

Mr. Eric J. Epstein
TMI-Alert Chairman
4100 Hillsdale Road
Harrisburg, PA 17112

Dear Mr. Epstein:

I am responding to your letter of October 19, 2005, in which you submitted a petition for rulemaking. The petition, docketed as PRM-50-81, requests that the NRC amend its regulations to codify criteria in the Federal Emergency Management Agency (FEMA) 1986 Guidance Memorandum (GM) EV-2, "Protective Actions for School Children," into the NRC's emergency planning regulations in Title 10 of the Code of Federal Regulations (CFR) Part 50. You state that without such codification, children in Pennsylvania will not have preplanned evacuation capabilities in the event of an emergency.

The Commission is denying your petition because it does not provide any new information that was not previously considered in denying an earlier petition submitted by Mr. Lawrence T. Christian (PRM-50-79), which requested that the emergency planning regulations be amended to ensure that all day care centers and nursery schools in the vicinity of nuclear power facilities are properly protected during a radiological emergency. You submitted an enclosure to PRM-50-81, a copy of a Differing Professional Opinion (DPO) by a member of the NRC staff. This DPO focused on the adequacy of preplanned evacuation resources and preplanned relocation centers for day care centers and nursery schools within the Commonwealth and on whether the Commonwealth and DHS/FEMA have failed to comply with DHS/FEMA guidance. Your proposed remedy is for the NRC to incorporate the criteria in GM EV-2 into its emergency planning regulations, to grant the petition for rulemaking (PRM 50-79), and to implement the 120-day clock provisions of 10 CFR 50.54(s)(2) while the rulemaking is in progress. The DPO raises issues about local implementation of requirements and guidance, which would not be resolved by your proposal that the GM EV-2 criteria be incorporated into NRC regulations. GM-EV2 is a guidance document developed by FEMA and utilized by the Department of Homeland security (DHS), which has the primary responsibility for assessing the adequacy of offsite emergency preparedness. NRC bases its own findings in part on a review of DHS's findings and determinations as to whether State and local emergency plans are adequate and whether there is reasonable assurance that they can be implemented.

As part of the denial of PRM-50-79, the Commission directed the staff to undertake several actions to further assess these implementation questions and to provide appropriate recommendations for improvement. In response to this direction, the NRC staff met with DHS and the Pennsylvania Emergency Management Agency to obtain information relevant to local implementation. Pennsylvania officials described a comprehensive program, mandated by Pennsylvania law, for licensed day care 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 day care facilities. The staff provided the Commission the results of this assessment

in a Commission paper dated May 4, 2006 (SECY-06-0101; ML060760586). The staff found no sufficient basis to question the adequacy of DHS findings regarding reasonable assurance. The staff believes the DHS findings are consistent with the planning standards of 10 CFR § 50.47(b) and the existing memorandum of understanding between NRC and DHS.

The Commonwealth has undertaken significant recent efforts to ensure that day care facilities have arrangements to implement adequate protective measures for their charges. The Commonwealth enacted a new law in 2004 that directed these facilities to develop and implement all-hazards emergency preparedness as a condition of their licensing. The day care facility licensing authority has promulgated supporting regulations and a "Day Care Facilities Emergency Planning Guide" was distributed to each licensed day care facility. At this time, all 90 licensed day care facilities within the TMI emergency planning zone have completed, submitted, and implemented their facility plans. The above recent actions have provided additional assurance that adequate protective measures can be taken, and added clarity to the affected parties' roles and responsibilities.

The DPO was carefully considered in accordance with NRC procedures included in Management Directive 10.159, "The NRC Differing Professional Opinions Program." As a result of this evaluation, NRC staff concluded that DHS has arrived at a defensible finding of reasonable assurance that children at day care facilities and nursery schools would be evacuated in the event of a radiological emergency at a power plant in the Commonwealth. The NRC also concluded that the DHS finding is consistent with the relevant regulations and guidance documents as well as legal implementation of Federal, State, and local requirements. A summary of the DPO decision is available on the NRC public web site <http://www.nrc.gov>.

Sincerely,

Annette Vietti-Cook,
Secretary of the Commission.

Enclosure:
Federal Register Notice of Petition for Rulemaking