

EDO Principal Correspondence Control

FROM: DUE: 10/07/04

EDO CONTROL: G20040617
DOC DT: 09/01/04
FINAL REPLY:

Lawrence T. Christian
New Cumberland, Pennsylvania

Eric J. Epstein
TMI-Alert

TO:

Commission

FOR SIGNATURE OF :

** GRN **

CRC NO: 04-0566

Zimmerman, NSIR

DESC:

Evacuation Plans for Child Care Centers,
Preschools and Nursing Home Residents

ROUTING:

Reyes
Virgilio
Kane
Merschhoff
Norry
Dean
Burns/Cyr
Dyer, NRR
Collins, RI

DATE: 09/13/04

ASSIGNED TO:

CONTACT:

NSIR

Zimmerman

SPECIAL INSTRUCTIONS OR REMARKS:

Ref. G20040452.
Coordinate response with NRR and response to
PRM 50.79.

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Sep 11, 2004 12:47

PAPER NUMBER: LTR-04-0566

LOGGING DATE: 09/10/2004

ACTION OFFICE: EDO

AUTHOR: Mr. Larry Christian

AFFILIATION: PA

ADDRESSEE:

SUBJECT: Request NRC seek action for serious violations to Federal Regulations by the Commonwealth of Pennsylvania

ACTION: Direct Reply

DISTRIBUTION: RF

LETTER DATE: 09/10/2004

ACKNOWLEDGED No

SPECIAL HANDLING: Immediate release via SECY/EDO/DPC.

NOTES:

FILE LOCATION: ADAMS

DATE DUE: 10/7/04
~~10/10/2004~~

DATE SIGNED:

EDO --G20040617

From: Michael Jamgochian
To: Sheila McKelvin
Date: 9/10/04 10:44AM
Subject: Fwd: Please forward to the Commissioners and to Sue Gagner

Sheila, Please do not docket this correspondence as part of PRM50-79. Also, please do not docket this as a comment letter to PRM50-79. Please feel free to call me with any questions at 415-3224. Thanks, Mike

CC: Catherine Haney; David Skeen; Debra Schneck; Emile Julian; Eric Leeds; Frank Gillespie; Kathryn Barber Nolan; Nader Mamish; Paul Lohaus; Rosemary Hogan; Sue Gagner; Thomas Combs; Tim McGinty

From: Larry Christian <ldc@pa.net>
To: Michael Jamgochian <mtj1@nrc.gov>
Date: 9/10/04 8:46AM
Subject: Please forward to the Commissioners and to Sue Gagner

Mr. Jamgochain,

As lead contact listed on my petition, I'm sending you a copy of the letter we drafted to the NRC's Commissioners outlining our concerns about PA's violations of their Federal RERP Laws.

A reporter received a call from NRC Public Relations Person: Sue Gagner indicating they have no record or knowledge of our letter and also indicated that she can not find anyone at the NRC who knows about it.

I've attached this letter as a .pdf file to this email.

If possible, could you please forward this email and attachment to appropriate people and see that they receive this information?

Thank you,

Larry Christian
Author of PRM 50-79

SUBJECT: We here by inform The U.S. Nuclear Regulatory Commission that the Commonwealth of Pennsylvania is in violation of Federal Regulations (10 CFR 50.47; 10 CFR 50.54; 10 CFR Part 50 Appendix E; 44 CFR 350) because Pennsylvania has improperly planned for and/or left out special populations from their Radiological Emergency Response Planning (RERP) Requirements.

Date: 9/1/2004

Chairman Nils J Diaz, Ph.D.
Commissioner Edward McGaffigan, Jr.
Commissioner Jeffrey S. Merrifield
U.S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001

Dear Commission Members:

As authors of petition for rule making PRM 50-79, we are writing the U.S. Nuclear Regulator Commission to inform, and seek immediate action from, the Commission for serious violations to the following Federal Regulations by the Commonwealth of Pennsylvania:

10 CFR 50.47; and
10 CFR 50.54; and
10 CFR Part 50 Appendix E; and
44 CFR 350.

The Commonwealth of Pennsylvania is in violation of these Federal Regulations for the following reasons:

1) Pennsylvania has had no planning requirements for nursery schools and day care centers until June 24, 2004 even though these Federal Laws have required them to do so since 1986.

2) Pennsylvania's current law (which was passed in July 2004 to fix this oversight) is still in violation because it requires only for-profit nursery schools and day care centers to have plans leaving a large portion of preschool children without planning.

3) Pennsylvania is also in violation because it's current law requires the day care centers and nursery schools, not the State and local government agencies, to be responsible for all preschoolers' radiological emergency response planning needs.

- These Federal Regulations require State and local governments, not the populations residing inside 10-mile Emergency Planning Zones, to provide emergency off site planning to insure the public is adequately protected in the event of a radiological emergency.

- Therefore it is the State and local governments who host the nuclear power plants responsibility, not the child care facilities, to insure these Federal Regulations are meet.

4) Pennsylvania is also in violation because we can find no evidence that Pennsylvania currently provides emergency planning for nursing homes and group homes for the physically or mentally challenged.

5) These Federal Regulations outline the requirements to provide Radiological Emergency Response Plans (RERP) that provide "reasonable assurance" that the public is adequately protected in the event of a nuclear accident as a condition to own and operate a nuclear power utility license. No such assurance can be made at this time in the Commonwealth of Pennsylvania.

