

**PROPOSED STAFF RESOLUTION OF COMMENTS  
ON DRAFT SUPPLEMENT TO STANDARD REVIEW PLAN**

(NEI Comments)

1. The Standard Review Plan (SRP) should use language that reflects that insurance as a decommissioning funding assurance mechanism must provide reasonable assurance that funds will be available as needed, not absolute certainty. Also, the word “guarantee” should be avoided.

Response: The NRC’s decommissioning funding assurance regulation at 10 CFR 50.75 uses the term “other guarantee method” when discussing the alternative methods of providing financial assurance available to licensees. To the extent appropriate, the SRP will be modified to use language to reflect that financial assurance methods, including insurance, must meet a reasonable assurance standard rather than an absolute certainty standard.

2. The SRP should recognize that insurance may be used in combination with other decommissioning funding assurance mechanisms.

Response: The SRP will be modified to reflect that insurance may be used in combination with other approved funding assurance mechanisms.

3. The SRP should recognize that a licensee’s decommissioning funding obligation could be based upon a site-specific cost estimate that is less than the formula amount, for example, derived through an approved exemption or, if at the end of plant life, a Post Shutdown Decommissioning Activities Report, License Termination Plan, or Decommissioning Plan.

Response: NRC regulations at 10 CFR 50.75(b)(1) require that decommissioning funding assurance be provided in an amount which may be more but not less than the NRC formula amount. See also NUREG-1577, Rev. 1. An exemption to allow funding assurance in an amount less than the formula would be at best, extremely rare. In addition, the NRC does not believe that the SRP, which focuses primarily on operating reactor situations, needs to explicitly recognize hypothetical post-shutdown scenarios, which are very case-specific and are addressed by the NRC on a case by case basis. Therefore, in consideration of the above, the NRC is not making any modifications to the SRP in response to this comment.

4. The NRC should not impose constraints on provisions allowing increases in coverage, or allowing reductions in the policy limits under a predetermined methodology.

Response: The SRP does not impose constraints on provisions allowing increases in coverage or allowing reductions in policy limits under a predetermined methodology as long as the policy provides the required minimum amount of coverage, which can be identified and calculated at any time. For purposes of the biennial decommissioning funding reports, a minimum current policy value statement by the insurance company will be needed from the licensee.

5. The NRC should not require that an insurance policy establish sublimits specifying what amounts are covered for radiological versus nonradiological cleanup. As an alternative, the NRC could require that radiological costs have priority.

Response: The NRC must be able to readily determine how much financial assurance is being provided for radiological decommissioning in order to determine if additional funding assurance is necessary. Radiological decommissioning amounts have always been required to be specifically identifiable in decommissioning trusts separate from non-radiological amounts. Even if an insurance policy were to indicate that radiological costs have priority, there could be potential conflicts between competing interested parties during the decommissioning process that could introduce uncertainty and litigation as to what amount of funds remain to complete radiological decommissioning. The NRC believes that sublimits should be clearly identified in an insurance policy, analogous to subaccounts or dedicated amounts being required to be identified in decommissioning trusts.

6. The NRC should not require that an insurance policy be automatically adjustable as decommissioning cost estimates rise.

Response: The NRC does not intend to require that an insurance policy be automatically adjustable as decommissioning cost estimates rise. Should the estimates rise, the licensee is responsible for providing additional financial assurance, whether through additional insurance or through another mechanism.

7. The SRP should not refer to deductibles as a “euphemism.”

Response: The term will not be used in the SRP.

8. Coverage of costs incurred after a plant shuts down beyond NRC defined decommissioning costs should not be precluded.

Response: In general, the NRC does not object to an insurance policy covering costs beyond NRC-defined decommissioning costs after shutdown, provided that specific sublimits are identified, and provided further that radiological decommissioning funds are not used to purchase insurance coverage that can be used for non-radiological decommissioning purposes, and that issues or controversies related to non-radiological coverage(s) have no effect on the policy’s coverage of NRC-defined decommissioning.

9. Costs that must be paid under the insurance policy should be only those that have been actually incurred. Amounts above costs actually incurred should not be required to be placed in a standby trust.

