

NUCLEAR REGULATORY COMMISSION
HOLTEC DECOMMISSIONING INTERNATIONAL, INC.
OYSTER CREEK NUCLEAR GENERATING STATION
DOCKET NOS. 50-219 AND 72-15
EXEMPTION

1.0 BACKGROUND

Holtec Decommissioning International, LLC (HDI or the licensee) is the holder of Renewed Facility Operating License No. DPR-16 for the Oyster Creek Nuclear Generating Station (OCNGS) in Lacey Township, Ocean County, New Jersey. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect. The facility consists of a permanently shut down and decommissioning boiling water reactor and associated Independent Spent Fuel Storage Installation (ISFSI). The ISFSI is licensed under a general license.

In a letter dated May 25, 2021, the licensee notified the NRC that as of May 21, 2021, all spent nuclear fuel assemblies have been transferred out of the spent fuel pool and have been placed in dry storage within the ISFSI (ADAMS Accession No. ML21160A065).

2.0 REQUEST/ACTION

By letter dated June 3, 2021 (ADAMS Accession No. ML21161A289) , as supplemented on June 8, 2021 (ADAMS Accession No. ML21162A362), and pursuant to 10 CFR 73.5, “Specific Exemptions,” HDI requested an exemption from the requirement to conduct annual 2021 Force-on Force (FOF) exercises including the requirements for the Performance Evaluation Program, per 10 CFR Part 73, Appendix B, Section VI, Subsection C.3.(I). The enclosures to these submittals contain official use only - security-related information and, accordingly, are not available to the public.

10 CFR Part 73, Appendix B, Section VI, Subsection C.3 provides requirements for a Performance Evaluation Program to demonstrate and assess the effectiveness of the onsite physical protection program and protective strategy through the conduct of force-on-force exercises and tactical response drills.

10 CFR Part 73, Appendix B, Section VI, Subsection C.3.(I) - states:

“(I) The Performance Evaluation Program must be designed to ensure that:

(1) Each member of each shift who is assigned duties and responsibilities required to implement the safeguards contingency plan and licensee protective strategy participates in at least one (1) tactical response drill on a quarterly basis and one (1) force-on- force exercise on an annual basis. Force-on-force exercises conducted to satisfy the NRC triennial evaluation requirement can be used to satisfy the annual force-on-force requirement for the personnel that participate in the capacity of the security response organization.

(2) The mock adversary force replicates, as closely as possible, adversary characteristics and capabilities of the design basis threat described in 10 CFR 73.1(a)(1)

and is capable of exploiting and challenging the licensee's protective strategy, personnel, command and control, and implementing procedures.

(3) Protective strategies can be evaluated and challenged through the conduct of tactical response tabletop demonstrations.

(4) Drill and exercise controllers are trained and qualified to ensure that each controller has the requisite knowledge and experience to control and evaluate exercises.

(5) Tactical response drills and force-on-force exercises are conducted safely and in accordance with site safety plans.”

With this exemption, the licensee will no longer be required to conduct annual FOF exercises or quarterly tactical response drills at OCNGS, including performing the related requirements for the Performance Evaluation Program in 10 CFR Part 73, Appendix B, Section VI, Subsection C.3 because the program is no longer necessary for a site where all the spent nuclear fuel is in dry storage on an ISFSI.

3.0 DISCUSSION OF EXEMPTION FROM FORCE-ON-FORCE ANNUAL EXERCISE AND 10 CFR PART 73, APPENDIX B, SECTION VI.C.3 REQUIREMENTS

NRC approval of this exemption would exempt the licensee from the requirements of 10 CFR Part 73, Appendix B, Section VI.C.3 (i.e., quarterly tactical drills, the annual force-on-force exercises, and the implementation of the Performance Evaluation Program). Force-on-force exercises provide a realistic evaluation of the proficiency of licensee security forces in carrying out the protective strategy to interdict and neutralize threats consistent with the design basis threat (DBT). For the protection of spent fuel stored in an ISFSI under a general license, 10 CFR 72.212(b)(9)(v) provides that the requirement to interdict and neutralize threats does not apply. Accordingly, when all spent fuel is located in an ISFSI, such as the case at the OCNGS, the protective strategy for the site changes to reflect the changed site configuration.

Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Authorized by Law

As explained below, the NRC determines that the exemption would not endanger life or property, nor the common defense and security, and is otherwise in the public interest. Based on the above evaluation, the NRC finds that the issuance of this exemption would be consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with the NRC's regulations or other applicable laws. Therefore, issuance of the exemption is authorized by law.

