

Enclosure 7

Letter to Petitioners

(ML060930234)

XXX YY, 2006

Lawrence T. Christian
133 Pleasant View Terrace
New Cumberland, Pennsylvania 17070

Dear Mr. Christian:

The purpose of this letter is to inform you that the Nuclear Regulatory Commission (NRC) is re-publishing its December 19, 2005, notice denying your September 4, 2002, petition for rulemaking. We are re-publishing our notice to correct errors and clarify the NRC's regulatory position. The petition was docketed by the Nuclear Regulatory Commission (NRC) on September 23, 2002, and has been assigned Docket No. PRM-50-79. The petition requested that the NRC amend its regulations regarding offsite emergency plans for nuclear power plants to ensure that all daycare centers and nursery schools in the Emergency Planning Zone (EPZ) of nuclear power facilities are properly protected in the event of a radiological emergency.

The petition was published in the Federal Register on November 1, 2002, for a 75-day public comment period. The NRC received 56 public comment letters relating to this petition. Twenty-three letters supported granting the petition (mostly from citizens, including three letters with 410 signatures), while 30 letters requested that the petition be denied. Those letters that supported denial of the petition were mostly from state and local governmental agencies, the Federal Emergency Management Agency (FEMA), and NRC licensees.

The Commission denied your petition for rulemaking because current requirements and guidance, along with state and local government established emergency plans provide reasonable assurance of adequate protection of all members of the public, including daycare centers and nursery schools, in the event of a nuclear power plant incident.

However, your petition raised questions about implementation and compliance with relevant requirements and guidelines that were previously determined to be adequate. The Commission considered your petition as identifying potential implementation problems with the current requirements and guidelines in your state and local area. Accordingly, the NRC staff met with FEMA to discuss these issues and your petition was forwarded to FEMA for investigation.¹

¹ FEMA evaluated a May 3, 2005 Emergency Planning exercise at TMI. NRC understands that during this exercise FEMA reviewed aspects of emergency planning involving nurseries and daycare centers. No deficiencies were identified by FEMA during the exercise. FEMA's final report on the exercise was issued on August 4, 2005.

The Commission's emergency planning regulations for nuclear power reactors are contained in 10 CFR Part 50, specifically § 50.33(g), 50.47, 50.54 and Appendix E. As stated in 10 CFR 50.47(a)(1), in order to issue an initial operating license, the NRC must make a finding "that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency" to protect the public health and safety. An acceptable way of meeting the NRC's emergency planning requirements is contained in Regulatory Guide (RG) 1.101, Rev. 4, "Emergency Planning and Preparedness for Nuclear Power Reactors" (ADAMS Accession No. ML032020276). This guidance document endorses NUREG-0654/FEMA-REP-1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" (ML040420012; Addenda: ML021050240), an NRC and FEMA joint guidance document intended to provide nuclear facility operators and federal, state, and local government agencies with acceptance criteria and guidance on the creation and review of radiological emergency plans. Together, RG 1.101, Rev. 4, and NUREG-0654, Rev. 1, provide guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the Commission's regulations for emergency response plans and preparedness at nuclear power reactors.

Emergency plans for all nuclear power reactors are required under Part 50, as amplified by NUREG-0654/FEMA-REP-1 and applicable FEMA guidance documents, to have specific provisions for all "special facility populations," which refers not only to pre-schools, nursery schools, and daycare centers, but all kindergarten through twelfth grade (K-12) students, nursing homes, group homes for physically or mentally challenged individuals and those who are mobility challenged, as well as those in correctional facilities. FEMA GM 24, "Radiological Emergency Preparedness for Handicapped Persons," dated April 5, 1984, and GM EV-2, "Protective Actions for School Children," dated November 13, 1986, provide further guidance. These specific plans should, at a minimum: (1) identify the population of such facilities; (2) determine and provide protective actions for these populations; (3) establish and maintain notification methods for these facilities; and (4) determine and provide for transportation and relocation.

State and local Emergency Operations Plans and procedures are initially and periodically evaluated by FEMA. The plans are tested in a biennial emergency preparedness exercise conducted for each nuclear power station. If plans or procedures are found to be inadequate, they must be corrected.

The NRC emergency preparedness regulations are predicated on State and local governments that participate in emergency planning assuming overall responsibility for ensuring the performance of off-site planning and preparedness activities. This assignment is appropriate since State and local governments have responsibility for public health and safety, and the authority to take actions to protect the public during an emergency. A radiological emergency is but one of the hazards for which a State and its local government entities may prepare. All emergency response is local; the planning for that response must similarly reflect local capabilities, constraints, organizational relationships, statutes, regulations, and ordinances. As such, the NRC's regulations allow the flexibility for State or local governments to task other entities, such as but not limited to, daycare facilities, with emergency preparedness activities and obligations responsive to the applicable planning standards of 10 CFR 50.47(b). The overall responsibility for demonstrating, with reasonable assurance, that adequate protective measures can and will be taken to protect the public in the event of a radiological emergency, remains with the participating State and local governments.

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The Commission believes that current emergency planning requirements provide reasonable assurance of adequate protection of all members of the public, including children in nursery schools and daycare centers. Further details are discussed in the enclosed re-issued notice of Denial of Petition for Rulemaking, which will be published in the Federal Register.

Sincerely,

Annette L. Vietti-Cook

Enclosure:
Federal Register Notice of
Petition for Rulemaking

cc: Eric J. Epstein