

DIFFERING PROFESSIONAL OPINION

INSTRUCTIONS: *Prepare this form legibly and submit three copies to the address provided in Block 14 below.*

1. DPO CASE NUMBER

2. DATE RECEIVED

3. NAME OF SUBMITTER
Michael Jamgochian

4. POSITION TITLE
Senior Nuclear Engineer

5. GRADE
GS-15

6. OFFICE/DIVISION/BRANCH/SECTION
NRR

7. BUILDING

8. MAIL STOP
0-12-A1

9. SUPERVISOR
Stephanie Coffin

10. DESCRIBE THE PRESENT SITUATION, CONDITION, METHOD, ETC., WHICH YOU BELIEVE SHOULD BE CHANGED OR IMPROVED.
(Continue on Page 2 or 3 as necessary.)
I believe that FEMA and the State of Pennsylvania does not comply with FEMA guidance that NRC bases it's licensing decisions on, I believe that the criteria in FEMA GM-EV-2 must be codified into NRC's emergency planning regulations, in order to permit the NRC to make a finding that "there is reasonable assurance that protective measures can and will be taken." I also believe that the 120 day clock contained in 10 CFR 50.54(s)(2) should be implemented in Pennsylvania during the rulemaking. My beliefs are based on the fact that in 45 FR 55406, dated August 19, 1980 the Commission stated that the NRC will "review FEMA findings and determinations on the adequacy and capability of implementation of State and local plans (and will) make decisions with regard to the overall state of emergency preparedness (i.e, integration of the licensee's emergency preparedness as determined by the NRC and of the State/local governments as determined by FEMA and reviewed by NRC) and issuance of operating licenses or
CONTINUED ON PAGE 2

11. DESCRIBE YOUR DIFFERING OPINION IN ACCORDANCE WITH THE GUIDANCE PRESENTED IN NRC MANAGEMENT DIRECTIVE 10.159.
(Continue on Page 2 or 3 as necessary.)
The Commission's emergency planning regulations, specifically 10 CFR 50.47(a)(1), require that nuclear power plant licensees develop and maintain emergency plans that provide reasonable assurance that adequate protective actions can and will be taken for the protection of the public in an emergency. Section 50.47(a)(2) states that the NRC will base its findings regarding adequacy of these plans on a review by NRC of FEMA, who will determine if the plans are adequate and whether there is reasonable assurance that they can be implemented. NRC and FEMA promulgated NUREG-0654/FEMA-REP-1 to provide detailed guidance on the development and implementation of these plans. Appendix 4 in NUREG-0654 details the requirements for the identification and planning for special facility populations and schools. FEMA Guidance Memorandum (GM) EV-2, "Protective Actions For School Children," provides guidance to assist federal officials in evaluating adequacy of state and local government offsite emergency plans and preparedness for protecting school children during a radiological emergency. The term "school" refers to all public and private schools, pre-schools, and licensed day care centers with 10 or more students.
CONTINUED ON PAGE 3

12. Check (a) or (b) as appropriate:
 a. Thorough discussions of the issue(s) raised in item 11 have taken place within my management chain; or
 b. The reasons why I cannot approach my immediate chain of command are:

SIGNATURE OF SUBMITTER

DATE

SIGNATURE OF CO-SUBMITTER (if any)

DATE

13. PROPOSED PANEL MEMBERS ARE (in priority order):
1. **Kathy Gibson**
2. **Cathy Haney**
3. **Frank Gillespie**

14. Submit this form to:
Differing Professional Opinions Program Manager
Office of: _____
Mail Stop: _____

15. ACKNOWLEDGMENT

THANK YOU FOR YOUR DIFFERING PROFESSIONAL OPINION. It will be carefully considered by a panel of experts in accordance with the provisions of NRCMD 10.159, and you will be advised of any action taken. Your interest in improving NRC operations is appreciated.

SIGNATURE OF DIFFERING PROFESSIONAL OPINIONS PROGRAM MANAGER (DPOPM)

PRE-CONDITIONS MET

YES NO

DATE OF ACKNOWLEDGMENT

DIFFERING PROFESSIONAL OPINION
(Continued)

CONTINUE ITEM 10, ITEM 11, AND/OR ITEM 12 FROM PAGE 1. (Indicate the block number to which this information applies.)

