



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

August 24, 1988

MEMORANDUM FOR: William G. McDonald, Director  
Office of Administration and  
Resources Management

FROM: Frank P. Gillespie, Director  
Program Management, Policy  
Development and Analysis Staff  
Office of Nuclear Reactor Regulation

SUBJECT: PETITIONS FOR RULEMAKING (PR-50-51, 50-51A, AND 50-51B)  
FILED BY AMERICAN NUCLEAR INSURERS AND MAERP REINSURANCE  
ASSOCIATION, ET AL.

This responds to your memorandum to Thomas E. Murley dated August 17, 1988 which requested a determination by NRR as to whether the subject petitions for rulemaking qualify for "fast-track" handling. Additionally, you asked for NRR comments on the draft Federal Register notice enclosed with your memorandum if we determined that the subject petition for rulemaking did not qualify for "fast-track" handling.

We believe that the subject petitions for rulemaking would be considered eligible for "fast-track" processing under section 11.7(c)(1) of the NRC Regulations Handbook (NUREG/BR-0053). That is, the petitions for rulemaking appear to propose "action granting or recognizing an exemption from requirements in 10 CFR Chapter I or granting relief from restrictions while not imposing additional burdens upon or increasing the risks to the health and safety of any segment of industry or the public."

However, the appropriate method for handling the subject petitions for rulemaking is complicated by the fact that NRR has prepared and submitted to the Commission for negative consent (SECY-88-230, August 10, 1988) a proposed rule which would, if adopted, delay the effective date of the trusteeship and stabilization and decontamination priority provisions of § 50.54(w) from October 4, 1988 to April 4, 1990. If adopted, this rule would essentially grant on an interim basis the relief requested by petitioners in their petitions for rulemaking. We have expedited this rulemaking, in part, to forestall a situation where, after October 4, 1988, no power reactor licensee will be able to comply with the stabilization and decontamination priority and trusteeship provisions of § 50.54(w), because insurance policies containing such provisions will apparently not be available. In addition, the adoption of the proposed rule in SECY-88-230 would allow the NRC time to consider the broader issues raised in the petitions for rulemaking on their merits.

We believe that the proposed rule contained in SECY-88-230 serves the purposes of both treating the petitions for rulemaking under "fast-track" procedures and also noticing receipt of the petitions in the Federal Register. Therefore,

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PNU

CONTACT:  
R. Wood, NRR/PTSB  
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PRM-50-51  
PRM 50-51A  
PRM 50-51B

August 24, 1988

we do not believe it is necessary to issue the separate "Notice of Receipt of Petitions for Rulemaking" as enclosed in draft in your August 17 memorandum. However, if you conclude that this separate Federal Register notice needs to be issued, a marked-up copy of the notice with our marginal comments is enclosed.

Original signed by F P Gillespie

Frank P. Gillespie, Director  
Program Management, Policy  
Development and Analysis Staff  
Office of Nuclear Reactor Regulation

Enclosure: As stated

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Docket No. PRM-50-51, PRM-50-51A,  
and PRM-50-51B

American Nuclear Insurers and MAERP Reinsurance Association,  
et al., Filing of Petitions for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Petitions for Rulemaking.

SUMMARY: The Commission is publishing for public comment this notice of receipt of petitions for rulemaking that were filed with the Commission. The first petition, dated June 3, 1988, was submitted by Steptoe and Johnson on behalf of American Nuclear Insurer and MAERP Reinsurance Association and has been assigned Docket No. PRM-50-51. The second petition, dated June 21, 1988, was submitted by Bishop, Cook, Purcell, and Reynolds on behalf of the Edison Electric Institute and the Nuclear Utility Management and Resource Council and has been assigned Docket No. PRM-50-51A. The third petition (undated) docketed by the NRC on July 7, 1988, was submitted by Baker and McKenzie on behalf of Nuclear Mutual Limited and Nuclear Electric Insurance Limited and has been assigned Docket No. PRM-50-51B. The petitions, which are similar, request that the Commission ~~suspend its regulations in~~ ~~10 CFR Part 50 concerning special trust provisions for nuclear power plant~~ ~~licensees and amend, after notice and opportunity for comment, certain~~ insurance requirements in 10 CFR 50.54(w), ~~as they relate to~~ such requirements relate to special trust provisions ~~the establishment of~~ special trustees established to receive and disburse insurance proceeds after an accident.

