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Draft Interim Staff Guidance: Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal

Comment On: NRC-2023-0111-0001

Draft Interim Staff Guidance: Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal

Document: NRC-2023-0111-DRAFT-0006

Comment on FR Doc # 2023-13093

Submitter Information

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General Comment

See attached file(s)

Attachments

ES-2023-003 EnergySolutions Comments on NRC-2023-0111

August 21, 2023

ES-2023-003

Office of Administration
Mail Stop: TWFN-7-A60M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
ATTN: Program Management, Announcements and Editing Staff

Subject: Comments on Draft Interim Staff Guidance on the Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal

Reference: Docket ID NRC-2023-0111

Dear Sir or Madam:

EnergySolutions appreciates the opportunity to provide comments on the U.S. Nuclear Regulatory Commission's (NRC) "Draft Interim Staff Guidance: Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal," published in the *Federal Register* (88 FR 40337) on June 21, 2023.

EnergySolutions acknowledges the foresight shown by the Commissioners in SRM-SECY-20-0095 to direct staff to identify what information would assist the staff in assessing an exemption request. We also appreciate the effort that staff has invested in developing this guidance. It is our view that this guidance will enable licensees to justify exemptions to dispose of major radioactive components using the nuclear decommissioning trust fund without jeopardizing the essential purpose of those funds, which is to provide "...assurance that funding will be available to radiologically decommission a reactor facility and terminate the Part 50 license."

Overall, the guidance document effectively identifies the information that staff needs to consider in its review of an exemption request. As staff has noted in the FR notice, this guidance will enable a licensee to specify the circumstances that may lead to the approval of its request, based on the totality of the facts. While it is our view that the guidance is comprehensive, we also find it could be improved with a few revisions, and we submit the detailed comments in the attachment for your consideration.

If you have any questions, please email me at jtwheat@energysolutions.com.

Respectfully submitted,

Justin T. Wheat
Regulatory Affairs Director

Attachment: EnergySolutions Comments on Docket ID NRC-2023-0111

ATTACHMENT TO ES-2023-003

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

Comments on Draft Interim Staff Guidance on the Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal

No.	EnergySolutions Comment
1	<p>Overall – EnergySolutions agrees with the approach staff has taken not to specifically quantify an acceptable difference between the decommissioning trust fund (DTF) and the decommissioning cost estimate (DCE). While the difference is an important consideration, the specifics are best left to a case-by-case analysis that takes into consideration the totality of the facts presented in an exemption request. The same comment is true regarding the time remaining until the cessation of permanent operations.</p>
2	<p>Overall – EnergySolutions agrees with the approach staff has taken to describe the guidance as information that assists NRC staff in evaluating an exemption request. It is important to consider the site-specific circumstances, knowing that some of the items may not be available or useful in a given case. We agree with staff’s approach not to consider the items listed to be a checklist, but rather as sources of information to be taken into consideration in evaluating an exemption request.</p>
3	<p>p. 2, “Options for Using the DTF During Operations for MRC Disposal” – EnergySolutions recommends deleting the sentence, “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.”</p> <p>The implication of this sentence is that a major radioactive component (MRC) that is disposed upon removal, rather than initially stored onsite, should be funded using operational funds. The suitability of using funds from the DTF for disposal should not be affected by whether the MRC is stored onsite and then disposed at a later time or is immediately disposed. NRC regulations at 10 CFR 50.2 state that a major decommissioning activity means, among other things, removal of an MRC. While we recognize that NRC regulations in 10 CFR 50.82(a)(5) do address timing, and state that decommissioning activities should not commence until after “...certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel,” it is noteworthy that the definition of a major decommissioning activity includes removal of an MRC. As such, the use of the DTF to fund the disposal of an MRC at the time of removal should not be treated differently from an MRC that is removed, stored onsite, and then disposed at a later date.</p> <p>Storage of an MRC onsite prior to disposal results in additional operational costs and higher decommissioning costs. Operational costs are increased due to the necessary monitoring of a facility containing the retired radioactive components. It also would require an exemption from the requirements of Part 37 unless the mausoleum in which the components are stored is constructed within the protected area of the site, which is unlikely. At the time of decommissioning, the mausoleum would have to be demolished and the waste disposed, which adds to the cost of decommissioning.</p>

