



AA61-2 PDR

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 30, 1983

Dircks
Roe
Ridman
Stello
Denton
H. Cunningham
Carver

MEMORANDUM FOR: Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine

FROM: Nunzio J. Palladino *NJP*

SUBJECT: SECY-83-16B: MARCH 29 VERSION

I propose the following approach:

1. Reracking:

- a. Insert Attachment A of this memo on Page 23 of the OGC March 29 version in place of the two paragraphs on Page 23 and the first paragraph on Page 24 under "Reracking of Spent Fuel Pools."
- b. Delete §2.105(a)(4)(iii) on Page 34 of the OGC March 29 version.

2. Other points:

- a. The underscored words on Page 26 appear to be inconsistent with Senator Simpson's comment on Page 25. I would end the sentence on Page 26 at the semicolon. I would also add, "in that it is likely to meet the 50.92 (d) criteria" to the end of the following sentence.
- b. I am concerned that the last sentence of the first full paragraph on Page 27 could cause the examples to be something more than guidance. See my suggested fix attached.
- c. On Page 30, examples (iv) and (v), what is intended by the words "essentially self-evident?" Could the word "justified" be substituted for "essentially self-evident?"
- d. Paragraph (b) on Page 38 presents the same question for me as the underscored words on Page 26 (see "a" above). I would prefer to end the sentence immediately after the parenthetical phrase.

cc: *W. Dircks*
SECY
OGC

Reracking of Spent Fuel Pools

The Commission has been providing prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. The Commission is not prepared to say that a reracking of a spent fuel storage pool will necessarily involve a significant hazards consideration. Nevertheless, as shown by the legislative history of P.L. 97-415, Section 12a, the Congress was aware of the Commission's practice, and statements were made by members of both Houses, prior to passage of P.L. 97-415, that these members thought the practice would be continued. The report on the Senate side has been quoted above; the discussion in the House is found at 127 Cong. Record H 8156, Nov. 5, 1981.

The Commission is not including reracking in the list of examples that will be considered likely to involve a significant hazard consideration because a significant hazards consideration finding is a technical matter which has been assigned to the NRC. However, in view of the expressions of Congressional understanding, the Commission feels that the matter deserves further study. Accordingly, the staff has been directed to prepare by August 1, 1983 a report which reviews NRC experience to date with respect to spent fuel pool expansion reviews, and which provides a technical judgment on the basis on which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration. Upon receipt and review of this report, the Commission will revisit this part of the rule.

During the interim, the Commission will make a finding on the no-significant-hazards-consideration question for each reracking application, on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standards in §50.92(d) of the rule. It is not the intent of the Commission to make a no significant hazards consideration finding for reracking based on unproven technology. However, where reracking technology has been well developed and demonstrated and where the NRC determines on a technical basis that reracking involves no significant hazards, NRC should not be precluded from making such a finding. If the Commission determines that a particular reracking involves significant hazards considerations, it will provide an opportunity for a prior hearing, as explained in the separate FEDERAL REGISTER Notice.

Additionally, it should be noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing rather than a formal adjudicatory hearing in connection with reracking, and may participate in such a hearing, if one is held. The Commission will publish in the near future a FEDERAL REGISTER notice describing this type of hearing with respect to expansions of spent fuel storage capacity and other matters concerning spent fuel.

add new examples, in keeping with the standards in § 50.92 of the interim final rule -- and, if necessary, it will tighten the standards themselves.

The Commission has left the proposed rule intact to the extent that the rule states standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rule (~~new-§-50.92(e)~~) are substantially identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 has been revised ~~(1)~~ to make the determination easier to use and understand. ~~(2) to incorporate the examples (formerly in the preamble of the proposed rule) into the rule (§ 50.92(b)(1) and (b)(2)) in order to better carry out the intent of the legislation, (2) and to ensure consistency between the interim final rule and the proposed rule.~~

To supplement the standards that are being incorporated into the Commission's regulations, ~~the examples will be incorporated into~~ ^{the guidance embodied in, referenced,} the procedures of the Office of Nuclear Reactor Regulation, a copy of which will be placed in the Commission's Public Document Room.

EXAMPLES OF AMENDMENTS THAT ARE CONSIDERED LIKELY TO INVOLVE SIGNIFICANT HAZARDS CONSIDERATIONS ARE LISTED BELOW

Unless the specific circumstances of a license amendment request, when measured against the standards in § 50.92, lead to a contrary conclusion, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve



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