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**UNITED STATES COURT OF APPEALS**

FOR THE THIRD CIRCUIT  
21400 UNITED STATES COURTHOUSE  
601 MARKET STREET  
PHILADELPHIA, PA 19106-1790  
Website: [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov)

TELEPHONE

215-597-2995

September 24, 2008

Mr. Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112

RE: Epstein v. USA  
Case Number: 08-3963  
Agency Case Number: PRM-54-5

To All Parties:

Enclosed is the case opening information regarding the above-captioned petition for review filed by **Eric Epstein**, docketed at No. **08-3963**. All inquiries should be directed to your Case Manager in writing or by calling the Clerk's Office at 215-597-2995. This Court's rules, forms and case information are available on our website at <http://www.ca3.uscourts.gov>. The petition was received on **09/24/2008**.

**Counsel for Petitioner**

The docketing fee of \$450.00 was received on **09/24/2008**. A receipt for the docketing fee is enclosed.

For Immigration cases only:

The filing of this petition for review will not automatically stay removal. A separate Motion for Stay of Removal must be filed. You must submit an original and 1 copy of the Motion for Stay of Removal with a certificate of service.

**Counsel for Respondent**

As counsel for Respondent(s), you must file:

1. Application for Admission (if applicable); and
2. Appearance Form (original+1).

These forms must be filed on or before **10/08/2008**

Pursuant to Fed. R. App. P. 17 (a), the agency must file the record with this Court within 40 days after being served with the petition for review, unless the statute authorizing review provides

otherwise.

Attached is a copy of the full caption as taken from the petition for review. Please review the caption carefully and promptly advise this office in writing of any discrepancies.

Very truly yours,

*Marcia M. Waldron*  
Marcia M. Waldron, Clerk

By: *Carmella Wells*  
Carmella Wells, Case Manager  
267-299-4928

Enclosures:  
Information for Pro Se Litigants  
Receipt of Docketing Fee

cc: Secretary NRC  
Attorney General USA

ERIC JOSEPH EPSTEIN,  
Petitioner

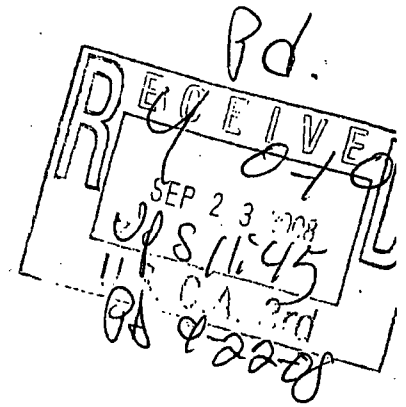
v.

UNITED STATES OF AMERICA;  
UNITED STATES NUCLEAR  
REGULATORY COMMISSION,  
Respondent

No. 08-3963

**United States Court of Appeals  
for the Third Circuit  
U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106**

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**Eric Joseph Epstein, *Pro se*  
Petitioner**

v.

**United States; United States Nuclear Regulatory Commission**

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**On Petition for Review of Order by the  
United States Nuclear Regulatory Commission**

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**Brief for Petitioner  
Eric Joseph Epstein**

**Eric Joseph Epstein, *Pro se*  
4100 Hillsdale Road  
Harrisburg, PA 17112  
717-541-1101**

Dated: September 22, 2008

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**Petition**

Petition for Rulemaking Submitted by Eric Epstein, Re  
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During The License Renewal Process [Docket No. PRM-54-5].....1



## **I. Subject Matter & Appellate Jurisdiction**

This is a civil action by Eric Joseph Epstein (“Petitioner,” “Epstein,” or “Mr. Epstein”) Appealing the U.S. Nuclear Regulatory Commission’s (“NRC” or “the Commission”) Denial of A Petition for Rulemaking Submitted by Eric Epstein, Three Mile Island Alert, Re Requiring Periodic Comprehensive NRC Review of Emergency Planning Around U.S. Nuclear Power Plants During The License Renewal Process on July 25, 2008 . (1)

The Third Circuit Court of Appeals (“the Court”) has jurisdiction pursuant to the Hobbes Act, 28 U.S.C. 28 § 2342(4); the Administrative Procedure Act (APA), 5 U.C.S. § 702; and, the Atomic Energy Act (AEA, 42 U.S.C. § 2239(b).

The Petitioner’s Complaint falls under 42 U.S.C.S. section 2239(b)(1) which provides for judicial review of the actions, "proceeding under this chapter, for granting, suspending, revoking or amending of any license or construction permit or application to transfer control and in any proceeding for the issuance of modification of rules and regulations dealing with the activities of licensees..." of the former Atomic Energy Commission (now NRC) according the chapter 158 of title 28. Title 28, Chapter 158 , 28 U.S.C.S. section 2342(4) provides for jurisdiction for all appeals of the former Atomic Energy Commission lies in the Circuit Court of Appeals. 28 U.S.C.S. section 2343 establishes venue in either the Washington DC Circuit or the Third Circuit which is where the Petitioner lives and works.

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<sup>1</sup> Please refer to the “Appendix: Volume I” for a copy of the “Petition for Rulemaking, ” and also a copy of the “NRC’s Denial of the Petition for Rulemaking.”

Mr. Epstein has also established standing before the Atomic Safety Licensing Board at the Nuclear Regulatory Commission In the Matter of PPL Susquehanna, LLC, Susquehanna Steam Electric Station Units 1 and 2, Docket Nos. 50-387-LR & 50-388-LR, ASLBP No. 07-851-01-LR. (2)

The Appeal is timely pursuant to 28 U.C.S. § 2344 because the Petitioner is afforded sixty (60) days from the date of the NRC's issuance of its determination on the Petitioner's request for Rulemaking which occurred on July 25, 2008.

