

June 11, 1985SECY-85-209

For: The Commissioners

From: William J. Dircks  
Executive Director for Operations

Subject: ALTERNATIVE APPROACHES FOR IMPLEMENTING THE SHOLLY AMENDMENT ON NO SIGNIFICANT HAZARDS CONSIDERATIONS

Summary: In April 1983, the Commission published two interim final rules adopting standards, criteria and notice procedures for implementing the Sholly Amendment to Section 189 of the Atomic Energy Act of 1954 (as amended). The staff has been preparing a final rule which considers the public comments and makes a few clarifying changes to the present procedures. The staff has been requested to provide alternative approaches to implementation which the Commission may wish to consider, since the resources required to administer the current approach have been greater than originally estimated. What follows is a brief outline of three alternatives, short of requesting new legislation: (1) keep the staff's present procedures by continuing to notice "proposed determinations" ("final determinations" are made only if a hearing is requested); (2) notice receipt of amendment requests, offer an opportunity for a hearing, and then make the "no significant hazards considerations" analysis only if a request for a hearing is received; or (3) normally, notice licensees' amendment requests with their Sholly determinations and offer an opportunity for a hearing; in unusual, difficult or complex cases, notice the staff's proposed determinations. The Commission should note that the options lend themselves to a number of variations and are not as stark as described here.

Background: Among other things, Public Law 97-415 authorizes issuance of amendments to operating licenses involving no significant hazards considerations before the conduct of any requested hearing if prior notice of intent to make a no significant hazards determination is given. The statute required implementing regulations within 90 days of enactment, which establish: (a) standards for determining whether any amendment to an operating license involves no significant hazards considerations; (b) criteria for

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providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on such a determination; and (c) procedures for consultation on any such determination with the state in which the facility involved is located. (See SECY-79-660 (December 13, 1979); SECY-81-366 (June 9, 1981); SECY-81-366A (August 28, 1981); SECY-83-16 (January 13, 1983); SECY-83-16A (February 1, 1983); and SECY-83-16B (March 4, 1983)).

On March 30, 1983, the Commission approved two Federal Register notices, an interim final rule on standards and criteria and an interim final rule on notice and state consultation procedures. These two rules were published in the Federal Register on April 6, 1983 ((48 FR 14864) and 48 FR 14873)). Both solicited public comments and stated that the Commission would publish a final rule. The staff has prepared a final rule which essentially codifies the current approach and analyzes and responds to public comments. This final rule is consistent with Choice 1 below and can be forwarded quickly to the Commission.

Discussion:

Under the current interim rule approach, normally each amendment request is noticed in the Federal Register before issuance. The notice provides an opportunity to comment on the staff's proposed "no significant hazards considerations" determination, an opportunity to request a hearing, and a description of the amendment. Thirty days are normally provided for comment. In exigent circumstances a shorter notice period can be provided by using individual Federal Register notices or by using local media. In situations involving emergencies, e.g., shutdown, the notice can be provided after the amendment is issued. Before the Sholly legislation, normally both the notice and opportunity for a hearing on amendments determined to pose no significant hazards considerations occurred when the amendment was issued.

The no significant hazards consideration standard is a procedural one which governs whether an opportunity for a prior hearing must be provided before action is taken by the Commission on an amendment request and whether prior notice for public comment may be dispensed with in emergency situations or shortened in exigent circumstances.

Choice 1:

Keep the staff's present procedures by continuing to notice the staff's proposed determinations.

The staff wishes to note at the outset that it has had difficulty in making judgments about no significant hazards considerations using the present standards. If the procedures were to work as envisaged, it may be possible to reduce resource commitments under the current rule if the staff were to publish the licensee's suggestions for the staff's proposed no significant hazards determination with only cursory review of the matter, saving more substantive review for the final determination. As originally envisaged, reviews were not to focus on close calls but were to be done to separate clearly non-significant amendments from significant ones. For the former, no significant hazards considerations could be easily proposed. For the latter, early notice could be given. No major changes are needed to the final rule to follow such an approach. The Sholly procedures, as contemplated, were not intended to be resource intensive for the staff. Only a few minutes of staff time were to be spent on making a proposed determination. It was thought that if a licensee requesting an amendment provided a well grounded and thorough analysis of the amendment, the staff could give it a quick review in the form of a proposed determination and then notice it. If the licensee's analysis were inadequate, the staff could either send back the amendment request for better justification or pre-notice it. A detailed analysis of whether a proposed no significant hazards determination could be made was not envisioned. Only if a hearing were requested would the staff have been required to do a detailed analysis for a final determination (to decide whether the hearing should be granted before or after the amendment request is granted). The Commission decided to split the determination between "proposed" and "final" as opposed to making only one "up front" detailed determination with a full Sholly analysis for each amendment request. See SECY-83-16.

