



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 2, 2015

Mr. Thomas Saporito
Senior Consultant
Saprodani Associates
401 Old Dixie Hwy #3525
Tequesta, FL 22469

SUBJECT: PETITION UNDER 10 CFR 2.206 SEEKING ENFORCEMENT ACTION
AGAINST ALL NRC LICENSEES

Dear Mr. Saporito:

Your petition dated October 16, 2014,¹ and addressed to the U.S. Nuclear Regulatory Commission (NRC) Executive Director for Operations, has been referred to the Office of Nuclear Reactor Regulation (NRR) pursuant to Title 10 of the *Code of Federal Regulations* Section 2.206 (10 CFR 2.206) of the Commission's regulations. You requested the NRC take Enforcement Actions against all licensees regarding licensee preparedness in responding to a licensee employee being infected with the Ebola virus. As the basis for your request, you stated, in part, that:

The United States Government (Government), has made know[n] the fact that at least three individuals in the United States became infected with the Ebola virus and that many others are currently under observation to determine if they have contracted the Ebola virus. Petitioner contends that any licensee of the NRC who operates a nuclear facility in the United States may have employees who become infected with the Ebola virus in the near future; and that NRC licensee [whose] nuclear facilities become contaminated with the Ebola virus will not be able to operate in full compliance with NRC regulations and requirements under 10 CFR [Part] 50.

On October 30, 2014, Mr. Jeffrey Whited, petition manager,² contacted you to discuss the 10 CFR 2.206 process and to offer you an opportunity to address the Petition Review Board (PRB) prior to the PRB making its initial recommendation to accept or reject the petition for review in accordance with Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions." You accepted the opportunity, and on December 17, 2014, you addressed the PRB during a recorded teleconference. The meeting transcript from this teleconference is available in the Agencywide Documents Access and Management System (ADAMS) at Accession Nos. ML14365A124 and ML14365A126. During the conference call, you requested to expand your petition to include all contagious diseases, as opposed to just the Ebola virus.

By e-mail dated December 17, 2014,³ you supplemented your petition to include a Bloomberg.com article titled, "Ebola Outbreak Boosts Odds of Mutation Helping it Spread." The

¹ Agencywide Documents Access and Management System (ADAMS) Accession No. ML14290A488.

² E-mail correspondence between you and the petition manager, the conference call transcripts, and your petition can be found in ADAMS at Package Accession No. ML14290A489.

³ ADAMS Accession Nos. ML14353A119 and ML14353A128.

article discussed the mutations of the Ebola virus, and whether or not these mutations help the virus spread. In your e-mail, you requested that this article be provided to the PRB in support of your petition.

On January 8, 2015, the PRB met internally to discuss your petition, as supplemented, and made an initial recommendation that the petition did not meet the criteria for review because you did not set forth facts sufficient to constitute a basis for taking the requested enforcement action against all NRC licensees.

On February 9, 2015,⁴ Mr. Whited informed you of the PRB's initial recommendation and offered you a second opportunity to address the PRB to provide additional, relevant information in support of your petition request. On February 10, 2015,⁵ you declined this opportunity.

Based on the discussions outlined above, the PRB has determined that your petition does not meet the criteria for reviewing petitions under 10 CFR 2.206. This determination is based on Criterion 2 for reviewing petitions under 10 CFR 2.206, as outlined in MD 8.11. Criterion 2 states, in part, that:

The facts that constitute the bases for taking the particular action are specified.
The petitioner must provide some element of support beyond the bare essentials.
The supporting facts must be credible and sufficient to warrant further inquiry.

The PRB has determined that you do not meet this criterion because the facts set forth in your petition, as further outlined during your conference call on December 17, 2014, do not constitute a basis for the requested actions. Specifically, in Section B. of your Petition, and as stated above, you state, in part, that:

The United States Government (Government), has made know[n] the fact that at least three individuals in the United States became infected with the Ebola virus and that many others are currently under observation to determine if they have contracted the Ebola virus. Petitioner contends that any licensee of the NRC who operates a nuclear facility in the United States may have employees who become infected with the Ebola virus in the near future; and that NRC licensee [whose] nuclear facilities become contaminated with the Ebola virus will not be able to operate in full compliance with NRC regulations and requirements under 10 CFR [Part] 50.

