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# CITIZENS AWARENESS NETWORK

August 27, 2002

Mr. E. William Brach  
Spent Fuel Project Office  
Office of Nuclear Material Safety and Safeguards  
U. S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: PROPOSED DIRECTOR'S DECISION ON 2.206 PETITION REGARDING  
IRRADIATED FUEL DRY CASK STORAGE AT THE JAMES A. FITZPATRICK  
REACTOR

Dear Mr. Brach:

By letter dated August 13, 2002, you offered the petitioners the opportunity to submit comments on the Proposed Director's Decision on our 2.206 petition for emergency enforcement action with regard to the dry cask storage program for irradiated fuel at the James A. FitzPatrick reactor. We appreciate the Petition Review Board's decision to grant two of our demands: to accept our demand for information and have all documents related to FitzPatrick's dry storage program placed on the docket; and to submit our petition to the Office of the Inspector General for review of the Spent Fuel Project Office's compliance in regard to NRC regulations in terms of design changes, licensing, amendments, exemptions, and ALARA in its permitting process with regard to the use of dry cask storage at FitzPatrick.

We have reviewed the proposed decision and find it an inadequate response to the primary request of our petition, that is, to "demonstrate that the proposed fuel storage program presents no increased risks to national security or worker or public health and safety beyond what is contemplated in the certificate of compliance and General License, pursuant to § 72.212(4)-(5)" (February 21 petition to NRC by Citizens Awareness Network and New York-Public Interest Research Group). The Proposed Director's Decision:

- 1) contains factual inaccuracies and misrepresentations;
- 2) lacks sufficient rigor, specificity, and documentation for the public to be confident in the NRC's evaluation of our safety concerns; and

**THE EXPERIMENT IS OVER**

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- 3) casts further doubt on the NRC's regulation of dry cask storage, especially the application of 10 CFR 72.48.

The Proposed Decision responds to 13 specific issues we raised that support our concerns and our request for enforcement action. The Petition Review Board (PRB) concludes in each and every case that "there is no safety significant concern related to this item in the petition" (pp. 3, 4, 5, 6, 7, 8, 9). While we are unsatisfied with the PRB's response to most of our concerns, two of these (#9 and #12) must remain open because the PRB has failed to prevent any evidence to support its claim there is no safety significance to the issues we have raised.

#### **I. Factual Inaccuracies and Misrepresentations**

Issue #2 has to do with the NRC's withholding information about the design changes from the public. The PRB acknowledges that the design problem for using the HI-STORM casks at FitzPatrick was not mentioned at the public meeting held in Oswego County on December 13, 2000, after NRC staff were made aware of the problem during a tour of FitzPatrick earlier that day. In response, the PRB claims that the purpose of the meeting was to discuss the regulatory program for dry cask storage: "Had a member of the public asked a question during the meeting regarding cask movement, NRC staff could have responded or referred the question to Entergy" (4).

This statement is factually incorrect. Members of the public, Mr. Judson included, asked questions about the movement of the casks at that meeting, including the safe load path analysis, the radiation exposure of workers loading the casks, and the use of the HI-TRAC 100 transfer cask. With regard to the choice of the HI-STORM 100 transfer cask, the NRC staff did defer to FitzPatrick managers to explain that weight limits on the crane or building structure precluded use of the HI-TRAC 125 transfer cask. However, both NRC and Entergy failed to mention the fact that the cask was too large to be moved out of the fuel handling building and its use would require modification of the design or of fuel handling procedures. At the very least, this issue would have been an important example of how the NRC regulatory process would apply to the dry storage program at FitzPatrick.

Members of the public also asked about regulatory approvals Entergy would require and opportunities for the public to intervene. NRC staff repeatedly emphasized that, under the general license, FitzPatrick would require no additional oversight or regulatory approvals to implement dry cask storage at FitzPatrick, once the seismic qualifications and safe load path analysis had been satisfactorily completed. NRC's clear implication at the meeting was that this matter was merely one of processing paperwork, less significant than a technical specification change. At the time of the meeting, NRC knew that there were significant challenges facing the cask design and fuel handling procedures, which could even require a license amendment. Contrary to the PRB's claims, NRC had the opportunity to notify the public and failed to do so.

The PRB attempts to cover up for a much more complicated and pervasive problem undermining the NRC's credibility. The NRC staff's default position in dealing with the public is to withhold information about technical matters and safety problems for fear of justifying the public's concerns about nuclear power. This culture of obfuscation precludes transparency in the regulatory process and undermines the democratic safeguards built into the NRC's mandates and regulations.

In the case of issue #1, which has to do with the NRC's prior knowledge of the design changes, the PRB claims that "NRC did not know that the [HI-STORM] overpacks would require modification for use at FitzPatrick," and that "[t]he NRC first became aware of the planned modifications when FitzPatrick applied for a different exemption on August 24, 2001" (3). These statements are unconvincing. The PRB acknowledges that NRC has been aware that "the [HI-TRAC] transfer cask was too large to be moved out of the fuel handling building in a standard configuration" since December 13, 2000, when NRC staff were given a tour of the FitzPatrick site (3). The lack of a paper trail documenting Entergy's intention to modify the casks is insufficient to convince the public that the NRC was unaware of the licensee's predicament, or it indicates a significant lack of oversight and regulatory involvement.

## **II. Issues that Must Remain Open**

In response to our request that NRC require an ALARA evaluation of the use of the HI-TRAC 100 rather than the HI-TRAC 125 (issue #9), the PRB merely says, "The licensee stated in a conference call with the PRB and the Petitioners on March 29, 2002, that they will not be using the HI-TRAC 100 transfer cask. They have procured and will be using the HI-TRAC 125 transfer cask" (7). The NRC provides no evidence or documentation to support Entergy's statement, which contradicts several previous statements made up to that point. FitzPatrick management defended the use of the HI-TRAC 100 at the December 13, 2000 public meeting in Oswego County, and Dr. Andrew Kadak reported in March 2000 that FitzPatrick officials planned to use the HI-TRAC 100. It is shocking that NRC lacks documentation or regulatory procedures to verify Entergy's statements – particularly where workers' radiation exposure and the Commission's own ALARA regulations are concerned. The NRC's reluctance or inability to independently verify Entergy's statements makes it impossible for the public to have confidence in the PRB's answer to our petition, the NRC's regulation of dry cask storage, and the agency's protection of worker health and safety.

In response to our concerns about the increased risk of terrorism posed by the design of the cask storage facility, the PRB's statements are inconsistent. On the one hand, the PRB does not address the specific issues raised by the Petitioners. It merely states that "the Commission has issued a series of advisories to licensees, including those operating independent spent fuel storage installations, to augment certain aspects of their security plans and capability." It also refers to the Commission's ongoing evaluation of safeguards and structural vulnerabilities since

the September 11 attacks. However, neither of these statements constitutes evidence demonstrating that the dry casks facility does not increase the site's vulnerability to terrorism. The PRB has presented no support for its conclusion that "there is no safety significant concern" with regard to this issue. It would be more accurate to say that NRC cannot determine at this time whether there is a significant safety issue related to terrorism. This issue should remain open pending completion of the generic review of terrorism risks and revision of the design basis threat.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Judson". The signature is fluid and cursive, with a prominent initial "T" and a long, sweeping underline.

Tim Judson, Organizer  
Citizens Awareness Network  
140 Bassett St.  
Syracuse, NY 13210