

10 CFR 50.12

October 8, 2001  
2130-01-20205U.S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Washington, DC 20555-0001Subject:       Schedular Exemption from 10 CFR 50, Appendix E, Section IV.F.2.c -  
                  Biennial ExerciseOyster Creek Generating Station (Oyster Creek)  
Facility Operating License No. DPR-16  
NRC Docket No. 50-219

Pursuant to the requirements of 10 CFR 50.12(a), Oyster Creek Generating Station (Oyster Creek) requests a temporary one-time exemption from the requirements of 10 CFR 50, Appendix E, Section IV.F.2.c regarding the conduct of a full participation emergency preparedness exercise in 2001. These regulatory requirements direct the performance of a biennial exercise of the Oyster Creek Emergency Plan including full participation by offsite authorities. This schedular exemption is being requested as a result of the ongoing national security threat in the United States, and the response, recovery, and other continuing offsite agency activities associated with the September 11, 2001 attacks on the World Trade Center.

Oyster Creek had scheduled a full participation biennial exercise for October 16, 2001. This scheduled exercise has been postponed based on discussions with the Federal Emergency Management Agency (FEMA), the New Jersey Office of Emergency Management (NJOEM), and other local government agencies. These offsite agencies have agreed to defer the full participation exercise of the Oyster Creek Emergency Plan to calendar year 2002 in light of present circumstances that are beyond our control. This exemption would allow Oyster Creek to conduct a biennial exercise of the Emergency Plan in calendar year 2002 on a date that is agreeable between Oyster Creek, the NRC, the Federal Emergency Management Agency (FEMA), and other affected offsite agencies. The rescheduled date is expected to be established at the December 2001 Emergency Preparedness Scheduling Workshop involving NRC Region I sites. It is requested that NRC grant this exemption on an expedited basis but no later than December 31, 2001.

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The attachment to this letter provides the detailed basis and justification for this exemption request and addresses the exemption requirements of 10 CFR 50.12.

If you have any questions or require additional information, please do not hesitate to contact us.

Very truly yours,



Michael P. Gallagher  
Director, Licensing & Regulatory Affairs  
Mid-Atlantic Regional Operating Group

Attachment

cc: H. J. Miller, USNRC Regional Administrator, Region I  
H. N. Pastis, USNRC Senior Project Manager, Oyster Creek  
L. A. Dudes, USNRC Senior Resident Inspector, Oyster Creek  
J. Picciano, FEMA Region II, Acting Regional Director  
K. J. Hayden, State of New Jersey Office of Emergency Management,  
Acting Commanding Officer  
File No. 01076

**ATTACHMENT**

**I. Justification for 10 CFR 50, Appendix E, Section IV.F.2.c Scheduling Exemption Request**

The following information provides the basis for the exemption request from the requirements of 10 CFR 50, Appendix E, Section IV.F.2.c to defer the full participation biennial exercise of the Oyster Creek Emergency Plan from October 16, 2001 to calendar year 2002 on a date mutually agreeable to Oyster Creek, the NRC, and other affected offsite agencies.

**II. 10 CFR 50.12 Requirements**

The requested exemption to allow deferral of the full participation biennial exercise of the Oyster Creek Emergency Plan from October 16, 2001 to calendar year 2002 meets the criteria of 10 CFR 50.12 as addressed below. 10 CFR 50.12 states that the Commission may grant an exemption from requirements contained in 10 CFR 50 provided that:

1. The requested exemption is authorized by law:

No law exists which precludes the activities covered by this exemption request.

2. The requested exemption does not present an undue risk to the public health and safety:

The requested exemption is a one-time schedule exemption to allow deferral of the full participation biennial exercise of the Oyster Creek Emergency Plan from October 16, 2001 to calendar year 2002. The previous full participation biennial exercise of the Oyster Creek Emergency Plan was performed on October 5, 1999. The rescheduled exercise will be conducted such that the interval between biennial exercises would, at the most, be 38 months and 26 days, which is only slightly outside the parameters of the existing general policy and practice.

