Docket No.: 50-400

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Mr. E. E. Utley
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Post Office box 1551
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Dear Mr. Utley:

Subject: Interim Guidance on Emergency Planning Standard 10 CFR 50.47(b)(12) Regarding the Shearon Harris Nuclear Power Plant, Unit 1

The recent Commission Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12), published in the Federal Register (50 FR 20892) May 21, 1985, deals with arrangements for medical services for contaminated injured individuals, and provides Interim Guidance (see Section III of the Federal Register Statement, copy enclosed) with respect to the recent court decision GUARD vs NRC, 753 F.2d 1144 (D. C. Cir. 1985). The Interim Guidance states the Commission's belief that Licensing Boards, and in uncontested cases, the staff, may find that applicants who:

(1) have met the requirements of 10 CFR 50.47(b)(12) as interpreted by the Commission before the GUARD decision, and

(2) commit to full compliance with the Commission's response to the GUARD remand,

meet the requirements of 50.47(c)(1) and, therefore, are entitled to a license on the condition of full compliance with the Commission's forthcoming response to the GUARD remand.

Accordingly, in order for us to issue a license to operate Shearon Harris you are required to formally (1) confirm that offsite emergency plans include a list of local or regional medical facilities which have capabilities to provide treatment for radiation exposure, and (2) commit to full compliance with the Commission's response to the GUARD remand.

Sincerely,

ORIGINAL SIGNED BY

George W. Knighton, Chief
Licensing Branch No. 3
Division of Licensing

Enclosure: As stated

cc: See next page

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Enclosure

10 CFR Part 50

Emergency Planning; Statement of Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy on Emergency Planning Standard 10 CFR 50.47(b)(12).

SUMMARY: The United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit" or "Court") has vacated and remanded to the Nuclear Regulatory Commission ("NRC" or "Commission") that part of its interpretation of 10 CFR 50.47(b)(12) ("planning standard (b)(12)") which stated that a list of treatment facilities constituted adequate arrangements for medical services for individuals who might be exposed to dangerous levels of radiation at locations offsite from nuclear power plants. *GUARD* v. *NRC*, 753 F.2d 1144 (D.C. Cir. 1985). The Court also vacated certain Commission decisions which applied this interpretation in the Commission proceeding on operating licenses for the San Onofre Nuclear Generating Station, Units 2 and 3 ("SONGS"). However, the Court did not vacate or in any other way disturb the operating licenses for SONGS. Moreover, the Court's remand left to the Commission's sound discretion a wide range of alternatives from which to select an appropriate response to the Court's decision. This Statement of Policy provides guidance to the NRC's Atomic Safety and Licensing Boards ("Licensing Boards") and Atomic Safety and Licensing Appeal Boards ("Appeal Boards") pending completion of the Commission's response to the D.C. Circuit's remand.

EFFECTIVE DATE: May 21, 1985.

FOR FURTHER INFORMATION CONTACT: Sheldon Trubatch, Office of the General Counsel, (202) 634-3224.

SUPPLEMENTARY INFORMATION:

I. Background

Emergency planning standard (b)(12) provides:

(b) The onsite and offsite emergency response plans for nuclear power reactors must meet the following standards:

(12) Arrangements are made for medical services for contaminated injured individuals.

10 CFR 50.47(b)(12).

The scope of this requirement was an issue of controversy in the adjudicatory proceeding on the adequacy of the emergency plans for SONGS. See generally, LBP-82-39, 15 NRC 1163, 1188-1200, 1244-1257, 1290 (1982). The Licensing Board concluded that planning standard (b)(12) required, among other things, the development of arrangements for medical services for members of offsite public who might be exposed to excessive amounts of radiation as a result of a serious accident. 15 NRC at 1199. The Licensing Board did not specify what would constitute adequate medical service arrangements for such overexposure. However, it found that there was no need to direct the construction of hospitals, the purchase of expensive equipment, the stockpiling of medicine or any other large expenditure, the sole purpose of which

would be to guard against a very remote accident. Rather, the Licensing Board believed that the emphasis should be on developing specific plans and training people to perform the necessary medical services. 15 NRC at 1200.

