

Enclosure 2

Letter to David Lochbaum

ADAMS Accession No: ML073140010

Mr. David Lochbaum
Union of Concerned Scientists
1707 H Street, NW, Suite 600
Washington, D.C. 20006-3919

Dear Mr. Lochbaum:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of February 23, 2007, by which you submitted a petition for rulemaking on behalf of the Union of Concerned Scientists and the Project on Government Oversight. The petition, docketed as PRM-50-83, requests that the NRC amend its regulations in Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR Part 50) to add an appendix (or comparable regulation) similar to the existing Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities," which would require periodic demonstrations of adequate protection by local, State, and Federal entities against radiological sabotage of U.S. nuclear power plants by adversaries who have capabilities that exceed the design basis threat (DBT). A notice of receipt of your petition appeared in the *Federal Register* on March 29, 2007 (72 FR 14713).

In December 1979, the President directed the Federal Emergency Management Agency to assume lead federal responsibility for all offsite nuclear emergency planning and response. Homeland Security Presidential Directive - 7, "Critical Infrastructure Identification, Prioritization, and Protection," assigns the lead role for coordinating offsite security responses to the U.S. Department of Homeland Security. The granting of your petition for rulemaking to require offsite entities to participate in demonstrations of their capability to respond to beyond-DBT events would exceed the NRC's authority in these matters. The NRC cooperates in these planning and response activities, and its participation is a factor in the NRC's determination that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, whether or not the event is the result of sabotage. A summary of the NRC's involvement in the planning and response activities is enclosed.

In support of the petition, you state that "Appendix E to 10 CFR part 50 currently requires periodic demonstrations that plant owners and external authorities can successfully meet their responsibilities during nuclear plant emergencies...." Appendix E requires nuclear power reactor licensees to involve in emergency preparedness demonstrations the offsite authorities having a role in the emergency preparedness plan. However, Section IV.F.2.h of Appendix E and 10 CFR 50.47(c) recognize that local and State entities are at liberty to refuse to participate. Further, the NRC does not have the authority to require offsite federal agencies to participate in a nuclear power reactor licensee's exercises. Thus, the Commission has determined that your reliance on Appendix E to 10 CFR Part 50 to support your request that the NRC require Federal, State and local governments to participate in demonstrations of their capability to respond to beyond-DBT events is misplaced because the NRC cannot compel local, State, or Federal entities to take part in biennial emergency exercises if those entities do not choose to participate in emergency planning activities.

The Commission has considered the merits of your petition and the public comments received and finds that granting the petition would exceed the Commission's authority. Thus, the Commission is denying your petition for rulemaking.

Sincerely,

Annette L. Vietti-Cook
Secretary of the Commission

Enclosures:

1. Summary of NRC's Efforts to Enhance Federal, State and Local Response
2. *Federal Register* Notice

D. Lochbaum

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ADAMS Accession No.: ML073140010/EDATS: NRR-2008-0010 *via e-mail **via memo

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SUMMARY OF THE NRC'S EFFORTS TO ENHANCE FEDERAL, STATE AND LOCAL RESPONSE

Since the September 11, 2001, attacks, the Nuclear Regulatory Commission (NRC) has supported and worked with licensees, the U.S. Department of Homeland Security (DHS), and various State and local governments to improve the capabilities of first responders as part of the National Infrastructure Protection Plan. Part of this effort included the conduct of Comprehensive Reviews (CRs) at all commercial nuclear power plants. These CRs were led by DHS, with support from the NRC, United States Coast Guard, Federal Bureau of Investigation (FBI), and nuclear power industry representatives as part of a government and private sector initiative to determine facilities' exposure to potential terrorist attacks, the consequences of such attacks, and the integrated response (prevention and response capabilities) of facility owners/operators and Federal, State, local law enforcement, and emergency response organizations. The results of the CRs are being used to enhance the security posture of the facilities and first responders by funding improvements in equipment, training, and processes in the short-term, and informing risk-based investments and science and technology decisions in the long-term. In less than one year, the CR program resulted in identifying numerous readily-adaptable protective measures for increased first responder readiness and preparedness in the event of a terrorist attack or natural disaster.

The NRC also assisted DHS in the Buffer Zone Protection Program (BZPP) designed to support State, local and tribal law enforcement and other first responders to enhance the security of a range of Critical Infrastructures and Key Resources (CI/KR), which includes nuclear power plants. Specifically, the BZPP was created to:

- Develop an appropriate buffer zone extending outward from a CI/KR facility in which protective measures can be employed to make it more difficult for terrorists to conduct site surveillance or launch attacks;
- Identify all applicable law enforcement jurisdictions and other Federal, State, and local agencies with a role in the prevention of, protection against, and response to terrorist threats or attacks specific to the site and appropriate points of contact within these organizations; and
- Evaluate the capabilities of the responsible law enforcement jurisdictions with respect to terrorism prevention and response and to identify specific planning, equipment, training and/or exercise capabilities to assist the response jurisdictions in mitigating the threats to the site and its buffer zone.

The BZPP supports requests by responsible jurisdictions for Federal grants to eligible States.

The NRC has also helped advance offsite response capabilities by meeting with a range of Federal stakeholders to ascertain their support and concurrence on a path forward for integrated response planning. Key outcomes of this effort to date include (1) FBI funding of comprehensive site models of certain nuclear facilities to aid law enforcement in planning effective tactical response including site "take back" strategies and (2) interagency planning for an FBI-led "integrated protection comprehensive exercise" at a commercial power reactor scheduled for late 2008.

The NRC has also completed multiple rounds of imminent aircraft attack "walk-throughs" with commercial reactor licensees to practice implementation of event response protocols. Lessons learned from these walk-throughs have been incorporated into Supplement 1 to Regulatory Issue Summary 2004-15: "Emergency Preparedness Issues: Post 9/11/2001," which was issued on May 25, 2006.

Finally, the NRC staff has been working with the Federal Emergency Management Agency as part of the ongoing Emergency Preparedness (EP) rulemaking to incorporate hostile action initiated scenarios into periodic biennial exercises under Appendix E to Part 50 of Title 10 of the *Code of Federal Regulations*. These exercises are intended to test the ability of licensee personnel to coordinate with State and local responders under the National Incident Management System/Incident Command Structure to take appropriate actions to mitigate the impact of a terrorist attack on a commercial nuclear power plant. The NRC staff is also working with the power reactor industry, as part of a voluntary initiative response to NRC Bulletin 2005-02, where each reactor site is conducting a hostile action-based drill within a 3-year period. The NRC staff will be incorporating the lessons-learned from these drills into its proposed EP rulemaking. To date, 10 of these "off-year" drills have been conducted with involvement and support from State, county and local officials.