BLOCK 10 CONTINUED - shutdown of operating reactors. FEMA will approve State and local emergency plans and preparedness, where appropriate, based upon its findings and determinations with respect to the adequacy of State and local plans and the capabilities of State and local governments to effectively implement these plans and preparedness measures. These findings and determinations will be provided to the NRC for use in its licensing process." In 45 FR 55403 dated August 19, 1980, the Commission emphasized the importance of preplanning for emergencies by stating, "In order to discharge effectively its statutory responsibilities, the Commission must know that proper means and procedures will be in place to assess the course of an accident and its potential severity, that NRC and other appropriate authorities and the public will be notified promptly, and that adequate protective actions in response to actual or anticipated conditions can and will be taken." Since September 2002, I have been responsible for evaluating the merits of a Petition For Rulemaking (PRM 50-79) "Emergency Planning For Nursery Schools and Day Care Centers." After evaluating all public comments received, along with several discussions with the petitioners, FEMA, several state and local governments and NRC staff and management. I developed a Commission paper recommending that the petition be denied (SECY-05-0045, dated March 11, 2005). This SECY was concurred in by FEMA, NRC Office directors and the EDO. I based my recommendation to deny this petition on my fundamental belief that 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 all public and private schools, day care centers and nursery schools, in the event of a nuclear power plant incident, and that no new regulations were required. The petition did raise questions about implementation and compliance with relevant requirements and guidelines that were thought to be previously determined to be adequate in the petitioners state and local area. Accordingly, the petition was recommended to the Commission to be denied and forwarded to FEMA for investigation into implementation problems relating to the preplanning of protective actions for day care centers and nursery schools. Because the real problem is implementation and not regulations, FEMA committed to the NRC and the petitioners that the implementation concerns relating to the elements in GM-EV-2 would be fully demonstrated and evaluated during the May 05 TMI exercise. The demonstration of the elements in EV-2 for nursery schools and day care centers was not adequately demonstrated during the TMI exercise. Therefore, I can no longer support the staff position to deny PRM 50-79. I believe that my current position is confirmed by letters from Pennsylvania and supported by the following. The petitioner stated, and the comment letters from FEMA, PEMA, Penn. Governor and the Mayor of Harrisburg confirmed that the preplanned protective measures for public and private elementary, middle and high schools is very different then the preplanned protective measures for licenced day care and nursery schools. This is not consistent with NRC and FEMA's regulations and guidelines. FEMA's Guidance Memorandum EV-2 require that state and local emergency plans address, at a minimum, preplanned transportation resources that are to be available for evacuating all schools including day care and nursery schools. Preplanned evacuation reception and care centers will be established for all schools, preplanned alert and notification procedures are to be established for all schools and preplanned public information for parents and guardians of all schools including day care and nursery schools. The petitioner stated that all of the above does not exist for nursery schools and day care centers in Pennsylvania. FEMA, PEMA, the Pennsylvania Governor and the Mayor of Harrisburg have confirmed that all of the above exist only for public and private elementary, middle or high schools and does not exist for nursery schools and day care centers. FEMA and PEMA has documented that PEMA will notify day care and nursery schools of an existing emergency but that it is the responsibility of the day care and nursery schools and the parents to take the necessary protective actions instead of the state or local government. In a letter dated March 24, 2005, the NRC told the petitioner that protective actions for nursery schools in accordance with EV-2 would be evaluated in the May 05 TMI offsite exercise. The FEMA report on the TMI exercise did not show an evaluation of all the requirements in EV-2 for nursery schools or day care centers.

BLOCK 11 CONTINUED - The state and local government offsite emergency plans shall address, at a minimum, preplanned transportation resources available for evacuating all schools including the licensed day care and nursery schools; preplanned reception and care centers for all schools including day care and nursery schools, alert and notification procedures for all schools including day care and nursery schools and public information for parents and guardians of all schools including day care and nursery school children. No evidence has been presented to show that Pennsylvania complies with these emergency planning requirements. The consequences of not codifying state and local government specific responsibilities for day care and nursery school children is that these children in Pennsylvania will not have preplanned evacuation capabilities in the event of an emergency. Therefore, the NRC would not be able to find that "there is reasonable assurance that protective measures can and will be taken in the event of an emergency. Thus requiring NRC to implement the 120 day clock contained in 10 CFR 50.54(s)(2) and to grant the petition for rulemaking (50-79) to codify the criteria contained in GM-EV-2.

