

Licenses,” are not applicable, in whole, to operators of reprocessing facilities. The NRC needs to develop criteria in 10 CFR Part 55, “Operators’ Licenses,” or in a reprocessing-specific regulation in a revised 10 CFR Part 70 or new Part 7X, for testing and licensing operators of reprocessing facilities.

e. Gap 19—Effluent Controls and Monitoring

The requirements of 10 CFR Part 70 do not sufficiently address effluent controls and monitoring for reprocessing facilities [e.g., implementation of EPA regulations in 40 CFR Part 190, as required by 10 CFR 20.1301(e)]. Additional requirements for effluent controls and monitoring may be needed for reprocessing facilities because of the amounts of radioactive material that are handled in them and greater potential for emissions. Although the regulations in 10 CFR 50.34a, “Design Objectives for Equipment To Control Releases of Radioactive Material in Effluents—Nuclear Power Plants,” and 10 CFR 50.36a, “Technical Specifications on Effluents from Nuclear Power Reactors,” specify requirements for utilization facilities, these would require modification to address reprocessing and recycling facilities.

IV. Licensing Gaps

a. Gap 1—Regulatory Framework Options, Part 50 or Part 70

Currently, licensing a reprocessing facility under 10 CFR Part 50 would pose a significant hindrance to effective and efficient licensing. The regulations in 10 CFR Part 70, as currently written, do not provide a regulatory framework to license a reprocessing facility. Therefore, the staff is evaluating options for either revising Part 50 or Part 70, or develop regulations in a new Part 5X, or Part 7X.

b. Gap 6—Definition for Reprocessing Related Terms

There are currently no definitions of the terms “reprocessing,” “recycling,” and “vitrification.” Existing regulations in 10 CFR Parts 20, 50, 51, 60, 63, 70 and 72 use the term “reprocessing” without a definition. Accordingly, such definitions will need to be developed to describe both reprocessing and reprocessing facilities for 10 CFR Chapter I.

c. Gap 10—One-Step Licensing and Inspection, Testing and Acceptance Criteria (ITAAC) Requirements

Currently, regulations for one-step licensing of reprocessing facilities do not exist. One-step licensing

necessitates requirements to verify that the constructed facility conforms to the approved, licensed design. For reactors, 10 CFR Part 52 identifies these requirements as ITAAC. The regulations in 10 CFR Part 52 do not apply to reprocessing or other production facilities, nor do the requirements for the approval of applications set forth in 10 CFR 70.23, “Requirements for the Approval of Applications,” address reprocessing facilities. Clarity is needed in 10 CFR Part 70 to provide reasonable assurance that a reprocessing facility, undergoing a one-step licensing process, will have been constructed and will operate in conformity with the license, the AEA, and the Commission’s rules and regulations.

d. Gap 12—Financial Protection Requirements and Indemnity Agreements (10 CFR Part 140)

A reprocessing facility cannot be licensed without financial protection and indemnity agreements. Price Anderson protection and indemnity fees and amounts for reprocessing facilities are currently not included in 10 CFR Part 140, “Financial Protection Requirements and Indemnity Agreements.” Additionally, several appendices to 10 CFR Part 140 do not include forms for reprocessing facilities.

e. Gap 13—Schedule of Fees (10 CFR Part 170)

The scope of 10 CFR Part 170, “Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services under the Atomic Energy Act of 1954, as Amended,” does not include a production facility licensed outside 10 CFR Part 50.

f. Gap 14—Annual Fees (10 CFR Part 171)

The regulations in 10 CFR Part 171, “Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC,” do not include annual fees for reprocessing facility licenses. The scope of the regulation, described in 10 CFR 171.3, does not specifically include reprocessing or production facilities.

Dated at Rockville, Maryland, this 23rd day of July 2010.

For the Nuclear Regulatory Commission.

**Marissa G. Bailey,**

*Deputy Director, Special Projects and Technical Support Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

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**NUCLEAR REGULATORY COMMISSION**

[NRC-2010-0072]

**Notice of Issuance of Regulatory Guide**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Issuance and Availability of Regulatory Guide 3.13, Revision 1, “Design, Construction, and Inspection of Embankment Retention Systems at Fuel Cycle Facilities.”

