

March 1, 2002

The Honorable Joseph I. Lieberman, Chairman  
Committee on Governmental Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the statutory obligation to respond to recommendations by the General Accounting Office (GAO) within 60 days of receipt, I am pleased to submit the Commission's responses to the recommendations made by the GAO in its report entitled "Nuclear Regulation - NRC's Assurances of Decommissioning Funding During Utility Restructuring Could Be Improved." Specific responses to the GAO recommendations are presented in the enclosure.

Sincerely,

**/RA/**

Richard A. Meserve

Enclosure:  
NRC Responses to GAO Recommendations

cc: Senator Fred Thompson

NUCLEAR REGULATORY COMMISSION (NRC)  
RESPONSES TO GAO RECOMMENDATIONS

The General Accounting Office (GAO), in its report, "Nuclear Regulation - NRC's Assurances of Decommissioning Funding During Utility Restructuring Could Be Improved," made specific recommendations with respect to financial assurance and other aspects of the NRC's power reactor decommissioning program. These recommendations, and the NRC's responses to them, are provided below.

Recommendation 1

To ensure that the decommissioning assurance methods and financial qualifications of all new nuclear plant owners are consistently verified, validated, and documented, we recommend that the Chairman, NRC, revise the Commission's standard review plan and related management controls for reviewing license transfers to include a checklist or step-by-step process for its staff, its management, and prospective owners to follow (page 34).

NRC Response:

The NRC continues to disagree with GAO's recommendation that the NRC revise its standard review plan, NUREG-1577, Rev. 1, March 1999, "Standard Review Plan on Power Reactor Licensee Financial Qualifications and Decommissioning Funding Assurance," to include a checklist or step-by-step process for reviewing the decommissioning funding assurance aspects of license transfers. As the NRC pointed out to GAO in its comments on earlier drafts of the GAO report, the NRC believes that a checklist will not greatly enhance the effectiveness of license transfer reviews because many of the reviews that the NRC completed over the past few years have been very complex and, in many respects, unique. GAO disagrees with the NRC's comments and states that license transfer applicants "have consistently used the same few basic methods permitted by the NRC's regulations, such as prepayment and/or parent company guarantees, to provide NRC with assurance that decommissioning funding and financial qualifications are being met."

Although the GAO statement is true, it does not consider the unique evaluations that the NRC's financial analyst has to complete for even the same type of financial assurance method. For example, in the Exelon license transfer, which GAO cited in its report, Exelon chose the decommissioning funding assurance method of a non-bypassable wires charge to provide for uncollected funds. The NRC recognizes this method as a valid means of demonstrating financial assurance for decommissioning. However, the NRC financial analyst must evaluate the specific provisions of non-bypassable wires charges that vary from State to State, which is difficult to do by checklist.

GAO's assessment of the NRC license transfer review process appears to be based largely on the lack of adequate documentation supporting the decision-making logic provided in the standard review plan. Therefore, the NRC continues to believe that appropriate documentation of the logic supporting each license transfer review will help to further demonstrate the adequacy and effectiveness of each review. The NRC will strive to eliminate documentation deficiencies identified by GAO. As GAO acknowledges in its report (page 34), the NRC's standard review plan "offers a sound basis for obtaining consistency." The NRC believes that,

the best approach to address GAO's expressed concerns with respect to license transfer reviews is to ensure that reviews are conducted and proper documentation is maintained according to the processes and considerations discussed in the standard review plan.

## Recommendation 2

We recommend that the Chairman, NRC, in the Commission's ongoing consideration of modifications to radiological criteria for terminating licenses and alternative decommissioning approaches, address:

- how the burial or entombment of low-level radioactive waste at nuclear plant sites, leading to a potentially large number of contaminated sites scattered around the country, affects the federal policy under the Low-Level Radioactive Waste Policy Act to manage radioactive waste on a regional basis; and
- concerns about whether these decommissioning approaches are technically compatible with provisions of the Low-Level Radioactive Waste Policy Act, the interstate compact agreements that implement the act, and NRC's technical regulations on licensing disposal facilities for low-level radioactive waste (page 52).

