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**Docket:** NRC-2010-0003  
Open Government Directive

**Comment On:** NRC-2010-0003-0001  
Implementation of Open Government Directive

**Document:** NRC-2010-0003-DRAFT-0011  
Comment on FR Doc # 2010-00228

1/11/2010

75 FR 1418

## Submitter Information

9

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**Address:**  
828 South Broadway  
Tarrytown, NY, 10591  
**Organization:** Riverkeeper, Inc.

## General Comment

Please accept the attached comments, on behalf of Riverkeeper, Inc., on the U.S. Nuclear Regulatory Commission's Solicitation of Public Comment Regarding Implementation of Open Government Directive, 75 Fed. Reg. 1418 (Jan. 11, 2010), Docket ID NRC-2010-0003.

Should you have any questions about this submission, please don't hesitate to contact me at (914) 478-4501, ext. 230, or via e-mail at dbrancato@riverkeeper.org.

Thank you for your consideration.

Sincerely,

Deborah Brancato  
Staff Attorney  
Riverkeeper, Inc.

*SUNSI Review Complete*

## Attachments

**NRC-2010-0003-DRAFT-0011.1:** Comment on FR Doc # 2010-00228

*Complete = ADM-013*

*FRIDS = ADM-03*

*Call = S. Crockett  
(SFC)*

*J. Schaeffer (JBS)*

# RIVERKEEPER.

VIA E-MAIL AND U.S. MAIL

January 22, 2010

Michael T. Lesar  
Chief, Rulemaking and Directives Branch  
Division of Administrative Services  
Office of Administration  
Mail Stop: TWB-05-B01M  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555-0001

Re: Nuclear Regulatory Commission Solicitation of Public Comment Regarding  
Implementation of Open Government Directive, 75 Fed. Reg. 1418 (Jan. 11, 2010),  
Docket ID NRC-2010-0003

Dear Mr. Lesar:

Riverkeeper, Inc. ("Riverkeeper") hereby respectfully submits the following in response to the U.S. Nuclear Regulatory Commission's ("NRC") request for comments to aid its determination of what "high-value data sets" to publish in accordance with the U.S. Office of Management and Budget's ("OMB") Open Government Directive, issued on December 8, 2009.<sup>1</sup>

As NRC acknowledges, the Open Government Directive instructs Federal agencies to identify and publish at least three "high-value data sets" by January 22, 2010. It is highly questionable whether the meager 11 days NRC provided to the public to influence this determination is meaningful in any way. For example, the timing of the instant comments will ostensibly not play a role in NRC's compliance with this aspect of the Open Government Directive, since it coincides with OMB's deadline. Given the NRC's failure to provide timely notice for public comment, it is only fair that Riverkeeper's comments be afforded full consideration. The NRC's encouragement that comments past the January 22, 2010 deadline are welcome because the NRC "may decide to publish additional data sets at later dates,"<sup>2</sup> is clearly no guarantee. In light of the foregoing, please take into account the following comments when determining what data to publish for public consumption in conformity with OMB's explicit directive, the Federal deadline notwithstanding.

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<sup>1</sup> The NRC further requests comments on what transparency, public participation, and collaboration improvements to include in its Open Government Plan. Should Riverkeeper have additional comments with respect to that inquiry, such comments will be submitted by the February 10, 2010 deadline set forth in the above-referenced Federal Register notice.

<sup>2</sup> NRC Implementation of Open Government Directive, 75 Fed. Reg. at 1419.



## I. Riverkeeper's Interest

Riverkeeper is a member-supported, not-for-profit organization dedicated to protecting the Hudson River and its tributaries.<sup>3</sup> Since its inception in 1966, Riverkeeper has used litigation, science, advocacy, and public education to raise and address concerns relating to the Indian Point nuclear power plant, located on the eastern bank of the Hudson River in Buchanan, NY. Riverkeeper's active involvement in issues surrounding Indian Point stems from the serious concerns relating to the continued operation of the facility, including the environmental damage caused by its antiquated once-through cooling system, leaking spent fuel pools and leaking buried pipes, the vulnerability of the plant's spent fuel pools to terrorist attacks and serious accidents, and the failure of any long-term solution for permanent nuclear waste disposal.

