

Enclosure 1

Minutes of NRC Staff Meeting with the Pennsylvania Emergency Management Agency and Summary of Follow-on Activities

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MINUTES OF NRC STAFF MEETING WITH THE PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY AND SUMMARY OF FOLLOW-ON ACTIVITIES

On January 26, 2006, representatives of the Pennsylvania Emergency Management Agency (PEMA), the Pennsylvania Department of Welfare (DPW), the Pennsylvania Department of Environment Resources/Bureau of Radiation Protection, DHS headquarters and the DHS Philadelphia Field Office, and NRC headquarters and Region 1 met at the PEMA headquarters in Harrisburg. The PEMA contingent was led by Mr. James Joseph, Director, PEMA. The NRC contingent was led by Mr. Nader Mamish, Director, Emergency Preparedness Directorate, NRC. The DHS contingent was led by Ms. Vanessa Quinn, Chief, Radiological Emergency Preparedness Section, DHS. Mr. Joshua Batkin, Executive Assistant to Commissioner Jaczko, observed the meeting. The meeting agenda is attached.

Mr. Joseph, speaking for PEMA, welcomed the opportunity for everyone to get together to discuss the issues. He identified that the Commonwealth, counties, and local municipalities have had workable plans in each of the EPZs within Pennsylvania for more than 20 years. He acknowledged the contributions of these parties and the cooperative efforts by the plant licensees. He noted that there had been steady improvement in preparedness over this period. Citing the successful outcome of the recent TMI and Limerick exercises as an example, he stated his belief that Pennsylvania has met its obligations under Federal and Commonwealth statutes, common sense, and moral imperative for protecting the health and safety of its citizens against all hazards across the Commonwealth.

Mr. Mamish accepted the welcome and expressed appreciation for the PEMA's assistance in arranging the meeting. He explained the staff's objective in requesting this meeting was to identify opportunities for improving the preparedness for the daycare facility segment of the population and to determine the facilities' actions in the event of a radiological emergency.

The NRC staff provided an overview of the staff requirements memorandum (SRM) issued by the Commission and previewed the list of questions that the NRC staff sought to address in resolving concerns regarding implementation. PEMA stated its intent to be fully responsive to the meeting agenda items. PEMA strongly expressed a concern regarding the inflexible implementation of regulations, noting that ". . . one size doesn't fit all; what works elsewhere doesn't always work in Pennsylvania." He explained that as a home rule state, the governing authority largely rests with the municipalities (counties, cities, townships, boroughs, etc.) unless otherwise provided for by Federal or Commonwealth statutes.¹

¹ The National League of Cities Web site defines "home rule" as follows: "Home rule is a delegation of power from the state to its sub-units of governments (including counties, municipalities, towns or townships, or villages) Home rule creates local autonomy and limits the degree of state interference in local affairs State provisions for home rule by its local government entities can be defined by the state's constitution and/or statutes enacted by its legislature." The staff notes that the Commonwealth's emergency preparedness programs and plans accordingly reflect this governance structure. As an example, until the passage of Senate Act 922 in 2004, State and local agencies apparently did not have clear authority to mandate that private daycare facilities develop and maintain facility-specific all-hazards emergency plans. As a consequence, the local municipalities have, until recently, provided for this segment of the population as they would for any mobility-challenged individual during an

Mr. Joseph expressed concern, on behalf of the Governor's staff, PEMA, and their respective counsel, that the language of the petition denial published in the *Federal Register* notice (FRN) appeared to impose new responsibilities on the Commonwealth. PEMA questioned DHS on the stature of DHS Guidance Memorandum (GM) EV2, "Protective Actions for School Children," as regulation. In response, DHS stated that GM-EV2 was guidance that supplements and explains regulation, concluding that it is not regulation per se. The FRN reference to exercise guidance in GM-EV2 was specifically questioned. DHS confirmed PEMA's understanding that the DHS Interim Exercise Evaluation Methodology superceded the information in GM-EV2 as it applies to exercises. PEMA also took strong exception to the statement in the FRN that a letter from the Governor "... support[ed] the granting of the petition"²

PEMA expressed frustration with some media reports that used inappropriate wording in describing the existing planning, and with individuals who redistribute e-mails containing mischaracterizations of meetings at which they were not present. PEMA encouraged all present to validate such information before further distribution in the interest of minimizing the spread of misinformation. PEMA noted that a lot of resources have been expended on this issue, resources that it believed could have been put to better use in protecting all citizens of the Commonwealth.

