



Union of Concerned Scientists

December 20, 2000

Chairman Richard A. Meserve
Commissioner Nils J. Diaz
Commissioner Greta J. Dicus
Commissioner Edward McGaffigan, Jr.
Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: COMMENTS ON NUCLEAR FUEL CYCLE FACILITY OVERSIGHT PROGRAM REVISION

Dear Chairman and Commissioners:

During the public workshop on the revised reactor oversight process conducted in January 2000 by the Office of Nuclear Reactor Regulation, Mr. Walter Schwink of the NRC staff introduced himself to Mr. James P. Riccio and me and explained that the Office of Nuclear Material Safety and Safeguards (NMSS) was undertaking a revision of the oversight process for nuclear fuel cycle facilities. Mr. Schwink invited us to participate in the process. Mr. Riccio and I politely declined his invitation on the grounds that we focused our efforts on operating nuclear power plants. If nothing else, Mr. Schwink is persistent. He pushed aside my lame excuses until I agreed to participate in the process until I could find a representative of another public interest group to fill my seat at the table. I did not anticipate difficulty finding someone. After all, there are more public interest groups in the DC area with active concerns about nuclear fuel cycle facilities than there are groups tracking nuclear power plant safety issues.

The search for another public interest group representative proved futile. Mr. Schwink contacted several representatives that I had suggested to him, but was unable to convince any one to attend. I contacted those same representatives and several others without success. I urged colleagues to at least attend one public meeting before making a final decision not to participate, but found no takers. I even pledged UCS support for a group's efforts, in return for its participation. No group wanted to participate under any terms. After attending two of the initial meetings, I reluctantly stopped attending in order to devote that time to nuclear power plant issues.

The recurring theme that I heard while negotiating with other public interest groups was a lack of trust in the NRC staff. Almost every individual that I contacted told me that he or she felt that the NRC staff was only interested in having the public participate as an underhanded way of "legitimizing" the regulatory retreat that was going to occur. No one that I contacted had any confidence that his or her concerns would be handled responsibly by the NRC staff. Given that perception, I can understand why no one volunteered to participate in the nuclear fuel cycle facility oversight process revision effort.

From my own experience with Mr. Schwink and the fuel cycle facility oversight process revision meetings I attended, the perception was not reality in this case. Mr. Schwink professionally handled every concern I raised. Sometimes Mr. Schwink explained to me why some position I was advocating was not viable. At other times he explained that the NRC staff agreed with my concern, but planned to deal with it in a manner different than the one I had recommended. And there were times when Mr. Schwink acknowledged that I had raised a valid new point and explained how it would be addressed. From my observations, Mr. Schwink treated every concern by each stakeholder in this same responsible and professional manner.

Unfortunately, the perception by public interest group stakeholders that NRC public meetings are a sham is preventing them from participating in the fuel cycle facility oversight process revision effort. The most probable cause for the perception is lack of confidence by the public interest groups in the NRC. That lack of confidence is evidenced by the majority of public interest groups boycotting an NRC meeting conducted on August 5, 1999, to discuss issues related to the recycling of contaminated materials. Most of the public interest groups concluded, after considerable internal discussion, that it would not be productive to attend an NRC meeting specifically arranged to examine public interactions. It was such a compelling vote of no confidence that even Florida would have no difficulty reporting the outcome.

Further evidence is found in views by public interest groups on the revised reactor oversight process. UCS is alone in thinking that the revised process is beneficial. All other public interest groups believe that the revised process demonstrates regulatory retreat and an overall reduction in public protection. These disparate views might be due to the fact that UCS participated in more of the NRC public meetings during the revision effort than other public interest groups. Greater participation may have enabled UCS to overcome inherent skepticism when dealing with the NRC staff. Of course, another explanation may be that we are wrong about the value of the revised reactor oversight process.

Whatever the reasons, lack of public participation not only stymies the efforts of Mr. Schwink and others on the NRC staff trying to do the right thing the right way, but also retards public acceptance of NRC efforts. Thus, it is clearly in everyone's best interests to have meaningful public participation in NRC activities. UCS recommends that the Commission direct the NRC staff take immediate actions to ensure that meaningful public participation is the rule and not the exception.