DIFFERING PROFESSIONAL OPINION (Continued)

CONTINUE ITEM 10, ITEM 11, AND/OR ITEM 12 FROM PAGE 1. (Indicate the block number to which this information applies.)

The protective actions that were described in the TMI exercise report for nursery schools and day care centers is that "Municipalities in the Commonwealth of Pennsylvania are the responsible offsite response organizations for notifying day care centers located in their geographical/political boundaries in the event of an incident occurring at TMI. The municipal plans and procedures require that day care centers be notified of an incident at TMI at the Alert, Site Area and General Emergency and/or when Protective Action Decisions are announced."

The TMI Exercise report further stated that "Each municipality has a Notification and Resources Manual that list the names, address, point of contact and phone number of the day care centers located in their portion of the EPZ. In every case, the municipalities simulated notification of the day care centers in a timely manner pursuant to their codified plans and procedures". The above TMI Exercise descriptions of how the state and local governments will protect the health and safety of nursery school children taken in conjunction with the following quote from a FEMA letter dated April 29, 2004 to NRC, illustrates a definite lack of compliance with the regulations and guidelines.

"Please keep in mind that day care centers and nursery schools are considered private business in the Commonwealth of Pennsylvania as opposed to elementary, middle and high schools that are considered public institutions. As was stated in a letter dated January 10, 2003, from the Acting Director of the Pennsylvania Emergency Management Agency to the NRC, "Parents are legally required to send their children to public schools unless they opt to enroll them in private institutions. The use of private day-care facilities is voluntary on the parents. There is no legal requirement to send children to them." Also from a FEMA letter dated July 29, 2004 to NRC "parents should review with day care centers and nursery schools procedures and plans for the safety and protection of their children, the Commonwealth of Pennsylvania Department of Public Welfare issued a bulletin on December 27, 2003, requiring day care centers to develop an EOP. The enclosed Draft EOP for Nursery Schools delineates a listing of transportation providers and contact lists for drivers." Also

In a letter from PEMA to the petitioners dated July 30, 2004, PEMA stated that "Child care facilities are, for the most part, private business entities who in conjunction with the parents, should assume responsibility for the safety of their charges. Local government will not treat these businesses any differently than it does any other citizen. Especially in rural areas, municipal government simply may not have the resources to provide shelter. In so far as municipal shelters are available, child care providers are encouraged to use them". Also

"Child care facilities are, for the most part, private entities who should assume responsibility for their charges. As mentioned in the Day Care planning guide that's on PEMA's website "...the municipal emergency management agency may be able to help, but it won't be able to guarantee that you will remain in one group, thus complicating your accountability problems." Child day care providers should coordinate with municipal government and decided whether to use government-provided resources, or to make separate arrangements". Also "Care of their charges is ultimately the responsibility of the day care provider and the parents of the children".

"If time allows, municipal officials will issue a protective action decision. However, localized emergencies or severe time constraints may dictate that the day care facility operator must choose the most prudent course of action. The sample plan on PEMA's website lists considerations (Part II, Checklist A) that will help the day care provider to make that decision".

In a letter for the Mayor of Harrisburg to the NRC dated December 3, 2002, he stated "The exclusion of such facilities in present Radiological Emergency Plans is an omission that is certain to create confusion and chaos in the event that an evacuation would ever be ordered in one of the affected evacuation zones near a nuclear power station. Parents and others would be attempting to reach the nursery schools and day care centers, which would almost certainly delay any prospect of their orderly evacuation. Further, nursery schools and day care centers have thus far generally not put into place any evacuation plan, which means there would be an on-site confusion regarding the safety of the children entrusted to these facilities."

All of the above documentation, along with the TMI exercise results leads me to conclude that state and local emergency plans do not address preplanned transportation resources available for evacuating all public and private schools including day cares and nursery schools establishing preplanned reception and care centers for all public and private schools including day care and nursery school has not been addressed and alert and notification procedures for these schools and public information for parents and guardians of day care and nursery school children has not been preplanned.