

December 4, 2003

Mr. Michael J. Meisner  
Chief Nuclear Officer  
Maine Yankee  
321 Old Ferry Road  
Wiscasset, Maine 04578

Dear Mr. Meisner:

I am responding, on behalf of the Commission, to your letter of October 29, 2003, expressing your concern with application of certain Nuclear Regulatory Commission (NRC) record-keeping requirements during reactor decommissioning. I understand that the NRC processed your earlier letter of July 14, 2003, on this matter as a request for an exemption from the relevant requirements. On November 21, 2003, NRC granted Maine Yankee Atomic Power Company's (MY) exemption request.

You believe there is no safety benefit to retaining records of structures, systems, and components (SSCs) that no longer exist, and you urge NRC to interpret its regulations consistent with this view and to establish a process, short of formal amendment of its requirements, to effect this view. When these record-keeping requirements were originally promulgated, the rulemaking did not focus on their application to decommissioning activities. Attempting to reconcile the literal application of the requirements to the actual circumstances presented, as set forth in the earlier correspondence from OGC referred to in your letter, may create cases such as those presented by MY's situation where there is no significant safety benefit to retaining the records. Dealing with such situations is exactly the purpose of the exemption process and in this case, the staff concluded as you proposed, that MY should be granted an exemption from those requirements.

The most straightforward manner in which to address the anomalies in application of requirements to the decommissioning process which have been identified during MY's and others' efforts to decommission their facilities would be through rulemaking to amend various requirements to include provisions specifically applicable to decommissioning. Unfortunately, while NRC has on its regulatory agenda an integrated reactor decommissioning rulemaking which could address record retention as well as other refinements to the decommissioning requirements, action on this rulemaking has been deferred to focus resources on higher priority actions responsive to the events of September 11, 2001. Until such time as that rulemaking is completed, the exemption process has been and should continue to be an effective method to address particular factual circumstances where the application of requirements does not serve the underlying purposes of the rule or other special circumstances presented by the licensee. This process provides certainty to the individual licensee and does not introduce the possibility that the Commission would be substantively modifying its regulations through a series of

informal interpretations or opinions without appropriate notice and comment, which might arguably occur if the agency were to engage in issuance of a series of letter opinions, each dealing with a specific set of facts. We believe it is appropriate to continue to reserve binding legal interpretations by the General Counsel for those major legal or policy questions affecting broad categories of NRC licensees.

Sincerely,

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Nils J. Diaz