

January 27,2000

SECY-00-0021

FOR: The Commissioners

FROM: William D. Travers /RA/
Executive Director for Operations

SUBJECT: PROPOSED RULE: INTERIM STORAGE FOR GREATER THAN
CLASS C WASTE

PURPOSE:

To request Commission approval to publish a proposed rule, in the Federal Register, that would amend 10 CFR Parts 72, 150, and 171. The proposed amendments would allow licensing for interim storage of reactor-related greater than class C (GTCC) waste in a manner that is consistent with licensing the interim storage of spent fuel and would maintain Federal jurisdiction over the interim storage of reactor-related GTCC waste either on or off the reactor site. These proposed amendments provide an option which would simplify and clarify the licensing process and reduce the potential burden on licensees, the U.S. Nuclear Regulatory Commission (NRC), and Agreement States, with no adverse effect on public health and safety or the environment.

BACKGROUND:

The proposed amendments respond to a petition for rulemaking submitted by Portland General Electric Company (PRM-72-2). If adopted in final form, the proposed amendments would grant the petition in part and deny the petition in part by amending NRC's regulations governing the interim storage of reactor-related GTCC waste. The NRC received six favorable comments in support of the petition. The staff developed a draft rulemaking plan that was provided to the Commission and to the Agreement States (SECY-97-056, dated March 5, 1997). The Office of the General Counsel submitted additional views to the Commission.

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DISCUSSION:

Current NRC regulations are not clear on the acceptability of storing GTCC waste co-located at an Independent Spent Fuel Storage Installation (ISFSI) or a Monitored Retrievable Storage Installation (MRS). This situation has created confusion and uncertainty among decommissioning reactor licensees and may create inefficiency and inconsistency in the way the NRC handles GTCC waste-licensing matters.

Under existing regulations, storage of GTCC waste at an ISFSI (or an MRS) after termination of a reactor licensed under 10 CFR Part 50 "Domestic Licensing of Production and Utilization Facilities," could lead to a situation in which the NRC regulates the spent fuel at an ISFSI while an Agreement State regulates GTCC waste at the same location. The NRC has exclusive regulatory authority over a reactor licensee's storage of spent fuel and of GTCC waste during operations. Under current regulations, since GTCC waste is a type of low-level waste (LLW), Agreement States have licensing authority for any GTCC waste possessed by a utility when the Part 50 license is terminated. Thus, a reactor licensee would have to apply for and receive an Agreement State license to store the GTCC waste in order for the NRC to terminate the Part 50 license.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 gave the Federal Government [U.S. Department of Energy (DOE)] the primary responsibility for developing a national strategy for disposal of GTCC waste. The Act gave the NRC the licensing responsibility for a disposal facility for GTCC waste. GTCC waste is not generally acceptable for near-surface disposal at licensed low-level radioactive waste disposal facilities. There currently are no other routine disposal options for GTCC waste.

In developing storage criteria, the NRC must be cognizant of potential DOE disposal criteria to preclude unnecessarily allowing a storage option that is unacceptable for disposal. Because the DOE has not yet identified such criteria or technical regulations for a disposal package, the NRC is concerned that storage of GTCC waste and spent fuel in the same container may be unacceptable for placement in the geologic repository. Therefore, a specific issue is whether to allow GTCC waste to be commingled within a spent fuel storage cask. Allowing commingling could be a safe and economical use of spent fuel storage cask space. However, incompatibility with potential DOE disposal criteria could be reduced by precluding this option now.

Therefore, the staff is recommending that the NRC submit a letter to the DOE, at the time the proposed rule is published in the Federal Register, requesting specific guidance on the advisability of allowing GTCC waste and spent fuel to be commingled in a single container.

Currently, utilities store all types of radioactive materials under their Part 50 licenses, including material that, when finally disposed of, would be classified as GTCC waste. The GTCC waste is typically stored within the reactor vessel, in the spent fuel pool, or in a radioactive material storage area, pending development of a suitable permanent disposal facility.

