

so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Robert Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504-1255.

SUPPLEMENTARY INFORMATION:

Background

The NRC decommissioning regulations in 10 CFR 50.75 and 50.82 are silent on whether approval of the decommissioning plan must precede withdrawals from the decommissioning trust fund. Appendix B.3.1, p. B-12 of Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," contains sample trust language that indicates that the fund trustee should only release funds upon certification "that decommissioning is proceeding pursuant to an NRC-approved plan." However, not all licensees have used this sample language. When the NRC evaluated trust funds as part of the initial certification required by 10 CFR 50.75(b) and submitted in July 1990, it found trusts acceptable if, along with other provisions, they contained language limiting trust fund withdrawals to legitimate decommissioning purposes. Thus, many licensees have acceptable trusts that nevertheless do not expressly limit the withdrawal of trust funds before NRC approves a decommissioning plan.

Because of a request by Yankee Atomic Electric Company (YAEC)¹ and in anticipation of future requests by other power reactor licensees of permanently shutdown facilities, the Commission directed the NRC staff to provide an analysis and recommendation to the Commission on permitting licensees to use their decommissioning funds for decommissioning activities prior to approval of the decommissioning plans. The Commission approved the criteria developed by the staff to evaluate early withdrawals from external decommissioning sinking funds and directed the staff to publish the details of this policy in the Federal Register for

information and public comment.² This proposed policy and implementing criteria are provided below:

Statement of Policy

If a licensee of a permanently shutdown facility spends decommissioning trust funds on legitimate decommissioning activities, the timing of these expenditures, either before or after NRC approves a licensee's decommissioning plan, should not adversely affect public health and safety, provided adequate funds are maintained to restore the facility to a safe storage configuration in case decommissioning activities are interrupted unexpectedly. Consequently, the timing of the NRC review of a licensee's decommissioning plan in relation to withdrawals from trust funds is not as important as the purpose of those withdrawals.

In its decommissioning plan reviews, the NRC evaluates proposed licensee activities in the planned decommissioning process to determine whether the proposed plan adequately ensures protection of public health and safety. The NRC will also assess a licensee's overall decommissioning fund balance in relation to total cost. The NRC review of decommissioning costs is focused on seeing that they fall within a normal range of costs and is not focused on examining the timing, scope, and cost of specific component removal or other decommissioning activities. Therefore, although the NRC believes that it should guard against misuse or waste of decommissioning trust funds by licensees, it is not clear that prior NRC review of the decommissioning plan would identify such misuse or waste unless it resulted in costs far higher than would normally be expected. The NRC would find it difficult to identify the misuse of funds if a licensee's estimates were within a reasonable range of the costs estimated for similar facilities. Further, the NRC does not supervise or review the actual

59 FR 5216
Published 2/3/94
Comment period expires 4/19/94

Use of Decommissioning Trust Funds Before Decommissioning Plan Approval; Draft Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement.

SUMMARY: This draft policy statement presents the criteria the U.S. Nuclear Regulatory Commission (NRC) proposes to follow in addressing requests from power reactor licensees that have permanently shut down their power reactors to make withdrawals from external decommissioning sinking funds to pay for the removal of components and other decommissioning-related activities before the NRC approves these licensees' decommissioning plans submitted pursuant to 10 CFR 50.82. This draft policy statement also covers *de minimis* withdrawals from external decommissioning sinking funds to pay for developing the 10 CFR 50.82 decommissioning plan and for other post-shutdown administrative expenses.

DATE: Comment period expires April 19, 1994. Comments received after this date will be considered if it is practical to do

¹ In a letter to the Commission dated November 25, 1992, YAEC stated its intention to use its decommissioning trust funds to remove reactor core internals, steam generators and the pressurizer from Yankee-Rowe before the NRC approves YAEC's decommissioning plan. (YAEC plans to submit its decommissioning plan for NRC review in late 1993.) By letter dated April 16, 1993, the NRC did not object to YAEC's proposed use of decommissioning trust funds before NRC approval of the Yankee-Rowe decommissioning plan, using criteria consistent with those discussed in this policy statement.

² This policy statement does not apply to licensees with operating nuclear reactors. The staff is separately evaluating the issue of whether and under what circumstances the NRC should allow licensees of operating plants to withdraw decommissioning trust funds.

expenditure of funds during decommissioning and would not have an opportunity to identify serious cost overruns that might jeopardize the adequacy of funding available for remaining decommissioning activities.

