

March 14, 2005

The Honorable Thomas F. Reilly  
Attorney General  
The Commonwealth of Massachusetts  
One Ashburton Place  
Boston, Massachusetts 02108-1698

Dear Attorney General Reilly:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated December 7, 2004, in which you urged the NRC to take a close look at the various concerns raised by the National Academy of Sciences (NAS), the House Appropriations Committee, and the Nuclear Security Coalition regarding protection of spent fuel pools from terrorist attacks. You also urged the NRC to consider the risk of terrorism in updating the generic environmental impact statement (GEIS) for license renewal for nuclear power plants.

Security of the Nation's commercial nuclear facilities, including spent fuel pools, is a top priority for the NRC. The NRC will continue to take actions to enhance security at these facilities based on the evolving threat environment in order to protect the public health and safety, promote the common defense and security, and protect the environment. NRC actions include ongoing inspections and assessments of security at NRC-licensed facilities, continuous assessment of terrorist threats (domestic and international), detailed engineering studies to assess potential mitigative strategies, and enhancing the ability to conduct realistic predictions of performance of structures and components.

Following September 11, 2001, the NRC issued orders requiring all nuclear power plant licensees to strengthen security measures. As a result, NRC licensees that operate these facilities, including spent fuel pools, have made numerous enhancements and have significantly strengthened their ability to protect against potential terrorist attacks. Licensees supplemented their protective strategies and security plans, which were reviewed and approved by NRC and implemented by October 29, 2004. Additionally, the NRC has worked closely with Federal, State, and local authorities to enhance response plans for potential terrorist attacks on nuclear power plants. As a result of these and other actions, the Commission is confident that nuclear power plants, including the spent fuel pools, are among the best protected facilities in the national critical infrastructure. The public is adequately protected.

Additionally, in November 2004, following two years of development and trial implementation, the NRC began a revised force-on-force (FOF) testing inspection program that incorporates a mock adversary force that meets rigorous NRC performance standards. The frequency of these FOF tests has been increased so that each nuclear power plant site will be evaluated by the NRC at least once every three years.

With regard to the NAS study on spent fuel storage which was described in the House Energy and Water Appropriations Bill report, the NRC staff has reviewed the NAS report and is taking the NAS study and recommendations seriously. The Commission responded to the NAS report in a report to Congress by letters dated today. The NRC is also taking additional actions as warranted to enhance the safety and security of spent fuel. Additionally, the staff is continuing to review the Nuclear Security Coalition's concerns through the petition review process. The Coalition's petition, which references and supports the concerns raised by the NAS study, requests that the NRC take action to provide stronger defenses for boiling-water reactors with Mark I and II containments and their spent fuel.

On the subject of license renewal, the staff acknowledges your request, along with comments offered by Mr. Milkey of your office on July 17, 2003, to consider the risk of terrorism as NRC updates the GEIS for license renewal for nuclear power plants. The NRC staff is considering your comments as part of the update to the GEIS (NUREG-1437). The GEIS update project is ongoing and is scheduled for completion in 2006. A draft of the updated GEIS will be issued for public comment to ensure that the final product is appropriately informed by stakeholder concerns.

The Commission has considered in several licensing proceedings whether the National Environmental Policy Act (NEPA), requires consideration of intentional malevolent acts, such as those directed against the United States on September 11, 2001. See *Duke Cogema Stone & Webster (Savannah River Mixed Oxide Fuel Fabrication Facility)*, CLI-02-24,56 NRC 335 (2002); and *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, CLI-02-25,56 NRC 340 (2002). In those decisions, the Commission determined that the NRC has no obligation under NEPA to consider such acts. The Commission devotes significant attention to terrorism-related matters through other aspects of the regulatory process. The NRC has stressed its determination to ensure adequate security at the facilities it regulates, and currently is engaged in revising its security regulations and programs.

The Commission appreciates your comments and your interest in nuclear safety and security. If you have any questions, please do not hesitate to contact me.

Sincerely,

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Nils J. Diaz