Under current regulations, a reactor licensee seeking decommissioned status would need to apply for and be granted a specific 10 CFR Part 30 and/or a 10 CFR Part 70 license, to store GTCC waste, prior to termination of its Part 50 license. At present, Part 72 only provides for licensing the storage of spent fuel at an ISFSI and storage of spent fuel and solid high-level

radioactive waste at an MRS. Nonetheless, a reactor licensee could elect to store GTCC waste in a facility co-located at an ISFSI site using a license(s) issued under Parts 30 and/or 70.

The proposed rule would not eliminate the current availability of storing GTCC waste under the authority of a Part 30 or 70 license. Neither Parts 30 nor 70 include explicit criteria for storage of GTCC waste. Therefore, a licensing process conducted under these regulations would be more complicated and resource intensive because the licensee would need to develop new proposed storage criteria and the NRC would then need to review and approve these criteria within the licensing process. The licensing process will be simpler with less regulatory burden if all the radioactive waste to be stored at an ISFSI or MRS is stored under the authority of one Part 72 license. Part 72 was developed specifically for storage of spent fuel at an ISFSI and spent fuel and high-level waste at an MRS. The general storage criteria of Part 72 will be applied to GTCC waste storage. Also, using Part 72 to store reactor-related GTCC waste would eliminate the need for multiple licenses for the storage of spent fuel and GTCC waste.

The proposed changes to Parts 72, 150, and 171 are necessary to allow the storage of NRC-licensed reactor-related GTCC waste under a specific Part 72 license within an ISFSI or an MRS and to require that the licensing responsibility for this waste remain under Federal jurisdiction. Because GTCC waste at reactor facilities is under Federal jurisdiction during the operating life of the plant and the ultimate disposal of such GTCC waste is also under Federal jurisdiction, the period between termination of a reactor license and ultimate disposal should also remain under Federal jurisdiction. The existing regulatory scheme, that allows for Federal-State-Federal jurisdiction over the generation, interim storage, and disposal of GTCC waste, is an inefficient approach in that the NRC and an Agreement State would both spend scarce resources licensing and inspecting an ISFSI that stores both spent fuel and GTCC waste. Therefore, for efficiency and consistency of licensing, Part 72 should be modified to also allow storage of GTCC waste within these facilities under NRC's jurisdiction.

AGREEMENT STATE ISSUES:

This rulemaking would change NRC's current interpretation and policy regarding the regulation of a specific kind of LLW after termination of a Part 50 license. Under current procedures, after termination of the license, licensing the storage of all LLW, including GTCC waste, is the responsibility of an Agreement State if the storage facility is located in an Agreement State. Under this proposal, licensing the storage of reactor-related GTCC waste would be reserved to the NRC, regardless of location. The Federal Register notice specifically discusses this point and asks for Agreement State comments.

COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed the proposed rule for information technology and information management implications and concurs in it. However, the rule suggests changes in information collection requirements that must be submitted to the Office of Management and Budget (OMB) no later than the date the proposed rule is forwarded to the Federal Register for publication.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication, in the Federal Register, the proposed amendments to Parts 72, 150, and 171 on interim storage of GTCC waste (Attachment 1).
2. Approve a letter to the DOE requesting specific guidance on the advisability of commingling GTCC waste and spent fuel in the same cask (Attachment 2).
3. Note:
 - a. That the proposed amendments will be published in the Federal Register, allowing 75 days for public comment.
 - b. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b).
 - c. That a draft Regulatory Analysis has been prepared for this rulemaking (Attachment 3).
 - d. That a draft Environmental Assessment has been prepared for this rulemaking (Attachment 4).
 - e. That appropriate Congressional committees will be informed of this action.
 - f. That a press release will be issued by the Office of Public Affairs when the proposed rulemaking is filed with the Office of the Federal Register.

- g. OMB review is required and a clearance package will be forwarded to OMB no later than the date the proposed rule is submitted to the Office of the Federal Register for publication.
- h. That resources to complete and implement this rulemaking are included in the current budget.

/RA/

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Attachments:

1. Federal Register notice
2. Letter to DOE
3. Draft Regulatory Analysis
4. Draft Environmental Assessment

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- 2. Letter to DOE
- 3. Draft Regulatory Analysis
- 4. Draft Environmental Assessment

RECORD NOTE: A draft copy of the proposed rule was sent to OIG for information on November 19, 1999.

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