

August 22, 2007

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I have enclosed responses to your questions in your letter of July 3, 2007, regarding your concerns about a significant event at Nuclear Fuel Services (NFS) and the agency's related policy concerning withholding information from the public. The Commission is currently reconsidering its policy and criteria for withholding information from the public that is related to regulatory activities at the BWX Technologies (BWXT) and NFS nuclear facilities.

I want to assure you that the Commission's goal is to strike an appropriate balance between a regulatory process that is open to the public and the protection from disclosure of sensitive information which would be helpful to potential adversaries. As an initial step, on July 19, 2007, the NRC made publicly available a Confirmatory Order issued to NFS on February 21, 2007, that was a result of an alternative dispute resolution process. This Order will be published in the *Federal Register* to provide an opportunity for members of the public to request a hearing. The Commission has also published on the NRC website a redacted transcript and staff requirements memorandum from a closed meeting held on May 30, 2007, between the Commission and NFS management.

Thank you for the opportunity to respond to your letter. Our responses to your specific questions are enclosed. Documents that you requested in questions 8 and 9 that are currently considered Official Use Only (pending reconsideration of the NRC policy on withholding information discussed above) will be provided by separate correspondence. The NRC will continue to keep the Committee promptly informed of significant safety and security events.

Sincerely,

/RA/

Dale E. Klein

Enclosure:
Responses to Questions

cc: Representative Joe Barton

Identical letter sent to:

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Joe Barton

The Honorable Bart Stupak
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515
cc: Representative Ed Whitfield

Responses to Questions Regarding the Nuclear Regulatory Commission's
Policy for Designating Information as Official Use Only

1. *Why is the OOU policy (SECY-04-155) referenced above designated as OOU?*

SECY-04-0155 (dated August 24, 2004) was designated as an OOU document because it 1) referred to a classified U.S. Department of Energy (DOE) request that NRC withdraw from public access certain information that could potentially be used to threaten national security; 2) contained a description of an evolving NRC staff non-disclosure policy for the Commission's consideration; 3) included a non-public letter to DOE responding to its request; 4) contained a description of public document collections where sensitive information would be removed by the NRC; and 5) contained a communication plan on how the NRC would disseminate information on its public access policy.

2. *Please provide all of the names, positions, and titles for all officials involved in developing and approving the OOU policy, as well as those involved in determining that the OOU policy, itself, be designated as OOU?*

The policy of withholding information concerning Nuclear Fuel Services (NFS) and BWX Technologies (BWXT) was established by the Office of Nuclear Material Safety and Safeguards within the Office of the Executive Director for Operations in consultation with the NRC offices listed below. The Commission was informed of the request and staff's actions in response.

Luis Reyes, Executive Director for Operations
Karen Cyr, General Counsel
Jesse Funches, Chief Financial Officer (retired)

3. *A June 7, 2007, NRC letter to our Committee indicates that NRC is working with Naval Reactors staff to develop new guidelines for public disclosure of documents related to BWXT and NFS. What is NRC's schedule for reevaluating this policy?*

The NRC staff has provided its recommendations to the Commission for its consideration, and a Commission decision will be made shortly.

4. *If NRC terminates the OOU policy, will it retroactively open to public disclosure all information previously deemed OOU (excluding classified/safeguards information)?*

The Commission is committed to making more information publicly available about the NFS and BWXT facilities while continuing to protect sensitive, security-related information. In considering the staff recommendations, the Commission will determine how to direct staff with regard to retroactively making previously deemed OOU information public.

Enclosure

5. *NRC staff indicate that those documents regarding licensing, inspections, and enforcement of purely commercial activity at BWXT and NFS are public. What justifies publicly disclosing commercial information about these plants, but designating as OOU all information related to Naval Reactors funded activity?*

The NRC adopted its information disclosure policy in 2004 after DOE Naval Reactors, in a classified letter to the NRC, identified security concerns with an extensive amount of information that the NRC had made public regarding BWXT and NFS. These facilities perform work with high-enriched uranium for DOE. In contrast, most commercial fuel activities involve low-enriched uranium, nuclear material that poses less of a security risk. A more robust policy for withholding information was considered justified by the NRC due to the attractiveness of the material combined with the specific examples that DOE provided on how information released previously could pose security risks. Please note that part of the commercial process involves the blending of high-enriched uranium with natural uranium to produce low-enriched uranium (i.e., downblending). Therefore, some information concerning the commercial downblending facility may be designated OOU because it could raise similar security concerns.

