

**Responses to Questions from Representative Derek Kilmer et al.,
Letter Dated December 12, 2016**

1. Has the NRC regulated the decommissioning, dismantling, transporting, and disposing of naval nuclear vessels in the past?

No. It is the NRC's view that it does not have regulatory authority over waste produced by the naval nuclear propulsion program, including decommissioning activities for nuclear vessels. However, such waste may be disposed of in an NRC or Agreement State-licensed facility, provided that the waste complies with the requirements for disposal at the facility. See Low-Level Radioactive Waste Policy Act of 1985, § 4(b)(1)(B).

Section 91.a(3) of the Atomic Energy Act authorizes the former Atomic Energy Commission (AEC) to "provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs." Under the Energy Reorganization Act of 1974 (ERA), the AEC was abolished and replaced by the NRC and the Energy Research and Development Administration (ERDA), a predecessor agency of the Department of Energy (DOE). As part of the reorganization of authorities and functions, section 91 of the AEA was assigned exclusively to ERDA. See H.R. Rep. No. 707, 93d Cong., 1st Sess., at 25 (1973). The NRC was not given authority under Section 91.a(3), with the potential exception of low-level waste disposal, as described in the preceding paragraph.

Moreover, the ERA clearly sets forth the responsibilities of NRC and DOE. Sections 104(c) and 201(f) of the ERA provide that only the licensing and related regulatory functions of the AEC are transferred to the NRC. Similarly, section 110.b of the AEA expressly exempts from NRC licensing the manufacture, production, acquisition, or use of a utilization facility authorized under section 91 by the Department of Defense (DOD) or a DOD contractor. As the authority under section 91 is held by DOE, and given the section 110.b exemption, the NRC does not have jurisdiction over section 91 material, including waste from the naval nuclear propulsion program. NRC Agreement States also lack jurisdiction because their regulatory authority derives from the NRC's authority under the AEA.

2. Over the past several years, Congress has reduced the budget for the NRC's Nuclear Materials and Waste Safety efforts. Does the NRC have any funding or Full-Time Equivalent (FTE) budgeted in FY 2018 for such an effort?

Although we cannot discuss FY 2018 as that is considered confidential pursuant to OMB Circular A-11, Section 22.1, the NRC has not had specific funding or staff designated for regulating the decommissioning of defense-related facilities in previous budgets.

3. Does the NRC have sufficient existing statutory authority to perform this mission? If not, why not? If possible please provide some specific citations of precedence, regulations, policy, and legislative intent that would support this.

No, it is the NRC's view that it does not have regulatory authority over waste produced by the naval nuclear propulsion program, including decommissioning activities for nuclear vessels.

Enclosure

Naval Reactors may use service providers that have NRC or Agreement State licensees as contractors for work with AEA section 91 material irrespective of whether the NRC or an Agreement State regulates other work performed by those licensees (i.e., work within the NRC's authority). While the NRC does not have authority over these Naval Reactors activities, the NRC has, for specific projects, operated under reimbursable agreements with Naval Reactors to provide technical assistance on matters over which the NRC has technical expertise, but does not have jurisdiction. At Naval Reactors' request, the NRC staff is open to exploring whether such an approach could be applied to specific activities associated with naval decommissioning. The NRC staff is currently discussing the technical parameters of a potential reimbursable agreement with Naval Reactors.

4. Would the existing regulatory procedures and guidance (e.g., 10 CFR 20 and NUREG/CR-5884) cover the decommissioning, dismantling, transporting, and disposing of naval vessel nuclear reactor compartments such as the USS Enterprise or would new regulation procedures and guidance have to be produced? If new regulatory procedures and guidance would be needed, how long would it take the NRC to promulgate, finalize, and implement these procedures and guidance—including public comment? Furthermore, what would be the cost for these efforts?

The NRC's view is that it does not have regulatory authority over such activities. Consistent with this view, existing NRC regulatory procedures and guidance were not written to specifically address the decommissioning, dismantling, transportation, or disposal of naval nuclear vessels, including their reactor compartments. Under a reimbursable agreement with Naval Reactors, the NRC could work with Naval Reactors to determine whether existing NRC technical guidance and procedures could be adapted to inform such work. As appropriate, the NRC could work with Naval Reactors to develop any new technical guidance or procedures as described in a reimbursable agreement.

The NRC's existing regulations and guidance are risk-informed and performance-based in many respects. Consequently, if the NRC were to receive statutory jurisdiction over these activities, these general requirements and approaches could be applied to naval nuclear decommissioning activities, subject to any needed modifications. If significantly revised or new regulatory procedures and guidance are necessary, they could take up to several years to complete at a cost that could vary greatly depending upon the nature and complexity of the new provisions.

5. How would the NRC ensure a disciplined transfer of responsibilities from oversight of naval nuclear vessels from Executive Order 12444 to some type of NRC regulatory structure, given that there is no license termination process per 10 CFR 50.82?

Precisely how a transfer of responsibility occurs would depend upon the scope of the statutory changes that give rise to the transfer. The NRC has well-established relationships with the Department of Energy and Naval Reactors and would work to minimize disruption and ensure continuing safety, security, and environmental protection, consistent with congressional direction. While 10 CFR 50.82 may not apply to the regulatory activities in question, the NRC does have other license termination processes that may prove more applicable, depending on the scope of the activities.

