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RULEMAKING ISSUE

December 27, 1993

(NEGATIVE CONSENT)

SECY-93-359

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: FINAL RULE, 10 CFR 50.54(bb), "NOTIFICATION OF SPENT FUEL MANAGEMENT AND FUNDING PLANS BY LICENSEES OF PREMATURELY SHUT DOWN POWER REACTORS"

PURPOSE:

To inform the Commission that the Executive Director for Operations (EDO) intends to publish a final rule amending the requirements contained in 10 CFR 50.54(bb) on the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down before the expected end of their operating lives.

SUMMARY:

This final rule will amend 10 CFR 50.54(bb) to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely. The current rule requires a licensee to submit such notification no later than 5 years before the operating license expires, regardless of the operating status of the plant. This final rule amends the current rule to require that a licensee submit such notification either within 2 years after permanently ceasing operation of its licensed power reactor or no later than 5 years before the reactor operating license expires, whichever event occurs first. Licensees of nuclear power reactors that have already permanently ceased operation by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

Contact:
Robert Wood, NRR
504-1255

NOTE: TO BE MADE PUBLICLY AVAILABLE
IN 10 WORKING DAYS FROM THE
DATE OF THIS PAPER.

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CATEGORY:

This is a negative consent item.

DISCUSSION:

On June 30, 1993, the NRC published in the Federal Register a notice of proposed rulemaking to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely (58 FR 34947). This action was recommended to the Commission in SECY-93-117, May 3, 1993. The Commission approved the staff's recommendation by negative consent on May 24, 1993.

SECY-93-117 also stated that the staff will consider recommending to the Commission a rulemaking to include spent fuel costs as part of decommissioning funding assurance requirements when its information base on spent fuel costs is more fully developed. This information is expected to be available by the end of 1994.

1. Comments

The NRC received four comments on the proposed rule. Licensees or their representatives submitted three of the four comments and supported the rule as proposed. These three agreed with the NRC assessment that the proposed rule is administrative in nature and would produce consistency with the decommissioning rule. However, each of the three commenters recommended that the rule amendments should apply only prospectively; that is, the rule should not apply to licensees whose power reactors have already permanently ceased operating. For these plants, the commenters requested that the NRC allow licensees to submit spent fuel management funding plans on a case-by-case schedule. One commenter recommended that a statement to this effect be added to the final rule.

A fourth commenter supported the concept of requiring the submittal of spent fuel management and funding plans soon after permanent shutdown, but recommended that licensees be required to submit these plans within 60 days after permanent shutdown.

The three commenters representing licensees also supported the NRC intent to initiate rulemaking to include spent fuel costs as part of decommissioning costs only after careful consideration of the database that the NRC is developing in this area. In a related area, one of these commenters noted that the NRC currently has regulations in place in 10 CFR Part 72 to ensure a licensee's financial qualifications for the safe construction, operation, and decommissioning of an independent spent fuel storage installation (ISFSI). The fourth commenter supported

rulemaking on funding assurance for spent fuel storage costs that would be similar to, but separate from, decommissioning costs.

2. Staff Response

The staff responds as follows to the issues raised by the commenters:

(1) The rule should only apply prospectively.

Response: The staff disagrees that this rule should not apply to licensees of plants that have already permanently ceased operating. This rule should be consistent with the provisions of 10 CFR 50.82(a), which requires that each power plant licensee submit its decommissioning plans no later than 2 years after permanently ceasing operations, regardless of how long the plant operated. The NRC recently amended 10 CFR 50.82(a) to allow the collection period of any shortfall of decommissioning funds to be determined on a case-by-case basis for plants that had been shut down prematurely (57 FR 30383, July 9, 1992). However, even licensees of these plants must submit their decommissioning plans within the 2-year time frame, notwithstanding the collection period ultimately adopted.

To maintain consistency, the staff believes that the 2-year limit should be applied to plants already shut down. However, to assure that the NRC does not impose unnecessary burdens on these licensees, the final rule has been modified to allow these licensees 2 years from the effective date of the rule to submit their spent fuel management and funding plans.¹

(2) Submittal of spent fuel management and funding plans should be required within 60 days of permanent shutdown of the facility, rather than within 2 years.

