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L. Bykowski

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DEPARTMENT OF NUCLEAR SAFETY

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U.S. Nuclear Regulatory Commission
Mr. Bykowski, Rules & Directives Branch
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DATE: October 12, 1999

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COMMENTS:

Mr. Bykowski,

Enclosed please find our letter submitting comments on NRC's Draft Regulatory Guide DG-3014 (proposed Revision 1 to Regulatory Guide 3.66) -- "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30. 40. 70 and 72."

Kathy Allen
Senior Project Manager
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IF YOU HAVE QUESTIONS OR PROBLEMS RECEIVING THIS FAX, PLEASE CALL THE VERIFICATION NUMBER LISTED ABOVE.



PDR REG.GD.

DEPARTMENT OF NUCLEAR SAFETY

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George H. Ryan
Governor

Thomas W. Ortziger
Director

October 12, 1999

Rules and Directives Branch
Office of Administration, DAS
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Sirs:

The Illinois Department of Nuclear Safety (Department) hereby submits comments on NRC's Draft Regulatory Guide DG-3014 (proposed Revision 1 to Regulatory Guide 3.66). "Standard Format and Content of Financial Assurance Mechanisms Required for Decommissioning Under 10 CFR Parts 30. 40. 70 and 72." We are in the process of updating our own financial assurance rules and guidance documents, and we hope the following comments on your Draft Regulatory Guide (DRG) will be useful.

1. The DRG, in several places, misuses the term "issuer," in particular:

"4.1 Qualifications of the Issuer: The Trustee" – a trustee does not "issue" a trust and there is no reason to refer to the trustee as an "issuer."

"5.1 Qualifications of the Issuer: The Escrow Agent" – an escrow agent does not "issue" an escrow account and there is no reason to refer to the escrow agent as an "issuer."

"6.1 Qualifications of the Issuer: The State or State Agency" – a state or state agency does not "issue" a government fund and there is no reason to refer to a state or state agency as an "issuer."

"13.1 Qualifications of the Issuer" – a parent company does not "issue" a parent company guarantee and there is no reason to refer to the parent company as an "issuer."

"14.1 Qualifications of the Issuer" – a licensee does not "issue" a self-guarantee and there is no reason to refer to the licensee as an "issuer."

2. In the first paragraph of Section 4.4 Model Trust Fund Agreement, it is indicated that an association can be a licensee. An association is ordinarily not a legal entity separate from its potentially numerous members. Enforcement of legal commitments made by an association may be extremely difficult. Furthermore, NRC's program specific guidance in NUREG 1556 specifies that license applications shall list the "legal name of the applicant's corporation or other legal entity with direct control over use of the radioactive material." (See, e.g., NUREG-1556, Vol. 6, p. 8-1.) It would appear, therefore, that NRC does not issue radioactive materials licenses to associations, and that reference to an association as a type of licensee should be deleted from the first paragraph of 4.4 Model Trust Fund Agreement.
3. The first paragraph of Section 5. Escrow Agreements states that, "A decommissioning *escrow* (or *escrow account*) is an irrevocable, three-party written agreement" (emphasis added, italics in original) The NRC's model escrow agreement in Section 5.4 Model for an Escrow Agreement is, however, a two-party agreement. The inconsistency should be corrected.
4. In Section 9.4 Model Surety Bond, a "joint venture" is listed as one of the types of possible organizations, for both the licensee and the surety. "Joint venture" is not identified as a possible organizational type for all of the other financial assurance mechanisms addressed in the DRG. Additionally, it seems unlikely that sureties would enter into "joint ventures" to issue surety bonds for NRC licensees. NRC should review whether reference to joint ventures is appropriate in Section 9.4, and, if it is, whether similar references should be made in the sections on the other financial assurance mechanisms.
5. The fourth textual paragraph of Section 9.4 Model Surety Bond states:

"Or, if the Principal shall fund the standby trust fund in such amount after an order to begin facility decommissioning is issued by NRC of such assurance, within 30 days after a date a notice of cancellation from the Surety is received by both the Principal and the NRC, then this obligation shall be null and void; otherwise it is to remain in full force and effect."
(emphasis added.)

