

EDO Principal Correspondence Control

FROM: DUE: 06/01/11

EDO CONTROL: G20110393
DOC DT: 05/26/11
FINAL REPLY:

Representative Darrell Issa

TO:

Chairman Jaczko

FOR SIGNATURE OF :

** PRI **

CRC NO: 11-0319

Chairman Jaczko

DESC:

ROUTING:

ACRS Request for Scientific Data Necessary to
Review the NRC's Response to Fukushima Daiichi
Nuclear Power Facility Incident/Decision-Making
Process (EDATS: SECY-2011-0317)

Borchardt
Weber
Virgilio
Ash
Muessle
OGC/GC
Leeds, NRR
Wiggins, NSIR
Burns, OGC
Schmidt, OCA

DATE: 05/31/11

ASSIGNED TO:

CONTACT:

EDO

Rihm

SPECIAL INSTRUCTIONS OR REMARKS:

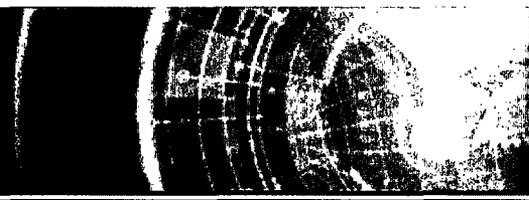
Please prepare response in accordance with OEDO
Notice 2009-0441-02 (ML093290179). NRR and NSIR to
provide input to Roger Rihm, OEDO, if required.
Roger Rihm to coordinate response with OGC and OCA.

Template: SECY-017

E-RIDS: SECY-01

EDATS

Electronic Document and Action Tracking System



EDATS Number: SECY-2011-0317

Source: SECY

General Information

Assigned To: OEDO

OEDO Due Date: 6/1/2011 11:00 PM

Other Assignees:

SECY Due Date: 6/2/2011 11:00 PM

Subject: ACRS Request for Scientific Data Necessary to Review the NRC's Response to Fukushima Daiichi Nuclear Power Facility Incident/Decision-Making Process

Description:

CC Routing: NRR; NSIR; OGC; OCA

ADAMS Accession Numbers - Incoming: NONE

Response/Package: NONE

Other Information

Cross Reference Number: G20110393, LTR-11-0319

Staff Initiated: NO

Related Task:

Recurring Item: NO

File Routing: EDATS

Agency Lesson Learned: NO

OEDO Monthly Report Item: NO

Process Information

Action Type: Letter

Priority: Medium

Sensitivity: None

Signature Level: Chairman Jaczko

Urgency: NO

Approval Level: No Approval Required

OEDO Concurrence: YES

OCM Concurrence: NO

OCA Concurrence: NO

Special Instructions: Please prepare response in accordance with OEDO Notice 2009-0441-02 (ML093290179). NRR and NSIR to provide input to Roger Rihm, if required. Roger Rihm will coordinate response with OGC and OCA.

Document Information

Originator Name: Representative Darrell Issa

Date of Incoming: 5/26/2011

Originating Organization: Congress

Document Received by SECY Date: 5/31/2011

Addressee: Chairman Jaczko

Date Response Requested by Originator: 6/9/2011

Incoming Task Received: Letter

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: May 31, 2011 08:23

PAPER NUMBER: LTR-11-0319 **LOGGING DATE:** 05/27/2011
ACTION OFFICE: EDO

AUTHOR: REP Darrell Issa
AFFILIATION: CONG
ADDRESSEE: Gregory Jaczko
SUBJECT: Concerns the decision-making process for the Commission's leadership

ACTION: Signature of Chairman
DISTRIBUTION: RF, OCA to Ack

LETTER DATE: 05/26/2011
ACKNOWLEDGED: No
SPECIAL HANDLING: Chairman Correspondence

NOTES:

FILE LOCATION: ADAMS

DATE DUE: 06/02/2011 **DATE SIGNED:**

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Congress of the United States

House of Representatives

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LAWRENCE J. BRADY
STAFF DIRECTOR

May 26, 2011

The Honorable Gregory B. Jaczko
Chairman
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Chairman Jaczko:

The Committee's investigation into the Nuclear Regulatory Commission (NRC) has raised additional questions about the decision-making process of the Commission's leadership. Recently, the independent Advisory Committee on Reactor Safeguards (ACRS) requested certain scientific data necessary to review the NRC's response to the tragic earthquake and tsunami that damaged Japan's Fukushima Daiichi nuclear power facility. I would like to understand why, for more than a month, the ACRS has not received this information.

