

COUNTY OF SUFFOLK

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96

DOCKET NUMBER
PROPOSED RULE 73
(70 FR 67380)



STEVE LEVY
SUFFOLK COUNTY EXECUTIVE

February 23, 2006 (3:29pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

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VIA FACSIMILE & ELECTRONIC TRANSMISSION ADDRESS ALL COMMUNICATIONS
IN THIS MATTER TO:

(631) 853-4049

February 22, 2006

Secretary
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

ATTN: Rulemakings and Adjudications Staff.

Re: R1N 3150-AH60 - Proposed Rule -- 70 FR 67380
10 CFR §73 - Design Basis Threat

PRM-73-12: Petition by Committee to Bridge the Gap to amend NRC regulations
to upgrade the design basis threat regulations

Dear Madam Secretary:

The County of Suffolk ("County") submits the following comments concerning the proposed rule on Design Basis Threats¹ and in support of the Petition for Rulemaking by the Committee to Bridge the Gap. The County also supports the comments dated January 18, 2006, submitted by Global Resource Action Center for the Environment ("GRACE") concerning the Petition.

The County is particularly concerned because of the County's close proximity to the Millstone Nuclear Power Plant in Connecticut. The County is obligated under the laws of the State of New York to protect the health and safety of its large numbers of residents and visitors. In this capacity, the County would be a primary provider of emergency services in the event of an attack on a nearby nuclear facility, such as Millstone. The County is concerned about the potential exposure of such persons to radiation in the event of a terrorist attack and the difficulty in evacuating such persons. The County is also concerned about potential for radiation dispersal to the County's extensive farmlands, waters and other natural resources. The County believes that nuclear plants and facilities might be a tempting target for terrorist attacks for a variety of reasons, such as: the fact that fuel must be constantly cooled to prevent it from melting and releasing radioactivity, the severe public health consequences of radiation exposure, the public dread of radiation

¹ 70 FR 67380, et seq.

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SECY-02

exposure and other horrific potential consequences of an attack. The proximity of many nuclear plants to densely populated areas increases the risk that these facilities may be subject to an attack. In reaction to the events of September 11, 2001, efforts have significantly increased to harden government, military and air transportation facilities, to name a few, and it is only logical that the private sector, particularly one that makes up the critical infrastructure of the country, begin to do the same for all potential threats and modes of delivery.

The County finds it difficult to comment meaningfully on the proposed regulation,² insofar as the NRC proposal is extremely vague and contains little detail on the specific proposed rule. This type of public notice violates the Congressional intent, expressed by the Administrative Procedures Act,³ to allow greater accessibility and participation by the public in the rulemaking process.

We understand that detailed documents, including Regulatory Guides and Adversary Characteristics Documents were going to be provided to the Nuclear Energy Institute, an industry group,⁴ and the County, as a concerned municipality, requests the same level of access and information to be able to provide meaningful comments. Accordingly, the County requests that it be provided with these documents and that the deadline for comments be extended for an additional sixty (60) days, until April 24, 2006.

The County's comments pertain to public health and safety, types, numbers and coordination of adversaries, types of weapons and alternative types of threats, the potential for fires, air and water-borne threats, proposed exemptions to the rule and spent fuel pools. The County requests that the proposed rule be enhanced to protect security in these areas. Also, the current rules regarding required exercises, security planning and other such areas should be upgraded accordingly.

Public Health and Safety is Paramount

Congress made protection of public health and safety an express purpose of the laws providing for development and use of nuclear energy.⁵ This purpose was reiterated in the Energy Policy Act of 2005, which required the NRC to consider the following factor in its rulemaking to revise the Design Basis Threats ("DBT's):

The adequacy of planning to protect the public health and safety at and around nuclear facilities, as appropriate, in the event of a terrorist attack against a nuclear facility...⁶

² 70 FR 67380.

³ 5 U.S.C. § 553.

⁴ 71 FR 3791.

⁵ 42 U.S.C. §§2012(d) and (e) & §2013(d).

⁶ 109 P.L. 58, 119 Stat.594, Title VI, Subtitle D, §651.

There can be no dispute that the proposed regulations must be drawn to protect public health and safety and should err on the side of caution.

Congress expressly directed the NRC to consider the events of September 11, 2001, in its proposed rulemaking.⁷ Due to those events, previously unimaginable terrorist attacks in the United States are a real possibility, including potential attacks on nuclear reactors. The NRC must take a pro-active role in safeguarding the public and must, at a minimum, protect nuclear facilities against threats of the magnitude and sophistication that occurred on September 11.

Types, Numbers and Coordination of Adversaries

We support the Petitioner's request that the NRC amend its regulations to upgrade the "design basis threat" (DBT) regulations and the associated requirements for protection of domestic reactors from nuclear terrorism. The NRC should require that protection levels match the capabilities evidenced by the attacks of September 11, 2001. This includes attacks by multiple large teams of adversaries, attacks by adversaries who are sophisticated and knowledgeable about specific facilities and sophisticated weapons, attacks by suicidal adversaries, attacks by insiders and well-coordinated attacks by multiple parties. Some of these changes are reflected in the proposed rule; however, some have not been inserted and should be.

Weapons and Alternative Types of Threats

Current DBT regulations require protection against weapons no greater than hand-carried automatic weapons and against hand-carried equipment, including incapacitating agents and explosives.⁸ Congress expressly directed the NRC to consider:

The potential use of explosive devices of considerable size and other modern weaponry.

and:

An assessment of ... cyber, biochemical and other terrorist threats.

