

June 6, 2000

Mr. David A. Lochbaum  
Union of Concerned Scientists  
1616 P Street, NW., Suite 310  
Washington, DC 20036-1495

SUBJECT: RISK-INFORMED REGULATION (SECY-00-0062)

Dear Mr. Lochbaum:

I am responding to your letter of March 31, 2000, submitted in support of your comments before the Commission during the public meeting on March 31, 2000, concerning the risk-informed regulation implementing plan. You indicated that the U.S. Nuclear Regulatory Commission (NRC) should redirect resources from risk-informed regulation to (1) improve the allegation process with respect to protecting members of the public identifying safety concerns; (2) improve the timeliness and quality of responses to safety issues raised by the NRC staff using the differing professional opinion (DPO) process; and (3) revise the public petition process, 10 CFR 2.206, to provide the public with a viable method for raising safety issues. Your letter also contained information that may involve NRC staff wrongdoing, and we have forwarded the information to the Inspector General for his consideration.

We understand from your statements at the March 31 public meeting that you believe that the concept of risk-informed regulation is acceptable and you are primarily concerned with implementation. In addition, you are uncomfortable with the NRC's emphasis on risk-informed regulation and your perceived de-emphasis in the areas previously mentioned.

As described in SECY-99-256, "Rulemaking Plan for Risk-Informing Special Treatment Requirements," and SECY- 99-264, "Proposed Staff Plan for Risk-Informing Technical Requirements in 10 CFR Part 50," we believe that risk-informing the regulations can be done in a manner that maintains or enhances safety. Under these and other risk-informed initiatives, risk-informed programs use integrated decision making processes that consider both traditional engineering and probabilistic risk information in a complementary manner. Also, programs established by licensees verify that the assumptions made remain valid and that no unexpected degradation in system performance occurs as a result of implementation of a new risk-informed program at their plant.

The agency addressed your comments regarding the 10 CFR 2.206 petition process in its letter of April 21, 2000.

With regard to the allegation program, we agree that plant workers have contributed to plant safety by raising issues through the allegation program for resolution. However, we disagree with your assertion that the NRC indiscriminately turns the names of whistleblowers over to the licensees, that responses to allegations are untimely, and the general characterization that there are problems with the quality of responses to allegations. The NRC's policy is not to release the names of alleged to licensees unless the alleged agrees to the release. Because it is not possible to investigate a claim of discrimination without discussing the name of the

allegor, the NRC will not proceed with an investigation unless the allegor is willing to have his or her identity disclosed to the licensee. You accused the NRC of looking the other way as managers illegally make workers pay with their careers for raising safety concerns. The NRC has taken enforcement actions against utilities, vendors, and individuals who discriminate against individuals who raise safety concerns. The Department of Labor (DOL) is responsible for providing personal remedies, such as reinstatement and back pay. The NRC cannot provide individuals with personal remedies. This type of remedy can only come from DOL.

With regard to the timeliness of responding to allegations, since October 1996 when the NRC introduced new software to track the resolution of allegations, the average time to respond to technical issues has improved significantly, dropping from 131 days in Fiscal Year (FY) 1997 to 102 days in FY 1999. During the first half of FY 2000, the average time it took to respond to an allegation was 89 days. With regard to the timeliness of resolution of allegations of wrongdoing, including discrimination, the average time to complete an investigation of a wrongdoing issue in FY 1999 was 174 days. This longer time is acceptable because the resolution of a potential wrongdoing case is more complex.

With regard to the quality of the response provided by the NRC, each letter describing the NRC's findings asks that the allegor contact the NRC if he or she believes the response is inappropriate or inaccurate. The NRC receives very few communications after the response is sent. In those instances in which an individual has raised a concern, the staff has reviewed the actions it took and the results and, if appropriate, conducted an additional inspection or investigation. Additionally, the staff is in the process of initiating a pilot program that will survey allegors on the performance of the allegation program, including the quality of the response.

You also recommended allocating additional resources to improve the timeliness and quality of responses to safety issues raised by the NRC staff using the DPO process. It is the policy of the NRC to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from a prevailing staff view, disagree with a management decision or policy position, or take issue with proposed or established agency practices. The DPO process is not meant to resolve the DPO to everyone's satisfaction, but is intended to provide full consideration of an individual's differing position by conducting a detailed review by qualified personnel. We recognize that there is a longstanding DPO on steam generator issues that has not been resolved yet. While the circumstances surrounding this DPO are unique in many respects, we recognize that, in this particular case, the process has not been timely. However, actions are underway to complete the steam generator DPO on a priority basis.

The agency periodically assesses the DPO process and prepares and submits a report of the assessment to me for consideration. I then forward the report with any comments or recommendations to the Commission for approval. The agency continues to periodically assess the DPO process, including the timeliness and the quality of responses to safety issues raised by the NRC staff. The next assessment is currently expected to begin within the next 12 months.

Mr. D. A. Lochbaum

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The NRC is actively pursuing improvements in the processes you mentioned in your letter. No reduction in our risk-informed activities is necessary to support these process improvements.

Sincerely,

***/RA by Frank J. Miraglia Acting For/***

William D. Travers  
Executive Director  
for Operations

Mr. D. A. Lochbaum

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William D. Travers  
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