As a member of the public with a vested interest in the work NRC is charged with, Riverkeeper has had numerous opportunities to take part in NRC proceedings and to interact with NRC staff. For example, Riverkeeper is currently an intervenor in the Indian Point license renewal proceeding, having successfully raised three contentions which will be litigated at an adjudicatory hearing. Having had significant experience with NRC (staff, procedures, process, etc), Riverkeeper certainly sees room to improve the accessibility of information and agency transparency, to facilitate more meaningful public participation. With ongoing concerns about Indian Point, Riverkeeper's interaction with NRC will definitely continue in the future. As such, it is imperative that NRC chooses to publish information sets that will aid the public's ability to successfully address the important environmental and safety issues facing nuclear power plants today, like those at Indian Point.

In order to comply with the spirit and intent of OMB's directive, and publish data which will promote "the principles of transparency, participation, and collaboration set forth in the President's Memorandum [on Transparency and Open Government],"<sup>4</sup> Riverkeeper submits that the following information sets be considered.

## II. Nuclear Power Plants' Current Licensing Basis

One "high-value data set" that NRC should publish is the current licensing basis ("CLB") for all currently operating nuclear plants in the United States. NRC defines the "current licensing basis" as

the set of NRC requirements applicable to a specific plant and a licensee's written commitments for ensuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all modifications and additions to

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<sup>3</sup> See generally, Riverkeeper.org, Our Story, [http://www.riverkeeper.org/ourstory\\_index.php](http://www.riverkeeper.org/ourstory_index.php) (last visited Jan. 22, 2010).

<sup>4</sup> Memo from Peter R. Orszag (Director, Office of Management and Budget) to Heads of Executive Departments and Agencies, Re: Open Government Directive (December 8, 2009), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf), at 1.

such commitments over the life of the license) that are docketed and in effect.<sup>5</sup>

When confronted directly, the NRC has had noted difficulty defining what constitutes the CLB for particular nuclear power plants. This has become evident in license renewal proceedings, where NRC staff have not been always been able to adequately define current licensee commitments. Accordingly, there is a growing concern that many of the safety requirements that nuclear power plants must meet are vaguely defined and poorly understood by the NRC.<sup>6</sup> With an increasing number of nuclear power plants applying for license extensions, this is very problematic, since issues pertaining to the CLB are considered outside the scope of license renewal review. However, the underlying assumption that nuclear power plants are in compliance with the CLB is wholly undermined by the inability of NRC staff to even identify what the CLB is.

A comprehensive understanding of what requirements are governing individual nuclear power plants is necessary to ensure proper oversight by the NRC. The efficacy of publishing the CLB for every operating nuclear power plant is, thus, quite apparent. This is precisely the kind of information “that can be used to increase agency accountability and responsiveness,”<sup>7</sup> that OMB was contemplating as “high-value data” in the Open Government Directive. Indeed, publishing individual plant CLB’s would hold the NRC directly responsible for knowing what regulations are applicable to each nuclear power plant, and assist the NRC in being able respond when problems with compliance arise.

Public availability of this information would also “improve public knowledge of the agency and its operations,”<sup>8</sup> by allowing the public to develop an understanding of what requirements nuclear plants must obey and by helping to restore public confidence that the NRC understands its regulations and how to safely govern the operation of nuclear plants across the country. Publication of individual plant CLB’s would certainly “further the core mission of the agency,”<sup>9</sup> which is ostensibly to ensure the safe operation of nuclear plants. Lastly, publishing the CLB would indeed “respond to need and demand as identified through public consultation,”<sup>10</sup> since members of the public have raised concerns over the NRC’s lack of understanding of the CLB.

Accordingly, Riverkeeper urges the NRC to publish individual nuclear plant CLB’s as one of NRC’s “high-value data sets,” to comply with OMB’s Open Government Directive.

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<sup>5</sup> 10 C.F.R. § 54.3(a); *see also* NRC Generic Letter 92-03, Compilation of the Current Licensing Basis: Request for Voluntary Participation in Pilot Program (March 19, 1992) (“A definition of CLB was set forth in Section 54.3. Although set out in Part 54 [the plant license renewal Part], that definition represents the staff’s understanding of the scope of the CLB and should be applicable to all reactor licensees.”).

