

From: "Brendan Hoffman" <bhoffman@citizen.org>
To: <NRCREP@nrc.gov>
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Subject: Comments: FY 2004-2009 Draft Strategic Plan

To Whom It May Concern:

Comments are attached as a Microsoft Word document.

Brendan Hoffman
Organizer, Nuclear Energy & Waste
Critical Mass Energy and Environment Program
Public Citizen
p: 202.454.5130
f: 202.547.7392
bhoffman@citizen.org
www.citizen.org/cmep

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L.W. Barnett (LWB)
M. Amstutz (15551)



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Joan Claybrook, President

December 31, 2003

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

Re: Comments on U.S. Nuclear Regulatory Commission FY 2004-2009 Draft Strategic Plan

To Whom It May Concern:

Public Citizen is a national, non-profit, consumer advocacy organization based in Washington, DC. Public Citizen was founded in 1971 and is supported by more than 150,000 members across the country. Our Critical Mass Energy and Environment Program works closely with local, state-level, and national organizations on nuclear energy and nuclear waste issues. Our comments on the U.S. Nuclear Regulatory Commission (NRC) FY 2004-2009 Draft Strategic Plan (DSP) follow.

- **Long term safety outcomes too lenient.** The long term goals of NRC's safety program, according to pages 5 and 11 of the DSP, are:
 - 1) No acute radiation exposures resulting in fatalities.
 - 2) No releases of radioactive materials that result in significant radiation exposures.
 - 3) No releases of radioactive materials that cause significant adverse environmental impacts.

We find these goals to be less than ambitious and feel NRC is setting the bar too low. A relatively large exposure to radiation is necessary in order to result in immediate fatalities and, absent a catastrophic accident, it is unlikely to occur. However, this goal makes no mention of radiation exposures resulting in sickness, cancers, genetic mutations, or other harmful effects. By setting such an easily achievable standard, NRC is guaranteeing success in meeting that standard without necessarily ensuring public health and safety in the process. An ambitious and demonstrated commitment in writing to elimination of radiation exposures, even if that goal is in practice unlikely to be fulfilled, would send a strong message to the public and would help contribute to a rejuvenation of NRC's currently-lacking safety culture.

The other goals similarly set the bar too low. Rather than calling for no *significant* radiation exposures or environmental impacts, why not aim for no exposures or environmental impacts from radioactive contamination at all? Likewise, rather than calling for no significant exposures from radiation *releases*, why not strive to prevent all unnecessary radiation exposures in the course of daily handling and use of such materials? Use of the term "releases" implies a focus on singular events where substantial quantities of radiation escape; equal weight should be given to the low-

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level but constant seepage of radiation and radioactive materials from nuclear plants and facilities, as radiation exposure is effective cumulatively.

- **NRC has no responsibility to guarantee interim storage facilities** where such facilities are not in the best interest of public health and safety. On page 7 of the DSP, one finds the sentence, “Sufficient interim storage capacity *must* be made available until a repository is licensed and ready to receive high-level waste,” (emphasis added). In order to meet NRC’s “preeminent goal” of “ensuring the protection of public health and safety,” the licensing of interim storage facilities must only be undertaken on the condition that it should not include any central repositories which would involve transportation of high-level nuclear waste for storage on a temporary basis, only to require transport again when a permanent repository opens. This is in keeping with the General Accounting Office’s recent recommendation that transportation of high-level spent nuclear fuel be kept to an absolute minimum so as to reduce the potential for an accident to the greatest extent possible.¹

In the absence of a permanent central repository, NRC has no obligation to license whatever interim storage plan comes along; without a plan that adequately guards public health and safety, NRC instead has an obligation to require the shutdown of any nuclear facilities which do not have the capacity to store additional spent fuel until a permanent central repository opens.

- **Quality assurance program needed.** On page 7 of the DSP, NRC pledges to “ensure the safety of spent fuel transportation casks. These casks must be evaluated, tested, and certified as being capable of storing and transporting spent fuel...” Perhaps more specificity is needed in whether this applies only to the design phase of spent fuel cask licensing or if NRC intends to pursue a quality assurance program to oversee contractors hired to design and build such casks.

Past experiences have shown that even casks designed to meet NRC standards are not always constructed in such a way that they meet the design specifications. One example is the Holtec cask, constructed by U.S. Tool & Die, which was found by an Exelon quality assurance leader in June-July 2000 to have nine different quality assurance violations, calling into question the cask’s durability. Better quality assurance oversight by the NRC could help uncover any other instances of shoddy construction and help prevent future occurrences.

- **More follow-up inspections needed.** On page 8 of the DSP, NRC pledges “expanded oversight and enforcement, including issuing orders for corrective action, issuing shutdown orders, imposing civil penalties and/or criminal prosecution, or, when required, suspending or revoking the license.” However, it doesn’t mention an increase in follow-up inspections to enforce orders for corrective action. The need for such inspections was highlighted by the General Accounting Office (GAO) in a September 2003 report on nuclear plant security.² The report found an over-reliance by NRC on “non-cited violations,” which do not require NRC inspectors to verify that a problem has been corrected.

More consistent follow-up could ensure more timely response when problems are identified. While the necessary increases in follow-up inspections will undoubtedly require a budget larger than the

¹ United States General Accounting Office, *Spent Nuclear Fuel: Options Exist to Further Enhance Security*; July 2003; GAO-03-426.

² United States General Accounting Office, *Nuclear Regulatory Commission: Oversight of Security at Commercial Nuclear Power Plants Needs to Be Strengthened*; September 2003; GAO-03-752.