## **II. Issues Presented for Review**

- 1) Does the Petition for Rulemaking merit a public discussion?
- 2) Did the Petitioner present new and significant information?
- 3) Was the NRC staff aware of the new information?
- 4) Is there a dissenting Opinion to base this Appeal?
- 5) Does the public possess a reasonable assurance "reasonable assurance of adequate protection of the population?"

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<sup>2</sup> U.S. NRC, "Memorandum and Order," III. Board Ruling on Standing of Petitioner, pp. 6-11, March 22, 2007.

### III. Case

The Petitioner is asking the Third Circuit Court of Appeals to Stay the NRC's Denial of Eric Epstein's Petition for Rulemaking, and Order the Commission to post the Petition Rulemaking for public comment, and allow the staff to render a decision based on the merits of Petition after an engaged and informed public debate has occurred which factors new and significant information that has come to light.

Mr. Epstein asked that the NRC amend its regulations that govern renewal of operating licenses for nuclear power plants. Specifically, the Petitioner requests that the NRC conduct a comprehensive review of U.S. nuclear power plant licensees' emergency planning during the license renewal proceedings based on new information he produced.

The Commission's position was that the NRC's emergency planning system is part of a comprehensive regulatory process that is intended to provide continuing assurance that emergency planning for every nuclear plant is adequate. Thus, the Commission has already extensively considered and addressed the types of issues raised in the petition. Also, the NRC alleged the Petition failed to present any significant new information or arguments that would warrant the requested amendment.

The Petition for Rulemaking does **not** oppose the relicensing nuclear generating stations. The Petitioner is asking the Court to compel the NRC to publish the Petition for Rulemaking and allow an open discussion based on the new information presented and subsequently revealed after the filing of the Petition.

The NRC staff has recently published new and significant information established, i.e., Protective Action Recommendations (PAR) Project NUREG-0654 /FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." The staff has demonstrated the Commission has not provided "reasonable assurances" that existing emergency plans will adequately protect the public's health and safety as the world we live in undergoes dramatic challenges.

#### IV. Statement of Facts

On July 18, 2006, US NRC Commissioner Gregory B. Jaczko told the Tri-State Emergency Management meeting in Danvers, Massachusetts:

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.'

...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 [Department of Homeland Security] 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. (Bold face type added)**

A Petition for Rulemaking was submitted by Eric Epstein, Three Mile Island Alert, Re: Requiring Periodic Comprehensive NRC Review of Emergency Planning Around U.S. Nuclear Power Plants During The License Renewal Process on September 12, 2007. Commissioner Jaczko's remarks was included as a statement of support.

On April 18, 2008, the Secretary of the NRC, Annette L. Vietti-Cook, released the "Commission Voting Record" SECY-070225, "Revision for NUREG-0654, Supplement 3, "Criteria for Protective Action Recommendations for Severe Accidents." (3)

By a 4-0 vote the "Commissioners approved the staff's recommendations" to revise NUREG-0654, and "provide a thorough evaluation of alternative protective actions that could potentially reduce the possible consequences to the public during a serve radiological emergency at a nuclear power plant." (4) Mr. Jaczko also noted that new data provided by the staff,

"...cause me significant additional concern about the Commission's October 26, 2005 denial of a petition for rulemaking to revise 10 CFR part 50 to require offsite emergency plans to include nursery schools and day care centers (PRM 50-79). The petitioner raised several concerns about the adequacy of evacuation plans for these facilities and argued that they needed to be address[ed] in a systematic way. (5)

3 Please refer to "Appendix: Volume 2" for a copy of "Commission Voting Record."

4 U.S. NRC Chairman, Dale E. Klein's Comments on SECY-07-0225, January 15, 2008.

5 (In a Memorandum to Luis A. Reyes, U.S. NRC Executive Director of Operations, Ms. Vietti-Cook actually said, "In the absence of any significant new information, there is no reason for the Commission to revisit this issue." (January 19, 2007, please refer to Appendix: Volume 2.)

**I believe that this study provides sufficient evidence for accepting this petition and therefore, consistent with the Commission's internal procedures, I formally offer a motion for reconsideration of the Commission decision...**

**Along those same lines the staff should evaluate other findings from this study to determine if there are issues of such importance that they should not only be the subject addressed in NUREG-0654 guidance, but should also be the subject of rulemaking to enhance existing EP regulatory requirements and ensure sufficient minimum mandates are replaced on licensees in a transparent manner. (6) (Bold face type added)**

On July 25, 2008, the Secretary of the NRC, Annette L. Vietti-Cook, sent a letter to Mr. Epstein informing Mr. Epstein of the Denial of his Petition for Rulemaking. The correspondence from Ms. Vietti-Cook was postmarked July 28, 2008. Mr. Epstein actually received the correspondence on July 31, 2008.

On July 31, 2008 (Volume 73, Number 148) the Federal Register published the NRC's Denial of Eric Epstein's Petition for Rulemaking.

The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Eric Epstein (PRM-54-5). The petition requests that the NRC amend its regulations that govern renewal of operating licenses for nuclear power plants. Specifically, the petitioner requests that the NRC conduct a comprehensive review of U.S. nuclear power plant licensees' emergency planning during the license renewal proceedings. (7)

<sup>6</sup> NRC Commissioner, Gregory B. Jaczko's Comments on SECY-07-0225, February 13, 2008.

