

October 13, 2009 (1:10pm)

17

To Whom It May Concern,

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

The following is offered in response to Federal Register / Vol. 74, No. 94 / Monday, May 18, 2009 / Proposed Rules Part II, Nuclear Regulatory Commission, 10 CFR Parts 50 and 52 Enhancements to Emergency Preparedness Regulations and its request for comments. These comments are my personal views based on over 10-years involvement in the REP program and are not meant to be taken as the official or unofficial viewpoints of either the Commonwealth of Pennsylvania or the state agency I work for.

1. Paragraph II.A.6 on page 23260 states that scenarios for nuclear power plant exercises have become predictable and serve to precondition on-site responders. This is likely true, but begs the question as to why it took 30-years to come to this realization. It also raises the question as to what will prevent a few new variations from becoming predictable in a short time. It is worth mentioning that Offsite Response Organizations (ORO) find the scenarios and exercises just as predictable as everyone else, but we have no way of meeting the rigid FEMA evaluation criteria without using these predictable and unrealistic scenarios. Without a significant release OROs simply will not reach the point where many of the offsite decisions and responses will be required. For exercises, the agreed upon scenario that meets the bases of these new Emergency Preparedness changes (avoiding pre-conditioning, realistic scenarios, and no negative training) should determine the evaluation criteria used. In other words the evaluation goals, parameters, and criteria should be flexibly determined once the scenario has been agreed to by all parties and we should cease this concept that all criteria listed for a biennial exercise must be evaluated regardless of it being realistically tied to the scenario. Unless FEMA is willing to waive the evaluation of these numerous "must evaluate" biennial criteria it may be more advantageous to continue the current method for the graded biennial exercises and use the new scenarios for more plant oriented exercises that do not involve such a huge level of offsite participation and evaluation.

2. Paragraph II.B.1 on page 23261 cites the Energy Policy Act of 2005 requiring backup power for siren systems located where there is a population of 15 million within 50-miles of a power plant. This makes no sense. I know of no EPZ where sirens are located beyond the 10-mile EPZ and know of no release phase planning beyond the 10-mile EPZ either. Why is it necessary to even mention requiring siren backup power for sirens that don't exist? As has been mentioned before, backup power to sirens is only helpful if the cause of siren failure is lack of power. If something is defective with the siren itself no amount of power is going to fix it. It is much better to simply require an alternate or backup system of rapid notification, of the same area of coverage, in the event a siren, or other primary means of notification, should fail. Serious consideration should also be given to encouraging the power plant operators to begin replacing the 1950s technology of sirens with more modern computer and telecommunication alert systems that are available today and are significantly less vulnerable to vandalism and naturally caused damage. It would be helpful if the NRC or FEMA would define what they consider to be acceptable backup alert and warning systems above and beyond siren systems.

3. Paragraph II.B.2 on page 23262 correctly lists the four emergency classes as Notification of Unusual Event, Alert, Site Area Emergency, and General Emergency. We realize that this has

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been in effect since the inception of the REP program, but since this appears to be a time of change perhaps it is time to give the emergency classes less cumbersome and confusing names. Defensive Conditions 1-5 seem to work for the military and a color coding system has served the Department of Homeland Security since the aftermath of the 9/11 attacks. The four emergency classes in use now are too long and unclear to the ORO emergency workers and the general public. Words like event, site, and emergency are used daily in the vernacular of any emergency management agency. In nearly every biennial REP exercise this commonwealth participates in there is inevitable confusion between Site Area Emergency, General Emergency, and Declaration or Proclamation of Disaster Emergency (presidential or gubernatorial) to give just one example. Surely it should not be difficult to convert the emergency classes from the technician/engineer type wording it is presently in to a more user friendly system for laymen who do not operate in this environment on a regular basis, but are nevertheless tasked to respond and mitigate when something goes wrong.

4. Paragraph V, Appendix E to Part 50 on page 23273 would require the licensee to update their Evacuation Time Estimate (ETE) if there is a 10-percent population change based on the latest decennial census or as a result of an annual review to changes in the EPZ population. Setting a standard or "trigger point" for a revision of an ETE should not be done by a federal agency without any ties to the affected localities. The need for an ETE revision should be based on a comprehensive look at population numbers, demographics, and changes in transportation networks. The people best qualified to analyze this data and make a determination on the need for an ETE revision are the local emergency management leaders, not NRC Headquarters or regional offices. Population in an area may increase by 20-percent, but if that increase all occurred in developments with easy access to multi-lane egress highways it would have very little influence on ETEs. The opposite is also true in that a population increase of 9-percent in an area with a poor road network could greatly change the ETE. This commonwealth and its counties have traditionally and competently notified the power plants when a new ETE is necessary. The decision to revise an ETE should remain at the local level.