These Federal Regulations state the following:

1. The Requirements to provide "reasonable assurance that adequate protective measures can be taken" are listed here:

10 CFR 50.47 Emergency plans

(a)(1) Except as provided in paragraph (d) of this section, no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. No finding under this section is necessary for issuance of a renewed nuclear power reactor operating license.

(2) The NRC will base its finding on a review of the Federal Emergency Management Agency (FEMA) findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented, and on the NRC assessment as to whether the applicant's on site emergency plans are adequate and whether there is reasonable assurance that they can be implemented. A FEMA finding will primarily be based on a review of the plans. Any other information already available to FEMA may be considered in assessing whether there is reasonable assurance that the plans can be implemented. In any NRC licensing proceeding, a FEMA finding will constitute a rebuttable presumption on questions of adequacy and implementation capability.

2. The following Guidance Documents and General Memorandums listed under the authority of these Federal Regulations require planning for "those persons whose mobility may be impaired due to such factors as institutional or other confinement" can be found in these documents:

NUREG0654r1/FEMA REP-1 "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; and

FEMA-REP-14 "Radiological Emergency Preparedness Exercise Manual"; and

FEMA GM 24 "Radiological Emergency Preparedness for Handicapped Persons"

GM EV-2 "Protective Actions for School Children"

As outlined in these documents the following groups must be included:

Public and private schools; and
Public and private day care centers, nursery schools; and
Nursing homes; and
Group homes for the physically or mentally challenged; and
Correctional facilities

3. The organizations responsible for providing "adequate protective measures" are defined as the "Appropriate State, Local and Federal Agencies" are listed here and include:

10 CFR Part 50 Appendix E Emergency Planning and Preparedness for Production and Utilization Facilities

The applicant's emergency plans shall contain, but not necessarily be limited to, information needed to demonstrate compliance with the elements set forth below, i.e., organization for coping with radiation emergencies, assessment action, activation of emergency organization, notification

procedures, emergency facilities and equipment, training, maintaining emergency preparedness, and recovery. In addition, the emergency response plans submitted by an applicant for a nuclear power reactor operating license shall contain information needed to demonstrate compliance with the standards described in § 50.47(b), and they will be evaluated against those standards. The nuclear power reactor operating license applicant shall also provide an analysis of the time required to evacuate and for taking other protective actions for various sectors and distances within the plume exposure pathway EPZ for transient and permanent populations.

A. Organization

The organization for coping with radiological emergencies shall be described, including definition of authorities, responsibilities, and duties of individuals assigned to the licensee's emergency organization and the means for notification of such individuals in the event of an emergency. Specifically, the following shall be included:

7. Identification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.

8. Identification of the State and/or local officials responsible for planning for, ordering, and controlling appropriate protective actions, including evacuations when necessary.

4. The penalties for violation of these Federal Requirements are as follows and include:

10 CFR 50.54 Conditions of licenses

(s)(1) Each licensee who is authorized to possess and/or operate a nuclear power reactor shall submit to NRC within 60 days of the effective date of this amendment the radiological emergency response plans of State and local governmental entities in the United States that are wholly or partially within a plume exposure pathway EPZ, as well as the plans of State governments wholly or partially within an ingestion pathway EPZ.^{1, 2} These plans must be forwarded to the Director of Nuclear Reactor Regulation, by appropriate method listed in § 50.4, with a copy to the Administrator of the appropriate NRC regional office. Generally, the plume exposure pathway EPZ for nuclear power reactors shall consist of an area about 10 miles (16 km) in radius and the ingestion pathway EPZ shall consist of an area about 50 miles (80 km) in radius. The exact size and configuration of the EPZs for a particular nuclear power reactor shall be determined in relation to local emergency response needs and capabilities as they are affected by such conditions as demography, topography, land characteristics, access routes, and jurisdictional boundaries. The size of the EPZs also may be determined on a case-by-case basis for gas-cooled nuclear reactors and for reactors with an authorized power level less than 250 MW thermal. The plans for the ingestion pathway EPZ shall focus on such actions as are appropriate to protect the food ingestion pathway.

(ii) If after April 1, 1981, the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency (including findings based on requirements of appendix E, section IV.D.3) and if the deficiencies (including deficiencies based on requirements of appendix E, section IV.D.3) are not corrected within four months of that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate. In determining whether a shutdown or other enforcement action is appropriate, the Commission shall take into account, among other factors, whether the licensee can demonstrate to the Commission's satisfaction that the deficiencies in the plan are not significant for the plant in question, or that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons for continued operation.

5. Funding and financial responsibility for providing off-site planning is listed here...

From Federal Register / Vol. 45, No. 162 / Tuesday, August 19, 1980 / Rules & Regulations

IX. FUNDING

In view of the requirements in these rule changes regarding the actions to be taken in the event State and local government planning and preparedness are or become inadequate, a utility may have an incentive, base on its own self interest as well as its responsibility to provide power, to assist in providing manpower, items of equipment, or other resources that the State and local governments may need but are themselves unable to provide. The Commission believes that the view of the President's Statements of December 7, 1979, giving FEMA the lead role in off site planning and preparedness, the question of whether the NRC should or could require a utility to contribute to the expenses incurred by State and local governments in upgrading and maintaining their emergency planning and preparedness (and if it is to be required, the mechanics for doing so) is beyond the scope of the present rule change. It should be noted, however that any direct funding of State or local governments solely for emergency preparedness purposes by the Federal government would come through FEMA.