Over the past 50 years, the technical experts appointed to the ACRS have provided objective analysis and advice to NRC Commissioners. Created by the Atomic Energy Act of 1954, as amended, the ACRS fulfills four primary purposes:

- Review and report on safety studies and reactor facility license and license renewal applications;
- Advise the Commission on the hazards of proposed and existing production and utilization facilities and the adequacy of proposed safety standards;
- Initiate reviews of specific generic matters or nuclear facility safety-related items; and,
- Provide advice in the areas of health physics and radiation protection.¹

The ACRS is well positioned to conduct an independent review of the NRC's response to Fukushima. Such an evaluation is especially necessary because the NRC assumed an unprecedented and pivotal role in the federal government's effort to ensure the safety of Americans and assist the nation of Japan. Understanding what transpired at Fukushima, and how

¹ NRC website, "About ACRS," available at <http://www.nrc.gov/about-nrc/regulatory/advisory/acrs.html> (last visited May 24, 2011).

the NRC responded to those events, will be critical in ensuring the continued safety of U.S. citizens – both at home and abroad.

Recognizing the importance of independent evaluation, the Commission requested that the ACRS review the NRC staff's report on the agency's response to Fukushima. The ACRS is under no obligation, however, to limit its engagement to the Commission's request. When NRC staff first appeared before the ACRS on April 7, 2011, Chairman Said Abdel-Khalik stated clearly that while "[t]he Commission tasking . . . is thus far specific to the evaluation of the staff's longer term review, . . . consistent with its charter, [ACRS] will self-initiate activities to be appropriately informed and properly prepared to provide the best possible advice to the Commission on an ongoing basis."²

During the meeting, ACRS members specifically questioned the March 16, 2011, recommendation to evacuate U.S. citizens residing within 50 miles of the damaged reactors. At the time, the Japanese Government had implemented a 12-mile evacuation zone. Considering the discrepancy between the Japanese recommendation and that of the United States, the ACRS is certainly justified in seeking to understand how the NRC and other federal agencies settled on the 50-mile radius.

You have stated that "the NRC determined that evacuation out to 50 miles for U.S. citizens was a prudent course of action, and would be consistent with what we would do under similar circumstances in the United States."³ As pointed out by NRC staff, however, the agency played an entirely different role in responding to Fukushima than it would have in response to an emergency at a nuclear facility located within the United States.⁴ For example, in the case of a domestic incident, the NRC is charged with monitoring plant operators and offering guidance – not providing an evacuation recommendation. That function is properly left to state and local officials.⁵

The calculations released by the NRC to explain the 50-mile recommendation were incomplete and misleading.⁶ When pressed by members of the ACRS to explain how the 50-mile radius was determined, NRC staff revealed that they were forced to rely on "limited and

² Transcript, Meeting No. 582, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, "Advisory Committee on Reactor Safeguards, Excerpt RE: Fukushima Daiichi Nuclear Power Plant," (April 7, 2011) available at <http://pbadupws.nrc.gov/docs/ML1110/ML11102A041.pdf>, p. 5.

³ Written testimony of Gregory Jaczko, Chairman, U.S. Nuclear Regulatory Commission to Environment and Public Works Committee, U.S. Senate (April 12, 2011) available at <http://pbadupws.nrc.gov/docs/ML1110/ML111020070.pdf>.

⁴ *Id.* at 95.

⁵ The NRC's own website advises, "In the unlikely event of a nuclear power plant accident, it is important to follow the direction of your State or local government in order to make sure protective actions are implemented safely and effectively for the affected population." U.S. Nuclear Regulatory Commission, "Protective Action Recommendations," available at <http://www.nrc.gov/about-nrc/emerg-preparedness/about-emerg-preparedness/protective-action-recommendations.html> (retrieved Apr. 20, 2011).

⁶ Press Release No. 11-050, Nuclear Regulatory Commission, "NRC PROVIDES PROTECTIVE ACTION RECOMMENDATIONS BASED ON U.S. GUIDELINES." (Mar. 16, 2011).

uncertain data.”⁷ NRC staff further stated that “we suspect that the Japanese in fact had that information internally,” much as the NRC would expect from a U.S. licensed facility. However, given the situation on the ground, the NRC was not receiving the “detailed source term information they were using.”⁸ Instead, NRC staff had to provide conservative “what-if” calculations “based on essentially press reports.”⁹

In light of the fact that NRC staff had access to very limited information, it is important to understand how the NRC collaborated with other federal agencies in developing, reviewing, and approving the recommendation for the 50-mile evacuation zone. While I have no doubt that NRC staff provided the best possible assessment based on the information available to them, it is important we understand that the decision to enlarge the evacuation zone was based on sound science and a careful examination of the unintended consequences of such a dramatic contradiction. As one of the members of the ACRS asked, “thirty-two years ago, if Japan would have done a what-if calculation about Three Mile Island, and said all the Japanese within 50 miles of Harrisburg should get out, what would be our response to that, from a policy standpoint?”¹⁰

The ACRS has a statutory obligation to review this and other questions related to Fukushima in order to provide the Commission with clear, objective recommendations necessary to maintain the safety and security of U.S. citizens. To that end, at the April 7, 2011, meeting, NRC staff pledged to provide the ACRS with all the assumptions and underlying data supporting the staff’s calculation used in developing the 50-mile evacuation zone recommendation. Unfortunately, for over a month the ACRS has been denied access to this information. Without the underlying data, it is impossible for the ACRS to conduct a meaningful evaluation.

