

EDO Principal Correspondence Control

FROM: DUE: 11/17/04 EDO CONTROL: G20040754
DOC DT: 10/26/04
FINAL REPLY:

David Lochbaum
Union of Concerned Scientists

TO:

Commission

FOR SIGNATURE OF : ** GRN ** CRC NO: 04-0689

Kane, DEDH

DESC:

NRC's Temporary Suspension of Public Access to
Records in the Agencywide Documents Access and
Management System (ADAMS)

ROUTING:

Reyes
Virgilio
Kane
Norry
Merschhoff
Dean
Burns/Cyr
Zimmerman, NSIR
Silber, CIO
Brenner, OPA
Cyr, OGC

DATE: 11/02/04

ASSIGNED TO: CONTACT:
EDO Huffert

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with CIO, NSIR and OGC. Commission to
review response prior to dispatch. Response to be
consistent with Rep. Markey (G20040747) and Hauter
(G20040755).

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Nov 02, 2004 14:02

PAPER NUMBER: LTR-04-0689 **LOGGING DATE:** 11/02/2004
ACTION OFFICE: EDO

AUTHOR: David Lochbaum
AFFILIATION: UCS
ADDRESSEE: Nils Diaz
SUBJECT: Public access to records in the Agencywide Documents Access and Management System (ADAMS)

ACTION: Direct Reply
DISTRIBUTION: RF....Commission to review response prior to dispatch

LETTER DATE: 10/26/2004

ACKNOWLEDGED No
SPECIAL HANDLING: Made publicly available in ADAMS via SECY/EDO/DPC

NOTES: Multiple Addressees: Commissioners

FILE LOCATION: ADAMS

DATE DUE: 11¹⁹/~~18~~/2004 **DATE SIGNED:**

EDO --G20040754



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

October 26, 2004

Chairman Nils J. Diaz, Pd.D. (612)
Commissioner Edward McGaffigan, Jr. (247)
Commissioner Jeffrey S. Merrifield (977)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: UNBELIEVABLE, UNFAIR, UNWARRANTED, UNACCEPTABLE NRC ACTION

Dear Chairman Diaz and Commissioners:

On October 25, 2004, the NRC pulled the plug on the public's access to records in the Agencywide Documents Access and Management System (ADAMS). This NRC action is unbelievable, unfair, unwarranted, and unacceptable. We implore you to either reinstate public access to ADAMS immediately or suspend all non-essential licensing actions until public access is restored.

Since November 1999, ADAMS has been essentially the only public source of information about NRC matters. At that time, the NRC stopped sending information to Local Public Document Rooms around the country.

The NRC contends it pulled the plug on ADAMS to allow a review "intended to ensure that documents which might provide assistance to terrorists will be inaccessible." It is undeniably clear from our words and actions spanning years that we fully the need to withhold certain information from the public arena. We have a consistent track record of calling the NRC's attention to documents we found in ADAMS that seemed unsuitable for public consumption. The NRC usually agreed with us and removed those documents from the public arena.

Thus, we are fully supportive of the NRC staff reviewing documents in ADAMS so as to remove those from the public arena containing non-classified yet still useful information to terrorists. However, we are vehemently opposed to the process employed by NRC for this review. This process is unlike the process used by the NRC to remedy vulnerabilities at this nation's nuclear facilities.

After 09/11, then NRC Chairman Richard Meserve announced the commencement of a top to bottom review of nuclear security. The NRC did not require any nuclear facilities to be shut down as this review was being conducted. The probability of a terrorist attack on nuclear facilities was considered sufficiently low as to allow operation during the top to bottom review.

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After the top to bottom review, the NRC staff identified vulnerabilities that it ordered nuclear plant owners in April 2003 to correct. Even with known vulnerabilities, the NRC did not require any nuclear plants to be shut down as the security upgrades were implemented, even though the deadline for making the changes was not until October 2004. Once again, the probability of a terrorist attack was considered sufficiently low as to allow operation during the security upgrades.

Now, the NRC feels that ADAMS may contain records with information potentially useful to terrorists.

Are terrorists more likely to use this information, should any exist, to attack nuclear facilities than they were to attack facilities as the NRC conducted its top to bottom review? No.

If 103 nuclear power reactors could operate in the United States as the NRC conducted its top to bottom security review, why can't ADAMS remain accessible to the public while the NRC conducts its document review? It could, and should.

If 103 nuclear power reactors could operate in the United States after the NRC's top to bottom security review identified vulnerabilities that had not yet been remedied, why can't ADAMS remain accessible to the public as the NRC removes documents deemed to contain sensitive information? It could, and should.

If the public could have free and unfettered access to ADAMS between 09/11 and yesterday, why can't ADAMS remain accessible to the public during the next few weeks while the NRC reviews and removes documents deemed to contain sensitive information? It could, and should.

The NRC could justify sustaining public access to ADAMS during the ongoing review using the same logic it applied to allow nuclear plants to continue operating during and after the top to bottom security review. But the NRC opted not to follow this precedent. Instead, the NRC deliberately chose to subject the public to an unfair, unwarranted, and unacceptable action.

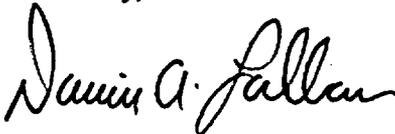
If it is necessary, for some unexplained reason, to really pull the plug on ADAMS while the NRC staff conducts its sensitive document safari hunt, it is equally necessary to suspend all non-essential licensing proceedings. After all, the public cannot participate in such proceedings with access to relevant information blocked. The NRC must immediately suspend all non-essential licensing proceedings until public access to ADAMS is restored.

The NRC staff has already insisted that licensing proceedings can continue during the information blackout because the agency will continue to notice amendment applications, etc. in the *Federal Register*. That's insufficient. Knowing that a proceeding is underway does not enable the public when it cannot access information needed to determine whether to intervene in that proceeding. It's an apparent violation of the Administrative Procedures Act to conduct agency business as proposed by the NRC.

We have first-hand experience with the efficacy of this proposed process. We are supporting the Blue Ridge Environmental Defense League (BREDL) in the mixed-oxide (MOX) case at the Catawba nuclear plant. The applicant revised its security plan, but failed to inform the NRC staff or BREDL about the revision as required under the discovery provisions of the case. UCS's Ed Lyman found the security plan transmittal letter (absent its safeguards attachment) in ADAMS. Clearly, public access to ADAMS is essential because required disclosure of relevant information between parties during proceedings is unreliable.

In summary, the NRC staff should review documents in ADAMS and remove those deemed to contain sensitive information that might be used by terrorists. But it is no more necessary to deny public access to ADAMS during this process than it was to shut down nuclear power plants during the NRC staff's top to bottom review. If for some unfathomable reason it is necessary to deny public access to ADAMS during this process, the NRC must suspend all non-essential licensing proceedings until access is restored.

Sincerely,

A handwritten signature in cursive script that reads "David A. Lochbaum".

David Lochbaum
Nuclear Safety Engineer
Washington Office



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 4, 2004

SECRETARY

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

Dear Mr. Lochbaum:

This is to acknowledge receipt of your letter dated October 26, 2004 to the Commission concerning NRC's suspension of public access to the ADAMS on-line library.

A response is under preparation which will be forwarded to you shortly.

Sincerely,

Annette L. Vietti-Cook