

10 CFR Part 50

Environmental Qualification of
Electrical Equipment; Status of June
30, 1982, Deadline; Statement of Policy

AGENCY: Nuclear Regulatory
Commission.

ACTION: Statement of Policy.

SUMMARY: In July 1984, the Nuclear Regulatory Commission and the Union of Concerned Scientists entered into a stipulation in settlement of *Union of Concerned Scientists v. Nuclear Regulatory Commission*, U.S.C.A., D.C. Cir. No. 83-1842. This Statement of Policy is in compliance with the publication requirements of one provision of the stipulation. It is intended to advise the public on the status of the previously imposed June 30, 1982 deadline for licensee compliance. This is accomplished through the publication of the stipulation of the Commission's position on the effect of its final rule on Environmental Qualifications of Electric Equipment (48 FR 2729; January 21, 1983).

EFFECTIVE DATE: July 25, 1984.

FOR FURTHER INFORMATION CONTACT:
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General Counsel, U.S. Nuclear
Regulatory Commission, Washington,
DC 20555, (202) 634-3224.

SUPPLEMENTARY INFORMATION: The
Union of Concerned Scientists and the
Nuclear Regulatory Commission agree
as follows:

1. On June 30, 1982, the Commission issued an interim rule by which it sought to amend the operating licenses of certain plants to eliminate the June 30, 1982 deadline for compliance with environmental qualification requirements established in CLI-80-21 and later actually written into those reactor operating licenses.¹

2. On January 20, 1982, the Commission proposed to codify environmental qualification requirements and to establish a compliance deadline. The Commission issued a final rule based upon that proposal on January 21, 1983 (48 FR

2729). In the preamble to the final rule, the Commission stated its intent that the compliance deadline embodied in the final rule would supersede all other compliance schedules.

3. In *Union of Concerned Scientists v. Nuclear Regulatory Commission*, 711 F.2d 370 (1983), the Court of Appeals for the District of Columbia Circuit ruled that the interim rule was based upon a Commission finding that continued reactor operation would not be inimical to the public health and safety pending full compliance with environmental qualification requirements. The Court also held that the interim rule was invalid because the Commission had failed to give notice and an opportunity for public comment on the safety finding.

4. Because the decision in *UCS v. NRC* came after promulgation of the final rule, the compliance schedule in that rule was set in the belief that the 1982 deadline had been deleted from all licenses into which it had been actually written. As a result of the Court's decision in *UCS v. NRC*, however, the Commission has concluded that the final rule should not be relied on as having amended licenses to eliminate the compliance deadline of June 30, 1982 from those licenses into which it was actually written. The Commission will not argue that the final rule has such an effect in this or any subsequent litigation or administrative proceedings involving environmental qualification for such plants.

5. Therefore, as a result of the Court's decision of June 30, 1983, the Commission regards the compliance deadline of June 30, 1982 as remaining in effect with respect to the environmental qualification requirements established in CLI-80-21, for those plants having a June 30, 1982 deadline actually written into their reactor operating licenses. Such plants not meeting those requirements as of June 30, 1982 were then in violation of their licenses and remain so until either the requirements are met or the licenses are lawfully amended to remove or modify the deadline. The Commission has proposed to eliminate the deadline by amending all licenses through a notice and comment rulemaking initiated in response to *UCS v. NRC*, 711 F.2d 370 (D.C. Cir. 1983), and now in progress. 49 FR 8445 (March 7, 1984). Any extension of the June 30, 1982 deadline depends at present upon the outcome of that rulemaking proceeding. The Commission will expedite the conclusion of the ongoing rulemaking and intends to reach a decision by August 15, 1984.²

6. In a Policy Statement (49 FR 8422), the Commission has stated the reasons why it believes that no enforcement action with regard to violation of the deadline is appropriate, pending conclusion of the rulemaking. However, enforcement action for demonstrated safety deficiencies may be taken at any time, regardless of the status of the June 30, 1982 rule.

7. The Commission will not interpret its Policy Statement of March 7, 1984 in any manner that violates the terms of this stipulation.

8. The Union of Concerned Scientists agrees to withdraw the Petition for Review that it filed in this case on March 7, 1983.

9. The Commission agrees to publish this stipulation in the Federal Register as a Policy Statement.

10. The parties agree that the Union of Concerned Scientists is entitled to pursue recovery of such attorneys' fees and costs as may be authorized by the Equal Access to Justice Act, 28 U.S.C. 2412(d)(1)(B). In entering into this stipulation, however, the Nuclear Regulatory Commission does not concede that the Union of Concerned Scientists is entitled to recover any attorneys' fees or other expenses and expressly reserves the right to oppose any application for such attorneys' fees or other expenses.

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Dated at Washington, DC, this 8th day of
November 1984.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,
Secretary of the Commission

¹ Pursuant to CLI-80-21, the deadline was incorporated into existing reactor operating licenses by a series of orders. With respect to operating licenses issued thereafter, the deadline was included as a license condition. This practice continued up through the time the Commission issued the June 30, 1982 interim rule.

² On September 5, 1984, subsequent to the execution of this stipulation, the Commission issued a final rule deleting the June 30, 1982 deadline from individual licenses.