The PRB has determined that the above stated information does not constitute a basis for your requested actions. During the December 17, 2014, conference call between yourself and the PRB, you further outlined situations and scenarios wherein an employee or an entire facility might be contaminated with the Ebola virus. The PRB determined that this additional information that you provided also did not constitute a basis for your requested actions.

Further, the following items that you requested the NRC to take against all licensees as Enforcement Actions, as stated in Section A of your Petition, are not 10 CFR 2.206 related actions:

⁴ ADAMS Accession No. ML15040A101.

⁵ ADAMS Accession No. ML15041A180.

5. The licensees further detail in written policies and procedures mandatory employee self-identification of suspected Ebola virus;
6. The licensee further detail in written policies and procedures mandatory employee training and testing for Ebola virus [symptoms] and actions to be taken where an employee is suspected of being infected with the Ebola virus; and
7. The licensees designate and/or construct a building or structure where any licensee employee suspected of having the Ebola virus can be taken and isolated until proper medical personnel can provide medical care accordingly.

The NRC, through regulations contained in 10 CFR, requires all nuclear power reactor licensees to have a defined staffing level, deemed necessary to maintain the safe operation of the plant under all operating conditions. The regulations in 10 CFR 50.54(i), (j), (k), (l), and (m) establish minimum staffing levels and qualifications required to be on hand during each shift at an operating nuclear power reactor. Facility-specific technical specifications (TS) in Section 5.1, "Responsibility," and Section 5.2, "Onsite and Offsite Organizations," establish requirements for shift crew and radiation protection technician minimum staffing. The management, technical support, and operational organizations are described in Chapter 13.1 of the NRC-approved Final Safety Analysis Report (FSAR) for reactors licensed under 10 CFR Part 50 or 10 CFR Part 52. The TS and the FSAR are also part of the licensing basis for nuclear power reactors. Staffing requirements are established for the Radiation Protection Program (10 CFR 20.1101), Emergency Plans (10 CFR 50.47), Fire Protection Program (10 CFR 50.48), Physical Security Program (10 CFR Part 73), and other similar programs are described in the FSAR or in the program documents specific to each program.

Licensees are required to maintain the minimum staffing requirements, as described in the regulations, the TS, the FSAR, and as committed to in the various program documents, regardless of the cause of the staffing deficiencies, or take action to correct the situation in a timely manner. The licensee's response to personnel incapacitated due to Ebola, or any other contagious disease, as it affects staffing levels, would be no different than any other cause of a staffing deficiency.

The licensee is required by regulations in 10 CFR Part 26 to establish and maintain a fitness for duty (FFD) program that has the objective of providing reasonable assurance that individuals are not mentally or physically impaired from any cause which in any way adversely affects their ability to safely and competently perform their duties. All persons who are granted unescorted access to a nuclear power reactor, who perform duties that have a nexus to public health and safety, including operating crews, health physics personnel, and members of the licensee's emergency response organization, for example, are included in the FFD program.

Each operating reactor site has two or more NRC resident inspectors that monitor the licensee's performance. At any time that a licensee is not meeting its regulatory requirements or commitments, for any reason, the NRC will take necessary regulatory actions to correct the adverse conditions. The NRC will not allow operation of a nuclear power reactor in a manner that is inimical to the health and safety of the public or common defense and security.

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In conclusion, the PRB's final determination is that the petition does not meet the criteria for review in accordance with MD 8.11, because you did not provide sufficient facts to justify your requested action. As discussed above, the NRC already has in place regulations that require a minimum staffing level at a nuclear power reactor. In a scenario where a licensee could not meet these requirements, the NRC would take appropriate regulatory action.

Thank you for bringing these issues to the attention of the NRC.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aby Mohseni', with a long horizontal flourish extending to the right.

Aby Mohseni, Deputy Division Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

cc: Distribution via Listserv

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In conclusion, the PRB's final determination is that the petition does not meet the criteria for review in accordance with MD 8.11, because you did not provide sufficient facts to justify your requested action. As discussed above, the NRC already has in place regulations that require a minimum staffing level at a nuclear power reactor. In a scenario where a licensee could not meet these requirements, the NRC would take appropriate regulatory action.

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Sincerely,

/RA/

Aby Mohseni, Deputy Division Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

cc: Distribution via Listserv

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ADAMS Accession Nos. Package: ML14290A489 Closeout Letter: ML15043A153 *via e-mail dated

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