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P. Kadambi



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Joan Claybrook, President

March 22, 2000

David L. Meyer,
Rules and Directives Branch
U.S. Nuclear Regulatory Commission,
Mail Stop T-6D59,
Washington, DC 20555-0001

Dear Mr. Meyer,

Public Citizen participated in the NRC's workshop on High-Level Guidelines for Performance-Based Activities. At that time, Mr. Kadambi indicated that both my comments and those Ms. Shollenberger would be incorporated into the record for consideration by the agency. The following are additional comments of Public Citizen's Critical Mass Energy Project on the U.S. Nuclear Regulatory Commission's High-Level Guidelines for Performance-Based Activities.

We at Public Citizen view the NRC's efforts to "risk-inform and performance-base" its regulations as yet another in a series of attempts by the agency and industry to deregulate safety standards. This deregulatory effort has come about because the nuclear industry has come to the realization that if forced to comply with the regulations that are currently on the books their nuclear reactors will be unable to compete in a newly deregulated electricity market place.

We believe that the current attempt to risk-inform and performance base the NRC's regulatory approach will result in destroying the safety culture that had been established in the wake of the meltdown at Three Mile Island and expose the public to greater risk.

Many of the same issues that undermine the risk-informed approach to regulation limit the ability of this agency to implement a performance based regulatory that will adequately protect the public health and safety. It is especially ironic that just at the point where the NRC is moving to "risk informed - performance based regulation" it destroys its ability to actually track performance. After the AEOD's data was used to prove that NRC's Senior Managers were failing to do their jobs, the NRC wiped out the AEOD scattering its personnel throughout the agency. Unfortunately the NRC reminds me of Shakespeare's Othello, their eyes have offended them and so they have torn them from their body. I believe that wiping out AEOD and relying upon INPO or industry data is a

Ralph Nader, Founder

grave mistake that will eventually come back to haunt this agency. If the NRC intends to performance base its regulation, the agency not the nuclear industry should track and verify the performance of nuclear reactors.

Public Citizen is especially concerned that the criteria established in the guidelines merely attempt to maintain safety at the nation's 103 nuclear reactors. This seems to be a tacit acknowledgement that the current level of performance is good enough for the NRC. The Commissioners have been cowed by the Senate's threats to slash the NRC's budget and have been lulled into a false sense of security by industry claims of improved performance. However, Public Citizen has consistently maintained that the mere fact that the nuclear industry has not melted down a reactor in the last 20 years is not a sufficient reason for scrapping the regulatory regime that achieved that level of performance. Several years ago, Hal Lewis, a former member of the Advisory Committee on Reactor Safeguards, recognized the flaw in the industry and agency's thinking. Mr. Lewis stated that:

"the general argument that the fact that one has operated safely for a finite period of time proves that the safety level is adequate is just not statistically right, because there isn't that much history in the industry. And it's a trap. Because other agencies, for example, people have used the argument that they had 24 successful Shuttle flights, to show the level of safety was adequate. And in retrospect, after one disaster, it turned out not to be. The Soviets, after Chernobyl, suddenly discovered that the level of safety they had before Chernobyl was not adequate. But the day before Chernobyl they would have said it was adequate on the basis of operating history.

So it is a general trap, a psychological trap, to believe that because something has not happened, you are doing just fine."

(Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices: License Renewal, ACRS-T-1789, March 26, 1990, pp. 153, 154.)

Public Citizen views NRC's efforts to performance base nuclear safety regulations as yet another in a series of attempts by the agency and industry to deregulate safety standards based not upon safety but upon cost. We have already witnessed the NRC's Reduction of Requirements Marginal to Safety, Cost Beneficial Licensing Actions, the use of Notices of Enforcement Discretion to avoid shutdowns and allow restarts and the "New and Improved" Technical Specifications that reduced the limiting conditions of operation by 40%.

NRC's proposed guideline that if the industry indicates that "a change in regulatory practice is likely to be expensive, a much closer examination of the benefits would be warranted before such a change is pursued," merely reinforces the perception that this is a deregulatory effort based upon cost to the nuclear industry rather than protecting the public health and safety.

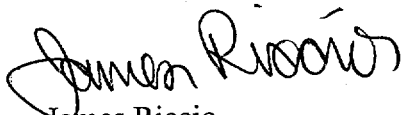
We are also concerned that the NRC will alter the criteria established in these guidelines to suit the nuclear industry. We are particularly wary of the NRC changing the criteria into conclusions. One of NRC's proposed criteria for performance based regulation is that "a framework exists or can be developed such that performance criteria, if not met, will not result in an immediate safety concern." The NRC then denotes three criteria:

- a. A sufficient safety margin exists.
- b. Time is available for taking corrective action to avoid the safety concern.
- c. The licensee is capable of detecting and correcting performance degradation.

These criteria must be **proven**, not merely assumed by the agency. They should increase safety rather than merely maintaining it and they must be documented and verifiable.

Public Citizen believes that the shift to "risk-informed/performance-based" regulation will further undermine public confidence in this agency and the industry that it purports to regulate. It is increasingly evident that, at the behest of the nuclear industry, the NRC has torn up the tracks of the old regulatory system before it has established that the "risk-informed/performance-based" scheme will adequately protect the public health and safety from the dangers posed by nuclear reactors and the long-lived radioactive wastes that they produce.

Sincerely,



James Riccio
Critical Mass Energy Project