DATE: Submit comments by 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch. For a copy of the petition, write: Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Juanita Beeson, Chief, Rules Review and Editorial Section, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, Washington, DC 20555, Telephone (301) 492-8926.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1987 (52 FR 28963), the NRC issued a final rule entitled "Changes in Property Insurance Requirements for NRC Licensed Nuclear Power Plants." The rule required that each nuclear reactor licensee, as a condition of its license, meet certain onsite property damage insurance requirements for each of its nuclear reactor station sites. Utilities licensed by the NRC to operate nuclear power plants are currently subject to §50.54(w) that requires them to maintain \$1.06 billion in property insurance.

As insurers of nuclear power plants, the petitioners are concerned with those

provisions of the final rule which require that (1) any insurance claims be paid first for the stabilization of the reactor facility and secondly, for decontamination of the facility and (2) any insurance proceeds be paid to a trustee who would disburse the proceeds according to the priorities.

#### Basis for Request

##### 1. Priority Provision

The petitioners state that they will be unable to include the priority provision in their insurance policies by the mandated date of October 4, 1988, and that implementing this provision is complex and will result in substantial administrative expense. Furthermore, the petitioner, American Nuclear Insurers and MAERP Reinsurance Association, is concerned that the new priorities for the proceeds of the required insurance will increase the demand for higher amounts of nuclear property insurance in order to cover ~~the work of~~ physical damage loss.

##### 2. Special Trust Provision

The petitioners, all of whom request NRC to temporarily suspend and eventually delete the provision in the final rule that requires insurance proceeds for decontamination loss to be paid to a separate trust, argue that the special trust provision was not included in the proposed rule issued on November 8, 1984 (49 FR 44645), but was introduced in the final rule issued on August 5, 1987. The petitioners state that NRC issued the special trust provision without notice to interested parties, thus denying

them opportunity to comment. The petitioners believe the special trust provision is a significant matter and that NRC should have allowed discussion that would have afforded them and others the opportunity to address this provision. Therefore, the petitioners request the provisions contained in §56.4(w) of the final rule be suspended until this petition for rulemaking is completed.

American Nuclear Insurers and MAERP Reinsurance Association (ANI/MAERP)  
PRM-50-51

Petitioners (ANI/MAERP) are an organized association of insurance companies whose members have been engaged in providing on-site property coverage for nuclear facilities since 1957. ANI/MAERP state that the Commission's commercial reactor licensees, as a group, purchase the largest share of this form of coverage.

ANI/MAERP believe that the current provisions in the final rule will result in uncertainty, delay, and substantial administrative expense in the process of proving loss and prompt payment of valid claim.<sup>S</sup> ANI/MAERP claim that these provisions will also hinder the ability of private sources to meet the need for large amounts of nuclear property insurance. Therefore, ANI/MAERP request that the Commission suspend those provisions of the current rule that require:

- (1) insurance proceeds for decontamination loss be paid to a separate trust, and
- (2) the priorities for stabilization loss and decontamination loss (including the related trust provision) be incorporated in property insurance policies not later than October 4, 1988.



ANI/MAERP also request that the Commission amend the current rule, after notice and comment:

- (1) to define more clearly the nature and extent of the obligations and priorities set forth in §50.54(w) (3) and (4),
- (2) to clarify the rights and obligations of insurers with respect to securing appropriate proofs of loss for the coverages affected by the rule and making timely and proper payments in accordance with insurance practice and policy provisions,
- (3) to delete the provision requiring payment of decontamination loss proceeds to a separate trust, and
- (4) to provide insurers a more definite method for paying promptly reasonable amounts of loss encumbered by the priorities established by the current rule when there is more than enough insurance in force.

Edison Electric Institute (EEI) and the Nuclear Utility Management and Resources Council (NUMARC) PRM-50-51A

EEI is the association of investor-owned electric companies whose members operate 96 nuclear plants and have five additional units under construction. NUMARC is an organization that represents all electric utilities licensed by the NRC to construct or operate nuclear power plants. NUMARC is responsible for coordinating the combined efforts of its members in addressing generic operational and technical regulatory issues and to work with the NRC to obtain solutions to regulatory issues affecting nuclear plant construction and operation.

