

July 20, 2007

Mr. David A. Lochbaum
Union of Concerned Scientists
1707 H Street, NW, Suite 600
Washington, D.C. 20006-3919

Dear Mr. Lochbaum:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your email dated May 22, 2007. Your email stated your concerns with the NRC's actions on the 2.206 petition process (Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206), public meetings, and the public's access to documents in the Agencywide Documents Access and Management System (ADAMS). These are all important NRC processes that enhance our ability to interact with our public stakeholders and I appreciate that you have brought your concerns to my attention. For clarity, I have addressed each of your concerns separately.

The 10 CFR 2.206 Petition Process

Regarding the 10 CFR 2.206 petition process, you identified the following two concerns:

1. In your email you stated that with regards to the Shearon Harris Nuclear Power Plant (Shearon Harris) 2.206 petition that was filed on September 20, 2006, by Mr. John D. Runkle (attorney for the petitioners), petitioners were not added to the NRC's service list for correspondence in accordance with the requirements of Management Directive (MD) 8.11, "Review Process for 10 CFR 2.206 Petitions." (A copy of this petition is available in ADAMS as Accession No. ML062640550.)

In this email, the specific NRC letter that excluded the petitioners from the service list was not referenced. However, in followup with the petition manager (PM), we identified that there were two separate instances where the petitioners were not included on the service list for two letters.

The first instance involved a letter dated April 29, 2007, from the NRC to Progress Energy (ADAMS Accession No. ML070590625). The petitioners were not included on the service list for this letter because of an unintentional oversight resulting from a brief period of transition that changed the responsibility for overseeing all aspects of the petition from one PM to another. Due to this transition, the new PM only became aware of the letter once it was issued by the NRC. Since the new PM was knowledgeable of MD 8.11 guidance, she immediately recognized that the petitioners had not been included on the service list for this letter. Even though this letter was already publicly available and noticed in the *Federal Register*, the PM promptly emailed the letter directly to Mr. Runkle on May 8, 2007 (ADAMS Accession No. ML071830038).

The second instance involved your email dated May 9, 2007, titled, "Dis-service to NC WARN." You sent this email to Mr. Runkle (ADAMS Accession No. ML071830055) and also forwarded it to the NRC staff. In this email, you claimed that a letter that discussed the NRC's review of Shearon Harris' response to the May 6, 2007, Generic Letter 2003-01, "Control Room Habitability," (ADAMS Accession No. ML070580345), from the NRC to Progress Energy excluded the petitioners from the service list. In this instance, you may have misinterpreted the guidance in MD 8.11 because it clearly requires that the petitioner be added to the service list(s) "for the topic (if one exists)." In accordance with MD 8.11, the PM added the petitioners to the service list for all fire protection correspondence related to the 2.206 petition; petitioners were not added on the service list to receive correspondence on other topics (i.e., the May 6, 2007 letter). This is in accordance with MD 8.11.

2. In your email you also stated that your first verbal contact with the NRC staff on your petition dated April 30, 2007 (ADAMS Accession No. ML071210285), was after the Petition Review Board (PRB) made a decision.

MD 8.11 states that the PM will "offer a meeting or teleconference between the petitioner and the petition review board before the board reviews the petition." However, please also note that guidance states that "if a decision is required on a petitioner's request for immediate action, before the petitioner's presentation can be scheduled, that decision shall not be delayed." When a petitioner makes a request for an immediate action through a 2.206 petition, the PRB, consisting of NRC cognizant managers and technical experts, will meet to discuss if an immediate safety concern exists, based upon the merits of the petition. As a result, when the PM initially contacted you by telephone on May 3, 2007, he stated that he was only conveying the PRB's determination on the request for immediate action. The PM clarified that in accordance with MD 8.11, the PRB did not make any initial determination concerning Items #2 and #3 of your petition request, since they were not requests for immediate action. At that time, you were offered an opportunity to address the PRB (which you declined) before the PRB met to make its initial recommendations on Items #2 and #3 of your petition request. After the PRB made its initial recommendations on Items #2 and #3, those recommendations were communicated to you, by the PM, on May 29, 2007. During that telephone call, you indicated that you would like to address the PRB. A public meeting was subsequently scheduled and held on June 18, 2007.

Public Meeting Notices

Regarding public meeting notices, you identified the following two concerns:

1. In your email you stated that NRC public meetings are not being noticed and conducted in accordance with MD 3.5, "Attendance at NRC Staff Sponsored Meetings." You expressed that Category 2 public meeting notices are being issued without an agenda, or with agendas that do not identify opportunities for public comment during the meeting.

In response to your concern, we agree that it's important to identify when an opportunity for public comment will be provided during a public meeting, so that members of the public can plan accordingly. As a result of your feedback, the NRC sampled and reviewed recently issued public meeting notices and determined that the agency noticed 115 Category 2 public meetings between January 1, 2007, and May 31, 2007. The majority of those meetings contained an agenda, which identified an opportunity for the public to comment, in accordance with MD 3.5.

