



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 11, 2022

Mr. Steven D. Wahnschaffe
DOE NRC Programs License Manager
U.S. Department of Energy
Idaho Cleanup Project
1955 Fremont Avenue
Idaho Falls, ID 83415

SUBJECT: RESPONSE TO U.S. DEPARTMENT OF ENERGY REGARDING IDAHO
SPENT FUEL FACILITY LICENSE EXPIRATION DATE EXTENSION
(CAC/EPID NOS. 001028/L-2019-LRM-0080)

Dear Steven Wahnschaffe:

By letter dated January 19, 2021, the U.S. Department of Energy, Idaho Cleanup Project (DOE-ICP) notified the U.S. Nuclear Regulatory Commission (NRC) of the DOE-ICP planned license extension strategy for the Idaho Spent Fuel Facility (ISFF) License No. SNM-2512 (Agencywide Documents Access and Management System {ADAMS} Accession No. ML21048A151). The NRC staff appreciates the early communication regarding DOE-ICP's expected licensing request for the ISFF, as communicated in your January 19, 2021, letter and the July 16, 2020, pre-application meeting (ADAMS Accession No. ML20230A197).

The ISFF is licensed under NRC's requirements for spent fuel storage, in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, "Licensing requirements for the independent storage of spent nuclear fuel, high-level radioactive waste, and reactor-related greater than Class C waste." License No. SNM-2512 was issued on November 30, 2004, for a 20-year period, and is set to expire on November 30, 2024. The ISFF has not been constructed or operated. This is the first 10 CFR Part 72 license for a facility that has not been constructed or operated that is set to expire.

At the time ISFF was licensed, the regulation in 10 CFR 72.42, "Duration of license; renewal," allowed initial license terms of up to 20 years. In 2011, the NRC amended § 72.42 to increase the initial license terms and renewal terms from "not to exceed 20 years" to "not to exceed 40 years." Your letter presented an approach to change the current initial license term for the ISFF from 20 years to 40 years via a license amendment, resetting the initial license expiration date to November 30, 2044. Under such an approach, DOE-ICP would submit a license amendment request (LAR) under 10 CFR 72.56, "Application for amendment of license." Changing the initial license term from 20 years to 40 years via a license amendment under the 10 CFR Part 72 regulations appears to be a viable licensing option.

As was discussed in the July 16, 2020, pre-application meeting, renewing the license term an additional 20 years via a license renewal request under the 10 CFR Part 72 regulations also appears to be a viable licensing option. The provisions in the § 72.42 regulation allow licenses to be renewed by the NRC at the expiration of the license term upon application by the licensee for a period not to exceed 40 years.

There are NRC review process similarities for either a license amendment or license renewal, including noticing an opportunity for hearing and conducting an environmental review under the National Environmental Policy Act and 10 CFR Part 51. Under either a license amendment or license renewal approach, the application should be clear regarding the scope of the request and how it impacts the current 20-year licensing bases. For example, a LAR should be clear in explaining where the current 20-year licensing bases remain unchanged versus where there is new or updated environmental information, technical information, or safety analysis that supports the LAR. A clear application scope, particularly in the case of a LAR, is important for the NRC staff's technical and environmental reviews and for the opportunity for hearing that will be provided regarding the proposed licensing action. The NRC staff's review of either a LAR or a license renewal application will include a technical review to determine if the materials performance of any existing structures, systems, and components and the spent fuel contents is adequately addressed for an additional 20 years. The NRC staff expects that the NRC review cost would be similar between a LAR or license renewal application.


Finally, the NRC staff encourages DOE-ICP to carefully consider the timing of its submittal. Under the NRC staff's current workload prioritization, the review of either a LAR or a license renewal application for the ISFF would be prioritized as a routine licensing activity and would be subject to the 10 CFR Part 72 review metric of three years. Per 10 CFR 72.54, "Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas," each license expires at the end of the day on the license expiration date except when a licensee has filed an application for renewal pursuant to 10 CFR 72.42 not less than two years before the expiration of the existing license. Specifically, the regulation in 10 CFR 72.42(c) provides timely renewal protection to licensees that submit sufficient license renewal applications at least two years before the expiration of the existing license. This timely renewal protection only applies to license renewal applications submitted under 10 CFR 72.42.