The Licensing Board also found, pursuant to 10 CFR 50.47(c)(1), that although the failure to develop arrangements for medical services for members of the offsite public who may be injured in a serious accident was a deficiency in the emergency plan, that deficiency was not significant enough to warrant a refusal to authorize the issuance of operating licenses for SONGS provided that deficiency was cured within six months. 15 NRC at 1199. (This period was subsequently extended by stipulation of the parties.) The Licensing Board provides several reasons which supported its finding that this deficiency was insignificant. Among these were that the possibility of a serious accident was very remote, significantly less than one-in-a-million per year, and that the nature of radiation exposure injury being protected against was such that available medical services in the area could be called upon on an *ad hoc* basic for injured members of the offsite public.

The Licensing Board's interpretation of planning standard (b)(12) was called into question by the Appeal Board, ALAB-680, 16 NRC 127 (1982). In denying a motion to stay the Licensing Board's decision, the Appeal Board suggested that the phrase "contaminated injured individuals" had been read too broadly to include individuals who were severely irradiated. In the Appeal Board's view, the phrase was limited to individuals onsite and offsite who had been *both* contaminated with radiation *and* traumatically injured. The record in San Onofre was found to support a finding that adequate medical arrangements had been made for such individuals.

Faced with these differing interpretations, the Commission certified to itself the issue of the interpretation of planning standard (b)(12). CLI-82-27, 16 NRC 883 (1982). After hearing from the parties to the San Onofre proceeding and the Federal Emergency Management Agency (FEMA), the Commission determined among other things, that: (1) Planning standard (b)(12) applied to individuals both onsite and offsite; (2) "contaminated injured individuals" was intended to include seriously irradiated members of the public; and (3) adequate medical arrangements for such injured individuals would be provided by a list of area facilities capable of treating such injuries.

Subsequently, Southern California Edison provided a list of such facilities to the Licensing Board. The Licensing Board found that the list satisfied planning standard (b)(12). LBP-83-47, 18 NRC 128 (1983). Thereupon, the staff amended the San Onofre licenses to remove the emergency planning condition previously imposed. 48 FR 43248 (September 22, 1983).

II. The Court's Decision

In *Guard* v. *NRC*, the Court vacated the Commission's interpretation of planning standard (b)(12) to the extent that a list of treatment facilities was found to constitute adequate arrangements for medical services for offsite individuals exposed to dangerous levels of radiation. 753 F.2d at 1146, 1150. The Court did not review any other aspects on the Commission's interpretation of planning standard (b)(12). In particular, because the Court's decision addressed the adequacy of certain arrangements for only offsite individuals, the decision does not affect the emergency planning findings necessary for low power operation.

With regard to full-power operation, the Court also afforded the NRC substantial flexibility in its reconsideration of planning standard (b)(12) to pursue any rational course. 753 F.2d at 1146. Possible further Commission action might range from reconsideration of the scope of the phrase "contaminated injured individuals" to imposition of "genuine" arrangements for members of the public exposed to dangerous levels of radiation. *Id.* Until the Commission determined how it will proceed to respond to the Court's remand, the Commission provides the following interim guidance to the boards in authorizing, and to the NRC staff in issuing, a full-power operating licenses.

III. Interim Guidance

The Commission's regulations specifically contemplated certain equitable exceptions, of a limited duration, from the requirements of 50.47(b), including those presently uncertain requirements here at issue. Section 50.47(c)(1) provides that:

"Failure to meet the applicable standards set forth in paragraph (b) of this section may result in the Commission's declining to issue an operating license; demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operations."