**FOR FURTHER INFORMATION CONTACT:**

Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 251-7495 or e-mail *Mark.Orr@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency’s “Regulatory Guide” series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency’s regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 3.13, “Design, Construction, and Inspection of Embankment Retention Systems at Fuel Cycle Facilities,” was issued with a temporary identification as Draft Regulatory Guide, DG-3040. This guide describes some engineering practices and methods generally considered by the NRC to be satisfactory for the design, construction, and inspection of embankment retention systems used for retaining solid and liquid effluent from nuclear fuel cycle facility operations other than mining and milling. These practices and methods are the result of NRC review and action on a number of specific cases, and they reflect the latest general engineering approaches that are acceptable to the NRC staff. If future information results in alternative

methods, the NRC staff will review such methods to determine their acceptability.

The NRC recognizes the need for significant revision of this guide to address newer technology and environmental considerations. The NRC is revising this guidance to provide regulatory recommendations and positions that focus on more modern designs with perimeter embankments.

## II. Further Information

In February 2010, DG-3040 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on April 30, 2010. Electronic copies of Regulatory Guide 3.13, Revision 1 are available through the NRC's public Web site under "Regulatory Guides" at <http://www.nrc.gov/reading-rm/doc-collections/> and through the NRC's Agencywide Documents Access and Management System (ADAMS) at <http://www.nrc.gov/reading-rm/adams.html> under Accession No. ML101470167. The regulatory analysis may be found in ADAMS under Accession No. ML101470167.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555-0001. The PDR can also be reached by telephone at (301) 415-4737 or (800) 397-4209, by fax at (301) 415-3548, and by e-mail to [pdr.resources@nrc.gov](mailto:pdr.resources@nrc.gov).

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Dated at Rockville, Maryland, this 23rd day of July, 2010.

For the Nuclear Regulatory Commission.

**Harriet Karagiannis,**

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

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## NUCLEAR REGULATORY COMMISSION

[NRC-2010-0266]

### Withdrawal of Regulatory Guides 3.44 and 3.49

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Withdrawal of Regulatory Guide 3.44, "Standard Format and Content for

the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Water-Basin Type)" and Regulatory Guide 3.49, "Design of an Independent Spent Fuel Storage Installation (Water-Basin Type)."

#### FOR FURTHER INFORMATION CONTACT:

Mark P. Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-251-7495 or e-mail [Mark.Orr@nrc.gov](mailto:Mark.Orr@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 3.44, "Standard Format and Content for the Safety Analysis Report for an Independent Spent Fuel Storage Installation (Water-Basin Type)," dated January 1989 and RG 3.49, "Design of an Independent Spent Fuel Storage Installation (Water-Basin Type)," dated December 1981.

Regulatory Guide 3.44 provides guidance to applicants on the format and content of the safety analysis report that is required as part of an application to construct or operate a water-basin type in an independent spent fuel storage installation (ISFSI). Regulatory Guide 3.49 endorses portions of the American National Standards Institute (ANSI), American Nuclear Society (ANS) standard ANSI/ANS 57.7-1981, "Design Criteria for an Independent Spent Fuel Storage Installation (Water-Pool Type)," with exceptions and supplements, as an acceptable method of complying with the requirements of Subpart F, "General Design Criteria" of Title 10, of the *Code of Federal Regulations*, Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste" (10 CFR Part 72) for the design of a water-basin type ISFSI.

These guides do not support any active license or application; they were developed to provide guidance on the facility design and application to construct and operate a water-basin type ISFSI. The NRC has no record of either of these regulatory guides ever being used in the 20 years since they were published and no indication that any applicant or licensee is planning to submit an application for the construction and/or operation of a water-basin type ISFSI.

These guides for wet basin storage are no longer necessary because the use of dry cask storage for ISFSIs has proven

to be superior to wet basin storage and, in the event that there is an industry initiative to reprocess spent fuel, any wet basin storage operation associated with the reprocessing will likely be licensed as an integral part of the reprocessing facility, rather than as an ISFSI.

## II. Further Information

The withdrawal of RG 3.44 and RG 3.49 does not alter any prior or existing licensing commitments based on their use. The guidance provided in these regulatory guides is no longer necessary. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological, congressional actions, or other events.

Guides are revised for a variety of reasons, and the withdrawal of a regulatory guide should be thought of as the final revision of the guide. Although a regulatory guide is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal means that the guide should not be used for future NRC licensing activities. Changes to existing licenses would be accomplished using other regulatory products.

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, Maryland 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](mailto:pdr.resource@nrc.gov).

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Dated at Rockville, Maryland, this 22nd day of July 2010.

For the Nuclear Regulatory Commission.

**Harriet Karagiannis,**

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

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