

Dated at 475 Allendale Road, King of Prussia, PA, this 28th day of July 2009.
For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

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NUCLEAR REGULATORY COMMISSION

[NRC-2009-0341]

Nuclear Regulatory Commission's Involvement With the Navy's Remediation of the Hunters Point Shipyard Site in San Francisco, CA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of jurisdiction and future involvement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has decided that it will take a limited involvement approach to stay informed about the Navy's ongoing remediation of the Hunters Point Shipyard (HPS) site in San Francisco, California. NRC will rely on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process and the U.S. Environmental Protection Agency (EPA) Region 9 oversight. This notice discusses NRC's jurisdiction and future limited involvement at the HPS site and how it plans on staying informed about the Navy's remediation in the future.

FOR FURTHER INFORMATION CONTACT: Robert L. Johnson, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, Mail Stop T-8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: (301) 415-7282; e-mail: Robert.Johnson2@nrc.gov.

SUPPLEMENTARY INFORMATION: In July 2007 the Navy requested clarification about NRC's jurisdiction and potential involvement with the Navy's ongoing remediation of radioactive material at the HPS site. In response to the Navy's request, NRC reviewed key HPS site documents, met with the Navy, and conducted a site visit in October 2007. NRC also met with representatives from EPA Region 9, the State of California agencies involved with the HPS site, and the City of San Francisco. In addition to evaluating potential NRC involvement, these meetings were used to obtain an understanding of the site, the Navy's remediation, and the oversight roles and issues of the key

parties involved with the remediation. Based on this information, the NRC staff evaluated NRC's jurisdiction for the materials at the HPS site and evaluated options for NRC involvement. These options and the staff's recommendations were provided to the Commission in SECY-08-0077. This Commission paper also gives background about the HPS and the Navy's ongoing remediation. The Commission provided its direction to the staff on June 26, 2008, in SRM-SECY-08-0077. The results of the staff's evaluation and the Commission's decision are summarized in the answers to the following questions:

1. What is NRC's regulatory jurisdiction for the Navy's remediation of the HPS site?

Atomic Energy Commission (AEC) licenses for radioactive material used by the Navy in both the shipyard and the Navy Radiological Defense Laboratory (NRDL) at the HPS site were terminated in the 1970s after extensive radiological surveys of the facilities confirmed that the facilities met the radiological standards at that time. Therefore, after termination of the AEC licenses, neither the NRC nor its predecessor, AEC, exercised direct regulatory authority over the residual contamination at the HPS site. Subsequently, the Navy conducted radiological surveys and completed a Historical Radiological Assessment of the site in 2004. These studies provided new information about the suspected and confirmed radiological contamination for the entire HPS site. Based on this new information, the Navy and NRC assume that any remaining licensable material is likely commingled with atomic weapons testing material. Both types of radioactive material were used at the NRDL. NRC has jurisdiction for the licensable material. However, under Section 91(b) of the AEA, the atomic weapons testing material is outside of NRC's jurisdiction.

2. What is NRC's future involvement with the Navy's ongoing remediation of the HPS site?

NRC will rely on the ongoing Navy remediation under the CERCLA process and EPA regulatory oversight for the licensable radioactive material assumed to be present at the HPS site. NRC would not exercise its regulatory authority and would not require compliance with its decommissioning regulations. NRC would not conduct any formal regulatory reviews or participate in the ongoing CERCLA comment process for the Navy's remediation. The NRC staff would have a limited involvement to stay informed

about the Navy's remediation of the remaining parcels, which is expected to take about 10 years.

The basis for this approach is that NRC can reasonably rely on the CERCLA process and EPA oversight of this Superfund site because the process should result in a level of protection of public health and safety and the environment that is generally equivalent to what would be provided if the NRC's decommissioning process was used. NRC believes that this is a reasonable approach because: (1) The licensable materials are inextricably commingled with the atomic weapons testing material over which NRC has no jurisdiction; (2) over-laying NRC requirements and oversight on the CERCLA process overseen by EPA provides no clear public health and safety benefit; (3) dual NRC-EPA regulation is avoided; (4) remediation can proceed under CERCLA; and (5) NRC would be in a position to respond to stakeholder questions in a timely and effective manner. NRC considered, but did not select the option of regulating the remediation through the Navy's Masters Material License with NRC. This option would have resulted in dual regulation, unnecessary expenditure of resources, and no benefit to public health and safety.

3. How will NRC stay informed about the Navy's remediation of the HPS site?

NRC anticipates that it would stay informed throughout the remediation process using existing mechanisms, such as documents received through standard distributions or that are available on the Administrative Record (e.g., records of decision and completion documents such as the finding of suitability to transfer). If necessary, NRC would request access to documents. Staff would read selected documents and conduct an annual site visit and progress meeting with the Navy, EPA, State agencies, and the City of San Francisco. The staff would use a risk-informed approach to focus on those elements of the Navy's remediation that are most important to the protection of public health and safety. The staff would also focus on those elements that are currently being planned but not yet implemented such as formal establishment of the institutional controls and engineered controls. Finally, NRC would also reserve the option of commenting to EPA if necessary to justify our continued reliance on the CERCLA process.

