



The Dow Chemical Company
Midland, MI 48674
U.S.A.

June 12, 2017

Secretary, U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Rulemakings and Adjudications Staff

VIA FACSIMILE
301/415-1101

COMMENTS OF THE DOW CHEMICAL COMPANY ON THE PROPOSED RULE "NON-POWER PRODUCTION OR UTILIZATION FACILITY LICENSE RENEWAL, DOCKET #NRC-2011-0087

The Dow Chemical Company ("Dow") is pleased to comment on NRC's proposal, "Non-Power Production or Utilization Facility License Renewal," docket #NRC-2011-0087, published March 30, 2017 at 82 Federal Register 15643.

Dow owns and operates a TRIGA research nuclear reactor that falls within the scope of the NRC's proposed regulatory amendments. In general, Dow favors the proposed amendments. We have a few comments requesting revisions or clarifications. While we believe that these revisions or clarifications are important, our comments are not intended to detract from Dow's over-all favorable impression of the proposal.

If you have questions concerning these comments, or if Dow can provide additional information, please contact the undersigned.

Sincerely:

A handwritten signature in black ink, appearing to read "Toby Threet".

Toby Threet, Lead Counsel
The Dow Chemical Company
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WORLDWIDE PARTNER

Dow supports NRC’s proposal to eliminate license terms.

As the NRC is aware, The Dow Chemical Company (“Dow”) owns and operates a TRIGA nuclear reactor for research purposes. Under the NRC’s proposal, the license for this reactor would be converted from a 20-year term (requiring renewal every two decades) to an ongoing license that does not require renewal at fixed periods. Dow supports this, and agrees with the rationale stated in the Agency’s proposal.

Dow requests clarification that we will not need to renew our license one final time, near its currently-listed expiration date, in order to obtain a license without a fixed expiration date.

Dow understands that the NRC’s proposal is intended to reduce burdens both on the Agency and on license holders. We support the proposed reduction of burden. However, our initial review of the proposed regulatory language gave us the impression that the burdens might actually be increased. This is because the regulatory language appeared to indicate that our current license (with a fixed 20-year term) would remain in effect for the remainder of its lifespan, and only then would we convert to a license without a fixed term. This is because proposed section 50.51(c) says licenses “issued under section 50.21(a) or (c) after [EFFECTIVE DATE OF FINAL RULE] will be issued with no fixed term.” This seems to indicate that our current license, which of course was issued before the “effective date of final rule,” would still continue to have a fixed term. If that were the case, then it seemed that for the remainder of our license term (approximately 17 years), we might be subject to two burdens at the same time: the old burden of preparing a renewal application near the end of life of the current license, and the new burden of submitting an update of the FSAR every five years. If that were the case, then the regulatory amendments would actually increase the burden on the licensed facility. And since our reactor is a fee-bearing facility, this increase in burden would be accompanied by an increase in cost for reimbursement of the Agency’s oversight.

Upon further review, we believe this was not the Agency’s intent. Rather, we believe that when the NRC issues “orders” to set the date for each licensee’s submittal of the first FSAR update, the Agency intends to use the “order” to amend the license so that it no longer has a fixed term. We would then have a license issued “after effective date of final rule,” so there would be no increase in regulatory burdens. Rather, the burden of preparing license amendment applications would be eliminated as of the date of the order, and the duty to submit FSAR updates would begin. Since this intent is not quite clear from the proposal, Dow requests clarification. We suggest that it is not necessary to revise the proposed regulatory text. A discussion in the preamble of the final rule should be sufficient. For example, the NRC might say something such as the following:

A commenter requested clarification that its existing license will not need to be renewed at the end of its 20-year term, in order to obtain a license without a fixed term. The NRC intends to issue orders which will establish the date for the first

FSAR update. The orders will also revise existing licenses so that they no longer have a fixed term. Therefore, as of the date of the order, the licensee will possess a license that does not have a fixed term. This means there will be no requirement to prepare a renewal application for such licenses, after issuance of the order.

The NRC should provide additional flexibility on the deadline for submitting updates of the FSAR, to avoid creating an unintended burden.

Section 50.71(e)(4)(ii) says that, after the initial FSAR update, subsequent updates must be submitted “at intervals not to exceed 5 years.” Taken literally (which is a normal expectation with regulatory language), this means a facility would be out of compliance, and potentially subject to penalties, if (for example) one update is submitted on a January 11 and the subsequent update is submitted on a January 12. We acknowledge that, in reality, the NRC would likely not bring an enforcement action for something so minor. However, for reasons that follow, we request slightly greater flexibility.

First and foremost, Dow’s corporate policy requires compliance with law. This means that, even if the Agency would exercise enforcement discretion, Dow would feel compelled to literally submit each successive FSAR update no later than the precise month and day that we submitted the previous update. In this light, the current language creates a situation where compliance might become literally impossible. This is because, if the compliance deadline is precisely five years (to the exact day) from the last report, then as a practical matter we will need to leapfrog (or “ratchet”) the submittals to an earlier date each year. This will be necessary in order to deal with holidays, weekends, other workload, the possibility of vacations or illnesses, etc. For example, if our first FSAR update was submitted on a January 22, we would likely try to get the next update into the mail no later than January 12. And then we would probably try to time the next update for no later than January 2. As you can see, at that point our back would be against the wall. January 1 is a holiday, so there is no date earlier than January 2 for the next submittal.

Second, we believe that the precise date of the submittal should not actually be critical to the NRC, for a document that is submitted on five-year intervals. So long as the document is received during the anticipated calendar year, and not terribly far from the month of the previous submittal, the precise date would not seem to be likely to materially affect the Agency’s activities. For example, we believe it likely would not make a great deal of difference whether one update is received in March and the next update is received in May.

