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OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, DC 20310

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PROPOSED RULE PR-30, 40, 50 et al.

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OFFICE OF THE ASSISTANT SECRETARY  
DOCKETING & SERVICE  
BRANCH

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
ATTN: Docketing and Service Branch  
Washington, D. C. 20555

Dear Sir:

This letter provides Department of the Army comments on the Nuclear Regulatory Commission's (NRC) proposed rule on Decommissioning Criteria for Nuclear Facilities, Title 10 CFR Parts 30, 40, 50, 51, 70 and 72, published in the Federal Register on February 11, 1985.

Proposed requirements for Federal agencies appear inconsistent with Federal statute. Proposed 10 CFR 30.35(e)(4), 40.36(d)(4), 50.33(k)(3)(iv), 70.25(e)(4), and 72.18(c)(4), as they apply to the Federal government, require a certification that the appropriate government entity will be guarantor of decommissioning funds. Since this certification would be required by applicants for licenses far in advance of decommissioning, it would in all likelihood subject the United States to an indefinite and uncertain liability, in contravention of the Anti-Deficiency Act, 31 USC 1341(a), and the Adequacy of Appropriations Act, 41 USC 11. Furthermore, no provision in either the Atomic Energy Act of 1954 or the Energy Reorganization Act of 1974 provides the NRC with express statutory authority to impose such a requirement on Federal agencies.

To avoid the problem of Federal agency obligation authority, the NRC should spearhead statutory relief or, establish a federal agency funding strategy. This NRC initiative might take one of two forms:

- o Funds for decommissioning could be included as part of the project appropriation request and then obligated and disbursed to an interest earning trust fund. Decommissioning funds could be disbursed from the fund as required even after the original appropriation had expired. This approach would require congressional approval.

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o Under the second approach, the NRC could sponsor an Executive Order similar to the Environmental Protection Agency sponsored Executive Order 12088. The NRC sponsored order could require all Federal agencies to ensure that sufficient funds are requested for the prevention, control and restoration of radioactive contaminated property caused by Federal agencies. The order should require each agency head to ensure that these funds are used exclusively for the prevention, control, and abatement of Federal agency radioactive contamination.

Each proposal requires the use of appropriated funds and recognizes the Army's responsibilities to provide for decommissioning. Accordingly, either proposal should satisfy the intent of the NRC proposed rule.

Restoration cost estimates (10 CFR 30.35) appear to be low. Army cost of cleaning up a small wooden maintenance building that burned while containing 9 curies of Pm-147 was \$300,000 in 1974. Based on that fire, clean-up involving radioactive material could cost between \$500,000 to several million dollars. Extensive contamination such as occurred at the US Atomic Energy Commission contractor plant at Weldon Spring, Missouri is estimated in excess of \$200,000,000. A laboratory complex with millicurie, unsealed, radioactive material operations could cost about \$700,000 to restore. If done by contract, \$100,000 minimum base cost would probably be needed to cover insurance, legal set aside, initial surveys and planning, with decontamination and disposal costs over and above that first \$100,000. The cost of restoring four igloos, which were contaminated at Seneca Army Depot by U.S. Atomic Energy Commission ore storage, will cost the Army \$300,000 as compared to \$1,000,000 if done by contract.

We appreciate the opportunity to comment on this Proposed Rule and hope you incorporate these comments into the Final Rule.

Sincerely,

*Lewis D. Walker*

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Deputy for Environment, Safety  
and Occupational Health,  
OASA (I&L)