



North Carolina Department of Crime Control and Public Safety
Division of Emergency Management

Beverly Eaves Perdue, Governor
Reuben F. Young, Secretary

H. Douglas Hoell, Jr., Director

October 27, 2009

DOCKETED
USNRC

October 27, 2009 (4:00pm)

Secretary, U.S.
Nuclear Regulatory Commission,
Washington, DC 20555-0001
Attn: Rulemakings and Adjudications Staff

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Subject: Comments on Enhancements to Emergency Preparedness Regulations 10 CFR Parts 50 and 52 [NRC-2008-0122]

The State of North Carolina welcomes the opportunity to comment on the proposed amendments to emergency preparedness (EP) requirements found in its regulations that govern domestic licensing of production and utilization facilities. The North Carolina Division of Emergency Management (NCEM) is responsible for coordinating state-wide emergency response to natural and technological events that threaten public health and safety. In addition to general comments and observations, this correspondence offers specific comments in response to the solicitation for public comments on NRC's Enhancements to Emergency Preparedness Regulations published in the Federal Register / Vol. 74, No. 94 / Monday, May 18, 2009.

The North Carolina Division of Emergency Management does not support acceptance of Section 4. Licensee Coordination with Offsite Response Organizations during Hostile Action Events of the rulemaking as written. Discussion with State, Local and Utility REP planners and partners shows the level of concern and disapproval for this recommendation in North Carolina to be very strong and wide spread. We highly recommend that NRC totally delete this requirement.

We are concerned with the manner in which the NRC has chosen for making enhancements to emergency preparedness regulations as they apply to nuclear power generation sites. As written, these "enhancements" go beyond the scope of current US Code of Federal Regulations or NRC/FEMA MOU documents.

There is a definite difference between emergency planning guidance issued by FEMA for OROs and the legally established regulatory planning standards dictated by the NRC for nuclear power

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Secretary, U.S.
Nuclear Regulatory Commission,
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facilities. That distinction becomes very blurred by the format which this document is written. This proposed rulemaking states that that once adopted, the NRC through the individual licensee will determine the adequacy of ORO emergency planning and response capabilities. This approach will extend NRC's influence beyond that of regulating the nuclear power industry.

NCEM recognizes the need to protect vital infrastructure such as nuclear power facilities, but these proposed rule changes amount to unfunded, at least by Federal funds, requirements for the State, Local and tribal response agencies to meet.

If you have questions or need additional information regarding our position on these issues, you may contact Stephen G. Payne, NCEM REP Program Manager at (919) 715-0170 or via e-mail at spayne@ncem.org.

Respectfully,

Elaine Wathen, Assistant Director
Information & Planning

Cc: Stephen Payne, REP Program Manager/Tech Hazards Lead

Attachment

II. Discussion

A. Security-Related Issues

4. Licensee Coordination with Offsite Response Organizations during Hostile Action Events

The NRC acknowledged this challenge when it issued Order EA-02-026 and included provisions that licensees address coordination with OROs for hostile action events. Specifically, the order required that licensees develop plans, procedures, and training regarding coordination between the site and OROs and directed licensees to review emergency plans to ensure sufficient numbers of personnel would be available in a hostile action event.

COMMENT:

1. *Review of who's emergency plans – the licensee's plan or the ORO's plan?*
2. *How does the licensee ensure the ORO has sufficient personnel "available for a hostile action event."?*
3. *What authority does the NRC or licensee have to require this type of action?*
4. *Under what authority or guidance does the NRC or licensee have to determine the sufficiency of ORO personnel for a hostile action event?*

We are very concerned with the manner in which the NRC has chosen for making enhancements to emergency preparedness regulations as they apply to nuclear power generation sites. As written, these "enhancements" go beyond the scope of current CFR or NRC/FEMA MOU documents.

There is a definite difference between emergency planning guidance issued by FEMA for OROs and the legally established regulatory planning standards dictated by the NRC for nuclear power facilities. That distinction becomes very blurred by the format which this document is written. This proposed rulemaking states that that once adopted, the NRC through the individual licensee will determine the adequacy of ORO emergency planning and response capabilities

This approach extends NRC influence beyond that of statutory regulation of the nuclear power industry.

Licensees and the supporting OROs have taken various actions to respond to this issue, but criteria for determining the adequacy of the licensee and ORO actions have not been established. The NRC considered encouraging industry to develop and implement a voluntary program; however, voluntary programs do not provide a consistent, NRC-approved means for addressing the needed enhancements in the post September 11, 2001, threat environment. The NRC believes that a voluntary approach would not ensure consistent industry-wide implementation of the ICM requirements and there would be no requirement for new licensees to incorporate the changes into their emergency plans.

