

February 27, 2003

Mr. Jordan Fried
Acting General Counsel
Federal Emergency Management Agency
500 C. Street
Washington, DC 10278

Re: 44 CFR 305.13 Petition For Withdrawal of FEMA Approval of the Indian Point Radiological Emergency Preparedness Plan.

Dear Acting General Counsel Fried:

I submit this Petition, pursuant to 44 CFR § 350.13(a), to request that the Federal Emergency Management Agency (“FEMA”) withdraw approval of the Indian Point Radiological Emergency Preparedness Plan (“REPP”). The State of Connecticut has a direct and immediate interest in the REPP because several hundred thousand of our citizens, and important water supply sources, reside in the area affected by the REPP and its evacuation zones. Further, in the event of an incident at the plant, the medical and other emergency services of Connecticut would be heavily involved. The REPP, however, completely fails to take into account contingencies associated with a potential terrorist attack, does not adequately address existing evacuation and communication procedures, and is based on flawed assumptions and data. For these reasons, the REPP clearly violates the legal requirements of 44 CFR § 350.10, CFR § 50.47 and associated FEMA policy and guidance documents.

I therefore urge you to withdraw FEMA’s approval of this flawed and inadequate emergency response plan. The legal deficiencies are significant and demonstrate that the REPP is unable to “adequately protect public health and safety” as required by law. The evidence that the REPP cannot meet the minimum legal standard is compelling.

Accordingly, FEMA should immediately act to withdraw approval of the REPP based upon the substantial evidence presented in this petition, and inform New York State officials of that decision as required by law. In addition, I request that FEMA call Public Hearings to undertake a review of the radiological emergency preparedness plan for the Indian Point Nuclear Generating Facility.

I. THE INDIAN POINT REPP.

The Indian Point Nuclear Generating Facility is located in the Town of Buchanan, New York, is currently comprised of two actively operating nuclear reactors, and is owned by Entergy Nuclear Northeast, a Nuclear Regulatory Commission (“NRC”) licensee. Indian Point is located in one of the most densely populated regions of the United States. Pursuant to federal law and regulations, the radiological emergency preparedness plan must be created primarily to provide evacuation routes and other emergency plans in the event of a release from the nuclear generating facility.

It is important to note that the REPP includes plans covering both a 10-mile radius emergency planning zone (“EPZ”) and a separate 50-mile radius ingestion pathway EPZ. The 50-mile radius EPZ includes substantial portions of the State of Connecticut, including its largest city, Bridgeport, and its most populous county, Fairfield.

For the reasons set forth below, the Indian Point REPP does not meet the legal standard that it “adequately protect public health and safety,” and thus, FEMA must withdraw approval immediately.

II. INTEREST OF THE PETITIONER.

Richard Blumenthal (“Petitioner”), resides in Greenwich, Connecticut, which is within the 50 mile EPZ for the Indian Point Nuclear Generating Facility, and brings this petition in his capacity as the chief legal officer representing the legal interests of Connecticut residents, including those residing in the 50 mile EPZ.

III. REGULATORY AUTHORITY FOR FEMA TO WITHDRAW APPROVAL OF THE INDIAN POINT RADIOLOGICAL EMERGENCY PREPAREDNESS PLAN.

Emergency evacuation plans for nuclear facilities are governed by regulations and guidance documents promulgated by the NRC and FEMA. The initial requirement for an emergency response plan, specifically, 10 CFR § 50.47, mandates the existence of an evacuation plan as a condition of the license granted to the private operator of each nuclear power plant. In addition, Executive Order Number 12148 instructs FEMA to coordinate and review state and local evacuation plans. Finally, FEMA regulation 44 CFR § 350 incorporates and adds to the requirements of guidance document “Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants,” NUREG 0654/FEMA REP-1, Rev. 1, March 1987.

Under FEMA regulations, the FEMA Associate Director makes the determination of whether or not the Indian Point REPP is “adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer

capable of being implemented.” 44 CFR § 350.13(a). Such determination can be made “on his or her own initiative, motion or on the basis of information another person supplied.” 44 CFR § 350.13(a). The basis for withdrawal “is the same basis used for reviewing plans and exercises, i.e., the planning standards and related criteria in NUREG 0654/FEMA/REP-1, Rev.1.” 44 CFR § 350.13(a). If the Associate Director determines that the plan is “no longer adequate to protect public health and safety,” he or she shall direct the appropriate Regional Director and the NRC to “immediately advise the Governor” of that “initial determination in writing.” 44 CFR § 350.13(a). FEMA is required to “spell out in detail the reasons for its initial determination, and shall describe the deficiencies in the plan or the preparedness of the State.” 44 CFR § 350.13(a).

