

September 12, 2007

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USNRC

September 28, 2007 (10:58am)

Ms. Annette Vietti-Cook
Secretary
US Nuclear Regulatory Commission
Washington, DC 20555

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Re: Petition For Rulemaking Requiring Periodic Comprehensive NRC Review Of
Emergency Planning Around U.S. Nuclear Power Plants During The License
Renewal Process

Dear Ms. Vietti-Cook,

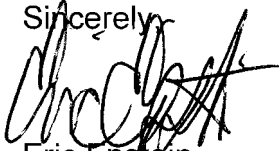
Pursuant to the NRC's §2.802 rulemaking process, I'm writing to submit a petition
for rulemaking.

This petition seeks new NRC rulemaking requiring periodic comprehensive NRC
review of emergency planning around U.S. nuclear power plants during the
license renewal process for the purpose of making a new finding of reasonable
assurance of adequate protection of the population.

Also pursuant to NRC Regulations Section (D) of §2.802, this petition requests
the Commission immediately suspend all licensing proceedings throughout the
United States until validation of "reasonable assurance of adequate protection of
the population" has been re-established by the NRC for all US Licensees.

Thank you for your assistance with this issue.

Sincerely,



Eric Epstein
Three Mile Island Alert
4100 Millsdale Rd.
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(717) 541-1101

Petition For Rulemaking Requiring Periodic Comprehensive NRC Review Of
Emergency Planning Around U.S. Nuclear Power Plants During The License
Renewal Process

**PURSUANT TO NRC §2.802 PETITION FOR RULEMAKING THIS
PETITION SHALL:**

- (1) Set forth a general solution to the problem or the substance or text of any proposed regulation or amendment, or specify the regulation which is to be revoked or amended;
 - (2) State clearly and concisely the petitioner's grounds for and interest in the action requested;
 - (3) Include a statement in support of the petition which shall set forth the specific issues involved, the petitioner's views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and such other pertinent information as the petitioner deems necessary to support the action sought. In support of its petition, petitioner should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened.
 - (d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a party pending disposition of the petition for rulemaking.
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(1) SET FORTH A GENERAL SOLUTION TO THE PROBLEM OR THE SUBSTANCE OR TEXT OF ANY PROPOSED REGULATION OR AMENDMENT, OR SPECIFY THE REGULATION WHICH IS TO BE REVOKED OR AMENDED

GENERAL SOLUTION:

This petition seeks new NRC rulemaking requiring periodic comprehensive NRC review of emergency planning around U.S. nuclear power plants during the license renewal process for the purpose of making a new finding of "reasonable assurance of adequate protection of the population."

(2) STATE CLEARLY AND CONCISELY THE PETITIONER'S GROUNDS FOR AND INTEREST IN THE ACTION REQUESTED

GROUNDS FOR INTEREST:

The current regulations are deficient because the NRC only issues a comprehensive affirmative finding that both onsite and offsite emergency plans are in place around a nuclear power plant, and that they can be implemented, only at the time it grants an initial operating license. The NRC does not perform periodic reviews of emergency planning around nuclear power plants for the purpose of making a new finding of a "reasonable assurance of adequate protection of the population."

The NRC should not re-license any nuclear facility without first making a new comprehensive finding that the public is protected in the event of a radiological emergency each time it re-licenses a nuclear facility to insure that each licensee continues to meet NRC emergency planning requirements.

(3) INCLUDE A STATEMENT IN SUPPORT OF THE PETITION WHICH SHALL SET FORTH THE SPECIFIC ISSUES INVOLVED, THE PETITIONER'S VIEWS OR ARGUMENTS WITH RESPECT TO THOSE ISSUES, RELEVANT TECHNICAL, SCIENTIFIC OR OTHER DATA INVOLVED WHICH IS REASONABLY AVAILABLE TO THE PETITIONER, AND SUCH OTHER PERTINENT INFORMATION AS THE PETITIONER DEEMS NECESSARY TO SUPPORT THE ACTION SOUGHT. IN SUPPORT OF ITS PETITION, PETITIONER SHOULD NOTE ANY SPECIFIC CASES OF WHICH PETITIONER IS AWARE WHERE THE CURRENT RULE IS UNDULY BURDENSOME, DEFICIENT, OR NEEDS TO BE STRENGTHENED.