For these reasons, Dow requests slightly greater flexibility. This could be addressed either in the regulatory language, or in the preamble of the final rule. If the Agency chooses to address the regulatory language, a modification might be as follows. (Additions are underlined, and deletions are in ~~strikeout~~.)

50.71(e)(4)(ii): Non-power production or utilization facility licensees shall file subsequent FSAR updates ~~at intervals not to exceed 5 years~~ in the fifth year after the previous FSAR update, on a date that may be earlier than, but shall not be more than [duration]¹ later than, the date of the prior submittal. Each update must reflect all changes made to the FSAR up to a maximum of 6 months prior to the date of filing the update.

Alternatively, if the NRC wishes to address this issue in the preamble rather than in the regulatory wording, the Agency might say something like this:

A commenter expressed concern that the wording of proposed section 50.71(e)(4)(ii) provided too rigid a deadline for submittal of the second and subsequent FSAR updates. The concern was that, if one update was submitted on (for example) a January 12, and the next update was submitted on January 13, this would constitute noncompliance. The commenter was concerned that illness, holidays, vacations or other issues might make it necessary to send each successive update earlier than the last, until eventually the update would need to be submitted in the fourth year, rather than the fifth year. This was not the NRC's intent. An update that is submitted in the fifth year, in reasonable proximity to the date of the prior update (e.g., within [duration]² of the precise date) will be considered in compliance.

The Agency should clarify that licensees are not required to submit the entire updated FSAR, but only the actual updates.

The NRC intends that these proposed amendments would reduce burden both on the Agency and on the regulated community. The concept is that submitting FSAR updates every five years would be a smaller burden than completing a license renewal application at a longer interval, such as (in Dow's case) every twenty years. In order to achieve a net benefit, the burden of preparing and submitting a FSAR update must be relatively modest. In Dow's case, there would be a burden reduction only if:

$$4 \times (\text{FSAR update}) < 1 \times (\text{License renewal application}).$$

Unfortunately, the wording of the proposal is not entirely clear as to the size of the effort of preparing and submitting an update to the FSAR. Section 50.71(e) says the submittal shall "contain" certain information and shall "include" certain other information, but does not say the submittal is limited to that information. This means reasonable minds could differ as to what a complete submittal looks like. At one end of the spectrum, a complete submittal might contain

¹ Dow suggests two months.

² Dow suggests two months.

only the information specified in section 50.71(e). (We think of this as “only the changes.”) At the other end of the spectrum, a complete submittal might consist of the entire up-to-date FSAR, with the changes highlighted. Clearly the burden of the latter would be larger.

The NRC has published not only the proposed regulations, but also a draft regulatory guide DG-2006, explaining how to prepare FSAR updates. Unfortunately, the draft regulatory guide appears to embrace the most burdensome end of the spectrum. The Guide (page 7) says that “**The FSAR (as updated) shall be submitted . . .**” (Emphasis added.) This means we would have to submit the entire FSAR, from beginning to end, every five years. Considering that the NRC already has all the sections that have not changed, this burden is unnecessary. We should be allowed to simply submit the changed sections or items.

We believe the NRC should require submittal of only the changes, not the entire FSAR. We do not think any change is needed in the wording of the proposed regulation. Rather, a discussion in the preamble of the final rule, and revision of the draft Regulatory Guide would be sufficient. The topic could be addressed in the preamble by wording such as the following:

A commenter expressed concern that the wording of section 50.71(e) might be interpreted so that an “update” to the FSAR would consist of the entire FSAR (with changes highlighted), rather than only the changes. The Agency wishes to clarify that a complete submittal consists of only the changes. The unchanged sections of the FSAR do not have to be submitted. A submittal that contains the information identified in section 50.71(e) is sufficient to constitute compliance.

The draft Regulatory Guide (page 7) should be revised as follows. (Additions are underlined, and deletions are in ~~strikeout~~ font.)

3. Submittal of ~~the FSAR (as updated)~~ updates to the FSAR

- a. ~~The FSAR (as updated)~~ Updates to the FSAR shall be submitted in accordance with 10 CFR 50.71(e)(2) which requires that the ~~submitted FSAR submittal~~ include: (1) a certification by a duly authorized officer of the licensee that either the information accurately presents changes made since the previous submittal, necessary to reflect information and analyses submitted to the Commission or prepared pursuant to Commission requirement, or that no such changes were made; and (2) an identification of changes made under the provisions of section 50.59 but not previously submitted to the Commission.
- b. ~~The FSAR (as updated)~~ Updates to the FSAR must be submitted in accordance with 10 CFR 50.4, “Written communications.” Where practicable, licensees should electronically submit the entire ~~document~~ update, for example via Electronic Information Exchange, e-mail, or CD-ROM. . . .

- c. Information included in ~~the FSAR (as updated)~~ an update to the FSAR that is considered sensitive or proprietary, that the licensee seeks to have withheld from the public, must be marked . . .

From: [Jennings, Audrey \(AG\)](#)
To: [RulemakingComments Resource](#)
Subject: [External_Sender] Comments of The Dow Chemical Company on NPUF Amendments
Date: Tuesday, June 13, 2017 8:25:16 AM
Attachments: [DOC.PDF](#)

Hello,

Attached are the comments of The Dow Chemical Company on the proposed rule, "Non-Power Production or Utilization Facility License Renewal", Docket #NRC-2011-0087.

Regards,

Audrey Jennings

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Workers' Compensation

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