The regulatory basis for radiological emergency preparedness plans is the “planning and preparedness standards and related criteria contained in NUREG-0654/FEMA-REP-1, Rev. 1.”¹ 44 CFR § 350.13(a) citing 44 CFR § 350.5(a). The Planning Standards include a series of “Evaluation Criteria” requirements for the licensee, and for the State and local governments. The “overall objective of the emergency response plan is to provide dose savings (and in some cases immediate life savings) for a spectrum of accidents.” NUREG-0654/FEMA REP-1, Rev. 1 at 6. To reach this objective, NUREG 0654 FEMA REP-1, Rev. 1 requires that the criteria be met by each REPP, noting that “it is important that the means by which all criteria are met be clearly set forth in the plans” and that the plans address “the substance of all criteria.” Emphasis added. NUREG-0654/FEMA Rep-1 at 29.

A key standard that must be met in order for the REPP to “adequately protect public health and safety” is standard 10, which requires that

A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

44 CFR § 350.5(a)(10). This particular legal requirement for the REPP is a central and critical element of FEMA’s determination of “adequacy” because it addresses the specific protective actions for the public within the area of influence of nuclear power plants.

The “Protective Response” Planning Standard is made up of twelve “Evaluation Criteria.” Eight of the twelve Evaluation Criteria directly apply to the licensee of the nuclear facility.² There are four Evaluation Criteria that apply to state and local governments. In this

¹ These are the same “planning and preparedness standards” required by 10 CFR § 50.47, the NRC Emergency Planning Rule, which sets forth the licensee requirements regarding emergency preparedness.

² The eight are: 1. establish the means and time required to warn or advise onsite individuals; 2. make provisions for evacuation routes and transportation for onsite individuals, including alternatives for inclement weather, high traffic

case, the State organization is the State Emergency Management Office (“SEMO”).³ The local organizations in this case are the County Governments of those counties in the ten mile EPZ.⁴

The Evaluation Criteria that apply to state and local governments are: 9. establish a capability for implementing protective measures based upon protective action guides and other criteria, 10. implement protective measures for the plume exposure pathway; and 11. specify protective measures to be used for the ingestion pathway, including the methods for protecting the public from consumption of contaminated foodstuffs; and 12. describe the means for registering and monitoring of evacuees at relocation centers. NUREG 0654/FEMA REP-1, Rev. 1 at 61-65. The licensee must also meet some of these requirements.⁵

Upon notice of withdrawal of approval of the plan, a four month window of time begins for the State to correct deficiencies. 44 CFR § 350.13(a). If, within that time frame, the State has failed to either correct the deficiencies or submit an acceptable plan for correcting the deficiencies. “the Associate Director shall withdraw approval and shall immediately inform the Governor.” 44 CFR § 350.13(a).

IV. THE INDIAN POINT REPP FAILS TO MEET THE REGULATORY REQUIREMENTS OF 44 CFR § 50.5 AND 10 CFR § 50.47.

The Indian Point REPP was approved by FEMA on May 3, 1996. See FR 24938, Vol. 61, No. 97 (May 17, 1996). Subsequently, an “Annual Letter of Certification” has been prepared by the State of New York every January 31st. The Annual Letter is written pursuant to another FEMA guidance document, PR-1. The State, in turn, requests a voluntary Letter of Certification

density and specific radiological conditions; 3. radiological monitoring of people evacuated from the site; 4. evacuation of onsite non-essential personnel in the event of a site or general emergency; 5. capability to account for all individuals onsite at the time of emergency and of missing individuals within 30 minutes; 6. provisions for safety of onsite individuals; 7. mechanisms for recommending protective actions to appropriate State and local authorities; and 8. “contain time estimates for evacuation within the plume exposure EPZ.” NUREG 0654/FEMA REP-1, Rev. 1 at 69-61. Each of the Evaluation Criteria apply to the licensee except for criteria 2, pertaining to evacuation routes, which also applies to the state and local governments. NUREG 0654/FEMA REP-1, Rev. 1 at 59.

³ State organizations are defined as the “government agency or office having the principal or lead role in emergency planning and preparedness.” NUREG 0654/FEMA REP-1, Rev. 1 at 5-1.

