

9, 2012, the Commission determined that the additional requirements in Order EA-12-051 represent “a substantial increase in the protection of public health and safety.”

Consequently, the Commission decided to administratively exempt this Order from applicable provisions of the Backfit Rule, Title 10 of the *Code of Federal Regulations* (10 CFR), 50.109, and the issue finality requirements in 10 CFR part 52.

As required by Order EA-12-051, the NRC staff is issuing a draft version of JLD-ISG-12-03 to provide additional details on an acceptable approach for complying with Order EA-12-051 requirements. The staff intends to issue the final ISG in August 2012 following consideration of public comments.

Numerous public meetings were held to receive stakeholder input on the proposed requirement for spent fuel pool instrumentation enhancements prior to issuance of Order EA-12-051. Following issuance of Order EA-12-051, several more public meetings were held with representatives from the NEI task force to discuss development of the guidance for compliance with Order EA-12-051. By letter dated May 11, 2012, the NEI task force submitted a guidance document for the implementation of Order EA-12-051 and requested the NRC endorsement.

Proposed Action

By this action, the NRC is requesting public comments on draft JLD-ISG-2012-03. This ISG proposes guidance related to requirements contained in Order EA-12-051, Reliable Spent Fuel Pool Instrumentation. The NRC staff will make a final determination regarding issuance of the JLD-ISG after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 31st day of May 2012.

For the Nuclear Regulatory Commission.

David L. Skeen,

Director, Japan Lessons-Learned Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 2012-13811 Filed 6-6-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040-08502; NRC-2012-0120]

License Amendment To Construct and Operate New In Situ Leach Uranium Recovery Facility; Uranium One Americas; Ludeman

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to request a hearing and to petition for leave to intervene, and Commission order.

DATES: Requests for a hearing or leave to intervene must be filed by August 6, 2012. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4, who believes access to sensitive unclassified non-safeguards information (SUNSI) is necessary to respond to this notice must request document access by June 18, 2012.

ADDRESSES: Please refer to Docket ID NRC-2012-0120 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2012-0120. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.

NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The Ludeman facility *In Situ* Leach Uranium Recovery Project License Amendment Request is available electronically under ADAMS Accession No. ML120120182. The license amendment request and additional supporting documents can be found in ADAMS under Accession Nos. ML120120182, ML120880043, ML120870451, and ML12128A244. Documents related to the application can be found in ADAMS under Docket No. 04008502.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Senior Project Manager, Reactor Decommissioning Branch, Division of Waste Management and

Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-6607; email: John.Buckley@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received, by letter dated December 5, 2011, a request to amend Source Material License SUA-1341 to construct and operate a new *in situ* leach uranium recovery (ISL) facility at its Ludeman facility in Converse County, Wyoming.

An NRC administrative completeness review found the application acceptable for a technical review (ADAMS Accession No. ML12131A322). Prior to approving the license amendment request, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report and an environmental review report. The environmental review report will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity To Request a Hearing and Petitions for Leave To Intervene

The NRC hereby provides note that this is a proceeding on an amendment to Source Material License SUA-1341 to construct and operate a new ISL uranium recovery facility at its Ludeman facility in Converse County, Wyoming. Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, “Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.” Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 (or call the PDR at 1-800-397-4209 or 301-415-4737). The NRC's regulations are also accessible online in the NRC's Library at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>.

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in accordance with the filing instructions in Section III of this document. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the

petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions that support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one which, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The presiding officer will set the time and place for any prehearing conferences and evidentiary hearings,

and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

A State, county, municipality, Federally-recognized Indian tribe, or designated representative thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 6, 2012. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). The petition must be filed in accordance with the filing instructions in Section III of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in the proceeding pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 6, 2012.

III. Electronic Submissions (E-Filing)

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested

governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in,

is available on the NRC's Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.htm>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email at MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary,

Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/EHD/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are Hearing.Docket@nrc.gov and OGCmailcenter@nrc.gov, respectively.¹ The request must include the following information:

- (1) A description of the licensing action with a citation to this **Federal Register** notice;
- (2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and
- (3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

- (1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and
- (2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement

¹ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes

concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 31st day of May, 2012.

Annette L. Vietti-Cook,
Secretary of the Commission.

