

# NUCLEAR ENERGY ACCOUNTABILITY PROJECT

Post Office Box 129 • Jupiter, Florida 33465-0129 • (407) 743 0770  
Environmental Protection • Involvement • Litigation • Information

UNITED STATES OF AMERICA  
U.S. NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

September 20, 1990

In the Matter of )  
Nuclear Energy )  
Accountability Project )

10 C.R.F. 2.206

v. )

Below Regulatory Concern  
(BRC) rule

U.S. Nuclear Regulatory )  
Commission )  
\_\_\_\_\_ )

COMES NOW, the Nuclear Energy Accountability Project, (hereinafter Petitioner), and hereby requests action by the U.S. Nuclear Regulatory Commission pursuant to Title 10 of the Code of Federal Regulations Part 2.206.

## Specific Request

1. Petitioners request the immediate resignation of all five NRC Commissioners.
2. Petitioners request that a single administrator be appointed to function in place of the current commissioners.
3. Petitioners request that the BRC rule or policy be immediately discontinued by the NRC.

## Basis and Justification

1. The NRC illegally denied the public of its right to participate in the formulation of a BRC policy.
2. A new study released by Public Citizen, Deregulation the Disposal of Radioactive Waste: A Status Report - 2nd edition, associates the potential health risk posed to each state as a direct result of the NRC's BRC policy.

3. The NRC recognizes that one additional cancer death per 20,000 persons could result each year if citizens were exposed to the maximum permitted radiation dose of 100 millirems as allowed by the BRC rule.

4. The NRC violated the federal Administrative Procedure Act (APA) by failing to publish the BRC proposal in draft form subject to public comment before issuing a final rule.

5. The NRC's BRC rule violates both the 1954 Atomic Energy Act and the 1985 Low-Level Radioactive Waste Policy Amendments Act by seeking to reduce the economic costs associated with radioactive waste disposal at the expense of public health and safety.

6. The NRC acted in an arbitrary and capricious manner by approving a BRC rule which incorporates a health risk standard which is less restrictive than is generally accepted as a matter of a public health policy.

7. The NRC, through adoption of the BRC policy, has violated its own mission to protect the public health and safety, the environment and the common defense and security within the United States of America.

8. The NRC commissioners erred in their evaluation and justification of the BRC policy by making a comparison of the BRC policy to Denver, Colorado vs. Washington, DC, Brick vs. Wood Home and a Round-trip Cross-Country Flight. In all the aforementioned comparisons, the public has a choice to accept the risk of additional radiation exposure, whereas the NRC's BRC policy affords the public no choice in being exposed to additional radiation and the adverse health effects which may result.

9. Implementation of the BRC policy will not benefit the public and will prevent State and Federal agencies and others from focusing on the activities that pose greater risks to the public. Specifically, the public will be adversely affected through:

- \* Less timely and less consistent cleanup of contaminated sites,
- \* Decreased assurance that funds set aside to cleanup and decommission nuclear facilities are adequate,
- \* Increased costs and overall risks to the public from managing certain types of radioactive wastes in a manner commensurate with their radiological risk,
- \* Decreased assurance of a consistent level of safety for consumer products containing nuclear materials.

10. The NRC regulatory exemptions using the individual and collective dose criteria will not provide reasonable assurance that individual exposures to the public from all licensed activities and exempted practices will not exceed the generally recognized dose criterion for members of the public of 100 mrem per year, given the Commission's intent to:

- \* Impose both individual and collective dose criteria,
- \* Consider the total impact of a proposed activity (not just a portion of a practice),
- \* Evaluate the potential that people may be exposed to more than one exempted practice,
- \* Monitor and verify how exemptions are implemented under this BRC policy,
- \* Verify dose calculations through licensing reviews and rulemakings with full benefit of public review and comment and
- \* Inspect and enforce licensee adherence to specific conditions and constraints imposed by NRC on exempted practices.

11. The NRC's BRC policy is not consistent with the intent of the National Environmental Policy Act and would not provide an appropriate level of environmental review under the act.

12. The NRC's BRC policy would result in greater risk levels through the introduction of radioactive materials into products which may be used by children. Additionally, Commissioner Carr stated at a recent hearing in July 1990 that a nuclear site could be cleaned-up in accordance with the BRC policy to permit a children's playground to be constructed on the site.

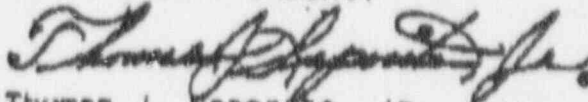
13. Commissioner Curtiss does not support the establishment of a collective dose criterion at a level of 1000 person-rem. Commissioner Curtiss stated that this level is an order of magnitude higher than the level recommended in IAEA Series No. 89, as well as the level recommended by most other international groups. Furthermore, it is an order of magnitude higher than the 1986 collective dose to members of the public due to effluents from all operating reactors, the most recent year for which figures are available.

Commissioner Curtiss further stated that he considered this level of 1000 person-rem to be unacceptably high, when in the context of other risks that we regulate and in view of the fact that the purpose of this Policy Statement is to establish a framework for identifying those practices that the Commission considers to be below regulatory concern.

14. The NRC's BRC policy does not comply with Federal Law wherein the BRC policy exceeds the regulatory discretion provided by the 1986 Low-Level Radioactive Waste Policy Amendments, which specifically permits only that "regulation of a waste stream [that] is not necessary to protect the public health and safety ..." may be terminated. The deregulation criterion addressed in the 1986 BRC policy is that it may not create "an undue risk to public health and safety." The 1990 BRC policy addresses "acceptable risk" as a justification and basis for regulatory considerations. The Low-Level Radioactive Waste Policy Amendments of 1986 stated unequivocally and unconditionally that only regulation not necessary "to protect the public health and safety" may be terminated.

For all the foregoing reasons, and in the interest of public health and safety and for the protection of the environment as a whole, Petitioners request that this petition be granted.

For the environment,



Thomas J. Saporito, Jr.  
Executive Director, NEAP

Nuclear Energy Accountability Project  
Post Office Box 129  
Jupiter, Florida 33468-0129  
(407) 743-0770

c18/ts