⁴ Local organization is defined as the “government agency or office having the principal or lead role in emergency planning and preparedness. Generally this will be the County Government.” NUREG 0654/FEMA REP-1, Rev. 1 at 5-2.

⁵ The “sub-criteria” that the licensee must meet are: 10(a) maps showing evacuation routes, 10(b) maps showing population distribution around the nuclear facility, 10(c) means for notifying all segments of the transient and resident population, 10(m) bases for the choice of recommended protective actions from the plume exposure pathway during emergency conditions. NUREG 0654/FEMA REP-1, Rev. 1 at 61, 64.

from the counties immediately surrounding Indian Point, which develop and operate the existing emergency plans. The State of New York requests the letters from the counties in December, and asks that it receive them no later than January 15, so that the State's required Letter of Certification may include those letters. On January 10, 2003, an independent study requested by the State of New York performed by James L. Witt Associates was released ("Witt Report"). This study identified numerous areas of concern regarding security at the nuclear power facility and with regard to emergency response procedures generally. As a response to this study, and the concerns expressed by numerous state and county officials, the State of New York declined to certify the REPP as of January 31, 2003.

As previously noted, substantial portions of the State of Connecticut lie within the 50-mile radius ingestion pathway zone. Bridgeport and Danbury are both within this zone. The migration of radioisotopes from an accident plume will in most circumstances be directed by the prevailing winds into Connecticut and will affect water supply sources and food production areas. Furthermore, the movement of evacuees from the vicinity of the plant will directly affect large areas of Connecticut, particularly with respect to emergency resettlement and medical attention. Consequently, Connecticut has a direct interest in the REPP.

The Indian Point REPP fails to meet all of the planning standards and evaluation criteria required by 44 CFR § 350. Thus, as a matter of law, the REPP does not comply with the provisions of 44 CFR § 350, nor with the provisions of 10 CFR § 50.47. The following sections of this Petition set forth the legal requirements for the Indian Point REPP relevant to the State of Connecticut and demonstrate the failure of the documents to meet the legal requirements. Thus, under the legal standard set forth in 44 CFR § 350.13(a), FEMA should withdraw approval of the Indian Point REPP.

A. THE INDIAN POINT REPP DOES NOT ADEQUATELY ADDRESS THE POSSIBILITY OF A TERRORIST ATTACK.

The essential premise of the REPP is that any radiological release from the facility would come from an accident in the reactor containment building. This assumption fatally compromises the REPP because it does not consider the impact of a deliberate (terrorist-caused) release which would have significantly different characteristics and effects.

This is not an idle concern. Since September 11, 2001, there has been a heightened awareness that nuclear facilities are at risk for terrorist attacks. President Bush, Office of Homeland Security Director Tom Ridge and Secretary of Defense Donald Rumsfeld have repeatedly warned the public about the possibility of such an attack, which could be inflicted by an airplane. In his State of the Union Address, President Bush noted that "we have found diagrams of American nuclear power plants and water facilities, [and] detailed instructions for making chemical weapons." President George W. Bush, State of the Union Address (January 29, 2002). Such an attack might target the reactor containment building of a nuclear generating

facility, but it might also target potentially more vulnerable targets, such as the spent fuel pools, that have considerably less structural protection. A recent article in the New York Times states that “A successful terrorist attack on a spent fuel storage pool at a large nuclear reactor could have consequences ‘significantly worse than Chernobyl,’” citing a recent study by Princeton University. *Study Warns Attack on Fuel Could Pose Serious Hazards*, New York Times, Jan. 29, 2003. An attack on these non-containment building structures may result in the likelihood of a rapid radiation release because of the lack of even minimal radiological safety systems.

Furthermore, the essential purpose of a terrorist attack is to cause maximum damage and casualties. On September 11, 2001, multiple attacks on different targets occurred simultaneously, causing massive damage to buildings and loss of life. Official responses included shutting down transportation centers and roadways in New York City to permit emergency personnel to reach the scene and also included shutting down the entire aviation system for an extended period in order to hinder the ability of other potential terrorists to carry out other attacks. The probability that, in the event of a deliberate attack, authorities would actually be required to shut down major roads and railways is not considered in the REPP. Even the most elementary police response to a terror attack, setting up roadblocks to catch escaping terrorists, would bring all evacuation to a halt, but that possibility is never discussed or considered in the REPP.