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current one, the agency's regulatory ability is only as strong as its ability to enforce the regulations it creates; this should be a top priority.

- **NRC must remain impartial.** In safety strategy #2 (page 8), NRC pledges to “develop, maintain, and implement licensing and regulatory programs to resolve issues of radioactive waste management, including the high-level waste repository.” As the federal agency responsible for ultimately approving or rejecting a high-level waste repository design proposal, to take on an active role of resolving issues of waste management presents a conflict of interest. The eventual approval of a repository design should rest solely on the merits of the proposal, not on an agency mandate to solve the problem of waste disposal. Responsibility for resolving those problems lies with the U.S. Department of Energy and the nuclear industry; it is NRC's job only to ensure that the problems are solved without compromising public health and safety.
- **Better oversight of licensed engineers.** On page 10 of the DSP, NRC describes a plan to participate in domestic standards organizations such as the American Society of Mechanical Engineers and the Institute of Electrical and Electronics Engineers to develop standards better integrated with the internal practices of the nuclear industry. Since members of these organizations must be licensed by state licensing boards and are subject to the oversight and disciplinary actions of those boards, perhaps it would be beneficial for NRC to do more to encourage state licensing boards to adequately discipline wrongdoers, both individual and corporate, as well as jointly develop more robust protections for whistleblowers, both licensed engineers and not.

By encouraging nuclear industry employees to put public health and safety further ahead of company loyalty, odds increase dramatically that potential disasters will be identified and exposed in their early stages. In almost all cases, ranging from the Davis-Besse near-miss to the space shuttle Columbia, there are at least several people who are well aware that something could go seriously wrong, yet whether due to fear or self-doubt are not vocal enough about it. More should be done to encourage early warnings without fear of retribution.

- **Reevaluate “safeguards” classification.** While we recognize that terrorism and sabotage of nuclear facilities pose a very real and serious threat, the use of the “safeguards” classification for information on nuclear facilities seems at times designed more to prevent the public from accessing harmless yet potentially embarrassing information rather than honestly protecting against terrorism or other threats. We request that more consideration be given to safeguards information to better determine whether its release poses a significant threat to public health and safety or the common defense and security, and release for public scrutiny all that does not. Democracy is founded on principles of open government, and the public at large—not just qualified stakeholders—should have the ability and opportunity to review pertinent information in order to make their own determinations regarding the risks and benefits of nuclear facilities.
- **NRC must pledge further openness and public participation.** On page 17 of the DSP, NRC pledges to “actively engage the public,” and will, “for example...inform residents of the agency's role in the regulatory process, and the schedule involved in the licensing process.” It continues on page 18 that “openness will be achieved successfully when public feedback on major agency actions indicates that the public understands the agency's Mission and has had opportunities to effectively express its views.” These actions do not constitute active engagement of the public, nor will openness have been achieved successfully if this is all that takes place. Successful openness can only come when the public's views and comments are made as part of the official record of decision and are taken into consideration in crafting the final rule. Simply allowing the opportunity

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for comment and then subsequently ignoring those comments does not constitute active engagement.

Similarly, NRC's pledge to "maintain and update the external website with timely information" (page 18) does not go far enough to ensure sufficient openness. In addition to simply presenting timely information, that information must be organized in a logical and easily retrievable way. NRC's current website design is in desperate need of an update, especially in two areas: first, the website's search function clearly uses outdated technology, resulting in search results that are often overwhelming, irrelevant, and/or unorganized, especially with regards to the ADAMS documents. Software exists to dramatically increase the capabilities of the site's search function to provide more relevant and better organized information; NRC has an obligation to the public to make this upgrade.

Second, the site's database of Event Notification Reports needs to also be reorganized. Currently it is searchable only by date, meaning it is extraordinarily time-consuming to compile information based on other criteria such as the plant where the event took place or the type of event. Providing the ability to sort the information by these additional criteria would be a relatively simple matter for NRC to undertake, yet would dramatically improve the public's ability to access important information. As the main interface between NRC and the public, the website should be top-notch and provide a rewarding, rather than frustrating, experience.

- **NRC is a regulator, not an accountant.** On page 20 of the DSP, this sentence appears: "The NRC is largely funded through fees, and is committed to improving its programs and processes to help control the financial burden imposed on the regulated community." This sentence seems to imply that NRC would not impose a regulation on the industry if it were too financially costly. Once again, the job of NRC is only to ensure the highest safety standards, not to solve problems for the nuclear industry. If a choice exists between sacrificing safety to ensure the viability of a nuclear operator and protecting the public at all costs, the public must be protected. The fees paid to NRC by industry are a statutory requirement and do not come with an implication that NRC will work on behalf of the industry. NRC is and must continue to be a servant of the public.
- **Ensure proper rulemaking procedures.** On page 21 of the DSP, as an effectiveness strategy, NRC pledges to "improve NRC regulation by adding needed requirements and eliminating unnecessary requirements." We wish to emphasize that eliminating requirements deemed unnecessary by NRC should follow the same procedures that are followed upon creation of new or changed regulations. This includes publication of a notice of proposed rulemaking in the *Federal Register*, a public comment period, and publication of notice of a final rulemaking.

I appreciate your attention and considered response to these comments. Should you have any further questions or desire more information, please don't hesitate to contact me at (202) 454-5130. Thank you.

Sincerely,

Brendan Hoffman
Organizer, Nuclear Energy & Waste
Critical Mass Energy and Environment Program

Ralph Nader, Founder
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