

March 10, 2006

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

Dear Mr. Epstein:

Your petition dated November 18, 2005, addressed to Mr. Luis Reyes, Executive Director for Operations, and Mr. William Kane, Deputy Executive Director for Reactor and Preparedness Programs, has been referred to the Office of Nuclear Reactor Regulation pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). The petition requests that the Nuclear Regulatory Commission (NRC) issue a demand for information (DFI) to Amergen, the licensee for Three Mile Island Nuclear Station (TMI), Unit 1, and Exelon Generating Company (Exelon), the licensee for Peach Bottom Atomic Power Station (Peach Bottom), Units 2 and 3. You requested that the licensees be required to provide the NRC with information that establishes that they are in compliance with NRC regulations related to emergency planning and specifically the ability to implement protective measures for childcare facilities within the Emergency Planning Zones (EPZs) established around the TMI and Peach Bottom facilities. In addition, the petition requested that the NRC defer approving transfers of the licenses for the TMI and Peach Bottom facilities until the issues raised in the petition are resolved.

In support of your request, you provided various documents, including citations to NRC regulations and guidance issued by the NRC and the Federal Emergency Management Agency (FEMA).¹ On December 21, 2005, you participated in a telephone conference call with our petition review board (PRB) to discuss your petition. A transcript of the telephone conference call is provided as an enclosure to this letter. The material accompanying your petition and your supplemental letter dated December 21, 2005, and the discussions during the telephone conference call have been considered in the PRB's final determination regarding whether the petition meets the criteria for consideration under 10 CFR 2.206.

The PRB has concluded that your submittal does not meet the criteria for consideration under 10 CFR 2.206. We commend you for bringing this issue forward and believe that your ongoing discussions with State and local governments and individual childcare facilities are the most appropriate means to identify and implement improvements in emergency preparedness for childcare facilities in your area. Such discussions and, if needed, changes at the State and local levels and at the individual childcare facilities are a more appropriate approach to assess and resolve this issue than is NRC's 10 CFR 2.206 petition process.

¹ FEMA is in the process of re-organization at this time. When this re-organization is complete, FEMA's emergency preparedness functions will be re-located into the Preparedness Directorate, Department of Homeland Security (DHS). This letter will use the traditional "FEMA" acronym in historical context and "DHS" in present context.

With respect to your request to hold in abeyance the NRC approval of the transfer of the licenses for the Peach Bottom and TMI facilities, you were informed on December 22, 2005, during a telephone call with Mr. William Reckley of the NRC staff that the NRC action on the transfers would be decided and issued independent of your petition under 10 CFR 2.206. You had submitted several contentions in a request to intervene in the NRC licensing actions associated with the proposed transfer of the operating licenses for the Peach Bottom and TMI facilities resulting from a merger of Public Service Enterprise Group (PSEG) and Exelon. Your request related to TMI has been rendered moot because the NRC has determined that the merger of Exelon and PSEG does not require a licensing action (see CLI-05-25). The Commission denied your request for a proceeding related to the transfer of the Peach Bottom licenses based on a lack of standing (see CLI-05-26) but instructed the NRC staff to address your contentions as comments regarding the proposed transfer. The NRC staff will address your comments, including Contention 7 dealing with the issue of emergency planning for childcare facilities, within the safety evaluation associated with the NRC decision regarding the license transfer.

The NRC bases its decisions on the adequacy of emergency preparedness for commercial nuclear power plants on a review of the FEMA findings and determinations regarding the State and local emergency plans and on the NRC assessment of the licensee's onsite emergency plans. The role of FEMA as the lead Federal agency for providing assistance to State, Tribal, and local governments and for review and evaluation of State, Tribal, and local radiological emergency plans derives from executive and Congressional actions following the March 1979 accident at TMI. Regulations, including 10 CFR 50.54(s), and related guidance documents describe a process to address circumstances where the NRC finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Challenges to the adequacy of the overall emergency preparedness for a nuclear power plant that are related to the plans or abilities of offsite response organizations would usually be identified by the State, Tribal, or local governments or FEMA in their role of reviewing and approving offsite plans or during periodic drills. In such circumstances, FEMA would generally consult with offsite response organizations and assess the implementation of corrective actions for any identified deficiencies in the offsite plans. The finding by FEMA and the NRC that an offsite plan provides reasonable assurance of public protection may include judgments that offsite response organizations can and would take appropriate actions in accordance with general provisions of their plans or that the plans support defining actions on an ad-hoc basis if needed to protect the public. Only in the rare case where corrective actions are not taken within a reasonable time period (i.e., the four months specified in 10 CFR 50.54(s)), would the NRC consider ordering a plant to shut down or take other actions to compensate for a significant deficiency in the plans or capabilities of offsite response organizations.

