



Union of Concerned Scientists

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Mr. David Meyer, Chief
Rules and Directives Branch
Office of Administration, Mail Stop T6-D59
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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Rules and Directives
Branch
NRC

SUBJECT: COMMENTS ON REDUCING UNNECESSARY REGULATORY BURDEN WHILST MAINTAINING SAFETY

Dear Mr. Meyer:

On behalf of the Union of Concerned Scientists, I respectfully submit the attached comments regarding reducing unnecessary regulatory burden while maintaining safety.

Sincerely,

David Lochbaum
Nuclear Safety Engineer
Washington Office

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UCS attended the day-long public workshop conducted on May 31, 2001, by the NRC staff related to this effort. During that workshop, Mr. Neill Howey commented that the Illinois Department of Nuclear Safety provide formal comments in January 2001 that included the observation that there was a rationale behind the existing regulations that absolutely must be fully explored and understood if regulations are to be relaxed without compromising safety. Throughout the workshop, UCS heard reminder after reminder of how sensible this IDNS comment was in this matter. We are concerned that in its haste to satisfy the industry's demands for bona fide signs of progress, the NRC staff will streamline the exploration for and subsequent understanding of the real reasons for the regulations and thus make well-intended but safety-adverse changes. Mr. Mark Cunningham of the NRC staff alluded to this potential when he remarked during the workshop that many of the staffers involved in the creation of the regulations have retired or left the agency such that getting to the true bases is extremely difficult. Perhaps, but relaxing regulations without fully understanding their underlying bases amounts to little more than experimentation. The NRC must not conduct nuclear plant experiments under the guise of burden reduction.

Answers to specific questions from the NRC's *Federal Register* notice:

1. ***What aspects of these initiatives interfere with the NRC ability to maintain safety or increase public confidence?***

Every single aspect of these initiatives interferes directly with the NRC's ability to maintain safety, unless it can be reasonably argued that the effort expended now will reap safety dividends later.

Any initiatives undertaken by the NRC staff to reduce unnecessary regulatory burden are inherently counter-productive to safety, at least initially, because they distract the NRC's attention and resources away from ongoing activities and initiatives that have a direct safety payback. From a ridiculously long list of examples, consider the settlement agreement recently reached between the NRC staff and the owner of the Perry nuclear plant. This agreement involved an uncontested violation of 10 CFR 50.7, Employee Protection, that happened back in July 1997. The NRC announced its initial determination in May 1999 and announced the final resolution of this matter in May 2001. Or consider the agreement yet to be reached between the NRC staff and the owner of the Watts Bar nuclear plant. In April 1998, the US Department of Labor (DOL) determined that the plant owner had unlawfully discriminated against a worker who raised concerns about the ice condenser. In April 2001, the DOL re-determined this point in ruling against the plant owner's appeal. The NRC has yet to take any action for this violation of 10 CFR 50.7. Or consider the petition for rulemaking (PRM-26-2) submitted by Mr. Barry Quiqley in September 1999 involving working hour limits. Or consider the petition for rulemaking (PRM-30-62) submitted by UCS in August 1999 involving training on employee protection. Or consider that virtually every NRC inspection at the Indian Point 2 nuclear plant reveals problems, either repeats of previously



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identified problems or brand new problems. The NRC has been singularly unsuccessful in "encouraging" this plant to improve its safety performance. Or consider the fact that despite promulgating a decommissioning rule in 1997, the NRC has had to handle every subsequent decommissioning with exemptions and waivers. Clearly, that four-year old rulemaking did not meet the NRC's expectations, yet the agency's pace to repair that damage has been glacial. These, and numerous other initiatives, are working their way slowly through the NRC's bureaucratic morass. These initiatives have the very real potential for improving or at least restoring safety levels at nuclear plants. But they are being relegated to a slower pace by the NRC staff's emphasis on burden reduction initiatives.

Thus, any initiative that takes NRC staff attention and resources away from pursuing corrections or improvements to safety is by its very nature going to interfere directly with the NRC's ability to maintain safety.

The NRC has failed to make the case that the burden reduction efforts now will lead to better focus on safety in the future. On the contrary, by failing to specify where the staff resources will be robbed in order to facilitate the burden reduction efforts, the public can reasonably surmise that areas such as safety inspections will be cut. And once these areas are cut, it is highly doubtful that they will be restored. Thus, one can expect that the burden reduction efforts will compromise safety levels both now and in the future.