The petitioners, EEI and NUMARC, share concerns similar to those of the petitioners in PRM-50-51. They contend that the independent trustee arrangement is neither effective nor even needed to address either the bond trustee problem or the bankruptcy situation and could lead to unwarranted delays in funding post-accident cleanup.

Therefore, the petitioners request that the NRC:

- (1) initially suspend the independent trustee provision or relieve licensees from compliance with the independent trust requirement and ultimately delete it,
- (2) amend the rule to require that licensees purchase insurance that provides coverage against liability (which would be explicitly established in the rule) for stabilization and decontamination expense (the form along the lines of the Nuclear Electric Insurance Limited (NEIL II) hybrid policies would be acceptable), to avoid needlessly invoking the duty of trustees for bondholders to assert their interest in property insurance proceeds,
- (3) clarify the rule (or at least the statement of considerations) by defining or at least giving examples of stabilization and by subjecting stabilization expenditures to the automatic priority only when a reasonable threshold, such as \$100 million, is exceeded for a reasonable period of time such as thirty days, subject to extension, and
- (4) provide a mechanism for releasing from the priorities insurance proceeds as will not be needed for stabilization and decontamination.



Nuclear Mutual Limited (NML) and Nuclear Electric Insurance Limited (NEIL)  
PRM-50-516

As insurers of nuclear property risks, NML provides \$500 million of primary property insurance to about 50 percent of the nation's nuclear reactor stations sites in the country. NEIL states that a licensee cannot meet the \$1.06 billion minimum amount required by the current rule without purchasing insurance from their company.

The petitioners, NML and NEIL, state that the current rule does not achieve the Commission's objective, i.e., to provide assurance in the event of an accident that the licensee would have sufficient funds to stabilize and decontaminate a nuclear reactor station site. NML and NEIL indicate that the special trust provisions do not protect <sup>insurance proceeds against potential</sup> the indenture trustee and may <sup>claims by</sup> further complicate an already difficult situation. Therefore, the petitioners urge the issuance of the proposed amendments submitted by EEI and NUMARC.

Petitioners' Proposal

The petitioners request that §50.54(w) be revised to read as follows:

§50.54 Conditions of licenses.

- (w) Each electric utility licensee under this part for a production or utilization facility of the type described in §50.21(b) or §50.22 shall, by June 29, 1982, take reasonable steps to obtain insurance, available at reasonable costs and on reasonable terms from private sources or to demonstrate to the satisfaction of the Commission that it possesses an equivalent amount of protection covering the licensee's obligation, in the event of a significant contamination event at the licensee's reactor, to stabilize and decontaminate the reactor station site at which the unit experiencing such event is located as provided in this subsection.

- (1) The insurance required by this subsection must have a minimum coverage limit with respect to each reactor station site of either \$1.06 billion or whatever amount of insurance is generally available from private sources, whichever is less. The required insurance may at the option of the licensee, be included within policies that also provide coverage for other risks, including but not limited to, the risk of direct physical damage. In such cases, all such policies shall clearly state that any proceeds shall be payable first for stabilization and next for decontamination of the reactor station site as and to the extent provided herein, and that any such optional coverage or coverages are subject thereto. If a licensee's coverage falls below the required minimum, the licensee shall within 60 days take all reasonable steps to restore its coverage to the required minimum.
- (2) Effective -----,-----, [a date which allows sufficient time for development and approval of changes in policies of insurance after the effective date of a final rule adopted in accordance with this petition] with respect to policies issued or annually renewed thereafter, the proceeds of such required insurance shall be dedicated, as and to the extent provided herein, to reimbursement or payment on behalf of the insured of reasonable expenses incurred by the licensee in taking action to fulfill the licensee's obligation, in the event of a significant contamination event at the licensee's reactor, unless otherwise ordered or approved by the ensure that the reactor is in, or is returned to, and maintained in, a safe and stable condition and that radioactive contamination is removed or controlled such that personnel exposures are consistent with the occupational exposure limits in 10 CFR Part 20. Such actions shall be consistent with any other obligation the licensee may have under this chapter and shall be subject to paragraphs (4) and (5) hereof. As used in this paragraph, a "significant contamination" event means an event that involves the release of radioactive material from its intended place of confinement within the plant or on the reactor station site such that there is a present danger of release offsite in amounts that would pose a threat to public health and safety if for stabilization and decontamination expense or expenses for other appropriate remedial action in an amount equal to or greater than the threshold level set forth in subparagraph (4) were not taken.
- (3) The licensee shall report to the NRC on April 1 of each year the current levels of this insurance or financial security it maintains and the sources of this insurance or financial security.
- (4) (i) The proceeds of the insurance required by paragraph (2) hereof, if and to the extent applicable, shall be used first to ensure that the licensed reactor is in a safe and stable condition and can be maintained in that condition so as to prevent any significant risk to the public health and safety. The licensee shall inform the Director of the Office of Nuclear Reactor Regulation in writing when that condition is attained. This priority on insurance proceeds for

