

January 15, 1997

MEMORANDUM TO: David L. Morrison, Director
Office of Nuclear Regulatory Research

FROM: Carl J. Paperiello, Director
Office of Nuclear Material Safety
and Safeguards

[ORIGINAL SIGNED BY JGREEVES FOR]

SUBJECT: OFFICE REVIEW AND CONCURRENCE ON A PROPOSED RULEMAKING
FOR AMENDMENTS TO 10 CFR PARTS 30, 40, 50, 70, AND 72 --
SELF-GUARANTEE FOR NON-PROFIT AND NON-BOND ISSUING
LICENSEES

The Division of Waste Management staff has reviewed the Commission Paper entitled, "Proposed Amendments to 10 CFR Parts 30, 40, 50, 70, and 72 -- Self-Guarantee of Decommissioning Funding by Non-Profit and Non-Bond Issuing Licensees." Our comments are attached. With the incorporation of our comments, we concur with the Commission Paper.

Attachment: As stated

CONTACT: Louis M. Bykoski, NMSS/DWM
415-6754

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

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Comments on Proposed Self-Guarantee Rule
for Non-Profit and Non-Bonded Organizations

1. The objective of the ICF study was to develop information from which to propose financial tests of equivalency for non-profit entities that are equivalent to other instruments. The ratio test proposed in the ICF study is a risk based proposal of failure equivalence that likely is not as reliable as the risk based evaluation that a bond rating agency would perform. We believe that additional public comments should be sought on this issue. NMSS will consider future options based on the comments received. Note that the bond rating is based on a very thorough financial review that cannot be matched with the use of the simple financial tests. Note also that the medical community is currently under severe pressure to reduce costs, and having a thorough financial review will result in greater credibility for our granting self-guarantees without having to rely on a bankruptcy database.

The financial tests proposed for non-bond rated companies appear to be based on risk levels equivalent to the other allowable financial assurance mechanisms. We do not object to presenting these criteria in the proposed rule. However, through the bond rating process, a company undergoes a much more thorough financial review than is possible through the simple financial tests proposed. Because of the added credibility of the bond rating and the fact that there will be no other source of decommissioning funding, we, therefore, recommend that bond ratings be used as the principle basis for corporate self-guarantees. Note that a company can request a rating from the rating companies even if they do not issue bonds. Since only 2 of 36 non-bond rated licensees are expected to qualify under the financial test, we do not consider there will be substantial impacts for rejecting the proposed financial tests.

2. If the financial test for non-bonded companies is accepted, we should state over what period bonds have not been issued. For example, does this apply to companies who have never issued bonds or do not have any outstanding short-term or long-term bonds at the present time? Suggest a period of five years.
3. In the proposed rule language, we should specify that the certified public accountant's review should be based on United States generally accepted accounting practices. We should also amend the parent company and self-guarantee provisions in Appendices A and C to also reflect this standard. Note that we have had numerous discussions with Siemens, which proposed a guarantee by its German parent. The auditor's reports initially were not performed in accordance with US GAAP. Not using US GAAP may not ensure that foreign companies meet the same high financial standards we require.
4. In the proposed Appendix D, is there a reason why the language in Appendix A, II, C.2 was not included? If a company cannot pass succeeding financial tests, we should require submittal of notice and a new instrument as required in Appendix A, II, C.2.

Attachment

5. In proposed Appendix E, the bond ratings should be specified as uninsured uncollateralized, unencumbered ratings as stated in the Statement of Considerations.
6. In proposed Appendix E, is there a reason why language similar to Appendix C, II.B and II.C is not used? We recommend including requirements for auditor's statements, annual financial retests, and, if the licensee fails to meet the financial test requirements, submittal of notices and alternative instruments.
7. In Appendix E, III.E, the second sentence in Appendix C, III.E should be added if a bond rating is to be required for all licensees using this self-guarantee.
8. There are pagination errors in Table 3.1 in the Regulatory Analysis.
9. In the Regulatory Analysis, Footnote 7, p. 9, states that due to the charges for obtaining an indicative rating, companies are unlikely to get ratings. However, if a licensee must put up substantial collateral to obtain an alternative instrument, like a letter of credit, it may be cost-effective to get the bond rating to use a self-guarantee.
10. For college and university licensees, it should be stated that the bond rating is for uninsured bonds.

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