As referenced above, the previous Oyster Creek full participation exercise was conducted on October 5, 1999. The results of this exercise determined that the overall performance of the emergency response organization demonstrated that onsite emergency plans are adequate and that the organization is capable of implementing these plans (reference NRC Inspection Report No. 50-219/99-06, dated November 22, 1999). One exercise weakness involving technical support center communications was identified and prompt corrective actions were

implemented. The State of New Jersey and local governments have maintained radiological emergency preparedness by fully participating in the October 5, 1999 exercise. Corrective actions have addressed the one area requiring corrective action involving a facsimile machine problem at a local community.

Subsequent to the October 5, 1999 full participation exercise, Oyster Creek has conducted emergency response drills on March 29, 2000, May 11, 2000, May 17, 2000, May 18, 2000, and an annual exercise on September 20, 2000. The May 11, 17, and 18, 2000 drills were specifically conducted as proficiency enhancing drills for new emergency response team personnel. The September 20, 2000 annual exercise included active participation by the New Jersey Office of Emergency Management (NJOEM). These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR 50, Appendix E, Section IV.F.2.b. Overall performance throughout these drills and exercises demonstrated successful implementation of the Emergency Plan and its Implementing Procedures. Issues identified during these drills, exercises, and associated critiques are being resolved under the Oyster Creek corrective action program. Based on our assessment of drill and exercise performance, there will be no decrease in safety as a result of this exemption.

Additionally, Oyster Creek conducted a training drill on July 11, 2001, a pre-exercise drill on September 4, 2001, and an additional pre-exercise drill on September 24, 2001. The State of New Jersey and local governments have maintained radiological emergency preparedness by participating in the September 4, 2001 drill. Offsite agencies have completed, without issue, all of the out-of-sequence exercise demonstrations, encompassing FEMA Objective Nos. 15, 16, 17, 18, 19, 20, 21, and 22, in conjunction with the previously planned October 16, 2001 full participation exercise. Completion of these exercise demonstrations provides added assurance of emergency response preparedness.

On a continuing basis, measures will be taken to maintain emergency preparedness at Oyster Creek. The existing training and drill schedule currently in place for emergency response activities will remain in place and adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. This includes annual training, requalification, and participation drills for onsite emergency responders. These measures will maintain an acceptable level of emergency preparedness during this period.

Based on the present national security threat, there is an elevated level of plant security in place as well as public and plant personnel sensitivity to any unusual activities. Therefore, the performance of an Emergency Plan Exercise may result in undue stress and risk to the general public and plant personnel. The removal of this risk is a benefit to the public health and safety. Additionally, the offsite local, state, and federal government agencies that are required to participate in the Oyster Creek biennial exercise are directly participating in the response, recovery, and other continuing activities associated with the September 11, 2001 attacks on the World Trade Center. Continued support of these ongoing efforts by the affected offsite local, state, and federal government agencies provides a benefit to the public health and safety. It is also in the best interest of the public to allow these government agencies to fully focus on the current national security threat without any unnecessary distractions. Therefore, this exemption does not present an undue risk to the public health and safety.

3. The requested exemption will not endanger the common defense and security:

The common defense and security are not endangered by this exemption request.

4. Special circumstances are present which necessitate the request for an exemption to the regulations of 10 CFR 50, Appendix E, Section IV.F.2.c:

Pursuant to 10 CFR 50.12(a)(2), the NRC will consider granting an exemption to the regulation if special circumstances are present. This exemption meets the special circumstances of paragraphs:

(a)(2)(ii) – demonstrates that the underlying purpose of the regulation will continue to be achieved;

(a)(2)(iv) – would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption;

(a)(2)(v) – would provide only temporary relief from the applicable regulation and licensee has made good faith efforts to comply with the regulations and;

(a)(2)(vi) – there is present any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

10 CFR 50.12(a)(2)(ii): The underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.c is to ensure that emergency response organization personnel are familiar with their duties and to test the adequacy of emergency plans. The intent of this requirement is also met by the scheduled Emergency Plan participation drills and exercises, which are performed in excess of the regulatory requirement and provide a benefit by allowing for more opportunities for training of response personnel. These previous drills and exercises have adequately demonstrated the capability of onsite and offsite personnel. Therefore, application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

10 CFR 50.12 (a)(2)(iv): The requested exemption will result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption. Based on the present national security threat, there is an elevated level of plant security in place as well as public and plant personnel sensitivity to any unusual activities. Therefore, the performance of an Emergency Plan Exercise may result in undue stress and risk to the general public and plant personnel. The removal of this risk is a benefit to the public health and safety. Additionally, the offsite local, state, and federal government agencies that are required to participate in the Oyster Creek biennial exercise are directly participating in the response, recovery, and other continuing activities associated with the September 11, 2001 attacks on the World Trade Center. Continued support of these ongoing efforts by the affected offsite local, state, and federal government agencies provides a benefit to the public health and safety. It is also in the best interest of the public to allow these government agencies to fully focus on the current national security threat without any unnecessary distractions.

