



State of New Jersey  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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Governor

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Commissioner

March 18, 2008

Richard Webster, Esq.  
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744 Broad Street, Suite 1525  
Newark, New Jersey 07102

Dear Mr. Webster:

This letter is in response to your correspondence of February 25, 2008 regarding your concerns related to the Oyster Creek Nuclear Generating Station ASME drywell analysis and Oyster Creek's evacuation plan.

In your February 25, 2008 letter, you made two requests on behalf of your clients relating to AmerGen's planned state-of-the-art analysis for the Oyster Creek drywell. Specifically, you requested New Jersey make clear to the U.S. Nuclear Regulatory Commission (NRC) that (1) the refueling of Oyster Creek should not proceed unless it can be publicly demonstrated, with a high degree of certainty, that the plant currently meets the ASME code and (2) to use the new modeling to make a conservative estimate of the limiting margin above the ASME code against which any additional thickness measurements can be compared.

As you are aware, the New Jersey Department of Environmental Protection (NJDEP) has already written to both the NRC and AmerGen about NJDEP's concerns relating to the timing and public access to the new drywell analysis currently committed to be done by AmerGen prior to Oyster Creek entering the proposed period of extended operation. This correspondence is available on our website at <http://www.nj.gov/dep/rpp/bne/index.htm>.

Specifically, with respect to your first request, since the U. S. Nuclear Regulatory Commission (NRC) has sole regulatory control over the Oyster Creek operating license and the pending 20 year license renewal application, New Jersey does not have the authority to impose conditions on Oyster Creek's upcoming refueling outage. NJDEP does support the position that the planned state-of-the-art drywell analysis be made public at the earliest opportunity, if possible even before the planned refueling outage. NJDEP also agrees that the Oyster Creek drywell must satisfy all design bases requirements including the ASME Code for all loading combinations, including refueling design loads.

Relating to your second request, NJDEP agrees that, after thorough review and acceptance of the new state-of-the-art drywell model, the new model should be used to determine the available thickness margins for the current drywell configuration and also to ensure that future thickness measurements and projections maintain the safety margins required to satisfy the ASME code.

With respect to your concerns over nuclear emergency preparedness and planning, the State of New Jersey's Radiation Accident Response Act (N.J.S.A. 26:2D-37 et seq.) became effective October 27, 1981. This act provided for the establishment of procedures for implementing protective actions in the event of nuclear emergencies and for the preparation and implementation of a state radiation emergency response plan. The New Jersey Radiological Emergency Response Plan (RERP) for Nuclear Power Plants was developed as a joint effort by the New Jersey Department of Environmental Protection (DEP) and the New Jersey Division of State Police to coordinate and implement an immediate comprehensive state, county and municipal response to a radiological emergency at a nuclear power plant affecting the State of New Jersey. The RERP identifies the DEP as the lead state agency for accident assessment during a nuclear incident, protective action formulation and control of food, water and milk. The State Police Office of Emergency Management (OEM) is the lead agency for evacuation, sheltering and access control, for personnel monitoring and record keeping and for decontamination.

On December 7, 1979, the President directed the Director of the Federal Emergency Management Agency (FEMA) to "take the lead" in State and local emergency planning and preparedness activities with respect to nuclear power facilities. This included a review of the existing emergency plans both in States with operating reactors and those with plants scheduled for operation in the near future. The Code of Federal Regulations Title 44 Part 350, published in 1983, establishes the policy and procedures for review and approval by FEMA. The process involves preparation of findings and determinations of the adequacy of the plans and capabilities of State and local governments to effectively implement the plans.

In addition to demonstrating the effectiveness of the RERP through exercises and drills, New Jersey is required to forward an Annual Letter of Certification each year to the Department of Homeland Security (DHS) on or before January 31. FEMA Guidance Memorandum PR-1, Policy on NUREG-0654/FEMA -REP-1 and 44 CFR 350 Periodic Requirements, mandates the state to forward the annual letter to document plan requirements for the previous year. The letter summarizes all planning and preparation activities of the previous year (e.g. exercises, drills, training, and facility inspections). DHS/FEMA reviews this letter as part of their annual certification process of the RERP.

In order to maintain federal approval:

"Each State which has a commercial nuclear power site within its boundaries or is within the 10-mile plume exposure pathway Emergency Planning Zone of such site shall fully participate in an exercise jointly with the nuclear power plant licensee and appropriate local governments at least every two years."

"States within the 50-mile emergency planning zone of a site shall exercise their plans and preparedness related to ingestion exposure pathway measures at least once every five years in conjunction with a plume exposure pathway exercise for that site."

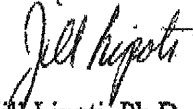
The New Jersey Radiological Emergency Response Plan requires a more demanding exercise schedule than the federal schedule of once every two years at each site. The New Jersey Radiation Accident Response Act (N.J.S.A. 26:2D-43f) which established the RERP requires: "...testing and evaluation of all plans developed pursuant to this act upon adoption, and annually thereafter, to assure that all personnel and emergency response duties and responsibilities effectively carry out their assigned tasks." Thus, the RERP is evaluated either federally or by the state at each nuclear generating site each year.

Every year state emergency planners review and evaluate the comments and feedback from NRC and DHS based upon exercise evaluation and update the RERP as appropriate. In addition, the DEP holds annual Public Hearings in each of the Emergency Planning Zone counties to take comments and suggestions from the public on the adequacy and effectiveness of the Plan. State emergency planning staff makes revisions to the RERP as appropriate based on the comments submitted by the public. New or updated federal guidance documents are reviewed and evaluated as they are made available. Following the review, state, county and local emergency planners update the RERP to reflect the most current information and requirements. The National Response Plan, the Witt Report and NRC Regulatory Bulletins as well as numerous other reports have all been reviewed and incorporated into the NJ RERP as applicable. As a result of this practice, New Jersey is consistently updating the RERP to reflect the most current initiatives with respect to emergency response planning.

Your letter includes a list of specific planning issues that you feel need further review by an independent auditor. In my explanation of the roles and responsibilities of the State Police OEM and the DEP within the RERP, I indicated that the DEP is responsible for accident assessment. In that capacity, we have made provisions for developing protective actions for the public in the event of a fast breaking event that may or may not include a radiological release. Certain events may progress quickly regardless of whether or not they are the result of deliberate actions. Natural disasters, for example, may require the immediate development of protective measures prior to the full deployment of DEP resources. Our plans and procedures account for these extreme scenarios and provide a means to make protective actions promptly. The State Police OEM is the lead agency for the other planning issues that you raised in your letter and may be able to provide you with additional details of specific planning strategies that address them. With regard to the evacuation survey conducted by students in Ocean County that you cited in your letter, I have not had the opportunity to examine the survey or the results and cannot comment on its findings. I would appreciate a copy for our review.

Thank you for writing and sharing your concerns about Oyster Creek. Be assured that both the Governor and the Commissioner carefully consider all comments raised by members of the public and share in your determination that Oyster Creek should be allowed to operate only if all safety and environmental requirements are vigorously maintained.

Sincerely yours,



Jill Lipoti, Ph.D.  
Director