

April 11, 2006

Gregory C. Cwalina,
Senior Allegation Coordinator
Office of Nuclear Reactor Regulations
Nuclear Regulator Commission

Subject: Allegation NSIR-2005-A-0011

Dear Mr. Cwalina,

Received you April 3, 2006 letter of rejection to Allegation NSIR-2005-A-0011.

In our allegation we provided creditable evidence that preschool children located near Pennsylvania's nuclear power facilities were not being provided emergency provisions to assure their safety in the event of a radiological emergency.

Your response failed to provide any evidence that preschool children are planned for in the event of a nuclear emergency; and was in complete contrast to the NRC's reasons published for denying petition (PRM 50-79) to codify new emergency planning requirements for preschool children.

The NRC's April 3, 2006 response to allegation NSIR-2005-A-001, indicates the following conclusions:

1. **CONCLUSION:** Emergency planning for preschool children falls under the control of state and local government agencies. The NRC is unable and does not have the authority to substantiate that preschool children have any radiological emergency plans in place at this time.
2. **CONCLUSION:** The NRC basis it's finding of reasonable assurance for licensing nuclear reactors on DHS findings and determinations. The NRC will not attempt to confirm our allegation even though we have provided thirteen (13) exhibits of evidence that Pennsylvania has had no emergency planning for preschool children for more than twenty years; and Pennsylvania continues to confirm it's refusal to provide these services in official written communications to the NRC. The NRC will continue to base it's findings of reasonable assurance on DHS findings even when creditable evidence is provided to the NRC showing that DHS's findings are completely false and preschool children do not have any radiological emergency plans in place.
3. **CONCLUSION:** The reactor licensees are not responsible for, and have no control over emergency planning -- because state and local governments control offsite emergency preparedness activities. Therefore the licensee are not responsible for emergency planning. As such if no emergency plans exist, a licensee cannot be found in noncompliance of NRC licensing rules.
4. **CONCLUSION:** Emergency planning is not an issue of licensee compliance with NRC regulations, but rather a choice of state and local governments.
5. **CONCLUSION:** Neither the NRC or DHS has the authority to challenge the State's actions regarding their refusal to provide radiological emergency services to preschool children.

6. **CONCLUSION:** Pennsylvania can assign radiological emergency responsibilities to parents of preschool children.
7. **CONCLUSION:** FEMA GM-EV-2 "Protective Actions for School Children" is simply a guidance document that outlines suggested approaches for emergency planning for preschool children. No federal regulation requiring specifically defined radiological emergency planning for preschool children actually exists at this time.

Your letter indicated that if we have any additional questions or concerns regarding this allegation rejection to contact you for clarification.

Here are our questions:

1. Are the above listed conclusions correct?
2. If not why?
3. How can the NRC reach a finding of reasonable assurance and issue a license to a nuclear reactor if the NRC is unable to substantiate that the nuclear reactor licensees are operating in the Commonwealth of Pennsylvania without emergency plans for preschool children?
4. Do preschool children in Pennsylvania at day care centers and nursery schools currently have the preplanned radiological emergency procedures outlined in GM EV-2 "Protective Actions for School Children"?
5. If yes, please provide us proof.
6. Is GM EV-2 a requirement?
7. If not, are there any requirements under NRC licensing laws for emergency planning for preschool children?

Respectfully submitted,



Eric J. Epstein
TMI-Alert Chairman
4100 Hillsdale Road
Harrisburg, PA 17112
717-541-1101

cc:

John F. Cordes, Jr., Solicitor
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Counsel Washington, DC 20555-0001

Office of the Secretary
U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, DC 20555-0001

K. Scott Roy, Esquire
PA Governor's Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
717-783-6563

Jose Morales, Esquire
Pennsylvania Emergency Management Agency
2605 Interstate Drive
Harrisburg, PA 17110-9364

Susan Shinkman, Esquire
PA Department of Environmental Protection
400 Market Street, 16th Floor
Harrisburg, PA 17105

Jordan Fried, Esquire
FEMA, Associate General for Litigation
500 C. Street, S.W.
Washington, D.C. 20472

J. Bradley Fewell, Esquire
Vice President & General Counsel
Exelon BSC
Exelon Nuclear
4300 Winfield Road, Floor 5
Winfield, Illinois 60555

Congressman Todd R. Platts
2209 East Market Street
York, PA 17402