



NUCLEAR ENERGY INSTITUTE

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September 23, 2005

70 FR 42596

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Chief, Rules and Directives Branch
Division of Administrative Services
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U.S. Nuclear Regulatory Commission
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SUBJECT: "Proposed Generic Communication; Impact of Potentially Degraded Hemyc and Mt Fire Barriers on Compliance with Approved Fire Protection Programs," (70 Fed. Reg. 42596, July 25, 2005)

PROJECT: 689

The Nuclear Energy Institute (NEI)¹ submits the following comments on the Nuclear Regulatory Commission's proposed generic communication addressing the impact of potentially degraded fire barriers on compliance with approved fire protection programs. We offer the following comments:

1. In an April 25, 2001 letter to Mr. John N. Hannon, NEI provided summary information related to Hemyc/MT fire barrier system testing, plant applications, plant licensing basis, and NRC previous acceptance. The NRC previously accepted the use of this material based upon cable functionality as an acceptance criteria. It appears that the NRC no longer accepts the use of this material because of the performance of this material during NRC sponsored testing that used temperature-based acceptance criteria published in Generic Letter 86-10, Supplement 1.

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

FSP Review Complete

E-RDS = ADM-03

Qdd = A. Lavetta (AXL3)

Imposition of a new regulatory requirement was not intended by the NRC at the time Generic Letter 86-10, Supplement 1 was issued in March 1994. The Backfit Discussion stated the following, "The guidance transmitted by this generic letter supplement will be used by the staff for review and evaluation of the adequacy of fire barrier systems and fire barrier tests that may be proposed in the future to satisfy NRC fire protection rules and regulations." It further states, "No generic or plant-specific backfitting is intended or approved at this time in connection with issuance of this review guidance." In effect, it appears that the NRC has determined that the acceptance criteria in the Generic Letter 86-10, Supplement 1, is a new regulatory requirement. This represents another example of evolving NRC regulatory requirements that are established via generic communications rather than the disciplined process of rulemaking.

It is clear that the performance of Hemyc/MT fire barrier system has to be confirmed in light of the NRC testing referenced in the proposed generic communication. However, the burden of proof should rest with the NRC to demonstrate the basis for establishing a new regulatory position that in effect changes the previously accepted licensing basis of the plants that use the Hemyc/MT fire barrier system. Basically the NRC used Generic Letter 86-10, Supplement 1, to establish a regulatory position relative to fire endurance testing acceptance criteria and is now imposing that position.

The utilities that use this system for compliance with NRC regulatory requirements have implemented a testing program to demonstrate the fire endurance capability of this material, conducted detailed technical evaluations, and initiated plant modifications. These actions will be used to fully address this issue while maintaining defense-in-depth and the safety margins associated with currently approved fire protection programs. The utilities have implemented compensatory and corrective actions in accordance with existing regulations commensurate with the safety significance of this issue.

2. The proposed generic communication describes the construction of the Hemyc fire barrier system tested by the NRC earlier this year. The construction of material used in the industry has an outer covering made of Siltemp or a two-part blanket made of Siltemp and Klevers. Klevers is a fiberglass cloth used on the cold side of the two-part blanket configurations. These differences in materials of construction will yield different fire endurance test results.

Therefore, we recommend the NRC consider the utility-sponsored testing that was conducted this past August. The test report is in review and should be available by the end of October.

3. The proposed generic communication provides guidance suggesting that utilities who do not plan to conduct plant modifications and who have plants licensed prior January 1, 1979, must request an exemption from 10 CFR 50, Appendix R. The proposed generic communication provides further guidance that plants licensed after that date must submit a license amendment in accordance with 10CFR50.90. Additionally, the NRC states that if the licensee adopts a risk-informed approach, then the standard license condition and 10CFR50.48(f)(3) does not apply. The reason given in the proposed generic communication is that "...the risk assessment approaches used by the plants deviate from the approved deterministic approaches used in their licensing bases." This is inconsistent with NRC policy and practice on the use of risk-informed approaches that can clearly demonstrate the safety significance of degraded or non-conforming conditions. NRC should allow the use of the standard license condition [10CFR50.48(f)(3)] and risk-informed approaches in evaluating the safety significance. It is inappropriate to use a proposed generic communication to establish new regulatory policy or practice.
4. We respectfully request that the date listed in "Requested Information" item 3 be revised to December 1, 2008. This extension would provide a reasonable time for additional testing, analyses, and possible plant modifications for those utilities that have a large amount of Hemyc/MT fire barrier system installed in their plants. Plant safety will be maintained since compensatory actions will remain in effect during this time period.
5. Item 3c, "Requested Information," requests "A description of programmatic controls that will ensure that other fire barriers will be assessed for potential degradation and resultant adverse effects." The purpose of the proposed generic communication is to confirm compliance of the Hemyc/MT fire barrier system. It is inappropriate to suggest that assessments of other fire barrier systems be conducted without data or other information indicating that the performance of these systems is suspect. It is important to note, that NRC has reviewed and accepted the fire endurance tests of fire barrier systems installed in current plants. Therefore, we request that item be withdrawn.

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6. We recommend a public meeting be held with the licensees that use the Hemyc/MT fire barrier system to discuss specific compensatory and corrective actions, and schedules for resolution of NRC concerns. This would provide all interested stakeholders to fully understand the actions that have been taken as well as those actions planned resolution of this issue.

If you have any question or wish to discuss these comments, please contact me at 202.739.8080; am@nei.org or Brandon Jamar at 202.739.8043; btj@nei.org.

Sincerely,



Alexander Marion

c: Mr. Bruce A. Boger, NRC - NRR
Mr. John M. Hannon, NRC - NRR
Mr. S. D. Weerakoddy, NRC- NRR

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