

December 3, 2004

Revised Letter
***Revised text is
in Bold and Italic***

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

I am writing on behalf of the Commission, to respond to your letter of October 29, 2004, concerning the temporary suspension of public access to the U.S. Nuclear Regulatory Commission's (NRC's) Agencywide Documents Access and Management System (ADAMS) database that occurred on October 25, 2004. As you recognized in your letter, this action was necessary due to security concerns related to some documents that terrorists could potentially use to assist them in carrying out attacks. Specific responses to your questions are provided in the enclosure to this letter.

Although the events of September 11, 2001, dramatically altered the threat environment, the NRC has, for the most part maintained public access to ADAMS and the NRC web site, and has limited that access only with good reason. Shortly after the attacks, the NRC recognized that descriptions and drawings of NRC-regulated facilities that could assist a terrorist were electronically available to the public through ADAMS, in our Public Document Room, or directly on the NRC's web site. Accordingly, the NRC shut down its public web site on **October 10, 2001**, and reviewed thousands of documents. The 2001 review focused primarily on information pertaining to power reactors and certain fuel cycle facilities. Based on lessons learned from this review, the agency determined that certain documents should not be available to the public.

Recently, NRC received inquiries that raised new concerns that some licensee documents that could possibly aid terrorists, primarily related to research and test reactors and materials licensees, may remain available to the public through ADAMS. As a precaution, public access to ADAMS was therefore temporarily suspended until a review of these documents could be conducted and block access to suspect documents. This decision took into account the fact that there was no immediate way to remove the suspect portions of the database without suspending public access.

The public has been able to continue to participate in the majority of the Commission's ongoing regulatory activities. Documents on the NRC web site have remained available and access to rulemaking documents has been available at the "Ruleforum" web site, neither of which were affected by the ADAMS suspension. On November 3, 2004, the agency restored access to the staff's document collection in its electronic Licensing Support Network (www.isnnet.gov) for a possible application for a high-level waste repository. Public access to high-level waste documents on the electronic hearing docket (<http://www.nrc.gov/reading-rm/ehd.html#2>) was also restored that day. The NRC has already restored for public access the information available through the Electronic Hearing Docket for reactor proceedings and two materials proceedings and the NRC staff's review of information contained in ADAMS is proceeding in a phased manner. The Commission expects to restore the remaining documents will be restored in the following priority over the next few weeks: additional hearing-related

documents will be made available through the Electronic Hearing Docket; other nuclear reactor documents; and other documents not related to specific facilities will be made available through ADAMS. Restoration of documents dealing with nuclear materials is expected to take longer. Pending further restoration of information through ADAMS, time-sensitive documents related to opportunities for hearing or to public reviews and requests for comments on regulatory matters may be requested, on a case-by-case basis, by contacting the NRC Public Document Room at 1-800-397-4209 or 301-415-4737, or pdrr@nrc.gov. Based on the availability of agency documents, Commission proceedings will continue. The Commission recognizes, however, that there may be case-specific circumstances that warrant the extension of some schedules.

The Commission agrees with you that an appropriate balance must be maintained between information security and public access. As you know, NRC remains one of the most open Federal agencies, making available to the public hundreds of thousands of documents. At the same time, the NRC must ensure that sensitive information regarding security for nuclear facilities and nuclear materials does not fall into the hands of those who wish to do harm. The agency restricts access to agency records and participation in its activities to ensure security. Furthermore, the NRC is committed to providing the same degree of access to information in ADAMS for industry and public stakeholders. Although NRC licensees must have access to plant-specific details, some of which are considered sensitive and no longer accessible through ADAMS, the nuclear industry has not been granted any special access to the ADAMS document repository that is denied to members of the public.

I appreciate your interest in this matter. If you have any further questions, please contact me.

Sincerely,

/RA/

Nils J. Diaz

Enclosure: As stated

Question 1: How long do you anticipate that access to ADAMS will be suspended?