Attached are numerous articles and letters that give direct evidence to these violations by the Commonwealth of Pennsylvania.

These articles show Pennsylvania has had no planning requirements for preschool children until this year and that the current requirements are in violation of these laws.

Also attached are letters from the Pennsylvania Emergency Management Agency that show the current PA Government Agencies are negligent and are not following these Federal Laws creating a dangerous and illegal situation in the Commonwealth of Pennsylvania.

Therefore the U.S. Nuclear Regulatory Commission and the Federal Emergency Management Agency cannot provide "reasonable assurance" that adequate protective measures can and will be taken in the event of a radiological emergency in the Commonwealth of Pennsylvania.

FEMA is required to give the State's certified plans to the NRC who then combines them with the State's nuclear facilities on site plans to create the final and complete State certified plan. Since the NRC does not review FEMA's State certifications unless questions are raised regarding the off site plans we must inform you that even though FEMA has approved Pennsylvania's Radiological Emergency Response Plans, they are out of compliance with these Federal Regulations.

Since the U.S. Nuclear Regulatory Commission regulates these Federal Requirements, this letter is seeking immediate action; and to also inform you that the Federal Emergency Management Agency (FEMA) is improperly overseeing and approving United States off site Radiological Emergency Response Plans because FEMA has not been requiring child care and other "special" populations in their certification criteria as required by these Federal Regulations.

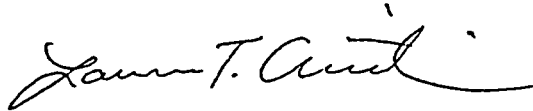
Further, upon a review of comments submitted by other State and Local Government Agencies to Petition PRM-50-79, it is our conclusion that many other states' Radiological Emergency Response Plans have been improperly certified by FEMA.

We now ask the U.S. Nuclear Regulatory Commission to do an in depth review and audit of ALL States' Radiological Emergency Response Plans who are currently certified by FEMA as well as FEMA's current practices for State RERP Certification to insure that all special populations such as: public and private schools, day care centers, nursery schools, preschool child care facilities, nursing homes, group homes for the physically or mentally challenged, as well as all correctional

facilities have not been improperly planned for or completely left out as they have been in the Commonwealth of Pennsylvania for the past 18 years.

We also now ask that the U.S. Nuclear Regulatory Commission intervene and immediately bring Pennsylvania into compliance with these Federal Regulations so that **"reasonable assurance"** that adequate protective measures for all special populations located in Pennsylvania can and will be taken to protect the public in the event of a radiological emergency.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence T. Christian".

Lawrence T. Christian
Author of Petition PRM-50-79
133 Pleasant View Terrace
New Cumberland, PA 17070

A handwritten signature in cursive script, appearing to read "Eric J. Epstein".

Eric J. Epstein
TMI-Alert Chairman
4100 Hillside Road
Harrisburg, PA 17112

Cc: See attached list

Cc:

U.S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001.

NRC Commission
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Commissioner Edward McGaffigan, Jr.
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NRC Office of the Inspector General
Inspector General: Hubert T. Bell

NRC Office of Congressional Affairs
Director: Dennis K. Rathbun
Associate Director: Linda E.
Portner

Federal Emergency Management Agency
Washington, D.C. 20472

Brown, Michael D.
FEMA Under Secretary

W, Craig Conklin
Director Technological Services Division

Pennsylvania Office of the Governor
Harrisburg, PA 17120
Adrian King
Special Assistant to the Governor

Pennsylvania Office of the Attorney General
Harrisburg, PA 17120
Jerry Pappert
Attorney General

Pennsylvania Emergency Management Agency
2605 Interstate Drive
Harrisburg, PA 17110-9364
Director David M. Sanko

Pennsylvania Department of Environmental Protection
Harrisburg, PA 17120
Kathleen Alana McGinty

Pennsylvania Congressman Todd Platts
York County District Office
2209 East Market Street
York, PA 17402
Todd Platts
Lisa Flanagan

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Some Seek Preschool Nuke Evacuation Plans

By Associated Press

August 10, 2003, 10:25 PM EDT

MIDDLETOWN, Pa. -- If an accident or terrorist attack at a nuclear power plant required an evacuation, plans already exist to get school children and nursing home residents out of harm's way.

But preschools and day care centers around nuclear plants aren't required to have evacuation plans, and child-care officials say many don't.

The father of a child who attends a nursery near the Three Mile Island nuclear plant has petitioned the Nuclear Regulatory Commission to require child-care facilities within 10 miles of a nuclear plant to file emergency plans. Critics say the lack of such plans could be problematic -- or dangerous -- if there is an accident or attack.

"I was dumbfounded to find out that our most vulnerable population was left out of the planning," said Larry Christian, the New Cumberland parent who filed the petition last fall with Eric Epstein, member of a nuclear watchdog group. "It angered me quite a bit."

The petition has drawn the support of state Attorney General Mike Fisher, state Rep. Bruce Smith, R-Dillsburg, Lancaster County's Emergency Management Agency and Harrisburg Mayor Stephen Reed.

Smith, whose district includes areas within the 10-mile evacuation zone around TMI, said the NRC needs to update its rules. He noted that day care programs for children are more prevalent now than they were in 1979, the year a portion of the core of Three Mile Island's reactor melted.