Comments on Draft Interim Staff Guidance on the Use of the Decommissioning Trust Fund During Operations for Major Radioactive Component Disposal

No.	EnergySolutions Comment
4	<p>p. 3, “Exemption from NRC Regulations” – At the end of the first paragraph, EnergySolutions recommends adding the following sentences: “The totality of the facts is based on the information listed below that NRC staff will use to evaluate an exemption request. Providing a satisfactory response to this information constitutes a demonstration of extraordinary circumstances.”</p> <p>The term “extraordinary circumstances” is vague and does not provide guidance regarding the “ways and means” that staff would consider in evaluating an exemption request. It is subjective and suggests there is information not included in the interim staff guidance (ISG) that might be necessary to consider such a request. The <i>Federal Register</i> notice announcing the issuance of the draft guidance states that “...the NRC staff envisions certain circumstances, which could be stated in an exemption request, that may lead to the approval of the particular request, based on the totality of the facts.” It is the purpose of the ISG to define the “ways and means” that could lead to approval of an exemption request. The ISG should clearly specify that extraordinary circumstances are satisfied by the evaluation of the information listed in the ISG, which constitutes the “totality of the facts.”</p>
5	<p>p. 3, “Information that Assists NRC Staff in Evaluating an Exemption Request Include” – Prior to the list of bulleted items, EnergySolutions recommends adding the following sentences: “While the items included in the following list are those that staff will evaluate, it is not necessary to address all of the criteria listed. A licensee may be able to demonstrate extraordinary circumstances and thus justify an exemption based on the totality of the facts, by addressing a subset of the issues listed in the ISG.”</p> <p>Demonstrating the totality of the facts means considering the aggregate of the relevant criteria identified in the ISG. Staff has generated an exhaustive list that includes any criterion that may be relevant. Because staff has been so thorough in identifying criteria relevant to reaching a determination that “...the total DTF contains funds in excess of cost estimates to complete all required radiological decommissioning,” it is to be expected that the criteria will vary in relative importance from case to case. There also likely will be cases where the totality of the facts supports the exemption based on only a subset of the criteria. EnergySolutions proposes that making this point explicitly clear in the guidance would be advantageous.</p>
6	<p>p. 4, bullets 1 and 5 – EnergySolutions recommends deleting the word “comingled.”</p> <p>EnergySolutions agrees that it would be useful to know if funds “...were collected or set aside for specific decommissioning activity(ies)...” in the DCE or the decommissioning funding plan. We do not find it relevant; however, if the DTF in question has comingled funds, that is, funds specifically collected for uses other than radiological decommissioning.</p>

Comments on Draft Interim Staff Guidance on the Use of the Decommissioning Trust Fund
During Operations for Major Radioactive Component Disposal

No.	EnergySolutions Comment
7	<p>p. 4, bullet 6 – EnergySolutions recommends deleting the phrase “over many years” and the word “significant.”</p> <p>The recent history of the status of the fund is relevant to an exemption request, but there is no need to demonstrate excess funding over an extended period. The most relevant considerations are the comparison between the DTF and the DCE at the time of withdrawal and the drawdown of the DTF relative to costs during decommissioning. As for significant, that is a subject term that is not quantifiable and likely would complicate the review.</p>
8	<p>p. 4, bullet 7 – EnergySolutions recommends inserting the word “not” prior to the phrase “had significant shortfalls.”</p> <p>As written, this information request seems to suggest a preference for significant shortfalls, which clearly is not advantageous. While we agree that the historical occurrence of significant shortfalls may be relevant, it is the absence of such shortfalls that should be considered.</p>
9	<p>p. 4, bullet 9 – Delete the phrase “of a rate-regulated” at the end of the bullet.</p> <p>This phrase appears to have been included in error. If not, please clarify the meaning.</p>