For the reasons discussed below, the Commission believes that Licensing Boards (and, the uncontested situations, the staff) may find that applicants who have met the requirements of § 50.47(b)(12) as interpreted by the Commission before the *GUARD* decision and who commit to full compliance with the Commission's response to the *GUARD* remand meet the requirements of § 50.47(c)(1) and, therefore, are entitled to license conditional of full compliance with the Commission's response to the *GUARD* remand.[1]

The Commission relies upon several factors in directing the Licensing Boards and, where appropriate, the staff to consider carefully the applicability of § 50.47(c)(1) for the limited period necessary to finalize a response to the recent *GUARD* decision. Because the Commission has not determined how, or even whether, to define what constitutes adequate arrangements for offsite individuals who have been exposed to dangerous levels of radiation, the Commission believes that until it provides further guidance on this matter, Licensing Boards (or, in uncontested matters, the staff) should first consider the applicability of 10 CFR 50.47(c)(1) before considering whether any additional actions are required to implement planning standard (b)(12). Such consideration is particularly appropriate because the *GUARD* decision leaves open the possibility that modification or reinterpretation of planning standard (b)(12) could result in a determination that no prior arrangements need to be made for offsite individuals for whom the consequences of a hypothetical accident are limited to exposure to radiation.

In considering the applicability of 10 CFR 50.47(c)(1), the Licensing Boards (and, in uncontested cases, the staff) should consider the uncertainty over the continued viability of the current meaning of the phrase "contaminated injured individuals." Although, that phrase currently includes members of the offsite public exposed to high levels of radiation, the *GUARD*, court has clearly left the Commission the

[1] Licensees who have already obtained operating licenses based on compliance with the Commission's previous interpretation planning standard (b)(12) will also be expected either to come into compliance with any different interpretation of that planning standard or to explain why an exemption would be warranted. Failure to provide an adequate basis for an exemption request could lead to initiation of an enforcement action pursuant to 10 CFR Part 2.202.

discretion to "revisit" that definition in a fashion that could remove exposed individuals from the coverage of planning standard (b)(12). Therefore, Licensing Boards (and, in uncontested cases, the staff) may reasonably conclude that no additional actions should be undertaken now on the strength of the present interpretation of that term.

Moreover, the Commission believes that Licensing Boards (and, in uncontested cases, the staff) could reasonably find that any deficiency which may be found in complying with a finalized, post-*GUARD* planning standard (b)(12) is insignificant for the purposes of 10 CFR 50.47(c)(1). The low probability of accidents which might cause extensive radiation exposure during the brief period necessary to finalize a Commission response to *GUARD* (as the San Onofre Licensing Board found, the probability of such an accident is less than one in a million per year of operation), and the slow evolution of adverse reactions to overexposure to radiation are generic matters applicable to all plants and licensing situations and over which there is no genuine controversy. Both of those factors weigh in favor of a finding that any deficiencies between present licensee planning (which complies with Commission's pre-*GUARD* interpretation of 10 CFR 50.47(b)(12)) and future planning in accordance with the final interpretation of planning standard (b)(12) as a response to the *GUARD* decision, will not be safety significant for the brief period in which it takes licensee to implement the final standard.

In addition, as a matter of equity, the Commission believes that Licensing Boards (and, in uncontested cases, the staff) could reasonably find that there are "other compelling reasons" to avoid delaying the licensees of those applicants who have complied with the Commission's pre-*GUARD* section 50.47(b)(12) requirements. Where applicants have acted in good faith reliance on the Commission's prior interpretation of its own regulation, the reasonableness of this good faith reliance indicates that it would be unfair to delay licensing while the Commission completes its response to the *GUARD* remand.

Finally, if Licensing Boards find that these factors adequately support the application of 10 CFR 50.47(c)(1), then those Licensing Boards could conclude no hearings would be warranted. Therefore, until the Commission concludes its *GUARD* remand and instructs its boards and its staff differently, the Licensing Boards could reasonably find that any hearing regarding compliance with 10 CFR 50.47(b)(12) shall be limited to issues which could have been heard before the Court's decision in *GUARD* v. *NRC*.

Dated at Washington, D.C. this 16th day of May, 1985.

For the Commission.

Samuel J. Chilk,

Secretary of the Commission.

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