

POLICY ISSUE
(Notation Vote)

May 4, 2006

SECY-06-0101

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations /RA/

SUBJECT: EMERGENCY PREPAREDNESS FOR DAYCARE FACILITIES
WITHIN THE COMMONWEALTH OF PENNSYLVANIA; UPDATE ON
STAFF ACTIONS AND REQUEST FOR COMMISSION APPROVAL
FOR RELATED STAFF ACTIONS

PURPOSE:

- 1) To provide a response to the potential implementation questions raised in the Petition for Rulemaking (PRM) 50-79 as directed by the staff requirements memorandum (SRM) for SECY-05-0045, "Denial of Petition for Rulemaking to Revise 10 CFR Part 50 to Require Offsite Emergency Plans to Include Nursery Schools and Day Care Centers (PRM-50-79)."
- 2) To obtain Commission approval to re-issue the petition denial with proposed staff revisions to address stakeholder concerns regarding factual errors and potentially misleading language.
- 3) To update the Commission on staff initiatives described in the Executive Director for Operation's (EDO's) December 30, 2005, and February 9, 2006, memoranda.

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BACKGROUND:

On October 26, 2005, the Commission approved the staff's recommendation to deny Petition for Rulemaking (PRM) 50-79 regarding emergency preparedness for children in daycare facilities. Further, the Commission directed the staff to seek further information from the Department of Homeland Security (DHS) on the level of communication between State and local governments and daycare facilities in the Three Mile Island (TMI) emergency planning zone (EPZ) and to consult with DHS and other stakeholders on options, including public outreach, for further assessing the questions raised in the petition about local implementation of relevant requirements and guidance.

In a memorandum dated December 30, 2005, the staff provided an update on progress on certain staff actions requested in the subject staff requirements memorandum (SRM). In this memorandum, the staff notified the Commission that it was taking the following actions responsive to the SRM: 1) holding a meeting with the Pennsylvania Emergency Management Agency (PEMA), DHS, and the NRC scheduled for January 26, 2006; 2) creating a NRC/DHS Steering Committee standing subcommittee on revising the NRC/FEMA Memorandum of Understanding; and 3) holding a meeting between Mr. Roy Zimmerman, NSIR, and Mr. Robert Stephan, DHS Assistant Secretary for Infrastructure Protection. The staff had also described licensee-sponsored emergency planning workshops for daycare facilities within the TMI and Limerick EPZs.

In a memorandum from the EDO dated February 9, 2006, the Commission was informed of the results of a preliminary staff review of the petition denial approved by the Commission on October 26, 2005. The memorandum also committed to provide a proposed course of action on what steps, if any, needed to be taken to assure the public record is accurate.

DISCUSSION

Staff Response to Potential Implementation Issues

The October 26, 2005, SRM directed the staff to explore with FEMA and other stakeholders options to further assess the questions raised in the petition about local implementation of relevant requirements and guidance and provide appropriate recommendations for improvement, as necessary. The EDO's December 30, 2005, memorandum described discussions with DHS to resolve the stakeholder concerns. The memorandum also identified the staff's intent to meet with representatives of PEMA and DHS.

On January 26, 2006, representatives of NRC headquarters and Region 1, PEMA, the Pennsylvania Department of Welfare (DPW), the Pennsylvania Department of Environment Resources/Bureau of Radiation Protection, DHS headquarters, and the DHS Philadelphia Field Office met at the PEMA headquarters in Harrisburg, Pennsylvania. This government-to-government meeting was not open to the public. Significant information pertinent to the implementation concerns identified in the SRM was obtained. PEMA and the DPW described a comprehensive program, mandated by Pennsylvania law, for licensed daycare facilities that substantially enhances the existing emergency preparedness posture that was previously found by DHS to provide reasonable assurance that adequate protective measures can and will be

taken for the public, including children in daycare facilities. Enclosure 1 to this Commission paper contains the minutes of this meeting (and a follow-on teleconference).

Based on the information collected in this meeting and the follow-up teleconference, the staff has prepared a response to questions raised in the petition about local implementation of relevant requirements and guidance and has identified an improvement opportunity which the staff will pursue with DHS. Enclosure 2 to this Commission paper provides the staff's response and recommendation.