SPECIFIC CASE & STATEMENT IN SUPPORT:

The statement in support of this rulemaking petition are best supported by the Honorable Gregory B. Jaczko, U.S. Nuclear Regulatory Commission Commissioner, in his July 18, 2006 comments at the Tri-State Emergency Management Meeting in Danvers, MA in which he stated, "The NRC only issues a comprehensive affirmative finding that both onsite and offsite emergency plans are in place around a nuclear power plant, and that they can be implemented, at the time it grants an initial operating license. We do not perform periodic reviews of emergency planning around nuclear power plants for the purpose of making a new finding of a "reasonable assurance of adequate protection of the population."

This situation is not helpful for your organizations. I am absolutely certain that state and local emergency managers and first responders are entirely dedicated to protecting their citizens. But because there is a lack of specificity in our regulations and guidance, and because there are no opportunities to periodically assess how all of the pieces fit together, there is little incentive for DHS or the NRC to provide new guidance and support for you as your community and the world we live in undergoes dramatic changes.

I understand the argument that emergency preparedness requirements are in effect at all times. But considering emergency preparedness during the license renewal process would be good public policy and a very valuable exercise. It would provide you with a forum to raise concerns, analyze and point out the changes that have occurred in your communities over the intervening decades, and suggest improvements. It also represents a huge opportunity to improve public confidence in the licensees and all levels of government by demonstrating how seriously we take these issues. (Please see enclosure.)

(D) THE PETITIONER MAY REQUEST THE COMMISSION TO SUSPEND ALL OR ANY PART OF ANY LICENSING PROCEEDING TO WHICH THE PETITIONER IS A PARTY PENDING DISPOSITION OF THE PETITION FOR RULEMAKING.

REQUEST TO IMMEDIATELY SUSPEND ALL LICENSING PROCEEDINGS

Pursuant to NRC Regulations Section (D) of § 2.802, this petition requests the Commission to immediately suspend all licensing proceedings throughout the United States until validation of “reasonable assurance of adequate protection of the population” has been re-established by the NRC for all US Licensees to insure and confirm each licensee is up to date and current with all NRC emergency planning requirements.

Thank you for assistance regarding this petition.

Respectfully submitted,

Eric Epstein
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(717) 541-1101

No. S-06-019

PDF Version 

Stronger Support for State and Local Governments

Prepared Remarks by

**The Honorable Gregory B. Jaczko, Commissioner
U.S. Nuclear Regulatory Commission**

**at the
Tri-State Emergency Management Meeting
Danvers, MA
July 18, 2006**

Good morning. As you heard in my introduction, I have done work in physics which involved analyzing very small systems. The emergency preparedness work you do is about large and complex systems involving many different agencies and levels of government. These present very different challenges, so I have made the effort to get a fuller understanding of this subject by visiting over a dozen nuclear power plants and meeting with public groups and local officials.

I have come to believe that emergency preparedness serves as a barometer for public confidence in the U.S. Nuclear Regulatory Commission (NRC). After all, it is the area in which our agency most closely interacts with the public and with you, state and local officials. In an emergency, licensees make protective actions recommendations, state and local officials make decisions, and the public reacts. So this is an area that we have to get right. It is important work and your citizens are depending on you.

I think we need to be doing a better job of helping you do yours.

The focus of my talk today will be on one small section of the Department of Homeland Security's (DHS) regulations governing the radiological emergency preparedness roles that federal government agencies play. 44 CFR Part 351.21 describes the NRC's role of evaluating the emergency plans to ensure they are adequate and can be implemented and Section (g) reads as follows:

“Participate with FEMA in assisting State and Local governments in developing their radiological emergency plans, evaluating exercises to test plans, and evaluating the plans and preparedness.”

The NRC clearly has the primary responsibility to ensure onsite plans provide reasonable assurance that appropriate protective measures can be taken and for reviewing DHS's offsite findings to make an overall determination of adequate protection for your communities. The regulation I just quoted makes it clear that we also have an obligation to stand with you to help you develop the plans that you submit to DHS. I believe we have ceded that responsibility to DHS/FEMA and it is time for us to stop being observers, roll up our sleeves, and join with you to fulfill that mandate.

What difference would it make, you might ask.

As I mentioned earlier, I have visited over a dozen nuclear power plants. At some of the plants I have visited, I have heard serious concerns that emergency plans will not work. I have concluded that we have not done a thorough job at the federal level of figuring out exactly what it means for a plan to “work.” For instance, I often hear that evacuations would take too long, but I am unable to point to a section of our regulations that explains how long they should take because there is not one.

