

POLICY ISSUE NOTATION VOTE

November 20, 2008

SECY-08-0182

FOR: The Commissioners

FROM: R. W. Borchardt
Executive Director for Operations

SUBJECT: DENIAL OF A PETITION FOR RULEMAKING (PRM-50-85) SUBMITTED BY MR. ERIC EPSTEIN ON BEHALF OF THREE MILE ISLAND ALERT, INC.

PURPOSE:

To obtain Commission approval of the staff's proposal to deny a petition for rulemaking (PRM) to amend the U.S. Nuclear Regulatory Commission's (NRC) emergency preparedness regulations in Title 10, Part 50, "Domestic Licensing of Production and Utilization Facilities," of the *Code of Federal Regulations* (10 CFR Part 50). This petition requested that all host school pick-up centers be located at a minimum distance of 5 to 10 miles beyond the radiation plume exposure boundary zone to ensure that all school children are protected in the event of a radiological emergency. (*NOTE: The NRC refers to the referenced geographical area as the plume exposure pathway planning zone or the emergency planning zone (EPZ).*) This paper does not address any new commitments or resource implications.

BACKGROUND:

On April 11, 2007, the NRC received a PRM (Agency Documents Access and Management System (ADAMS) Accession No. ML071070475) from Mr. Eric Epstein on behalf of Three Mile Island Alert, Inc. (TMIA). The NRC docketed the petition on April 17, 2007, and assigned it Docket No. PRM-50-85. The petitioner requested that the NRC amend its emergency preparedness regulations in 10 CFR Part 50 to require all host school pick-up centers to be located a minimum distance of 5 to 10 miles beyond the EPZ to properly ensure that all school children are protected in the event of a radiological emergency. The petitioner observed that this criterion applies to the general population relocation centers and that the lack of such a criterion for host school pick-up centers constitutes a "regulatory gap." On July 10, 2007 (72 FR 37470), the NRC published a notice of receipt in the *Federal Register* requesting public comment. Fourteen comment letters were received, thirteen of which were supportive of the petition.

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SECY NOTE: THIS SECY PAPER TO BE RELEASED TO THE PUBLIC 5 WORKING DAYS AFTER DISPATCH OF THE LETTER.

DISCUSSION:

Inherent in the TMIA argument in support of its petition is the premise that host school pick-up centers serve the same purpose for school children as general population centers do for the remainder of the population. However, there is a fundamental difference between the intended functions of the two. The Federal Emergency Management Agency (FEMA) distinguishes host school pick-up centers from general population relocation centers. Host school pick-up centers serve as temporary locations where school children can be held while they wait for their parents or guardians to pick them up, whereas general population relocation centers offer longer term assistance to people displaced from their homes. The NRC/FEMA guidance, contained in NUREG-0654/FEMA-REP-1, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants," dated November 30, 1980 (ADAMS Accession No. ML040420012), and addenda, dated March 31, 2001 (ADAMS Accession No. ML021050240), provide for host school pick-up centers to be located outside of the EPZ and general population relocation centers to be located at least 5 miles and preferably 10 miles beyond the boundaries of the EPZ.

The petitioner requested that the NRC amend its emergency preparedness regulations to require that all host school pick-up centers be located at least 5 to 10 miles beyond the EPZ to ensure that all school children are protected in the event of a radiological emergency. The petitioner believes that current NRC, U.S. Department of Homeland Security, and FEMA emergency planning requirements fail to meet the safety needs of all school children. The petitioner believes that NRC and FEMA regulations advising that general population relocation centers be located at least 5 and preferably 10 miles beyond the EPZ but advising that host school pick-up centers be located just outside the EPZ constitute a regulatory gap that should be closed.

In its May 14, 2008, letter from Ms. Vanessa E. Quinn (FEMA) to Mr. Anthony C. McMurtry (NRC) (ADAMS Accession No. ML081570134), FEMA further clarifies the intended roles of the two types of evacuation sites. The FEMA letter clarifies that host school pick-up centers are pre-designated sites outside the EPZ specifically designed to receive and provide *temporary* shelter to evacuated students until their parents or guardians regain custody of them. Host school pick-up centers are generally located in the same school district as the primary school to make it easy for parents or guardians to pick up their children. If a parent or guardian has not picked up his or her student at the pre-designated site, the student is then transported to a relocation center for longer term protection and care. As such, these pre-designated sites do not serve as *relocation centers* as identified in Evaluation Criterion II.J.10.h in NUREG-0654/FEMA-REP-1 and, therefore, do not need to meet the siting criteria that apply to a relocation center.