<sup>7</sup> Proposed Rules, [Page 44671-44673] Federal Register Online, 10 CFR Part 54 [Docket No. PRM-54-5].

## V. Standard of Review

Under the APA, an Appeals court must “hold unlawful and set aside agency action, findings and conclusions found to be arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law. (*Dubois v. U.S. Department of Agriculture*, 102 F 3d. 1273, 1284 (1st Circuit 1996) citing 5 U.S.C., § 706 92)

While the Court may not be endowed with the requisite scientific expertise to referee technical nuclear matters, this Appeal does not rest on the NRC’s scientific expertise and the deference owed by the Court is relative (*Puerto Rico Aqueduct & Sewer Authority v. EPA*, 35 F.3d 600, 604 (1st Circuit, 1994)

## VI. Summary of Argument

The Petitioner is asking the Third Circuit Court of Appeals to Stay the NRC’s Denial of of Eric Epstein’s Petition for Rulemaking, and Order the Commission to post the Petition Rulemaking for public comment, and allow the staff to render a decision based on the merits of Petition after an engaged and informed public debate has occurred which factors the new and significant information that has come to light.

Mr. Epstein asked that the NRC amend its regulations that govern renewal of operating licenses for nuclear power plants. Specifically, the Petitioner requested that the NRC conduct a comprehensive review of U.S. nuclear power plant licensees' emergency planning during the license renewal proceedings based on new and significant information.

## **VII. Argument**

### **1) Does the Petition for Rulemaking merit a public discussion?**

**Answer: Yes.**

Based on the new and significant information Mr. Epstein presented in his Petition for Rulemaking and data subsequently revealed on April 18, 2008 as a result NRC staff's recommendations to revise NUREG-0654, it is clear that Mr. Jaczko's concerns have been verified and require an open and transparent discussion.

The Court should remand the case back to the NRC and compel the agency to advertise and solicit input in the Federal Register Re: Mr. Epstein's Petition for Rulemaking.

The Court's action would represent a huge opportunity to improve public confidence, and incorporate new and significant into emergency planning during the relicensing of aging nuclear power plants.

### **2) Did the Petitioner present new and significant information?**

**Answer: Yes.**

Mr. Epstein submitted U.S. NRC Commissioner Gregory B. Jaczko's comments at the Tri-State Emergency Management meeting in Danvers, Massachusetts on July 18, 2006.



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. (Bold face type added)**

Mr. Jaczko's comments were actually supported by finding in the NRC staff's recommendations" to revise NUREG-0654, and point to the gaping shortcoming embedded in current emergency preparedness planning in place at nuclear power plants (**most of which make no preparations for nursery school and day care facilities**) as they seek a license extension.

The Protective Action Recommendations (PAR) project "evaluated the current NRC PAR guidance contained in Supplement 3 to NUREG-0654 / FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (NRC, 1996) and assessed whether implementation of alternative protective actions could reduce potential health effects in the event of a nuclear power plant (NPP) accident." (Executive Summary, pp. ix-x)

Several relevant conclusions have been drawn from the PAR project, including:

- The study indicates that shelter-in-place followed by evacuation is more protective than immediate evacuation for rapidly developing releases.
- Evacuation should remain the major element of protective action strategies.
- Revision of NUREG-0654, Supplement 3, should be considered to better address the use of alternative protective actions.

- The study indicates that consideration should be given to protective action strategies that allow the population to quickly distance themselves from the plant, such as an early or staged evacuation, because this can reduce public health consequences.
- The study indicates that precautionary efforts during Site Area Emergency are prudent.
- The study indicates that strategies that reduce evacuation time can reduce consequences.
- The study and other ongoing studies indicate that special needs populations that do not reside in special facilities may be under served in evacuation planning. It appears that this issue warrants further investigation and development of guidance on this issue may be appropriate.

The new and significant conclusions recently released by the NRC's study support the following protective action strategies for **all nuclear power plants**:

- Immediate radial evacuation
- Shelter-in-place,
- Staged evacuation,
- Preferential sheltering for special needs individuals,
- Delayed evacuation, until traffic controls are in place,
- Early closure of schools, parks, government facilities, etc., at the Site Area Emergency
- Early notification of the general population within the 16 km<sup>2</sup> (about 10 mile) Emergency Planning Zone (EPZ) to prepare for evacuation.

A revisions to Supplement 3 should consider addressing the following items and be incorporated into **license extension planning**:

- Clarification of the conditions for which shelter-in-place is effective.
- Guidance on the importance tracking the plume passage, communicating with those sheltered, and directing an effective evacuation immediately upon the termination of the shelter event.
- Emphasis on the benefits of staged evacuation.
- Guidance and expectations for the transit dependent persons.

“If a revision to Supplement 3 is pursued, the effort would benefit from stake holder input as it should foster development of protective actions that include the breadth of available options within the context of site specific considerations.”

There is absolutely no reason a nuclear generation seeking a license extension should be exempted from the data, conclusions and new significant information produced by this recent NRC study and endorsed by the Commissioners.

### **3) Was the NRC staff aware of the new information?**

**Answer: Yes.**

The staff produced and then ignored new and significant information it generated internally. The new and significant information contained in the Protective Action Recommendations, Supplement 3 to NUREG-0654 /FEMA-REP-1, Rev. 1, and the Commissioners' comments, did not come to Mr. Epstein's attention until he conducted a data search in June 2008.

