

construction phase of a combined license. In SECY-95-090, "Emergency Planning Under 10 CFR part 52," (April 11, 1995), the NRC staff stated that 10 CFR part 52 does not clearly require an applicant referencing an early site permit to submit updated information on changes in emergency preparedness information and any emergency plans that were approved as part of the early site permit in accordance with § 52.18. SECY-95-090 indicated (p. 4) that, in view of the lack of industry interest in pursuing an early site permit, resolution of this matter may be deferred until a "lessons learned" rulemaking updating 10 CFR part 52 is conducted after the first design certification rulemakings are issued. Following public release of a draft SECY paper setting forth the NRC staff's preliminary views on the licensing process for a combined license, the Nuclear Energy Institute (NEI) submitted a letter dated September 8, 1998 (comment 2.d), expressing NEI's opposition to a requirement for updating emergency preparedness information throughout the duration of an early site permit absent an application referencing the early site permit. As an alternative to updating throughout the duration of an early site permit, NEI proposed that emergency planning information be updated when an application for a license referencing the early site permit is filed; portions of the emergency plans that are unchanged would continue to have finality under 10 CFR 52.39. Thereafter, in a September 3, 1999 letter, the NRC staff identified updating of emergency preparedness information in early site permits as a possible subject for the part 52 rulemaking.

The Commission agrees with the Illinois Department of Nuclear Safety that the emergency preparedness information approved when the early site permit was issued must be updated if there is new information which may materially affect the Commission's earlier determination on emergency preparedness, or if the new information is needed to correct inaccuracies in the emergency preparedness information approved in the early site permit. In the absence of such an updating requirement, the NRC would bear the responsibility of identifying whether there is new information on emergency preparedness that necessitates a re-examination of the Commission's earlier emergency preparedness determinations for the early site permit, and the early site permit holder or applicant referencing the early site permit would be under no obligation to correct inaccurate emergency preparedness

information in the early site permit or approved emergency plan. However, the Commission also agrees with NEI that a "continuous" early site permit update requirement would impose burdens upon the early site permit holder without any commensurate benefit if the early site permit is not subsequently referenced. Accordingly, the Commission has decided that § 52.39 and current § 52.79 (proposed § 52.211) should contain an updating requirement to be imposed upon the applicant referencing an early site permit.

The proposed rule redesignates paragraph (b) of current § 52.39 as paragraph (c), and adds a new paragraph (b) requiring an applicant for a construction permit, operating license, duplicate design license, or combined license whose application references an early site permit to update and correct the emergency preparedness information provided under § 52.17(b), and to discuss whether the new information may materially change the bases for compliance with the applicable NRC requirements. A parallel requirement is included in proposed § 52.211(d)(1) to ensure that applicants for combined licenses referencing an early site permit will submit the updated emergency preparedness information. New information which materially changes the bases for compliance includes: (1) Information which substantially alters the bases for a previous NRC conclusion with respect to the acceptability of a material aspect of emergency preparedness or an emergency preparedness plan, as well as (2) information which would constitute a sufficient basis for the Commission to modify or impose new terms and conditions related to emergency preparedness in accordance with § 52.39(a)(1). New information which materially changes the Commission's determination of the matters in § 52.17(b), or results in modifications of existing terms and conditions under § 52.39(a)(1) would be subject to litigation during the construction permit, operating license, duplicate design license, or combined license proceedings in accordance with § 52.39(a)(2)(ii).

Not all new information on emergency preparedness would be subject to challenge in a hearing under § 52.39(a)(2)(ii). For example, an emergency plan may have to be updated to reflect current telephone numbers, the names of governmental officials whose positions and responsibilities are defined in the plan (e.g., the name of the current police chief for a municipality), or the current name of a hospital facility. Such corrections do not

materially change the NRC's previously-stated bases for accepting the early site permit emergency plan; therefore, a hearing contention would not be admitted under § 52.39(a)(2)(ii) (or any other provision of § 52.39) in a proceeding for a license referencing the early site permit. By contrast, if an emergency plan submitted as part of an early site permit relies upon a bridge to provide the primary path of evacuation, and that bridge no longer exists, the change could materially affect the NRC's previous determination that the emergency plan complied with the Commission's emergency preparedness regulations in effect at the time of the issuance of the early site permit. Thus, such information may be the basis for a change in the early site permit's terms and conditions related to emergency preparedness under § 52.39(a)(1), as well as the basis for a hearing contention under § 52.39(a)(2)(ii)—assuming that the requirements in 10 CFR part 2 for admission of a contention are met.

An updating requirement for early site permit information other than emergency preparedness information does not appear to be necessary, inasmuch as it is unlikely that there would be changes to the information previously submitted on the site, such that a significant change to the site characteristics, terms, and conditions would be necessary if requested under the provisions of § 52.39(a)(2). If the site does not conform to the characteristics of the early site permit, an interested person may submit a petition under § 52.39(a)(2)(ii) alleging that the site does not conform to the early site permit. Accordingly, the proposed rule does not include an updating requirement for other early site permit information.

The proposed rule would amend § 52.79(a)(1) (proposed § 52.211(a)(1)), which currently requires a combined license application referencing an early site permit to contain information demonstrating that the design of the facility falls within the parameters specified in the early site permit, and information needed to resolve any other significant environmental issue not considered in the proceeding on the referenced early site permit. Currently, § 52.79(a)(1) requires a combined license application referencing an early site permit to contain information demonstrating that the design of the facility falls within the site parameters specified in the early site permit. However, § 52.79(a) does not explicitly require the application to address whether the terms and conditions specified in the early site permit under