Response: The NRC disagrees. Under the regulation at 10 CFR 50.75(e)(1)(iii)(A)(1), if the insurer intends to cancel or not renew the insurance policy, the full face amount of the insurance policy must be paid to the beneficiary automatically prior to the expiration if the licensee fails to provide a replacement within 30 days after receipt of notification of cancellation or non-renewal. Outside of this situation, the insurer must timely transfer funds to the trust on a schedule required by the trustee consistent with access to funds allowed by 10 CFR 50.82(a)(8). The schedule required by the trustee may anticipate funding needs and need not demonstrate which costs have been incurred.

10. Legal fees and expenses, other than those incurred to obtain NRC approvals of a license termination plan, should not be recoverable under an insurance policy unless they are pre-approved by the insurer.

Response: The NRC disagrees. Legal fees and expenses when disputes arise in the contracting business are routinely considered part of overall costs for the project, in this case, decommissioning a reactor.

11. The SRP should clarify the use of the term “domiciled.”

Response: A corporation’s domicile is normally where its principal place of business is located. The SRP will be modified to more clearly indicate whether the SRP is referring to where the insurer’s principal place of business is, where the insurer is incorporated, and/or where the insurer is licensed.

12. The SRP should not provide that the insurer must be licensed in the State where the relevant plant is located.

Response: The NRC is aware that in general, insurance companies are not necessarily required to be licensed by each state where the company does business or insures property. The NRC is also aware that Federal law allows Risk Retention Groups (RRGs) to be licensed in a single state but do business elsewhere. However, decommissioning a nuclear reactor is not a typical line of insurance. The health and safety interests of the state where the reactor is located are undoubtedly very distinct from the interests of the state where an insurance company may be incorporated or have its principal place of business. Accordingly, the NRC believes that the state insurance commission where the relevant reactor is located must be given an opportunity to allow or disallow the insurance product to be used in that State. The NRC recognizes that a particular state's insurance commission may not want to actually license the insurance company. Therefore, the SRP will be modified such that written approval, non-objection, or licensing by the State where the reactor is located must be obtained.

13. The SRP should not state that a captive insurer that covers only a single owner's reactors will be problematic.

Response: The SRP states that a captive insurer that covers only a single owner's reactors is problematic due to the inherent risks of this form of self-insurance. Also, NMSS policy and guidance on this subject adheres to this position and there is no reason that the SRP should not be consistent with the NMSS policy and guidance. Accordingly, the SRP will not be modified in response to this comment.

14. Clarification is needed for the SRP's statement that a mutual, captive, or RRG that can insure more than a single owner's reactors may be problematic.

Response: Even though a mutual, captive, or risk retention group may insure more than a single owners' reactors, such an insurer still may not provide reasonable assurance of decommissioning funding due to insufficient capitalization, risk transfer, and risk distribution, among other factors. The SRP includes specific eligibility criteria for such insurers in light of the fact that these insurers still may not provide reasonable assurance. The SRP will be clarified to state that there are factors whereby the subject category of insurers still may not provide reasonable assurance of decommissioning funding.

15. The criterion that a group captive, RRG, or mutual insurer should have a favorable IRS ruling is inappropriate.

Response: The NRC believes that an IRS ruling is important evidence demonstrating that there is an actual transfer of risk warranting a determination that the applicant for the ruling is in fact an insurance company. The NRC is not concerned with the financial aspects of whether the insurance company receives a tax deduction.

16. Ratings from rating organizations such as A.M. Best should not be a criterion in the SRP.

Response: The NRC continues to believe that a rating should be obtained with respect to certain entities described in the SRP. However, the NRC recognizes that a rating may not be available immediately in cases where an insurance company is new. Therefore, the SRP will reflect that an insurance company will be expected to request a rating where a rating has not yet been assigned.

17. The SRP should clarify that certain notice and payment requirements for cancellation or termination would be inapplicable to policies that cannot be canceled.

Response: The NRC agrees that the SRP should say certain notice and payment requirements for cancellation would be inapplicable to policies that cannot be canceled. However, termination and cancellation may mean different things in some States. Therefore, such requirements may still apply to policies that cannot be canceled. The SRP will be modified to reflect the above.

The NRC is also modifying Section 9 of the SRP to delete references to “misrepresentation/fraud.” The NRC has reconsidered whether misrepresentation or fraud should be noted as a basis for an insurer to cancel or terminate a policy. In this specific context of decommissioning funding assurance, the NRC has concluded that an insurer, prior to issuing a policy, should be able to uncover fraud or misrepresentations of a nature that would result in the insurer deciding not to issue the policy.

