

POLICY ISSUE NOTATION VOTE

March 9, 2006

SECY-06-0056

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: IMPROVING TRANSPARENCY IN THE 10 CFR 20.2002
PROCESS

PURPOSE:

In Staff Requirements Memorandum (SRM) COMGBJ-05-001, "Improving Transparency in the 10 CFR Sec. 20.2002 Process," the Commission directed the staff, working with the Office of the General Counsel (OGC), to develop options to enhance public understanding and awareness of 10 CFR 20.2002 approvals and to provide recommendations to the Commission. The recommendations were to identify potential adverse impacts on the U.S. Nuclear Regulatory Commission's (NRC's) well-established regulatory framework. The Commission also directed the staff to ". . . encourage stakeholder input by individuals who may be directly affected by an NRC decision." This paper responds to these requests.

BACKGROUND:

10 CFR 20.2001 (Enclosure 1) identifies the mechanisms by which a licensee may lawfully dispose of its licensed radioactive waste. It contains seven different disposal paths, including 10 CFR 20.2002, a provision for "alternative disposal" authorizations. Section 20.2002 is a general provision that allows for other disposal methods, different from those already defined in the regulations, provided that doses are maintained ALARA and within the dose limits in Part 20. In practice, 10 CFR 20.2002 is most often used for disposal of radioactive waste in hazardous or solid waste landfills that are permitted under the Resource Conservation and

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Recovery Act, but it can be used for any type of disposal not already defined in the regulations, such as disposal on a licensee's site or on offsite private property. With the exception of the initial licensing of a Part 61 disposal site, none of the disposal mechanisms in Subpart K has special public involvement requirements. Additional background on the history of 10 CFR 20.2002 in NRC's regulations and on licensee use of this provision is contained in Enclosure 2.

With a few exceptions, public interest in both onsite and offsite 10 CFR 20.2002 approvals has been limited. However, there have been two authorizations that did generate significant public interest in the recent past. In 2001, Consumers Power, the licensee for the Big Rock Point Nuclear Power Plant, proposed the disposal of large quantities of demolition debris from decommissioning in a nearby landfill. Before obtaining NRC approval under 10 CFR 20.2002, the licensee conducted a number of town meetings with stakeholders and members of the public on the proposed disposal. NRC participated in the licensee's meetings, and held its own public meeting as well. The authorization was granted in 2002. In 2005, NRC received a number of letters from members of Congress and others expressing concerns with a proposed disposal of large amounts of demolition debris from the Connecticut Yankee power plant at a hazardous waste disposal facility in Idaho. Although the disposal facility that was proposed routinely accepts large amounts of radioactive material, this would have been the first such disposal at this facility from a nuclear power plant undergoing decommissioning. One factor that affected the level of interest in the Connecticut Yankee proposal was NRC's proposed rulemaking on the disposition of solid material. The NRC staff's proposed rule package was released to the public one day before NRC's approval of the 10 CFR 20.2002 disposal, and letters to NRC expressed concern that NRC was implementing the rule before it had been promulgated. Neither the disposal facility operator nor the generator decided to pursue the waste's acceptance at the facility. Since then, NRC has approved five 10 CFR 20.2002 requests from licensees without any significant public interest.

DISCUSSION:

The staff has developed three options for addressing how NRC can: a) enhance public understanding and awareness of 10 CFR 20.2002 disposals; and b) encourage stakeholder input by those "directly affected" by an NRC 10 CFR 20.2002 approval, as directed by the SRM. Potential adverse impacts on NRC's regulatory program are also identified. Enclosure 3 contains a detailed description of the options and advantages and disadvantages of each. A summary of each option is provided below.

The first option is a "no-action" alternative that reflects current practice. Information on specific 10 CFR 20.200 requests from licensees is available to the public in the Agencywide Documents Access Management System (ADAMS) and in the public document room. Generic information is very limited, however, and none is available on the NRC public web site. With respect to staff receiving input from those directly affected by a 10 CFR 20.2002 request, there may be several opportunities, depending upon the type of request:

- Affected States are provided a copy of a draft environmental assessment (EA) for review and comment before the final EA is published.
- In certain cases, where there is significant interest in a proposed disposal and unique circumstances, the staff may hold a public meeting to solicit input from the public.
- Materials and fuel cycle 10 CFR 20.2002 requests are approved with a license amendment, thus affording an opportunity for a hearing. (Reactor approvals are generally granted with a letter, and there is no opportunity for hearing).

- Depending on the specific request, the staff may obtain information from the State permitting agency and disposal facility operator related to the request during the review.

The primary advantage of the current approach is that it can be viewed as appropriate because 1) the number of 10 CFR 20.2002 requests received each year is small (an average of twenty in the last six years), 2) the risk-significance of the 10 CFR 20.2002 authorizations is low, and 3) with the exception of a few cases in the last several years, the level of public interest has been small. The primary disadvantage of this option is that there would continue to be no basic information on 10 CFR 20.2002 authorizations available to the public, and whatever misunderstandings exist today would likely continue.