The NRC staff asked PEMA to describe the Commonwealth's position on emergency preparedness roles. PEMA noted that disasters and responses happen at the local level. Generally, the role of local governments is to direct the emergency response while the Commonwealth's role is to provide guidance and support for unmet needs. PEMA described the planning structure in which each level of government assesses its response needs against its available resources, and identifies unmet needs to the next level of government. That level responds to those unmet needs within its resources, with any remaining unmet needs forwarded to the next level, and so on.³ PEMA stated that every entity within the Commonwealth has an emergency preparedness role, including the Commonwealth, local governments, schools, businesses, daycare facilities and the parents of children in these facilities, and every household. PEMA's outreach efforts emphasize this personal responsibility for emergency preparedness.

Staff of the Pennsylvania DPW described the Commonwealth's program for emergency

emergency. As previously documented, DHS found these arrangements to provide reasonable assurance that adequate protective measures could and would be implemented for the public, including licensed daycare facilities.

² On January 10, 2003, PEMA submitted comments on PRM-50-79 and specifically stated its recommendation that the petitioner's request be denied [ML050130397]. By letter dated October 3, 2003, the Governor's office withdrew the earlier comments and described actions being taken in the Commonwealth to develop all-hazards emergency plans for child care facilities [ML032820391]. This second letter did not explicitly take a stand on PRM-50-79, but had apparently been erroneously interpreted by the NRC staff as doing so. On February 21, 2006, PEMA docketed a letter requesting the NRC correct the record [ML060650318].

³ The NRC staff notes that this protocol is a nearly universal approach to disaster planning. Few organizations have, under their own immediate control, all of the resources that might be needed in the event of an emergency.

preparedness for daycare facilities.⁴ Senate Act 922, enacted in 2004, directed that every school district and custodial child care facility, in cooperation with the local emergency management agency and PEMA, develop and implement a comprehensive disaster response and emergency plan consistent with guidelines developed by PEMA. The act required that plans be reviewed annually and updated as necessary and that a copy be provided to the local emergency management agency (EMA). DPW addressed these provisions in its regulations,⁵ including the following requirements: 1) capability of implementing a range of protective actions, 2) a method for contacting parents, 3) a documented annual review of the plan, 4) training for facility personnel on the plan, 5) parental letters explaining the plan and providing any update, and 6) a copy of the plan and any updates sent to the local EMA. Letters were sent to the administrators of each licensed daycare facility describing their new obligations under the act. Each of these letters contained a copy of a planning template created by PEMA (Enclosure 6 to this Commission paper).

These emergency planning requirements are integrated into DPW's overall program of regulating daycare facilities. The DPW staff identified several applicable provisions in response to questions. The department's regulations apply to facilities in which out-of-home care is provided to four or more children 15 years of age or younger. The emergency planning requirements within these regulations are specifically applicable to all licensed facilities be they, public or private, profit or nonprofit.⁶ A new facility is required to demonstrate that it has an emergency plan prior to licensure. Licensed daycare facilities are inspected annually. During the inspection DPW personnel confirm that the plan is in place and has been reviewed and updated annually and that all required elements are met. Sanctions are in place for noncompliance. The DPW regulations do not require participation in periodic drills or exercises. The DPW staff provided an estimate that 95% of the daycare facilities across the Commonwealth have developed the required plan. (See teleconference minutes below.)

Transportation arrangements for evacuating students in daycare facilities were discussed. The PEMA template tasks the daycare facility administrator to identify transportation assets in an attachment to the facility's plan. The vehicle owner, driver, normal location, and means of contacting the owner must be identified for each vehicle that the facility would use to evacuate its children. If the plan depends on resources obtained from a party outside of the facility, a written agreement with that party acknowledging the party's participation in the plan must be obtained and maintained as part of the plan. During the meeting, PEMA personnel provided an example of the transportation arrangements that have been negotiated by the local emergency management agency, the school districts, and the daycare facilities within Harrisburg (which is outside of the TMI Plume EPZ). In an emergency, the daycare facility staffs would bring their charges to a pre-identified nearby public school using the means the daycare administrators

⁴ Under Commonwealth law nursery schools and private kindergartens are classified as schools rather than custodial facilities and are therefore regulated by the Department of Education rather than the DPW. The Pennsylvania Emergency Services Code (35 Pa. Consol. Statutes §7102) required that schools have emergency plans prior to passage of the Senate Act 922. PEMA has published a school planning kit, including a plan template.