5. Paragraph V, Appendix E to Part 50 on page 23274 would require licensees to ensure that OROs are capable of adequately responding to the site during a hostile action event or any pre-planned contingency. Licensees cannot possibly guarantee or ensure local resources will be available to support the plant in the event of a hostile action. These are state and local resources that we have planned to be available to support the plant providing the situation does not require these types of resources to be available somewhere more critical at the same time. For instance, if a nuclear power plant was attacked at the same time a school or some other crowded venue was attacked there is no doubt that law enforcement would be directed to the site that has the most immediate risk of the loss of substantial human life. Regardless, this is a decision the local emergency manager and incident commander will have to make at the time and they will not be overruled by Letters of Agreement or Memoranda of Understanding. These letters and memoranda have never been legally binding in the first place. They merely acknowledge that assistance will be provided if available. That is true of both governmental and private assets. The Emergency Management Assistance Compact (EMAC) already exists under NIMS to share resources between the fifty states to meet unmet needs and provide additional assistance when requested and available. Likewise, in this commonwealth agreements already exist by law for the same support to occur between counties and municipalities. These mutual support provisions

under NIMS frankly make the old concept of Letters of Agreement and Memoranda of Understanding between governmental entities redundant and superfluous. The added requirements caused by a hostile action at a nuclear power plant would be treated like any other unmet need in any other type of disaster – it would be met by the next level of government in the chain. It is patently unfair to require a licensee to ensure that a governmental entity they have no control over will provide any type of assistance. NIMS and state law already requires these governmental entities to provide the support necessary to protect the health and safety of the public. A terrorist attack does not increase the likelihood of release or damage to the plant above and beyond other occurrences. This proposed requirement appears to be nothing more than an unnecessary solution looking for a problem.

6. Paragraph V, Appendix E to Part 50 on page 23275 states that the proposed amendment would not impose specific time requirements for using a backup method of alert and notification. This is a very good and long overdue action. In the 2002 rewrite of evaluation criteria the requirement for ORO decision makers to activate an alert system and promulgate a message was changed from a non-negotiable 15-minute time limit to a more sensible and reasonable “with a sense of urgency and without undue delay.” However, the requirement to complete backup route alerting in the event of a failure of the primary method was kept at a strict 45-minute limit. FEMA Regions have still been unable to agree on when to even start the clock on timing this 45-minute requirement. The 45-minute requirement itself is utterly unrealistic and impossible to guarantee under all conditions. What may be attainable under fair weather and day lit conditions during an exercise will obviously be impossible to match during the hours of darkness and during inclement weather. We recommend you get rid of the 45-minute limit and instead place a realistic requirement such as “with a sense of urgency and without undue delay and with an ideal planning target goal of @45-minutes.” Allowing the change to the 15-minute alert and notification sequence seven years ago has had no deleterious effects on prompt notification of the public. Changing the strict standard for backup route alerting will be equally harmless.

7. Finally, during the National Radiological Emergency Preparedness (NREP) Conference held in Harrisburg in 2004, the NRC received feedback from the states and municipalities in attendance. The general consensus from the attendees was that we did not want to see a whole new chapter written into the REP program because of possible terrorist threats. We felt that it really didn't matter what caused the problem in the plant – what mattered was what we did outside of the fence to protect the public. Our actions, with some minor modifications for the immediate safety of people living in very close proximity to the plant, would be precisely what our plans called for and what we have trained for. Quite obviously our feedback fell on deaf ears. The tortuously drawn out Comprehensive Review Program merely pointed out what we already knew outside of the fence – that we would have to plan for possible new commitments for local emergency response units and that these units may need outside support in order to meet their pre-designated requirements delineated in off-site plans. While this presents challenges it is not particularly new territory. In fact this juggling and economical use of scarce resources is the very gist of emergency management. This is what local emergency management agencies exist to do and they get plenty of practice at it. If everything was already in place to immediately correct an event it simply would not be an emergency. As stated earlier NIMS has already provided the means to stimulate assistance between governmental agencies. The Department of Homeland Security has poured enormous amounts of money into making this a workable system

that is already in place. There is nothing unique about a terrorist incident at a nuclear power plant that should require a separate set of decrees from the federal government concerning how local emergency management agencies will respond to such an incident. The present system in place for security incidents worked. There really was not a need on the off-site side for modifications of this scope.

Thank you for the opportunity to comment on this important and far reaching document. Do not hesitate to contact me if you have any questions or need further clarification.

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Rulemaking Comments

From: Fleck, Douglas [dfleck@state.pa.us]
Sent: Wednesday, October 07, 2009 9:12 AM
To: Rulemaking Comments
Subject: Response to the NRC Enhancements to Emergency Preparedness Regulations
Attachments: New NRC Reg Response.doc

The attached Word document is offered in response to Federal Register / Vol. 74, No. 94 / Monday, May 18, 2009 / Proposed Rules Part II, Nuclear Regulatory Commission, 10 CFR Parts 50 and 52 Enhancements to Emergency Preparedness Regulations and its request for comments.

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From: "Fleck, Douglas" <dfleck@state.pa.us>

To: "'Rulemaking.Comments@nrc.gov'" <Rulemaking.Comments@nrc.gov>

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Thread-Topic: Response to the NRC Enhancements to Emergency Preparedness
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