However, there appears to be little motivation for utilities to misuse these funds. Most NRC power reactor licensees are subject to rate regulation by State public utility commissions (PUCs) or the Federal Energy Regulatory Commission (FERC). Utilities are normally allowed to earn a return on assets, including nuclear plants, once they are determined to be "used and useful" and placed in the rate base. Decommissioning costs, however, are normally treated by PUCs and FERC as non-rate-base expenses. They are passed on to ratepayers as expenses, but the utility and its stockholders do not earn a return on these collections. Consequently, there is little financial incentive for a licensee to "pad" or dissipate collected decommissioning funds to increase the rate base, because the stockholders would not benefit.

Further, PUCs and FERC are unlikely to allow utilities under their jurisdictions to squander funds obtained from ratepayers. Rate regulators hold prudence reviews to determine whether utilities have spent funds properly throughout all aspects of plant operation, from initial planning to final decommissioning. The NRC expects that PUCs and FERC will continue to exercise their oversight of utilities' expenditures, including those being paid from decommissioning trust funds, throughout the decommissioning process. A utility has an incentive to spend decommissioning funds prudently if it knows that its stockholders will be liable for decommissioning costs in excess of those already collected from ratepayers.

Although NRC approval of the decommissioning plan does not ensure prevention of misuse or waste of decommissioning funds, the NRC believes that withdrawal of funds for decommissioning activities before a decommissioning plan is developed and approved should require NRC review. This is consistent with Commission guidance which provided that the staff may permit licensees to use their decommissioning funds for the decommissioning permitted above (as the term decommission is defined in 10 CFR 50.2), notwithstanding the fact that their decommissioning plans have not yet been approved by the NRC.

Criteria

The criteria and supporting rationale developed to evaluate licensee

proposals for early withdrawals from external decommissioning sinking funds are as follows:

1. The withdrawals are for expenses for legitimate decommissioning activities as defined in 10 CFR 50.2 that would necessarily occur under most reasonable decommissioning scenarios. Section 10 CFR 50.2 defines "decommission" as meaning "to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of licensee."

This criterion calls for a licensee to demonstrate that the early withdrawal is for activities that would occur under reasonable decommissioning scenarios and would prevent funds being used for activities that do not reduce radioactivity at the site and ultimately permit release of the property for unrestricted use. A licensee that has already prepared its § 50.82 decommissioning plan (which must be submitted within 2 years after a permanent cessation of operations) could reference the appropriate part of this plan. A licensee that has not yet completed its § 50.82 decommissioning plan would have to provide other documentation to demonstrate that its proposed activities were clearly decommissioning activities.

2. The expenditures would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the licensee's reactor in a safe storage (SAFSTOR) condition if unforeseen conditions or expenses arise. (For example, if the waste shipments were rejected by the disposal site because of lack of storage space or legal impediments, a licensee would have to show it had the funds to return and store any affected components on site and to store any radioactive components and materials that had remained on-site.)

Consistent with the purpose of the decommissioning funding regulations, assurance of availability of funds to safely decommission a facility, and the principle that a preapproval activity does not foreclose the release of the site for possible unrestricted use, this criterion calls for a licensee to show that it can maintain the status quo at a facility and that the proposed activities will not preclude the ultimate unrestricted use of the site. A licensee would have to document the rationale for the minimum amount estimated to be needed to return to a safe storage condition if decontamination or removal activities are interrupted and the components and equipment involved have to be stored safely at the site. Such

on-site storage after shipment could, in the worst case, require construction of a storage facility. This criterion ensures that decommissioning activities that occur before approval of the § 50.82 decommissioning plan do not reduce funds below a level that would ensure continued maintenance of safety at a defueled, shutdown facility until the decommissioning plan is reviewed and approved. A licensee could satisfy this criterion by demonstrating that it has sufficient funds in either its decommissioning fund or other available funds to maintain the status quo at the facility, that is, maintain safety in the defueled, shutdown condition. It should be noted that this criterion is also pertinent to the normal, end-of-life decommissioning; licensees are to accommodate the possibility of unforeseen occurrences by providing for contingencies. (See Regulatory Guide 1.159 at 1.159-10, Item 1.4.4.3. The general guidance of Regulatory Guide 1.159 concerning provisions for "contingencies," however, does not explicitly identify the nature of such contingencies. The NRC's proposed criterion is more explicit.)