The NRC is proposing to revise Part 50, Appendix E, Section IV.A.7. (*Identification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.*) to require licensees to ensure that ORO personnel assigned emergency plan implementation duties would be available to do so during hostile action events. These proposed changes are discussed in Section V of this document.

COMMENT: *How does the licensee ensure that an ORO has enough personnel assigned to various emergency response plans? This "requirement" puts the NRC into regulating ORO activity.*

V. Section-by-Section Analysis

Appendix E to Part 50, Emergency Planning and Preparedness for Production and Utilization Facilities

The NRC is proposing to amend 10 CFR Part 50, Appendix E, Section IV.A.7., (*Identification of, and assistance expected from, appropriate State, local, and Federal agencies with responsibilities for coping with emergencies.*) to require licensees to confirm that ORO resources, such as local law enforcement, firefighting, and medical services, are available to respond to an emergency, including a hostile action event, at the plant site. Currently, the regulations do not explicitly require the licensee to take action to ensure that OROs are capable of adequately responding to the site during a hostile action event.

COMMENT: *This change would put the NRC into dictating how ORO's staff their organization by requiring the licensee to confirm the ORO has the resources available to respond to an emergency. This change seems to move toward explicitly requiring the licensee to take action to ensure that OROs are capable of adequately responding to the site during a hostile action event.*

This new requirement would require licensee coordination with the OROs to ensure that licensees and OROs are able to effectively implement their pre-planned actions for any contingency, including hostile action events as required by Order EA-02-026. This requirement would be enforced through routine inspection and observation of emergency exercises.

COMMENT: *When combined with the previous statements "requiring" licensee confirmation of ORO resources again puts the NRC by way of the licensee in a position to dictate to the ORO how they staff their response organization.*

D. Notification Procedures

3. A licensee shall have the capability to notify responsible State and local governmental agencies within 15 minutes after declaring an emergency. The licensee shall demonstrate that the appropriate governmental authorities have the capability to make a public alerting and notification decision promptly on being informed by the licensee of an emergency condition.

The licensee shall identify and demonstrate that the appropriate governmental authorities have both the administrative and physical means for a backup method of public alerting and notification capable of being used in the event the primary method of alerting and notification is unavailable during an emergency to alert or notify all or portions of the plume exposure pathway EPZ population.

COMMENT: *How does the licensee "demonstrate" that an ORO has these capabilities (see underline segments)? When combined with the previous statements "requiring" licensee confirmation of ORO resources again puts the NRC by way of the licensee in a position to dictate to the ORO how they staff their response organization. This "requirement" puts the NRC into regulating ORO activity.*

NRC/ FEMA Rule Area: NUREG -0654, Supplement 4

Section III. Planning and Preparedness for HAB Events, Coordination between Licensees and OROs (Page 6)

"However, an HAB event will place increased demands on OROs, who will be expected to implement portions of State and local emergency plans, such as traffic control points, route alerting, etc., as well as respond to potential hostile activities at the NPP site and potential simultaneous offsite hostile activities. This situation could detract from State and local emergency response if plans have not been revised to address this contingency.

OROs should be able to support implementation of emergency plans during a broad range of contingencies, including HAB events. Emergency response plans and procedures should be revised to incorporate these elements. Licensee agreements with OROs (e.g., memoranda of understanding or letters of agreement) should also be updated to reflect the arrangements for HAB events at an NPP site. OROs should work with the licensees to identify solutions that will ensure timely implementation of emergency response plans. *For example, an ORO may enter into mutual aid agreements with neighboring jurisdictions and private sector entities, including both for-profit and not-for-profit organizations (sometimes called non-governmental organizations), to identify alternate personnel to supplement local resources.* **The revised ORO plans and procedures should address required training for the primary and alternate personnel.**

Radiological training that would be necessary for some functions could be delivered through an online course or in the classroom at a frequency determined in ORO plans and procedures. ORO plans and procedures should also include provisions for just-in-time training updates as the event progresses. Participation in drills and exercises should be encouraged to reinforce and to validate planning. Plans and procedures should also address maintaining additional duty rosters of qualified alternate personnel.”

New Evaluation Criterion:

C.6 Each organization shall make provision to enable onsite response support from OROs in a hostile action-based incident as needed.

The implied implementation of this new requirement is impractical. The proposed implementation of criterion C.6 would introduce new and significant regulatory burden and associated costs, without any commensurate increase in the ability to protect public health and safety.

