



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

April 3, 2006

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

Mr. Eric J. Epstein
4100 Hillsdale Road
Harrisburg, PA 17112

SUBJECT: ALLEGATION NSIR-2005-A-0011

Dear Messrs. Christian and Epstein:

This is in reference to the February 23, 2006, letter to you from the U. S. Nuclear Regulatory Commission (NRC). In that letter, I indicated that the NRC Office of Nuclear Reactor Regulation (NRR) would continue to examine the facts and circumstances of concerns you clarified in an e-mail transmitted to NRC staff on February 9, 2006. Those concerns are related to your assertion that nuclear power reactor licensees operating in the Commonwealth of Pennsylvania are in violation of Federal Regulations (10 CFR 50.47, 10 CFR 50.54, 10 CFR Part 50 Appendix E, and 44 CFR 350). You have alleged that reactor licensees are in violation of Federal Regulations because the criteria regarding emergency provisions for day care centers and nursery schools outlined in Federal Register Notice Vol. 70, No. 242, are not being followed.

The NRC has completed its followup in response to the concerns you brought to the NRC staff. The enclosure to this letter states your concerns and the NRC response.

Your concerns relate to offsite emergency preparedness programs, which the U. S. Department of Homeland Security (DHS) is responsible for assessing. The NRC and DHS are the two Federal agencies responsible for evaluating emergency preparedness at and around nuclear power plants. The NRC is responsible for assessing the adequacy of onsite emergency plans developed by the utility, while DHS is responsible for assessing the adequacy of State and local government offsite emergency planning.

NRC staff discussions determined that this issue would not normally meet the criteria for consideration under the NRC's Management Directive (MD) 8.8, "Management of Allegations," because it was reviewed by NRC staff under its 10 CFR 2.206 process. However, the NRC decided to review and respond to your issues while coordinating responses with those to your 10 CFR 2.206 Petition dated November 18, 2005. This matter will be closed and no further action will be taken by the NRR allegation team staff unless we receive additional information that suggests that our conclusions should be altered.

Thank you for informing us of your concerns. Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibilities to the public very seriously, and will continue to do so within the bounds of our lawful authority.

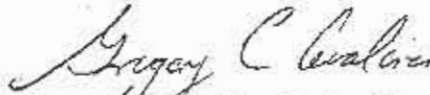
Messrs. L. Christian and E. Epstein

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Should you have any additional questions, or if we can be of further assistance to you, please telephone me at (800) 368-5642 or e-mail me at gcc@nrc.gov.

Sincerely,



Gregory C. Cwalina, Senior Allegation Coordinator
Office of Nuclear Reactor Regulation

Enclosure: As stated

STATEMENT OF CONCERNS AND NRC RESPONSES

ALLEGATION NO. NSIR-2005-A-0011

CONCERN 1:

The NRC nuclear power reactor licensees operating in the Commonwealth of Pennsylvania are in violation of Federal Regulations (10 CFR 50.47, 10 CFR 50.54, 10 CFR Part 50 Appendix E, and 44 CFR 350) because the criteria regarding emergency provisions for day care centers and nursery schools outlined in Federal Register Notice Vol. 70, No. 242 Monday, December 19, 2005, are not being followed.

NRC Response:

Your concern regarding inadequate emergency preparedness for daycare students has been raised to the Commission/Agency in a number of actions, which are currently, or were being evaluated in other formal processes. This response includes coordination with responses provided on your other submissions to the Commission.

The essence of your concern, i.e., the adequacy of State and local emergency plans for children in licensed daycare facilities, has previously been identified to, and reviewed by NRC staff and the concern does not identify any new regulatory issues. Emergency preparedness is evaluated against the standards of 10 CFR 50.47 and 44 CFR 350, supported by regulatory guidance and case law. It is these regulations, rather than the Federal Register Notice, that form the basis of NRC licensing decisions.

The Department of Homeland Security (DHS) has the responsibility for leading state and local government emergency preparedness and planning activities and is the lead authority concerning determinations with regard to the adequacy of state and local government emergency plans. (NOTE: the group from the Federal Emergency Management Agency (FEMA), which previously had that responsibility, has become part of DHS. For convenience we will refer to DHS in this correspondence as the agency tasked with emergency preparedness responsibility.) While the NRC is required, by 10 CFR 50.47, to make a finding that there is "reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency," that finding is based upon DHS findings and determinations. The licensee has no control over and cannot affect state and local government offsite emergency preparedness activities. As such, the licensee cannot be found in noncompliance as alleged.

Since this is not an issue of licensee compliance with NRC regulations, but rather with the adequacy of state and local government activities, we are unable to substantiate your concern that nuclear power reactor licensees operating in the Commonwealth of Pennsylvania are in violation of Federal Regulations.