The NRC has taken no action on the petition, which the nuclear industry and the Pennsylvania Emergency Management Agency oppose.

"We just don't think that the NRC ... or state government should be establishing rules that usurp a parent's right," said PEMA Director David M. Sanko.

Instead, PEMA is encouraging private child-care centers and nursery schools to voluntarily develop emergency plans and file them with local emergency officials.


Epstein, member of the group Three Mile Island Alert, called Sanko's position "irresponsible" and "pre-9/11."


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NEWS

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Federal mandate sought for preschool evacuation plans

By MARTHA RAFFAELE

The Associated Press

HARRISBURG, Pa. - On the day of the Sept. 11, 2001, terrorist attacks, Larry Christian and his wife decided to pick up their daughter from her nursery school near the Three Mile Island nuclear power plant, just as a precaution.

A week later, Christian asked the nursery school's director how it would be evacuated in the event of an emergency at the plant, the site of the nation's worst commercial nuclear accident in 1979.

"There was no plan. They took an active approach in trying to implement plans, but they were getting no assistance," Christian said. "I had contacted several other agencies ... and surprisingly there were no comprehensive requirements for daycare centers and nursery schools to have evacuation plans."

Christian, a resident of New Cumberland, across the Susquehanna River from Harrisburg, now hopes the federal government will intervene. Last fall, he and the leader of a nuclear watchdog group petitioned the U.S. Nuclear Regulatory Commission to require state and local governments to include nursery schools and daycare centers within 10 miles of nuclear power plants in their emergency preparedness plans.

NRC spokesman Scott Burnell said the agency is reviewing the petition and expects to issue a decision by Nov. 1.

The Pennsylvania Emergency Management Agency formally opposed the petition in January, in the waning days of Republican former Gov. Mark Schweiker's administration, saying preschools are private businesses and should be encouraged to develop such plans on a voluntary basis.

In a follow-up letter sent to Christian in April, PEMA Director David Sanko said current federal guidelines allow private institutions to participate in evacuation plans voluntarily.

"Our recommendation is based on the belief that parental and local involvement with these facilities will have better success than another highly prescriptive federal regulation," Sanko wrote.

More recently, officials in Democratic Gov. Ed Rendell's administration said they were taking several steps to improve preschoolers' safety across the state.

PEMA and the state Department of Public Welfare issued a joint statement Aug. 15 saying the welfare department would "immediately" seek new regulations to mandate broader, "all hazards" emergency plans for child-care centers and nursery schools. The department also would require any facilities receiving state aid to have such plans in place as a condition of receiving the aid.

"It would include the possibility of a nuclear emergency, but it would also include scores of other types of emergencies that could arise," said Tom Hickey, a spokesman for the governor.

Additionally, PEMA is developing "model" emergency preparedness plans to be released in the next several weeks for daycare centers and nursery schools to use as a guide for creating their own plans, Hickey said.

The Rendell administration is reviewing PEMA's opposition, but Hickey declined to say how soon officials may decide whether to change the state's position on the petition.

Christian, whose younger daughter is entering preschool this year, said that, although he views those developments as "definitely a positive thing," he still believes a federal regulation is needed to make sure other states follow suit.

"I think it's great that they're doing something on the state level now, but I still question why they aren't supporting the petition," he said. "This issue's bigger than just Pennsylvania."

On the Net:

Nuclear Regulatory Commission: <http://www.nrc.gov>

Pennsylvania Department of Public Welfare: <http://www.dpw.state.pa.us/>

Pennsylvania Emergency Management Agency: <http://www.pema.state.pa.us/>

August 27, 2003 4:34 PM

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Day-care measure termed deficient

Rendell asks Senate to tweak new law on evacuations

Wednesday, July 14, 2004

BY GARRY LENTON

Of The Patriot-News

A loophole in state emergency preparedness plans that left children in day-care centers uncovered has been made smaller, but is still not closed.

Legislation that Gov. Ed Rendell allowed to pass into law without his signature yesterday requires for-profit day-care centers to develop evacuation plans to be used in an emergency, such as a nuclear disaster or a terrorist attack.

But the measure's failure to cover nonprofit day-care centers, many of them operated by churches, dismayed its supporters and prompted Rendell to ask the state Senate to continue refining the law.

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Separate regulations the Rendell administration implemented last year required all day-care facilities to have an emergency plan by July 1. Child-care advocates, however, are concerned that the regulations, which can be changed at the whim of a new administration, do not carry the same weight as the law.

"I'm glad we now have a law that makes evacuation planning for preschool children permanent," said Larry Christian of New Cumberland, who lobbied for the requirement. "I do hope the legislators and agencies involved can come to an agreement that will broaden the number of children this law will protect."

Christian championed the need for the law in 2003 after discovering that his children's day-care center, which was within a few miles of Three Mile Island.

Federal law requires that state and local officials protect people in the custody of institutions such as schools, nursing homes and prisons. Child-care facilities were not included in the state's emergency plans.

State Sen. Christine Tartaglione, D-Philadelphia, sponsored legislation to correct the problem. At the request of Senate Republicans, her bill was amended to exempt small centers being run from private homes. Because of the state's definitions of day care, that change also exempted nonprofit centers.

The compromise prompted some of the bill's supporters, including Christian, to call on Rendell to veto the measure. Instead, the governor allowed the bill to pass into law without his signature.