**4) Is there a dissenting Opinion to base this Appeal?**

**Answer: Yes.**

Following the NRC's Denial of Eric Epstein's Petition for Rulemaking, the Commission directed that the Notice include the following comments of Commissioner Jaczko:

I disagree with the decision to deny this petition for rulemaking. Instead, I believe the review of a license renewal application authorizing, if granted, an additional twenty-years of operation, provides the opportune time at which the agency should reevaluate emergency preparedness issues. Currently, the only time the NRC 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, is at the time it grants an initial operating license. Although there are regular assessments of these plans through exercises and reviews, we do not periodically reassess that initial reasonable assurance of adequate protection of the public- - even if it was made decades ago--unless and until we find a serious deficiency in a biennial exercise. I believe considering emergency preparedness during the license renewal process would provide an opportunity to improve public confidence in the licensees and in all levels of government.

**5) Does the public possess a reasonable assurance  
"reasonable assurance of adequate protection of the  
population?"**

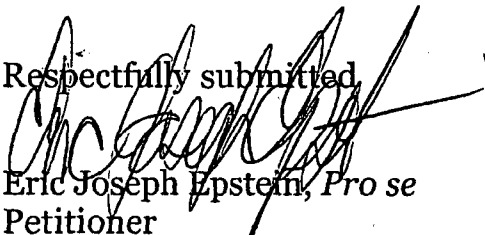
**Answer: No.**

The NRC's decision to Deny the Petition for Rulemaking was arbitrary and capricious, made without public input, and ignored new and significant information, including data produced by the staff. The staff's recommendations and Commissioner comments Re: PAR NUREG-0654, clearly indicate the need to update and review emergency planning for nuclear plants seeking license extensions.

### **VIII. Conclusions and Request for Relief**

For the foregoing reasons, and the new and significant information produced by the Plaintiff, the Court should reverse and remand the NRC's Denial of the Petition for Rulemaking submitted by Eric Epstein, Three Mile Island Alert, Re: Requiring Periodic Comprehensive NRC Review of Emergency Planning Around U.S. Nuclear Power Plants During The License Renewal Process.

Respectfully submitted,



Eric Joseph Epstein, *Pro se*  
Petitioner

4100 Hillsdale Road  
Harrisburg, PA 17112,  
(717)-541-1101

**Dated: September 22, 2008**

I hereby certify that on September 22, 2008 ten copies of the Brief for the Petitioner were served via overnight service to the United States Court of Appeals for the Third Circuit U.S. Courthouse, 601 Market Street Philadelphia, PA 19106 and copies were sent via electronic mail and by the United States Postal Service to:

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
16th Floor  
One White Flint North  
11555 Rockville Pike,  
Rockville, Maryland 20852  
Attn: Rulemaking and Adjudications Staff

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U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001  
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Administrative Judge  
Ann Marshall Young, Esq., Chairman  
Atomic Safety and Licensing Board  
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Washington, D.C. 20555-0001

David R. Lewis, Esquire  
Pillsbury, Winthrop, Shaw et al  
2300 N Street, N.W.  
Washington, D.C, 20037

**APPENDIX: VOLUME I**

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PRM-54-5

September 12, 2007

DOCKETED  
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,

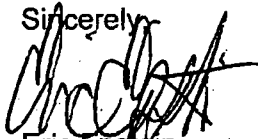
Pursuant to the NRC's §2.802 rulemaking process, I'm writing to submit a petition  
for rulemaking.

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.  
Harrisburg, PA 17112  
(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

1

Template = SECY-051

SECY-02



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.
-

(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  
Three Mile Island Alert  
4100 Hillsdale Rd.  
Harrisburg, PA 17112  
(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.

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*Last revised Wednesday, August 09, 2006*

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.

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
Mail Stop O-16 C1  
Washington, D.C. 20555-0001  
Attn: Rulemaking and Adjudication's Staff

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
One White Flint North, 16th Floor  
11555 Rockville Pike,  
Rockville, Maryland 20852  
Attn: Rulemaking and Adjudication's Staff

U.S. Nuclear Regulatory Commission  
John F. Cordes, Jr., Solicitor  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Federal Emergency Management Agency  
500 C. Street, S.W.  
Washington, D.C. 20472  
Attention:  
Document & Control Desk

Department of Homeland Security  
Office of Inspector General  
245 Murray Lane, SW  
Washington, D.C. 20528

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UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

July 25, 2008

SECRETARY

Mr. Eric Epstein  
Three Mile Island Alert  
4100 Hillsdale Road  
Harrisburg, Pennsylvania 17112

Dear Mr. Epstein:

I am responding to your petition for rulemaking, dated September 12, 2007, in which you requested that the U.S. Nuclear Regulatory Commission (NRC) amend its regulations in Part 54 of Title 10 of the *Code of Federal Regulations*. Specifically, you requested that the NRC conduct a comprehensive review of U.S. nuclear power plant licensees' emergency planning during the license renewal proceedings. The NRC docketed the petition as PRM-54-5.

The NRC has considered the petition and your supporting rationale. For the reasons provided in the enclosed *Federal Register* notice, your petition is denied. The NRC is denying the petition because the petition presents issues that the Commission carefully considered when it first adopted the license renewal rule (December 13, 1991; 56 FR 64943), when it revised the final rule (May 8, 1995; 60 FR 22461), and when it denied petitions for rulemaking (December 13, 2006; 71 FR 74848) submitted by Andrew J. Spano, County Executive, Westchester County, New York (PRM-54-02), and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM-54-03). In essence, the Commission's position is that the NRC's emergency planning system is part of a comprehensive regulatory process that is intended to provide continuing assurance that emergency planning for every nuclear plant is adequate. Thus, the Commission has already extensively considered and addressed the types of issues raised in the petition. Also, the petition fails to present any significant new information or arguments that would warrant the rulemaking you have requested.

