



65 FR 53050
Aug 31 - 2000
(11)

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Joan Claybrook, President

Public Citizen's Critical Mass Energy & Environment Program

Comments on the Proposed Guidelines for Including Industry Initiatives in the Regulatory Process (in Lieu of Regulation)

65 FR 53050

Public Citizen is categorically opposed to the regulatory retreat currently under way at the U.S. Nuclear Regulatory Commission (NRC) conducted under the guise of voluntary industry initiatives (in lieu of regulation). The NRC's failure to regulate the nuclear industry and instead provide for voluntary self-policing is both arbitrary and capricious and constitutes an abrogation of the Commission's duty to protect the public health and safety.

At least originally, the NRC had the decency to admit what it was up to. The NRC must have realized that the inclusion of the phrase "in lieu of regulation" would further undermine public confidence in the agency and the industry. The phrase has mysteriously disappeared from NRC lexicon, but the regulatory retreat continues. The NRC plans to supplant regulation with voluntary initiatives that are non-enforceable, that remove the public from the regulatory process and that fail to address significant safety issues. The NRC has refused to issue rules and regulations to address significant safety concerns, instead relying on the voluntary initiatives that the industry has failed to implement.

The proposed guidelines established by the NRC will result in limiting the ability of the public to meaningfully participate in the decisions that affect the health and safety of our families, homes and communities. The regulatory issues that the agency and industry wish to subject to this voluntary approach are not instances of prior regulatory vigor. They are instances where the NRC and the nuclear industry have been embarrassed by their inability or unwillingness to regulate.

In the early 1990's, the NRC staff developed both a generic letter and a proposed rule to regulate the integrity of steam generator tubes. Steam generator tube degradation is not only a financial risk to the reactor owner, but more importantly, a safety risk to surrounding communities. When degraded steam generator tubes go undetected, they may break, initiating a potentially disastrous sequence of events. The rupture of as few as ten steam generator tubes could result in the meltdown of the reactor fuel rods, potentially releasing catastrophic amounts of radiation into the surrounding communities.

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Ralph Nader, Founder

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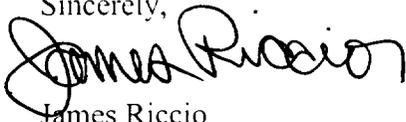
The NRC staff was leaning toward rulemaking and the generic letter because reactor technical specifications were not adequate to ensure safety from new, more severe forms of steam generator tube degradation. However, bowing to industry pressure the NRC never issued the generic letter or the proposed rule. Rather than regulate, the NRC instead deferred to the Nuclear Energy Institute's plan for voluntary self - regulation.

Failing to issue the proposed rule and instead relying upon the Nuclear Energy Institute's steam generator scheme has already resulted in limiting public participation. Rather than being afforded the opportunity for notice and comment rulemaking as contemplated by the Administrative Procedure Act, public input into the regulatory process has been short circuited.

According to an ACRS letter to NRC's Executive Director of Operations, "(i)n December 1997, the industry committed to implement, on a voluntary basis, NEI 97-06, "Steam Generator Program Guidelines." However, when the Indian Point 2 nuclear reactor burst a steam generator tube in February 2000, the NEI scheme still had not been implemented. The failure of the NRC to promulgate regulations to govern steam generator tube integrity and the subsequent failure of the industry to implement its own initiative resulted in an accident 30 miles from New York City.

The leadership at the NRC has shirked its responsibility, it has failed to protect the public health and safety and it has further undermined public confidence. If this is how the NRC intends to regulate it will only further the demise of the nuclear industry and deservedly make the NRC the subject of scorn and ridicule.

Sincerely,



James Riccio

Senior Policy Analyst

Public Citizen's Critical Mass Energy & Environment Program

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November 16, 2000
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NRC Project 692

Chief, Rules and Directives Branch
Division of Administrative Services
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

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Subject: Industry Initiatives in the Regulatory Process

Reference: NEI Letter, A. Marion to Chief, Rules and Directives Branch (NRC),
"Proposed Guidelines for Including Industry Initiatives in the Regulatory
Process (65 FR 53050), letter dated October 16, 2000.

The Reference letter, issued by NEI on behalf of its industry members, submitted comments in response to the proposed NRC guidelines for the use of industry initiatives in the nuclear regulatory framework. These guidelines were published by the staff in a *Federal Register Notice* dated August 31, 2000.

This letter is submitted on behalf of the CEOG who wishes to endorse the comments provided in the referenced NEI letter. These comments underscore the fundamental tenet that the NRC should pursue rulemaking for adequate protection issues, for cost-beneficial safety enhancements, and for imposing new regulatory requirements only when they comply with the discipline of the Backfit Rule (10 CFR 50.109). We concur with NEI's position that the proposed guidelines are unnecessary.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Richard A. Bernier, Chairman
CE Owners Group

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