But in a letter to the state Senate, Rendell called on lawmakers to send him legislation that would broaden the protection to all child-care operations licensed by the state.

"The president and former Governor [Tom] Ridge ... call on each of us to be prepared in the case of an emergency," Rendell wrote. "Yet, this bill is silent with respect to emergency planning for the evacuation of ... 183,000 children in licensed nonprofit or family-care entities."

Eric Epstein, president of Three Mile Island Alert, who also lobbied for the bill's passage, said it may be possible to refine the measure to include nonprofit centers, but exempt the small centers run from private homes.

For now, Epstein said, the bill "is probably the best we could have hoped for under the situation."

GARRY LENTON: 255-8264 or glenton@patriot-news.com

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Law applies to day care

Emergency response plans are a must-have at for-profit centers.

By TOM JOYCE

Daily Record/Sunday News

Monday, July 19, 2004

Larry Christian's crusade was successful. Sort of.

Christian started about two years ago, trying to get a law passed mandating emergency response plans for day-care centers and preschools. He got the idea when he learned his daughter's nursery school, located in York County, had no such plan despite its proximity to the Three Mile Island nuclear plant. And according to state law, it didn't need one.

Along the way, Christian found some allies, including state Sen. Christine Tartaglione, D-Philadelphia, and Eric Epstein, chair of regional nuclear watchdog group Three Mile Island Alert.

Tartaglione sponsored a bill requiring day-care centers and preschools to have response plans in place for emergencies and natural disasters. The bill also requires the Pennsylvania Emergency Management Agency to develop guidelines and provide assistance if asked.

Last week, that bill became law. Gov. Ed Rendell didn't sign it into law, but he didn't veto it either.

In a letter to the General Assembly, Rendell explained that he had some reservations. According to Rendell's letter, the bill applies only to for-profit day-care centers. In so doing, it neglects 183,000 children in licensed nonprofit centers.

In the letter, Rendell urged the General Assembly to pass more legislation extending the bill's requirements to all of Pennsylvania's day-care centers.

"I believe the parents of the Commonwealth who rely on these entities expect nothing less," Rendell wrote.

Christian said he also would have liked to see a law that applied to all day-care centers. But the fact that the law passed at all is a good sign, he believes, and bodes well for a more extensive one.

"It's nice that everybody's fighting for this," Christian said.

Why doesn't the law apply to nonprofit day-care centers? Neil Cashman, director of legislation for Tartaglione, said it's kind of a judgment call as to whether it doesn't.

The problem, Cashman said, is that Pennsylvania state law classifies for-profit and nonprofit centers under different sections of the public welfare code. The bill specifically refers to one section. From there, Cashman

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said, it could logically be extend to all day-care centers.

Cashman said Tartaglione didn't mean to exclude any children and would be willing to consider any bills officially extending the law's reach.

The bill that passed last week doesn't apply only to emergencies involving nuclear plants, Cashman said. It also could apply, say, to a preschool close to railroad tracks where a train carrying hazardous chemicals could crash. Does the preschool have an evacuation plan? Does it have enough provisions on hand in case an emergency confines the children to the building?

The bill directs PEMA to assist, Cashman said, because preschool employees likely don't have the expertise to consider and plan for such scenarios.

Christian first started with the issue soon after the Sept. 11, 2001, terrorist attacks. He wanted to know what his daughter's nursery school would do to protect the children in case an emergency involving the nearby Three Mile Island plant. Where would they take the children? Where would parents pick them up?

Christian learned that the nursery school, which he declines to name, had no plans. He also discovered that even though schools within a 10-mile radius of nuclear power plants must have an emergency response plan, no such requirement exists for preschools and day-care centers.

In addition to campaigning for a state law, Christian has filed a petition with the federal Nuclear Regulatory Commission, asking that the federal government develop similar regulations.

"I just want to make sure as many children are protected as can be protected," Christian said.

Reach Tom Joyce at 771-2089, 783-2365 or tjoyce@ydr.com.

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PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364



January 10, 2003

DOCKET NUMBER

PETITION FOR RULE MAKING

50-79
(67FR 66588)

DOCKETED
USNRC

28

January 17, 2003 (11:16AM)

Secretary
U. S. Nuclear Regulatory Commission
ATTN: Rulemaking and Adjudications Staff
Washington, DC 20555-0001

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Dear Sir or Madam:

This is in response to your request for public comment published in the Federal Register Volume 67, No. 212/Friday, November 1, 2002/Proposed Rules, specifically 10 CFR Part 50, Docket No. PRM-50-79.

Comments to the Lawrence T. Christian, et. al.; Receipt of Petition for Rulemaking, specifically The Petitioners' Justification:

1. Establishment of Designated Relocation Centers – The petitioners correctly assert that relocation centers are currently required for all elementary, middle, and high school students. They further contend that it is vital that relocation centers be designated for preschoolers. While their position may be laudable it must be remembered that these preschools are private businesses whereas elementary, middle, and high schools are public institutions. Parents are legally required to send their children to public schools unless they opt to enroll them in private institutions. The use of private day care facilities is voluntary on the part of the parents. There is no legal requirement to send children to them. It is strictly a parental option. Forcing these private enterprises, by regulation, to meet the same standards as public schools could be construed as yet another intrusive, unfunded government mandate. This would be no different than changing regulations to force businesses, social organizations, and entertainment venues to designate relocation centers and develop plans and assets to transport their members there.
2. Provision of Designated Transportation; Creation of Working Rosters of Emergency Bus Drivers – The petitioners believe that nurseries and day care centers should be required to have designated busses or vans, drivers, and back-up drivers to transport children out of the EPZ in the event of an emergency. We agree that this is an excellent goal. However, this is an issue that would be better addressed by the parents instead of the NRC. Day care is an option for parents. They pay money for the service and therefore are in an excellent position to choose what is best for their own children. If they feel that a particular day care center or nursery does not meet the safety level they require for their children they have the option of taking their business elsewhere. This applies to any day care center or nursery in the country, including the unlicensed "mom and pop" types, that are found in places other than nuclear power plant EPZs.