6. *Why is NRC treating simple inspection and enforcement information related to the March 6, 2006, near-criticality event at NFS as OOU? What is the public benefit?*

This information was designated OOU in accordance with NRC policy for withholding information because disclosure of the information could pose security risks. This information describes processes for handling highly-enriched uranium inside the protected area of the facility (i.e., the high security area where highly-enriched uranium is present). The NRC's objective is to protect against revealing information that could compromise national security. In an effort to balance security concerns with the agency's strategic goal of openness, we are reconsidering our policy to determine whether additional information may be released to the public. As discussed in item 7, the NRC recently released a February 2007 Confirmatory Order related to improving the safety culture at the NFS facility.

7. *Did NRC know that public notification of licensing activity -- the public's right to participate in licensing activities pertaining to NR activities -- at these two facilities would be effectively eliminated when it issued the August 2004 OOU policy? Did NRC take any steps to ensure that due process rights afforded to the public under the Atomic Energy Act were protected? Were the statutory provisions providing for public involvement in licensing reduced to meaningless paper rights under the August 2004 OOU policy?*

The NRC did not explicitly address these issues in adopting its policy in 2004. The NRC established this policy in an attempt to balance the agency's goals of safety, security, and openness. The Commission did continue its practice of publishing in the *Federal Register* significant licensing actions involving these facilities, such as the notice providing members of the public the opportunity to request a hearing on the proposed renewal of the BWX Technologies license (71 FR 11231, dated March 6, 2006). But most of the license amendments and proposed enforcement actions under consideration for both NFS and BWXT were not made publicly available during this time frame.

NRC is in the process of reevaluating, within existing processes and procedures, whether additional licensing-related information should be made publicly available. As part of this process, on July 19, 2007, NRC made public the Confirmatory Order to NFS related to improving the safety culture at the NFS facility originally issued in early 2007. This Confirmatory Order will be published shortly in the *Federal Register*. Anyone adversely affected by the Order, other than NFS, may request a hearing within 20 days of publication. As the process continues, more documents are expected to be released as appropriate.

8. *Which State and local governments authorities were notified of the March 6, 2006, nuclear incident? When was this notification delivered? Please provide copies of all communications notifying State and local government officials.*

The Tennessee Division of Radiological Health was provided documents at the time they were issued in accordance with procedures for routine coordination with the State radiation protection program. For example, the report of the special inspection team that first responded to the event was provided to the State of Tennessee on June 9, 2006. That document (NRC Inspection Report No. 70-143/2006-006) is currently labeled Official Use Only and will be provided along with similar documents requested in question 9 under separate correspondence. In addition, the NRC Resident Inspector had verbal discussions with the Mayor of Erwin, Tennessee, in the weeks following the event.

9. *Was there any involvement of the White House or Office of Management and Budget in formulating this OUC policy? If so, please provide copies of all communications between your agency and these offices.*

No.

In addition, please provide all communications between NRC and DOE Naval Reactors pertaining to this policy.

The unclassified documents presented below which are currently labeled Official Use Only will be provided under separate cover, and the NRC will make appropriate arrangements with your staff to provide the classified documents, if necessary.

- May 10, 2004, letter from DOE Naval Reactors requesting removal of docket files for NFS and BWXT from public access (Classified Confidential - not included here). Note: House Energy and Commerce Committee, Subcommittee on Oversight and Investigations staff with appropriate clearances reviewed this document on July 10, 2007.
- June 18, 2004, letter from NRC responding to the Naval Reactors request (ML041530065).
- July 1, 2005, e-mail from B. Gleaves, NRC transmitting revised communications plan.
- Summary of Closed Meeting on June 6, 2007 (ML071590117).
- June 19, 2007, e-mail from K. Ramsey, NRC summarizing call with Naval Reactors.