



MEMORANDUM

DATE: August 28, 2024

TO: Mirela Gavrilas
Executive Director for Operations

FROM: Hruta Virkar, CPA /*RA*/
Assistant Inspector General for Audits & Evaluations

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF THE
NRC'S DECOMMISSIONING FUNDS PROGRAM
(OIG-16-A-16)

REFERENCE: DIRECTOR, OFFICE OF NUCLEAR MATERIAL SAFETY
AND SAFEGUARDS, MEMORANDUM DATED
AUGUST 20, 2024

Attached is the Office of the Inspector General's (OIG) analysis and the status of recommendations as discussed in the agency's response dated August 20, 2024. Based on this response, recommendations 1 and 2 remain open and resolved. Recommendations 3 through 9 were previously closed. Please provide an updated status of the open, resolved recommendations by March 14, 2025.

If you have any questions or concerns, please call me at 301.415.1982 or Danielle Mahal, Team Leader, at 301.415.5965.

Attachment:
As stated

cc: J. Martin, Acting ADO
M. Meyer, DADO
S. Miotla, DADO
J. Jolicoeur, OEDO
OIG Liaison Resource
EDO ACS Distribution

Audit Report
AUDIT OF THE NRC'S DECOMMISSIONING FUNDS PROGRAM
Status of Recommendations
(OIG-16-A-16)

Recommendation 1: Clarify guidance to further define “legitimate decommissioning activities” by developing objective criteria for this term.

Agency Response

Dated August 20, 2024: Current Status: The staff plans to add additional criteria to Regulatory Guide (RG) 1.184 (DG-1347) and to specifically indicate that exemptions are needed for any spending of the decommissioning trust fund other than for radiological decommissioning activities.

Background: The staff originally planned to address this recommendation as part of the proposed power reactor decommissioning rulemaking, “Regulatory Improvements for Reactors Transitioning to Decommissioning” (RIN 3150-AJ59, NRC-2015-0070). Staff proposed changes to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.82(a)(8)(i)(A) and Section 52.110(h)(1)(i) that removed the term “legitimate” from the phrase “legitimate decommissioning activities” and planned to better clarify guidance in RG 1.184 (DG-1347), “Decommissioning of Nuclear Power Reactors,” to include objective criteria for identifying decommissioning activities and expenses that fall within the definition of decommission in 10 CFR 50.2, “Definitions.” The proposed objective criteria included:

Expenses directly related to activities that satisfy the definition of “decommission” in 10 CFR 50.2:

- Expenses directly related to decommissioning planning and execution including consulting and paper studies, environmental assessments, engineering, and licensing activities;
- Expenses directly related to the decontamination and dismantling of systems, structures, and components (SSCs) (labor, materials, and equipment), including disposal of waste generated from decontamination and dismantling activities;
- Expenses directly related to the disposal of contaminated SSCs (labor, materials, and equipment);
- Expenses directly related to radiological soil remediation (labor, materials, and equipment), including disposal of this waste;

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Recommendation 1 (continued):

- Expenses directly related to overhead costs (i.e., emergency planning and security) and energy (e.g., electricity and fuel) used in support of decommissioning activities and to maintain the safety and security of the site;
- Expenses directly related to undistributed costs such as property taxes and nuclear insurance required while in decommissioning until the license terminated;
- Expenses directly related to improving the efficiency and effectiveness of the decommissioning process (demonstrated through a cost-benefit analysis to reduce expenses and preserve the decommissioning fund), and to improve the safety and security of the site.

Additionally, the staff recommended changes to 10 CFR 50.82(a)(8)(viii) to provide a licensee the option to use its decommissioning trust fund for spent fuel management and specific license independent spent fuel storage installation decommissioning costs only if: (1) the licensee has submitted, and the NRC has docketed, the certifications required under 10 CFR 50.82(a)(1) or 10 CFR 52.110(a); (2) 90 days have elapsed since the NRC received the licensee's post shutdown decommissioning activities report under 10 CFR 50.82; and (3) the licensee has identified excess funds in the decommissioning trust. Such excess funds would be funds in the trust that are greater than those funds reasonably needed to maintain compliance with 10 CFR 50.82(a)(8)(i)(B) and (C), complete radiological decommissioning, and terminate the license.

The Commission issued SRM-SECY-18-0055 on November 3, 2021, approving publication of the proposed rule and draft guidance. However, the Commission directed the staff to make several changes prior to publication of the proposed rule for public comment. One of the changes directed by the Commission was to disapprove the staff's recommended change to the rule language in 10 CFR 50.82(a)(8)(viii) described above. Therefore, the proposed rule would maintain the status quo in that exemptions are needed for any spending of the decommissioning trust fund other than for radiological decommissioning activities.