The petitioner asserted that host schools located close to the EPZ do not provide the same level of protection as would a facility being located further beyond the EPZ. Although it is true that radiation exposure decreases with increasing distance, the impact of the exposure on the persons exposed to the radiation is also a function of the duration of the exposure. As indicated in the May 14, 2008, FEMA letter, host school pick-up centers are only pick-up points and any children whose parents or guardians have not picked them up would be transported to a relocation center. Thus, the duration of the students' stay at a host school pick-up center is expected to be short, after which their parents or guardians could evacuate them a further distance to the relocation center or to other individually arranged locations (*e.g.*, residences of friends, hotels). The NRC notes that these host school pick-up centers are located in residential

communities that are outside of the EPZ. According to NUREG-0654/FEMA-REP-1, protective actions would not likely be required beyond the EPZ. Thus, students in these host school pick-up centers would be afforded the same level of protection as that of the other residents in that community. As noted on the Pennsylvania Emergency Management Agency's website at <http://www.pema.state.pa.us/pema/cwp/view.asp?A=566&Q=254894>, school children are usually relocated before the evacuation of the general public as a precautionary measure, which further increases the likelihood that parents and guardians will have picked up their children before the onset of a radioactive release.

With respect to the petitioner's proposal to require a specific minimum distance outside of the EPZ for siting host school pick-up centers, the NRC intentionally used broad language in 10 CFR 50.47(b) because the planning standards apply to applicants, licensees, State governments, and local governments. The planning standards do not contain prescriptive requirements but instead provide the organizations with the flexibility to develop plans and procedures that best fit their specific needs and the needs of the affected public they are charged with protecting. The NRC and FEMA believe that numeric criteria, such as the minimum distance to a relocation center, properly belong in regulatory guidance. Because the existing regulatory structure already has minimum distance criteria for relocation centers for all segments of the population, including school children, no revision to 10 CFR Part 50 is necessary in response to the petitioner's request.

In addition, the staff believes that there is a sound regulatory structure, described in detail in the enclosed *Federal Register* notice (Enclosure 1), in place to provide adequate oversight and guidance for the protection of all members of the public, including school children, in the event of an incident at a nuclear power plant. The staff also believes that Appendix A, "Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission," to 44 CFR Part 353, "Fee for Services in Support, Review, and Approval of State and Local Government or Licensee Radiological Emergency Plans and Preparedness," and the jointly published NUREG-0654/FEMA-REP-1 adequately address the host school pick-up center siting issues raised by the petitioner.

PUBLIC COMMENTS:

The NRC received 14 comment letters in response to its July 10, 2007, notice of receipt of the TMIA petition. Comment letters came from five private citizens, three representatives from State government agencies, and six public advocacy organizations. Thirteen of the comment letters supported the petition while giving varying reasons for doing so. The enclosed *Federal Register* notice contains a detailed analysis and response to the public comments.

REASON FOR DENIAL:

The staff is proposing that the Commission deny PRM-50-85 submitted by Mr. Epstein, Chairman of TMIA. Current NRC regulations and NRC and FEMA regulatory guidance provide reasonable assurance of adequate protection of all members of the public, including school children, in the event of a nuclear power plant incident. Because it is prescriptive in nature and existing regulations and guidance already cover the petitioner's request, PRM-50-85 should be denied.

RECOMMENDATION:

The staff recommends that the Commission take the following two actions:

- (1) Deny PRM-50-85 submitted by Mr. Epstein on behalf of TMIA and publish the enclosed *Federal Register* notice (Enclosure 1), which announces the Commission's decision.
- (2) Approve the enclosed letter to the petitioner (Enclosure 2) for the Secretary's signature to inform the petitioner of the Commission's decision.

COORDINATION:

The Office of the General Counsel has reviewed this package and has no legal objection to the denial of this petition.

/RA Martin Virgilio for/

R. W. Borchardt
Executive Director
for Operations

Enclosures:

1. *Federal Register* Notice
2. Letter to the Petitioner

RECOMMENDATION:

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EDATS: NRR-2008-0025

ADAMS Accession No.: ML082470078(Package); ML082470080(SECY Paper)

*via e-mail

**via memo

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