

Question Set from David Lochbaum

Aug 5, 2021, letter from David Lochbaum
(ADAMS Accession No. ML21230A248)

- 1: Why didn't the NRC inspectors verify compliance with Amendment 14 to Certificate of Compliance No. 72-1014 instead of using an obsolete, outdated and superseded amendment as their "Answer Key"?

U.S. Nuclear Regulatory Commission (NRC) Response: The NRC inspectors inspected against Certificate of Compliance (CoC) No. 1014, Amendment No. 12, which is the approved CoC that was used to load the spent fuel into the storage casks at Pilgrim Nuclear Power Station. Holtec Decommissioning International, LLC (HDI) can use any approved storage cask listed under Part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 214. Holtec Decommissioning International, LLC is not required to use the latest approved amendment in 10 CFR 72.214 (e.g., HDI is not required to use Amendment No. 14 instead of Amendment No. 12). Each of the amendments to CoCs are stand-alone and are not superseded by future amendments (unless explicitly stated in 10 CFR 72.214). For example, when a CoC is renewed, the renewed CoC supersedes the previously approved CoC and associated amendments. If a CoC has been superseded, the word "supersedes" appears in the regulations with the associated CoC in 10 CFR 72.214. At the time of the subject inspection, CoC No. 1014, Amendment No. 12 had not been renewed, and therefore, it had not been superseded.

In addition, according to 10 CFR 72.240(b), "When the applicant has submitted a timely application for renewal, the existing CoC will not expire until the application for renewal has been determined by the NRC." In this case, the CoC holder (Holtec International) submitted a renewal application for CoC No. 1014 on January 31, 2020. Because the applicant has submitted the request "not less than 30 days before the expiration date of the CoC," the applicant is considered to have submitted the request in "timely renewal." Therefore, CoC No. 1014, Amendment No. 12 is not expired for use by HDI, nor has it become outdated or obsolete for use by HDI until NRC has made a determination on the renewal itself.

2. "Why did the NRC inspectors verify compliance with terms and conditions of an expired certificate of compliance?"

The NRC Response: As stated in the response to Question #1, CoC No. 1014, Amendment No. 12 is in timely renewal. Therefore, HDI can continue to use the amendment until NRC has made a determination on the renewal application. The NRC inspectors inspected against the approved CoC amendment that was used to load the storage casks.

3. How can an expired Certificate of Compliance be legally amended?

The NRC Response: Per 10 CFR 72.240(a), “The certificate holder may apply for renewal of the design of a spent fuel storage cask for a term not to exceed 40 years.” In this case, the CoC holder submitted a renewal application package for CoC No. 1014. The regulations do not require a CoC to be “amended” for the NRC to make a determination on a renewal application. The CoC can legally be “renewed” if the renewal application meets the “Conditions for spent fuel storage cask renewal” under 10 CFR 72.240. Per 10 CFR 72.240(b), the renewal application must be submitted not less than 30 days before the expiration of the CoC. The CoC holder satisfied this condition, and therefore is considered to be in timely renewal while staff conducts their review of the renewal application.

4. One is not supposed to operate a motor-vehicle using an expired driver’s license. One is not supposed to construct a facility using an expired building permit. How can the NRC legally, ethically and morally allow High Level Waste to be loaded into dry casks using an expired Certificate of Compliance?

The NRC Response: As stated in response to Question #1, CoC No. 1014, Amendment No. 12, is not expired. Per 10 CFR 72.240(a), the certificate holder, any licensee using a spent fuel storage cask, a representative of such licensee, or another certificate holder may apply for a renewal of that cask design for a term not to exceed 40 years. The CoC holder submitted the renewal application for CoC No. 1014, Amendment No. 12 in timely renewal as stated previously.