At a May 2nd Commission meeting I asked a panel of industry, state and local government, and public interest group representatives their understanding of what working means. They all said that a working plant is one that “protects public health and safety.” And of course that is the mission and our ultimate goal. But I believe emergency preparedness is mature enough that we can do a better job of adding more specificity into our regulations to define what constitutes an acceptable level of preparedness and response capabilities.

Certainly, the NRC has the 16 planning standards detailed in section 50.47 of our regulations and we have further guidance in Appendix E. And as 44 CFR 350 .5(a) states, these regulations “apply insofar as FEMA is concerned to State and Local governments.” And while those regulations and the guidance contained in NUREG-0654/FEMA-REP-1 from 1980 are helpful, there is something missing.

In emergency preparedness, the NRC has requirements for developing and maintaining plans, but not for what they must be able to accomplish. In reality, we simply have procedural regulations. We need better clarity for all of the different organizations involved to be able to do their jobs. As I see it, you are the emergency management experts and you play the critical role of protecting your citizens. There will never be an NRC employee in your community, for instance, directing traffic in the event of an evacuation, but the federal government does have a responsibility to provide you with easier access to the nuclear expertise resident in the NRC to help

you do your jobs in the event of a radiological emergency.

Before I continue, I want to issue my standard disclaimer: the NRC is run by a Commission of five people. I only get one vote. But here are some of the things I believe need to change to enable the federal government to better support state, local, and licensee radiological emergency preparedness efforts.

First, I propose the start of a new dialogue on this issue. I would like for us to discuss ways to develop a set of attainable radiological emergency preparedness goals and then design steps to measure how well they can actually be met. I believe the best way to do this is to embrace the development of a performance-based definition of reasonable assurance that can be implemented in a graded approach. Let me explain.

The agency has defined performance-based requirements as those that have a measurable or calculable outcome. In general, a performance-based regulatory approach focuses on results as the primary basis for regulatory decision-making. So let us have a discussion about what the standard should be, let us quantify the protection that emergency preparedness plans and procedures should result in, and let us codify them in regulations that are objective and measurable.

I do not know what these new performance-based regulations would look like. They may focus on an evacuation time standard, an amount of dose that should be prevented or a maximum dose that can be received. Because they would be performance-based, licensees and communities would have more flexibility to address their own challenges and develop their own unique solutions to meet the reasonable assurance definition.

I think this effort should also be implemented in a graded approach. We need to ensure that the same amount of protection is afforded to citizens around all nuclear power plants and to do that we need to apportion our resources and efforts based upon the size of the EPZ populations. Having the flexibility to tailor your efforts in such a fashion would be an improvement over the current system which does not adequately recognize that each plant and each community is different. Because the NRC and FEMA regulations are mostly one-size-fits all, they do not take into account one of the fundamental principles of emergency management that all disasters are local – that each community is unique and local emergency managers must have the flexibility to adopt individual solutions.

Wouldn't it be better if you had the flexibility to look at all the hazards your state faces and put the risk from a rural nuclear power plant with a small neighboring population in its proper context?

Making emergency preparedness regulations more performance-based and flexible should be really straightforward. Having this dialogue and moving our regulations in this direction will also make it more likely that we could successfully make dramatic changes to protective action recommendations, if we find that necessary in the future. I am thinking here, of course, about the Sandia evacuation and protective action recommendation studies that the NRC has funded over the past few years. The preliminary results of these studies show that in certain emergencies resulting in releases of radiological materials – such as short duration or “puff” releases and/or in communities with longer evacuation time estimates, it may be better for people to shelter in place rather than attempt to evacuate.

There is a widespread perception that radiological emergency preparedness is equivalent to evacuation. Because there is such a belief among many members of the public that evacuation is the best option for a radiological emergency, any discussion about sheltering is seen as an admission that emergency plans will not ‘work’ and rather than focusing on the best way to achieve our common goal of protecting the public, the dialogue ends abruptly and results in a loss of public confidence. By making clear the ultimate performance measures we strive to meet, we are more likely to be able to gain the support of the very people that we need to listen, believe, and follow instructions to shelter in place – if in fact that is the safest course of action for a given scenario.

Just the discussion of this type of proposal will be extremely valuable. Public participation in the debate will allow concerned citizens to have their views heard and considered, and it would provide them with additional information about the efforts undertaken every day by licensees, and state, local, and federal government personnel to keep them safe.

A performance-based regulatory structure would be more efficient and would free up resources that would allow the agency to take one additional step to strengthen public confidence and ensure adequate protection: performing periodic comprehensive evaluations of radiological emergency preparedness.