An objective review by the ACRS is of critical importance in this instance because the full Commission was excluded from the process of developing a response to Fukushima. In light of your decision to exercise the emergency authorities granted to the Chairman under the Reorganization Plan of No. 1 of 1980 (P.L. 98-614), your fellow Commissioners were excluded from the decision-making process and even banned from entering the NRC Emergency Operations Center.¹¹ The United States was fortunate to have a group of Commissioners uniquely qualified to respond to this incident, with valuable expertise in areas such as probabilistic risk assessment, interagency operations, the capabilities of the national laboratories, nuclear engineering, and command and control. A clear, independent assessment of the agency’s handling of this situation will better situate the Commission to ensure efficient and effective operations in the future.

⁷ Transcript, Meeting No. 582, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, “Advisory Committee on Reactor Safeguards, Excerpt RE: Fukushima Daiichi Nuclear Power Plant,” (Apr. 7, 2011) available at <http://pbdupws.nrc.gov/docs/ML1110/ML11102A041.pdf>, p. at 89.

⁸ *Id.*, at 83.

⁹ *Id.*, at 83-87.

¹⁰ *Id.* at 91-92.

¹¹ Section 3 of the Reorganization Plan No. 1 of 1980, grants the Chairman authority for all functions “pertaining to an emergency concerning a particular facility or materials licensed or regulated by the Commission.” It is the discretion of the Chairman to determine when to exercise emergency authorities.

As Chairman, you pledged that the NRC will “conduct the public’s work in an open and transparent manner.”¹² With that pledge in mind, and to assist the Committee in evaluating why the ACRS has not received the data it requires, as well as the role of the NRC in responding to the tragedy in Japan, please provide the Committee with answers to the following questions:

1. Why has the ACRS not received the information requested by the Committee at the April 7, 2011 meeting?
2. Have you or any other NRC Commissioner or employee informed members of the ACRS that they will not receive this information or that there will be a delay in receiving this information? If so, provide the date and a description of the nature of the discussion and any corresponding documents.
3. Which specific authorities are granted to the NRC for responding to incidents at reactors located outside of the United States and licensed by other regulators?
4. Why did you believe the use of emergency authority was necessary in response to the situation in Japan? In your view, what conditions will trigger termination of the use of emergency authority?

In addition, please provide the Committee with the following documents and information:

1. Documents, including e-mails and internal correspondence, related to developing a response to the ACRS request for data made at the April 7, 2011 meeting.
2. Documents created by the Office of the General Counsel regarding the use of emergency powers, the 50-mile evacuation zone, or any other aspect of the NRC’s response to the situation in Japan.
3. Recordings, logs, and chronologies – including but not limited to, WebEOC and any recorded phone calls – created in the NRC Operations Center since March 11, 2011.
4. Inputs, including, but not limited to, parameters, source terms, and assumptions, used for the calculations attached to the March 16, 2011, press release. Please provide a description of how each input was generated and include any supporting documents.
5. Documents, including e-mails and internal correspondence, related to concerns, dissenting opinions, or objections to the March 16, 2011 recommendation or associated calculations.
6. A list of personnel, including titles, at the NRC responsible for reviewing and approving the NRC’s 50-mile radius recommendation prior to providing this

¹² Prepared Remarks, The Honorable Gregory Jaczko, Chairman, U.S. Nuclear Regulatory Commission, “A Firm Foundation, A Strong Regulatory Future,” (Mar. 9, 2010) *available at* http://adamswebsearch2.nrc.gov/idmws/DocContent.dll?library=PU_ADAMS^pbntad01&LogonID=3d46d1e295e9f82d1bd118bda083450&id=100680285.

The Honorable Gregory B. Jaczko

May 26, 2011

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information to the U.S. Ambassador to Japan and other federal agencies. Provide documents, including e-mails and internal correspondence, related to the review and approval of this recommendation.

7. A list of federal agencies that received the NRC's proposed recommendation, the individual or individuals responsible for reviewing and approving information or recommendations received from the NRC, and any comments, questions, or concerns received by the NRC from those individuals or agencies. Please provide documents, including e-mails and internal correspondence, related to the review and approval of this recommendation by other federal agencies.

Please provide this information to the Committee by no later than 5:00 p.m. on Thursday, June 9, 2011. If you have any questions about this request, please contact John Ohly of the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable William Ostendorff, Commissioner
U.S. Nuclear Regulatory Commission

The Honorable Kristine Svinicki, Commissioner
U.S. Nuclear Regulatory Commission

The Honorable William Magwood, Commissioner
U.S. Nuclear Regulatory Commission

The Honorable George Apostolakis, Commissioner
U.S. Nuclear Regulatory Commission