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Recommendation 1 (continued):

Timeline: After making the changes directed by the Commission, the proposed rule and accompanying draft regulatory guides (including DG-1347, which contained the additional criteria and guidance on application of exemptions) were published for public comment on March 3, 2022. Initially, the public comment period was 75 days, but after several requests to extend the comment period, it was extended until August 30, 2022. After the close of the comment period, the staff reviewed all public comments and prepared a final rule package for Commission review and approval. The final rule package (SECY-24-0011) was submitted to the Commission on January 31, 2024. If the Commission approves publication of the final rule, then the staff would make any changes directed by the Commission and then publish the final rule in the *Federal Register* and issue the final guidance documents, including the updated RG 1.184. The estimated publication date of the final rule is February 2025. However, the actual publication date will depend on the timing of the Commission's review and the direction they provide to the staff.

Proposed Rule Publication Date: 3/3/2022

Estimated Final Rule Publication Date: February 2025

OIG Analysis:

The proposed corrective action addresses the intent of the OIG's recommendation. This recommendation will be closed when the OIG receives and reviews the final rule and associated guidance and determines that it further defines "legitimate decommissioning activities" by developing objective criteria for this term.

Status:

Open: Resolved.

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Recommendation 2: Develop and issue clarifying guidance to NRC staff and licensees specifying the instances when an exemption is not needed.

Agency Response

Dated August 20, 2024:

Current Status: The staff plans to add additional criteria to RG 1.184 (DG-1347) and to specifically indicate that exemptions are needed for any spending of the decommissioning trust fund other than for radiological decommissioning activities.

Background: The staff originally planned to address this recommendation as part of the proposed power reactor decommissioning rulemaking. Staff recommended changes to 10 CFR 50.82(a)(8)(viii) to provide a licensee the option to use its decommissioning trust fund for spent fuel management and specific license independent spent fuel storage installation decommissioning costs only if: (1) the licensee has submitted, and the NRC has docketed, the certifications required under 10 CFR 50.82(a)(1) or 10 CFR 52.110(a); (2) 90 days have elapsed since the NRC received the licensee's post shutdown decommissioning activities report under 10 CFR 50.82; and (3) the licensee has identified excess funds in the decommissioning trust. Such excess funds are funds in the trust that are greater than those funds reasonably needed to maintain compliance with 10 CFR 50.82(a)(8)(i)(B) and (C), complete radiological decommissioning, and terminate the license. These criteria would have been incorporated in Regulatory Guide (RG) 1.184 (DG-1347). A licensee that would choose this option would not need to submit a regulatory exemption to use the decommissioning trust fund for spent fuel management and specific license Independent Spent Fuel Storage Installation costs.

Additionally, staff proposed changes to guidance in RG 1.184 to include objective criteria for identifying decommissioning activities and expenses that fall within the definition of decommission in 10 CFR 50.2. These criteria are identified in response to Recommendation 1 from the OIG's Audit of NRC's Decommissioning Funds Program (OIG-16-A-16). Other revisions to RG 1.184 include the: 1) clarification of the

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Recommendation 2 (continued):

appropriate use of decommissioning planning funds; 2) clarification that funds within a licensee's decommissioning trust are exclusively for radiological decommissioning and cannot be used for spent fuel management; and 3) clarification that a regulatory exemption is required for any use of the decommissioning trust fund other than radiological decommissioning, including decommissioning planning.

The Commission issued SRM-SECY-18-0055 on November 3, 2021, approving publication of the proposed rule and draft guidance. However, the Commission directed the staff to make several changes prior to publication of the proposed rule for public comment. One of the changes directed by the Commission was to disapprove the staff's recommended change to the rule language in 10 CFR 50.82(a)(8)(viii) described above. Therefore, the proposed rule would maintain the status quo in that exemptions are needed for any spending of the decommissioning trust fund other than for radiological decommissioning activities.

Timeline: After making the changes directed by the Commission, the proposed rule and accompanying draft regulatory guides (including DG-1347, which contained the additional criteria and guidance on application of exemptions) were published for public comment on March 3, 2022. Initially, the public comment period was 75 days, but after several requests to extend the comment period, it was extended until August 30, 2022. After the close of the comment period, the staff reviewed all public comments and prepared a final rule package for Commission review and approval. The final rule package (SECY-24-0011) was submitted to the Commission on January 31, 2024. If the Commission approves publication of the final rule, then the staff would make any changes directed by the Commission and then publish the final rule in the *Federal Register* and issue the final guidance documents, including the updated RG 1.184. The estimated publication date of the final rule is February 2025. However, the actual publication date will depend on the timing of the Commission's review and the direction they provide to the staff.

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Recommendation 2 (continued):

Proposed Rule Publication Date: 3/3/2022

Estimated Final Rule Publication Date: February 2025

OIG Analysis:

The proposed actions meet the intent of the recommendation. This recommendation will be closed when the OIG receives and reviews the final rule and associated guidance and determines it specifies the instances when an exemption is not needed.

Status:

Open: Resolved.