



UNITED STATES NUCLEAR REGULATORY COMMISSION

Date: June 13, 2023

**SUBJECT: DRAFT INTERIM STAFF GUIDANCE ON THE USE OF THE
DECOMMISSIONING TRUST FUND DURING OPERATIONS FOR MAJOR
RADIOACTIVE COMPONENT DISPOSAL**

Purpose

The U.S. Nuclear Regulatory Commission (NRC, or Commission) staff is providing this interim staff guidance (ISG) to provide clarifying guidance to facilitate stakeholder understanding of the NRC's position on the use of the decommissioning trust fund (DTF) during operations for major radioactive component (MRC) disposal, including what information would assist the NRC staff in assessing a licensee's request for exemption from the regulations related to the activity.

Background and Scope

The NRC's reactor licensing regulations in 10 CFR Part 50 establish requirements for providing assurance that funding will be available to radiologically decommission a reactor facility and terminate the Part 50 license. Specifically, these requirements address the amount of decommissioning funding to be provided, the methods to be used for assuring sufficient funding, and provisions restricting the use of the DTF during operations.

On February 22, 2019, a petition for rulemaking (PRM) was filed with the NRC requesting that the NRC revise the definition of *Decommissioning* in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.2, "Definitions," and amend 10 CFR 50.82, "Termination of License," to allow access to the DTF to pay for the cost of the disposal of MRCs before the permanent cessation of operations at nuclear power plants. Subsequently on January 24, 2022, the Commission denied the petition, stating that the petition does not raise a significant safety or security concern, and the subject area is adequately covered by existing regulations.

Currently, the NRC does not have guidance specifically related to the use of the DTF during operations for MRC disposal. Guidance related to the subject would primarily be discussed in Regulatory Guide (RG) 1.159, “Assuring the Availability of Funds for Decommissioning Nuclear Reactors.” However, a revision to RG 1.159 is currently part of another rulemaking effort¹, and additional revisions cannot be considered while the rulemaking is in process. For these reasons, this draft ISG provides guidance for stakeholders on the subject while the revisions to RG 1.159 are being completed.²

Discussion

NRC Position on the Use of the DTF During Operations for MRC Disposal

The NRC has a comprehensive, regulation-based framework that provides oversight of a licensee’s decommissioning funding during operation and decommissioning. Compliance with NRC decommissioning funding regulations in 10 CFR Part 50 provides reasonable assurance that sufficient funding will be available for the radiological decommissioning of a reactor facility upon permanent cessation of operations. The withdrawal of funds from the DTF during operations, for purposes other than those allowed by NRC regulations, could undermine the primary objective of the decommissioning funding regulations. Therefore, only under extraordinary circumstances would a withdrawal from the DTF prior to permanent cessation of operations be permissible.

Options for Using the DTF During Operations for MRC Disposal

The removal and replacement of MRCs during the operational phase of a reactor facility to ensure ongoing safe operation of a reactor is considered a cost of doing business. Once the MRC is removed from service during reactor operations, a licensee has the option to either immediately dispose of the MRC at a designated off-site facility or store the MRC onsite until disposal is performed. The disposal of the MRC when performed during the operational phase of the reactor facility is a cost of doing business and should be funded by a licensee as a business activity. In addition, the NRC recognizes that after a reactor facility permanently ceases operations and is in the decommissioning phase, the off-site disposal of MRCs is a decommissioning expense and therefore, the use of funds from the DTF is permissible, either directly or as a reimbursement for a prior expense. Accordingly, a licensee has options on when to undertake MRC disposal and on whether to fund disposal from operational funds or from the DTF.

DTF Subaccounts

¹ Proposed Rulemaking: Regulatory improvements for Production and Utilization Facilities Transitioning to Decommissioning; <https://www.nrc.gov/waste/decommissioning/reg-guides-comm/regulations/reg-improv-trans-to-decom.html>

² RG 1.159 will be updated when the Commission approves the current decommissioning rulemaking.

Licensees may establish subaccounts in existing decommissioning trusts funds to pay for decommissioning activities other than radiological decommissioning of the facility, including MRC off-site disposal during operations. The NRC's regulations restrict the withdrawal of decommissioning trust funds dedicated to the radiological decommissioning of a facility prior to permanent cessation of operations. However, DTF subaccounts designated for activities other than radiological decommissioning may be used at the discretion of the licensee at any time during operations or decommissioning.

