

November 5, 2002

Mr. David Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street, Suite 600
Washington, D.C. 20006-3919

Dear Mr. Lochbaum:

I am writing in response to your e-mail correspondence on August 13, and August 30, 2002, concerning NRC staff participation in recent meetings conducted by the American Nuclear Society (ANS) and the Institute for Nuclear Power Operations (INPO), respectively, and to follow up on our telephone conversation of September 25, 2002. First, I appreciate the candid and informative discussion of your concerns and thank you for your patience while waiting for the opportunity for us to discuss the matter. As you know, our September 10, 2002, plans to address your concerns were unavoidably changed by elevation of the Homeland Security Advisory System threat condition status to Orange (High) on that day.

In correspondence with you on March 22, 2002, I noted that the working level meetings between the staff and members of industry since September 11, 2001, have included discussions of current protective measures and potential vulnerabilities at reactor sites and other nuclear facilities which must be treated as sensitive unclassified Safeguards Information. Your e-mail correspondence of August 30, 2002, cites access to safeguards information which was granted to some employees of the Nuclear Energy Institute. The discussion asks why "...safeguards clearance for a plant site gives that person free access for safeguards clearance for all sites." The short, twofold answer is that NRC does not provide a "safeguards clearance," and there is no such blanket access to information. 10 CFR Part 73.1(a)(7) states that "This part prescribes requirements for the protection of Safeguards Information in the hands of any person, whether or not a licensee of the Commission, who produces, receives, or acquires Safeguards Information." Part 73.21(c) further stipulates, in part, that "...Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless that person has an established "need to know" for the information..." The language goes on to define groups of persons whose duties would routinely require access to Safeguards Information because they are directly related to the responsibility for performance according to the terms of the license, government, or providing response to requests for assistance in safeguards-related emergency situations. While Part 73.1 makes provision for requirements for the protection of Safeguards Information to extend to non-licensees, Part 73.21 requires Commission approval for access to Safeguards Information by non-licensees who do not fall into the aforementioned groups. The staff is currently preparing options and formats for communicating with the general public, including non-governmental organizations.

Some organizations represent facility licensees before the Commission in an advocacy or oversight role with respect to performance of their licensed responsibilities. The agency, therefore, necessarily sponsors clearances for some of their individuals to obtain access to

classified information on a need to know basis; that need being commensurate with fulfilling licensed responsibilities. The clearance process, which involves background and criminal history checks by other agencies, is lengthy and must be prioritized according to the need to know. As you also may appreciate, there is currently a large number of applications being processed. Because some organizations may represent many licensees, their cleared employees may, at times, receive insight into sensitive or classified information pertaining to a number of different sites. Clearance for information related to one site, however, does not automatically convey or imply clearance for all sites. Information dissemination is still controlled by the staff on a need to know basis, and individuals may be asked to leave a meeting or portions of a meeting for which that need to know is not demonstrable.

The NRC continues to consider the staff's participation in industry sponsored conferences, such as those sponsored by ANS, to be an appropriate forum for stakeholder interface and to be an historically effective vehicle for outreach to licensees and their representatives. Interaction on this level unfortunately does not lend itself to the case-specific type of discussion that might be characteristic of a regularly scheduled, working level meeting. The events of September 11, 2001, have not diminished the Commission's commitment to public stakeholder involvement; although they have recast the format and content of certain security-related communication. The Chairman, in his July 19, 2002, response to your request for resumption of security-related interaction between the staff and public stakeholders, confirmed the continuing position of the Commission that public involvement, including non-governmental organizations, in the regulatory process is beneficial; and that the staff is including consideration of your recommendations in its development of options for the Commission's consideration. In the interim, while the staff cannot hold these meetings in a public forum, we remain receptive to written comments, recommendations, and concerns provided by non-licensee stakeholders who do not have access to Safeguards Information.

To the non-licensee public stakeholder, today's restrictions on security-related working level public meetings may be perceived as an inconsistency or as indicative of a "double standard." The former is, perhaps, the situation today; and we are working to inform the Commission of options for improvements in our ability to interact with stakeholders at all levels on these matters. The latter, please be assured, is not the case. I welcome your insights into opportunities for interaction on security-related matters at meetings being hosted by interested non-governmental organizations, consistent with the Agency's security obligation.

Sincerely,

/RA/

Glenn M. Tracy, Director
Division of Nuclear Security
Office of Nuclear Security
and Incident Response

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