

August 18, 1997

SECY-97-188

FOR: The Commissioners

FROM: L. Joseph Callan /s/
Executive Director for Operations

SUBJECT: FORMERLY LICENSED SITES IDENTIFIED FOR
FURTHER INVESTIGATION IN AGREEMENT STATES

PURPOSE:

To inform the Commission of the staff's intent to revise its approach for follow-up on formerly licensed sites identified for further investigation in Agreement States.

DISCUSSION:

In response to questions raised by General Accounting Office audits in 1976 and 1989, the staff has conducted reviews of terminated license files, with contractor assistance, primarily from 1977 - 1982 and from 1989 to the present. Under Nuclear Regulatory Commission contract, Oak Ridge National Laboratory (ORNL) has almost completed its review of terminated fuel cycle and material licenses, to determine whether the sites have been properly decommissioned. ORNL reviews relevant information from license files and analyzes it through a computerized evaluation system, to estimate the probability and magnitude of site contamination from loose materials, and to identify sealed sources not adequately accounted for in the license files. License files indicating the greatest potential hazard are referred to the regions for more detailed review and/or follow-up inspection. Many of the sites are in Agreement States, and therefore not under direct NRC jurisdiction (see Attachment 1 for additional background). The review of terminated license files and follow-up to determine whether facilities were properly decontaminated is expected to be completed in Fiscal Year (FY) 1999.

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NRC Constraints

Legal constraints and resource considerations have led the staff to reexamine NRC's role in addressing sites in Agreement States. In some cases, after consultation with the States, NRC has inspected formerly licensed sites in Agreement States. However, if excessive contamination at a site is confirmed, it has been the staff's position that the Agreement State is responsible for overseeing its remediation. The staff is concerned that NRC's continued involvement at sites in Agreement States diverts limited resources away from inspection of NRC licensees and formerly licensed sites in non-Agreement States.

Three options were considered for providing follow-up on terminated sites.

Option 1: NRC would continue to conduct detailed license file reviews and on-site inspections, for sites in Agreement States identified by ORNL. Agreement States would be responsible for addressing remediation of those sites where excessive contamination is confirmed by NRC inspection. This is the current NRC practice. Resources required: 1.3 full time equivalent (FTE) per year.

Option 2: Continue detailed reviews of license files for Agreement State sites identified by ORNL, but do not conduct on-site inspections. Sites requiring inspections would be referred to the Agreement States. Agreement States would be responsible for addressing remediation of those sites where excessive contamination is confirmed by inspection. Resources required: 0.6 FTE per year.

Option 3: Stop conducting detailed reviews of license files and inspections for sites in Agreement States. Refer identified cases directly to the Agreement States for follow-up investigation. Agreement States would be responsible for addressing remediation of those sites where excessive contamination is confirmed by inspection. Resources required: 0.2 FTE per year.

Regardless of which option is implemented, the staff would complete (with ORNL) the initial screening of all terminated licenses, regardless of their location, and evaluate Agreement State programs to resolve terminated licenses during program reviews conducted under the Integrated Materials Performance Evaluation Program (IMPEP).

Historically, approximately 1.0 FTE per year was budgeted for the regions to follow up on all formerly licensed sites identified by ORNL. In FY 1996, the Regions expended approximately 3.9 FTE, of which 1.3 FTE, were for sites located in Agreement States. Therefore, eliminating expenditures on Agreement State cases would allow focus of limited resources on cases under NRC jurisdiction.

Agreement State Concerns

In a letter dated November 5, 1996, the State of California objected to NRC's position that California has regulatory responsibility for two contaminated sites referred to the State after NRC inspection. California believes that it does not have jurisdiction over licenses terminated before it became an Agreement State. Other Agreement States have verbally expressed similar objections to NRC's decision.

In addition, several Agreement States have said that NRC has a "moral obligation" to resolve cases that predate Agreement-State oversight. Also, many Agreement States consider remedial action a State obligation if a licensee fails to properly clean up its site. For this reason, the States see sites identified by NRC as potential large financial obligations being imposed on the States.