Finally, a terrorist attack could not only include the spent fuel pool (which is an easier target than a containment dome) but also nearby military or police facilities. Terrorist attacks of this nature have occurred around the world. The reason for this type of attack is that it scatters and confuses governmental response efforts, as well as causing casualties among emergency responders, all of which diminishes the effectiveness of overall governmental response. The REPP seems to assume that all local emergency service providers are fully available to respond and are not under fire themselves. In addition, often transportation systems such as major road networks are themselves the targets of secondary attack because they tend to be ‘soft’ targets and their destruction would prevent movement of security forces and medical and firefighting personnel. The REPP never considers the possibility that emergency personnel might be busy elsewhere, or under attack themselves, or that the evacuation routes may be partially or completely destroyed. In a post-September 11th world, an ‘emergency’ plan that ignores these contingencies amounts to willful blindness.

B. THE EVACUATION TRAVEL TIME ESTIMATES FOR THE INDIAN POINT REPP FAIL TO MEET THE REQUIREMENTS OF NUREG 0654/FEMA REP 1.

NUREG 0654 FEMA REP 1 requires that both the licensee and the State and local governments meet specific requirements for the travel time estimates. Planning Standard J(8), “Protective Response,” requires that each licensee’s plan “contain time estimates for evacuation within the plume exposure EPZ” which shall be in accordance with “Appendix 4.” NUREG

0654 FEMA/REP 1, Rev. 1 at 61. Planning Standard J(10)(1) similarly requires State and local governments to implement protective measures that include “time estimates for evacuation of various sectors and distances based on a dynamic analysis (time-motion study under various conditions) for the plume exposure pathway (See Appendix 4.)” NUREG 0654/FEMA REP 1, Rev. 1 at 63. Appendix 4 sets forth a variety of factors that must be considered, at a minimum, and provides that evacuation travel time estimates “will be used by those emergency response personnel charged with recommending and deciding on protective actions” and therefore, “should be updated as local conditions change.” NUREG 0654/FEMA REP 1, Rev. 1 at 4-1. Thus, it is both the licensee’s and the state and local governments’ responsibility to make sure that travel time estimates meet the minimum legal requirements, and where necessary, are updated.

However, as noted in the Witt Report, the REPP has several material weaknesses in this regard. The REPP appears to be “based on the premise that people will comply with official government directions rather than acting in ... their best interest.” (Report, p. vi) Further, the plans do not consider the effects of a terrorist attack, which could include simultaneous attacks on transportation infrastructure or other targets within the 10-mile or 50-mile radii. Unlike an accident, the purpose of a terrorist attack is to cause disruption and increase casualties. Therefore, preparation for a terrorist attack requires much different contingency plans than preparation for an accident. Finally, no mention is made in the REPP of the current transportation capabilities of Interstates 95 and 84. Both of these major roads have suffered significant increases in average daily vehicle trips (ADVTs). “Congestion is endemic throughout the Coastal Corridor [area]. It is acute on the primary highways, Interstate Routes I-95 and 84, and U.S. Route 1 and CT Route 15, and particularly acute on the westerly portion of Interstate Route 95.” *Coastal Corridor Transportation Investment Area Twenty Year Strategic Plan For Transportation Investment Area*, Nov. 7, 2001, p. 6. This report continues: “When they can reach their destinations only by road, people are trapped in the congested conditions found there and can only contribute to that congestion when traveling.” *Id.*, p. 7. Even further, the report notes: “Poor or outdated engineering contributes to the inefficient movement of vehicles and gives rise to public safety concerns. Many of the Coastal Corridor [area] roadways were built neither to handle the volume of traffic that currently exists nor to accommodate the type of travel common today.” *Id.*

The fact that people are ‘trapped’ on normal days on the very network of roads that the REPP envisions using for emergency evacuation of millions of people is an obvious issue of concern. Furthermore, ongoing major reconstruction of these roads, which activity further increases travel time, does not appear to have been factored into the REPP. Finally, the Witt Report points out that existing travel time estimates are based on 1990 Census data and more current information has not yet been factored into the REPP. Witt Report, Section 5.1. The available data shows that there have been material changes in demographics since 1990 and,

thus, “[t]he fact that such large changes are present underscores the need for updated data – it is directly related to effective emergency preparedness and response. . . .” Id.