The *Federal Register* notice denying the petition is being transmitted to the Office of the *Federal Register* for publication.

Sincerely,

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook

Enclosure:  
*Federal Register* Notice  
Denying Petition

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 54**

**[Docket No. PRM-54-5]**

**Eric Epstein;  
Denial of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking: Denial.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Eric Epstein (PRM-54-5). The petition requests that the NRC amend its regulations that govern renewal of operating licenses for nuclear power plants. Specifically, the petitioner requests that the NRC conduct a comprehensive review of U.S. nuclear power plant licensees' emergency planning during the license renewal proceedings. The NRC is denying the petition because the petition presents issues that the Commission carefully considered when it first adopted the license renewal rule and denied petitions for rulemaking submitted by Andrew J. Spano, County Executive, Westchester County, New York (PRM-54-02), and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM-54-03). The Commission's position is that the NRC's emergency planning system is part of a comprehensive regulatory process that is intended to provide continuing assurance that emergency planning for every nuclear plant is adequate. Thus, the Commission has already extensively considered and addressed the types of issues raised in the petition. Also, the

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petition fails to present any significant new information or arguments that would warrant the requested amendment.

**ADDRESSES:** Publicly available documents related to this petition, including the petition for rulemaking and NRC's letter of denial to the petitioner may be viewed electronically on public computers in NRC's Public Document Room (PDR), 01F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Publicly available documents created or received at NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at (800) 387-4209 or (301) 415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Nina Bafundo, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001, telephone (301) 415-1621 or Toll Free: 1-800-368-5642, e-mail [Nina.Bafundo@nrc.gov](mailto:Nina.Bafundo@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

During the 1991 license renewal rulemaking (56 FR 64943; December 13, 1991), the Commission explained that initial license-type reviews are unnecessary at license renewal

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because of ongoing NRC inspections, enforcement, and upgrades: "since initial licensing, each operating plant has continually been inspected and reviewed as a result of new information gained from operating experience." 56 FR at 64945. These ongoing regulatory processes provide reasonable assurance that the licensing bases of currently operating plants provide and maintain an adequate level of safety. (60 FR at 22464, 22481-82; May 8, 1995). The license renewal rule likewise reflects the NRC's determination that issues of adequate safety and protection should be addressed when they arise. See, 60 FR at 22481. The NRC anticipated that safety issues will inevitably emerge, but concluded that its ongoing regulatory process is comprehensive and flexible enough to manage safety concerns before the license renewal process. (71 FR 74848, 74851; December 13, 2006). Also, in making revisions to the license renewal rule, the Commission reaffirmed the vitality of its regulatory process. See, 60 FR 22461.

More specifically, the NRC's emergency preparedness regulations in 10 CFR Part 50 require licensees to test the adequacy of their preparedness and ability to respond to emergency situations by the performance of a full-scale exercise at least once every two years, with the participation of Government agencies. These exercises are evaluated by NRC inspectors and FEMA evaluators. In the interval between these two-year exercises, licensees must conduct additional drills to ensure that they maintain adequate emergency response capabilities.

Further, the NRC actively reviews its regulatory framework to ensure that the regulations are current and effective. The agency began a major review of its emergency preparedness framework in 2005, including a comprehensive review of the emergency preparedness regulations and guidance, the issuance of generic communications regarding the integration of

emergency preparedness and security, and outreach efforts to interested persons to discuss emergency preparedness issues. These activities have informed an ongoing rulemaking effort that will enhance the NRC's emergency preparedness regulations and guidance. See, Rulemaking Plan for Enhancements to Emergency Preparedness Regulations and Guidance, (April 17, 2007) (ML070440148); SRM-SECY-06-0200, Results of the Review of Emergency Preparedness Regulations and Guidance, (January 8, 2007) (ML070080411); SECY-06-0200, Results of the Review of Emergency Preparedness Regulations and Guidance, (September 20, 2006) (ML061910707).

#### **The Petition**

This petition raises concerns nearly identical to the recent petitions by Andrew J. Spano, County Executive, Westchester County, New York (PRM-54-02) and Mayor Joseph Scarpelli of Brick Township, New Jersey (PRM-54-03), which the Commission denied after public comments. In the Spano and Scarpelli petitions, the petitioners requested that the NRC amend its regulations to provide that the agency renew a license only if the plant operator demonstrates that the plant meets all criteria and requirements that would apply if it were proposing the plant *de novo* for initial construction, including an emergency planning analysis. Similarly, this petition requests the NRC to make a "new finding of 'reasonable assurance of adequate protection,'" like a *de novo* review under the initial licensing process.

In the Spano and Scarpelli denials, the NRC addressed issues it had already considered at length during its license renewal rulemaking. See, 71 FR 74848, 74851. The Commission explained that "the petitioners did not present any new information that would contradict positions taken by the Commission when the license renewal rule was established or

demonstrate that sufficient reason exists to modify the current regulations." *Id.* Likewise, this petition does not pose any new concerns that would undermine the rationale for the current license renewal process.