Will Not Endanger Life or Property or the Common Defense and Security

With the spent nuclear fuel stored in dry casks at the ISFSI, per 10 CFR 72.212(b)(9)(v), the licensee is exempt from the requirements in 10 CFR 73.55 to interdict and neutralize threats; therefore, the Performance Evaluation Program is no longer necessary to implement the physical protection program. The requirements of 10 CFR Part 73, Appendix B, Section VI.C.3 are independent requirements that do not affect other physical security requirements. As a result, granting an exemption from the requirement of 10 CFR Part 73, Appendix B, Section VI.C.3(l) would not affect the requirements for other periodic, specifically quarterly and trimester, security training activities required per NRC regulations and the OCNGS physical security plan and such activities will continue, and will provide training opportunities which ensure the proficiency of the security staff. The exemption would not significantly reduce the measures currently in place to protect against radiological sabotage, theft or diversion, or significantly reduce the effectiveness of the Physical Security Plan, Training and Qualification Plan, or Safeguards Contingency Plan because the spent nuclear fuel will continue to be protected in

accordance with all applicable NRC requirements. Therefore, granting the exemption will not endanger life or property or the common defense and security.

Is Otherwise in the Public Interest

Granting this exemption would not impact the licensee's ability to maintain the proficiency of the OCNGS security staff consistent with the requirements of the approved Physical Security Plan. Approving the licensee's exemption request would align the training and evaluation requirements for security personnel with the requirements for protection of spent fuel at the ISFSI, and eliminate the need for exercises and drills that are not reflective of the required security posture for the ISFSI. Therefore, the proposed exemption is in the public interest.

4.0 ENVIRONMENTAL CONSIDERATIONS

Under 10 CFR 51.22(c)(25), granting of an exemption from the requirements of any regulation of Chapter I falls within a categorical exclusion to the environmental review requirements of Part 51, provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought are among those identified in 10 CFR 51.22(c)(25)(vi).

The Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, has determined that approval of the exemption request involves no significant hazards consideration because issuing an exemption to the licensee from certain requirements of 10 CFR Part 73, Appendix B, "General Criteria for Security Personnel," for OCNGS does not (1) involve a significant increase in the probability or consequences of an accident previously

evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exemption from certain requirements of 10 CFR Part 73, Appendix B, is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (i.e., potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for, or consequences from radiological accidents. The requirements from which the exemption is sought fall within categories identified in 10 CFR 51.22(c)(25)(vi)(E), specifically safeguard plans, and education, weapons training, training exercises, qualification, requalification or other employment suitability requirements.

Therefore, pursuant to 10 CFR 51.22(b) and 51.22(c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

5.0 CONCLUSION FOR 10 CFR PART 73, APPENDIX B, SECTION VI.C.3 EXEMPTION REQUEST

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for exemption from the requirements of 10 CFR Part 73, Appendix B, Section VI.C.3. With the spent nuclear fuel stored in dry casks at the ISFSI, per 10 CFR 72.212(b)(9)(v), the licensee is no longer required to interdict and neutralize threats; therefore the Performance Evaluation Program is no longer necessary to implement the physical protection program. Although HDI requested an exemption from the requirement to conduct annual 2021 FOF exercises per 10 CFR Part 73, Appendix B, Section VI, Subsection C.3.(I),

including the requirements for the Performance Evaluation Program, the licensee remains exempt with no time limitation from requirements in 10 CFR 73.55 to interdict and neutralize threats effective as of May 21, 2021, the date when all the spent fuel was transferred to the ISFSI. Therefore, the NRC grants the exemption from the requirements for the Performance Evaluation Program, including the requirements to conduct annual FOF exercises and quarterly tactical response drills, in 10 CFR Part 73, Appendix B, Section VI, Subsection C.3.

Pursuant to 10 CFR 51.22(c)(25), the NRC has determined that granting of an exemption from the requirements of 10 CFR Part 73, Appendix B, Section VI.C.3 falls within a categorical exclusion to the environmental review requirements of Part 51. Pursuant to 10 CFR 51.22(b), the NRC determined that no environmental impact statement or environmental assessment need be prepared in connection with the issuance of this proposed exemption request.

The NRC hereby grants the exemption from the requirement to conduct annual FOF exercises and related requirements for the Performance Evaluation Program in 10 CFR Part 73, Appendix B, Section VI, Subsection C.3. This exemption is effective upon issuance.

Dated this 21 day of June 2021.

FOR THE NUCLEAR REGULATORY COMMISSION



Signed by Holahan, Patricia
on 06/21/21

Patricia K. Holahan, Director
Division of Decommissioning, Uranium
Recovery, and Waste Programs
Office of Nuclear Material Safety
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