

November 7, 2005

MEMORANDUM TO: Herbert Berkow, Chairman  
Petition Review Board

FROM: Peter S. Tam **/RA/**  
Petition Manager

SUBJECT: NRC STAFF'S RESPONSE TO COMMENTS ON PROPOSED  
DIRECTOR'S DECISION RE: PETITION ON SPENT FUEL SECURITY

In a letter dated June 28, 2005, the Nuclear Regulatory Commission (NRC) staff solicited comments on its proposed Director's Decision (DD) from the Nuclear Security Coalition (the Petitioner) regarding spent fuel security at boiling-water reactors (BWRs) of the Mark I and II designs. The Petitioner and two of its member organizations (Pilgrim Security Watch and Nuclear Information and Resource Service) replied by letters dated July 29, 2005; these are henceforth referred to as commenters.

This memorandum documents the NRC staff's response to the Petitioner's and the two member organizations' comments.

Overall Petitioner Comment:

In general, the commenters state that the proposed DD dismissed the recommendations set forth in the public summary of the report published by the National Academy of Sciences (NAS), often simply with broad-brushed opinions but no proof. The commenters said that the NAS study was mandated by the U.S. Congress; if NRC does not wish to adopt the NAS recommendations, NRC has the burden of proof to counter the recommendations with scientific facts. Thus, the commenters requested NRC to revise the DD to adopt the Petitioner's requested enforcement actions.

Overall NRC staff Response:

The Petitioner expressed support for the concerns raised by the NAS in its public summary of the report on fuel pool vulnerabilities. Prior to the release of this public summary, the NRC had responded to the NAS report (classified non-public version) in a letter from Chairman Nils J. Diaz to Senator Pete V. Domenici dated March 14, 2005 (Accession No. ML050280428). In that letter, the NRC stated that: (1) the NAS report reinforces the validity of recent NRC studies which indicate that spent fuel storage systems are safe and secure, and of NRC actions to improve the safety and security of such systems; (2) there are a number of areas of NRC disagreement with the NAS report; (3) some scenarios postulated by the NAS are unreasonable; and (4) some NAS recommendations lack a sound technical basis. Although the Petitioner endorsed the NAS report, the NRC staff noted that the Petitioner did not provide any new information that could alter the position already expressed in Chairman Diaz's letter of March 14, 2005, to Senator Domenici. The proposed DD adopted the technical position expressed in Chairman Diaz's March 14, 2005, letter.

As stated in the proposed DD, both the NRC and the nuclear industry have taken, and are continuing to take, a large number of actions to improve, among other things, spent fuel security at nuclear plants. The proposed DD stated that much of the information on these actions is either classified as safeguards or national security. Because of such classification, much of the solid information that the NRC staff used to confute the Petitioner's proposed actions was not conveyed by the proposed DD nor Chairman Diaz's March 14, 2005, letter. The proposed DD had, at more than one place, clearly stated this fact. Accordingly, the NRC categorically denies the commenters' assertion that the NRC simply dismissed the Petitioner's bases of fact and requested actions which are supported in large part by the National Academy's study. This assertion is simply not true in light of all the information that NRC has in its possession, but most of which is not available to the public.

Comment 1 The Petitioner requested the NRC to issue a demand for information to the licensees of all Mark I and II BWRs conduct a 6-month study of options for addressing structural vulnerabilities. The commenters stated that the proposed DD is unresponsive to this request.

As the basis for this comment, the commenters stated that the public summary of the NAS report was published after Chairman Diaz's letter of March 14, 2005, and that both the Chairman's letter and the proposed DD made assertions about the robustness and, therefore, safety of the spent fuel pools at BWR Mark I and II plants without producing convincing facts. Further, the proposed DD dismissed the recommendations contained in the public NAS summary with no explanation other than some summary statements.

#### NRC Staff's Response:

The NRC staff disagrees with the commenters' implication that since the NAS public summary was published after Chairman Diaz's March 14, 2005, letter, the NRC has not addressed a number of safety and security issues regarding current spent nuclear fuel storage. The commenters continued to ignore the fact that the bulk of the information on NRC's own studies and actions, and the licensees' actions, is considered safeguards or national security information. Chairman Diaz's letter and the proposed DD were both written with the clear knowledge of such information, and the knowledge of what is in the full NAS report (classified as national security), which has been in existence since July 2004. With such knowledge, the NRC was able to determine that the Petitioner provided no new information in its various submittals cited in the proposed DD, and that NRC actions already taken and currently being taken have exceeded what the Petitioner requested. Further, the NRC was able to determine that the commenters' letters of July 29, 2005, provided no new information to compel the NRC staff to revise the proposed DD. Accordingly, in response to the first request, the NRC staff stated in the final DD:

In summary, the NRC, other agencies of the Federal government, the local governments, and the licensees have taken and continue to take extensive actions to enhance protection of these facilities in a manner consistent with NRC's defense-in-depth philosophy. These actions have significantly improved the safety and security of spent fuel storage. Therefore, the intent of the six-month study requested by the Petitioner has been achieved. Accordingly, the Petitioner's request has, in effect, been granted.

Comment 2 The Petitioner requested the NRC to present the findings of the study at a national conference attended by all interested stakeholders, providing for transcribed comments and questions. One commenter (Pilgrim Security Watch) insisted that safeguards information can be disclosed, as is the case in the context of nuclear licensing proceedings.

NRC Staff's Response:

As stated in the final DD:

The NRC is committed to ensuring openness and obtaining public input in its decision-making. The NRC attempts to keep the public appropriately informed within the constraints of the law. As part of its mission to protect the public health and safety, common defense and security, and the environment, the NRC must ensure that sensitive information about the Nation's nuclear facilities does not fall into the hands of terrorists. Public release of information concerning physical security of nuclear facilities, known as Safeguards Information (SGI), which could potentially be exploited by an adversary would be contrary to the NRC's efforts to ensure protection of the Nation's nuclear infrastructure and to NRC's statutory duties. See Section 147 of the Atomic Energy Act of 1954, as amended, 42 USC. §2166, and 10 CFR 73.21(c). In addition, the NRC's assessments of BWR structural vulnerabilities, including both the methodology employed and the results, are classified as national security information pursuant to Executive Order 12958, as amended on November 1999 and March 2003. Public release of national security information is prohibited pursuant to 10 CFR 95.35. Since the information which the Petitioner wishes to discuss at a national conference of stakeholders is either safeguards or national security information, the Petitioner's request for a presentation of a vulnerability study at a national conference of all interested stakeholders must be denied. The NRC notes, however, that some of this information has been declassified and is available in the public domain (e.g., Chairman Diaz's March 14, 2005, letter and the publicly available summary of the NAS report).

The commenter's reference to nuclear licensing hearings is inappropriate since the 10 CFR 2.206 process is not a licensing hearing.

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