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PDR

J. Dorian

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

JAN 27 1983

NOTE TO: William J. Dircks  
Executive Director for Operations

FROM: Guy H. Cunningham, III  
Executive Legal Director

SUBJECT: REVISIONS TO PROPOSED "SHOLLY" RULES

At yesterday's meeting it was agreed that the proposed rules to implement the so-called "Sholly Amendment" should be revised to provide as much latitude as the law allows for prompt action on amendments involving no significant hazards consideration, when expeditious action is, in fact, warranted. In view of the past confusion on this subject, the purpose of this note is to recapitulate the points on which we agreed and which will form the basis of our next draft.

Our previous proposal recognized two methods for dealing with amendments likely to involve no significant hazards consideration. In the normal case, a notice of opportunity for hearing and opportunity for comment on a tentative no significant hazards consideration determination would be published in the Federal Register. At the end of the comment period, the requested amendment would be issued (after appropriate review) if there were no request for hearing. A 30-day comment period was provided to meet the requirements of § 189 for notices of opportunity for hearing. This then allowed for the elimination of further administrative action related to the no significant hazards determination if no hearing request was received. Even if a hearing was requested, the amendment could be issued before holding the hearing if a final no significant hazards consideration determination were made. The process would normally take approximately 45 days. Alternatively, in emergency circumstances meeting the strict test of the Sholly Amendment, the amendment could be issued on shorter notice or immediately without allowing for prior public comment. This proposal was consistent with the strongly expressed intention of the conferees that "wherever practicable, the Commission should publish prior notice of, and provide for prior public comment on, [a proposed no significant hazards consideration] determination."

The wording of the Authorization Act allows for criteria to be adopted for reasonable public comment which is more flexible than the 30 days Federal Register notice required for notices of opportunity for hearing. Specifically, § 189a(2)(C)(ii) requires the Commission to promulgate "criteria for providing ... prior notice and reasonable opportunity for public comment on any [no significant hazards consideration] determination, which criteria shall take into account the exigency of the need for the amendment involved." In light of the clear legislative history of this

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provision, I do not believe that we can dispense with prior notice and opportunity for comment if the emergency situation criteria are not met. We can foreshorten the comment period in exigent circumstances so long as "reasonable opportunity for public comment" is preserved. In such cases, however, the no significant hazards determination must be made and documented even if no request for hearing is received.

Accordingly, we will revise the proposed rule to indicate that, in normal non-emergency circumstances, a Federal Register notice affording thirty days for public comment will be published. Should the licensee believe that exigent (but not "emergency") circumstances requires action on his amendment request on an expedited basis, he may request an accelerated comment method of soliciting and evaluating comments. The burden would be on the licensee to demonstrate that exigent circumstances exist to justify such an approach. (We will need NRR assistance to devise a test for an adequate showing of exigency.) If the showing of exigency is adequate, the Commission could (1) shorten the comment period and, (2) use media other than the Federal Register (e.g., newspapers or radio) to promptly notify interested persons of the request and of their opportunity for comment. Consideration should be given to the use of toll-free telephone numbers for submitting comments when the comment period is substantially compressed.

In the abstract, I believe that such a proposal is consistent with the Sholly Amendment. Specific factual situations will be judged according to the "reasonableness" of the opportunity for comment actually made available.

Original signed by  
Guy H. Cunningham, III

Guy H. Cunningham, III  
Executive Legal Director

cc: J. Roe  
V. Stello  
E. Case  
W. Olmstead  
T. Dorian

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January 18, 1983

MEMORANDUM FOR: Samuel J. Chilk  
Secretary

FROM: William J. Dircks  
Executive Director for Operations

SUBJECT: REVISED REGULATIONS TO IMPLEMENT LEGISLATION ON  
(1) TEMPORARY OPERATING LICENSING AUTHORITY AND  
(2) NO SIGNIFICANT HAZARDS CONSIDERATION (THE  
"SHOLLY AMENDMENT")

Enclosed please find a minor revision to page 27 of Enclosure 3 to  
SECY-83-16. This change is needed to make sure that the standards in the  
final rule on no significant hazards consideration will not conflict with  
the notice provisions in the proposed rule.

William J. Dircks  
Executive Director for Operations

Enclosure:  
As stated

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§ 50.92 Issuance of amendment.

In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued prior to the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action pursuant to § 2.105 of this chapter before acting thereon. The notice will be issued as soon as practicable after the application has been docketed. The Commission ~~will determine~~ may make a final determination pursuant to the procedures in § 50.91 that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards consideration, unless it finds that operation of the facility in accordance with the proposed amendment would:

- (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or
- (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or
- (3) Involve a significant reduction in a margin of safety.

Dated at Washington D.C. this \_\_\_\_\_ day of \_\_\_\_\_, 1983.

For the Nuclear Regulatory Commission,

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Samuel J. Chilk  
Secretary for the Commission