Template = SECY-067

SECY-02

3. Use of Assigned and Installed, Approved Child-Safety Seats in the Evacuation of Preschoolers – The petitioners request that the NRC require that children under 50 pounds or 4' 9" in height attending day care centers and nurseries be placed in approved safety seats prior to evacuation. This is illogical in an emergency situation. Numerous kindergarten and early elementary students not meeting these dimensions are safely transported daily. Infants do present a challenge but concerned parents should insist that child care providers have methods in place to safely evacuate their children in any type of emergency. Car seat requirements will be waived in a bona fide emergency. No institution is going to sit still and do nothing while radiation, a chlorine cloud, tornado, or flood passes over them because they lack car seats. Again it is incumbent on concerned parents to ensure the people they voluntarily entrust their children to have the capability to properly keep them safe.
4. Notification to Emergency Management Officials; Annual Site Inspections; inclusion of Day Care Centers and Nursery Schools in Radiological Preparedness Exercises – FEMA-REP-14, dated September 1991, already allows for this if these private institutions agree to participate on a voluntary basis.
5. Use of Identification Cards, School Attendance Lists and Fingerprinting To Keep Track of Children During an Emergency Evacuation – The petitioners' discussion on this subject requires one to accept that parents are leaving their children with care providers who have no idea who they are or who they belong to. This is ludicrous and leaves one wondering how they manage to match the children to their proper parents when they pick them up at the end of the day. Public schools with much larger classes are able to keep track of all their students on a daily basis. Again parents are responsible for placing their children in the hands of care providers that meet their safety requirements.
6. Preparation of Educational Materials for the Parents of Preschoolers – This is a great idea but once again this should be based on the insistence of responsible parents and not the NRC.
7. Stocking KI Tablets and the Preparation of Relevant Educational Materials for the Parents of Preschoolers – This is strictly a parental matter and decision. Additionally there is not a "one size fits all" solution that the NRC could dictate. In states that have accepted KI for the general public the pills are available to parents for family members. Some states have opted to accept the KI and stockpile it rather than pre-distribute it. Others have opted not to accept it. Responsible parents are more capable of deciding what is best for their own children.
8. Radiological Emergency Preparedness Training for Employees of Day Care Centers and Nursery Schools – The petitioners do not specify exactly what type of radiological emergency preparedness training they want day care employees to have. General information found in all of the EPZ telephone books provides

guidance for sheltering and evacuation. It is the same information that is available to the entire general public. Any further training such as that provided to emergency responders would serve no purpose to child care providers because they do not use survey instruments and other detection devices.

9. Phone Listings for Designated Relocation Centers Assigned to Local Day Care Centers and Nursery Schools; Toll-free and 911 Information Lines – Once again this is an issue best resolved between the parents and the child care provider. These are questions any responsible parent should ask prior to placing their children into the business's care. It boggles the mind that a parent would instruct someone else to pick up their child and provide no instructions as to what to do if there is an emergency. The toll free and 911 information lines already exist. During any emergency in this state, affected 911 centers are fully manned and rumor control centers are activated.
10. Creation of Written Scripts for the Public Emergency Broadcast System Which Include Information About Emergency Plans and Designated Relocation Centers for Day Care Centers and Nursery Schools – This is a counterproductive request. Emergency Alert System (EAS) messages are limited to a two minute maximum length and it is voluntary for broadcasters to air them. It would be impossible to list emergency plan information and relocation centers in a message of this length. Parents should have already requested this information from their child care providers. Additionally, it would tend to weaken the importance of an EAS message and the preceding siren alert to use the system to distribute information to the general public that is already provided in telephone books and other brochures. There is no need to tell parents that their children have left their buildings. Evacuation means just that – everyone within the zone is to evacuate.
11. Specialized Evacuation Needs of Preschool-aged Children – The petitioner's points about the special needs of preschool aged children are accurate but are no different than the needs of other children this age in any type of evacuation. Being in the Emergency Planning Zone (EPZ) of a nuclear power plant does not make evacuation any tougher than evacuating infants and toddlers in the event of a chlorine leak or fast moving natural disaster. These children are at no more risk to radiation than any public school student within the EPZ. This is not something that needs addressed with another federal regulation. If truly concerned, parents should be capable of insisting institutions provide for these needs or take their business elsewhere.

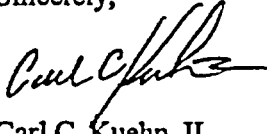
The petitioners give the distinct impression that their goal here is to further anti-nuclear activism. They appear to be concerned only with day care centers and nurseries near nuclear power plants. There is no mention of centers located near chemical plants, transportation routes where hazardous materials are transported, or basic natural hazards that the entire nation is susceptible to on a daily basis. The use of phrases such as "... society as a whole has a moral obligation to make sure that every possible measure is in place to insure the safety and well-being of young

children," merely states the obvious and appears as an effort to inject raw emotion into the discussion.

