

DECOMMISSIONING PLANNING RULEMAKING

Status

SECY-08-xxxx, October 1, 2008, recommends publication of the final rule. The purpose of the rule is to reduce the likelihood that any current operating facility will become a legacy site. A legacy site is a facility that is decommissioning with an owner who cannot complete the decommissioning work for technical or financial reasons. At present, there are 6 NRC legacy sites, all materials facilities. No power reactor sites have become legacy sites because the licensees have been electric utility companies with dedicated revenue from electric tariffs to complete the decommissioning work. The Regulatory Analysis assessed, and an Agreement State with legacy site experience concurred, that the cost to enforce and fully decommission a single legacy site is much higher than the cost to implement the final rule amendments.

NRC received 35 comment letters on the proposed rule:

- 17 from licensees (4 -- Part 40, 10 -- Part 50, and 3 -- Part 72)
- 7 from environmental advocacy groups
- 5 from States (CRCPD, MA, NY, NJ, and CO)
- 4 from trade groups (NEI, UPA, TRTR, and CORAR)
- 2 from licensees of non-power reactors (MIT and Univ. of Missouri)

The final rule adds a new 10 CFR 20.1406(c) and amends 20.1501 to address chronic low specific-activity releases to the environment, a primary contributor to legacy sites. The final rule also amends decommissioning financial assurance and reporting requirements in Parts 30, 40, 50, 70 and 72. These changes will improve NRC oversight of decommissioning planning and increase the likelihood that funds for decommissioning will be available when needed.

The NEI, supported by several power reactor licensees, submitted comments on the proposed rule stating in part that the new 10 CFR 20.1406(c) and amended 20.1501 should have been subject to a full backfit analysis pursuant to 10 CFR 50.109. The Office of General Counsel (OGC) finds that the backfitting rules do not require the preparation of a backfit analysis for this rulemaking. The backfit comments and NRC responses are in Section III.F of the draft *Federal Register* notice (FRN) for the final rule. FRN Section XII provides a summary discussion of backfit issues, and the Regulatory Analysis (Enclosure 2 of SECY-08-xxxx) discusses backfit issues in greater detail.

NEI sent a letter (ML081760135) to the NRC in June 2008 requesting a presentation of NEI backfit comments to the CRGR, and NRC's response (ML081910403) in August 2008 noted that CRGR is removed from routine reviews of rulemakings and that NEI's backfit comments would be addressed in the rulemaking package sent to the Commission.

Path to Success

Two guidance documents will be released to support the rule. Comments were received on both during the proposed rule public comment period. The guidance is complete for changes to financial assurance regulations. The guidance is in draft form for changes to 10 CFR Part 20, in Regulatory Guide DG-4014, "Radiological Surveys and Monitoring During Operations." The plan is to release DG-4014 for public comment in March 2009 and to hold a related workshop with stakeholders, for final form in November 2009. The staff has recommended the effective date of the final rule to be 1 year following publication of the final rule in the Federal Register.

Any Impediments

There are no impediments to successful implementation of this final rule. The current FY09 budget includes time and resources to complete the rulemaking and DG-4014.