For the reasons given by the Commission in the final license renewal rule (56 FR 64943; December 13, 1991) and again in revisions to the final rule (60 FR 22461; May 8, 1995), the scope of license renewal is appropriately limited to those issues which have a specific relevance to protecting the public health and safety during the license renewal period -- i.e., age-related degradation. Issues relevant to current plant operations, like emergency planning and nuclear plant security, fall within the purview of the current regulatory process and continue into the extended operation period of a license renewal. The Commission also mandates that each plant-specific licensing basis be maintained during the renewal term in the same manner and to the same extent as during the original licensing term, thereby ensuring the protection of public health and safety and the preservation of common defense and security.

The Commission has affirmed repeatedly that "emergency preparedness need not be reviewed again for license renewal." 71 FR at 74852 (referencing 56 FR at 64966). The Commission stated that "[t]hrough its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors." 71 FR at 78452 (quoting 56 FR at 64966). This basic determination is reflected in the NRC's regulations at 10 CFR 50.47(a) on emergency planning requirements, in which a new finding on emergency planning issues is not required for license renewal. Further, all of the emergency planning regulations in 10 CFR 50.47, 50.54(q), 50.54(s)-(u), and Appendix E are independent of the license renewal process, and continue to apply during the extended operation term.

For these reasons, the Commission denies PRM-54-5.

Following its review of this Notice, the Commission directed that the Notice include the following comments of Commissioner Jaczko:

I disagree with the decision to deny this petition for rulemaking. Instead, I believe the review of a license renewal application authorizing, if granted, an additional twenty-years of operation, provides the opportune time at which the agency should re-evaluate emergency preparedness issues. Currently, the only time the NRC 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, is at the time it grants an initial operating license. Although there are regular assessments of these plans through exercises and reviews, we do not periodically reassess that initial reasonable assurance of adequate protection of the public - even it was made decades ago - unless and until we find a serious deficiency in a biennial exercise. I believe considering emergency preparedness during the license renewal process would provide an opportunity to improve public confidence in the licensees and in all levels of government.

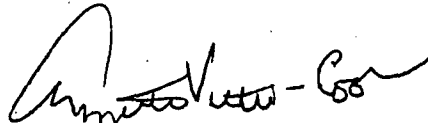
The Commission had additional views on the petition:

The Commission majority does not share Commissioner Jaczko's dissenting view. As stated in each of our votes on this matter, and in support of the Commission's responsibility to oversee the safety and security of operating reactors, we continue to support the view that issues of relevance to both current plant operation and operation during the license renewal period must be addressed as they arise within the present license term rather than at the time of renewal. Emergency planning is such an issue. Through its standards and required exercises, the Commission ensures that existing emergency plans are adequate throughout the life of any plant, even in the face of changing demographics and other site-related factors. The emergency preparedness regulations in 10 CFR Part 50 require licensees to test the adequacy of their preparedness and ability to respond to emergency situations through the performance of a full-scale exercise at least once every two years. These drills and independent evaluations provide a process to ensure continued adequacy of emergency

preparedness in light of changes in site characteristics. Consequently, consistent with the Commission's policy to confine the review of issues during license renewal to those uniquely relevant to protecting the public health and safety and common defense and security during the renewal period, we find no lost opportunity here and see no necessity for a review of emergency planning as part of the license renewal process.

Dated at Rockville, Maryland, this 25<sup>th</sup> day of July 2008.

For the Nuclear Regulatory Commission.

A handwritten signature in black ink, appearing to read "Annette Vietti-Cook". The signature is fluid and cursive, with a long horizontal stroke at the end.

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



**APPENDIX: VOLUME II**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

SECRETARY

April 18, 2008

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0225

TITLE: REVISION OF NUREG-0654, SUPPLEMENT 3, "CRITERIA  
FOR PROTECTIVE ACTION RECOMMENDATIONS FOR  
SEVERE ACCIDENTS"

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 18, 2008.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook".

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
Commissioner Svinicki  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-07-0225

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. KLEIN	X				X	1/15/08
COMR. JACZKO	X				X	2/13/08
COMR. LYONS	X				X	1/15/08
COMR. SVINICKI	X				X	4/10/08

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on April 18, 2008.

NOTATION VOTE


RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: CHAIRMAN KLEIN  
SUBJECT: SECY-07-0225 – REVISION OF NUREG-0654,  
SUPPLEMENT 3, "CRITERIA FOR PROTECTIVE  
ACTION RECOMMENDATIONS FOR SEVERE  
ACCIDENTS"

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached XX None \_\_\_\_\_

  
\_\_\_\_\_  
SIGNATURE


11/5/08  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

**Chairman Klein's Comments on SECY-07-0225**

I believe that the protective action recommendations (PAR) study documented in NUREG/CR-6953, Vol.1, provides a thorough evaluation of alternative protective actions that could potentially reduce the possible consequences to the public during a severe radiological emergency at a nuclear power plant.

I approve the staff's recommendation to revise NUREG-0654, Supplement 3, to reflect the results of NUREG/CR-6953, Vol.1, after input is received from State and local government emergency response professionals, stakeholders, and industry.

 1/15/08  
Dale E. Klein      Date

**NOTATION VOTE**

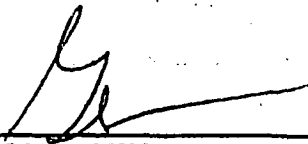
**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER JACZKO  
**SUBJECT:** SECY-07-0225 – REVISION OF NUREG-0654,  
SUPPLEMENT 3, "CRITERIA FOR PROTECTIVE  
ACTION RECOMMENDATIONS FOR SEVERE  
ACCIDENTS"

Approved  Disapproved  Abstain

Not Participating

**COMMENTS:** Below  Attached  None

  
\_\_\_\_\_  
SIGNATURE

2/13/08  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

**Commissioner Jaczko's Comments on SECY-07-0225  
Revision of NUREG-0654, Supplement 3, "Criteria for Protective Action  
Recommendations for Severe Accidents"**

I approve of the staff's recommendation to revise the protective action recommendation (PAR) guidance contained in NUREG-0654, Supplement 3, to reflect the results of this PAR study. The staff should be commended for the thorough review of work in this area and for the detailed technical analysis included in this new NUREG/CR-6953, Volume 1. I look forward to the second part of this study investigating how the public will receive revised PAR guidance. I also encourage the staff to move as quickly as possible to get input from the public and update the agency's protective action guidance to be used by state and local governments in the unlikely event of a significant accident at a nuclear power plant.

I think it is important to highlight several findings of this report. One of the main themes that emerges is the importance of accurate evacuation time estimates. The lack of a requirement that these protective action recommendation tools be regularly updated and maintained to a high-quality standard has been a concern of mine for years. That is why I have strongly supported the emergency preparedness proposed rulemaking provision that would put in place more stringent maintenance requirements for these evacuation time estimates and triggers for updating them -- including every ten years, when emergency planning zone (EPZ) populations change by 10 percent or more, and when there are major changes to the infrastructure around the plants. Better evacuation time estimates will yield better protective action recommendations.

Another discussion in the report worthy of note involves a review of the research into human behavior during emergencies. It is important to state that documented observed behavior in the face of disaster reveals that emergency workers respond in a selfless manner putting the needs of the community over their personal concerns. That is why we have so much respect for first responders - they do that every day. Additionally, local leaders and the public as a whole do not panic or behave irrationally, but instead help each other out in emergencies. This is not new information, but is important to reemphasize. It also reinforces the importance of having good emergency plans in place for local leaders, first responders, licensees, and the public to be able to implement if necessary.

The report also notes NRC studies which have concluded that shadow evacuation -- or people evacuating outside of a designated evacuation area -- is a real phenomenon in some disasters but one that has no statistically-significant impact on the effectiveness of overall evacuation efforts. In addition, the volume of people over-responding to evacuation orders can be mitigated by better communication with members of the public outside the evacuation area and by implementing traffic control measures.

I believe it is important to highlight several other sections of this study which I believe will be of particular interest to the public. The report concludes that there is more work to do to protect special needs populations around nuclear power plants -- both those people in special needs facilities such as schools and hospitals, and those people with special needs who live at home. It notes the difficulties experienced in previous disasters such as Hurricanes Katrina and Rita when it was discovered that multiple special facilities had

contracted with the same transportation services for evacuations, and those resources were overwhelmed by the need to simultaneously evacuate them all. The study notes that evacuating some of these facilities – such as hospitals – can take up to 20 hours. It also focuses on the challenges and importance of doing additional work to identify in advance those members of the special needs populations who do not reside facilities to ensure they are adequately incorporated into emergency plans. Finally, the report emphasizes the value in some scenarios of taking early protective action for special needs populations – both to ensure there is time to safely evacuate them, and to help spread out any subsequent evacuations that may need to occur.

These conclusions cause me significant additional concern about the Commission's October 26, 2005 denial of a petition for rulemaking to revise 10 CFR Part 50 to require offsite emergency plans to include nursery schools and day care centers (PRM-50-79). The petitioner raised several concerns about the adequacy of evacuation plans for these facilities and argued that they needed to be address in a systematic way. **I believe that this study provides sufficient evidence for accepting this petition and therefore, consistent with the Commission's internal procedures, I formally offer a motion for reconsideration of that Commission decision. The staff should include the content of that petition as part of the rulemaking the staff has initiated to enhance emergency preparedness regulations and guidance. If it is too late to incorporate the petition into that rulemaking without delaying it significantly, the staff should initiate a separate rulemaking. In addition, the staff should ensure that the effort to update the NUREG-0654 guidance specifically addresses these issues. There are a myriad of ways these issues can be addressed, but we need to consciously do so now based on the findings detailed in this study.**

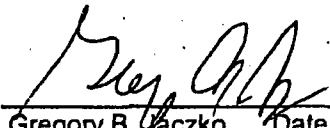
**Along those same lines, the staff should evaluate other findings from this study to determine if there are issues of such importance that they should not only be addressed in the NUREG-0654 guidance, but should also be the subject of rulemaking to enhance existing EP regulatory requirements and ensure sufficient minimum mandates are placed on licensees in a transparent manner.**

There is one protective option that was omitted from this study that I believe should have been included. The conclusion that preferential sheltering - using larger group facilities that may provide better radiation shielding than a normal residence - was unfeasible seems sound. But this is because the benefits are not that great versus the cost, as people sheltering in those facilities could still receive radiation doses since the buildings are not airtight and would have to be ventilated with outside air. Large pressurized sheltering facilities may prevent interior contamination and thereby offer much greater protection, as they do in the U.S. today in chemical stockpile hazard zones. And while the costs and logistics of building, maintaining, and operating them might be significant, this study assumed that pressurized facilities would not be available in nuclear power plant emergency planning zones. By not including them in this study, we do not have the data to know if the benefits they could provide would be worth that additional cost. **The staff should therefore rerun the models developed for this study with the option of access to pressurized sheltering facilities compared against the other strategies studied. This analysis should be straightforward since the models are already developed. The staff can then attach the results of this effort to the forthcoming Volume II of this report.**



Finally, the study was premised on a scenario that leads to a release of radioactive material 40 minutes from the declaration of a General Emergency. While such a scenario is extremely unlikely, the fact that the NRC studied it and has now formally concluded that in certain emergencies resulting in releases of radiological materials - such as short duration or "puff" releases - it is better for some people to shelter in place before evacuating, is significant. The challenge for the agency now is to explain this dramatic change in protective action recommendations to the public. Because there remains a widespread belief among many members of the public that evacuation is the best option for a radiological emergency, this discussion about sheltering may be seen by some stakeholders as an admission that emergency plans are insufficient. Even though temporarily sheltering-in-place may be the right answer scientifically, we risk losing the confidence of the very people we will need to follow protective action recommendations for these measures to be successful at reducing radiation exposures.

