

November 22, 2000

Mr. David A. Lochbaum  
Nuclear Safety Engineer  
Union of Concerned Scientists  
1707 H Street NW, Suite 600  
Washington, D.C. 20006-3919

SUBJECT: RESPONSE TO INQUIRY REGARDING PROTOCOLS FOR "INDEPENDENT"  
NRC STAFF REVIEWS

Dear Mr. Lochbaum:

I am responding to your letter of August 1, 2000, to Chairman Meserve in which you asked several questions relating to the U.S. Nuclear Regulatory Commission (NRC) staff's practices for dealing with informal or draft information provided by licensees. The enclosure provides our responses to your questions.

As noted in the enclosure, we have an ongoing initiative underway which includes a broad review of our office-level guidance documents. As part of that review, we will consider the issues that you raised and determine whether changes to our current process are appropriate. Again, I appreciate your interest in this important matter. If you have any questions on this response or related issues, please contact William Reckley at 301-415-1323.

Sincerely,

*/RA/*

Samuel J. Collins, Director  
Office of Nuclear Reactor Regulation

Enclosure: Responses to Questions

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Enclosure: Responses to Questions

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## Policies and Practices of the Office of Nuclear Reactor Regulation

1. Are informal (draft) copies of licensee correspondence placed on the docket and made publicly available? If not, why not?

Correspondence from licensees used to support our decisionmaking process is considered an official agency record. Unless the records contain sensitive information (e.g., proprietary information), our practice is to make them publicly available.

Licensees sometimes provide informal or draft copies of material to support technical discussions with the staff. When such information is subsequently included in correspondence, it becomes an official agency record and is made publicly available.

The staff practice concerning informally-provided material that is not used to support regulatory decisionmaking and is not included in subsequent correspondence will be addressed by an ongoing initiative to improve our office-level procedures and training.

2. Are staff replies to licensee's informal (draft) copies placed on the docket and made publicly available? If not, why not?

NRR staff sometimes ask questions about draft documents that are provided by a licensee to support the staff's technical reviews. Some of these interactions occur without the staff creating official agency records. If the interactions identify information that is needed to make or to document the staff's regulatory decisions, that information will be requested from the licensee and the licensee's correspondence is made an official agency record. This practice ensures that the bases for our decisionmaking are supported by publicly available records, but may not document all discussions that lead to the licensee submitting information supporting a specific licensing action. As mentioned above, the ongoing initiative to improve NRR procedures and training will address how and when the NRR staff should create official agency records.

3. What NRC policies and procedures govern the NRC staff's informal working relationship with licensees on the preparation of formal correspondence by the licensees?

The general principles that guide the staff in making the appropriate judgments regarding working relationships with licensees and other stakeholders are NRC's principles of good regulation (being independent, open, efficient, clear, and reliable) and NRC's performance goals (maintain safety; increase public confidence; improve efficiency, effectiveness, and realism; and reduce unnecessary regulatory burden).

Various regulatory requirements and agency policies are incorporated into NRC management directives (MDs) that are applicable to all NRC staff. The following management directives are applicable to this issue:

- MD 3.53, "NRC Records Management Program"
- MD 3.4, "Release of Information to the Public"

Office-level policies and procedures specific to NRR are provided in our office letters (OLs). The following OLs are applicable to this issue:

- OL 107, “Draft and Unsolicited Information”
- OL 803, “License Amendment Review Procedures”

NRR recently initiated a review and update of its office letters and other guidance documents to ensure that procedures, standard operating practices, and training support NRC performance goals and the principles of good regulation. This effort includes developing procedures and guidance that will better define when the staff should create an official agency record to document communications between the staff and licensees or other NRC stakeholders. The procedures and guidance will address communications using various technologies, including e-mail. The challenge in preparing and carrying out the procedures is to balance the competing factors that we include in our goals and the principles of good regulation. The NRC recognizes that the most effective use of our goals and the principles of good regulation requires consideration of specific issues or circumstances and balancing between the various interests and objectives.

4. Is the NRC staff really conducting independent reviews when it is actively involved in the preparation (i.e., review and comment cycle) of formal correspondence by licensees? (By comparison, the Quality Assurance staff of a licensee cannot perform an independent review of a calculation or engineering report that it helped prepare.)

The objectivity and independence of NRC staff reviews have not been compromised by the type of informal communications you identify. The staff reviews are independent; however independence does not imply isolation. The exchanges that occur between the staff and licensees before the submittal of formal correspondence are useful in ensuring that factual information is fully and accurately understood and described in staff documents, and that applicants and licensees readily understand what information the staff may need to perform its reviews.