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From: "Dave Lochbaum" <dlochbaum@ucsusa.org>
To: <nrcprep@nrc.gov>
Date: Mon, Nov 8, 2004 2:06 PM
Subject: UCS Comments on reactor oversight process

Good Day:

In response to the November 1, 2004, notice published in the Federal Register, attached is an electronic version of UCS's comments on the reactor oversight process. The original letter and its enclosure are in the mail to Mr. Lesar.

Thanks,

Dave Lochbaum
Nuclear Safety Engineer
Union of Concerned Scientists
1707 H Street NW Suite 600
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691-R63411
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CC: <fxc@nrc.gov>, <MSL@nrc.gov>, <SRB3@nrc.gov>

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Subject: UCS Comments on reactor oversight process
Creation Date: Mon, Nov 8, 2004 2:04 PM
From: "Dave Lochbaum" <dlochbaum@ucsusa.org>

Created By: dlochbaum@ucsusa.org

Recipients

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 owf1_po.OWFN_DO
 SRB3 CC (Scott Burnell)

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MESSAGE	417	Monday, November 8, 2004 2:04 PM
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Return Notification: None

Concealed Subject: No
Security: Standard



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

November 8, 2004

Michael T. Lesar
Chief, Rules and Directives Branch
Office of Administration (Mail Stop T-6D59)
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: SOLICITED COMMENTS ON THE REACTOR OVERSIGHT PROCESS

Dear Mr. Lesar:

On November 1, 2004 (one week *after* the agency denied public access to its Agencywide Document Access and Management System, ADAMS), the Nuclear Regulatory Commission published a notice in the *Federal Register* (Vol. 69, No. 210, pp. 63411-63413) soliciting comments from the public on the reactor oversight process (ROP). It is quite simply unbelievable that the NRC would ask the public for comments *after* the agency intentionally and deliberately took action to deny public access to agency records needed to formulate comments. It is shockingly poor regulatory performance.

On behalf of the Union of Concerned Scientists, it is my duty to formally provide comments in response to the agency's *Federal Register* notice so as to officially exhaust our administrative remedies before we can pursue this agency malfeasance in the courts. My comments are enclosed.

Sincerely,

David Lochbaum
Nuclear Safety Engineer
Washington Office

Enclosure: As stated



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

Solicited Comments on the Reactor Oversight Process

(1) Does the Performance Indicator Program promote plant safety?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(2) Does appropriate overlap exist between the Performance Indicator Program and the Inspection Program?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(3) Is the reporting of PI data efficient?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(4) Does NEI 99-02, "Regulatory Assessment Performance Indicator Guideline" provide clear guidance regarding Performance Indicators?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for

the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(5) Is the information in the inspection reports useful to you?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(6) Does the Significance Determination Process yield equivalent results for issues of similar significance in all ROP cornerstones?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(7) Does the NRC take appropriate actions to address performance issues for those licensees outside of the Licensee Response Column of the Action Matrix?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(8) Is the information contained in assessment reports relevant, useful, and written in plain English?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document

Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(9) Are the ROP oversight activities predictable (i.e., controlled by the process) and reasonably objective (i.e., based on supported facts, rather than relying on subjective judgement)?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(10) Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(11) Is the ROP understandable and are the processes, procedures and products clear and written in plain English?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(12) Does the ROP provide adequate regulatory assurance when combined with other NRC regulatory processes that plants are being operated and maintained safely?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for

the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(13) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(14) Does the ROP ensure openness in the regulatory process?

The NRC must be joking to ask such a question at a time when it has denied the public access to agency records on the reactor oversight process.

(15) Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(16) Has the NRC been responsive to public inputs and comments on the ROP?

Denying public access to agency records on the reactor oversight process is technically a response, but not one that should have occurred or should ever be replicated.

(17) Has the NRC implemented the ROP as defined by program documents?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the

agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(18) Does the ROP reduce unnecessary regulatory burden on licensees?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(19) Does the ROP minimize unintended consequences?

UCS is unable to provide a meaningful response to this question. During the pilot program conducted for the reactor oversight process and during prior annual public comment periods for the reactor oversight process, UCS searched documents in the NRC's Agencywide Document Access and Management System (ADAMS) to answer the NRC's specific questions by citing examples that supported our conclusions. On October 25, 2004, the NRC closed down public access to ADAMS and even disallowed members of the public from perusing documents in the agency's Public Document Room. The NRC cannot expect the public to develop and submit meaningful comments when the NRC denies that public access to agency records on the reactor oversight process.

(20) Please provide any additional information or comments related to the Reactor Oversight Process.

UCS intends to provide comments on the reactor oversight process within thirty (30) days of the NRC's restoring public access to agency records in ADAMS.