C. THE INDIAN POINT REPP FAILS TO ADDRESS VOLUNTARY EVACUATION AS REQUIRED BY NRC GUIDANCE DOCUMENTS

In 1992, the NRC further refined and improved travel time estimates for nuclear power plant evacuation planning in Guidance Document NUREG/CR-4831, “State of the Art in Evacuation Time Estimate Studies for Nuclear Power Plants.” NUREG/CR-4931 sets forth a series of issues that must be addressed in the basic methodology of evacuation time estimates.⁶ It builds upon two evacuation planning documents issued by the NRC.⁷

NUREG/CR-4831, in its discussion of estimating the number of people to be evacuated, specifically addresses “shadow evacuation,” which it defines as “voluntary evacuation” of those “who decide to evacuate without being advised to evacuate.” NUREG/CR-4831 at 4. The research and history that lead to the identification of “shadow evacuation” as a phenomenon in emergency planning is more fully discussed in the Witt Report, Section 5.2.3. These evacuees “can be individuals living within the planning zone but not within the sector(s) where evacuation has been advised, or those living outside, but near, the EPZ who may be responding to an evacuation order directed at people within the EPZ.” Emphasis added. NUREG/CR-4831 at 4. NUREG/CR-4831 identifies two activities that can be planned to address shadow evacuation: 1. control voluntary evacuation traffic to avoid interference with other evacuating traffic; and 2. include an “appropriate number of voluntary evacuees” in the traffic demand estimate. NUREG/CR-4831 at 4.⁸

The REPP does not address “shadow evacuation.” See Witt Report p. vi. “Shadow evacuation” is not mentioned, and from the descriptions of the computer model used, it is clear

⁶ The evacuation estimates required for nuclear evacuation plans must “examine the sensitivity of evacuation times to key variables, including the nature and limits of transportation facilities in the affected area and other factors that may affect evacuation time, such as the public’s use of public transportation or need for special transportation.” NUREG/CR-4831 AT 1. NUREG/CR-4831 addresses these “transportation analysis and ancillary concerns” required in an evacuation travel time estimate. NUREG/CR-4831 at 1.

⁷ These documents are the joint NRC – FEMA document *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants*, NUREG/CR-NUREG/CR 1754.

⁸ In addition to these suggestions to address “shadow evacuation,” NUREG/CR-4831 also identifies “background traffic,” which it defines as “vehicles in the EPZ during an evacuation but not associated with permanent residents, transients, or special facility populations,” which, for example, would consist of “through-traffic on major intercity routes such as interstate highways.” NUREG/CR-4831 at 4. NUREG/CR-4831 suggests that “background traffic” be addressed by “access control measures to direct through-traffic onto some alternative route outside the EPZ,” as the preferred method, or if the traffic cannot be re-routed, it “must be considered part of the evacuating traffic.” NUREG/CR-4831 at 4.

that “shadow evacuation” was not factored into the model. ETTE at 2-9 – 2-10 and 5-5- 5-7. Accordingly, all calculations of evacuation times, road capacities, and other logistical concerns assume no additional usage or loads by those outside the zone who may decide to evacuate without either instruction or permission from authorities to do so.

This glaring omission in the REPP clearly violates the regulatory requirements of 44 § 350.5(a)(1), NUREG 0654 FEMA REP. 1, and subsequent guidance documents developed to implement these legal requirements and has an immediate impact on the State of Connecticut.

D. THE REPP FAILS TO ADDRESS FAMILY SEPARATION IN ITS ANALYSIS OF EVACUATION TIMES.

The REPP assumes that family members, particularly parents and school children, will be willingly separated in the event of evacuation. This presumption is contrary to everyday common sense and has a serious impact on evacuation timetables.

Specifically, Planning Standard J(10)(1) requires that the state and local governments’ “plans to implement protective measures for the plume exposure pathway” include “time estimates for evacuation of various sectors and distances based on a dynamic analysis.” NUREG 0654/FEMA REP 1, Rev. 1 at 63. The “dynamic analysis” must require known behavioral responses of the population to be evacuated if the estimates are to be consistent with federal regulatory requirements. NUREG 0654/FEMA REP 1, Rev. 1 at 4-1 – 4-16. The requirements for such an analysis require that

Distribution functions for notification of the various categories of the evacuee population shall be developed. The distribution functions for the action stages after notification predict what fraction of the population will complete a particular action within the given span of time. There are separate distributions for auto-owning households, school population, and transit dependent populations. These distribution functions can be constructed in a variety of ways, depending greatly on the kinds of data available for the actual site being studied. The previously developed conditional distributions are combined to develop the time distribution for the various population segments departing their home or other facility from which they are being evacuated.