As the rules exist now, any nursery or day care center may opt to participate in the Radiological Emergency Preparedness program on a voluntary basis. This is sufficient. Ultimately this boils down to a parental decision on what they consider to be a proper level of safety for their own children. This level is bound to vary between families and there is not a "one size fits all" regulation that the government can invent. Obviously the majority of people living in an EPZ are comfortable and feel secure or they would not continue to build, move, and live there. Parents have the option of if and where they send their children for care. It is they who should insist these providers have a viable "all hazards" plan for emergencies that may occur that would affect their children. Any day care center or nursery can get assistance from the county emergency management agency or the utility off-site planners.

We recommend that the petitioner's request be denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl C. Kuehn, II". The signature is fluid and cursive, with a prominent "C" and "K".

Carl C. Kuehn, II
Acting Director

CCK/DRF/bea



PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364



May 19, 2003

Mr. Lawrence T. Christian
133 Pleasant View Terrace
New Cumberland, PA 17070

Dear Mr. Christian:

I am responding to your letter dated April 11, 2003, and in reference to "U. S. NRC Petition for Rulemaking PRM 50-79," on behalf of Governor Edward G. Rendell.

The question you raise is a valid one as day care and nursery school facilities are more plentiful today than twenty years ago. The Pennsylvania Emergency Management Agency (PEMA) has raised this issue with the emergency management professionals, who at the county level, are responsible for disseminating information, implementing program changes and assisting the municipalities within their jurisdictions. Since the early 1980s when the federal guidance on Radiological Emergency Response Preparedness (RERP) was initially established, the Commonwealth has been at the forefront of the national discussion. PEMA continues to lead this effort in conjunction with the eleven counties in the five nuclear power plant Emergency Planning Zones (EPZ) within the Commonwealth. The planning effort is reviewed on an annual basis. The preschool issue is currently under review. The issue is compounded because private businesses are not subject to the same requirements placed on public entities. Additionally, the existing regulatory guidance (PEMA-RI:PI4, dated September 1991) already allows for voluntary participation by private institutions.

PEMA has also reviewed and commented on the petition you authored and filed with the Nuclear Regulatory Commission (NRC). Based on our review, the Commonwealth has recommended the petition be denied. Our recommendation is based on our belief that parental and local involvement with these facilities will have better success than another highly prescriptive federal regulation. We agree the issue is valid. Many of the counties have taken steps to notify and advise preschool facilities on the importance of developing facility emergency plans for all hazards. Operators are encouraged to provide this information to the parents and the municipalities in which they operate. Some municipalities have had preschool facilities incorporated into their municipal planning efforts for years; other have not and more needs to be done.

The Commonwealth will continue to encourage voluntary participation in RERP programs for all interested parties and seek answers to the broader issues concerning "all hazards" planning and protection of all of our citizens.

Thank you for your concern in this matter. If I can provide additional information do not hesitate to contact me.

Sincerely,

David M. Sanko
Director

DMS/HIB/bca



PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY
2605 Interstate Drive
Harrisburg, Pennsylvania 17110-9364



July 30, 2004

Mr. Larry Christian
133 Pleasantview Terrace
New Cumberland, PA 17074

Dear Mr. Christian:

We received your letter inquiring about the provisions that are made in Pennsylvania law and regulation to protect children in day care facilities. As you know, last year the Pennsylvania Department of Public Welfare and this agency initiated actions to address concerns regarding comprehensive emergency planning and preparedness in day care centers. The Department of Public Welfare (which regulates and licenses day care centers) promulgated regulations that require all centers under their purview to develop more stringent emergency preparedness plans. Further, these day care facility plans will be part of the state's regular inspections of the facilities.

In addition, earlier this year the Pennsylvania General Assembly passed Act 2004-73 which codified these regulatory requirements for certain state licensed day care centers and nursery schools. This law, while a good start, does not go far enough to protect those in the care of others. It is important to note that, while not all state licensed or regulated day care centers were included in this legislation, it is the position of this Administration that sufficient legal authority exists for the Department to enforce the existing regulatory order statewide.

In your letter, you grouped your questions into seven categories. Although my responses may prove repetitious, it is probably best to address the questions individually:

(1) Shelter of children during an emergency.

Are child care facilities being provided these shelters by county emergency management officials? Child care facilities are, for the most part, private business entities who, in conjunction with the parents, should assume responsibility for the safety of their charges. Local government will not treat these businesses any differently than it does any other citizen. Especially in rural areas, municipal government simply may not have the resources to provide shelter. In so far as municipal shelters are available, child care providers are encouraged to use them.

On the other hand, "Immediate shelter" and "in place shelter" as discussed in the plan must be within the facility. As stated in the plan, these are to be used when it is unsafe to go outside (severe weather, hazardous materials in the atmosphere, civil disturbance in the area, etc.) Under these circumstances, any kind of government-provided shelter is out of the question.

What are the minimum distances from the EPZ that are going to be required? The daycare plan that is provided on the PEMA website is general, and was never meant to supersede other requirements. Facilities located within the 10-mile "emergency planning zone" of a nuclear power plant should comply with the planning constraints that come with living in that area, and identify a relocation center that's outside the EPZ.