With respect to public confidence, consider the level of effort undertaken by the agency to fix the ADAMS catastrophe. The NRC stop sending copies of plant-specific material to local public document rooms near nuclear facilities. ADAMS was then inflicted upon a poor, unsuspecting public in late 1999. It was readily apparent that the public's ability to access relevant documentation took a huge step backward. Nearly 18 months later, ADAMS is still broken. ADAMS was supposed to provide "instant" access to docketed material dated after November 30, 1999, and to provide bibliographic reference to docketed material before that date. The first portion of this role remains impaired. The second portion of this role was essentially abandoned by the NRC staff.

Thus, any initiative that provides plant owners with relief (i.e., the whole burden reduction gambit) in parallel with NRC efforts—albeit unintentional—that provide the public with additional undue burden (i.e., ADAMS) cannot possibly increase public confidence. The NRC should make fixing ADAMS as high a priority as making plant owners happy via burden reduction.

Lastly, the Atomic Energy Act and the Energy Reorganization Act as amended direct the Nuclear Regulatory Commission to protect public health and safety and provide for the common defense. The entire burden reduction efforts is therefore extracurricular to the NRC's legislated mission and should therefore be curtailed as expeditiously as possible. If the



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NRC wants to go around ensuring that nuclear plant owners turn a profit, the agency is free to ask the Congress to revise its enabling legislation to include that role.

2. ***Will implementation of these initiatives improve regulatory efficiency, effectiveness, and realism?***

Given UCS's views on the matter as articulated in the response to Question 1, commenting on the "realism" of the staff's efforts seems surreal. Fantasy sports leagues have been in vogue in recent years. Apparently, fantasy regulation is now being piloted.

While it is theoretically possible that some efficiency improvements will be realized, it seems more likely that the net effect of the burden reduction initiatives will be to reduce staff effectiveness (assuming it's possible). For example, the risk-informing Part 50 initiatives are all voluntary. Some plant owners might just opt to adopt all of them, some plant owners might try some of them, and other plant owners might stick with what they've got. The NRC will be to develop inspection procedures and standard review plans and all other regulatory paraphernalia to cover both very wide extremes and a diverse middle. This regulation diffusion cannot make the NRC's efforts more efficient and more effective.

3. ***Beyond this meeting and the request for comments, how can stakeholder participation in these initiatives be enhanced?***

When the burden reduction initiative is risk-informed, the NRC must make the plant-specific risk assessments publicly available. The agency must stop making regulatory decisions affecting the lives of millions of Americans in a vacuum.

The NRC must fix ADAMS or re-open the local public document rooms if the agency really wants public participation. If the agency only wants the allusion of public participation, then a few more brochures and day-long public work-shops can be used as an alternative.

The NRC should not take precipitous action using the direct final rule process since this virtually guarantees the public cannot participate in a meaningful manner.

4. ***Which areas being pursued will not likely be fruitful to stakeholders, or otherwise have a negative impact on stakeholder needs?***

If "fruit" is represented by larger bonuses to nuclear plant managers and increased earnings for nuclear plant stockholders, then the NRC's primary emphasis on burden reduction efforts will be among the most fruitful efforts in US history.



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If "fruit" is represented by safety levels at operating and permanently shutdown nuclear plants, then the NRC's primary emphasis on burden reduction efforts will be among the least fruitful efforts in US history.

5. *Are ongoing and future activities to reduce unnecessary burden appropriately prioritized? Which activities should receive the highest priority and why?*

All of the activities currently captured under the burden reduction program should be prioritized equally. Work should commence on these activities the first working day after ADAMS is fixed or the local public document rooms are re-opened.

6. *Are there any other opportunities that have not been recognized or being pursued at this time. Identify: (a) The regulation or portion thereof that should be evaluated; (b) possible improvements to the regulations; (c) the basis for the proposed reduction including the potential impact on safety, public confidence, regulatory effectiveness and efficiency; and (d) the estimate dollar cost saving per year.*

UCS can suggest no other activities to add to the list of burden reduction efforts that should be tabled.

7. *What advancements in technology would help NRC better meet its performance goal of reducing unnecessary burden on stakeholders?*

The NRC should pursue information technology that would enable its internal and external stakeholders to search for, review, and print out agency records. In other words, the NRC should find something like ADAMS only one that works.

8. *What new areas of regulatory research may be warranted to advance technology that could better serve these initiatives?*

UCS does not believe that further regulatory research is warranted into areas that the NRC staff should not pursue (i.e., burden reduction efforts).