

45

October 20, 2009 (4:00pm)

Comments by Richard B. Ennis
On Proposed Emergency Preparedness Rulemaking
October 19, 2009

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

- 1) The proposed use of the license amendment process to approve or deny changes to emergency plans is inconsistent with the positions stated by the Commission in the *Perry* decision. Specifically, a licensee's operating authority with respect to emergency preparedness is established based on the NRC staff's finding that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, not based on a "level of effectiveness." As such, the *Perry* decision does not support the proposed use of the license amendment process for approval of emergency plan changes requiring prior NRC approval in accordance with 10 CFR 50.54(q). Specific information supporting this comment is discussed in the following non-concurrences:
 - ADAMS Accession No. ML092250622 (Section 4.6 of Attachment 1 and Attachment 2)
 - ADAMS Accession No. ML091671101 (Section 4.8 of Attachment 1)
- 2) The proposed emergency preparedness rulemaking would continue to use the letter approval process rather than the license amendment process for review of emergency action level (EAL) scheme changes, while individual EAL changes, that would reduce the effectiveness of the plan, would be submitted and processed as license amendments. As noted in comment 1, a licensee's operating authority with respect to emergency preparedness is established based on the NRC staff's finding that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, not based on a "level of effectiveness." As such, there is no reason to treat EAL scheme changes differently than individual EAL changes. This is like saying that if a plant currently has custom technical specifications and wants to convert to the improved standard technical specifications, that change would be treated by letter approval while an individual technical specification change would be treated as a license amendment. As with a technical specification conversion, some of the individual changes are more restrictive and others are less restrictive. During an actual event/emergency, a single or small number of EALs may be exercised. As such, arguing that, as a whole, an entire EAL scheme change is more effective (and thus be evaluated by a different process) is meaningless.
- 3) The use of the license amendment process to approve emergency plan changes submitted pursuant to 10 CFR 50.54(q) would require the NRC staff to issue an environmental assessment in most cases. While some emergency plan changes would meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9), most emergency plan changes would not. As such, a new categorical exclusion should be added to 10 CFR 51.22(c) if the final rulemaking requires use of the license amendment process to approve changes submitted pursuant to 10 CFR 50.54(q).

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Rulemaking Comments

From: Gallagher, Carol
Sent: Tuesday, October 20, 2009 10:44 AM
To: Rulemaking Comments
Subject: Comment on Enhancements to Emergency Preparedness Regulations
Attachments: NRC-2008-0122-DRAFT-0075[1].1.pdf

Van,

Attached for docketing is a comment letter on the above noted proposed rule (74 FR 23253) from Richard Ennis that I received via the regulations.gov website on 10/19/09.

Thanks,
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.79]) by TWMS01.nrc.gov
([148.184.200.145]) with mapi; Tue, 20 Oct 2009 10:44:25 -0400
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: "Gallagher, Carol" <Carol.Gallagher@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Tue, 20 Oct 2009 10:43:34 -0400
Subject: Comment on Enhancements to Emergency Preparedness Regulations
Thread-Topic: Comment on Enhancements to Emergency Preparedness Regulations
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