Similar reasoning was presented in the NRC's recent denial of a Petition for Rulemaking (PRM-50-79) related to this issue (70 FR 75085; December 19, 2005). In that decision, the NRC stated that existing regulations provide the necessary requirements for maintaining emergency preparedness for nuclear power plants. In addition, NRC and FEMA provide guidance to licensees and offsite response organizations, including FEMA guidance related to special needs populations and schools. That NRC decision resulted in the filing of a Differing Professional Opinion (DPO) by a member of the NRC staff. The NRC is currently reviewing the DPO in accordance with established agency procedures (see NRC Management Directive 10.159, "The NRC Differing Professional Opinions Program").

Your primary request in this petition is for the NRC, using its authority for the licensing and oversight of nuclear power reactors, to issue a DFI to the licensees for the TMI and Peach Bottom facilities requiring them to provide information regarding the capabilities to evacuate nearby childcare facilities. As stated in your petition, the NRC can, under certain circumstances, order licensees to take action, including ceasing operations, if it is determined that the emergency preparedness of offsite response organizations does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. DHS has not withdrawn its approval of the subject offsite plans and the NRC has not invoked the provisions of 10 CFR 50.54(s). This is not an issue of the licensee's compliance with NRC regulations, but whether offsite response organizations are maintaining a state of emergency preparedness that provides a reasonable assurance that protective measures can and will be taken in the event of a radiological emergency. Various correspondence, petitions, and other actions by Mr. Lawrence Christian and yourself have raised the issue of emergency planning for childcare facilities to the attention of the NRC, DHS, and the appropriate State and local agencies. Demanding information from the licensee would not facilitate our assessments since we are already engaged in discussions with DHS and offsite response organizations regarding this matter. The 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, other activities within Pennsylvania (e.g., legislation related to licensing childcare facilities), the Commission's directions to the NRC staff associated with the denial of the petition for rulemaking, and the DPO filed by a member of the NRC staff.

Thank you for bringing these issues to the attention of the NRC, DHS, and the State and local agencies serving as offsite response organizations for the Peach Bottom and TMI facilities. We encourage you to work cooperatively with and support the efforts of the State and local agencies as well as the childcare facilities in your area to maximize their preparedness for possible emergencies, including those related to the commercial nuclear power plants.

Please contact Mr. William Reckley at (301) 415-1323 if you have additional questions regarding this response.

Sincerely,

/RA/

Christopher I. Grimes, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

Enclosure: Transcript of December 21, 2005, Teleconference

cc w/encl: See next page

DPO in accordance with established agency procedures (see NRC Management Directive 10.159, "The NRC Differing Professional Opinions Program").

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Division of Policy and Rulemaking
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cc w/encl: See next page

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Accession Nos.:

Package: ML060400505

Incoming: ML053250320

Supplement: ML060040126

Letter: ML060400462

Transcript: ML060400471

NRR-106

OFFICE	PSPB/PM	PSPB/LA	PRB Chair	NSIR/EPD
NAME	WReckley	DBaxley	RCorreia	SLavie
DATE	03/10/06	03/2/06	03/2/06	03/6/06
OFFICE	NSIR/EPD	DHS/PD/OIP	OGC	DPR/D
NAME	TMcGinty	CFiore by email	MWoods NLO	CGrimes
DATE	03/6/06	03/9/06	3/1/06	03/10/06

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Eric Epstein 2.206 Petition Response Letter Dated: March 10, 2006

cc:

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Eric Epstein 2.206 Petition Response Letter Dated: March 10, 2006

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