

February 18, 2004

Mr. Raymond Shadis
Post Office Box 76
Edgecomb, Maine 04556

Dear Mr. Shadis:

I am responding to your facsimile and email dated January 21, 2004, to Mr. Charles E. Mullins, Office of the General Counsel, U.S. Nuclear Regulatory Commission (NRC). In your facsimile and email you indicated that you have been seeking to establish the status of NUREG-1738, "Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants," as an official U.S. NRC document and requested that the NRC respond to your questions regarding this NUREG.

With respect to your first question regarding whether the study remains an official document of the NRC, you have already received a response to this question from Mr. Mullins. As his letter noted, NUREG-1738 is still considered an official NRC report and is publicly available in ADAMS under accession number ML010430066. You should note that this NUREG is comprised of technical and administrative reports prepared by the staff or agency contractors, but does not include or revise regulations or describe acceptable methods or techniques to meet the Commission's regulations. Regulations are promulgated via the Code of Federal Regulations. In addition, regulatory guides are issued to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, or techniques used by the staff in evaluating specific problems or postulated accidents; however, regulatory guides are not substitutes for regulations, and compliance with them is not required. The Commission has not endorsed NUREG-1738 as part of the considerations underlying any rule or regulation.

Two Commissioners have stated publicly (speeches available through NRC web site) that NUREG-1738 is too conservative. The staff used many conservative assumptions in preparing the report to simplify the analyses. Therefore, the results of the report should be used only in such a way that the report's underlying assumptions are satisfied and the conservatisms provide an additional margin of safety. Other applications of the report's results may produce invalid conclusions.

With respect to your second question of whether the NRC has promulgated any official notice or determination that the public and/or other agencies of the government should not place reliance on the representations contained within NUREG-1738, this NUREG documents a study undertaken to support development of a risk-informed technical basis for reviewing exemption requests and a regulatory framework for integrated rulemaking. Other users of the report's results should carefully consider the underlying assumptions used in the preparation of the report when developing conclusions.

R. Shadis

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With respect to your third question of whether Congress or any Committee of Congress has determined that it is necessary to replace NUREG-1738 with a study and/or report from the National Academy of Science, Congress has mandated (via an appropriations earmark) that the NRC contract with the National Academy of Sciences for an independent review of the overall safety of interim spent fuel storage in pools and dry casks. NRC staff results, including NUREG-1738, will likely be considered in that review.

With respect to your last question regarding whether the NUREG was peer reviewed, NUREG-1738 did not receive a formal peer review. However, public comments on the document were solicited. The requests for public comment were consistent with the intended purpose of NUREG-1738 in supporting potential rulemaking and exemption activities.

I hope that this adequately addresses your questions. If you need further clarification on this matter, please contact me at 301-415-1395.

Sincerely,

/RA/

Herbert N. Berkow, Director
Project Directorate IV
Division of Licensing Project Management
Office of Nuclear Reactor Regulation

R. Shadis

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