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STATE OF NEW YORK
DEPARTMENT OF LABOR
DIVISION OF SAFETY AND HEALTH
Radiological Health Unit
Building #12, Room 457
State Office Building Campus
Albany, NY 12240

April 19, 1995

DOCKET NUMBER
PROPOSED RULE PR 30, 40 et al.
(59 FR 32138)

Secretary of the Commission
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

ATTN: Docketing & Services Branch

Dear Sirs:

This letter is in reference to SECY 95-043, Final Rule on "Clarification of Decommissioning Funding Assurance Requirements" (SP-95-063). The referenced document requested comments from the Agreement States on a final rule amending NRC's financial assurance for decommissioning requirements.

We note that this document describes NRC-Agreement State interaction on this rulemaking as consisting of a discussion of the proposed rule at the 1993 NRC-Agreement States meeting. It is further stated that "because of the minor nature of the rulemaking" the draft final rule was not sent to the Agreement States for comment. Yet, NRC is assigning a "level 2" compatibility requirement to the rule, which means that the Agreement States must adopt it essentially as written, with latitude only to be more stringent. This is in spite of the fact that the only comment received by NRC from the Agreement States on the proposed rule was that it be assigned a level 3 or 4 compatibility, which would give the States latitude to accomplish the rule's intent by other means. This could consist of licensing action, for example, which would avoid consuming staff time and the public's money, on a rulemaking that NRC concedes is minor in nature. In the spirit of federal-state cooperation, the Agreement States' comment should be respected by NRC and the rule should be assigned a level 4 compatibility rating.

However, a far more important issue is that the "SECY" paper continues a factual error that was contained in the original regulatory analysis for the rule being amended, and which invalidates the certification that either rulemaking does not have a significant economic impact on a substantial number of small entities. We brought this error to NRC's attention in a letter dated March 11, 1994, and a copy is attached as a part of these comments.

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Telephone: 518-457-1202 FAX: 518-457-5545

NRC stated in the regulatory impact analysis for the original rule that small entities would be able to obtain financial instruments, such as bonds or letters of credit, to assure financing for eventual decommissioning, at an annual cost of one to two percent of the face value of the instrument. It was also stated that this was the assurance mechanism that small entities would be expected to use, since it was less expensive than prepayment, for example. As our letter pointed out, this was erroneous. Small entities are being required to fully collateralize such financial instruments, which amounts to prepayment. Also, the premises for which financial assurance for decontamination and decommissioning is being sought, will obviously not be accepted as collateral, and this is often a small entity's principal asset.

This rulemaking should not proceed without correcting this error and developing a revised, realistic regulatory impact analysis.

Sincerely,

Rita Aldrich

Rita Aldrich
Principal Radiophysicist

RA:jmp
attachment

STATE OF NEW YORK
DEPARTMENT OF LABOR

GOVERNOR W. AVERELL HARRIMAN
STATE OFFICE BUILDING CAMPUS
ALBANY, NEW YORK 12240

March 11, 1994

Richard Bangart, Director
Office of State Programs
USNRC
Washington, D.C. 20555

Dear Mr. Bangart:

This letter is in regard to the Regulatory Flexibility Analysis published with the final rule "General Requirements for Decommissioning Nuclear Facilities" on June 27, 1988.

The analysis stated that a surety or insurance method was most likely to be used by small businesses as the means to provide the financial assurance required by the rule. It also estimated that the annual cost of such a surety method would be 1 to 2% of the face value, or 1 to 2% of decommissioning costs; plus the administrative cost of developing a cost estimate for decommissioning. These small businesses were described as being almost exclusively industrial licensees; and the analysis pointed out that, since historically these licensees had been the most likely to default, it was particularly important that they provide financial assurance.

Unfortunately, our experience in New York State since adopting a similar rule, is that small businesses cannot obtain a letter of credit or surety bond at the cost estimated by NRC. Licensees that fall into this category have found that every financial institution contacted requires collateral for the full amount. A few institutions indicated that they make an exception only for "Fortune 500 companies with sales in excess of 200 million dollars a year", according to one licensee.

The only alternative for these licensees appears to be posting collateral for the full amount of projected decommissioning costs. Instead of the $500 to $10,000 yearly cost estimated by NRC, which these licensees expected to pay, they must provide collateral in amounts ranging up to $750,000. The primary collateral possessed by licensees is usually the plant within which they conduct licensed operations, and for which they are trying to provide assurance for eventual decontamination and decommissioning. However, financial institutions will not accept the equity in these plants as collateral because they would have to be decommissioned in order to be salable, creating a severe problem for our licensees.

We would be interested in knowing how NRC arrived at the cost estimates in its Regulatory Flexibility Analysis, which we relied upon in our rulemaking process. If NRC is aware of institutions or mechanisms that will provide the needed surety at 1 to 2% of face value, this information would be very helpful to our licensees. We would also be interested in learning whether NRC has accepted financial assurance arrangements other than those specified in the rule, such as accepting a lien against real property, which would decrease each year as a licensee added an equivalent amount to a letter of credit or bond.

We would appreciate your assistance in directing these questions to the proper quarters within NRC. This is a very important and pressing issue and a response would be appreciated as soon as possible.

Sincerely,

Rita Aldrich

Rita Aldrich
Principal Radiophysicist

RA:st
cc: M. Colavito
C. Thurnau