<sup>6</sup> *See, e.g.*, Letter from Richard Webster (Eastern Environmental Law Center) to Joseph A. McMillan (Assistant Inspector General for Investigations, U.S. NRC Office of the Inspector General), Re: NRC Staff Comments Regarding License Commitments (June 1, 2009), attached hereto as Exhibit A.

<sup>7</sup> NRC Implementation of Open Government Directive, 75 Fed. Reg. at 1419.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

### III. Decommissioning Fund Information

The NRC should publish information on the current status of all decommissioning funds for operating nuclear power plants. This data set should be kept up-to-date as new information becomes available.

Having such information readily accessible is necessary in light of recent revelations that many nuclear power plants across the country do not have sufficient decommissioning funds. A 2009 Biennial Decommissioning Funding Assurance Analysis indicates that at least 26 nuclear reactors had projected trust fund shortfalls.<sup>11</sup> This has led to major concerns about how nuclear reactor sites will be properly and timely decommissioned once plant operations cease. For example, at Indian Point, acknowledging that the decommissioning fund for Unit 2 was projected to be almost \$40 million short, the NRC approved a plan by owner/operator Entergy to delay decommissioning of the reactor for 50 years (to 2063) in order to allow time for the trust fund to accumulate the necessary funds.<sup>12</sup>

The merits of allowing nuclear reactor sites to sit in “safe storage” for decades while trust funds increase to legally mandated amounts is highly questionable. Having current information readily available the public will assist in keeping the NRC answerable to the many concerns that arise from the existence of decommissioning fund shortfalls, including excessive delay of proper site remediation.

Moreover, having decommissioning fund information available will allow the public to more easily evaluate whether required trust fund amounts are going to be adequate to cover all actual decommission costs. Indeed, the NRC uses a highly conservative formula to determine the minimum amount of funds required to be in decommissioning accounts. This formula fails to accurately account for all aspects of decommissioning needed to return sites to Greenfield status, such as extensive groundwater contamination plumes like those at Indian Point.<sup>13</sup> In fact, plant decommissioning costs estimates have actually demonstrated that projected costs have been far in excess of what NRC would require.<sup>14</sup> Accordingly, having decommissioning fund information accessible to the public will hold the NRC accountable to respond to concerns about insufficient trust fund balances, as measured against NRC’s own minimum requirements.

Decommissioning fund information is also “high-value” information as contemplated by OMB, since it will: “improve public knowledge of the agency and its operations”<sup>15</sup> by allowing the

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<sup>11</sup> 2009 Biennial Decommissioning Funding Assurance Analysis, ADAMS Accession No. ML091940387.

<sup>12</sup> See Letter from John P. Boska (Office of Nuclear Reactor Regulations, NRC) to Vice President, Operations, Entergy Nuclear Operations, Inc., Re: Indian Point Nuclear Generating Unit No. 2 – Decommissioning Funding Status Report (TAC NO. ME0528), December 28, 2009, ADAMS Accession No. ML093450778, at 1.

<sup>13</sup> For an explanation of flaws in NRC decommissioning cost methodology, see generally, Comments Submitted by the State of New York Concerning the NRC’s Proposed Rulemaking to Amend 10 C.F.R. Parts 20, 30, 40, 50, 70 and 72 to Require Certain Changes in Decommissioning Planning, NRC Docket No. RIN 315-AH45 (May 8, 2008), ADAMS Accession No. ML081340325.

<sup>14</sup> See, e.g., Preliminary Decommissioning Cost Analysis for the Indian Point Energy Center, Unit 2 (October 2008), ADAMS Accession No. ML092260723 (estimating decommissioning costs for IP2 to be almost a billion dollars, over double what NRC’s regulations would require).

