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FYC 95-001

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Subject: Yankee Atomic Electric Company Comments - Nuclear Regulatory Commission Staff's Proposed Rule "Radiological Criteria for Decommissioning" (59FR43200)

Dear Mr. Chilk:

Yankee Atomic Electric Company (Yankee) appreciates the opportunity to comment in response to the subject proposed rule on radiolcgical criteria for decommissioning. Yankee is the owner of the Yankee Nuclear Power Station in Rowe, Massachusetts and provides engineering and licensing services to nuclear power plants in New England. Because the Rowe facility has been permanently shutdown and is now in the process of preparing for decommissioning, we are vitally concerned about regulations that define the criteria to be used to establish completion of decontamination and decommissioning of an NRC licensed facility. Therefore, we offer the following comments on the proposed rule.

ALARA Analysis

The proposed rule would establish a site release dose limit of 15 mrem/y for residual radioactivity distinguishable from background. The proposed rule would further require that the licensee demonstrate that the residual radioactivity has been reduced to As Low As Reasonably Achievable (ALARA) even if the dose rate is less than 15 mrem/y. Specifically, the rule states: "ALARA considerations must include all significant risks to humans and the environment resulting from the decommissioning process. Licensees shall demonstrate why further reductions below the limit are not reasonably achievable." (59FR43229)

During the NRC Workshop in Boston in March 1993 and in our comment letter on the draft proposed criteria, Yankee recommended that the dose limit be set in the range of 30 - 40 mrem/y. Yankee continues to recommend that the site release dose limit be

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maintained at that range. This recommendation was based on our own measurements of background radiation in the New England area which showed variations of this magnitude around a single site. With a dose criterion of 30 - 40 mrem/y, there may have been some justification for performing an ALARA analysis to assure that a lower limit was not appropriate. However, with a criterion of 15 mrem/y which is substantially below the variability in background radiation, this justification no longer exists. There is no longer a need to perform an ALARA analysis.

The GEIS in support of this rulemaking states that "radiological doses from background typically range between 100 mrem/yr and 1000 mrem/yr in the United States." Commissioner de Planque in her remarks to the NRC Workshop on Site Characterization for Decommissioning described a 10,000 square foot site in New Jersey where the measured terrestrial gamma dose rate levels varied by 40 mrem/y from one point to the next. Such examples are numerous in the health physics literature. The only conclusion that can be reached by understanding background variability is that 15 mrem/y is already indistinguishable from background. There is no need to perform costly and time consuming ALARA analyses to determine if such a goal (indistinguishable from background) is reasonably achievable if the 15 mrem/y criterion is met. We recommend that the requirement for an ALARA demonstration by the licensee be removed from the rule.

Separate Groundwater Standard

The proposed rule requires licensees to remediate their sites such that the level of radioactivity in any groundwater will meet the limits of 40 CFR Part 141 (EPA drinking water standard). This standard is based on a dose rate of 4 mrem/y from the drinking water pathway. This is inconsistent with the Total Effective Dose Equivalent (TEDE) concept upon which the proposed rule is based. The 15 mrem/y TEDE proposed limit includes all pathways and modes of exposure, including internal exposure from groundwater consumption. There is no reason, therefore, to require a separate limit on one of the pathways. There is especially no reason to place a separate, and more restrictive limit, on a potential pathway that is so easily avoided.

The EPA standard is based on the effectiveness of water cleanup prior to the tap. This has little to do with the cost effectiveness of site remediation. The applications are vastly different. The groundwater standard is not technically consistent with the proposed criteria and is not supported by any regulatory analysis. It should not be included as part of the radiological criteria.

The Commission also requested comments on whether background radioactivity should be excluded from any groundwater standard. To do otherwise would be absurd. If background radioactivity is included in the standard, a licensee could be prevented from license termination based on the presence of naturally occurring radioactive materials in the groundwater. This is certainly well beyond the intent of the proposed rule.

Public Participation

We agree with the Commission that it is important for the public to be fully informed of the decommissioning actions being taken at a particular site, but we do not agree that the public should be afforded the opportunity to participate in site decommissioning decisions except through the vehicles for participation which already exist, such as through the license amendment process. The Commission notes on page 43222 of the Federal Register notice that the idea of a Site-Specific Advisory Board is designed to respond to the "desire" expressed by many workshop commenters that local affected parties have early and substantive input into the decommissioning process on a site-specific basis. The Commission goes on to say that it "believes" that increasing the opportunity for early public involvement in the decommissioning process is an effective way to provide an information exchange and to ensure credible and defensible licensing decisions. We have several comments regarding these statements:

- To suggest that decisions regarding a decommissioning site are somehow of such public health and safety importance that the NRC, on its own, cannot ensure and defend licensing decisions is to suggest that previous decisions made by NRC on far more critical matters involving safety are not credible or cannot be defended because there may not have been an information exchange among the NRC, licensee, and the public. We take exception, as the Commission should, to such a notion as the NRC is more than capable of making and defending licensing decisions. Experience has more than demonstrated that the decisions which have been rendered by NRC continue to provide for adequate protection of public health and safety.