There is no similar protection under either the timely renewal provisions in NRC regulations or the Administrative Procedure Act, 5 U.S.C. § 558(c), for a LAR submitted under 10 CFR 72.56. Should DOE-ICP seek to avoid the expiration of the license, DOE-ICP should consider the need for any exemptions associated with either of the licensing approaches described above (i.e., so that the license will not expire if the NRC review of the LAR continues after the current expiration date, or if DOE-ICP instead submits a license renewal application after the 2-year timely renewal date of November 30, 2022). The NRC staff would consider the criteria in 10 CFR 72.7, "Specific exemptions," in determining whether to approve any requested exemption.

Please continue to keep the NRC staff apprised of your licensing plans and schedule as you move forward. The NRC staff encourages pre-application discussions to ensure a mutual understanding of DOE-ICP's planned path forward and the associated regulatory implications.

Please reference Docket No. 72-25 and CAC/EPID Nos. 001028/L-2019-LRM-0080 in future correspondence related to this request. If you have any questions regarding this matter, please contact me at 301-287-9104 or Kristina Banovac of my staff at 301-415-7116 or Kristina.Banovac@nrc.gov.

Sincerely,



Signed by Helton, Shana
on 02/11/22

Shana R. Helton, Director
Division of Fuel Management
Office of Nuclear Material Safety
and Safeguards

Docket No. 72-25
License No. SNM-2512
CAC/EPID Nos. 001028/L-2019-LRM-0080

cc: Service List

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ADAMS Accession Number: ML21348A050

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cc:

Idaho Falls, ID 83404

Mr. Steven Ahrendts
DOE NRC Licensed Facility Director
U.S. Department of Energy
Idaho Cleanup Project
1955 Fremont Ave., MS-1222
Idaho Falls, ID 83415

Snake River Alliance
Beatrice Brailsford
Nuclear Program Director
PO Box 1731
Boise, ID 83701

Mr. Steven Wahnschaffe
DOE NRC Programs License Manager
U.S. Department of Energy
Idaho Cleanup Project
1955 Fremont Ave., MS-1222
Idaho Falls, ID 83415

Mr. Mark Clough
INL Oversight Coordinator
DEQ State Office
1410 N. Hilton
Boise, ID 83706

Mr. David Bland
Program Manager for NRC Programs
Spectra Tech Inc.
1955 Fremont Ave.
Idaho Falls, ID 83401

Chairman
INL Committee
Idaho Falls Chamber of Commerce
365 River Pkwy
Idaho Falls, ID 83402

Mr. John Scaglione
Business Manager for NRC Programs
Spectra Tech Inc.
132 Jefferson Court
Oak Ridge, TN 37830

Mr. Chuck Broscius
Environmental Defense Institute
P.O. Box 220
Troy, ID 83871-0220

Mr. David R. Einan
U.S. EPA Region 10
Hanford/INL Project Office
825 Jadwin Ave., Suite 210
Richland, WA 99352

Mr. Bruce LaRule
State of Idaho INL Oversight Program
900 N. Skyline Drive, Suite C
Idaho Falls, ID 83402

The Honorable Blaine Edmo
Chairman, Fort Hall Business Council
Shoshone-Bannock Tribes
P. O. Box 306
Fort Hall, ID 83203

Mr. Herb Bohrer
Chair, Citizens Advisory Board
c/o Ms. Jordan Davies
North Wind
1425 Higham Street
Idaho Falls, ID 83402

Ms. Talia Martin
Director, Tribal DOE Program
Shoshone-Bannock Tribes
P.O. Box 306
Fort Hall, ID 83203

Chairman
INL EM Site Specific Advisory Board
c/o Lori MacNamara
North Wind Group
1425 Higham St.
Idaho Falls, ID 83402

Mr. John Tanner
Coalition 21
2175 Tasman Ave

NRC Liaison
State of Idaho INL Oversight Program
900 N. Skyline Drive, Suite C
Idaho Falls, ID 83402

Response to DOE-ICP on Idaho Spent Fuel Facility license extension DATE February 11, 2022

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