Therefore, the requested exemption will result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption.

10 CFR 50.12(a)(2)(v): The requested exemption would provide only temporary relief from the applicable regulation and the licensee has made a good faith effort to comply with the regulation. The requested exemption is a one-time schedule exemption to allow deferral of the full participation biennial exercise of the Oyster Creek Emergency Plan from October 16, 2001 to calendar year 2002. The rescheduled exercise will be conducted in a time frame that is only slightly outside the parameters of the existing general policy and practice. Future full participation exercises for Oyster Creek will be performed on the existing biennial schedule and are not affected by the requested exemption. Oyster Creek has diligently worked to plan, coordinate, and conduct the scheduled

October 16, 2001 full participation exercise to satisfy the requirements of 10 CFR 50, Appendix E, Section IV.F.2.c. The full participation of affected offsite organizations had been established and coordinated and continued until the ongoing involvement of offsite agencies in the response, recovery, and other activities associated with the September 11, 2001 attacks on the World Trade Center was identified. The conditions necessitating the requested exemption could not have been foreseen and are beyond the control of Oyster Creek.

Therefore, the requested exemption would provide only temporary relief from the applicable regulation and the licensee has made a good faith effort to comply with the regulation.

10 CFR 50.12(a)(2)(vi): There is present any other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. The offsite local, state, and federal government agencies that are required to participate in the Oyster Creek biennial exercise are directly participating in the response, recovery, and other continuing activities associated with the September 11, 2001 attacks on the World Trade Center. Continued support of these ongoing efforts by the affected offsite local, state, and federal government agencies is in the best interest of the public to allow these government agencies to fully focus on the current national security threat without any unnecessary distractions.

Therefore, there is present other material circumstances not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

### **III. Environmental Assessment**

#### **1. Environmental Impact of the Proposed Action:**

The biennial full-participation emergency exercise would not be conducted for Oyster Creek, during 2001, if the requested exemption is approved by the NRC. Whether or not the exercise is conducted, the environment is not impacted since neither case involves the release of radioactive or non-radioactive effluents. In addition, the NRC has determined that an environmental impact statement for 10 CFR 50, Appendix E, in which the requirement for conducting the biennial full-participation emergency exercise is contained, was not required (45 FR 55413, August 19, 1980). Therefore, not conducting the biennial full-participation emergency exercise as required by the regulation will not have an impact on the environment.

2. Alternatives to the Proposed Action

The previous section provides the basis for concluding that there are no environmental effects which would result from the approval of the requested exemption. Accordingly, any alternatives with any environmental impact need not be evaluated.

3. Alternative Use of Resources

This exemption request, if granted, does not involve the use of any resources not previously considered in the Final Environmental Impact Statement for Oyster Creek.

4. Proposed Finding of No Significant Impact

Based upon the foregoing environmental assessment, it is concluded that the approval of this exemption request will not have an affect on the quality of the environment.

**IV. Conclusion**

As demonstrated above pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present as demonstrated above.

### SUMMARY OF AMERGEN COMMITMENTS

The following table identifies commitments made in this document by AmerGen. (Any other actions discussed in the submittal represent intended or planned actions by AmerGen. They are described to the NRC for the NRC's information and are not regulatory commitments.)

COMMITMENT	COMMITMENT DATE OR "OUTAGE"
Conduct a full-participation biennial exercise of the Oyster Creek Emergency Plan.	Calendar Year 2002
The existing training and drill schedule currently in place for emergency response activities will remain in place and adjusted as necessary to ensure the readiness of both onsite and offsite emergency response personnel. This includes annual training, requalification, and participation drills for onsite emergency responders.	Calendar Year 2002
Future full-participation exercises for Oyster Creek will be performed on the existing biennial schedule and are not affected by the requested exemption.	Calendar Year 2003