¹In practice, licensees of most of the nuclear power plants that have already permanently shut down have developed plans for the management and funding of the disposition of spent fuel at their sites. For example, Fort St. Vrain has either shipped spent fuel offsite to DOE or moved it to an onsite ISFSI. Shoreham is shipping its fuel to Limerick. Yankee-Rowe and Rancho Seco have developed plans for onsite storage facilities. Humboldt Bay and LaCrosse are maintaining fuel in their spent fuel pools. Dresden 1, San Onofre 1, and Indian Point 1 are maintaining fuel in their spent fuel pools or in pools of other units still operating at the site. Peach Bottom 1 has no fuel onsite.

Response: The staff disagrees with this comment. Sixty days is too short a period in which to develop a meaningful spent fuel management and funding plan. Because licensees will normally develop these plans in conjunction with their decommissioning plans, the NRC should maintain consistency by requiring the same 2-year limit for both spent fuel management and funding plans and the overall decommissioning plan, which includes decommissioning funding.

- (3) Costs associated with the construction, operation, and decommissioning of ISFSIs are already assured by provisions in 10 CFR Part 72.

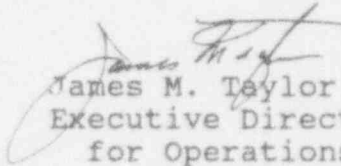
Response: The staff agrees that Part 72 contains provisions to ensure that licensees have adequate funds to construct, operate, and decommission ISFSIs. The staff will consider whether these provisions are adequate when it evaluates the necessity of including spent fuel management and funding as part of decommissioning costs. The staff also notes that not all licensees use ISFSIs for the storage of their spent fuel.

RECOMMENDATION: That the Commission note:

1. The EDO plans to sign the final rule revising 10 CFR 50.54(bb) as stated in the draft Federal Register notice (Enclosure 1) in 10 working days from the date of this paper, unless otherwise instructed by the Commission.
2. In 10 working days from the date of this paper, unless directed otherwise by the Commission, the EDO will certify that this final rule will not have a significant economic effect on a substantial number of small entities in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 605(b).
3. The Chief Counsel of Advocacy of the Small Business Administration will be informed of the certification and the reasons for it as required by the Regulatory Flexibility Act.
4. The staff has prepared an environmental assessment as required by the National Environmental Policy Act of 1969, as amended, and, based on that assessment, has determined that this final rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, the preparation of an environmental impact statement is not required. The environmental assessment and finding of no significant impact will be published in the Federal Register as part of the statement of consideration of the final rule. In the assessment, the staff concludes that modifying the timing of the submittal of spent fuel

management and funding plans for prematurely shut down power reactors will not be a major Federal action significantly affecting the quality of the environment.

5. This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).
6. The staff prepared a regulatory analysis and incorporated it into the draft Federal Register notice.
7. The final rule will not constitute a backfit under 10 CFR 50.109; therefore, a backfit analysis is not required.
8. The staff will inform the appropriate Congressional committees.
9. The staff will issue a public announcement.
10. The Office of the General Counsel has reviewed the proposed rule and has no legal objection.
11. No additional NRC resources will be required as a result of this final rule.


James M. Taylor
Executive Director
for Operations

Enclosure:
Draft Federal Register Notice

SECY NOTE: In the absence of instructions to the contrary, SECY will notify the staff on Wednesday, January 12, 1994, that the Commission, by negative consent, assents to the action proposed in this paper.

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Enclosure 1

Draft Federal Register Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AE46

Notification of Spent Fuel Management
and Funding Plans By Licensees of
Prematurely Shut Down Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down before the expected end of their operating lives. The final rule requires that a licensee submit such notification either within 2 years after permanently ceasing operation of its licensed power reactor or no later than 5 years before the reactor operating license expires, whichever event occurs first. Licensees of nuclear power reactors that have already permanently ceased operation by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

EFFECTIVE DATE: [30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-1255.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1993, the NRC published in the Federal Register a notice of proposed rulemaking to clarify the timing of notification to the NRC of spent fuel management and funding plans by licensees of those nuclear power reactors that have been shut down prematurely (58 FR 34947).