Emphasis added, NUREG 0654/FEMA REP 1, Rev. 1 at 4-8. Thus, a logical, thorough and complete analysis of the information known about population is necessary for the REPP to meet the legal requirement to “adequately protect the public health and safety.” 44 CFR § 350.5(b).

The Indian Point REPP fails to do this type of analysis. The most glaring example of this deficiency is that REPP blithely assumes that school children and their families would evacuate separately, and at the same time presumes that families would leave as one unit and utilize only

one family car. In evacuation scenarios that take place during school days, these two situations contradict each other. When people decide to get their children before evacuating, this will obviously throw off the planned evacuation timetable. The REPP time estimates analysis also fails to address the situation where parents may have children in multiple schools, which may have different designated reception centers for each child.

There is a larger behavioral problem, however. The evacuation plan calls for separation of school children from their parents in the event of a radiological release that requires evacuation. This will not happen. It defies explanation that plan prepares believe that parents will calmly leave their children in school or infants with daycare providers and climb into their private cars and drive to a designated disaster relocation area. What will happen is that people will seek to reunite *prior* to evacuation despite anything that governmental authorities try to do to stop this.

The failure properly to account for family evacuation behavior renders the “dynamic analysis” of travel times useless. The current REPP, therefore, is deficient on its face and does not meet the requirements of NUREG 0654/FEMA REP 1, Rev. 1, nor 44 CFR § 350.5(b).

E. THE INDIAN POINT REPP FAILS TO ADEQUATELY INFORM THE PUBLIC IN THE EVENT OF RADIOLOGICAL EMERGENCY AND RELIES UPON SELECTIVE RELEASE OF CRITICAL INFORMATION AND SECRECY.

Federal law requires notification to the public of a radiological release, particularly when protective action is required. Specifically, an emergency plan is required to include “(m) means for notifying all segments of transient and resident population.” Planning Standards J(10)(c), NUREG 0654/FEMA REP 1 at 61. In addition, the plan needs to address means of maintaining order and control during the evacuation. However, the Indian Point REPP fails to accomplish these two tasks for the reason that it bifurcates notice of evacuation. The REPP envisions a first, non-public notification of public school administrators. This, in effect ‘secret notice,’ will be counterproductive and inevitably lead to confusion and loss of trust and public confidence.

Specifically, the REPP states that “school superintendents, college, university and private school administrators within the EPZ in accordance with evacuation procedures developed may evacuate prior to the announcement of a general evacuation.” The obvious reason is to evacuate children first and avoid the mass confusion of large numbers of parents rushing to the schools before leaving themselves. As a matter of easily predictable fact, this “secret notice” approach will lead to confusion, panic and chaos. Most nuclear power plants were built, or at least designed, in the 1960s and 1970s. At that time, sirens, radio, television and landline telephones were the only effective means of public communications. As was evident on September 11th 2001, cell phones and other technologies that disseminated unofficial warnings created “information soup” regarding emergency efforts. If there is an emergency at Indian Point,

individuals receiving advanced notice will immediately call spouses or friends to tell them to leave. Once word is out unofficially, it will spread virtually instantaneously. Attempts to control evacuation information through secrecy will fail, and will undermine confidence in the overall evacuation plan.

F. THE INDIAN POINT REPP FAILS TO MEET THE REQUIREMENTS FOR PROTECTION OF FOODSTUFFS AND DRINKING WATER IN THE 50 MILE INGESTION EXPOSURE PATHWAY EPZ.

FEMA requires each REPP to address contamination of the food and water supply in the fifty mile EPZ. Planning Standard J(11) requires each State to

Specify the protective measures to be used for the ingestion pathway, including the methods for protecting the public from consumption of contaminated foodstuffs. ... The plan shall identify procedures for detecting contamination, for estimating the dose commitment consequences of uncontrolled ingestion, and for imposing protection procedures such as impoundment, decontamination, processing, decay, product diversion, and preservation.

NUREG 0654/FEMA REP 1, Rev. 1 at 64. The New York State REPP provides for the water sampling procedures to be carried out by various New York agencies. State REPP at H-8. These efforts include sampling of "open reservoirs downwind within the EPZ and the tap water for water supplies using these reservoirs" by the Bureau of Public Water Supply in the Division of Environmental Health, New York Department of Health. State REPP at H-8. This issue vitally affects Connecticut citizens because both water supply sources in Connecticut and some in New York that supply water to nearby Connecticut residents are within the 50-mile EPZ.