4. Have the Navy and EPA Region 9 agreed to NRC's approach?

On January 16, 2009, NRC sent letters to both the Navy and EPA Region 9 that explained NRC's limited involvement approach and requested agreement to support the approach at the Hunters Point site. The Navy provided a response on April 1, 2009, that agreed to support NRC's approach. Similarly, EPA Region 9 provided a response on May 7, 2009, that also supported NRC's approach.

5. What documents are available that provided additional information about NRC's involvement with the HPS site?

The NRC staff's evaluation of jurisdiction and options for involvement is documented in a May 30, 2008, Commission paper (SECY-08-0077) that is electronically available on NRC's Web site at: <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2008/secy2008-0077/2008-0077scy.pdf>.

The Commission's decision and direction to the staff is documented in a June 30, 2008, Staff Requirements Memorandum (SRM-SECY-08-0077) that is also electronically available on NRC's Web site at: <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2008/2008-0077srm.pdf>.

The letters mentioned above from the NRC, the Navy, and EPA Region 9 are available from the NRC's Agencywide Document Access and Management System using the following accession numbers:

NRC's January 16, 2009, letter to the Navy ML083440652.

NRC's January 16, 2009, letter to the EPA ML083430426.

Navy's April 1, 2009, letter to NRC ML091120805.

EPA's May 7, 2009, letter to NRC ML091460102.

Dated at Rockville, MD, this 29th day of June, 2009.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

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NUCLEAR REGULATORY COMMISSION

[NRC-2009-0344]

Regulatory Guide Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide 1.135, Normal Water Level and Discharge at Nuclear Power Plants.

FOR FURTHER INFORMATION CONTACT:

Henry Jones, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1463 or e-mail Henry.Jones@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 1.135, "Normal Water Level and Discharge at Nuclear Power Plants." Regulatory Guide 1.135 was issued for comment in September 1977 and never finalized. The RG was intended to provide guidance on estimating the normal ground and surface water elevations at a nuclear power plant site. The determination of normal and flood water elevation is one of the site characteristics required by Title 10 of the *Code of Federal Regulations*, part 100, "Reactor Site Criteria," section 10, "Factors to be considered when evaluating sites," (10 CFR 100.10) for test reactors and stationary power reactor site applications dated before January 10, 1997 and by 10 CFR 100.20, "Factors to be Considered When Evaluating Sites," for stationary power reactor site applications dated on or after January 10, 1997.

General Design Criterion (GDC) 2, "Design Basis for Protection Against Natural Phenomena," of Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR part 50 requires facilities to be designed for protection against the most severe of the natural phenomena that have been historically reported for the site and surrounding area. This includes events such as floods, tsunamis, and seiches. A determination of the normal pool level as described in RG 1.135 is not required by GDC 2 and thus, compliance with GDC 2 is not impacted by the withdrawal of RG 1.135.

The guidance in RG 1.135 is no longer current; section 2.4.1, "Hydrologic Description" in Chapter 2, "Sites Characteristics," of NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants" (the SRP) contains more current guidance for complying with the

site criteria regulations. Additionally, a review of updated Final Safety Analysis Reports (FSARs) from licensees and applicants determined that only a few FSARs referenced RG 1.135 and no applicant or licensee is currently using it. Applicants and licensees use the guidance in the SRP and ANSI/ANS-2.8-1992, "Determining Design Basis Flooding at Power Reactor Sites" for water level determinations. Revising this guide could be potentially confusing for the staff and applicant.

Regulatory Guide 1.135 is being withdrawn because it is outdated, the staff is unaware of its use by any current licensee or applicant, and it does not provide guidance that is not more current and more readily available in the SRP or ANSI/ANS-2.8-1992.

II. Further Information

Withdrawal of RG 1.135 does not, in and of itself, alter any prior or existing licensing commitments based on its use. The guidance provided in this RG is no longer necessary. Regulatory Guides may be withdrawn when their guidance is superseded by Congressional action, the methods or techniques described in the Regulatory Guide no longer describe a preferred approach, or the Regulatory Guide does not provide useful information.

Regulatory guides are available for inspection or downloading through the NRC's public Web site under "Regulatory Guides" in the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/doc-collections>. Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O-1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852-2738. The PDR's mailing address is US NRC PDR, Washington, DC 20555-0001. You can reach the staff by telephone at 301-415-4737 or 800-397-4209, by fax at 301-415-3548, and by e-mail to pdr.resource@nrc.gov.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 29th day of July, 2009.

For the Nuclear Regulatory Commission.

John N. Ridgely,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

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