such stabilization of the reactor shall attach where expenditures for stabilization and decontamination with respect to a significant contamination event are likely to exceed \$100 million, and shall remain in effect for 30 days or, upon order of the Director, for such longer period, in increments not to exceed 30 days, as the Director may find is necessary to protect the public health and safety. The actions appropriate to bring the reactor to condition and maintain it in that condition generally include those:

- (A) to shut down the reactor;
  - (B) to establish long-term cooling;
  - (C) to control radioactive releases; and
  - (D) to secure structures, systems, or components to minimize exposure to onsite personnel or the offsite public to radiation or to facilitate later decontamination or both.
- (ii) Within thirty (30) days after the licensee informs the Director of the Office of Nuclear Reactor Regulation that the reactor is and can be maintained in a safe and stable condition, or at such earlier time as the licensee may elect or the Director may for good cause direct, the licensee shall prepare and submit a cleanup plan for the Director's approval. The plan shall identify all cleanup operations that will be required to decontaminate the reactor sufficiently to permit the licensee either to resume operation or to undertake measures leading to decommissioning of the reactor in a manner that is consistent with the Commission's occupational exposure limits in 10 CFR Part 20, and shall provide the estimated expenditures for each operation. If applicable, such operations shall include:
- (A) Processing any contaminated water generated by the accident and by decontamination operations to remove radioactive materials;
  - (B) Decontamination of surfaces inside the auxiliary and fuel handling buildings and the reactor building to levels consistent with the Commission's occupational exposure limits in 10 CFR Part 20, and decontamination or disposal of equipment;
  - (C) Decontamination or removal and disposal of internal parts and damaged fuel from the reactor vessel; and
  - (D) Cleanup of the reactor coolant system.

- (iii) Following review of the licensee's plan, the Director will order that the licensee complete all operations that the Director finds are necessary to decontaminate the reactor sufficiently to permit the licensee either to resume operation or to undertake measures leading to decommissioning of the reactor, in a manner that is consistent with the Commission's occupational exposure limits in 10 CFR Part 20. The Director shall approve or disapprove, for stated reasons, the licensee's estimate of expenditures for such operations. Such order may not be effective for more than one year, at which time it may be renewed. Each subsequent renewal order, if imposed, may be effective for not more than six months.
- (iv) Of the balance of the proceeds of the required insurance not already expended to place the reactor in a safe and stable condition pursuant to paragraph (w) (4) (i) of this subsection, an amount sufficient to cover the expenses of completion of those decontamination operations that are the subject of the Director's order shall be dedicated to such use. Provided that, upon certification to the Director of the amounts expended previously and from time to time for stabilization and decontamination and upon further certification to the Director as to the sufficiency of the dedicated amount remaining, policies of insurance may provide for payment to the licensee or other loss payees of amounts not so dedicated, and the licensee may proceed to use in parallel (and not in preference thereto) any insurance proceeds not so dedicated for other purposes.
- (5) The stabilization and decontamination requirements set forth in paragraph (w) (4) of this section must apply uniformly to all insurance policies required under paragraph (w) (2) of this section.

Dated at Rockville, MD. this ----- day of -----, 1988.

For the Nuclear Regulatory Commission.

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Samuel J. Chilk,  
Secretary of the Commission.