⁵ Pennsylvania Code Title 55 Section 3270, "Child Day Care Centers," www.pacode.com/secure/data/055/chapter3270/055_3270.pdf

⁶ See 55 Pa. Code §§ 3270, 3280, 3290 (each of which addresses a particular classification of child care facility). These regulations generally exempt from licensure facilities in which care is provided (1) by relatives, (2) with a parent present at all times, (3) in a place of worship during religious services, or (4) *during hours of instruction* in nonpublic schools and in private nursery schools and kindergartens. Pursuant to existing local EMA plans, the students and staff in exempt facilities would be provided for during radiological emergencies as would any member of the general public needing assistance.

documented in their individual plans. Transportation out of the area would then be via school buses provided by the school district. Bus runs would continue until the public school children and daycare facility population (children and staff) were evacuated. PEMA noted that this approach is likely feasible only in an urban area, that other approaches might be necessary in less built-up areas, and that this situation is an example of why the “one size does not fit all.”

The NRC staff, using the findings of the survey of daycare facilities performed by the EFMR⁷ stakeholder group in late 2004 as a contrary view, discussed the Commission’s concerns regarding public and daycare facility awareness of the emergency preparedness measures in place for daycare students and the Commission’s interest in an outreach to and a survey of these facilities. PEMA, noting the ongoing involvement of the daycare facility administrators in the DPW-mandated planning effort, the Exelon-sponsored daycare planning workshops, and an array of routine emergency planning information distribution, could not identify any further means of increasing awareness. PEMA indicated that it wished to further consider the concept of a survey of the daycare facilities and other options of gaining information.

NRC/DHS Follow-on Meeting

Immediately following the meeting, the NRC and DHS participants caucused to review the preceding discussions. The parties agreed that the objectives of the meeting had been met in that significant information pertinent to the implementation concerns identified in the SRM had been obtained. The parties also agreed that PEMA and the DPW had described a very comprehensive, legally mandated program for licensed daycare facilities that, moving forward, substantially enhances the emergency preparedness posture that 1) has been in place and 2) has previously been found by DHS to provide reasonable assurance that adequate protective measures can and will be taken for the public, including children in daycare facilities.

It was clear to NRC and DHS participants that PEMA feels strongly that the Commonwealth’s emergency preparedness posture, as it relates to licensed daycare facilities, has been unfairly characterized by the petitioners and others, and that the resources expended in addressing the claims of the petitioner have detracted from other activities that could improve all-hazards preparedness for all citizens in the Commonwealth.

The NRC and DHS participants reviewed the individual requests made by the petitioner, as tabulated in the FRN, and discussed 1) how each request had been addressed in the Commonwealth’s planning prior to the recent legislation, and 2) how each request is addressed in the current program. Enclosure 2 to this Commission paper tabulates this review.

The DHS staff expressed concern regarding a change in the FRN language.⁸ The language, as revised, states an expectation that DHS 1) did not express, 2) does not agree with, and 3) was not in the version of SECY-05-0045 that DHS had concurred on. The DHS staff expressed the view that DHS should have been given the opportunity to concur in the version as published.

⁷ “Emergency Preparedness Survey of Childcare Facilities Located Near the Three Mile Island Nuclear Facility,” EFMR Monitoring Group, February 15, 2005 [ML050660223]. The NRC staff notes that the Governor signed the Senate Act 922 into law in July 2004. Daycare facility operators were given until the next annual recertification to complete the required planning effort. Thus, most facilities would have been in the earlier stages of plan development when the survey was performed.

⁸ In the “NRC Review” for petition Request E, a statement “*NRC expects local governments to assume responsibility...*” was revised pursuant to Commission direction to read “*NRC and FEMA expect local governments to assume responsibility...*”

The NRC asked for DHS's positions on two issues related to the NRC's evaluation of the initial petition for rulemaking and subsequent related correspondence, allegations, 2.206 petitions, and a new petition for rulemaking.

- *Do current regulations and guidance⁹ preclude a State from tasking other entities for the performance of planning and preparedness actions, such as the Commonwealth did when it passed Senate Act 922?*

The DHS staff stated that the regulations and guidance do not preclude a State from tasking other entities for the performance of planning and preparedness actions. The DHS staff noted that the regulatory focus ought to be on establishing adequate plans and procedures and confirming that they are in place, rather than on who performs the required actions.

