



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

October 5, 2018

Ms. Janet R. Schlueter, Senior Director  
Radiation and Materials Safety  
Nuclear Energy Institute  
1201 F Street NW, Suite 1100  
Washington, DC 20004

SUBJECT: CLOSURE OF THE NUCLEAR ENERGY INSTITUTE'S REQUEST TO USE NEI 14-14, "REGULATORY ISSUE RESOLUTION PROTOCOL," REGARDING THE CLARIFICATION ASSOCIATED WITH REPORTING OF UNPLANNED CONTAMINATION EVENTS AT FUEL CYCLE FACILITIES

Dear Ms. Schlueter:

By letter dated April 4, 2017 (Agencywide Documents Access and Management System [ADAMS] Accession Number ML17065A174), the U.S. Nuclear Regulatory Commission (NRC) staff responded to a letter from the Nuclear Energy Institute (NEI), dated July 27, 2015 (ADAMS Accession Number ML15217A487). In the July 27, 2015, letter, NEI, on behalf of its fuel cycle facility members, requested clarification of the NRC's reporting requirements contained in Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 40.60 and 70.50. Specifically, NEI requested clarification of: (A) the 10 CFR 40.60(b)(3) and 70.50(b)(3) provisions for reporting the unplanned medical treatment of personnel with spreadable radioactive contamination on the individual's clothing or body, and (B) the 10 CFR 40.60(b)(1) and 70.50(b)(1) provisions for reporting certain unplanned events involving the contamination of radiologically controlled areas occurring within a facility.

In the NRC's April 4, 2017, letter to NEI, the NRC staff provided its position on the reporting requirements and stated the NRC's intention to develop a Regulatory Issue Summary (RIS) that would provide additional information regarding the reporting requirements. However, after evaluating existing guidance, the NRC staff determined that the existing guidance is adequate and has decided not to issue a RIS. Consistent with the information provided in the NEI 14-14 Issue Closure Form (ADAMS Accession Number ML17075A039), the staff position on the reporting requirements pursuant to 10 CFR 40.60(b)(1) and 70.50(b)(1) is documented in this letter.

#### Background

The NEI 14-14 protocol was endorsed by the NRC in a letter dated December 16, 2014 (ADAMS Accession Number ML14342A172), as a methodology for the NRC staff, NEI, and the fuel cycle industry to use in resolving generic regulatory issues.

Utilizing this protocol, NEI submitted a request, by letter dated July 27, 2015, for clarification of the NRC's reporting requirements in 10 CFR 40.60 and 70.50. NEI requested, in part, clarification of the 10 CFR 40.60(b)(1) and 70.50(b)(1) provisions for reporting certain unplanned events involving the contamination of radiologically controlled areas occurring within a facility. As described in the request, industry's position is that there are specifically designed radiological or contamination controlled areas and that "releases of radioactive material in these specifically designed areas should not necessitate 24 hour reporting per 10 CFR 70.50(b)(1) and 10 CFR 40.60(b)(1), as these areas are "planned" to contain and control contamination." By letter dated September 23, 2015 (ADAMS Accession Number ML15257A222), the NRC acknowledged the receipt of NEI's July 27, 2015 letter.

Public meetings with the NRC staff, NEI, and other stakeholders were subsequently held to discuss the reporting requirements. As discussed during these public meetings and documented in subsequent meeting summaries, the NRC staff position differed from the industry position on reporting of unplanned contamination events. A history of the NRC's public meetings and the NRC staff position are summarized in the staff's "Response to the Nuclear Energy Institute's Request to Use NEI 14-14, 'Regulatory Issue Resolution Protocol,' Regarding the Issue Associated with Reporting of Unplanned Contamination Events at Fuel Cycle Facilities," dated April 4, 2017 (ADAMS Accession Number ML17065A174).

### Discussion

After further evaluation of the NRC's existing guidance, the NRC staff has decided not to issue a RIS because the NRC staff finds that current guidance regarding radiation protection programs is sufficient to aid licensees in implementing the reporting requirements in 10 CFR 40.60 and 70.50. NUREG-1736 "Consolidated Guidance: 10 CFR Part 20-Standards for Protection Against Radiation," NUREG 1556 "Consolidated Guidance About Materials Licenses," and NUREG-1520 "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility," provide information that can be used to implement the reporting requirements.

While radiological or contamination controlled areas may be designed to contain and control contamination, the NRC staff position is that notification to the NRC of unplanned contamination events, in accordance with the criteria stated in 10 CFR 70.50(b)(1) and 10 CFR 40.60(b)(1), regardless of where they occur, is necessary to ensure that the contaminated areas are being decontaminated in a safe and timely manner. This position is consistent with the statements of consideration (SOC) published for the 1991 rulemaking establishing the 10 CFR 40.60(b)(1) and 70.50(b)(1) provisions (56 Fed. Reg. 40757 *et seq.* (August 16, 1991)). Consistent with the SOC, the NRC must be notified of such events "to ensure that appropriate and timely actions are taken." This would include notifying other licensees if the event is found to have "generic safety implications not previously recognized" (56 Fed. Reg. 40757, at 40760).

Further, the NRC staff maintains that industry's proposal to exclude contamination events that occur in a radiological or contamination controlled area from the reporting requirements would not be consistent with current radiation safety programs. These programs are designed to keep exposures as-low-as-reasonably-achievable (ALARA).

In addition, the NRC staff position is that "unplanned" contamination events are not intended nor reasonably foreseeable. In responding to a comment to the 1991 rulemaking, the NRC staff acknowledged that certain planned activities, such as maintenance, may result in contamination events and therefore the criteria contained in 10 CFR 40.60(b)(1) and 70.50(b)(1) were "revised to clarify that it applies to unplanned contamination only" (56 Fed. Reg. 40757, at 40761).

In accordance with Title 10 of the *Code of Federal Regulations*, Part 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records component of NRC's ADAMS. ADAMS is accessible from the NRC Web site at: <http://www.nrc.gov/reading-rm/adams.html>.

If you have any questions, please contact Ms. Alayna Pearson of my staff by telephone at (404) 997- 4716, or via e-mail at [Alayna.Pearson@nrc.gov](mailto:Alayna.Pearson@nrc.gov).

Sincerely,

\RA\

Brian W. Smith, Acting Director  
Division of Fuel Cycle Safety, Safeguards,  
and Environmental Review  
Office of Nuclear Material Safety  
and Safeguards

**SUBJECT:** RESPONSE TO THE NUCLEAR ENERGY INSTITUTE'S REQUEST TO USE NEI 14-14, "REGULATORY ISSUE RESOLUTION PROTOCOL," REGARDING THE ISSUE ASSOCIATED WITH REPORTING OF UNPLANNED CONTAMINATION EVENTS AT FUEL CYCLE FACILITIES

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