Although the staff understands the States' resource concerns, we nevertheless believe that NRC's legal and resource constraints dictate that the sites must be addressed by the States that have jurisdiction. Although most of the interaction with the Agreement States on this issue has been informal, the staff did discuss this issue at the 1996 "All Agreement States," meeting and committed to providing the Agreement States with a formal statement of position. The positions reflected in this paper were also discussed with the Organization of Agreement States Executive Board during an Office of State Programs conference call on May 21, 1997. A decision to clarify that regulatory responsibility for these sites is under the authority of Agreement States, and to include this as part of the IMPEP review, will most likely continue to be a cause of concern to some Agreement States. This concern may necessitate the need for further formal discussion of this issue with the Agreement States. The staff notes that Texas and Illinois have already acted to address their sites. California appears to be the primary critic of the Commission's policy. Note that California has 40, of the 101 sites identified in Agreement States, that require additional review and where review is pending.

RESOURCES:

The FY 1999 Internal Program/Budget proposal is based on the implementation of Option 3 and includes 0.2 FTE in FY 1998 and FY 1999 for follow-up on sites in Agreement States. If this option is not approved, an additional 1 FTE would be required to continue NRC's current practice (Option 1). A reimbursable agreement would be negotiated if an Agreement State were to request technical assistance from NRC.

CONCLUSION:

Unless otherwise directed, the staff plans to reduce expenditures associated with the review of terminated licenses by ceasing detailed file reviews and inspections of sites under Agreement State jurisdiction, and referring identified cases to the Agreement States for appropriate investigation (Option 3). The staff will continue to provide the States with general technical assistance and cooperation in completing this program, to ensure that all formerly licensed sites are reviewed and remediated where appropriate.

Agreement States will be informed of the staff's decision, including NRC's position on regulatory jurisdiction, by the issuance of an All Agreement States letter addressing this subject (see Attachment 2). To maintain a complete database on the status of terminated license sites, Agreement States will be requested to report resolution of each case to NRC, for tracking. In addition, Agreement State actions to review and resolve terminated licenses referred to them will be evaluated during Agreement State program reviews conducted under IMPEP.

COORDINATION:

The Office of the General Counsel (OGC) has reviewed this paper and has no legal objection. However, OGC has prepared a separate memorandum on this matter. The Office of the Chief Financial Officer has reviewed this paper and has no objection to the discussion of resources.

RECOMMENDATION;

That the Commission note that the staff will initiate these actions within ten business days, unless otherwise directed by the Commission.

L. Joseph Callan
Executive Director
for Operations

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Attachments:

1. Additional background
2. Draft letter to
 Agreement States

ADDITIONAL BACKGROUND ON FORMERLY LICENSED SITES

In 1976, the General Accounting Office (GAO) raised concerns about the decommissioning of sites formerly licensed by Nuclear Regulatory Commission's predecessor, the Atomic Energy Commission. In response, NRC agreed to review the terminated license files. Between 1977 and 1982, an NRC contractor, Oak Ridge National Laboratory (ORNL), reviewed the docket files for all 16,000 fuel cycle and material licenses terminated before 1965, to verify whether the sites had been properly decommissioned.

In 1989, GAO issued a report critical of NRC decommissioning procedures and criteria. Chairman Carr subsequently made a commitment to Congress to review licenses terminated since 1965. ORNL was again contracted to review all license files retired between 1965 and 1985. To assure a complete review, the staff subsequently expanded the effort to include all licenses terminated through 1996, including a reexamination of those terminated before 1965.

As of December 1996, ORNL had completed its review of all licenses terminated through 1985 -- about 33,000 files. ORNL has also completed its review of approximately 4000 of the 10,000 licenses terminated after 1985, and is scheduled to complete the project in March 1998. ORNL reviews relevant information from license files and analyzes it through a computerized evaluation system to estimate the probability and magnitude of site contamination from loose materials not adequately accounted for in license files. This system also examines the potential risk from sealed sources not adequately accounted for in the license files. A score is assigned to licenses that do not have adequate documentation of site cleanup and materials disposition, to provide a ranking of the potential hazard and a priority, relative to other licenses. All files of terminated licenses with scores above a certain level are referred to the regions, for appropriate follow-up.

