

*E. Baker**65FR 6399
Feb. 9, 2000***Electronic
Letterhead***(14)*

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April 10, 2000

VIA E-MAIL

David L. Meyer
Chief, Rules and Directives Branch
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U.S. Nuclear Regulatory Commission
Washington, D. C. 20555-0001

RECEIVED
200 APR 11 AM 8:45
RULES & DIR. BRANCH
US NRC

Re: Allegations Management Implications of
New NRC Reactor Oversight Process

Dear Mr. Meyer:

In response to the Nuclear Regulatory Commission's invitation to comment on the implications of its new reactor oversight policy for the agency's allegation management program (65 Fed. Reg. 6399, February 9, 2000), we submit the following comments on behalf of the power reactor licensees listed in the margin.¹ The Commission specifically invited comments on the four options for retaining or modifying its present allegation management program as set forth in SECY-99-273.

We note that a key issue, according to the notice, is whether the employer will be able to identify the allegor (if he or she has requested confidentiality), e.g., from the fact that the NRC conducts a non-baseline or other non-scheduled inspection in the area implicated in the allegation. We are concerned that the NRC proceeds from the assumption that under the present

^{1/} Our comments are submitted on behalf of the following clients, all of whom are licensed to operate power reactors by the NRC: Consumers Energy Company, Nebraska Public Power District, Niagara Mohawk Power Corporation, and Omaha Public Power District.


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system or under any of the options being considered, licensees would seek to identify and retaliate against alleged unless the NRC goes to some lengths to disguise its pursuit of that allegation as a basis for inspection activity. The notice expresses concern that individuals who fear being identified as the source of an allegation may be less inclined to provide safety or regulatory issues to the NRC or may provide issues to the NRC without first raising them with their employer. We note that no evidence is cited for the proposition that employees are rightly concerned to seek anonymity or that employers seek to uncover alleged's identities so that they can retaliate against them. On the contrary, power reactor licensees have taken steps to ensure a safety culture in the workplace that encourages employees to come forward with safety issues to management or to the NRC without fear of retaliation. Moreover, the Department of Labor has ample authority to remediate, and the NRC ample enforcement authority to respond to, any situation in which an employer sought to take personnel action against an employee who raised safety issues. We therefore think that the concern that employees may be less willing to raise safety issues under any option which risk-informs the allegation management process is misplaced and based on a false premise.

The four options identified in SECY-99-273 are discussed in SECY-99-273 at pp. 4-8 and the Staff's views on the pros and cons of each are given in the summary table in the attachment thereto. Basically, the Staff's four options are: (1) retain the existing program; (2) base timeliness of resolution on risk significance; (3) risk inform the allegation program; and (4) risk inform the allegation program, but allow alleged input.

The first specific question that the Commission poses in its February 9 notice is:

Which of the four options contained in [SECY 99-273] will strike the best balance between the efficient use of agency resources and the need for alleged to feel the NRC will address their issue[s] and protect their identity, if they so desire?

Our view is that a modified version of Option 3, which is to risk inform the allegation program but with alleged input as to risk significance and response schedule, would strike the best balance. This option would best protect the public health and safety and makes best use of NRC Staff and licensee resources by focusing those resources on risk-significant issues. As noted above, we believe that the factors properly to be emphasized are protecting public health and safety by focusing on the significant issues raised by individuals or otherwise and making efficient use of Staff and licensee resources. We assume that alleged input on safety or risk significance would be welcomed by the NRC Staff under this option as advisory rather than controlling as required by Option 4 which permits the alleged to "insis[t] on independent staff follow-up within the timeliness goals for the present allegation process"(SECY-99-273 at 8).

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Option 3 should be modified to so recognize the need to seek allegor input in the risk significance determination to be made by the NRC.