The second option recognizes that there are significant differences in the types of 10 CFR 20.2002 disposals that are requested by licensees, and that a graded approach for transparency may be appropriate. This option would both provide basic, generic information on 10 CFR 20.2002 disposals on the NRC's public web site, as well as define and document a more systematic approach for interacting with the public and obtaining input on particular requests than current practice. The primary advantage of this approach is that it would increase public understanding and awareness and provide for input from stakeholders, without a large expenditure in staff resources. At the same time, a disadvantage is that these resources would be expended for a small number of requests for such disposals (twenty in the last six years).

The third option treats 10 CFR 20.2002 requests in a manner similar to high-visibility NRC activities, such as the renewal of a power reactor license. "Real-time" information would be posted on the NRC's public web page regarding the status of all reviews, along with links to documents in ADAMS. In addition, reactor 10 CFR 20.2002 requests would be approved with a license amendment, thus affording an opportunity for a hearing. The advantage of this option is that it would provide stakeholders to determine quickly and efficiently the status of individual reviews, obtain important documents related to the request, and understand what opportunities there might be for public input. The disadvantage is that the level of effort to implement the option would be significant compared to the first two options. In addition, if a reactor hearing were necessary, significantly more resources might be needed. A hearing could also cause a significant delay in NRC's decision on a request.

COMMITMENTS:

The staff will provide the Commission with the results of its analysis of how 10 CFR 20.2002 approvals are granted (by license amendment in the Office of Nuclear Material Safety and Safeguards and by letter approval in the Office of Nuclear Reactor Regulation) and whether any changes may be appropriate, as discussed in Option 1, Enclosure 3.

RECOMMENDATION:

The staff recommends Option 2 for improving transparency in NRC's 10 CFR 20.2002 process. This option would increase the background information available to the public on 10 CFR 20.2002 disposals, and apply resources for additional public outreach to case-specific requests based on defined criteria. It would also: (1) minimize the resource impacts on the low-level

waste (LLW) budget, which is currently 5.0 full-time equivalent (FTEs) in FY 07; (2) appropriately weigh, in the staff's view, NRC's strategic goal of openness with its safety, security, and effectiveness goals for this particular type of regulatory action; and (3) enable NRC to have flexibility in addressing the wide variety of 10 CFR 20.2002 disposals.

It should be noted that the staff intends to formalize and document the procedure for reviewing 10 CFR 20.2002 requests, independent of the transparency measures identified in this paper. The Commission's decision on which measures the staff should implement to improve transparency would be included when this procedure is developed.

RESOURCES:

For planning purposes, the staff has assumed six 10 CFR 20.2002 requests per year, with one that meets the proposed criteria for additional outreach measures, based on the history of requests received over the last 6 years (see Enclosure 4). Two of these six requests would be from nuclear power reactor licensees and, for Option 3, would require some additional resources to issue a license amendment. Implementing Option 2 would require a one-time investment of 0.3 FTE to develop generic communications tools and 0.2 FTE/yr to maintain them and conduct public meetings. Option 3 would require 0.6 FTE to develop both the communication tools and a web page that provides "real-time" information on 10 CFR 20.2002 requests under review. It would also require 0.4 FTE each year to implement, assuming there were no reactor hearings. If a hearing were requested, the resources could range from a few staff weeks to several FTEs, depending upon the case. Enclosure 5 summarizes these resource estimates, and includes a column identifying the time added to the review for each, as well.

10 CFR 20.2002 authorizations are currently performed as part of routine casework and resources are not specifically budgeted for these reviews. Most of the annual resources for reviewing specific requests would come from the materials, fuel cycle and reactor licensing programs. If Option 2 or 3 were to be implemented, however, the one-time resources needed for the communication tools would come from the LLW program budget for Fiscal Year (FY) 2007. Staff would use the planning, budgeting, and performance management process, as resources for this activity are not included in the budget. Projects whose schedule could be affected include updating the LLW storage guidance, developing a staff procedure for processing 10 CFR 20.2002 requests, or staff's response to the Commission's request to consider the potential reclassification of depleted uranium.¹ The Office of Nuclear Material Safety and Safeguards LLW budget for FY '07 is 5.0 FTEs and \$57,000.

¹ See Memorandum and Order CLI-05-20 in connection with the Louisiana Energy Services hearing.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objections. The Office of the Chief Financial Officer has also reviewed the paper and concurs.

/RA/

Luis A. Reyes
Executive Director
for Operations

Enclosures:

1. 10 CFR Part 20, Subpart K, and 10 CFR 20.2002 Waste Disposal Provisions
2. History of 10 CFR 20.2002 in NRC's Regulations and Its Use by Licensees
3. Options for Improving Transparency in the 10 CFR 20.2002 Process.
4. Summary of 20.2002 Requests Received Since January 1, 2000
5. Resources for Options Presented in Commission Paper
6. Specific Activities and Associated Resources to Increase 10 CFR 20.2002 Transparency
7. Agency Communication Tools

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NAME	JKennedy	RWhited	SFlanders	EKraus	STreby
DATE	2/ 10 /06	2/ 10 /06	2/ 16 /06	2/ 6 /06	2/ 15 /06
OFC	NRR	DWMEP	CFO	NMSS	EDO
NAME	JDwyer	LCamper	JFunches	JRStrosnider	LAReyes
DATE	2/16 /06	2/ 21 /06	2 / 23 /06	2/28/06	03/09/06