Based on ORNL's review to date, 636 licenses for unsealed radioactive material have been referred to the regions for further evaluation. Approximately 450 licenses have been determined to be properly decommissioned; 34 sites were found to be contaminated; and the remainder are still under review. Six significant cases have been placed in the Site Decommissioning Management Plan. ORNL has also identified 539 licenses with sealed sources not accounted for. Of these, 116 have been eliminated after NRC follow-up review, and the remainder are still under review.

In many instances, a site inspection is necessary to assess a case. For sites in Agreement States, the Regions have notified the States, and requested inspections, with NRC accompaniment, if

necessary. However, many States have informally declined these requests due to resource limitations or policy/legal positions adopted by the States. Therefore, the NRC staff has conducted some inspections without Agreement State participation. Sites found to be contaminated in an Agreement State are referred to the State, because under a 274b Agreement, NRC has discontinued federal regulatory authority over certain Atomic Energy Act materials, and the State has assumed regulatory authority under State law. Therefore, any residual radioactivity (covered by a 274b Agreement) at formerly licensed sites in an Agreement State is subject to regulation by the State. About 11 contaminated sites have already been referred to the States, and it is likely that additional sites could be referred as the file reviews are completed through March 1998. ORNL has identified 101 sites in Agreement States, which need further review and are still pending. Most of these sites are in California (40), and New York (36). In addition, 183 sealed source licenses still under review are located in Agreement States.

ALL AGREEMENT STATES
MASSACHUSETTS, OHIO, OKLAHOMA, PENNSYLVANIA

TRANSMITTAL OF STATE AGREEMENTS PROGRAM INFORMATION (SP-97-)

Your attention is invited to the enclosed correspondence which contains:

- INCIDENT AND EVENT INFORMATION.....
- PROGRAM MANAGEMENT INFORMATION.XX FORMERLY LICENSED SITES
AND JURISDICTION FOR
REMAINING RESIDUAL
MATERIALS
- TRAINING COURSE INFORMATION.....
- TECHNICAL INFORMATION.....
- OTHER INFORMATION.....

Supplementary Information: The Nuclear Regulatory Commission (NRC) has been reviewing previously terminated licenses to determine whether there was appropriate documentation that the sites were adequately decontaminated prior to termination of the license and release of the site. This project was initiated in 1977 for licenses terminated prior to 1965. Another effort was initiated in 1989 for licenses terminated after 1965, which was subsequently expanded to include all terminated licenses. A number of sites have been identified for which there is insufficient documentation to ensure that the site was adequately decommissioned or to account for all sealed sources. NRC regional offices are currently working to close these records through additional file searches and, when necessary, site surveys. NRC guidance for conducting these follow-up inspections is documented in Temporary Instruction 2800/026 (TI 2800/026), and copies were provided to the Agreement States.

Radioactive material remaining at a site located within an Agreement State, including material originally licensed by NRC or its predecessors, is the regulatory responsibility of the Agreement State. Therefore, an Agreement State is responsible for conducting detailed license reviews, and investigation and

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remediation of any site identified through NRC review of previously terminated licenses for which there is insufficient documentation to ensure that the site was properly decommissioned or which has inadequate accounting of sealed sources.

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After review of the files, some cases require on-site inspections to determine whether excessive contamination may be present. Up to now, NRC has conducted numerous inspections in Agreement States where the States have indicated resource constraints or have indicated that they do not believe they have regulatory jurisdiction. However, in light of our own resource constraints and our position that Agreement States have jurisdiction over these sites, NRC is phasing out detailed reviews of license files and follow-up inspections. Sites that appear to require further investigations or inspections to properly assess the sites will be referred to the appropriate Agreement States for follow-up. The States will continue to be responsible for regulation of any needed remediation of any contaminated sites under their jurisdiction. To maintain a complete database on the status of terminated license sites, Agreement States are requested to report resolution of each case to NRC for tracking. In addition, Agreement State activities to review and resolve issues associated with terminated licenses referred to them will be evaluated during Agreement State program reviews conducted using the Integrated Materials Performance Evaluation Program.

If you have any questions about this correspondence, please contact me or the individual named below.

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