Answer:

NRC review of information contained in ADAMS is proceeding in a disciplined and phased manner. We expect to restore documents in the following priority order over the next few weeks: additional hearing-related documents will be made available through the Electronic Hearing Docket; other nuclear reactor documents; and other documents not related to specific facilities will be made available through ADAMS. Restoration of documents dealing with nuclear materials is expected to take longer. Pending further restoration of information through ADAMS, time-sensitive documents related to opportunities for hearing or to public reviews and requests for comments on regulatory matters may be requested, on a case-by-case basis, by contacting the NRC Public Document Room at 1-800-397-4209 or 301-415-4737, or pdr@nrc.gov.

Portions of the information available to the public through the Electronic Hearing Docket for reactor proceedings and two materials proceedings have already been restored. Also, the agency restored access to the staff's document collection in its electronic Licensing Support Network (www.lsnnet.gov) for a possible application for a high-level waste repository. Public access to high-level waste documents on the Electronic Hearing Docket (<http://www.nrc.gov/reading-rm/ehd.html#2>) was also restored that day.

Documents on the NRC web site have remained available and access to rulemaking documents has been available at the "Ruleforum" web site, neither of which were affected by the ADAMS shutdown.

Enclosure

- Question 2: In the months following 9-11, the Commission directed its Atomic Safety and Licensing Boards to eliminate security contentions related to terrorist threats from licensing proceedings because such threats were deemed speculative. Does the Commission believe that the threat from terrorists exploiting information found within ADAMS to be greater than that postulated in those security contentions?
- a) If so, why, and why did the NRC wait more than three years after 09/11 to take steps to address this threat?
 - b) If not, why is it necessary to bar public access to ADAMS while the NRC staff reviews its documents for sensitive information?

Answer:

The Commission, sitting in its appellate capacity in an adjudicatory proceeding, ruled that the National Environmental Policy Act (NEPA) did not require consideration of worse-case security scenarios. See *Private Fuel Storage, L.L.C. (Independent Spent Fuel Storage Installation)*, CLI-02-25, 56 NRC 340, 346 (2002). The Commission has not directly compared the threat from terrorists exploiting information found within ADAMS to the Commission's decision in the *PFS* proceeding. Both actions by the Commission – the decision in *PFS* and the temporary restriction of public access to ADAMS – are, nonetheless consistent with our mission to protect public health and safety, promote the common defense and security, and protect the environment.

Recently, it was brought to NRC's attention that certain publicly accessible documents in ADAMS, primarily regarding research and test reactor and materials licensees, contained information that could reasonably be expected to be useful to terrorists. As a precautionary measure, access to the public portion of ADAMS was suspended. There was no immediate way to remove the suspect portions of the database without shutting it down, pending a review of the documents.

Question 3: Who at the Commission made the decision to bar public access to ADAMS? NRC spokespersons have said it was a Commission decision, but I have been informed that at least one Commissioner did not learn of the decision until after it had been made and implemented. Is that true? Please provide me with a complete description of the specific process used by the Commission to make the decision to suspend access to ADAMS. If the matter was voted on by the Commission, please indicate how each Commissioner voted. If the matter was decided by the staff, please indicate who on the NRC staff made the decision.

Answer:

The Commission, after consultation with the staff, decided to suspend public access to ADAMS temporarily as a precaution until the agency could review documents available through ADAMS that could reasonably be expected to be useful to an adversary. On October 22, 2004, the NRC staff briefed Commission office staff on specific concerns related to public information on materials and research and test reactors. As a result, the decision was made to temporarily suspend public access to ADAMS.

Question 4: Will the Commission also suspend activity on all non-essential proceedings until after public access to ADAMS is restored? If not, why not? After all, even though some of these proceedings may continue to be noticed in the Federal Register, non-industry stakeholders may not be able to obtain documentation that would normally be available in ADAMS to assist them in preparing their input to the Commission.

Answer:

The Commission will continue activity on proceedings because many of the necessary documents have remained available to the public. We recognize, however, that there may be case-specific circumstances that warrant the extension of some schedules.