18. The SRP should recognize that the insurance policy may specify several face amounts that apply in different situations, including when a policy is terminated because of non-payment of premiums, material breach, or fraud. The SRP should clarify that it is the applicable face amount that would be paid to a standby trust in the event that a policy is terminated without an acceptable substitute, and that the acceptability of such a face amount would be a matter that the NRC would determine when approving an initial policy.

Response: If policies are submitted that contain more than a single pay-out amount (e.g., based on contingencies), the NRC will take only the lowest amount into account when assessing whether a sufficient amount of coverage has been offered, whether in combination with one or more other approved decommissioning funding methods or as the sole assurance method. Thus, the SRP will be modified to clarify that only the smallest amount will be used when determining compliance with the regulatory minimum amount. For pay-out amounts that are not expressed as absolute numbers but must be calculated using one or more variables whose values are not known or provided to the NRC, the NRC will calculate those pay-out amounts conservatively, using values for the variables that yield the lowest amounts. Also, fraud or misrepresentation (the insurance company should provide itself with an adequate opportunity to uncover any such fraud or misrepresentation before it issues the policy) or anticipated future shortfalls of

decommissioning funds cannot be an acceptable basis for proposing a reduced pay-out amount. The SRP will reflect the foregoing.

19. The SRP should not preclude a policy from designating whether coverage is primary or excess.

Response: The SRP will be modified so as to not preclude an insurance policy for radiological coverage from designating whether that coverage is primary or excess; however, the SRP will be modified such that should there be a dispute regarding which insurance policy is primary, the insurance policy first issued shall be treated as primary. The SRP with respect to any other types of coverage (e.g., non-radiological) included in the decommissioning policy will reflect that such coverage should be primary. The reason is that the primary versus excess issue only relates to radiological coverage by reason of the existing NEIL property coverage that also covers radiological cleanup in the event of an accident leading to decommissioning. Also, disputes as to whether non-radiological coverage is primary or excess and associated delays will be avoided.

20. The SRP should not require that signatures be notarized.

Response: The NRC continues to believe that notarized signatures provide additional assurance of the identity of the parties. Moreover, the additional burden of notarization is minimal. Thus, the SRP will not be modified in this regard.

21. Legal opinion letters should state that the insurance policy does not violate applicable State law, rather than stating it conforms to State Law.

Response: The NRC sees no material difference between the two alternatives. Therefore, it does not object to making the requested change.

22. Approvals or non-objections by State public utility commissions in the case of electric utilities with access to nonbypassable charges should not be required before or as part of the NRC approval process regarding an insurance policy.

Response: The draft SRP inadvertently addressed "electric utility licensees with access to nonbypassable charges" when it should have addressed electric utility licensees and non-electric utility licensees with access to nonbypassable charges. In any event, with respect to electric utility licensees, the NRC believes that State public utility commission approval or non-objection should be explicitly included in the SRP as an integral step in the NRC's approval process because State PUCs maintain continuing oversight of ratepayer financed decommissioning trust funds, and the NRC's decommissioning funding assurance regulatory scheme has long recognized this role of the States. PUC approval or non-objection will help avoid conflicts in the regulatory approval process. To avoid unnecessary delays in the NRC approval process when a State PUC has not yet acted, the SRP will be modified slightly to reflect that State PUC approval or non-objection will be either a condition precedent or a condition subsequent to the NRC's approval. For non-electric utilities with access to nonbypassable charges, State

legislation varies and the NRC recognizes that PUCs, therefore, may or may not have a role in overseeing decommissioning trust funds. However, the NRC believes that the “approve or raise no objection” language of the draft SRP adequately covers situations where the State may or may not have a role in overseeing decommissioning trust funds when such funds are proposed to be used to obtain decommissioning insurance policies.

23. The SRP should allow for a claims management process under which claims are submitted as losses or costs are incurred, the claims are assessed by the insurer, and then paid by the insurer. The SRP should reflect that decommissioning payments can be made directly by the insurer instead of the trustee when approved in advance by the trustee.