ATTACHMENT—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28 ..	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53 ..	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60 ..	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

² Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not

yet been designated, within 30 days of the deadline for the receipt of the written access request.

³ Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC

staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2012-13809 Filed 6-6-12; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0176]

NRC Enforcement Policy Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing revisions to its Enforcement Policy (Enforcement Policy or Policy) to address construction-related topics, including enforcement discretion.

DATES: This revision of the NRC Enforcement Policy is effective on June 7, 2012.

ADDRESSES: Please refer to Docket ID NRC-2011-0176 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0176. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; email: Carol.Gallagher@nrc.gov.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Carolyn Faria, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-4050, email: Carolyn.Faria-Ocasio@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In a Staff Requirements Memorandum, SECY-09-0190, "Staff Requirements—SECY-09-0190—Major Revision to NRC Enforcement Policy," dated August 27, 2010 (ADAMS Accession No. ML102390327), the Commission approved a revision to its Enforcement Policy. The NRC published a notice in the **Federal Register** on September 30, 2010 (75 FR 60485), announcing a revision to the Policy. The Commission also directed the NRC staff to reevaluate the portions of the Policy associated with construction activities (e.g., reactor or uranium enrichment plants), including under what conditions enforcement discretion could be applied to cases involving the holder of a limited work authorization (LWA) or combined license (COL). In a **Federal Register** notice (FRN) published on August 9, 2011 (76 FR 48919), the NRC solicited written comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (i.e., reactor and materials licensees, vendors, and contractors) on construction-related topics that the NRC staff was evaluating for discussion in a Commission paper that would include recommended revisions to the NRC Enforcement Policy. On August 30, 2011, the NRC conducted a public meeting to discuss the proposed changes to the Policy. The meeting consisted of a detailed presentation of the changes as published in the FRN, and members of the public who attended the meeting received the opportunity to have an open discussion with the NRC staff.

In response to the FRN dated August 9, 2011 (76 FR 48919), and the public meeting on August 30, 2011, the staff received written comments on the proposed Policy revisions. Several stakeholders offered changes to the language in the Enforcement Policy to assist the NRC staff in clarifying the intent of the proposed revisions. The NRC also received comments from regulated industry stakeholders about the agency's policy on the use of enforcement discretion during construction. Based in part on the comments received from external stakeholders, the NRC staff has made changes to the Policy language where it deemed it appropriate to do so. A summary of the public comments on the proposed Policy and the NRC staff's responses to those comments is available in ADAMS under Accession No. ML11286A123.

Summary of Revisions to the Enforcement Policy

The following sections describe the changes to the Enforcement Policy. These sections also provide background information on those topics evaluated by the NRC staff.

1. Revision to Section 1.0, "Introduction"

The phrase "construct and" was added to Item b to recognize that the NRC's regulatory authority includes applications for, and the actual construction of, facilities that will eventually operate under NRC regulations.

2. Revision to Section 1.2, "Applicability"

The following two paragraphs were added to clarify that the Enforcement Policy applies to license holders, applicants, holders of construction authorizations, and certificate holders:

It is NRC policy to hold licensees, certificate holders, and applicants responsible for the acts of their employees, contractors, or vendors and their employees, and the NRC may cite the licensee, certificate holder, or applicant for violations committed by its employees, contractors, or vendors and their employees.

The NRC may use the term "licensee" in this Policy to generally refer not only to licensees, but also to certificate holders and applicants.

3. Revision to Section 2.2.1.a, "Factors Affecting Assessment of Violations"

The phrase "onsite or offsite chemical hazard exposures resulting from licensed or certified activities" was added as the third criterion when evaluating actual consequences for uniformity. The inclusion of "onsite and offsite chemical hazard exposures" is consistent with the current Policy, including the examples provided in Section 6.2, "Fuel Cycle Operations." The first example in Section 6.2 involves a high-consequence event, as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, "Domestic Licensing of Special Nuclear Material." In particular, 10 CFR 70.61, "Performance Requirements," defines "high consequence" to include, among other things, acute chemical exposure.

4. New Section 2.2.6, "Construction"

New Section 2.2.6 was added as follows:

Section 2.2.6 Construction

In accordance with 10 CFR 50.10, no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction