

Dear Congressman Gutmire:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of August 28, 2009, in which you requested information regarding potential NRC funding for a project related to *in situ* testing of protective coatings used at nuclear power plants, and which included an attachment from your constituents describing a safety concern and a proposed project to address that concern.

The NRC has funds available to perform research that supports its mission to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. An interested party may submit an unsolicited proposal requesting consideration by the agency for award of either a contract or a financial assistance arrangement. We note that, contrary to what is indicated in the attachment to your letter, the NRC receives no stimulus funding under the American Recovery and Reinvestment Act of 2009 to support its research mission. Therefore, the NRC does not award contracts or financial assistance arrangements under this Act.

An unsolicited proposal for a contract must be for "unique and innovative" ideas or approaches that "support the mission of the agency." There should be no government involvement in developing the proposal. The Federal Acquisition Regulation (FAR) is the governing regulation for contracts.

An unsolicited financial assistance application is a proposal requesting financial assistance from the government for either a grant or cooperative agreement. A grant is a legal instrument for transferring money, property, or services to a recipient to accomplish a "public purpose" of support and there is "no" substantial involvement between the government and the recipient during performance. A cooperative agreement is a legal instrument for transferring money, property, or services to a recipient to accomplish a "public purpose" of support and there is substantial involvement between the government and the recipient during performance. The Code of Federal Regulation provisions set forth at 2 CFR Part 215, "Uniform Administrative Requirement for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," is the governing regulation for these financial assistance applications.

Either type of request should be submitted to the NRC Division of Contracts. The agency evaluates such requests on a case-by-case basis for suitability for funding. However, the *in situ* testing approach proposed by your constituent does not appear to involve a matter which supports the mission of the NRC. Rather, it appears to be a matter of commercial interest to nuclear power plant licensees as a means of demonstrating compliance with NRC safety requirements regarding protective coatings.

The NRC does not agree with your constituents' opinion that it is inappropriate for the NRC to approve the use of ASTM D3911 and ASTM D5163. These two standards are industry consensus standards developed by ASTM International¹, a voluntary consensus standards body. The NRC determined that compliance with these standards is not prohibited by any applicable statute, and would achieve the NRC's safety and regulatory objectives. The National Technology Transfer and Advancement Act of 1995, P.L. 104-113 (NTTAA), requires Federal agencies to use technical standards that are developed by voluntary consensus standards bodies unless using such standard is inconsistent with applicable law or is otherwise impractical. Thus, the NRC's approval of the ASTM standards is consistent with Congress' mandate in the NTTAA.

I hope that you find this information useful in understanding NRC's acquisition process and the actions the agency is undertaking to ensure ECCS performance.

Please feel free to contact me with any further questions or concerns.

Sincerely,

/RA Martin Virgilio for/

R. W. Borchardt
Executive Director
for Operations

This organization was formerly known as the American Society of Testing and Materials.

With regard to your constituents' safety concern, we agree that the issue of proper adhesion of protective coatings is an important part of a larger issue of maintaining the long term operation of the Emergency Core Cooling System (ECCS) in a postulated accident. The NRC has taken numerous actions to address this safety concern. We also agree that the NRC has approved the use of ASTM D3911 to qualify protective coatings for initial coating application, and that this standard does not address age related degradation. To address such degradation, the NRC has approved the use of ASTM D5163 for periodic condition assessments of coatings to detect degradation, including age-related degradation. Testing of coatings performed in 2006 and 2007 supports the NRC's approval of ASTM D5163.

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Letter to The Honorable Brett Guthrie dated: October 8, 2009

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