The underscored language does not make sense and needs to be rewritten.

6. The second paragraph of Section 9. Surety Bonds includes the following:

“A surety bond must also provide that the full face amount of the bond be paid to the beneficiary [NRC] automatically prior to expiration, without proof of forfeiture, if the licensee fails to provide a replacement mechanism acceptable to the NRC within 30 days after receipt of notification of cancellation.”

The Model Surety Bond in Section 9.4 does not include this required provision.

7. The first paragraph of the Model Chief Executive Officer (CEO) Letter in Section 13.4, which is used in the context of a parent company guarantee, indicates that the licensee could be a joint venture. Does NRC issue licenses to joint ventures? Do joint ventures have chief executive officers? Do joint ventures have parent companies? As stated in comment no. 4 above, NRC should revisit references to joint ventures.

The model CEO letter also includes a certification by the licensee’s CEO that the licensee is a going concern and a statement of the licensee’s net worth. While this might be desirable information, it does not appear to be required by the underlying regulations.

8. The discussion in Sections 14 and 14.1 of the categories of licensees that may satisfy financial assurance requirements by means of a self-guarantee references only Part 30 licensees. Self-guarantees may also be utilized by Part 40, 70 and 72 licensees by virtue of incorporation within those parts of the tests in Appendices C, D, and E of Part 30. The model forms for self-guarantees correctly reference all four parts. To avoid potential confusion, Section 14 and possibly Section 14.1 should be revised to recognize that Part 40, 70 and 72 licensees may also make use of the self-guarantee.
9. The financial test for commercial companies that do not issue bonds, which is based on Appendix D of 10 CFR 30, is referenced in Sections 14.3, 14.6, and 14.13. One component included in the test, “cash flow,” is not reported in financial statements prepared under generally accepted accounting practices (GAAP) and is not defined by NRC. NRC should define “cash flow,” preferably with reference to items reported in GAAP financial statements. Based on a comparison of the text for the “Financial Test for Commercial Companies that Do Not Issue Bonds” in Section 14.3 and the form in Section 14.6, “cash flow” apparently means “the sum of net income plus depreciation, depletion and amortization.”

10. Item 7 (b) of Section 14.13 references “the above identified beneficiary.” This presumably is intended to mean the NRC, which is identified in the first paragraph of the model self-guarantee as “obligee.” The language should be modified to be consistent.
11. Item 8 of Section 14.13 references “a special auditor’s report.” The phrase should be revised to read “an auditor’s special report.”
12. In Item 10 of Section 14.5, Item 4 of Section 14.7, and Item 4 of Section 14.9, the capital “A” should be placed in quotations as in Item 18 of Section 14.13.
13. Item 16 of Section 14.13 states,

“The guarantor expressly waives notice of acceptance of this self-guarantee by the NRC. The guarantor also expressly waives notice of amendments or modifications of the decommissioning requirements and of amendments or modifications of the license.

While it is appropriate to require the self-guaranteeing licensee to waive notice of acceptance of the guarantee by NRC and to waive notice of regulatory changes, it does not seem appropriate to require the licensee to waive notice of site specific decommissioning requirements imposed by NRC or amendments to its own license. Clearly, NRC must give a licensee notice of license conditions before those conditions can be enforced. The second quoted sentence should be revised to read that, “The guarantor also expressly waives notice of amendments or modifications of regulatory decommissioning requirements.”

14. The first paragraph of Section 17.4 Model Standby Trust Agreement indicates that an association can be a licensee. See comment no. 2 above.

Thank you for the opportunity to comment on the proposed revisions to Regulatory Guide 3.66. Should you have any questions, please contact me at 217-785-9931 or via e-mail at k_allen@idns.state.il.us.

Sincerely,



Kathy Allen
Health Physicist