

December 1, 2011

Sherwood Martinelli
351 Dyckman Street
Peekskill, NY 10566

Dear Mr. Martinelli:

I am responding to your letter of December 23, 2009, by which you submitted to the U.S. Nuclear Regulatory Commission (NRC or the Commission) a petition for rulemaking (PRM), asking the NRC to amend its regulations at Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, "Domestic Licensing of Production and Utilization Facilities," as they relate to decommissioning and decommissioning funding. Specifically, you requested that the NRC revise its reporting requirements, restrict funding mechanisms, require deposits within 90 days to cover shortfalls regardless of cause, amend the definition of the safe storage (SAFSTOR) decommissioning option, and eliminate the ENTOMB decommissioning option. The petition was docketed as PRM-50-94, and the NRC published a notice of receipt and request for public comment in the *Federal Register* (FR) on February 26, 2010 (75 FR 8843). The comment period closed on May 12, 2010, and the NRC received one letter with public comments on the petition, from the Nuclear Energy Institute.

The NRC has determined that your petition has not provided an adequate basis upon which the NRC could act to amend its regulations as requested. We are, therefore, denying your petition. The reasons for the denial are outlined in this letter, and discussed in detail in the enclosed notice, to be submitted for publication in the FR.

With respect to your request for annual instead of biennial reporting of the decommissioning trust funds status, the Commission published a final rule in September 1998 (63 FR 50465), "Financial Assurance Requirements for Decommissioning Nuclear Power Reactors," in which the NRC established the 2-year frequency for the decommissioning funding status reports, after considering a range of frequencies from 1 to 5 years. With the 2-year reports, the NRC can increase the frequency of monitoring as needed to ensure that the reactor facility has adequate financial assurance. The NRC's ability provides flexibility to enable the NRC to obtain adequate information for cases where the licensee has a shortfall, but avoids imposing an unnecessary reporting burden on licensees that meet the funding assurance requirements.

With respect to your request for requirements to restrict funding mechanisms and increase financial assurance, the NRC does not have the authority to require a State to become a trustee nor does it view it as appropriate to impose trustee status on a non-licensee. Also, the NRC regulations already specify that a licensee cannot hold decommissioning trust funds; therefore, no amendment is necessary to achieve the goal of prohibiting the licensee from holding the funds itself. Finally, requiring a licensee to deposit funds into the licensee's decommissioning trust fund within 90 days of reporting a shortfall as the exclusive remedy for a shortfall would be

imprudent, as there are already several methods that provide an adequate level of assurance that funds for decommissioning will be available when needed. Providing several methods permits licensees to select the method best suited for their needs, whereas eliminating the flexibility of all of the currently existing methods of financial assurance would impose a burden on licensees without providing an increase in safety.

With respect to your request to amend the definition of the SAFSTOR decommissioning option, the 60-year period was never intended to be an absolute limit for SAFSTOR. The rule language developed in 1988 (53 FR 24018) never stated it as an absolute limit. The NRC amended the unrestricted criteria for termination of a license in July 1997 when it amended the definition of decommissioning to allow license termination under restricted conditions (62 FR 39058, 39090-91). You did not raise any new issues to cause the NRC to reconsider the conclusions reached in the 1997 rulemaking process. Finally, your requests to forbid the licensee from using SAFSTOR for any activities related to other reactors onsite, or from receiving additional waste streams that belong to other licensees, are resolved under current NRC regulations. To prevent the occurrence of legacy sites at reactor facilities, 10 CFR 50.75(f)(3) requires the licensee to submit a preliminary decommissioning cost estimate which includes an up-to-date assessment of the major factors that could affect the cost of decommissioning, and 10 CFR 50.54(bb) requires the licensee to provide a plan for the management of spent fuel. The Commission also recently issued a rule which requires that licensees minimize contamination and survey on-site contamination, and which also revises the decommissioning funding requirements (76 FR 35512; June 17, 2011). These requirements ensure that a facility will not become a legacy site, even if a facility in SAFSTOR continues to share equipment with an operating unit on site or in the event that some waste from another reactor on the site is placed in the SAFSTOR facility.

With respect to your request to eliminate the ENTOMB decommissioning option, the NRC's 1988 Decommissioning Rule included a decision to retain the ENTOMB option. Your petition did not raise any new or significant points that would cause the NRC to reconsider the conclusions reached in the 1988 rulemaking.

Finally, your petition also includes two claims that are outside of the petition for rulemaking process under 10 CFR 2.802. First, you claim that Entergy Nuclear Operations, Inc. is violating NRC rules and regulations by allowing Indian Point Nuclear Generating Unit No. 1 (IP1) to remain in SAFSTOR, is wrongfully and illegally depending on parts of IP1 to help run Indian Nuclear Generating Unit Nos. 2 and 3 (IP2 and IP3), and is using the reactor of IP1 as an illegal storage/dumping ground for radiological waste streams from the continued operations of IP2 and IP3. Because these actions are not disallowed under the current NRC regulations and you did not request a specific enforcement action, this claim was not considered under the NRC's 10 CFR 2.206 or allegation process. Second, your petition further claims that the NRC has negligently allowed certain licensees to violate the current regulations as they relate to funding and the filing of reports. This claim has been forwarded to the Office of the Inspector General (OIG) for a determination of whether it qualifies as an allegation of wrongdoing. You may contact Rossana Raspa (telephone: 301-415-5954; e-mail: Rossana.Raspa@nrc.gov), in the Office of the Assistant Inspector General for Investigations, to determine the status of the OIG evaluation.

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Please note that while you do not specifically request enforcement action against any NRC licensee, any request of this type must be formally submitted as a request for enforcement action under 10 CFR 2.206.

This petition is considered closed.

Any questions you may have regarding this matter should be directed to Aaron L. Szabo, by calling 301-415-1985 or by e-mail to Aaron.Szabo@nrc.gov.

Sincerely,

/RA/

Annette L. Vietti-Cook

Enclosure:
Federal Register Notice

