

July 19, 2006

Christine Malafi, Suffolk County Attorney
Jennifer B. Kohn, Assistant Suffolk County Attorney
P.O. Box 6100
Hauppauge, New York 11788

Dear Ms. Malafi and Ms. Kohn:

I am responding to your letter dated February 22, 2006, containing comments on the Design Basis Threat (DBT) proposed rule (70 FR 67380) in support of a Petition for Rulemaking submitted by the Committee to Bridge the Gap (PRM-73-12). Your letter also requests access to certain documents relating to the DBT, specifically the associated Regulatory Guides (RGs) and the "Adversary Characteristics Documents" (ACDs). The basis of your request is the County's stated public health and safety responsibilities associated with a potential attack on the Millstone Nuclear Power Plant (Millstone plant) in Connecticut. In addition, your letter states that the County, as a "concerned municipality," seeks the same level of access and information as the Nuclear Energy Institute (NEI). You also seek a 60-day extension of time for submission of public comments on the proposed rule on the basis that additional time would be needed to review those documents and submit comment on them.

The documents associated with nuclear power reactors that you request are not publicly available because they contain Safeguards Information (SGI). They are not part of the proposed rule, which is public in its entirety. Rather, the requested documents relate to details for compliance with the rule, contain SGI and are not needed to comment meaningfully on the rule.

In support of the County's request for access, you state that the County has incident response and emergency services responsibilities and other public health and safety responsibilities for its citizens in the event of a terrorist attack on the Millstone plant. To the extent that Suffolk County provides incident response services in the event of an attack on the Millstone plant, the County would be provided appropriate information, including possibly SGI, that the U.S. Nuclear Regulatory Commission (NRC) determines the County needs to carry out its NRC-related responsibilities on an as needed basis. Although the County is situated such that it might be called upon to perform some emergency preparedness or incident response activities, it is not located such that it would be a first responder to a site security event. NRC does not consider disclosure of the specific attributes of the DBT or implementing details in regulatory guides to be necessary to perform the County's emergency planning or response functions that are outside of the duties and responsibilities assigned to the licensee armed response team and offsite law enforcement agencies. Accordingly, a determination has been made that Suffolk County does not have a need to know the information because of the nature of the activities supported by the County and a lack of a need to know the information for commenting on the proposed rule.

As noted in your request, before expiration of the initial comment period, the NEI requested access to the RGs and ACDs. NRC provided access to properly cleared individuals with a need to know the information in those documents for purposes independent of commenting on the rule. The NRC also granted NEI's request for a 30-day extension of the comment period. 71 FR 3791 (January 24, 2006).

In granting the NEI requests, NRC determined that NEI has a need to know the information. This determination relies primarily on the fact that NEI served a central role in the implementation of the post September 11, 2001 security orders. An NEI task force developed a security plan template that was approved by the NRC and used as the foundation for implementing the industry-wide revision of all of the site security plans that were required by the security orders. NEI continues to maintain this document as a method of facilitating consistent implementation of security requirements. Because of this role, NEI was provided access to the draft ACDs and RGs so that NEI could evaluate the documents for implementation and potential impacts on the NEI template. The granting of the NEI request was not intended to imply that access to such information is necessary to comment on the proposed rule. Access to SGI simply is not required for meaningful comments in this public rulemaking.

For the reasons set forth above, Suffolk County's requests for access to the RGs and the ACDs and for a 60-day extension of the comment period are being denied. However, the NRC welcomes the comments on the proposed rule in Suffolk County's letter, which has been docketed on the official rulemaking record. The NRC is under a statutory deadline to complete the DBT rulemaking, and therefore is proceeding to consider comments.

Sincerely,

/RA/

Annette L. Vietti-Cook