

July 12, 2007

Mr. Sherwood Martinelli
351 Dyckman Street
Peekskill, New York 10566

Dear Mr. Martinelli:

I am responding to your undated petition for rulemaking that was received by the U.S. Nuclear Regulatory Commission (NRC) on April 10, 2007, in which you requested that the NRC amend its regulations to hold nuclear licensees or the Federal government financially responsible for the costs incurred in building, stocking, and maintaining personal shelters for sheltering in place during a nuclear incident or attack and other relief as stated in the petition. Your petition was docketed by the NRC as PRM-50-86 on May 1, 2007. The NRC is denying your petition because the NRC has determined that it requests the NRC to take actions that exceed the NRC's authority, requests that the NRC address issues that the NRC has already considered in previous rulemakings, and fails to adequately support its request to revise NRC regulations.

Your petition requests the NRC to modify its regulations to require nuclear facilities licensed by the NRC or the Federal government to provide adequate funding to enable every family living within 10 miles of a nuclear facility to build, stock, and maintain a personal family shelter to allow families to shelter in place during releases of nuclear material following an incident or attack at a nuclear facility. The NRC cannot grant this request, in part because the NRC is not authorized by Congress to make financial payments to individuals. Further, the petition does not establish that requiring licensees to pay for these shelters would be necessary, in light of existing NRC requirements on emergency preparedness, to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

PRM-50-86 also asks that NRC regulations be revised to require licensees to pay for satellite communication systems for nuclear power plant communities to "protect human health and the environment." The petition does not demonstrate how requiring licensees to pay for these satellite communication systems would provide, in light of existing NRC requirements on emergency preparedness, reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The petition requests that NRC rules be changed so that anyone living within 10 miles of a licensed nuclear facility is able to demand an Independent Safety Assessment (ISA), which would include public review of onsite security and offsite evacuation plans for that licensee. The NRC already conducts detailed, objective inspections of licensed research and test reactors, operating power reactors, and fuel facilities. The NRC also performs assessments under a program called the Reactor Oversight Process (ROP) at all operating power reactor facilities on a continuous basis. These assessments measure performance in seven fundamental areas to ensure safe plant operation. The ROP, as currently implemented, effectively incorporates the inspection elements of the 1996 Maine Yankee ISA. The agency believes the ROP and NRC's regulatory framework effectively examine the same key aspects of plant safety as, an ISA, but with a better focus on potentially risk-significant problems.

The NRC may not permit the public review of onsite security plans because public review of the details of these plans could aid adversaries. However, information concerning emergency plans is publicly available. Residents within a radius of approximately 10 miles from a nuclear power plant receive emergency information materials annually, including information about protective actions such as evacuation and sheltering. For more information concerning emergency plans, including public inspection of these plans, contact your local emergency management organization, the Westchester County Office of Emergency Management.

Your petition also seeks revisions to NRC regulations because you claim that the Price-Andersen Act, the structures of corporate organizations, and NRC regulations do not adequately provide financial protection for individuals harmed by releases of nuclear material following an incident or attack at a nuclear facility. This claim challenges a statutory framework that the NRC is not authorized to change. Further, the petition does not explain why the current NRC regulations do not assure that the public will receive prompt financial compensation under available indemnity and underlying financial protection for damage resulting from the hazardous properties of radioactive materials or radiation.

PRM-50-86 seeks other relief related to security issues at nuclear power plants. The petition does not provide significant new information or arguments that were not previously considered by the Commission in its final rule on the Design Basis Threat, which was published in the *Federal Register* on March 19, 2007 (72 FR 12705), and became effective on April 18, 2007.

Sincerely,

/RA/

Annette L. Vietti-Cook

Enclosure:
Federal Register Notice of Denial

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-86]

Sherwood Martinelli; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-50-86) submitted by Sherwood Martinelli. The petitioner requested that the NRC amend its regulations to provide financial protection for individuals harmed by releases of nuclear material following an incident or attack at a nuclear facility, and to require licensees to pay for satellite communication systems for nuclear power plant communities to “protect human health and the environment.” The petitioner also requested that nuclear facilities licensed by the NRC or the Federal government provide adequate funding to enable every family living within 10 miles of a nuclear facility to build, stock, and maintain a personal family shelter to allow families to shelter in place during releases of nuclear material following an incident or attack at a nuclear facility.