<sup>15</sup> NRC Implementation of Open Government Directive, 75 Fed. Reg. at 1419.

public to understand how NRC is handling the decommissioning process and problems therewith; “further the core mission of the agency”<sup>16</sup> by permitting the public to more effectively evaluate NRC’s efforts toward ensuring proper protection of people and the environment at the time of decommissioning<sup>17</sup>; and “respond to need and demand as identified through public consultation,”<sup>18</sup> since it would respond to public concerns about the ability of nuclear power plant owners to sufficiently complete decommissioning activities in a timely manner.<sup>19</sup>

Thus, the NRC should compile and maintain decommissioning fund information for every operating nuclear power plant for public scrutiny. This data set should include current decommissioning trust fund amounts, any information about actual decommissioning costs estimates, details about any current shortfalls along with the number of years it would take the licensee to accumulate the funds at a reasonable rate of return, and proposed or approved plans to deal with any identified shortfalls. This data set should also list all nuclear plants that have been decommissioned thus far, with the original estimate of decommissioning costs, and the final, actual cost listed side by side. Having this information available will undoubtedly foster public participation and inquiry about important environmental concerns associated with decommissioning.

#### IV. Conclusion

Riverkeeper urges the NRC to publish the foregoing “high-value data sets” to comply with OMB’s Open Government Directive. Doing so would go a long way toward helping to achieve agency openness and transparency and well-informed public participation in current and future NRC processes.

We appreciate your full consideration of the above comments.

Sincerely,



Deborah Brancato  
Staff Attorney

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<sup>16</sup> *Id.*

<sup>17</sup> NRC’s website banner touts “Protecting People and the Environment.” See <http://www.nrc.gov/>.

<sup>18</sup> NRC Implementation of Open Government Directive, 75 Fed. Reg. at 1419.

<sup>19</sup> See, e.g. *supra* Note 13.

# **Exhibit A**



VIA E-MAIL AND U.S. MAIL

June 1, 2009

Mr. Joseph A. McMillan  
Assistant Inspector General for Investigations  
United States Nuclear Regulatory Commission  
Office of the Inspector General  
11555 Rockville Pike  
OWFN 05-E13  
Rockville, MD 20852

**Re: NRC Staff Comments Regarding Licensee Commitments**

Dear Mr. McMillan:

I am enclosing an internal NRC email regarding the agency's inability to adequately define licensee commitments. This email reaffirms a problem of which we have been aware for some time. In graphic language, the Staff member appears to state that the commitments at Oyster Creek are so vague that the Staff have difficulty ensuring that they adopt consistent interpretations.

This e-mail reinforces our concern that many of safety requirements that plants must meet are vaguely defined and poorly understood by the Staff. As another example, we have been trying to find out from Region 1 what they believe the CLB requires for the buried piping that recently developed leaks at Oyster Creek. I asked this question during a phone call on April 29, 2009 and then followed up with an e-mail on May 4, 2009. Having received no firm answer, I discussed this issue further with Region 1 officials, including Sam Collins, on May 28, 2009. I heard that the CLB for the pipes requires intended function to be maintained. We then debated whether the intended function is merely to provide water to other components or whether it includes prevention of discharge of radioactive water. I believe that in the end the Staff decided that containment of radioactive materials was not included in the intended function, which appears counter-intuitive. While I intend to seek further clarification of this answer, I find it incredible that over a month after radiation has leaked from corroded pipes at Oyster Creek and three months since similar problems were found at Indian Point, the Staff are not prepared to state unequivocally whether such leakage in itself constitutes a violation of the CLB. I also question how the reviews of the aging management programs conducted during relicensing could be effective if the CLB is so vague.

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As we have discussed, the NRC cannot ensure licensees meet their regulatory requirements without first being able to properly define them. That NRC Staff members are willing to so casually affirm an inability to define the regulatory requirements speaks directly to the magnitude of the problem and confirms that further investigation is needed into whether NRC Staff can define CLB requirements adequately.

Finally, please note that I am urging the OIG to investigate the underlying truth to the statement, not the author, who was merely candid in his assessment of the situation. I have no desire to see the candor of this Staff member discouraged, particularly with respect to such a serious issue. I have therefore decided not to provide Mr. Collins with the attached e-mail. I trust that you will ensure that no retaliation occurs against the author of the e-mail. I thank you for your time and consideration and look forward to hearing from you.

Yours sincerely,

/s

Richard Webster, Esq.

c.c. Mr. Samuel J. Collins, Regional Administrator, NRC Region I (w/o enclosure)