Response: The NRC has reconsidered the potential ramifications of a comprehensive claims management scenario involving substantive review and approval by the insurer of activities, vendor selections, and payments. The NRC believes that claims management of this nature is problematic. Any claims management process of a substantive nature that could result in claims being denied or delayed by the insurer has the potential to disrupt and interfere with carrying out an approved decommissioning plan, and thereby undermine the regulatory requirement that reasonable assurance of decommissioning funding is being provided. Other approved decommissioning funding methods do not involve any additional claims management layer. Furthermore, the NRC conducts inspections and provides substantial oversight to ensure that decommissioning activities are performed in accordance with NRC-approved plans. In addition, since they are ultimately responsible for the completion of decommissioning their facilities by law, licensees have always had every incentive to use assured sources of funding in the most cost effective manner possible consistent with protecting public health and safety. Accordingly, the SRP will be revised so that claims management features in an insurance policy will not be acceptable.

24. Instead of stating that decommissioning trust funds transferred to an insurance company must be invested by the insurer under a prudent investor standard, the SRP should recognize that there may be State PUC or insurance commission investment standards and thus clarify that the investment standard should be either the applicable State standard or where no such standard applies, the prudent investor standard.

Response: The NRC agrees with this comment and will change the SRP accordingly.

25. The SRP should not remark that qualified decommissioning trusts are not likely to be used as standby trusts because of IRS limitations.

Response: The NRC will modify the SRP to remove the remark.

(AIG Comments)

26. The SRP should reflect that the insurance policy may be “excess” insurance if the licensee has other valid and collectible insurance applicable to decommissioning.

Response: See the response to comment #19 above.

27. The insurer should have a rating of at least AA by a rating organization.

Response: Licensees are free to select insurers with higher ratings than the benchmarks required by the SRP, but the NRC believes that the SRP rating levels are appropriate in the overall context. Therefore, no changes will be made to the SRP.

28. A mutual, captive, or RRG would be less risky if the insurer had a diversified portfolio of business, rather than business consisting only of nuclear reactors.

Response: NRC expects that such factors would be considered by the IRS, licensing authorities, and rating agencies and does not intend to conduct its own analysis of insurer risk. No changes to the SRP will be made in this regard.

(Michigan Public Service Commission Comments)

29. A ruling by the Internal Revenue Service concerning whether the insurer will be treated as an insurance company for tax purposes is critical.

Response: The SRP in essence provides that an IRS ruling must be obtained with respect to a group captive, RRG, or mutual insurer, which are the cases where there is an issue as to whether the insurer would be deemed an insurance company for tax purposes. Therefore, no changes to the SRP were made in response to this comment.

30. States that continue to regulate utilities may best be served by the continued use of trust funds for decommissioning.

Response: The SRP does not dictate which type of decommissioning funding assurance mechanism a licensee must use. No changes to the SRP were made in response to this comment.

31. An insurer should be incorporated and have its principal place of business in the United States. It is preferable that the insurer be licensed in the state where the relevant plant is located.

Response: The SRP does not preclude an insurer from being domiciled or incorporated outside the U.S. in light of the other qualifications that an insurer must have, and in light of service of process and being subject to lawsuits not normally being problematic. The SRP provides that an insurer should be licensed by the state where the plant is located, or, after notice to the state, approved by the state authorities or not objected to. (See also comment 12 and the response thereto.) Thus, no additional changes were made to the SRP.



32. A new insurer should be able to provide a satisfactory rating by a rating agency.

Response: See the response to comment 16.

33. State public utility commission approval of or non-objection to the use of an insurance policy is appropriate. The NRC should allow states to decide whether to allow licensees in those states to use an insurance policy for decommissioning funding assurance purposes.

Response: The SRP provides for state public utility commission approval or non-objection in the case of regulated electric utilities or licensees who have regulated nonbypassable charges. The SRP does not preempt existing state jurisdiction over its utilities with respect to whether the state may disallow the use of a certain decommissioning funding assurance method such as insurance. Therefore, no changes were made to the SRP.

(Public Service Commission of Wisconsin Comments)

34. The NRC should not do anything to infringe upon the ability of a state to determine what forms of financial assurance will work best for the state.

Response: See response to comment 33.

35. The bankruptcy of an insurer raises the possibility of a taxpayer burden to pay for decommissioning. Insurance should not be allowed unless it is a form of financial assurance as “real” as other methods of financial assurance.

Response: The SRP has been designed such that the NRC will not approve any insurance policy unless it provides reasonable assurance of decommissioning funding within the scope of 10 CFR 50.75.