



NUCLEAR SECURITY COALITION

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Alliance for Nuclear Responsibility
C-10
Cape Downwinders
Citizens Awareness Network
Citizens Campaign for the Environment
Citizens' Environmental Coalition
Citizens' Regulatory Commission
Citizens Resistance at Fermi II
Clean Water Action
Connecticut Coalition Against Millstone
Earth Care
EFMR Monitoring
Environmental Coalition on Nuclear Power
Finger Lakes Citizens for the Environment
Georgians Against Nuclear Energy
Greenpeace
Heart of America Northwest
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Activism Network
Institute for Resource and Security Studies
Justice Through Peace Initiative
Kids Against Pollution
Lakeshore Environmental Action
Massachusetts Citizens Awareness Network
Massachusetts Public Interest Research Group
Nebraskans for Peace
New England Coalition on Nuclear Power
New Jersey Public Interest Research Group
North American Water Office
New York Public Interest Research Group
North Carolina Waste Awareness & Reduction
Network
Nuclear Energy Information Service
Nuclear Free Vermont
Nuclear Information & Resource Service
People's Environmental Network of New York
Physicians for Social Responsibility
Pilgrim Watch
Plymouth County Nuclear Information Committee
Public Citizen
Riverkeeper
San Luis Obispo Mothers for Peace
Sierra Club
Southern Alliance for Clean Energy
Syracuse Peace Council
Three Mile Island Alert
Union of Concerned Scientists
UNPLUG Salem
Vermont Citizens Awareness Network

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**Reply to NRC Director's Decision for the Nuclear Security Coalition
Emergency Enforcement Petition (10 CFR 2.206) Dated August 10,
2004 Regarding the Structural Vulnerability of the GE Boiling
Water Reactor
MARK I & II Spent Fuel Pools**

Mr. Dyer:

The Nuclear Security Coalition, hereafter referred to as the Petitioners, submits our reply to the Proposed Director's Decision dated June 29, 2005 regarding an Emergency Enforcement Petition (10 CFR 2.206) requested on August 10, 2004 that focused on the structural vulnerability of 32 "spent" nuclear fuel storage pools for high-level radioactive waste generated in the General Electric Boiling Water Reactor MARK I and II units (GE BWR).

The Petitioners stated that:

- 1) Nuclear reactors are known terrorist targets -vulnerable to attack;
- 2) Densely -packed spent radioactive fuel pools are especially vulnerable;
- 3) GE Mark I and II Boiling Water Reactors' spent fuel pools are the most vulnerable targets because of their location with respect to ground level and construction. They are elevated in the main reactor building, outside primary containment, without a reinforced superstructure- vulnerable from three-sides and the roof;
- 4) If the water in any densely packed spent nuclear fuel pool is lost, even a year and longer after discharge, the fuel will heat up to the point where its zircoloy cladding will catch fire. The resulting fire will not be able to be extinguished and has the potential of significantly contaminating hundreds of miles downwind.

The Petitioners asked NRC to take the following specific emergency enforcement actions:

- 1) A comprehensive study for addressing structurally vulnerable fuel pools;
- 2) A public presentation of non-safeguard findings;
- 3) Development of a comprehensive plan to address structural vulnerabilities;
- 4) Issue Orders to Mark I and II operators incorporated into the vulnerable fuel storage pools;
- 5) Require future operation to be contingent on addressing the structural vulnerabilities.

The Petitioners' requested actions are factually supported by key findings and recommendations of the National Academy of Sciences in their April 2005 Public Report to Congress, Safety & Security of Commercial Spent Nuclear Fuel Storage which in its redacted form publicly summarizes the classified report provided to Congress in 2004.

These key findings are specifically relevant to the structural vulnerability of the Mark I and II elevated storage pools. Further, the NAS report clearly establishes a model and threshold for publicly presenting non-safeguards and non-classified information related to the public health, safety and security.

The NRC responded by dismissing the findings of the National Academy's report specific to the risk and consequence of elevated storage pools in the Mark I and II BWR stating that the agency "identified a number of areas of disagreement with the NAS Committee's conclusions" including "some scenarios that are unreasonable" and "NRC staff also disagreed with some NAS recommendations and indicated its conclusion that they lacked a sound technical basis."¹ NRC then denied the Petitioners' requested enforcement actions as supported by these NAS findings, accordingly, stating "the technical matters [as identified by NAS] discussed in Chairman Diaz's March 14, 2005 letter need no further elaboration in this Director's Decision."²

Given that the NAS Committee has not retracted, revised or reversed any of its findings, conclusions and recommendations related to the public health, safety and security, it is NRC that has established a significant and genuine dispute involving the scientific and technical matters of the NAS findings and conclusions pertinent to the Petitioners' requested emergency enforcement actions as supported by same NAS findings and conclusions.

The Petitioners submit this evidence of a genuine and unresolved dispute as new information in support of the requested emergency enforcement actions in the August 10, 2004 petition.

NRC cannot simply dismiss the Petitioners' basis of fact and requested actions which are supported in large part by National Academy's study – as well as the National Academy's study. A standard of review requires that NRC demonstrate with facts, not as they do with broad brushed opinions, that no reasonable person could have reached the same conclusions as did the NAS Committee's experts.

The Petitioners further raise this failure to meet a reasonable standard of review as an important new issue in the matter of addressing the final disposition of the requested enforcement actions of this petition.

¹ Letter from Commissioner Nils Diaz to Senator Pete Domenici, March 14, 2004, U.S. Nuclear Regulatory Commission Report to Congress on the National Academy of Sciences Study on the Safety and Security of Commercial Spent Nuclear Fuel Storage, (ML050280428)

² Proposed Director's Decision Under 10 CFR 2.206, J.E. Dyer, Director, NRR, U.S. NRC, June 29, 2005, p. 5

The United States Congress asked the National Academy of Sciences to provide an independent scientific and technical analysis on the safety and security of the commercial spent nuclear fuel storage including the GE BWRs that are the subject of the emergency enforcement petition and the Proposed Director's Decision. The National Academy's report strongly supports the basis of the Petitioners' requested actions specifically with regard to the BWRs, namely, the structural vulnerability of the elevated spent nuclear fuel storage pools and the associated risks, consequences and need for mitigation. The Petitioners contend that it is now the findings, conclusions and recommendations of NAS that are presumed to be correct.

Because of the Congressional mandate, the NRC, and not the public, has the burden of proving that the NAS conclusions are wrong. It is now the NAS conclusions, and not those of the NRC that are entitled to the presumption of correctness. In short, the NRC is now outside the group that is entitled to the presumption of administrative correctness – the shoe is on the other foot.

NRC cannot simply say that it is in “disagreement” and “need no further elaboration” on a dispute with the NAS findings and dismiss both the independent study and the emergency enforcement petition. Congress assigned NAS to provide the analysis to mitigate identified vulnerabilities to spent nuclear fuel storage systems, including the more vulnerable nuclear waste storage structures elevated to the upper portions of the BWR reactor buildings.

NRC cannot now glibly dismiss the facts found in both the NAS study and the petition without addressing these facts in the dispute it has created with the NAS findings and conclusions and those requested actions of the Petitioners.

Rather, NRC has the burden of proof that NAS, and our contentions as requested actions that are supported by NAS, not only reached a conclusion with which the NRC disagrees, but that no reasonable person could have reached the same conclusions as did NAS.

The Nuclear Security Coalition, therefore, requests that the Proposed Director's Decision be revised to adopt the requested enforcement actions of the August 10, 2004 petition.

On behalf of the Nuclear Security Coalition,

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