Funding DTF subaccounts can be accomplished in a variety of ways. Rate-regulated licensees typically have subaccounts funded by rate collections authorized by the Federal Energy Regulatory Commission (FERC) or state and local public utility commissions. Rate-regulated licensees may establish subaccounts after demonstrating that the portion of the trust dedicated to radiological decommissioning is sufficiently funded under NRC's regulations. Merchant nuclear plants, those not rate-regulated by FERC or a public utility commission, may fund subaccounts in addition to radiological decommissioning accounts. For example, a merchant plant may establish and fund subaccounts in a DTF with cash injections. In the alternative, it may seek reallocation of their DTF into subaccounts by the specific exemption process under 10 CFR 50.12. Therefore, permission to reallocate funds within a merchant plant's decommissioning trust fund accounts, which are not permissible under the NRC's regulations, may be requested under the 10 CFR 50.12 special exemption process.

Exemption from NRC Regulations

A licensee may request an exemption in accordance with 10 CFR 50.12, "Specific exemptions," to permit withdrawal of funds from the DTF for the removal and disposal of MRCs, prior to the cessation of operations and initiation of decommissioning. The withdrawal of funds from the DTF may only be used to pay for the offsite disposal of MRCs when the NRC has determined the total DTF contains funds in excess of cost estimates to complete all required radiological decommissioning. In addition, licensees may use economic projections for future years in calculating the amount of excess funds in the DTF. However, significant changes in the economic conditions of a licensee, combined with withdrawals from the trust fund, have the potential to result in future shortfalls in the DTF. The Commission has stated trust fund withdrawals for the disposal of MRCs would be granted only "in extraordinary circumstances" (73 FR 62222; October 20, 2008). For these reasons, the staff evaluates each exemption request for a DTF withdrawal based on a totality of facts in determining whether to grant or deny a request.

Information that Assists NRC Staff in Evaluating an Exemption Request Include:

- A licensee identifies and the NRC confirms that a large projected surplus in DTF reserves compared with the site-specific cost estimate for a facility;
- A licensee identifies the site-specific cost estimate for decommissioning includes the cost of the expense for which a withdrawal is requested;

- A licensee provides evidence that funds in the comingled DTF were collected or set aside for specific decommissioning activity(ies) identified in the decommissioning cost estimates;
- A licensee demonstrates that the time period, estimated before the permanent cessation of operations and commencement of major radiological decommissioning activities will begin, is sufficiently long to provide for the accumulation of funds in the DTF;
 - For example, when a licensee projects 20 additional years of operations before the cessation of operations, the opportunity for growth of the DTF will be significantly higher than for a facility that will cease operations in 5 years.
- A licensee demonstrates that the current and projected DTF amounts required for decommissioning provide adequate assurance that funds will be available throughout the decommissioning period;
- A licensee fully explains its DTF structure, for example, are there existing subaccounts, or are funds for different decommissioning activities comingled in one account;
- A licensee provides evidence that funds in the comingled DTF were collected or set aside for specific decommissioning activity(ies) identified in the decommissioning funding plans submitted as required to the NRC;
- Decommissioning funding assurance (DFA) history demonstrates that over many years the projected DTF has had significant excess funding;
- DFA history demonstrates that over many years the projected DTF has had significant shortfalls in funding;
- A licensee provides a current financial health narrative;
- A licensee of a rate-regulated utility identifies rate collection mechanisms available to obtain additional funds when a shortfall in the DTF occurs; of a rate-regulated
- A licensee of a merchant plant provides existing and potential funding mechanisms that are or could be made available (for example, parent company guarantee, parent company support agreement, or cash injection) to cover future shortfalls in a DTF.

References

(NRC, 2011) Regulatory Guide 1.159, Revision 2, “Assuring the Availability of Funds for Decommissioning Nuclear Reactors,” dated October 2011.

10 CFR Part 50, “Domestic Licensing of Production and Utilization Facilities.”

“Rulemaking Petition to Amend 10 CFR § 50.2 and 10 CFR § 50.82,” dated February 22, 2019. (ADAMS Accession No. ML19079A293)

“Denial of Petition for Rulemaking: Access to the Decommissioning Trust Fund for the Disposal of Large Components (PRM-50-119; NRC-2019-0083),” dated January 24, 2022. (ADAMS Accession No. ML22012A058)