- *Is GM-EV2 regulation or guidance?*

The DHS staff explained that GM-EV2 has a regulatory status not unlike that of the NRC regulatory guides, that a guidance memorandum represents an approach for meeting a particular emergency planning standard that DHS deems to be acceptable, that alternative approaches could be acceptable, and that compliance with the memorandum is not mandatory for DHS to make a determination of reasonable assurance.¹⁰

Staff Teleconference With the Pennsylvania Emergency Management Agency

On February 2, 2006, the NRC HQ and Region 1 staff and the DHS HQ and Philadelphia Field Office staff conducted a teleconference with PEMA to obtain clarification on certain items discussed during the January 26, 2006 meeting.

- The NRC staff requested a better understanding of the percentage of daycare facility within the EPZs that have completed their facility-specific plans. PEMA stated that 89 out of 90 daycare facilities within the TMI EPZ have completed and submitted the requisite plans for their facilities. The remaining facility has completed all but the transportation element of their plan and the DPW is actively working with the facility to complete this element.¹¹
- The NRC asked about provisions for ensuring the long-term maintenance of the plans now that they were in place. The DPW performs an annual evaluation of each licensed daycare facility. During these evaluations, the DPW inspector confirms that each of the requisite planning element is met. If the plan does not meet one or more of the elements, the deficiencies are cited on the spot. The operator is given a period of time

⁹ For example: NUREG-0654/FEMA-REP-1, Section II.J.9 states: "Each State and local organization shall establish a capability for implementing protective measures based upon protective action guides and other criteria."

¹⁰ Some individuals have characterized the content of the FRN as Commission direction and stated that the Commission's expectation is that GM-EV2 will be considered as a minimum for demonstrating compliance with the Commission's regulations. The NRC staff notes that interpretation is flawed in that GM EV2 is guidance issued by FEMA and changing the status of this guidance can only be done by DHS.

¹¹ Mr. Jim Joseph, notified the staff via E-mail on May 4, 2006 that the remaining facility has completed all elements of their plan and that the plan is now in effect.

to correct and a followup inspection will be conducted. If the plan is still deficient at that time, the county and local emergency management agencies (EMAs) are notified, and the daycare facility's license could be withdrawn.

- The NRC asked about integration of the daycare facility planning with that of the local EMAs and the Commonwealth. PEMA explained that Commonwealth statute¹² and a PEMA directive regarding emergency preparedness require that each level of government, State, county, city, township, etc., develop and maintain all-hazard emergency plans. PEMA provided template plans, which are consistent with the guidance of the National Response Plan and the DHS Incident Command Structure, to each EMA. With regard to resources needs, such as transportation, each EMA plan includes a section known as the Notification and Resource Manual (NARM), which tabulates the vulnerable facilities and populations within its jurisdiction, their contact information, and resource needs. If a particular EMA has a resource need that cannot be met from local sources, its NARM would identify this as an unmet need. The resource need would then be coordinated with the EMA at the next higher government level (e.g., a county) and so forth up to the Commonwealth and the Federal government. If a local EMA had agreed to provide transportation to a given daycare facility, it would have issued a letter of agreement to the facility operator and the associated transportation resource needs would be included in the NARM. Since a daycare facility plan is required to have letters of agreement for any resources from external sources, there would be integration of the resource needs. PEMA further explained that if a daycare facility could not meet its needs (e.g., a disabled vehicle) during an event, the unmet needs would be raised to the local EMA, and then to each successive level of government until the need was met.

¹² See 35 Pa. Consol. Statutes §7102

Enclosure 1 Tab 1

Agenda for PEMA/DHS/NRC Information Sharing Meeting

Introductions (PEMA/DHS/NRC)

NRC Perspectives (NRC)

- 2002 petition for rulemaking
- 2004 & 2005 additional letters, congressional interest
- Commission denial of PRM; questions are implementation rather than regulation
- DPO, new petitions, new allegations, request for hearing
- Commission Direction to NRC Staff (NRC)
- Seek further information on the level of communication taking place between State and local governments and the licensed daycare centers
- Explore options to further assess the questions raised by stakeholders
- Options should include outreach and survey to determine whether licensed daycare facilities are aware of EP that would apply to them.

DHS Perspectives (DHS)

- Daycare Center Planning Requirements and Guidance (DHS)
- NUREG-0654/FEMA REP-1
- GM-EV-2

PEMA Perspectives (PEMA)

Path Forward & Next Steps (PEMA/DHS/NRC)