



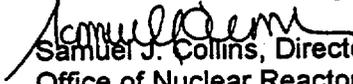
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

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December 11, 1998

MEMORANDUM TO: Jack W. Roe, Acting Director
Division of Reactor Program Management

FROM: 
Samuel J. Collins, Director
Office of Nuclear Reactor Regulation

SUBJECT: TASKING MEMORANDUM FOR STAFF FOLLOWUP ON DIFFERING
PROFESSIONAL VIEWS REGARDING THE OPERATIONAL
SAFEGUARDS RESPONSE EVALUATION PROGRAM

By memorandum dated November 4, 1998, the ad hoc panel on the consolidated Differing Professional Views regarding the cancellation of the Operational Safeguards Response Evaluation program forwarded their report to me. That report contained the following recommendations:

1. a. Dedicate specific resources to satisfying the commitment in the 9/27/96 memo "to reconcile ... the differences between facilities with security plans which are consistent with 10 CFR 73.55 (b) through (h) and which may not protect against the DBT for radiological sabotage..."
- b. "[R]econcile the differences ... between NRR and NMSS as they relate to response testing and exercises."
- c. Determine "whether to proceed to correct difficulties through order or through the normal rule making process, including consideration of 10 CFR 50.109 requirements."
2. "OSRE should be terminated pending resolution of the first recommendation. The inspection program should then be adjusted, if applicable."
3. a. Inspection Procedure 81700 (which references equipment testing as part of the normal program to be done by headquarters with contractor assistance) should be "re-examined in view of Regulatory Guide 5.44 (October 1997) on testing."
- b. Terminate equipment testing by NRC or its contractor (refers to 7/14/92 memo from Director, NRR, to all Regional Administrators, and Inspection Procedure 81700).

I have adopted these recommendations, with the exception of items 2 and 3b. The OSRE program has been reinstated and the equipment testing portion of the Regional Assists will remain in place.

To carry out the recommendations of the panel, the staff is tasked to do the following:

1. Continue with the efforts of the Safeguards Performance Assessment (SPA) Task Force to examine the regulatory basis for performance testing of licensees' security programs and make recommendations as to how the NRC should conduct performance testing in the future.

A/Y

The SPA Task Force should consider whether a changes in regulations, inspection procedures, and/or agency policies are appropriate to address this issue. In this process, the team should consider the requirements in 10 CFR 73.46 for Category I licensees to conduct periodic exercises of their contingency plans and whether those requirements have a bearing on the need for power reactor reactors to test their contingency response plans.

2. Working with OGC, the team should examine the issue of compliance with requirements and the expectation that licensees' security programs will be able to defend against the design basis threat. This examination should consider whether:
 - a. licensees are legally required to be able to defend against the design basis threat (73.55(a)) and to demonstrate that capability when called upon to do so by a representative of the NRC (73.55(b)(4)).
 - b. a licensee can be cited for violations of 73.55(a) when they fail to successfully demonstrate the capability to defend against the design basis threat, even when it can be shown that the licensee is in compliance with applicable regulations and commitments.
 - c. some NRC action other than a Notice of Violation is appropriate and legally supportable when a licensee fails to comply with 73.55(a)
3. Reconcile the differences between Inspection Procedure 81700 and Regulatory Guide 5.44 with respect to NRC-conducted equipment tests and, if there are actual differences, determine the appropriate means of resolving them.

I note that the SPA Task Force has already made considerable progress in answering these questions and that a report detailing the Task Force's recommendations is forthcoming. The Task Force should accelerate its efforts in this regard and prepare recommendations to be forwarded to the Commission by the end of December 1998.

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