

13. Question From the "Issues for Public Comment" Section of the Proposed Rule: Are the Proposed Definitions in § 50.2 Clear?

Comment: The MARSSIM Workgroup commented that the definitions of impacted and non-impacted areas proposed for incorporation into 10 CFR 50.2 are inconsistent with MARSSIM. The workgroup recommends that the definitions be taken verbatim from the MARSSIM glossary as follows:

Impacted Area—Any area that is not classified as non-impacted. Areas with a possibility of containing residual radioactivity in excess of natural background or fallout levels.

Non-Impacted Area—Areas where there is no reasonable possibility (extremely low probability) of residual contamination. Non-impacted areas are typically located off-site and may be used as background reference areas.

Response: The definitions of impacted and non-impacted areas being added to 10 CFR 50.2 will remain as presented in the proposed rule. These definitions were not taken from the MARSSIM glossary but were, for the most part, taken from the definitions provided in section 2.2 of the MARSSIM text, titled "Understanding Key MARSSIM Technology." The text in section 2.2 states that areas that have no reasonable potential for residual contamination are classified as non-impacted areas, and that areas with some potential for residual contamination are classified as impacted areas.

In the definitions of impacted and non-impacted areas incorporated into the rule, the term "residual contamination" found in the MARSSIM text was replaced with the term "residual radioactivity" for consistency with the definition of residual radioactivity found in 10 CFR 20.1003. For clarity, the definitions also specify that the radioactivity referred to is that which is in excess of natural background or fallout levels.

In addition, the word "reasonable" was added to the definition of impacted areas in order for the definitions of impacted and non-impacted areas to be mutually exclusive. Without the opposition between the two definitions, an area could conceivably meet both definitions. The MARSSIM glossary definition of impacted area states that it is an area not classified as non-impacted. Therefore, this change is consistent with the MARSSIM intent that the definitions be mutually exclusive. Also, non-impacted areas are defined in the MARSSIM glossary as those areas with no reasonable possibility of residual contamination. Impacted areas are defined as those

areas with a possibility for residual radioactivity—meaning no matter how slight a possibility, because the word "reasonable" is omitted. Because the word "reasonable" is omitted from the MARSSIM glossary definition of impacted areas, the two glossary definitions are not mutually exclusive as intended.

Finally, the statement in the MARSSIM glossary definition that non-impacted areas are typically located off-site and may be used as background reference areas is irrelevant to the determination of whether an area is non-impacted and is therefore inappropriate for incorporation into the definition.

Comment: One reactor licensee and the NEI recommended that the definitions for Historical Site Assessment, Impacted areas, and Non-impacted areas be incorporated into 10 CFR 50.2 and be changed to specify that the residual material or radioactivity is that from licensed activities.

Response: The radioactivity referred to in the definition of Historical Site Assessment cannot be limited to that resulting from licensed activities and the definition is not revised. Residual radioactivity is a defined term in 10 CFR 20.1003 referring to radioactivity at a site resulting from any activities under the licensee's control, and includes radioactivity from both licensed and unlicensed sources.

14. Question From the "Issues for Public Comment" Section of the Proposed Rule: Is Public Involvement Adequately Considered?

Comment: The NEI commented that the rule adequately considers public involvement. A State commenter stated, however, that there is no mechanism described in the proposed rule that addresses how or if stakeholders can challenge the "non-impacted designation" by a licensee. Though the proposed rule states that it provides for public participation through a public meeting, a public meeting to inform stakeholders of NRC decisions is not a participatory process. It gives no right of intervention, no right of appeal, and no right of a meaningful review. How does a public meeting address a material dispute in fact? The NRC is not bound to consider any information brought forward during the public meeting. At the very least a mandatory public hearing is needed.

Response: The Commission disagrees with this comment and believes that the public will have ample opportunity to be involved with partial site release issues. The partial site release rule provides for public participation

through review and comment on a licensee's proposed release plans and through participation in a public meeting whether or not an amendment is involved. This process enables the public to collect information, to comment on and question the actions at the site with regard to the proposed release, and to discuss relevant issues among stakeholders. The NRC will consider any information or concerns brought forward by members of the public during the public review and comment period or during the public meeting.

The NRC has issued a policy statement, "Policy on Enhancing Public Participation in NRC Meetings" (67 FR 36920, May 28, 2002). This policy statement articulates the NRC's revised policy concerning opening meetings to public observation and participation. It defines three categories of public meeting, each with an increasing level of public participation. The public meeting required by the partial site release rule will be classified as a Category 3 meeting with the highest level of public participation. In these meetings, public participation is actively sought. The meetings are specifically tailored for the public to discuss relevant issues with the NRC and other stakeholders, to make comments, and ask questions throughout the meeting. Questions or concerns that cannot be resolved at the meeting will be assigned to a designated NRC staff person for action.

Although there is no mandatory public hearing provided for in this rule, there are ways in which the public may participate in hearings on partial site release issues. First, in the event that a license amendment associated with a partial site release is challenged, there will be the opportunity for a hearing on the license amendment. Second, NRC regulations in 10 CFR 2.206, "Requests for Action under this Subpart," allow any member of the public to raise potential health and safety concerns and petition the NRC to take specific actions to resolve a dispute identified in the petition. The NRC believes that a mandatory hearing is not warranted in light of the many opportunities for public participation. Consequently, no change has been made to the final rule in response to this comment.