**Ultimately, the best way to address this challenge is to continue to develop a performance based definition of reasonable assurance that focuses on what the standard should be, transparently quantifies the level of protection that emergency preparedness plans and procedures provide, and then codifies these results into regulations that are objective and measurable. By making clear the overall 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.**

  
Gregory B. Jaczko      Date 2/13/08

**NOTATION VOTE**

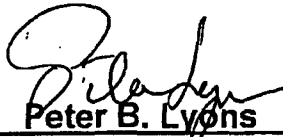
**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER LYONS  
**SUBJECT:** SECY-07-0225 – REVISION OF NUREG-0654,  
SUPPLEMENT 3, "CRITERIA FOR PROTECTIVE  
ACTION RECOMMENDATIONS FOR SEVERE  
ACCIDENTS"

Approved  X  Disapproved       Abstain      

Not Participating      

COMMENTS: Below       Attached  X  None      

  
Peter B. Lyons  
\_\_\_\_\_  
SIGNATURE

1/15/08  
\_\_\_\_\_  
DATE

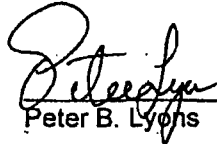
Entered on "STARS" Yes  X  No      

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Commissioner Lyons' Comments on SECY-07-0225

I join with Chairman Klein in approving the staff recommendation to initiate the processes described in SECY-07-0225 to guide the revision of NUREG-0654, Supplement 3, so that it reflects the results of the protective action recommendations study (NUREG/CR-6953 Vol. 1).

The technical analyses documented in NUREG/CR-6953 Vol. 1 represent the best and current science, have been reviewed and commented upon by the NRC Advisory Committee on Reactor Safeguards, and will be published and publicly available during the revision process. Nonetheless, issues associated with any potential for public evacuation are sensitive ones, so I am particularly encouraged that the process for considering the development of revised guidance will be robust and scrutable. As described in SECY-07-0225, the process will include soliciting insights from State and local government emergency response professionals, professional conferences and other scheduled meetings, and a telephone survey of Emergency Planning Zone populations with results to be published as NUREG/CR-6953 Vol. 2.

  
Peter B. Lyons      1/15/08  
Date

**NOTATION VOTE**

**RESPONSE SHEET**

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-07-0225 - REVISION OF NUREG-0654,  
SUPPLEMENT 3, "CRITERIA FOR PROTECTIVE  
ACTION RECOMMENDATIONS FOR SEVERE  
ACCIDENTS"

Approved  X  Disapproved       Abstain      

Not Participating      

COMMENTS: Below       Attached  X  None      

  
SIGNATURE

4/10/08  
DATE

Entered on "STARS" Yes  No

**Commissioner Svinicki's Comments on SECY-07-0225**

I approve the staff's recommendation to revise NUREG-0654, Supplement 3, to reflect the results of NUREG/CR-6953, Vol. 1, after input is received from State and local government emergency response professionals, stakeholders, and industry.

The protective action recommendations (PAR) study documented in NUREG/CR-6953, Vol. 1, concluded that evacuation should remain the major element of protective strategies; thereby providing important confirmation – through more rigorous parametric analysis than has been undertaken to date – of current emergency planning approaches. Although the study states that sheltering-in-place should receive more emphasis in protective action strategies, the study confirmed, as stated in Supplement 3, that for all but a very limited set of conditions, prompt evacuation of the area near the plant is much more effective than sheltering the population in reducing the risk of early health effects in the event of severe accidents.

I believe that efforts to inform emergency planning strategies with the best and current science are furthered by the robustness of the analyses undertaken for Volume 1 of the study. These efforts will be further advanced by stakeholder involvement in the process.

  
Kristine L. Svinicki

4/10/2008  
Date

January 19, 2007

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary /RA/

SUBJECT: STAFF REQUIREMENTS - SECY-06-0228 - DENIAL OF A  
PETITION FOR RULEMAKING TO CODIFY FEDERAL  
EMERGENCY MANAGEMENT AGENCY GM EV-2,  
"PROTECTIVE ACTIONS FOR SCHOOL CHILDREN," INTO THE  
EMERGENCY PLANNING REGULATIONS IN 10 CFR PART 50  
(PRM-50-81)

The Commission has approved the staff's recommendation to deny the petition for rulemaking, PRM-50-81. In the absence of any significant new information, there is no reason for the Commission to revisit the issue at this time.

cc: Chairman Klein  
Commissioner McGaffigan  
Commissioner Merrifield  
Commissioner Jaczko  
Commissioner Lyons  
OGC  
CFO  
OCA  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)  
PDR

SECY NOTE: THIS SRM WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS  
AFTER DISPATCH OF THE LETTER TO THE PETITIONER.