



NUCLEAR MANAGEMENT AND RESOURCES COUNCIL

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April 6, 1990

Mr. James G. Partlow  
Associate Director for Projects  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Partlow:

Enclosed for your information is a draft white paper on the National Environmental Policy Act (NEPA) as it relates to decommissioning.

The white paper discusses the NEPA requirements as they apply to a plant permanently shut down and proceeding to go through the decommissioning process. The discussion includes a legal review of the NEPA requirements applicable to plant closure and decommissioning activities.

If there are any questions, please contact me or Alan Nelson.

Sincerely,

Thomas E. Tipton  
Director  
Operations, Management and  
Support Services Division

TET/APN:slr  
Enclosure

cc: Robert M. Bernero  
Thomas E. Murley

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NATIONAL ENVIRONMENTAL POLICY ACT  
APPLICATION TO  
NUCLEAR PLANT CLOSURE ACTIVITIES  
AND DECOMMISSIONING

INTRODUCTION

On June 27, 1988, the NRC amended its regulations to provide specific requirements for the decommissioning of nuclear facilities. Known as the Decommissioning Rule (53 Fed. Reg. 24018), these regulations require that a licensee obtain NRC approval of a proposed decommissioning plan prior to decommissioning the facility. The extent to which the provisions of National Environmental Policy Act ("NEPA") and their implementing regulations, codified by the NRC in 10 C.F.R. Part 51, apply to plant closure activities undertaken by a licensee prior to its decommissioning plan being approved, is not discussed in any detail. This white paper describes the application of NEPA, and Part 51, to the decommissioning plan approval process and to those activities undertaken prior to a decommissioning plan being approved, consistent with NRC regulations, with the facility's operating license and technical specifications, and with safe and appropriate practices.

Position:

In accordance with NEPA and the requirements of 10 C.F.R. Part 51, licensees must obtain NRC approval prior to undertaking plant closure activities that:

- o Would have an adverse environmental impact, or
- o Would limit the choice of reasonable decommissioning alternatives (i.e., SAFSTOR, DECON, or ENTOMB).

Evaluation:

The National Environmental Policy Act of 1969, ("NEPA") requires all Federal agencies to include an environmental impact statement ("EIS") "in every recommendation or report on proposals for ... major Federal actions significantly affecting the quality of the human environment." The NRC's major actions which trigger NEPA requirements are the issuance and amendment of licenses and permits, and the promulgation of regulations setting licensing requirements.

An agency may not improperly segment its environmental reviews by considering a project in a piecemeal fashion that avoids recognizing the environmental significance of the project as a whole. An action may not be segmented into component parts which, on their own, may not warrant EIS preparation or may justify an EIS conclusion that environmental impacts are acceptable. On the other hand, if an action is discrete, has independent utility, and does not foreclose the opportunity to consider alternative methods of accomplishing the objective, an appropriate

environmental review can be conducted relating to that action and segmentation has not occurred.

The decision to terminate operations at a nuclear power plant is the owner's to make, and does not require NRC authorization. Consequently, the cessation of operations itself is not a Federal action which can trigger NEPA environmental review requirements.<sup>1</sup>

Whether an NRC environmental review is required for closure activities already authorized by the operating license or permissible under 10 C.F.R. § 50.59 must be determined by examining the environmental conditions associated with each particular license. Activities may not be conducted without NRC environmental review if they would have a significant impact on the environment and have not previously been described in the applicant's environmental reports and reviewed by the NRC. Otherwise, an environmental review is not required. For any license amendment request which requires environmental review by NRC, the applicant must address environmental considerations and provide sufficient information to enable the NRC to assess the environmental impact of the proposed actions in accordance with 10 C.F.R. Part 51.

As a part of its rulemaking which led to the 1988 decommissioning regulations, the NRC prepared a comprehensive generic environmental impact statement which evaluated the environmental effects of permissible decommissioning alternatives under the regulations. This evaluation is contained in NUREG-0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities" (Aug. 1988) ("GEIS"). The NRC concluded that the environmental impacts of decommissioning "are expected to be similar from plant to plant" and that "their cumulative effect on the environment could best be examined generically." 53 Fed. Reg. at 24,039. The NRC found, in the GEIS, that the environmental impacts of decommissioning a nuclear power plant are insignificant.

The NRC has fully complied with NEPA by considering decommissioning during the decision making on the initial licensing of a nuclear power plant, by evaluating environmental impacts in detail in the adoption of its generic decommissioning regulations, and by considering any new information when decommissioning is actually proposed for a specific plant.

Eliminating requirements which are important only for plant operation and actions to conform the license to the facility's nonoperating status are actions which have "independent utility." For example, there would be independent utility to eliminating a license provision not required for

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<sup>1</sup> The NRC may not order the operation of a nuclear power plant except in such extreme circumstances as a Congressional declaration of war or national emergency.

protection of public health and safety which could cause unnecessary occupational radiation exposure. Thus, such closure activities may be considered as separate actions and not as segments of a decommissioning program as long as they do not foreclose reasonable decommissioning alternatives. The preparation of an EIS is not required where the activity does not have a significant impact on the environment associated with the then-current licensing condition and does not foreclose the consideration of reasonable decommissioning alternatives.

In accordance with 10 C.F.R. § 51.101, licensees require NRC approval prior to undertaking any plant closure activity that would limit the choice of reasonable decommissioning alternatives (i.e., SAFSTOR, DECON, and ENTOMB). Similarly, those activities that could have an adverse environmental impact would also require NRC approval. For example, plant closure activities that affect locations not previously disturbed during plant construction or operation may involve an unreviewed environmental question, and if those activities could have an adverse environmental impact, NRC approval would be required. The fact that plant closure is another step toward decommissioning is no reason for linking plant closure to decommissioning as a single Federal action that would require the performance of an environmental review. As long as closure activities have independent utility and do not foreclose reasonable decommissioning alternatives, the NRC's environmental review of decommissioning alternatives is unaffected by plant closure activities.

Finally, the alternatives for the NRC to consider before approving a decommissioning plan do not include continued plant operation and alternative means of supplying electricity. The alternatives which the NRC must consider are the various reasonable means of accomplishing the purpose of decommissioning -- which is "to restore a radioactive facility to a condition such that there is no unreasonable risk from the decommissioned facility to the public health and safety." GEIS § 2.4.1. The "no action" alternative to be considered in this context would be leaving the facility as is after terminating operations and the license. This is, in fact, the "no action" alternative which is considered and rejected in the GEIS. NEPA requires review of only those alternatives which accomplish the proposed objective, in this case decommissioning. Continued operation is a separate proposal, which does not advance the purposes of decommissioning and which therefore need not be considered in a NEPA review of a decommissioning proposal. It follows that closure activities which foreclose resumption of operations (that is, which are "irreversible" in the sense that it would not be practical to reverse these actions to be able to resume power operations) are not barred as an improper segmentation of the review of the environmental consequences of decommissioning.

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