The NRC only issues a comprehensive affirmative finding that both onsite and offsite emergency plans are in place around a nuclear power plant, and that they can be implemented, at the time it grants an initial operating license. We do not perform periodic reviews of emergency planning around nuclear power plants for the purpose of making a new finding of a “reasonable assurance of adequate protection of the population.”

The NRC and DHS do regularly assess the plans in place through exercises and reviews, but our agencies do not periodically *reassess* that initial reasonable assurance finding – even it was made decades ago – unless and until we find a serious deficiency in a biennial exercise.

This situation is not helpful for your organizations. I am absolutely certain that state and local emergency managers and first responders are entirely dedicated to protecting their citizens. But because there is a lack of specificity in our regulations and guidance, and because there are no opportunities to periodically assess how all of the pieces fit together, there is little incentive for DHS or the NRC to provide new guidance and support for you as your community and the world we live in undergoes dramatic changes.

Performing a comprehensive review of emergency preparedness at nuclear power plants, especially if it was designed to measure the new performance indicators established in performance-based regulations, would provide us all with a crucial opportunity to strengthen public confidence in those plans and procedures. Taking this step would be an acknowledgment of the importance of this capability, and it would honestly reflect the fact that the infrastructure and populations around many plants have changed dramatically in the decades since they began operation. Encouraging public participation in the review would also allow concerned citizens to have their views heard and considered.

Most importantly, it would allow the NRC to play its rightful role of assisting your agencies radiological preparedness efforts.

I am not sure what frequency such reviews would need to be conducted. Every five or ten years? More often around more densely populated plants? Based upon a trigger such as a 50% change in population size or the development of substantial new infrastructure? All of these ideas could be debated. New nuclear power plants will require you to amend your State plans to extend their coverage to the new units, and DHS's regulations require that those amended plans be reviewed in the same manner as if they were an initial plan submission. So we will be confronting this issue in some fashion in the near future. Why not take advantage of that environment to rework and improve the system?

Another logical time to perform this comprehensive evaluation during the review of a license renewal application. As you know, the process for renewing the licenses of nuclear power plants has been established in such a way that reviews of emergency preparedness are prohibited. I do not believe that was the appropriate policy decision.

I understand the argument that emergency preparedness requirements are in effect at all times. But considering emergency preparedness during the license renewal process would be good public policy and a very valuable exercise. It would provide you with a forum to raise concerns, analyze and point out the changes that have occurred in your communities over the intervening decades, and suggest improvements. It also represents a huge opportunity to improve public confidence in the licensees and all levels of government by demonstrating how seriously we take these issues.

I recognize that it is difficult to change this process now – the Commission acted some time ago and our agency has already approved many license renewal requests. But I believe this is an issue the Commission needs to reevaluate.

The vehicle to make the types of changes I have discussed already exists – a years-long comprehensive review of emergency preparedness regulations being performed by the staff that has involved everything from the previously mentioned Sandia studies to extensive and unprecedented public participation. At the conclusion of the effort in the fall, the staff intends to present the Commission with recommendations on how to improve the overall program. I am hopeful that the Commission will take action at that time to clarify and improve our regulations. And I believe that the NRC is uniquely positioned to work with DHS to take a larger onsite and offsite role as part of this reevaluation of emergency preparedness.

After all, while the Department of Homeland Security does all-hazards work with state and local emergency managers, the NRC continues to be responsible for onsite REP and for ultimately reviewing DHS offsite findings. We make the determination that the onsite and offsite arrangements are in place and can be implemented. If we cannot do this, the Commission has a responsibility to require a plant to cease operation.

The significant changes I have outlined will not be easy to accomplish because emergency planning is a complex and emotional issue. It will require that the NRC continue to interact with our DHS partners and with licensees, and state and local emergency management officials to continue to look for ways to make radiological emergency planning even more effective.

We must address this issue honestly, directly, and with the full participation of stakeholders to strengthen our credibility with the public and ultimately make the job each of us does a little bit easier to accomplish. Together we can make progress and I intend to help improve emergency preparedness for the current fleet of nuclear power plants and for potential future reactors.

Attending forums such as this is one of the ways I attempt to do that because in addition to sharing my ideas with you, today's sessions will give me the opportunity to hear your concerns and recommendations and engage you directly. So, again, I appreciate this opportunity to speak to you this morning. I would also welcome any questions you may have.

CERTIFICATE OF SERVICE

I hereby certify that copies of enclosed correspondence dated September 12, 2007, were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid or electronic mail. Please note that several exhibits were only available in hard copy.

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