The problem has arisen because the staff has found it very difficult to make judgments about an amendment request without focusing on its merits. Consequently, the present procedures have become more resource intensive than originally envisaged or thought to be desirable.

Choice 2:

Notice receipt of amendment requests, offer an opportunity for a hearing, and then make the "no significant hazards considerations" analysis only if a hearing request is received.

This was the suggested alternative in SECY-81-366A before the Sholly legislation became effective. Under this option, the licensee does not provide its analysis on no significant hazards considerations and the staff does not make or publish a proposed determination. It is based on Section 189 of the Atomic Energy Act of 1954 (as amended) which requires a no significant hazards determination to be made only where the Commission seeks to dispense with 30 days notice of its intent to issue an amendment. Under this approach, the normal course of action would be to give 30 days notice in most cases. Only if a hearing request were received would it then be necessary to do a significant hazards analysis and give notice of intent to make a no significant hazards determination in appropriate cases as the basis for issuing the amendment before the completion of a hearing. This approach was rejected by the Commission when it chose the approach originally outlined in SECY-83-16. In that paper the staff said, "The final legislation and its history make it clear that normally the staff should issue for public comment a proposed determination on no significant hazards consideration, as opposed to the procedure contemplated in the previous draft of simply issuing a notice of receipt of an amendment request before making the final determination."

The alternative's advantages, given the current criteria for making a determination about no significant hazards considerations, are (1) that the staff is spending substantial time and resources on Sholly matters, (2) that the public does not appear to be interested in the notices (out of over 2,000 amendment requests published over the past two years, NRC has received 14 public comments and 15 hearing requests), (3) that a simpler and more efficient noticing system is needed, (4) that an argument can be made for noticing receipt of amendment requests without also noticing licensees' or the staff's Sholly determinations, and (5) that, arguably, the legislation requires a Sholly determination only if a hearing request or, perhaps, public comments have been received. Thus, it appears that the present system could be changed to this approach without significantly restricting information available to the public while reducing the staff resource burden.

The Commission should note that the current Sholly determination procedures would have to be retained for exigent circumstances and emergency situations which do not allow time for the normal 30 day Federal Register publication schedule. It should also be noted in this context that the staff has found it very difficult to deal with these two situations and that it has been hard-pressed about the definition of emergency situation.

Choice 3:

Notice licensees' determinations in most cases and the staff's proposed determinations in unusual, complex or difficult ones.

Under this choice, licensees would continue to provide Sholly analyses with their amendment requests. However, in most cases (see, e.g., examples (i), (vii) and (viii) on no significant hazards considerations in SECY-83-16B, Enclosure 3, pp. 27-28), only the licensee's request, together with its own determination, without the staff's proposed determination would be published. In complex, unusual or difficult cases, the staff would make a proposed determination. The staff would not establish criteria to differentiate ahead of time between easy and difficult cases because this would prove a hard task. Instead, if it found itself wrestling with the licensee's analysis, it would proceed to issue its own proposed determination. Thus, the current approach's advantages would be retained while reducing the staff's resource burden.

Discussion of the three choices

Several factors should be taken into consideration in deciding among the alternatives. First, the Commission has promulgated the interim final rules for comment. The Commission is obligated to respond to the public comments on those two rules. Options 2 and 3 and their variations could require further comment if they are substantially different from the alternatives on which comment was originally solicited.

If the experience to date with public comments and hearing requests is any indication, then there exists the potential for a significant saving of staff resources. The staff believes that the second choice would allow notices to be published more speedily and with fewer resources because it would rarely have to do Sholly analyses. However, except for emergency situations and exigent circumstances which would be treated

as they are now, there would be delays in those instances where comments and hearing requests were received, because the licensees and the Staff would then have to make full Sholly determinations.

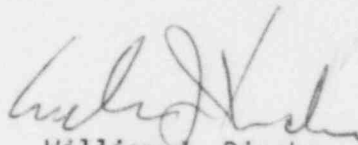
The third choice would not eliminate Sholly analyses currently done by licensees. On the other hand, from the staff's viewpoint, it could save staff time and resources.

Recommendation: That the Commission:

Review the three choices and determine which it wishes the staff to pursue.

Scheduling:

If scheduled on the Commission agenda, it is recommended that this paper be considered at an open meeting. No specific circumstances are known to the staff which would require Commission action by any particular date in the near term.



William J. Dircks  
Executive Director for Operations

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, June 28, 1985.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, June 21, 1985, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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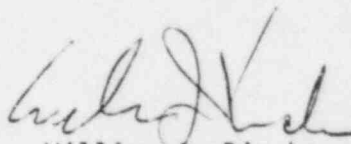
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