The 1966 Supreme Court decision in the *Miranda v. Arizona* case emphasized that individuals suspected of committing a crime have the right to remain silent when questioned by law enforcement officials. While somewhat of an apples and oranges comparison, it is true that members of the public attending NRC "public" meetings have fewer privileges than suspected criminals. Suspects have the option of waiving the right to remain silent and speaking if they so desire. But members of the public must remain silent at NRC "public" meetings under penalty of removal for uttering a sound. Suspected criminals have

The NRC staff must also provide its public stakeholders with timely and complete responses to their questions and concerns. The standard that UCS advocates in judging "timeliness and completeness" of responses is comparability to the staff's handling of industry questions and concerns. A positive example we can cite is that of the public meeting on license renewal conducted on December 6, 1999, by Mr. Christopher Grimes. In mid-September 2000, the NRC staff released a report documenting how each and every question and comment raised during the meeting was handled. This report shows how my comments, the comments of Mr. Riccio, the comments of NEI, the comments of utility representatives, and the comments of every other stakeholder were handled. Thus, the timeliness and completeness of the NRC's response was the same for all stakeholders. In other words, it was fair.

That fairness doctrine was not applied by the NRC staff when it came to the reactor oversight process. The NRC staff developed a formal process for collecting and responding to comments and questions from industry stakeholders (e.g., the Frequency Asked Questions or FAQ listing on the NRC website). It also developed a formal process for collecting and responding to comments and questions from its internal stakeholders. But the staff never bothered to collect and respond to comments and questions raised by public stakeholders during "public" meetings held across the country on the reactor oversight process. There are questions that I have asked at virtually every opportunity I've had over the past year that remain unanswered today (e.g., the Never Answered Questions or NAQs). Clearly, the timeliness and completeness of staff responses to public stakeholders was vastly different than to industry and internal stakeholders. In other words, it was unfair.

The Commission should direct the NRC staff to respond to routine questions and comments from all stakeholders with comparable timeliness and completeness.

UCS recognizes that it is going to take time for the NRC staff to remedy its public interaction shortcomings and for public interest groups to regain confidence. To accelerate this process, UCS recommends that the Commission direct the staff to conduct a series of public meetings early next year. The scope and agenda for these public meetings would be similar to that of two meetings conducted by Mr. Roy Zimmerman during 1999 about public access to NRC information. Those meetings were very beneficial in dealing with that matter. This time, NRC staff and public interest group representatives could meet to reach a common understanding of the problems and to discuss the status of actions taken to resolve the concerns.

In the meantime, there's no reason to delay the nuclear fuel cycle facility oversight program revision effort. Mr. Schwink and the NMSS staff have made every effort to solicit meaningful public participation during the process. They are taking advantage of the lessons learned from the reactor oversight program revision. Rather than curbing their reform efforts, it would be better to accelerate the staff's efforts to remedy its public interaction shortfalls.

In fact, UCS was discouraged to note the Resources specified in SECY-00-0222 for the fuel cycle facility oversight process revision effort. Two full-time equivalent (FTEs) positions and \$38,000 in FY 2001 and FY 2002 appears too low. The NRC is allocating fewer resources on this safety initiative than UCS, Public Citizen, and the Nuclear Information & Resource Service devote to monitoring nuclear safety. In addition, the reactor oversight process revision effort received far larger resources. Granted that there are 103 operating nuclear power plants and only a handful of fuel cycle facilities, but the level of effort is not linear.

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The fuel cycle facility oversight process revision is extremely important and deserves more resources to ensure that it is completed expeditiously. An effective oversight process is the best protection available for workers and members of the public. The work to date by Mr. Schwink and NMSS suggests that the revised oversight process will be more effective. In particular, the revised process looks like it will place needed emphasis on the hazards posed by the large inventories of toxic chemicals at the fuel cycle facilities. More effective oversight correlates to better protection of both workers and the public. The NRC should make sure that the fuel cycle facility oversight process revision is completed expeditiously, even if it means reallocating FTEs from some or all of the various burden reduction programs. After all, burden reduction only saves pennies while more effective oversight saves lives.

Sincerely,

David Lochbaum
Nuclear Safety Engineer

Enclosure: Slides for Commission briefing