- Imposition of a Site-Specific Advisory Board for a decommissioning site is a perfect example of what the industry through the Towers Perrin Report cites as inconsistent and subjective regulation that results in little, if any, improvement in the margin of safety. The Commission and Staff have repeatedly acknowledged that decommissioning facilities pose a substantially reduced risk

to the public health and safety from that of operating facilities. Yet, NRC is proposing a degree of participation that is proportionately inverse to the potential risk. That is, less risk -- more opportunity for participation. Such an approach is illogical and contrary to actions being taken by NRC at the present time with regard to regulatory reform to ensure that regulatory activities are consistent with the degree of risk reduction they achieve.

A "desire" or "belief" must not become the new threshold for promulgation of regulations. Public health and safety must remain as that threshold. NRC has not made the demonstration that a Site-Specific Advisory Board will result in an increase in the margin of public health and safety. Furthermore, the Commission states on page 43227 that the Regulatory Analysis examines the costs and benefits of the alternatives considered by the Commission. We have reviewed the Regulatory Analysis and find no information regarding the costs and benefits of a Site-Specific Advisory Board. This further supports our contention that the Commission is pursuing promulgation of regulations based on "desire" and "belief," not objective, factual information.

In discussing the need for a Site-Specific Advisory Board, the Commission suggests several ideas for restricting site use, when requested by the licensee, yet ensuring continued compliance with such restrictions in the future. The suggestions include zoning controls, deed restrictions, negative easements, and government ownership. All of these controls involve federal, state, and/or local government review and approval. These government entities have rules and practices for public participation.

Decisions regarding public participation opportunities should remain with the entity responsible for approval or denial of the particular action being requested. For example, if the licensee requests a license amendment, then the licensee is obligated under NRC's rules of 10 CFR Parts 2 and 50 on public participation. As another example, if a licensee's National Pollutant Discharge Elimination System permit must be reviewed for decommissioning, the rules and practices of the Environmental Protection Agency and/or agreement state agency continue to govern public participation for that particular licensing action.

Implementation of a Site-Specific Advisory Board would in effect usurp the authority of the states and local communities with regard to public participation on matters within their legal purview. Furthermore, a licensee's financial support of a Site-Specific Advisory Board, regardless of the amount, would constitute a conflict of interest.

We are aware that there is a range of public interest in decommissioning. However, it is our impression that the Commission is seeking "consensus" on all decommissioning matters which are raised by members of the public through implementation of a Site-Specific Advisory Board. We do not believe that consensus is always possible and/or preferable. The fact that some members of the public do not always agree with actions proposed by a licensee or actions taken by NRC should not suggest that the process for public participation is ripe for overhaul. Instead, the overall safety record of the commercial nuclear power industry should be the overriding factor in concluding that the current regulations complimented by the currently defined public participation process is more than adequate to ensure public health and safety. Furthermore, it is important to note that the subject rulemaking has involved a full and exhaustive public participation process.

Regulations which impose additional participation requirements will unduly penalize licensees without resulting in a commensurate reduction in risk. We urge the Commission to eliminate consideration of a Site-Specific Advisory Board.

Agreement States Compatibility

Yankee's long-standing position is that there must be a comprehensive uniform national approach to radiation safety regulation. Accordingly, Yankee believes that any policy or rulemaking consideration that decides the degree of federal-state regulatory compatibility involving radiation protection standards must consider and prevent potential conflicts resulting from inconsistent implementation. Therefore, the NRC should not authorize Agreement States to establish different or more stringent requirements than those set forth in this proposed rule under any circumstances.

Further, as stated in the subject rulemaking notice, "The NRC and EPA are coordinating their efforts in this area to ensure that effective and consistent site decommissioning standards are established..." (emphasis added). The Federal Register Notice states that the purpose for codifying the subject proposed regulation is to allow the NRC to more effectively carry out its function of protecting public health and the environment at decommissioned sites by providing for more efficient use of NRC and licensee resources, consistent application across all types of licenses, and a predictable basis for decommissioning planning. Given the foregoing, it would be inconsistent with the rulemaking's stated intent of ensuring a coordinated, compatible, and predictable regulatory basis, to authorize Agreement States

to establish radiological criteria requirements for site decommissioning different from the Federal standards proposed.

Backfit Analysis

The Commission states that a backfit analysis need not be done because the subject proposed rule would not impose backfits as defined by 10 CFR 50.59(a)(1). This is not the first time that the Commission has suggested that the NRC is not obligated by 10 CFR 50.109 to perform a backfit analysis for rules which apply to decommissioning sites. We do not agree with this position. The intent of 10 CFR 50.109 was to impose a systematic and documented approach to the promulgation of regulations. NRC is clearly evading its responsibilities under 10 CFR 50.109. Once again, this is a clear example of what the industry through the Towers Perrin Report cites as NRC's failure to ensure consistency in regulation.

Very truly yours,

Jane M. Grant

Jane M. Grant
Manager, Regulatory and Industry Affairs