We do not believe that risk informing allegations pursuant to this suggestion would lead to any measurable chilling effect on the bringing of allegations to the NRC. Specifically, some might argue that if the NRC sets a "threshold" for reviewing concerns, allegors could be chilled from bringing them to the NRC. Yet, a chilling effect is not the necessary consequence of a risk informed approach: even under the current process, the NRC surely receives a variety of allegations that do not merit serious attention, such as concerns that on their face are implausible or based on the allegor's misunderstandings, as well as concerns that fall outside the NRC's jurisdiction. In those cases, as under a risk-informed approach, the NRC would inform the allegor of the NRC's conclusion that further action is not warranted. (And, similarly, even after an investigation, the NRC is in many cases required to inform the allegor that the concern is without merit, even though the NRC's conclusion could arguably chill the allegor from raising future concerns.)

We believe the key to ensuring that a chilling effect does not arise is effective communication between the NRC and the allegor. The NRC will be in a position to discuss the safety or risk significance of a concern with the allegor. By providing a clear explanation as to why a concern lacks significance under a risk informed approach, and accompanying the explanation with assurances that the allegor properly raised the issue despite its lack of significance, any risk of chilling effect will be minimized, if not eliminated. Finally, while any potential chilling concerns must be taken seriously, the concern is not so significant in this context that it should preclude adoption of a risk informed approach.

The second specific question posed by the Commission was:

Does one of the options for implementing the allegation program provide more adequate assurance that the NRC can be more certain that through information provided by allegors, plants are being operated safely?

Yes, the third option should accomplish this objective for the reasons already stated, although it is probably difficult to differentiate among the options with regard to one option accomplishing this significantly better than any other.

The third question posed in the notice was:

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Does one of the options for implementing the allegation program under the new oversight process enhance public confidence by increasing the predictability, consistency, clarity, and objectivity of the NRC's allegation process?

We believe that public confidence would be enhanced if it becomes widely understood that NRC focuses on risk-significance and follows an allegation process that uses objective risk analysis to determine the priority to be given to its inquiry. Any option which permits the alleged to control NRC response to an allegation would hamper effective allocation of NRC resources and undermine public confidence in the objectivity of the process.

The fourth question the Commission posed was:

Does one of the options for implementing the allegation program under the new oversight process improve the efficiency and effectiveness of the regulatory process focusing agency resources on those issues with the most safety significance?

Yes, Option 3 is clearly superior compared to the other options. The Staff estimated a 4 FTE net savings from risk-informing the allegation process in line with Option 3 in SECY-99-273. The determination of risk significance would be made by the NRC using objective criteria.

The Commission's fifth question was:

Does one of the options for implementing the allegation program under the new oversight process reduce unnecessary regulatory burden on licensees?

Yes, the modified Option 3 does so by focusing the licensee's inspection and response burden (and associated license fees) on the more significant issues. By not being subject to referrals of non-risk-significant issues for investigation and response, licensee personnel would be freed up to concentrate on tasks that are safety-significant.

The Commission's sixth question was:

What options, beyond those stated in [SECY 99-273] should be considered?

We believe that Option 3 should be modified, as discussed above, to include the

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requirement to seek the non-binding advisory input of the alleged as to risk significance. In addition, a sunset provision should be added to the effect that the alleged would be informed that low risk technical issues would be inspected within a maximum period or dropped, in which case the alleged would be notified. While not, strictly speaking, an option for the allegations management process, it may have been more useful to test applying the Significance Determination Process to allegations received in the first quarter of 1999 using conservative assumptions that were more realistic than the worst-case assumptions used ("postulating a complete failure of the radiological or safeguards program to satisfy the cornerstone objective") that resulted in 29 issues ("mostly in the radiological safeguards cornerstone area" being considered to have risk significance "if they were true") and examining whether the allegations were ultimately found to be valid (SECY-99-273 at 6-7).

Finally, the Commission asked:

Should the Commission implement any changes in the allegation program for all reactor licensees or should any changes be [first] implemented in a pilot program before being implemented at all reactor facilities?

We believe that a pilot program would take too long to implement and evaluate to justify any benefits, which we judge to be minor, at best, and would delay the benefits of a risk-based allegations management program to the industry.

We appreciate the opportunity to comment on this important matter.

Sincerely,

Mark J. Wetterhahn

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