

July 31, 2012

Ms. Janet R. Schlueter, Director  
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Nuclear Generation Division  
Nuclear Energy Institute  
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SUBJECT: U.S. NUCLEAR REGULATORY COMMISSION RESPONSE TO THE  
JUNE 8, 2012, NUCLEAR ENERGY INSTITUTE LETTER

This letter responds to your letter dated June 8, 2012 (Agencywide Documents Access and Management System [ADAMS] Accession No. ML12163A560). The U.S. Nuclear Regulatory Commission (NRC) staff has carefully considered the Nuclear Energy Institute's (NEI's) concerns regarding the regulatory process employed by NRC at communicating its position on design features documented by the letter dated May 7, 2012 (ADAMS Accession No. ML113420462).

As noted in your letter, the NRC engaged the industry in numerous public meetings, workshops, and correspondence over a span of several years before concluding that the industry's approach in using design features does not meet the regulatory requirements in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, "Domestic Licensing of Special Nuclear Material." During this period, the NRC's staff employed an open and transparent process and provided comprehensive opportunities for the fuel cycle industry to present an approach and receive NRC staff feedback. Your letter states that the position presented by NRC in the May 7, 2012 letter is inconsistent with the agency's prior position. Our May 7, 2012, letter presented a position which is consistent with the regulatory requirements in 10 CFR Part 70, corresponding guidance, and the staff position documented in a letter dated June 17, 2010 (ADAMS Accession No. ML101450123).

In your letter, you expressed concern regarding the cumulative effects of several NRC regulatory actions (referring to 10 CFR Part 21 reporting and dedication requirements for items relied on for safety, unresolved regulatory issues identified as a result of the Post-Fukushima temporary instruction, and related regulatory initiatives and rulemakings) when combined with potential actions needed by licensees to address other priority matters. We continue to recognize the importance of the cumulative effects of regulation (see SRM-SECY-11-0032, "Consideration of the Cumulative Effects of Regulation in the Rulemaking Process" [ADAMS Accession No. ML112840466]). We anticipate continued dialog to address concerns regarding the cumulative effects of regulatory actions, and we understand that addressing multiple regulatory priorities is a topic where stakeholders such as NEI, the fuel facilities, and NRC should remain closely engaged.

Your letter also indicates that you reviewed SECY-12-0071, "Final Rule: Domestic Licensing of Source Material – Amendments/Integrated Safety Analysis" (ADAMS Accession No. ML12094A344), and "noted the dismissive tone of many of the staff's responses to stakeholder comments submitted on the proposed rule." NRC staff works hard to address stakeholder

comments, and we regret that you were not satisfied with our responses. On documents such as the (draft) final rule, we strive to present a direct, factual response to stakeholder comments, but we acknowledge that such a style may come across as blunt, at times. In the future, we will keep this in mind when preparing written communications. On the document in question, staff carefully reviewed and considered all comments received on the draft rule. A primary consideration was the safe and secure operation of facilities licensed under Part 40. Proposed responses were consistent with the Commission's direction in the staff requirement memorandum (SRM) to SECY-10-0128, "Proposed Rule Domestic Licensing of Source Material – Amendment/Integrated Safety Analysis" (ADAMS Accession No. ML103350037), which directed that certain Part 40 facilities "perform integrated safety analyses (ISAs) similar to the ISAs performed by 10 CFR Part 70 licensees...." Consistent with the Commission's direction, the NRC staff worked to make Part 40 and Part 70 consistent, where appropriate.

### **Path Forward**

It's our intent to actively engage stakeholders as we move forward on the activities mentioned in your letter, as well as other actions affecting fuel cycle licensees such as chemical security, cyber security, and the revised fuel cycle oversight process (RFCOP), among others. We understand that resolution of the cumulative effect of regulatory actions is important to the industry; therefore we anticipate continued dialogue to address your concerns regarding the cumulative effect of regulatory actions. Below are some near term examples of how we plan to engage our external stakeholders on specific activities.

#### **Design Features, Bounding Assumptions, & Initial Conditions**

Staff plans to engage NEI as well other external stakeholders on moving forward on (1) ensuring a common understanding of the application of this position by the fuel cycle industry and (2) obtaining a better understanding of the scope and impact of the consistent application of the NRC's position on design features. In addition, as mentioned in our May 7, 2012, letter, the staff is planning to revise the guidance in NUREG-1520 to address the use of passive engineered controls, bounding assumptions, and initial conditions to meet the 10 CFR Part 70 requirements and to provide clarification on the completeness of the ISA summaries to ensure that facilities appropriately consider credible events when developing an ISA. Staff will use the Agency's existing review process, which affords the industry and public opportunities to comment on draft documents. For example, the NRC will announce opportunities for public comment in the *Federal Register* and the NRC staff also anticipates additional interactions with the NEI, industry, and public to ensure clear communication during the guidance revision process. Further, the staff will consider, on a case by case basis, whether additional, more formal communication with individual licensees is needed. NRC staff is already beginning to work on this effort, and we anticipate issuing a draft for comment during the next year.

#### **10 CFR PART 21**

Moving to the future, we have plans to engage fuel cycle licensees in proposed revisions to Part 21. We anticipate having the draft technical basis for the proposed Part 21 revisions available for public comment by fall 2012, followed by a series of public meetings to discuss the proposed revisions. We look forward to receiving stakeholder comments.

**RFCOP**

On July 17, 2012, the staff's proposed plan for revising the RFCOP was made publicly available. This plan was informed by discussions with NEI and fuel cycle industry. This plan provides for multiple engagements with external stakeholders. In the next several months, NRC staff plans to interact with stakeholders on elements of an effective corrective action program and potentially other oversight program aspects that will help improve the program. These interactions will be structured to help ensure effective communication, while seeking to minimize the burden on stakeholders to participate.

As we move ahead, we look forward to engaging NEI, industry, and the public. Should you or your staff have any questions, please contact Larry Campbell at 301-492-3295 or via e-mail at [Larry.Campbell@nrc.gov](mailto:Larry.Campbell@nrc.gov).

Sincerely,

**/RA/**

Catherine Haney, Director  
Office of Nuclear Material Safety  
and Safeguard

cc:  
See attached list

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As we move ahead, we look forward to engaging NEI, industry, and the public. Should you or your staff have any questions, please contact Larry Campbell at 301-492-3295 or via e-mail at [Larry.Campbell@nrc.gov](mailto:Larry.Campbell@nrc.gov).

Sincerely,

/RA/

Catherine Haney, Director  
Office of Nuclear Material Safety  
and Safeguard

cc:  
See attached list

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