1. Comments Received

The NRC received four comments on the proposed rule. Three of the four comments came from licensees or their representatives and supported the rule as proposed. These commenters agreed with the NRC assessment that the proposed rule is administrative in nature and would produce consistency with the decommissioning rule. However, each of the three recommended that the rule amendments should apply only prospectively; that is, the rule

should not apply to licensees whose power reactors have already permanently ceased operating. The commenters requested that the NRC allow licensees of these plants to submit spent fuel management funding plans on a case-by-case schedule. One commenter recommended that the NRC add a statement to this effect to the final rule.

A fourth commenter supported the concept of requiring the submittal of spent fuel management and funding plans soon after permanent shutdown, but recommended that licensees be required to submit these plans within 60 days after permanent shutdown.

The three commenters representing licensees also supported the NRC intent to initiate rulemaking on including spent fuel costs as part of decommissioning costs only after careful consideration of the database that the NRC is developing in this area. In a related area, one of these commenters noted that the NRC currently has regulations in place in 10 CFR Part 72 to ensure a licensee's financial qualifications for the safe construction, operation, and decommissioning of an independent spent fuel storage installation (ISPSI). The fourth commenter supported rulemaking on funding assurance for spent fuel storage costs that would be similar to, but separate from, decommissioning costs.

2. NRC Response to Comments

The NRC responds as follows to the issues raised by the commenters:

- (1) The rule should only apply prospectively.

NRC response: The NRC disagrees that this rule should not apply to licensees of plants that have already permanently ceased operating. This rule should be consistent with the provisions of 10 CFR 50.82(a), which requires all power plant licensees to submit decommissioning plans no later than 2 years after permanently ceasing operations regardless of how long the plant operated. The NRC recently amended 10 CFR 50.82(a) to allow the collection period of any shortfall of decommissioning funds to be determined on a case-by-case basis for plants that had been shut down prematurely (57 FR 30383, July 9, 1992). However, even licensees of these plants must submit their decommissioning plans within the 2-year time frame, notwithstanding the collection period ultimately adopted.

To maintain consistency, the NRC believes that the 2-year limit should be applied to plants already shut down. However, to assure that the NRC does not impose unnecessary burdens on these licensees, the final rule has been modified to allow these

licensees 2 years from the effective date of the rule to submit their spent fuel management and funding plans.¹

- (2) Submittal of spent fuel management and funding plans should be required within 60 days of permanent shutdown of the facility, rather than within 2 years.

NRC Response: The NRC disagrees with this comment. Sixty days is too short a period in which to develop a meaningful spent fuel management and funding plan. Because licensees will normally develop these plans in conjunction with their decommissioning plans, the NRC should maintain consistency by requiring the same 2-year limit for both spent fuel management and funding plans and the overall decommissioning plan, which includes decommissioning funding.

- (3) Costs associated with the construction, operation, and decommissioning of ISFSIs are already assured by provisions in 10 CFR Part 72.

¹In practice, licensees of most of the nuclear power plants that have already permanently shut down have developed plans for the management and funding of the disposition of spent fuel at their sites. For example, Fort St. Vrain has either shipped spent fuel offsite to DOE or moved it to an ISFSI onsite. Shoreham is shipping its fuel to Limerick. Yankee-Rowe and Rancho Seco have developed plans for onsite storage. Humboldt Bay and LaCrosse are maintaining fuel in their spent fuel pools. Dresden 4, San Onofre 1, and Indian Point 1 are maintaining fuel in their spent fuel pools or in pools of other units still operating at the site. Peach Bottom 1 has no fuel onsite.

NRC Response: The NRC agrees that Part 72 contains provisions to ensure that licensees have adequate funds to construct, operate, and decommission ISFSIs. The NRC will consider whether these provisions are adequate when it evaluates whether it is necessary to include spent fuel management and funding as part of decommissioning costs.

Finding of No Significant

Environmental Impact: Availability

This final rule clarifies the timing of the submittal of plans for managing and providing funding for managing all irradiated fuel for those licensees whose power reactors are shut down prematurely. This action is required to coordinate the submittal of spent fuel management and funding plans with the submittal of decommissioning plans for prematurely shut down reactors. Because management and funding of spent fuel can have a significant impact on the method and timing of decommissioning, licensees should submit their plans for spent fuel management and funding to be consistent with the timing provisions for decommissioning plans in §50.82(a) (i.e., no later than 2 years after permanent shutdown).