The New York REPP expressly acknowledges that immediately following a radiological release, it cannot meet the requirement for "protecting the public from consumption of contaminated foodstuffs" required by federal law. NUREG 0654/FEMA REP 1, Rev. 1 at 64. The New York REPP acknowledges that the data from the sampling are "normally delayed from several hours to a few days" and are not usable in preliminary decision-making after a release of radiation. New York REPP at H-7. The New York REPP explicitly indicates that the

State has limited capability for conducting area monitoring in the EPZ in a timely manner that will be usable in the initial assessment stages.

New York REPP at H-7.

The Indian Point REPP only summarily discusses food and water contamination from a radiological release at Indian Point, and fails to identify the procedures for the nearby New York

counties to undertake with New York in addressing the contamination as required by federal law. The FEMA regulations require the state to assume the primary role in addressing radiological contamination of foodstuffs or the water supply, and to specify to the local governments how it plans to do so. NUREG 0654/FEMA REP 1, Rev. 1 at 64. There has been no such effort in the Indian Point REPP, which does not indicate which New York agencies are to be contacted or how these contamination assessment process will work. The Indian Point REPP does not even contain the maps locating crops, farms or water treatment centers, and indicates that they will not be made available. NUREG 0654/FEMA REP 1, Rev. 1 at 64.⁹

The Indian Point REPP is short on specific details essential to a plan protecting the water supply of numerous Connecticut residents. When FEMA reviewed the *Interim Report's* analysis of the failure of the Indian Point REPP to address contamination of the water supply, it succinctly summed up the problem. FEMA Region II said that the State needed to improve its efforts and better notify the nearby New York counties about what was expected in an emergency situation, recommending that the

State work with the counties to clarify the water supply plans in event of contamination. Contaminated water supplies fall into the ingestion pathway category under which NYS assumes control of the coordination of the response from the counties. The State with support from the federal response will assure protection from this radiological pathway.

FEMA Region II Review of the *Interim Report* at 7. The FEMA comments recognize the legal deficiency with regard to Planning Standard J(11) in NUREG 0654/FEMA REP 1, Rev. 1 discussed above. The comment that New York must “clarify” with the counties on how to coordinate a response is a clear admission from FEMA about the failure of the current Indian Point REPP, New York to address the radiological contamination of food and water as required by 44 CFR § 350.5 and supporting guidance documents. Obviously, the current plans make no provisions at all regarding potential water and food contamination in Connecticut, an unacceptable situation.

G. THE INDIAN POINT REPP FAILS TO ADDRESS THE REQUIREMENT FOR ADMINISTERING RADIOPROTECTIVE DRUGS TO THE GENERAL POPULATION.

The Protective Response Planning Standards require the State and Local governments develop a plan to administer radioprotective drugs, such as potassium iodide (“KI”), to the general public. Planning Standard J(10)(f) requires

⁹ Nor does the State REPP, CF. State REPP at the Dairy Farm and Radiological Control Resources List at 15.

State and local organizations' plans should include the method by which decisions by the State Health Department for administering radioprotective drugs to the general population are made during an emergency and the pre-determined conditions under which such drugs may be used by offsite emergency workers.

NUREG 0654/FEMA REP 1, Rev. 1 at 63.

Some experts believe that radioprotective drugs, such as potassium iodide ("KI"), may have a protective effect if taken properly for radioiodines. Westchester County REPP at I-4. The Westchester County REPP expressly acknowledges the importance of radioprotective drugs, clearly stating that "a major protective action to be considered after a serious accident at a nuclear power facility involving the release of radioiodine is the use of a table iodine as a thyroid blocking agent to prevent thyroid uptake of radioiodines," yet it only makes emergency workers eligible for potassium iodide. Westchester County REPP at C-1, 3-71. The Westchester County REPP makes no such provisions for administering these drugs in accordance with federal law, except to members of rescue personnel exposed to the radiological release. The language of the Westchester County REPP expressly defies the plain language of federal law, stating that "Distribution to the general population is not recommended." Westchester County REPP at C-1.