This criterion, and the associated proposed change to 10 CFR 50, Appendix E, Section IV.A.7, essentially deal with the question of “backfilling” public safety personnel who may be assigned dual response roles – one at the NPP and one supporting the offsite response plan for the NPP. The proposed criterion is problematic on several fronts concerning the Mutual Aid resources.

The criterion, as implemented by the NRC through NSIR/DPR-ISG-01, INTERIM STAFF GUIDANCE, EMERGENCY PLANNING FOR NUCLEAR POWER PLANTS, *will require NRC inspectors to verify ORO and Mutual Aid resources, verify mutual aid agreements (including notification, activation, training, and maintenance of duty rosters), and verify arrangements in ORO plans and/or procedures.* **This places NRC inspectors in a role of evaluating ORO planning and response capabilities.**

The existence of “State of Emergency” laws obviates the need for this new criterion. After a governor declares a State of Emergency, virtually all State resources are available for response, on a prioritized basis, to a NPP event. Further, many States have entered into regional public safety agency compacts; these agreements facilitate rapid inter-State sharing of public safety resources. There is no need for the NRC, through the licensee, to drive the generation and maintenance of additional MOUs for Mutual Aid resources.

As written, when combined with the proposed NRC rulemaking changes, puts the NRC and FEMA, through the REP program, in position to review and determine the adequacy of any ORO emergency planning and response capability.

Rulemaking Comments

From: Quinones, Lauren
Sent: Tuesday, October 27, 2009 3:20 PM
To: Rulemaking Comments
Cc: Tailleart, Don
Subject: FW: Enhancements to Emergency Preparedness Regulations 10 CFR Parts 50 and 552 [NRC-2008-0122]
Attachments: NRC Letter.-scan; NRC Letter.doc

Please, process this as a comment for the Emergency Preparedness Proposed rule. If you have any questions, let me know.

Thanks,
Lauren

-----Original Message-----

From: Kahler, Robert
Sent: Tuesday, October 27, 2009 8:08 AM
To: Tailleart, Don
Cc: Quinones, Lauren; Benowitz, Howard
Subject: FW: Enhancements to Emergency Preparedness Regulations 10 CFR Parts 50 and 552 [NRC-2008-0122]

Don, Lauren,

Please process as a comment being submitted on the proposed rulemaking.

Bob

-----Original Message-----

From: SPayne@ncem.org [mailto:SPayne@ncem.org]
Sent: Monday, October 26, 2009 7:16 PM
To: Tailleart, Don; Kahler, Robert
Cc: CJohnson@ncem.org; EJenkins@ncem.org
Subject: RE: Enhancements to Emergency Preparedness Regulations 10 CFR Parts 50 and 552 [NRC-2008-0122]

Don, Robert,

Attached are copies of the North Carolina comments on the NRC rule making documents. Thank you for allowing us this delay in receiving this information.

(See attached file: NRC Letter.-scan)(See attached file: NRC Letter.doc)

Stephen Payne
NCEM REP Program Manager/Tech Hazards Lead
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- "The only thing harder than getting your organization to prepare for a disaster, is explaining afterward why you didn't."

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----- Forwarded by Steve Payne/State/NCEM on 10/26/2009 06:05 PM -----

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	Ed Jenkins
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>-----|
| To: lisa.gibney@nrc.gov |
| cc: Corey Johnson/State/NCEM@NCEM, Steve Payne/State/NCEM@NCEM |
| Subject: Enhancements to Emergency Preparedness Regulations 10 CFR Parts 50 and 552 [NRC-2008-0122] |
>-----|

Ms. Gibney,

North Carolina's response to the subject document will be necessarily delayed. Our staff officer assigned to this important and extensive review was suddenly pulled away due the death of his mother and subsequent care arrangements required for his elderly father. Please accept this extenuating circumstance and grant an extension to the response date.

We will be able to respond by Wednesday, October 28.

Edwin (Ed) W. Jenkins
Manager, Planning Support Branch
North Carolina Division of Emergency Management Phone (Normal): 919-715-5979 Phone (EOC Activated):
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Content-Type: application/ms-tnef; name="winmail.dat"
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From: "Quinones, Lauren" <Lauren.Quinones@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
CC: "Tailleart, Don" <Don.Tailleart@nrc.gov>
Disposition-Notification-To: "Quinones, Lauren" <Lauren.Quinones@nrc.gov>
Date: Tue, 27 Oct 2009 15:19:59 -0400
Subject: FW: Enhancements to Emergency Preparedness Regulations 10 CFR Parts
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Thread-Topic: Enhancements to Emergency Preparedness Regulations 10 CFR
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