

August 25, 2011

Mark Leyse
P. O. Box 1314
New York, NY 10025

Dear Mr. Leyse:

On November 17, 2009, you submitted a petition for rulemaking (PRM) 50-93 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093290250) in which you asserted that the Nuclear Regulatory Commission's (NRC's) emergency core cooling regulations are non-conservative and should be amended. You referenced a large amount of information primarily from severe core damage experiments which you believe demonstrates the inadequacies you identified in your petition. On June 7, 2010, on behalf of the New England Coalition, you submitted a petition for enforcement action under Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206 which requested the NRC to lower the licensing basis peak cladding temperature of the Vermont Yankee Nuclear Power Station (Vermont Yankee) in order to provide a margin of safety in the event of a loss-of-coolant accident (LOCA) (ADAMS Accession No. ML102770018). Your basis for this request was also largely based on information from severe core damage experiments. On August 6, 2010, the NRC denied your petition under 10 CFR 2.206 (ADAMS Accession No. ML102160269), because it did not demonstrate that Vermont Yankee was in violation of any NRC regulations.

Because your § 2.206 petition asserted that there were generic inadequacies in NRC regulations, the NRC decided to review it under 10 CFR 2.802 as a petition for rulemaking (PRM-50-95). Because PRM-50-93 and PRM-50-95 address similar issues, the NRC consolidated these two petitions for review as a single petition for rulemaking activity. On October 27, 2010, the NRC published a notice in the *Federal Register*, which stated that the NRC is consolidating the two petitions for review into a single activity, and is providing a 30-day period for public comment on the consolidated petitions (75 FR 66007).

Comments submitted by members of the public on PRM-50-93/95 and supplementary comments that you have submitted raise additional arguments related to the issues in the petitions. Many complex technical issues are contained in the two petition documents and in the public comments received. The NRC staff estimates that overall, there are over 200 different technical citations related to experiments performed over the last 40 years that must be carefully evaluated to address the concerns in these petitions. Because of the large number of experiments that the NRC must evaluate, the staff established a priority-driven process to determine the order in which these issues should be reviewed. The working group (WG) performed a preliminary assessment of the submittals and identified those tests and data which appeared to be most supportive of the concerns in the petitions. As a result, the staff decided to first evaluate the CORA series of tests performed by Kernforschungszentrum Karlsruhe in West Germany. The WG then prioritized the remaining issues and is conducting subsequent evaluations of these issues in a similar fashion.

Because the duration of the NRC's review of the extremely large amount information in these petitions will exceed the review period of typical PRMs, the NRC staff decided to increase the

visibility to the public of the NRC's review of these particular petitions (PRM-50-93 and PRM-50-95). The NRC staff has decided to publicly release its draft determinations regarding each group or category of issues on a periodic basis as the review progresses. These draft determinations will be posted on Regulations.gov and will be available from the PRM status page on NRC's public website. In addition, the NRC will communicate review status information to the petitioners and to other persons or organizations known to be interested in this activity.

This approach differs from the NRC's established PRM review process as described in management directives. Normally, the staff's preliminary findings are not released until the Commission has completed its review of staff recommendations on all of the issues in a PRM and the NRC has published a notice in the *Federal Register* (FR) that explains the NRC's action on the PRM. But for the reasons cited above, the NRC staff has decided to make its preliminary findings on PRM-50-93/95 available to the public. The Commission's review of staff recommendations on PRM-50-93/95 will take place after the staff has completed its review of all concerns raised in the petition. The NRC's conclusions on the PRM-50-93/95 issues will not be final until the Commission formally acts on the staff's recommendations and publishes a notice of this action in the FR. The staff will place a disclaimer on all preliminary findings being made public to clearly indicate their non-final status. Because the formal public comment periods for PRM-50-93 and PRM-50-95 have closed, the staff will not solicit or formally respond to further public comments on the preliminary information posted during the review.

Please address any future questions regarding the PRM-50-93/95 review to Richard Dudley, of my staff, at (301) 415-1116.

Sincerely,

/RA/

Timothy J. McGinty, Director
Division of Policy and Rulemaking
Office of Nuclear Reactor Regulation

cc: R. Shadis, New England Coalition
R. Leyse

M. Leyse

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cc: R. Shadis, New England Coalition
R. Leyse

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ADAMS Accession No: ML112200303

*via email

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