ADDRESSES: Copies of the petition for rulemaking and NRC’s letter to the petitioner may be examined at the NRC Public Document Room (PDR), Public File Area Room O-1 F21, 11555 Rockville Pike, Rockville, MD. These documents also may be viewed and downloaded electronically via the rulemaking website.

The NRC maintains an Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301- 415-7163; e-mail: MTL@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

The petitioner requested that the NRC amend its regulations to provide financial protection for individuals harmed by releases of nuclear material following an incident or attack at a nuclear facility, and to require licensees to pay for satellite communication systems for nuclear power plant communities to "protect human health and the environment." The petitioner also requested that nuclear facilities licensed by the NRC or the Federal government provide adequate funding to enable every family living within 10 miles of a nuclear facility to build, stock, and maintain a personal family shelter to allow families to shelter in place during releases of nuclear material following an incident or attack at a nuclear facility.

The petitioner also requested that the NRC amend its regulations so that anyone living within 10 miles of a licensed nuclear facility is able to demand an Independent Safety

Assessment (ISA), which would include public review of onsite security and offsite evacuation plans for that licensee. The petitioner also sought other types of relief related to security issues at nuclear power plants.

A notice of receipt of this petition was not published in the *Federal Register*.

Reasons for Denial

The NRC is denying this petition because the NRC has determined that PRM-50-86 requests the NRC to take actions that exceed the NRC's authority, requests that the NRC address issues that the NRC has already considered in previous rulemakings, and fails to adequately support its requests to revise NRC regulations.

The petition requests the NRC to modify its regulations to require nuclear facilities licensed by the NRC or the Federal government to provide adequate funding to enable every family living within 10 miles of a nuclear facility to build, stock, and maintain a personal family shelter to allow families to shelter in place during releases of nuclear material following an incident or attack at a nuclear facility. The NRC cannot grant this request, in part because the NRC is not authorized by Congress to make financial payments to individuals. Further, the petition does not establish that requiring licensees to pay for these shelters would be necessary, in light of existing NRC requirements on emergency preparedness, to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The petition also asks that NRC regulations be revised to require licensees to pay for satellite communication systems for nuclear power plant communities to "protect human health and the environment." The petition does not demonstrate how requiring licensees to pay for these satellite communication systems would provide, in light of existing NRC requirements on

emergency preparedness, reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.

The petition requests that NRC rules be changed so that anyone living within 10 miles of a licensed nuclear facility is able to demand an ISA, which would include public review of onsite security and offsite evacuation plans for that licensee. The NRC already conducts detailed, objective inspections of licensed research and test reactors, operating power reactors, and fuel facilities. The NRC also performs assessments under a program called the Reactor Oversight Process (ROP) at all operating power reactor facilities on a continuous basis. These assessments measure performance in seven fundamental areas to ensure safe plant operation. The ROP, as currently implemented, effectively incorporates the inspection elements of the 1996 Maine Yankee ISA. The NRC believes the ROP and NRC's regulatory framework effectively examine the same key aspects of plant safety as an ISA, but with a better focus on potentially risk-significant problems.

The request for public review of onsite security plans cannot be granted because public review of these plans is not permissible. Allowing the details of these plans to be made public could aid adversaries. However, information concerning emergency plans is publicly available. Residents within a radius of approximately 10 miles from a nuclear power plant receive emergency information materials annually, including information about protective actions such as evacuation and sheltering. For more information concerning emergency plans, including public inspection of these plans, a resident should contact their local emergency management organization.

The petition also seeks revisions to NRC regulations because the petitioner claims that the Price-Andersen Act, the structures of corporate organizations, and NRC regulations do not adequately provide financial protection for individuals harmed by releases of nuclear material

following an incident or attack at a nuclear facility. This claim challenges a statutory framework that the NRC is not authorized to change. Further, the petition does not explain why the current NRC regulations do not assure that the public will receive prompt financial compensation under available indemnity and underlying financial protection for damage resulting from the hazardous properties of radioactive materials or radiation.

The petition seeks other relief related to security issues at nuclear power plants. The petition does not provide significant new information or arguments that were not previously considered by the Commission in its final rule on the Design Basis Threat, which was published in the *Federal Register* on March 19, 2007 (72 FR 12705), and became effective on April 18, 2007.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 12th day of July 2007.

For the Nuclear Regulatory Commission.

/RA/

Annette L. Vietti-Cook,
Secretary of the Commission.