The proposed rule⁹ fails to reflect these types of threats or specify that they must be considered by the regulated entities. The proposed changes are inadequate.

⁷ Id.

⁸ 10 CFR §73.1((a)(1)(i)(C) and (D), 10 CFR §73.1(a)(2)(i)(C) and (D).

⁹ 70 FR 67380, 67383, IV. Section-by-Section Analysis.

Potential for Fires

Consideration of the potential for fires, especially fires of long duration, was specifically required by Congress as a factor that the NRC must consider.¹⁰ However, the proposed rule does not comply with the Congressional directive because it fails to mention this threat.

Air-Based Threats

Congress also directed the NRC to consider the potential for, "air-based threats."¹¹ The proposed rule states that the NRC is deferring the issue of defending nuclear power plants against aircraft and plans to address that issue as part of the final action on the proposed rule.¹²

The County of Suffolk cannot comment specifically since no rule changes have been proposed. However, the County believes that protection of nuclear power plants and spent fuel pools from air-based threats is a vital part of protecting health and safety. Although the chances of an attack from the air have been decreased by safeguards enacted after 9/11, these safeguards are not foolproof, as evidenced by frequent news reports and published expert opinions.¹³ Such threats **must** be addressed in the final rule. The County requests the opportunity to comment on any specific proposed changes prior to enactment. However, in the absence of specific proposed regulations, which should be the subject of notice and rulemaking, we support enhanced protections proposed to guard against air attacks

Water-Borne Attacks

The County supports enhanced protection against water-borne attacks, a factor which must be considered by the NRC pursuant to the Energy Policy Act of 2005. The County agrees with the GRACE comments, which provided as follows:

Navigable water exclusion zones at reactors such as Indian Point, Millstone and Pilgrim are inadequate. An "exclusion zone" that is marked by buoys or floating "no-trespassing" signs is not impenetrable and is nothing more than a largely symbolic gesture. The NRC should require physical

¹⁰ 109 P.L. 58, 119 Stat.594, Title VI, Subtitle D, §651.

¹¹ *Id.*

¹² 70 FR at 67385.

¹³ According to the physicist Richard Garwin, who has served on numerous US government panels, a scenario involving a rented or stolen cargo aircraft may be no less likely than before September 11, 2001. Richard Garwin, "The Many Threats of Terror," The New York Review, November 1, pp 16-18. A licensed crew member could be involved in an attack. Moreover, the news reports are replete with instances where airport security was inadequate.

barriers that would prevent intrusion of a boat, scuba diver or floating explosive device anywhere near the reactor or intake canals. Moreover, there are readily deployable solutions available, for example the U.S. Army Corps of Engineers has installed barriers to protect dams and some version of this technology could be adapted for reactors.

The County supports a requirement for these types of physical barriers, as well as additional patrols, surveillance and any other necessary efforts to prevent air and waterborne attacks.

A recent NYS Office of Homeland Security Focus Report, entitled, "Maritime Terrorist Threat," concludes, in part, that patient and intricate preparation augurs a future sustained maritime terrorism campaign rather than a continued irregular pattern of attacks as has been experienced previously. Nuclear plants must be prepared to defend against this continuing threat.

Exemptions

The proposed Rule contains the following statement:

The NRC evaluated the need to apply waterborne requirements to ISFSIs [independent spent fuel storage installations] and concluded that other means in the proposed rule were sufficiently protective to preclude the need for specific requirements regarding waterborne threats. Consequently, an exemption from the waterborne threat has been added for ISFSIs in this proposed rule.¹⁴

The County would like to receive additional information regarding the provisions of the proposed rule which justify this exemption, as well as other exemptions in the proposed rule (e.g. licensees subject to § 73.20 (Category I fuel cycle facilities)). The proposed rule should strengthen protections, not weaken them.

Spent fuel pools

We also are particularly concerned about the possibility that a plane crash could result in a massive radioactive release from spent fuel pools. Indeed, the report "Safety and

¹⁴ 70 FR at 67382,

Security of Commercial Spent Nuclear Fuel Storage," from a Committee of the National Academy's Board on Radioactive Waste Management,¹⁵ concludes that:

Spent fuel storage facilities cannot be dismissed as targets for such attacks because it is not possible to predict the behavior and motivations of terrorists, and because of the attractiveness of spent fuel as a terrorist target given the well known public dread of radiation. . . The committee judges that attacks by knowledgeable terrorists with access to appropriate technical means are possible."¹⁶

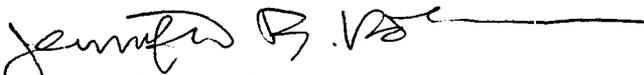
Aircraft impact at a spent fuel pool could cause dispersal of water and radiation from the pool, through various mechanisms.

Conclusion

The County respectfully urges the NRC to adopt the Petitioner's recommendations and to upgrade 10 CFR §73.1 in the manner indicated herein. The proposed NRC rules should require aggressive measures to protect nuclear reactors from possible attack and should provide an adequate margin of safety for the public. Furthermore, the County respectfully requests the additional information necessary for adequate County review of the proposed rules, such as the proposed Regulatory Guides and Adversary Characteristics Documents, and requests an extension of sixty (60) days for such review.

Very truly yours,

CHRISTINE MALAFI
Suffolk County Attorney



By Jennifer B. Kohn
Assistant County Attorney

¹⁵ "Safety and Security of Commercial Spent Nuclear Fuel Storage: Public Report," Committee on the Safety and Security of Commercial Spent Nuclear Fuel Storage, National Research Council.

¹⁶ Id., p.4.