ENCLOSURE

CONCERN 2:

The emergency planning requirements for day care centers and nursery schools defined in Federal Register Notice Vol. 70, No. 242 Monday, December 19, 2005, are not in place in Pennsylvania at this time, nor have they ever been in place since the regulations were promulgated.

NRC Response:

Onsite and offsite emergency response plans for nuclear power plants are evaluated against the planning standards provided in 10 CFR 50.47(b) and 44 CFR Part 350, as informed by supporting regulatory guidance and case law. It is these regulations, rather than the Federal Register Notice, that form the basis of NRC licensing decisions. FEMA GM-EV-2, "Protective Actions for School Children," identifies approaches acceptable to FEMA, now DHS, for meeting these planning standards. DHS has not withdrawn its approval of the subject offsite plans.

As stated above, the NRC bases its findings upon DHS findings and determinations to determine compliance with 10 CFR 50.47. Since this is not an issue of the licensee's compliance with NRC regulations, but rather with offsite response organizations tasked with maintaining a state of emergency preparedness, discussions with State and local governments and individual childcare facilities are the most appropriate means to identify and implement improvements in emergency preparedness in those facilities. Questions about the evacuation of childcare facilities are currently being considered by the NRC, DHS, and the appropriate offsite response organizations as a result of your inquiries and other activities.

CONCERN 3:

The appropriate state and local governments in Pennsylvania are refusing to provide the protective provisions outlined in the Federal Register Notice; and have submitted these refusals in writing stating that these emergency provisions are the responsibility of the child care facilities and the parents of the children.

NRC Response:

The elected legislature and Governor of the Commonwealth of Pennsylvania, within their authority bestowed by the Pennsylvania Constitution, enacted statutes in 2004, that codified the position that daycare centers have a responsibility to prepare for all-hazard emergencies. The regulations of the DPW that implement the statute assign certain responsibilities to the parents. Neither DHS nor the NRC, as Federal agencies, has any authority to challenge the State's action, and indeed, have no interest in doing so since the State's action has the potential to advance the effectiveness of emergency preparedness. The staff finds that this assertion does not provide any issues not already considered by the staff.

CONCERN 4:

FEMA's findings, which NRC bases its licensing decisions on, are not in compliance with the determinations outlined in the NRC's Federal Register Notice.

NRC Response:

Onsite and offsite emergency response plans for nuclear power plants are evaluated against the planning standards provided in 10 CFR 50.47(b) and 44 CFR Part 350, as informed by supporting regulatory guidance and case law. It is these regulations, rather than the Federal Register Notice, that form the basis of NRC licensing decisions. FEMA GM-EV-2, "Protective Actions for School Children," identifies approaches acceptable to FEMA, now DHS, for meeting these planning standards. Approaches different from those identified in GM-EV-2 can be proposed and can be found acceptable if they provide a basis for DHS to conclude that the planning standards are met.

CONCERN 5:

FEMA's lack of discovery of these deficiencies does not dismiss the NRC's responsibility to fix them because the NRC is the governing regulatory authority which issues the power plants their licenses to operate.

NRC Response:

The staff agrees that the Commission's regulations do provide the ultimate licensing authority and responsibility to the NRC. However, the regulations also state, that the NRC will base these determinations on a review of the DHS findings. This regulatory structure is consistent with Presidential Directives and Executive Orders that directed FEMA (now DHS) to take the lead in establishing Federal policies for and coordinating civil emergency planning. The Commission, including Commissioner Jazcko, directed the staff to take certain actions to resolve potential implementation issues. These actions are being pursued within NRC formal processes. If these actions fail to resolve the issues, then the agency will take appropriate actions as provided for by the regulation.

CONCERN 6:

Per the CI's assertions and the evidence submitted, the NRC must find immediate discovery of these deficiencies and take the required enforcement actions in accordance with 10 CFR 50.54(s)(2)(ii) to insure that protective provisions are in place for day care centers and nursery schools.

NRC Response:

The staff finds that this demand is essentially the same as the demands expressed in your November 18, 2005, petition addressed to Mr. Luis Reyes, Executive Director for Operations, and Mr. William Kane, Deputy Executive Director for Reactor and Preparedness Programs. The NRC responded to those demands in a letter dated March 10, 2006.

CONCERN 7:

Based upon this allegation and the evidence submitted [by Messers Christian and Epstein], the NRC must find immediate discovery of these deficiencies and take the required enforcement actions in accordance with 10 CFR 50.54(s)(2)(ii) to insure that protective provisions are in place for day care centers and nursery schools.

NRC Response:

See response to Concern 6.