The Rockland County REPP similarly makes no provision for distribution to the general public. Instead it states that "KI will be available for emergency workers and captive populations" such as hospital and nursing home patients and staff and incarcerated populations. Rockland County REPP at H-6. The Interim Report offers a discussion of the current status of the potassium iodide issue.¹⁰ Great care must be taken to assure that the public understands both the value and limitations of KI, but federal law requires development of methods for administering these drugs to the general public. While Westchester County officials have recently decided to opt into the Nuclear Regulatory Commission's offer to distribute free KI on a one time basis within 10-mile EPZ's, the Indian Point REPP has failed to meet this clear legal requirement of 44 CFR § 350.5 and supporting guidance documents.¹¹ Of greater concern to Connecticut, neither the regulations nor the plan provide at all for the possibility that KI will be needed in Connecticut, beyond the 10 mile EPZ. Obviously, the need for KI use in Connecticut must be carefully evaluated and provision made for KI distribution if it is appropriate.

The FEMA Region II Review of the *Interim Report* also admits that the State has failed to carry out this legal requirement. The FEMA Region II Review states, in its "Comment for State Consideration" that "it is expected this issue should be addressed in the next revision of the plans." FEMA Region II Review of the *Interim Report* at 8. FEMA's suggestion that this legal

¹⁰ See *Interim Report* at 43-44.

¹¹ *Radiation Pills to Be Given Away*, New York Times, June 1, 2002, at Section B, page 4 hereto attached as Exhibit R.

deficiency with the Indian Point REPP will be addressed prospectively directly contravenes the plain meaning of the law. NUREG 0654 FEMA REP 1 was first published in 1980 and the Indian Point REPP was last approved in 2001. Thus, FEMA acknowledges that the Indian Point REPP does not now, nor has it been in compliance since Indian Point was required to have an emergency plan.

H. FEMA MUST WITHDRAW APPROVAL OF THE INDIAN POINT REPP BECAUSE IT FAILS TO MEET THE LEGAL REQUIREMENT OF FEDERAL LAW THAT IT “ADEQUATELY PROTECT PUBLIC HEALTH AND SAFETY.”

The Indian Point REPP is vitally important for the millions of people who live within the fifty mile EPZ surrounding the Indian Point nuclear generating facility. It sets forth a series of protective actions in response to a radiological release. Although the possibility of a radiological release at Indian Point may be small, the consequences could be enormous. Indian Point is unique amongst nuclear power plants in the United States because of the population density surrounding the facility and because of its proximity to important areas of Connecticut and New York City. Indian Point is only miles away from major portions of the reservoirs for the water supply system for over eight million residents. The largest cities in the states of New York and Connecticut are within the 50-mile EPZ. Fairfield County, Connecticut, the most populous county in the state, also lies largely within this 50-mile radius. As the Witt Report notes, almost 11.8 million people reside within the area controlled by the REPP. In addition to the public health implications, the effect of a terrorist attack or nuclear accident at this facility to the national economy is simply incalculable. It is imperative, therefore, that the Indian Point REPP meet all legal requirements to protect this population should an unthinkable radiation release ever occur.

Federal law sets forth a series of requirements for a REPP. When a licensee seeks to operate a nuclear generating facility, FEMA must determine that the REPP meets specified emergency preparedness requirements. The law requires that all sixteen Planning Standards and their Evaluation Criteria of NUREG 0654/FEMA REP 1, Rev. 1 and 44 CFR § 350.5, be met before a REPP can be approved by FEMA or recertified.

The Indian Point REPP fails to meet several Evaluation Criteria for Planning Standard (J) of NUREG 0654/FEMA REP 1, Rev. 1, and thus fails to meet the requirements of 44 CFR § 350.5(a). The evidence clearly establishes that the Indian Point REPP does not meet the requirements of: Planning Standard J(8) and J(10)(1) because it does not address “shadow evacuation” or “family separation” in the evacuation time estimates and fails to consider the degradation of the interstate road system over time and the likelihood that the ‘secret notice’ provision of the REPP will result in confusion and panic. Similarly, the REPP fails adequately to

February 27, 2003
Page 15

discuss protection of Connecticut's water supply sources and the distribution of radioprotective drugs.

The Indian Point REPP fails to meet these requirements of federal law, and thus, cannot be deemed to "adequately protect the public health and safety" as a matter of law. At best, the Indian Point REPP is "incomplete" with respect to several Planning Standard requirements for protective actions, and therefore fails to meet the required legal standard. Thus, FEMA is obligated under law to withdraw approval.

FEMA must comply with its legal obligations under 44 CFR § 350.13(a) and withdraw approval for the Indian Point REPP. I ask that FEMA immediately notify the Governor that because the Planning Standards, criteria and regulations are not met, it has granted the petitioning parties request for relief, along with any other remedy that FEMA deems just and proper in this case.

Very truly yours,

RICHARD BLUMENTHAL