

October 31, 2013

Dr. Allison M. Macfarlane, Chairman
Ms. Kristine L. Svinicki, Commissioner
Dr. George Apostolakis, Commissioner
Mr. William D. Magwood, Commissioner
Mr. William C. Ostendorff, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

**SUBJECT: Tier 3 Recommendation for Expedited
Transfer of Spent Fuel to Dry Storage**

Dear Chairman and Commissioners:

On behalf of the Union of Concerned Scientists (UCS) and the many citizens and non-governmental organizations we are pleased to work with on this matter, I respectfully ask you to direct your staff to defer issuing its final spent fuel pool consequence study and associated expedited transfer of spent fuel to dry storage recommendation until it has engaged the public on the matter in a meaningful, substantive way. I realize that doing so would delay your final decision regarding this important issue, but sincerely believe that this minor schedule impact will likely yield a better result.

I participated in the public meetings conducted by the NRC on August 22, 2013 and September 18, 2013 on the Japan Lessons-Learned Tier 3 issue on expedited transfer of spent fuel to dry cask storage. This issue is extremely important to me personally and to UCS organizationally. I raised spent fuel pool storage concerns to the NRC in 1992 while working as a consultant at a boiling water reactor plant, initiating the sequence of events that brought me to UCS in 1996. Reducing the inventory of irradiated fuel in spent fuel pools to enhance their safety and security is the top priority of UCS's nuclear power safety project.

August 22 marked the first time that UCS participated in a public meeting on this Tier 3 issue. It was neither because our interest waned during the prior 20-plus months nor because we had more important things to do. It was solely because August 22 was the *first* public meeting conducted by the NRC on this Tier 3 item. According to the following NRC infographic, the NRC conducted 82 public meetings on Japan Lessons Learned in FY 2012, a rate of more than one and a half meetings per week. Yet not a single meeting covered the spent fuel transfer issue.



The NRC conducted the August 22 meeting nearly two months *after* releasing its draft spent fuel pool consequence study (ML13133A132) and nearly a month *after* the public comment period on the study ended. According to the infographic, the purpose of the 82 public meetings conducted on Japan Lessons Learned during FY 2012 was:

to explain how we're implementing lessons learned from Fukushima and to include the public in our decision-making process.

Failing to conduct any public meetings about spent fuel transfer prior to August 22 meant that (a) members of the public did not benefit from NRC's explanations about this matter to inform their comments on the spent fuel pool consequence study and (b) the public was excluded from the NRC's decision-making process for this matter.

After the September 18 meeting ended, I asked Michael Johnson, Deputy Executive Director for Reactor and Preparedness Programs, why the NRC had conducted no public meetings on the spent fuel transfer issue prior to releasing its draft study. Johnson replied that the NRC staff had all the information it needed on the matter and there was no need for additional input from stakeholders.

That the public originated the spent fuel pool transfer issue only compounds our frustration over being excluded from the decision-making process. It was not among the recommendations identified by the near-term task force (NTTF) in its report (ML111861807). Instead, it was among the handful of candidate lessons added to the NTTF list based on interactions and input from the public (ML11269A204).

It is incomprehensible that the public would have sufficient knowledge and information to identify the spent fuel transfer issue as one of only six issues added to the NTTF's recommendations, but lack any additional knowledge and information that might be useful to the NRC staff during its evaluation of the issue. But even if

that were the case, it is incomprehensible that the NRC staff would fail to conduct even one public meeting to explain how it was proceeding on our recommendation.

This situation reminds me of two other times when the NRC excluded its stakeholders. On April 2, 1997, the NRC staff presented the Integrated Reactor Assessment Program (IRAP) to the Commission. But for one short public meeting on November 6, 1997, attended by representatives from the Nuclear Energy Institute and me, the NRC staff developed IRAP in-house. The numerous recommendations made by NEI and me were neither incorporated in IRAP nor was their omission explained. The Commission essentially rejected IRAP and directed the staff to start over. The NRC staff then conducted several public meetings, including a several-day workshop in fall 1998, as part of producing the current Reactor Oversight Process (ROP) framework (SECY-99-007). Stakeholder engagement transformed IRAP into a significantly better product.

The second example began with the NRC oversight hearing conducted by the Senate's Committee on Environment and Public Works on May 20, 2004. Chairman George Voinovich made it clear to NRC Chairman Nils Diaz that the agency could either better oversee safety culture at the nation's nuclear power plants or his committee would mandate it through legislation. The NRC responded by forming a Safety Culture Steering Committee and embarking on an in-house effort to develop necessary changes to the ROP. The NRC conducted a public meeting on October 26, 2005 and essentially laid out its recommended changes as a *fait accompli*. It was IRAP all over again, as I noted in a letter (ML053210383) to Michael Johnson, then the Safety Culture Steering Committee chairman. The Commission once again directed the staff to hold off making changes until it had engaged stakeholders. The stakeholder engagement resulted in refinement of the staff's proposals as well as significantly broadened acceptance by stakeholders of the proposals that remained unaltered.

With the draft spent fuel pool consequence study, the NRC staff has again eschewed stakeholder involvement. As with past efforts, I sincerely believe this effort would benefit greatly from stakeholder engagement. Whether it leads to a significantly revised product (as in the IRAP case) or to a mostly retained product (as in the safety culture case), stakeholder engagement enables the NRC staff to explain what it is doing and why, as well as to receive input from its stakeholders about potentially better ways of doing it. Explanations helped stakeholders understand and accept the staff's safety culture work. Input helped the staff develop a superior oversight regime.

It is difficult for an agency that prides itself on transparency to explain 82-0. The NRC conducted eighty-two public meetings to explain how the staff was implementing Fukushima lessons and include the public in its decision-making process. But it conducted no public meetings about one of the few lessons originated by the public, until after the staff's work was completed.

We urge you to rectify this problem by directing the NRC staff to conduct meaningful, substantive public meetings on this Tier 3 recommendation before that recommendation is finalized and submitted to you. As in the cases outlined above, such meetings have yielded better results that were more broadly accepted by the stakeholders. We feel this situation provides a similar opportunity.

Sincerely,

A handwritten signature in black ink that reads "David A. Lochbaum". The signature is written in a cursive, flowing style.

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