How and by whom are these arrangements being secured? Child care facilities are, for the most part, private business entities who should assume responsibility for their charges along with the parents of the children.

Will public school officials be assisting child care facilities needs by making their relocation centers available for this purpose? In many cases, municipal governments already have agreements with school districts to use their facilities. It would make sense for the day care provider to utilize this if it is available. If the shelters that the municipal government has planned are for some reason unacceptable to the day care provider, that provider may make whatever agreements (s)he feels are necessary.

Are letters of agreement needed/being issued so that there is a record of this for all parties showing agreement to provide these services? There is a place in the plan (Part I, Paragraph 7) called "CONCURRENCE WITH OUTSIDE RESOURCES" where resource providers can sign that they are aware of the requirements placed on them by the plan.

(2) Evacuation of children from the facility.

Are child care facilities being provided transportation by county emergency management officials? Child care facilities are, for the most part, private business entities who should assume responsibility for their charges. As mentioned in the Day Care facilities planning guide that's on PEMA's website "...the municipal emergency management agency may be able to help, but it won't be able to guarantee that you will remain in one group, thus complicating your accountability problems." Child day care providers should coordinate with municipal government and decide whether to use government-provided resources, or to make separate arrangements.

How and by whom are these arrangements being secured? Care of their charges is ultimately the responsibility of the day care provider and the parents of the children.

What special provisions are being made to safely evacuate newborns and infants? Consideration for the special needs of specific charges should ultimately be the responsibility of the business owner and the parents of the children.

Will public school officials be assisting child care facilities needs by making their transportation available for this purpose? In many cases, school district-owned transportation resources are a major part of municipal evacuation plans. Day care providers should coordinate with local emergency planning agencies to determine if they will take advantage of these plans. In those cases where the municipal plans are unacceptable, the day care providers should make whatever

arrangements they feel are necessary to discharge their responsibility for their charges.

Are letters of agreement needed/being issued so that there is a record of this for all parties showing agreement to provide these services? There is a place in the plan (Part I, Paragraph 7) called "CONCURRENCE WITH OUTSIDE RESOURCES" where resource-providers can sign that they are aware of the requirements placed on them by the plan.

(3) Emergency Notification.

Are child care facilities going to be provided notification by emergency management officials during an emergency? Municipalities provide for notification of the general public through the emergency alert system or other means. Some municipalities that contain special hazards include a list of "special facilities" (i.e.: day care homes/centers) that will be notified directly.

Day care providers should find what systems are used in their community, and monitor those systems. We suggest that they use a NOAA weather alert radio and also, obviously, tune to the Emergency Alert System (EAS).

Will emergency management officials be deciding what protective actions each child care facility will take, or is it up to the facility director? If time allows, municipal officials will issue a protective action decision. However, localized emergencies or severe time constraints may dictate that the day care facility operator must choose the most prudent course of action. The sample plan on PEMA's website lists considerations (Part II, Checklist A) that will help the day care provider to make that decision.

How and by whom are these arrangements being secured? As a private business entity, the day care providers, in conjunction with the parents of the children, are responsible for the safety of their charges.

(4) Identification Systems for preschoolers.

What provisions are being required for identification systems for preschool children who are to be relocated during an emergency? This plan creates no additional procedures for identification. The same procedures that are used for normal field trips should suffice. If normal accountability procedures are unacceptable, the day care providers should make whatever arrangements they feel are necessary to discharge their responsibilities. As a caution, it is not recommended to create special procedures for use only during emergencies. New procedures only add to the confusion and the stress placed on the children.

How and by whom are these arrangements being secured? As a private business entity, the day care providers, in conjunction with the parents of the children, are responsible for the safety of their charges.

(5) KI Tablets.

What provisions are being secured for providing KI tablets for child care facilities? The distribution and use of Potassium Iodide (KI) is voluntary. If the day care provider chooses to

Mr. Larry Christian

July 30, 2004

Page 4

distribute KI to its charges (after obtaining the same written authorization from the child's parents as for any other pharmaceutical) it can obtain the pills from the Pennsylvania Department of Health. The commonwealth will conduct an annual KI awareness and distribution campaign.

How and by whom are these arrangements being secured? As a private business entity, the day care providers, in conjunction with the parents of the children, are responsible for the safety of their charges.

(6) Problems getting cooperation and securing provisions outlined with Title 55.

What recourses are child care facilities being provided if they are being denied or having trouble securing outside transportation, relocation and sheltering assistance? As a private business entity, the day care providers are responsible for the safety of their charges. Local governments will provide to them the same levels of protection that are provided to private citizens and other businesses in the community. These must be constrained by the levels of resources available to the municipality.

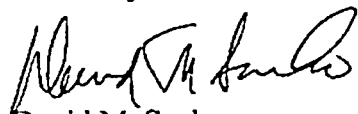
Title 55 does not place any additional requirements on local government. It simply requires that day care providers commit to writing those plans that they have to continue to provide care for children during time of emergency.

(7) Nursery Schools.

Are the protective actions listed in PA bulletin Title 55 required for all child care facilities including those regulated by the PA Department of Education like public and private nursery schools? NO. Those facilities are subject to other regulations promulgated by the state Department of Education. The Department of Education has not announced how it will address Act 2004-73 requirements.

I hope that we've provided adequate answers to your questions. If you have further questions, please feel free to contact me.

Sincerely



David M. Sanko
Director

DMS:JJC