We investigated the meeting notices that did not contain an agenda and determined that some of these meetings were ongoing NRC monthly status public meetings. Therefore, the topics of discussion for these meetings or telephone calls were not defined when the meeting notice was issued. In recognition that MD 3.5 requires an agenda, some of those meeting notices stated that "those interested in attending should call or email the meeting contact to obtain the topics to be discussed." Even in these cases, you made the point that the public doesn't need a detailed agenda, but some indication of when the opportunity for public comment will occur. Since the guidance already exists in MD 3.5, we will continue to reinforce the importance of identifying opportunities for public comment, in public meeting notices, with the NRC staff.

2. In your email you also made a specific reference to a meeting notice that was issued without an agenda. We are aware that you followed up with the meeting contact who later revised the meeting notice to include an agenda, which identified an opportunity for public comment (ADAMS Accession No. ML071300312). The meeting contact identified, and already communicated to you, that since this meeting was topic-specific, an agenda should have been included to identify opportunities for public comment. In your discussion with the meeting contact, he also discussed how the NRC conducts monthly public meetings to discuss generic license renewal topics and license renewal process improvements. Since the topics of discussion are developed throughout the month, a reference is always included under the purpose that describes how to contact the meeting contact to obtain topics to be discussed. We are considering alternatives to ensure that for ongoing public meetings, any opportunities for public comment are clearly identified in the public meeting notice.

ADAMS

Regarding public access to documents in ADAMS, you identified the following two concerns:

1. You have trouble locating documents in ADAMS, even after you have obtained an accession number for the document.

Without knowing the specific documents you were trying to review, or how you obtained access to accession numbers for documents that you were unable to access in ADAMS, it is difficult for the NRC staff to respond directly to your concerns. However, we appreciate your feedback, and will continue to look for ways to improve our internal processes to ensure documents are made publicly available, if applicable, in a timely and proper manner.

2. Your second concern is that a number of the documents that should be publicly available are not being profiled by the NRC staff correctly.

Again, without specific examples to review, it is difficult for us to respond. I know that you have been very diligent in communicating the challenges that you have encountered with ADAMS in the past. It is our goal to ensure that documents that should be publicly available are accessible in ADAMS. In addition, the agency has been very responsive in the past to concerns that other public stakeholders have shared regarding ADAMS. When we identify that a document has been incorrectly profiled, we take immediate action to correct it. Through our internal training, as well as the NRC's general orientation programs for new employees, we will continue to emphasize the importance of correctly profiling documents in ADAMS.

The NRC is committed to ensuring openness with the public and appreciates your willingness to bring these issues to our attention. If you have any questions on our response, please feel free to call me at 301-415-1703.

Sincerely,

/RA/

Vonna L. Ordaz
Assistant for Operations
Office of the Executive Director for Operations

2. Your second concern is that a number of the documents that should be publicly available are not being profiled by the NRC staff correctly.

Again, without specific examples to review, it is difficult for us to respond. I know that you have been very diligent in communicating the challenges that you have encountered with ADAMS in the past. It is our goal to ensure that documents that should be publicly available are accessible in ADAMS. In addition, the agency has been very responsive in the past to concerns that other public stakeholders have shared regarding ADAMS. When we identify that a document has been incorrectly profiled, we take immediate action to correct it. Through our internal training, as well as the NRC's general orientation programs for new employees, we will continue to emphasize the importance of correctly profiling documents in the ADAMS.

The NRC is committed to ensuring openness with the public and appreciates your willingness to bring these issues to our attention. Please continue to contact us with your concerns.

Sincerely,

/RA/

Vonna L. Ordaz
 Assistant for Operations
 Office of the Executive Director for Operations

DISTRIBUTION: G20070382

RidsEdoMailCenter	RidsOpaMail	RidsOcaMailCenter	RidsNrrOd
RidsNrrAdro	RidsNrrAdes	PSPB RF	RidsNrrDpr
RidsNrrDorl	RidsNrrDprPspb	RidsOgcMailCenter	RidsNrrPMTMensah
RidsNrrLADBaxley	RidsNrrWpcMail	RidsRgn4MailCenter	LRegner
SNorthern	HCruz	TWengert	LJames
SHoffman	TGorham	SJohnson (OIS)	

*concurrence via email

ADAMS package ML071690117, incoming ML071490097, response ML071660331

OFFICE	PSPB/PM	PSPB/LA	TechEdit*	PSPB/BC	OIS*	DPR/D	NRR/D	OGC	EDO/AO
NAME	TMensah	DBaxley	L-ACulp	SRosenberg	SNorthern	MCase	JDyer	BJones	VOrdaz
DATE	06/25/07	06/22/07	06/19/07	06/19/07	6/18/07	06/19/07	06/23/07	07/09/07	07/20/07

OFFICIAL RECORD COPY