## NRC Response:

Rubblization (demolishing plant concrete that is contaminated with radioactivity into rubble and burying the rubble in the underground portion of the dismantled plant) would not involve the quantity of radioactivity nor the inventory of radionuclides associated with a commercial low-level waste disposal site. In addition, the range of waste forms are not comparable. Rubblization is considered a viable decommissioning option that is consistent with the requirements of the LTR, but is not considered low level waste under 10 CFR Part 61; therefore, it does not affect the Low Level Radioactive Waste Policy Act (LLRWPA), because it is not required to be disposed of at a "licensed land disposal facility" as that term is used in Part 61. Rather, the residual radioactivity from rubblization must meet the requirements of the License Termination Rule (LTR), 10 CFR Part 20, Subpart E.<sup>1</sup>

Current NRC requirements in 10 C.F.R. § 50.82 tend to favor the use of other decommissioning alternatives over entombment, although entombment is not specifically precluded by the requirements of 10 C.F.R. § 50.82. At the current time, no licensee is proposing to use entombment as a decommissioning option and, if such a request were made, it would need to be evaluated on a case-by-case-basis. Recent studies conducted for NRC by Pacific Northwest National Laboratory indicate that entombment can be a viable decommissioning alternative. Licensees have expressed interest in the potential use of entombment as a decommissioning option, and have presented their views at an NRC public workshop held in December 1999. The conclusions from that workshop are contained in SECY-00-0129 (June 12, 2000).

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<sup>1</sup> It should be noted that both the LTR and Part 61 contain dose standards which are comparable and are designed to provide adequate protection of the public health and safety.

To further solicit a variety of stakeholder views, an Advance Notice of Proposed Rulemaking (ANPR) was published in the Federal Register (FR) for a 75-day comment period on October 16, 2001 (66 FR 52551). Questions raised in the ANPR included regulatory issues, technical feasibility issues, issues associated with greater-than-class-C (GTCC) waste, and State issues. The ANPR also specifically discussed how low-level waste disposal issues need to be considered in evaluating the three proposed entombment options and specifically requested public comment on issues related to the relationship of entombment the LLRWPA, and low level waste compacts. The NRC intends during the ongoing entombment rulemaking effort documented in SECY-01-0099 (June 1, 2001), to consider GAO's recommendations and obtain stakeholder input for addressing the technical and policy concerns associated with the entombment alternative approach.

The public comment period on the ANPR closed on December 31, 2001. Public comments have been received and docketed. The staff anticipates completing its review of the public comments and providing a paper to the Commission on a preferred approach for proceeding in mid-2002. As suggested in the GAO recommendation, that paper will include a discussion of means for resolution of issues related to low-level waste disposal and entombment.

### Recommendation 3

To reduce the likelihood that site contamination will go undetected until late in the cleanup process, we recommend that the Chairman, NRC, require licensees to survey their plant sites for radiation immediately following the announcement of intentions to permanently cease operations, rather than allowing them to wait until 2 years before decommissioning is supposed to be complete.

### NRC Response:

The NRC continues to have concerns with GAO's recommendation that an NRC licensee survey its site as soon as possible after announcement of its intention to cease operations permanently. Licensees have a reasonably good understanding of the contamination at their sites based on historical records, including records of past burials and of surveys conducted during the operational life.<sup>2</sup> Thus, a survey at the cessation of operations may serve little purpose. On the other hand, the staff believes that it is cost effective for the licensee to conduct a thorough final site survey near the end of the decommissioning process, after submission of a License Termination Plan (LTP), to confirm the site has been decommissioned and remediated in a fashion consistent with NRC's requirements in the License Termination Rule (LTR). To require a licensee to perform a thorough survey shortly after shutdown would not increase the public health and safety, but would place a substantial burden on licensees with no resultant benefit.

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<sup>2</sup> As required under 10 C.F.R. §§20.2103, 20.2108.

Identical letter sent to:

The Honorable Joseph I. Lieberman, Chairman  
Committee on Governmental Affairs  
United States Senate  
Washington, D.C. 20510  
cc: Senator Fred Thompson

The Honorable Robert C. Byrd, Chairman  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510  
cc: Senator Ted Stevens

The Honorable C. W. Bill Young, Chairman  
Committee on Appropriations  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative David Obey

The Honorable Harry Reid, Chairman  
Subcommittee on Transportation, Infrastructure,  
and Nuclear Safety  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510  
cc: Senator James M. Inhofe

The Honorable Joe Barton, Chairman  
Subcommittee on Energy and Air Quality  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative Rick Boucher

The Honorable W. J. "Billy" Tauzin, Chairman  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, D.C. 20515  
cc: Representative John D. Dingell

The Honorable James M. Jeffords, Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510  
cc: Senator Bob Smith

Identical letter to: (cont'd)

The Honorable David M. Walker, Chairman  
Comptroller General of the United States  
General Accounting Office  
Washington, D.C. 20548

The Honorable Mitchell E. Daniels, Jr.  
Director  
Office of Management and Budget  
Washington, D.C. 20503