Neither this action nor the alternative of maintaining the existing rule would significantly affect the environment. Changes in the timing of the submittal of spent fuel management

and funding for prematurely shut down power reactors would not alter the effect on the environment of the licensed activities considered in either the final spent fuel disposition rule (49 FR 34689; August 31, 1984) or the final decommissioning rule (53 FR 24018; June 27, 1988) as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG-0586, August 1988). The alternative to this action would not significantly affect the environment. Therefore, the Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. No other agencies or persons were contacted for this action, and no other documents related to the environmental impact of this action exist. The foregoing constitutes the environmental assessment and finding of no significant impact for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number [3150-0011].

Regulatory Analysis

On August 31, 1984, the NRC published a final rule, "Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses." (49 FR 34689). As part of this rule, the NRC required power reactor licensees to submit for NRC review and approval, no later than 5 years before expiration of the reactor operating license, their plans for managing spent fuel at their site until title to the spent fuel is transferred to the Department of Energy (DOE). These plans are to include plans for funding of spent fuel management before transfer to DOE.

On June 27, 1988, the Commission promulgated its final decommissioning rule (53 FR 24019). Section 50.82 of this rule provides that licensees of all power reactors that permanently cease operation after July 27, 1988, including those that shut down prematurely, must apply to the NRC to decommission their facilities within 2 years following permanent cessation of operations. Section 50.82(b)(1)(iii) further provides that the proposed decommissioning plan submitted by the licensee should consider such factors as the "unavailability of waste disposal capacity and other site-specific factors affecting the licensee's capability to carry out decommissioning safely...." The Commission requires licensees to submit decommissioning plans in a timely manner after they permanently cease operations at their

facilities. The NRC's regulations recognize that a licensee's ability to plan properly and safely for decommissioning depends on a licensee's ability to manage and dispose of its spent fuel. Thus, the timing of requirements for submittal of plans for spent fuel management and storage should be consistent with the timing for submittal of decommissioning plans, including those for power reactors that have been shut down prematurely. Therefore, the NRC is amending 10 CFR 50.54(bb) to require each power reactor licensee to notify the NRC of its program to manage and provide funding for management of the irradiated fuel at its reactor either within 2 years after the licensee permanently ceases operation of its reactor or no later than 5 years before its reactor operating license expires, whichever occurs first. Licensees of nuclear power reactors that have already permanently ceased operations by the effective date of this rule are required to submit such notification within 2 years after the effective date of this rule.

Although the timing of preparation and submittal of plans for management and funding of spent fuel would be formally advanced for licensees that shut down their power reactors prematurely, these licensees typically would have already evaluated spent fuel management and funding issues before submitting decommissioning plans required under 10 CFR 50.82. This rule merely makes 10 CFR 50.54(bb) submittal scheduler

requirements consistent with 10 CFR 50.82. Thus, there should be no substantive impact on power reactor licensees.

This final rule would not create substantial costs for other licensees. This final rule also will not significantly affect State and local governments and geographical regions, or the environment, or create substantial costs to the NRC or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect approximately 115 nuclear power reactor operating licenses. Nuclear power plant licensees do not fall within the definition of small businesses as defined in section 3 of the Small Business Act, 15 U.S.C. 632, the Small Business Size Standards of the Small Business Administrator (13 CFR Part 121), or the Commission's Size Standards (56 FR 56671, November 6, 1991).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis is not required for this final rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons given in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50-DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION
FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201 as amended, 202, 206, 88 Stat. 1242 as amended 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54 (dd), and 50.103 also issued under sec. 108, 68 Stat. 939 as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.54 is amended by revising paragraph (bb) to read as follows: §50.54 Conditions of licenses.

(bb) For nuclear power reactors licensed by the NRC, the licensee shall, within 2 years following permanent cessation of operation of the reactor or 5 years before expiration of the reactor operating license, whichever occurs first, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor following permanent cessation of operation of the reactor until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository. Licenseses of nuclear power reactors that have permanently ceased operation by [insert the effective date of this rule] are required to submit such written notification by [insert a date 2 years after the effective date of this rule]. Final Commission review will be undertaken as part of any proceeding for continued licensing under Part 50 or Part 72. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions requires NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the

notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

* * * * *

Dated at Rockville, Maryland this _____ day of _____,
1993.

FOR THE NUCLEAR REGULATORY COMMISSION.

James M. Taylor,
Executive Director for Operations.