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LAW DEPARTMENT

May 22, 1985

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Secretary of the Commission
Nuclear Regulatory Commission
Washington, D.C. 20555

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Attention: Docketing and Service Branch

Gentlemen:

These comments are in response to the Commission's proposed amendments to 10 CFR Parts 30, 40, 50, 51, 70 and 72, Decommissioning Criteria for Nuclear Facilities, as published in the Federal Register for February 11, 1985. We believe that the proposed rulemaking suffers from several defects.

1. At the bottom of the first column on page 5601 of the Federal Register it is said that "Classes of facilities licensed under Parts 50 and 72 are considered major facilities all of which will require a significant decommissioning effort." It has been NRC's practice to treat Parts 50 and 72 installations as major facilities for purposes of the National Environmental Policy Act. Nevertheless, it is dubious that all classes of facilities licensed under Parts 50 and 72 may categorically be considered major facilities for purposes other than NEPA. Some of them (such as small research reactors) are in fact not likely to demand "significant decommissioning effort". The differences in size, mass, exposure, contamination, and handling ease which prevail between typical large power reactors on the one hand and on the other small research reactors are simply too great to be dismissed by simple statements that they are all major facilities and that they will all equally demand significant effort in their decommissioning.

It seems arbitrary and inappropriate to lump together, as though indistinguishable, a decommissioning cost that will exceed \$100,000,000 for a large commercial facility and

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the cost for a small research reactor's decommissioning, likely to be substantially less than 10% of that. The latter will in many cases be manageable within a licensee's normal financial planning and budgets.

2. In the background discussion of "A. Decommissioning Alternatives", on the same page and elsewhere, there are passages which appear to contemplate that NRC intends to make economic judgments a significant element of the determination, presumably made effectively by NRC, of the acceptability of alternative methods of decommissioning. For example, it is stated that an alternative decommissioning method which delays the date when a license is no longer needed (or as sometimes phrased, when there is "unrestricted release" of a site) would be acceptable in cases where "sufficient" benefit results. We suggest that, provided the licensee observes its statutory and common law obligations to protect the public health and safety, it is improper to import the NEPA concept of cost-benefit balancing into licensing decisions to be made by NRC staff. There are similar indications of this intention in the discussion of "B. Timing", on the same page.
3. We urge NRC to get on with preparing standards for "unrestricted release", and to issue such a rulemaking for comment before adopting rules about financing decommissioning. To appraise the decommissioning burden, a licensee has to know to what degree it must diminish radioactivity or residual materials so as to satisfy NRC that they are at the level below which a license is not required. Ultimately, of course, that is a statutory question, but one concerning which the agency's regulatory standards may be almost conclusive. To deal with financing the decommissioning process and to impose regulations about it before decontamination standards are adopted puts the cart before the horse.

It seems unreasonable to adopt new decommissioning finance regulations without first defining the radioactivity and contamination levels to which a facility must be returned before it is freed of the need for NRC licenses.

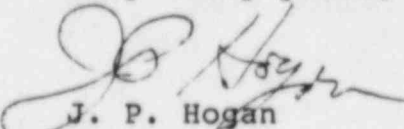
4. The proposed regulations make a distinction between private licensees and federal, state or local government licensees, requiring decommissioning plans and financial assurances of the former, but demanding of the governmental licensees only a prediction that some

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government entity will guarantee decommissioning funds. (Actually, the word used is "certification" that there will be—a guarantee, but it will necessarily be a prediction.) That is troubling. In many instances the nongovernmental licensees will be large, stable, well financed and thoroughly reliable, with assets and income that may exceed those of many of the licensed governmental establishments. If governmental licensees may provide financial assurance through a "certification", it is fair to ask why private organizations must all categorically be denied the same opportunity. Realistically, a "certification" from a government organization may be worth a lot less than a comparable "certification" from a large private organization. To pose only one example, in the federal system itself agencies are forbidden to commit themselves financially beyond currently available appropriations, subject to some exceptions which may or may not obtain in the circumstances adumbrated by Part 50's proposed amendments. The same policy is applicable in various state and local government systems. Notice for example, the implications of California Government Code Sections 11006, 16304 and 13337.5 and Public Contract Code Section 10125. We are told that Rhode Island, for another example, forbids accumulating public funds for contingencies.

5. We are unable to discern why NRC assumes in Part 61 that it is proper to accept that a waste form or container can be contrived to be stable for periods of over 300 years, while in the proposed Part 50 amendments apparently judging and denying the acceptability of any entombment method for plant decommissioning unless it will be relied on for less than 100 years. Surely, a reactor designed to withstand seismic assault and other such events can be so entombed as to last as long and provide as much protection for the environment and the population as stable waste forms and containers in shallow land burial. Isn't there an incongruity here which should be reduced?

Very truly yours,


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JPH/lm