



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

**PRM-50-80
(68FR35585)**

DOCKETED
USNRC

SECRETARY

August 30, 2007

August 31, 2007 (9:45am)

Mr. David Lochbaum
Union of Concerned Scientists
1707 H Street NW, Suite 600
Washington, D.C. 20006-3919

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

SUBJECT: PETITION FOR RULEMAKING PRM-50-80: BETTER PROTECTION OF
U.S. NUCLEAR POWER PLANTS AGAINST RADIOLOGICAL SABOTAGE

Dear Mr. Lochbaum:

I am responding to your letter dated April 28, 2003, in which you submitted a petition for rulemaking (PRM-50-80). The purpose of this letter is to inform you that we have concluded our evaluation of PRM-50-80 and have determined to grant your petition, in part, but also to deny your petition, in part. The bases of our determination are described further below. This letter also informs you that, having concluded our evaluation, PRM-50-80 is considered closed.

In PRM-50-80, you requested that the U.S. Nuclear Regulatory Commission (NRC) amend its regulations to better protect nuclear power plants against radiological sabotage. The petition was published in the *Federal Register* for public comment on June 16, 2003 (68 FR 35585). In PRM-50-80, you requested that NRC undertake two rulemaking actions. The first action proposed that the NRC revise 10 CFR 50.54(p), "Conditions of licenses," and 10 CFR 50.59, "Changes, tests, and experiments," to require licensees to evaluate whether proposed changes, tests, or experiments cause protection against radiological sabotage to be decreased and, if so, to conduct such actions only with prior NRC approval. The second action proposed that the NRC amend 10 CFR Part 50 to require licensees to evaluate their facilities against specified aerial hazards and make necessary changes to provide reasonable assurance that the ability of the facility to reach and maintain safe shutdown would not be compromised by an accidental or intentional aerial assault.

You also requested, in accordance with 10 CFR 2.802(d), that the Commission suspend the Diablo Canyon Independent Spent Fuel Storage Installation proceeding during the NRC's consideration of PRM-50-80. As you are aware, the Commission denied your request in Commission Memorandum and Order CLI-03-04, dated May 16, 2003.

In our letter to you dated November 9, 2005, we advised you of our decision to consider rulemaking for the portion of PRM-50-80 concerning the potential for plant changes to cause a decrease in protection against radiological sabotage. Subsequently, the NRC incorporated wording to regulate such changes in the proposed rule for 10 CFR 73.55, "Power Reactor Security Requirements." The NRC published this proposed rule for public comment on October 26, 2006 (71 FR 62663). Also in the November 9, 2005 letter, we advised you that the NRC was deferring resolution of that portion of PRM-50-80 related to aerial assault and that the NRC would consider that proposed action as part of its response to comments on the Design Basis Threat (DBT) rule. The DBT rule was published for comment on November 7, 2005 (70 FR 67380). The NRC chose this approach, in part, to allow it to consider your request along with a request in PRM-73-12 from the Committee to Bridge the Gap that also concerned

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the potential for aerial attack. In the DBT rule, the NRC, as directed by Congress under section 651(a) of the Energy Policy Act of 2005, considered, among other issues, actions to address the potential for water-based and air-based threats, and the potential for large fires and fires of long duration. These issues were identified in the proposed DBT rule as Factors 6 and 9, respectively.

During the course of that rulemaking, the Commission considered whether to include an airborne threat as part of the DBT. After careful consideration, the Commission chose a two-track response to aerial attacks. First, the Commission determined that active protection against the airborne threat rightfully belongs to the U.S. Department of Defense. Thus, the airborne threat is one that is beyond what a private security force can reasonably be expected to defend against. Second, the Commission directed licensees to implement certain mitigative measures to limit the effects of an aircraft strike that the Commission determined are sufficient to ensure adequate protection of the public health and safety. Further explanation of the Commission's reasoning underlying these determinations can be found in the enclosed Final DBT Rule. The Final DBT Rule was published in the *Federal Register*, March 19, 2007 (72 FR 12705).

As indicated above, the Commission reviewed PRM-50-80 and has partially granted the request for rulemaking regarding requiring licensees to consider the potential for plant changes to cause a decrease in protection against radiological sabotage. The NRC incorporated wording addressing that request in the proposed revision of 10 CFR 73.55. Additionally, the Commission has denied that portion of PRM-50-80 dealing with aerial attack for the reasons set forth above and as detailed in the Final DBT Rule. Therefore, PRM-50-80 is considered closed.

Sincerely,



Annette L. Vietti-Cook

Enclosure:
Federal Register Notice

cc: San Luis Obispo Mothers for Peace
P.O. Box 164
Pismo Beach, California 93448