In consideration of the information presented in Enclosures 1 and 2, the staff has found no sufficient basis to question the adequacy of DHS findings regarding reasonable assurance. The staff believes the DHS findings to be consistent with the planning standards of 10 CFR § 50.47(b) and the existing memorandum of understanding between NRC and DHS. As such, the staff considers that the potential implementation questions discussed in the SRM have been adequately resolved for the present. Nonetheless, in the interest of maintaining the current level of preparedness, the staff plans to continue to work with DHS to consider program enhancements, as necessary, that will better evaluate the preparedness for this segment of the population on an appropriate periodic basis.

Staff Review of Stakeholder Concerns Regarding PRM-50-79 Petition Denial

On March 11, 2005, the staff forwarded a recommendation to the Commission to deny PRM-50-79. Included with that recommendation was a proposed *Federal Register* notice that described the petition, the staff's evaluation, and the basis for the denial. In an SRM dated October 26, 2005, the Commission accepted the staff's recommendation, with language changes to the petition denial. The denial was published in the *Federal Register* on December 19, 2005, [70 FR 75085]. In a memorandum dated February, 9, 2006, the EDO notified the Commission of the results of a preliminary staff review of the petition denial and committed to provide a proposed course of action on what steps, if any, needed to be taken to assure the deficiencies in the public record are corrected. After a thorough interoffice evaluation, the staff has concluded that the identified deficiencies do not affect the staff's recommendation to deny the petition. However, the staff has gained additional insights during the conduct of its review that support a recommendation to correct factual errors and clarify NRC's regulatory positions and bases in the petition denial.

The revised petition denial incorporates two general clarifications. The first, the basis for which is provided in Enclosure 5 of this Commission paper, is with regard to whether the Commission's regulations prohibit a State or local government from tasking other entities with planning functions and obligations. The second clarification addresses the role of GM-EV-2 for which alternative methods can be found acceptable by DHS for demonstrating compliance to the planning standards and the evaluation criteria. This clarification was based upon discussions with DHS and their counsel and was agreed to by DHS.

Enclosure 3 to this Commission paper is the revised *Federal Register* notice that the staff proposes to publish to correct the public record. Enclosure 4 to this Commission paper is a redline/strikeout version of the revised notice. The revised notice incorporates changes requested by DHS and PEMA in various correspondence [ML060680076, ML060730534, ML060730538].

Update on Staff Actions Identified in the December 30, 2005, Memorandum

In its December 30, 2005, memorandum, the EDO noted several actions that were being taken to address the implementation questions raised in the petition. One of these actions, the meeting with PEMA, was described above. The outcome and status of the remaining actions are discussed below:

Kickoff Meeting for Revision of NRC/FEMA Memorandum of Understanding: In the December 30, 2005, SRM response, the NRC staff stated that a subcommittee of the NRC/FEMA Steering Committee had been created to revise the existing NRC/FEMA Memorandum of Understanding (MOU). This subcommittee met on February 7, 2006, to discuss a framework for revising the existing NRC/FEMA MOU. Highlights of this meeting included the following agreements: 1) revising the MOU to incorporate elements of the DHS reorganization and address areas of mutual interest to enhance coordination and cooperation; 2) considering new items for inclusion in the MOU to address areas, such as new reactor combined license application review; and 3) scheduling followup meetings to reach alignment on milestones for revising the MOU. Further developments will be addressed in the semiannual emergency preparedness updates to the Commission.

Meeting With Mr. Robert Stephan, DHS Assistant Secretary for Infrastructure Protection: On January 23, 2006, Mr. Roy Zimmerman, Director, NSIR, and Mr. Robert Stephan, DHS Assistant Secretary of Infrastructure Protection, and selected individuals from the staff of each, met to discuss the effectiveness of coordination between the two agencies regarding the oversight of offsite preparedness issues around NRC-licensed power reactors. The meeting participants identified several follow-on actions to further clarify how the two agencies will work together to fulfill their respective legislative mandates and presidential directives and to strengthen cooperation.