The NRC notes that 10 CFR 50.82(c)(1) requires that, "funds needed to complete decommissioning be placed into an account segregated from licensee assets and outside the licensee's administrative control during the storage or surveillance period, or a surety method or fund statement of intent be maintained in accordance with the criteria of § 50.75(e)." Because the definition of decommissioning in 10 CFR 50.2 implicitly includes the costs of placing and maintaining a reactor in safe storage, a licensee should continue to provide assurance of adequate funds for these expenses at all times during the SAFSTOR period. Thus, licensees are required to maintain this assurance both before and after the NRC approves a licensee's § 50.82 decommissioning plan.

3. The withdrawals would not inhibit the ability of the licensee to complete funding of any shortfalls in the decommissioning trust needed to ensure availability of funds to ultimately release the site for unrestricted use.

This criterion encompasses the principle that activities allowed before approval of the decommissioning plan do not significantly increase decommissioning costs. A licensee would be required to document the effect of the withdrawals on the decommissioning funding plan, addressing the current fund balance and collection schedule, and demonstrate that the use of funds before NRC approval of a decommissioning plan for

the facility would not impair the licensee's ability to fully fund the plan submitted to the NRC (or, if no plan has been filed, the actions necessary to permit release of the site for unrestricted use). A licensee would, for example, have to show that the decommissioning actions potentially taken out of sequence of any decommissioning plan submitted (or reasonable decommissioning alternatives if no plan has been submitted) would not significantly increase decommissioning costs or impair its ability to obtain the funds necessary to complete decommissioning.

4. Before the NRC approves a decommissioning plan, licensees can be allowed to undertake any decommissioning activity (as the term "decommission" is defined in 10 CFR 50.2) that does not: (a) Foreclose the release of the site for possible unrestricted use, (b) significantly increase decommissioning costs, (c) cause any significant environmental impact not previously reviewed, or (d) violate the terms of the licensee's existing license (e.g., OL, POL, or OL with confirmatory shutdown order) or 10 CFR 50.59 as applied to the existing license.

This criterion seeks to ensure that funds are only used for those decommissioning activities that would be allowed to proceed before the NRC approves a decommissioning plan. Items (a) and (b) have already been addressed by this policy statement. For items (c) and (d), a licensee and the NRC would evaluate the proposed activity to ensure that the activity may proceed under the current license and that the proposed activity will not result in any significant environmental impact not previously reviewed.

As stated above, the NRC may permit licensees to use their decommissioning funds for the decommissioning activities permitted above (as the term "decommission" is defined in 10 CFR 50.2), notwithstanding the fact that their decommissioning plans have not yet been approved by the NRC. After review of the licensee's proposed activities and fund withdrawal using the above criteria, the NRC would permit the licensee to use decommissioning funds and to undertake the proposed activities by tacitly consenting to the proposed withdrawals by not interposing, within a specified time, an objection to the licensee's proposal. The NRC would need 60 days to complete an effective review of a licensee's proposal and justification of how the above criteria will be met.

Ancillary Issue

In the past, licensees have asked the NRC informally whether they would be able to withdraw funds from their trusts to pay for developing the \$50.82 decommissioning plan and for other post-shutdown administrative expenses. The NRC believes that these withdrawals should be allowed before the NRC approves the final decommissioning plan, provided the licensee meets the following guidelines:

1. The sum of withdrawals for such purposes should be *de minimis*, that is, less than \$5 million.³
2. The decommissioning trust balance would not fall below an amount needed for safe storage.
3. The licensee provided for these costs in its site-specific decommissioning cost estimate and increased its overall trust fund balances accordingly.

Dated at Rockville, Maryland, this 12th day of January, 1994.

For the Nuclear Regulatory Commission.

James L. Blaha,

Acting Executive Director for Operations.

³In talking informally with several licensees, the NRC understands that most licensees expect to spend from \$1 million to \$3 million for completing decommissioning plans and for immediate post-shutdown administrative expenses. The amount of \$5 million, therefore, is based on a "best-guess" estimated, but is small enough not to significantly deplete the decommissioning trust.