

March 18, 1998

NOTE TO: File

FROM: Melinda Malloy, PGEB/NRR

SUBJECT: DISCUSSION WITH NEI ON RULEMAKING REGARDING CRITICALITY
ACCIDENT REQUIREMENTS FOR NUCLEAR POWER PLANTS

On March 11, 1998, I spoke with Kurt Cozens of the Nuclear Energy Institute (NEI) (202-739-8085; E-mail *koc@nei.org*) from about 4:15-5:00 pm regarding staff plans for finalizing the rulemaking related to criticality accident requirements for nuclear power plants (NPPs) (10 CFR 70.24 and 50.68).

Mr. Cozens told me he had spoken with Stan Turel of Office of Nuclear Regulatory Research (RES) who imparted to him that the staff was not planning to change the rule language that had been published and would address the public comments via the supplementary information accompanying the final rule in the FR notice. This information had troubled Mr. Cozens, who believes that this approach is not sound and would not give appropriate consideration to the public comments. I informed him that at the time the staff met with the DEDO (Hugh Thompson) to discuss withdrawal of the direct final rule (DFR), he directed the staff to meet with NEI (and other interested members of the public) before taking final agency action. Consequently, I told Mr. Cozens that NEI should not feel that the staff is fording ahead without giving appropriate consideration to the comments and different ways of bringing the rulemaking to fruition. He was relieved that we were taking this approach and discussed with me NEI's ideas on how best to bring the rulemaking to closure.

NEI's (and industry's) preferred approach would be to issue a brief, performance-based rule, which would be supplemented with a regulatory guide (or an endorsement of an industry guideline) containing details on a specific way (or ways) of meeting the rule. In this approach, the details that are presently located in proposed 10 CFR 50.68 could then appear in the regulatory guide, thereby providing flexibility that does not exist with the rule as it has been proposed. This approach would provide the greatest opportunity for avoiding future exemptions (which would likely be engendered by having very specific criteria contained in the rule. He told me that NEI would be happy to put together a group of industry representatives who would work with the staff to develop a guideline document which could be endorsed by the NRC. He also told me that he had discussed this overall approach with Singh Bajwa (PDI-1) some time ago. [As an aside, it should be noted that during the NRR concurrence reviews for the DFR, Mr. Bajwa raised this as a better approach to the rulemaking; however, he did not indicate that NEI had been talking with him and had convinced him that this was the approach to take. As it turns out, when Mr. Bajwa commented that this approach was better than what was in the concurrence package, he and I pitched his comment to Prasad Kadambi and Billy Morris of RES. Although they agreed that this would be the best way of doing the rulemaking, they dissuaded us from pursuing this beyond the informal discussion stage with RES. The reason they gave was that the approach would not satisfy the direction given by the Commission in the

staff requirements memorandum on SECY-97-155 as translated into the rulemaking "plan" forwarded to the Commission on October 6, 1997. At the time, I found this argument to be sufficiently compelling.]

NEI's other suggested approach, although preferred less than the one discussed above, would be to address the public comments by revising the rule to make it as clear as possible. In addition, NEI suggested that NRC consider addressing in the rule issue of GE fuel handling (once it is removed from its wooden overpack, which is part of the "approved" transport package).

Finally, Mr. Cozens and I briefly discussed meeting logistics. NEI would like to have the utilities well represented at the meeting and would like some suggestions on what they could bring to the meeting (topics he suggested included discussion on basic philosophy, presentation on the industry comments, explanation of GE fuel issue and overpack, discussion of flaws perceived in the staff's rule). He indicated that he would need approximately 2½-3 weeks notice to pull together industry representatives to support a meeting, and was looking to the NRC to propose some dates that would work for those NRC staff individuals who need to be represented. I agreed to work with him on setting the meeting agenda.