Exelon-Sponsored Emergency Planning Seminar for Daycare facilities: In the December 30, 2005, SRM response, the staff stated that Exelon, licensee for the TMI and Limerick plants, had scheduled a routine semiannual emergency planning workshop for February 4, 2006, in the TMI environs and on February 25, 2006, in the environs of the Limerick plant. In addition to sessions designated for local emergency response workers and coordinators, Exelon conducted two sessions for the operators of daycare facilities. Participation in these sessions was restricted to invitees. The staff has learned that the two sessions were well attended and the outreach helped the daycare facility administrators to develop emergency plans and increased their awareness of emergency planning and preparedness.

FUTURE ACTIONS

The staff will continue to work on the following initiatives and will report on applicable developments regarding these initiatives, as appropriate, in the semiannual emergency preparedness updates to the Commission:

1. The staff will continue to coordinate with DHS and PEMA on possible additional outreach activities. The staff and DHS, working with PEMA as appropriate, will evaluate the feasibility and effectiveness of performing a survey of daycare facilities within the TMI EPZ. However, the staff believes that periodic review of daycare facility plans by DHS, as part of DHS's routine review of public school plans and/or evaluated exercises, would be a more effective approach to ensuring long-term maintenance of the planning effectiveness, and will be working with DHS to consider such reviews.
2. The staff plans to continue to work with DHS to consider program enhancements, as necessary, that will better evaluate the preparedness for this segment of the population on an appropriate periodic basis.
3. The staff, working through the DHS/NRC standing subcommittee, will continue to pursue updates and enhancements to the NRC/DHS MOU.

RESOURCES

The staff estimates that re-issuing the Federal Register Notice and conducting the above future activities will require nominal resources for HQ and the region which will be accommodated within the existing FY 2006 budget.

COORDINATION

The Office of General Counsel has no legal objection to the content of this paper and its attachments. DHS has reviewed this paper and its attachments and provided comments. With one exception, these comments were addressed by the staff. The staff did not agree with a DHS comment that would have weakened the staff's commitment No. 2 under Future Actions above. The E-mail thread in which this comment was discussed is provided in Enclosure 8.

RECOMMENDATION

That the Commission

1. Approve the issuance of the corrected petition denial (Enclosure 3), including the clarification language that states that the Commission's regulations allow a finding of reasonable assurance that adequate protective measures can and will be taken during a radiological emergency where a State or local government tasks a non-governmental entity with emergency planning, preparedness, or response activities responsive to the planning standards of 10 CFR 50.47(b), provided that the overall responsibility for demonstrating, with reasonable assurance, that adequate protective measures can and will be taken in the event of a radiological emergency continues to remain with the State and local governments.
2. Note that a letter is attached for the Secretary's signature (Enclosure 7), informing the petitioners of the Commission's decision to re-issue the petition denial.

3. Note that this paper and its attachments address matters that have also been raised by a Differing Professional Opinion (DPO-2005-008). This DPO was still under consideration as this paper was prepared.

/RA William F. Kane Acting for/

Luis A. Reyes
Executive Director
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Enclosures:

1. Minutes of NRC Staff Meeting with the PA
Emergency Management Agency
2. NRC Staff Response to Petition Questions Regarding
Daycare Preparedness in PA
3. Proposed Amended Version of the Petition Denial
Published in the *Federal Register* on December 19, 2005
4. Proposed Amended Version of the Petition Denial
Published in the *Federal Register* on December 19, 2005
(redline/strikeout version)
5. Basis For the Revised Petition Denial Language Related
to State and Local Government Delegation of Emergency
Planning Responsibilities
6. "Day Care Facilities Emergency Planning Guide,"
Pennsylvania Emergency Management Agency
7. Letter to Petitioner
8. DHS Comment Correspondence

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8. DHS Comment Correspondence

DHS provided comments on this paper and attachments via E-mail on April, 12, 2006

ADAMS ACCESSION NUMBER NUMBER: ML060760586 (Package) ML060760541 (Memo) * = Prior concurrence

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