

which may have led to residual contamination be used in combination with historical analytical information such as survey data. MARSSIM section 3.6, "Evaluation of Historical Site Assessment Data" states that if process knowledge suggests that no residual contamination should be present and the historical analytical data also suggests that no residual contamination is present, the process knowledge provides an additional level of confidence and supports classifying the area as non-impacted. MARSSIM specifically cautions however, that existing radiation data must be examined carefully because previous survey and sampling efforts may not be compatible with the objectives of the HSA, may not be extensive enough to sufficiently characterize the facility or site, and because conditions may have changed since the site was last sampled.

NRC Regulatory Issue Summary 2002-02, "Lessons Learned Related to Recently Submitted Decommissioning Plans And License Termination Plans," states that old records may be inadequate or inaccurate for the purpose of developing either the HSA or site characterization, and suggests that these records not be relied on as the sole source of information for the HSA or site characterization. Interviews with current and former staff and contractors play an essential role in formulating the HSA, but may yield information as inadequate or inaccurate as old records. Experience has shown that old records and results of operational surveys and post-shutdown scoping surveys have been submitted as substitutes for characterization surveys. For example, the results of operational surveys may represent radiological status, describing conditions over a limited time span, or may have been conducted to address specific events (*i.e.*, post-spill cleanup assessment). In a few instances, the results of personnel interviews and information, which can only be considered as anecdotal, have been presented in the HSA. It could not be determined whether this information, in fact, was part of an unbroken chronological history of the site or contained time gaps when operational milestones or occurrences were missing. Although the NRC encourages licensees to review old records and conduct personnel interviews (past and current employees and key contractors), there is a need to present the information obtained in its proper context and qualify its usefulness and how it might be supplemented by additional data searches or characterization surveys.

Paragraphs 50.83(c)(2) and 50.83(d)(2) of the proposed rule stated that, after

receiving an approval request or license amendment application from the licensee, the NRC will determine whether the licensee's historical site assessment is adequate. To avoid the implication that the classification of release areas as non-impacted is based solely on historical process knowledge of events or conditions, these sections have been modified in the final rule to state that the NRC will determine if the licensee's classification of any release areas as non-impacted is adequately justified. Such a determination would require a review of the licensee's use of both analytical data as well as process knowledge of events and conditions in accordance with the MARSSIM guidance.

The NRC maintains its position that the rule should not require surveys of non-impacted areas. However, licensees may choose to survey these areas on their own initiative. The question of whether surveys of non-impacted areas should be performed is solely concerned with whether the HSAs and the site characterization process are adequate bases to conclude that there is no reasonable potential for residual radioactivity.

#### 11. Final Radiation Survey and Associated Documentation

*Comment:* Section 50.82(a)(11)(ii) provides the criteria for license termination with regard to the terminal or final radiation survey and its documentation. One reactor licensee and the NEI commented that adding the phrase "including any parts released for use before approval of the license termination plan" as suggested in the proposed rule implies that final surveys at license termination apply to previously released property and might force a licensee to perform remediation or conduct surveys on land which has been previously released for use when not otherwise required. One of the commenters also stated that the phrase "released for use" should be changed to "released for unrestricted use." Additionally, a commenter stated that the phrase "are suitable for release" with regard to the property being released should more appropriately be changed to indicate that the release meets the applicable release criteria.

*Response:* As stated in the proposed rule, the NRC does not anticipate further surveys of a previously released area, but rather is seeking to account for, in the radiation survey and associated documentation demonstrating compliance with the release criteria, potential dose contributions associated with previously released areas. The language at 10 CFR 50.82(a)(11)(ii) in

the final rule has therefore been modified to indicate that the final radiation survey and associated documentation is to include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria. The term "released for use" is retained because the intent is that the documentation assess dose contributions from previously released parts of the facility or site whether they were released for restricted or unrestricted use. Additionally, the phrase "are suitable for release" is changed to "have met the applicable criteria."

#### 12. Question From the "Issues for Public Comment" Section of the Proposed Rule: Are There Rulemaking Alternatives to This Proposed Rule That Were Not Considered in the Regulatory Analysis for This Proposed Rule?

*Comment:* The NEI and one reactor licensee commented that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands to provide additional assurance to future owners, and that this option should be included in the proposed rule.

*Response:* The Commission disagrees with this comment. There is no need to provide this option because the staff has determined that this approval is not an amendment to a license pursuant to the analysis in *Cleveland Electric Illuminating, et al.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 328 (1996). The NRC's oversight role in these cases is essentially a confirmation to ensure that the licensee complies with the clearly defined criteria found in the rule. This is in contrast to an impacted area where the staff must analyze and evaluate the information and survey documentation provided by the licensee in order to determine if release of the impacted area poses a threat to public health and safety. For these cases, the license amendment process is appropriate. Allowing a licensee to seek a license amendment for release of non-impacted areas would also decrease the efficiency and effectiveness of the staff's review process. The staff believes that a letter approval of a release will be sufficient to provide future property owners with assurance that the land poses no risk to public health and safety. Moreover, the rule established a process for the NRC to obtain public comments before making a decision to approve a release.