6. How many FTEs would be needed to develop and implement a regulatory structure for decommissioning, dismantling, transporting, and disposing of naval vessel nuclear reactor compartments such as the USS Enterprise? Does the NRC have the requisite number of FTEs available to perform such work? Would the number of FTEs required result in a net increase in the overall number of FTEs at the NRC? Has the Office of Management and Budget approved such an increase?

Under a reimbursable agreement, the costs and resources for NRC technical assistance would be covered by Naval Reactors. The specific resource needs for such work would depend on the scope of work provided by the NRC to Naval Reactors.

If Congress were to transfer regulatory authority to the NRC, then the cost and resources for facilitating such a transfer and regulatory oversight would depend upon how a transfer of responsibility occurs and the scope of the statutory changes that give rise to the transfer.

With no statutory authority to regulate Naval Reactors' decommissioning work, the NRC has not historically requested budget authority to do so.

7. Within the regulatory structure for decommissioning, dismantling, transporting, and disposing of naval vessel nuclear reactor compartments, who would the NRC consider to be the licensee, the United States Navy, a contractor of the United States Navy, the U.S. Department of Energy, or some other entity? What financial and administrative burdens would the licensee be responsible for in working with the NRC on this effort?

The specific regulatory structure for such work, including whom the NRC would regulate and license, would depend on the scope of any statutory changes. Under the NRC's current regulatory structure, the licensee is generally the user or possessor of the material. For additional information on the financial and administrative resources associated with NRC oversight, please see the response to Question 8.

8. The Omnibus Budget Reconciliation Act of 1990 (as amended) directs the NRC to recover approximately 90 percent of its budget authority during each fiscal year through fees. In order to develop and implement a regulatory structure for decommissioning, dismantling, transporting, and disposing of naval vessel reactor compartments such as the USS Enterprise, would the NRC have to raise existing fees? What entities could be impacted by fee and service charge increases? Historically, have fee and service charge increases been passed onto the taxpayer, the private sector, or individual consumers?

Under a reimbursable agreement, there would be no impact on the NRC's fees because Naval Reactors would cover the NRC's costs associated with this work.

If the NRC were given jurisdiction over this work, but no additional funding, then the NRC may need to reallocate budgetary resources from one fee class to another for the resources to perform the necessary oversight. Alternatively, NRC approval of proposed naval decommissioning activities may be delayed until adequate funds became available. The total fees charged would not change because the total fee recoverable budget would not change. If, however, the NRC received an augmentation of its appropriation to perform the necessary

oversight, then total fees charged would change to collect the fees required under the Omnibus Budget Reconciliation Act of 1990, as amended.

If budgetary resources were reallocated between fee classes to support this work, then those licensees in the other fee classes would be affected by the resulting changes in fees charged. The licensees in some fee classes would see lower fees and the licensees in other fee classes would see higher fees, depending on the work performed. However, as noted above, the total fees charged would not change. Fee increases would be assessed to licensees in fee classes where the budgetary resources expended by the NRC in regulating that fee class increased. The NRC does not assess fees to taxpayers or individual consumers although individual licensees may make a business decision to do so.

9. In charging fees for the oversight of decommissioning, dismantling, transporting, and disposing of naval vessel nuclear reactor compartments such as the USS Enterprise, would the NRC use the Fee Schedule in 10 CFR 170? Would the NRC expect the United States Navy to pay such fees or the private entity or entities conducting the decommissioning and disposal? Is there any reason not to expect that paying such fees would effectively take funding from one part of the federal budget to another and from one appropriations subcommittee purview to another (Defense Appropriations Subcommittee to a civilian independent agency under the Energy and Water Development Appropriations Subcommittee)?

Under a reimbursable agreement, Naval Reactors would cover the NRC's costs associated with any technical assistance. As such, the NRC would not use the Fee Schedule in 10 CFR 170. If the NRC were given jurisdiction over these activities, the fees would depend upon how a transfer of responsibility occurs and the scope of the statutory changes that give rise to the transfer. But in general, the NRC would assess fees for these types of activities using the Fee Schedule in 10 CFR Part 170.

The NRC imposes fees on its applicants and licensees. That is the case whether the owner of a decommissioning vessel is Naval Reactors or a private entity. The effect of the NRC's assessment of fees on the federal budget would depend on the entity being assessed fees.

10. Upon the final disposal of naval vessel nuclear reactor compartments such as the USS Enterprise, would the NRC, United States Navy, or the private entity or entities conducting the disposal be liable for any resulting possible harm to human health and the environment?

Under section 4(b)(1)(B) of the Low-Level Radioactive Waste Policy Act of 1985, Federal low-level waste may be disposed of at a commercial disposal facility "subject to the same conditions, regulations, requirements, fees, taxes and surcharges imposed by the compact commission, and by the State in which such facility is located, in the same manner and to the same extent as any low-level radioactive waste not generated by the Federal Government."

The NRC's regulatory activities generally focus on violations of NRC requirements as opposed to civil liability. With respect to potential violations of NRC (or Agreement State) requirements,

whether the site licensee or the generator of the waste would be subject to enforcement action would depend on the circumstances of any particular incident. For example, a disposal-facility licensee could be in violation of the NRC's regulations for disposing of Class B waste without first ensuring that the waste meets the stability requirements in 10 CFR 61.56(b). Additionally, if a licensee generator of waste were to send radioactive waste to a facility not licensed to dispose of such waste, then the generator would be in violation of the NRC's regulations. And, if such waste were disposed of, then both the generator and the facility licensee would be in violation of the NRC's regulations.