

C.3 Application Regulatory Topics

C.3.15 Environmental Issue Finality for COL Applicants

[Record-keeping: This guidance updates RG 1.206 *C.III.3 Finality of Environmental Issues* (2007)]

OVERVIEW

Part 52 provides that a combined license (COL) application may reference an early site permit (ESP) and/or a design certification (DC). A referenced ESP has regulatory finality regarding the site as provided by §52.39, “Finality of Early Site Permit Determinations,” and a referenced DC has regulatory finality associated with the design as provided by §52.63, “Finality of Standard Design Certifications.” Part 51, at §51.50, “Environmental report—construction permit, early site permit, or combined license stage,” requires the COL application to include an environmental report, “Applicant’s Environmental Report—Combined License Stage,” and provides that the environmental report may incorporate by reference the environmental impact statement previously prepared by the NRC for the referenced ESP and/or may incorporate by reference the environmental assessment previously prepared by the NRC for the referenced DC.

The guidance herein addresses the finality of environmental issues for a COL application referencing an ESP and/or a DC and the processes to be followed by the COL applicant for identifying and evaluating environmental information and preparing the environmental report.

GUIDANCE

Finality of Environmental Issues Associated with an ESP

The NRC staff’s review of an ESP application results, in part, in the staff’s preparation of an environmental impact statement (EIS) to 1) inform the Commission’s decision, 2) determine whether there is an obviously superior alternative site, and, 3) to the extent addressed by the applicant, disclose the environmental impacts associated with constructing and operating one or more nuclear facilities. For a COL application referencing an ESP, the EIS prepared for the ESP is an important starting point for the COL applicant when preparing the COL environmental report (ER). The ESP EIS resolves environmental issues within certain bounding conditions and, therefore, such issues are considered resolved at the COL stage provided that no “new and significant” information has become available. For issues resolved at the ESP stage, if no new and significant information is identified at the COL stage, the NRC staff may rely upon or “tier off” the ESP EIS, and will state in the COL EIS its conclusion as set forth in the ESP EIS. Conversely, if a given environmental issue was not resolved at the ESP stage, either because sufficient information was not available to permit resolution or because the ESP applicant was permitted to defer the issue (e.g., benefits assessment), the COL applicant must address the issue in the COL ER.

The COL applicant referencing an ESP must provide information sufficient to resolve any significant environmental issue that was not resolved in the ESP proceeding. The information contained in the COL application should be sufficient to aid the NRC staff in developing its independent analysis (see § 51.45). In addition, § 51.50(c)(1)(i) requires the COL applicant to provide information “to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit.” This demonstration

is part of the information that the COL applicant should provide in its ER to enable the NRC staff to perform the analyses required to be included in the COL EIS under § 51.92(e). This demonstration involves providing actual design or site characteristics and showing that the actual values are bounded by the values set forth in the ESP. For example, if the ESP specified a system flow of ≤ 5000 gpm, it would not be sufficient for the COL ER to include a statement that the actual flow is ≤ 5000 gpm; rather, the ER should provide the actual system flow and show that it is bounded in a conservative direction by the flow value assumed in the ESP. In addition, the COL ER must demonstrate that all environmental terms and conditions of the ESP will be satisfied by the date of issuance of the COL. In some instances, however, terms or conditions of the ESP that cannot be satisfied before issuance of the COL may be addressed by including terms or conditions in the COL.

§ 51.50(c)(1)(iii) requires the COL applicant to identify whether “new and significant” information has become available for environmental issues. The COL applicant should have a reasonable process for identifying “new and significant” information with respect to an NRC conclusion documented in the ESP EIS and, additionally, should document the results of this process in an auditable form for issues for which the COL applicant does not identify “new and significant” information. Issues for which the COL applicant does identify “new and significant” information must be addressed in the COL ER. Under § 51.70(b), the NRC is required to independently evaluate and be responsible for the reliability of all information used in the EIS, including an EIS prepared for a COL application. Toward that end, the NRC staff may 1) inquire into changes to information disclosed in an ESP EIS that is referenced in a COL application, and 2) identify new information that may affect the assumptions, analyses, or conclusions in the ESP EIS. If the staff determines that new information that was not submitted is significant, it may send a request to the applicant to submit the information.

In the context of a COL application that references an ESP, the NRC staff defines “new” (in “new and significant” information) as information that was both 1) not considered in preparing the ESP environmental report or EIS (as opposed to the information in references in these documents, applicant responses to NRC requests for additional information, comment letters, etc.) and 2) not generally known or publicly available during the preparation of the EIS (as opposed to information in published reports, studies, and treatises). New information may include (but is not limited to) specific design information that was not available during the review of the ESP application (especially where the design interacts with the environment), or information that was in the ESP application, but has changed by the time of the COL application (for example, a change in the regional socioeconomic profile resulting from a natural event (e.g., Hurricane Katrina)). New information may or may not also be “significant.”

The COL applicant should have a reasonable, auditable process to identify “new and significant” information and should describe the process in the ER. This process description should include 1) the methods that the COL applicant uses to ensure that it identifies new information, if it exists, and 2) the process for evaluating the significance of such new information. Methods to ensure identification of new information include the following:

- reviewing environmental monitoring results;
- reviewing related scientific literature;
- surveying environmental professionals familiar with the site environs (e.g., environmental and operations staff of a nearby nuclear or industrial facility);
- exchanging information within the industry through peer groups and industry organizations;
- consulting with academicians knowledgeable of the local environment;
- consulting with Federal, State, Tribal, and local environmental, natural resource,

- permitting, and land use agencies;
- verifying that the assumptions and representations made in the ESP ER are still valid;
- verifying that the NRC staff assumptions documented in the ESP EIS are still valid; and,
- reviewing information needed to perform the review described in the Environmental Standard Review Plan (NUREG-1555).

The COL applicant's process for evaluating the significance of new information should also include the organizational procedures for handling reports of new information and the criteria used to determine the applicability of such information. Detailed supporting information need not be included in the ER, but should be available in auditable form for review by the NRC staff. Such supporting information may include the following:

- qualifications of participants involved in the process, their organizational affiliations, how they interact among themselves, and the role they serve in the process;
- consultations with academicians and Federal, State, Tribal, and local environmental, natural resource, permitting, and land use agencies; and,
- new information identified and the assessment of its significance (with information the applicant determines to be both new and significant submitted in the ER) [§51.50(c)(1)(iii)].

Finality of Environmental Issues Associated with a DC

The NRC staff's review of a DC application results, in part, in the staff's preparation of an environmental assessment (EA). For a COL application referencing a DC, the COL ER may incorporate by reference the EA prepared for the referenced DC, thereby resolving for the COL applicant those environmental issues which were previously resolved in the DC EA. The COL applicant must provide sufficient information in the COL ER to demonstrate that the site characteristics for the COL fall within the site parameters in the DC EA [§51.50(c)(2)].

For matters resolved at the DC stage, if the site characteristics for the COL fall within the site parameters in the DC EA, the NRC staff may rely upon or "tier off" the DC EA; and, the staff will state in the COL EIS its conclusion set forth in the EA for the DC.