We have already restored portions of the information available to the public through the Electronic Hearing Docket for reactor proceedings and two material proceedings. Also, the agency restored access to the staff's document collection in its electronic Licensing Support Network (www.lsnnet.gov) for a possible application for a high-level waste repository. Public access to high-level waste documents on the Electronic Hearing Docket (<http://www.nrc.gov/reading-rm/ehd.html#2>) was also restored that day. Pending further restoration of information through ADAMS, time-sensitive documents related to opportunities for hearing or to public reviews and requests for comments on regulatory matters may be requested, on a case-by-case basis, by contacting the NRC Public Document Room at 1-800-397-4209 or 301-415-4737, or pdr@nrc.gov. Also, documents on the NRC web site have remained available and access to rulemaking documents have been available at the "Ruleforum" web site, neither of which were affected by the ADAMS shutdown.

Question 5: Will industry stakeholders continue to have access to ADAMS while access to the public is suspended? Will licensees, for example, be using the system to make any filings required pursuant to NRC regulations, or to comment on or intervene into any rulemakings or other regulatory proceedings by the Commission?

Answer:

The NRC is committed to providing the same degree of access to information in ADAMS for its stakeholders, both industry and public alike. Although the NRC licensees themselves must have access to licensee-specific details, some of which are considered sensitive and no longer accessible through ADAMS, the nuclear industry has not been granted any special access to ADAMS that is denied to members of the public.

Question 6: On November 15, 2001, I wrote and requested that you provide me with a list of the actual documents that had been withdrawn from the NRC web site along with the rationale for doing so (see http://www.house.gov/markey/Issues/iss_terrorism_ltr011115.pdf). On March 4, 2002, you responded to my correspondence but did not provide this list as it had not been completed (http://www.house.gov/markey/Issues/iss_nuclear_ltr020325a.pdf). The NRC never subsequently provided the promised documentation or information. Why was it never provided? Please provide the information I requested now.

Answer:

In our March 4, 2002 response, we stated that we would provide you a list of categories or types of documents that were not restored to the NRC's web site, once the web review was completed. We also planned to provide you the rationale as to why these particular categories of documents were not restored to the NRC's web site; this letter responds to your request.

We regret the inadvertent failure to provide you the promised information concerning withdrawn documents from the NRC web site.

Below are general categories of documents that were not restored to the NRC web site and, in turn, were removed from ADAMS during the agency's review conducted in 2001 and 2002. These documents were not restored to our web site because of security concerns that certain documents could reasonably be expected to be useful to terrorists in carrying out attacks.

- Emergency plans and emergency plan amendments related to reactor facilities
- Risk Informed Inspection Notebooks for each nuclear plant
- Documents related to the Individual Plant Examination of External Events Program
- Standardized Plant Analysis Risk Model
- Nuclear Plant Information Books
- Various NUREG reports
- Spent fuel pool data tables
- Documents containing Geospatial Coordinates of facilities
- Operational Safeguards Response Evaluation inspections
- Abnormal Operating Procedures
- Documents related to Safeguards Performance Assessment Pilot Program, Proposed Rule Changes to 10 CFR 73.55, 72, and 50.54(p)

Question 7: Please provide a list of all documents that have been removed from ADAMS pursuant to the Commission's recent announcement, along with the rationale for doing so. Were any classified documents posted on ADAMS? If so, why? If not, why are these documents being removed?

Answer:

The rationale for restricting public access to documents in ADAMS is to protect national security by limiting access to certain documents that could reasonably be expected to be useful to terrorists. The staff has developed screening criteria for identifying such sensitive information in specific documents in ADAMS concerning nuclear power reactors and is currently developing screening criteria for limiting public access to materials and other NRC-licensed facilities. A list of the general categories of documents that are removed from ADAMS will be provided to you when the current reviews of reactors and materials documents in ADAMS are complete, which is expected in 2005.

No classified or unclassified safeguards information has been permitted in ADAMS.