

September 5, 2001

MEMORANDUM TO: Michael T. Lesar, Chief
Rules and Directives Branch
Division of Administrative Services
Office of Administration

FROM: David B. Matthews Director/**RA**/
Division of Regulatory Improvement Programs, NRR
Office of Nuclear Reactor Regulation

SUBJECT: NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT FOR A
GENERIC COMMUNICATION REGARDING GUIDANCE ON
RESOLUTION OF DEGRADED AND NONCONFORMING
CONDITIONS (TAC MB2530)

Attached is one signed copy of a Notice of Opportunity for Public Comment for a proposed generic communication for your transmittal to the Office of the Federal Register, for publication. Five additional copies of the Notice are attached for your use; a 3.5-inch diskette containing the Notice is also being provided.

Please send a copy of the comments received to Eileen McKenna at Mail Stop O11F1 and to James Shapaker at Mail Stop O12D1.

Attachment:
As stated

Contact:
James W. Shapaker
(301) 415-1151

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NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication

Resolution of Degraded and Nonconforming Conditions

(“Generic Letter 91-18 Process”) - (MB2530)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a regulatory issue summary (RIS) to make available to the nuclear power industry updated staff guidance on the resolution of degraded and nonconforming conditions. Earlier guidance on this subject was provided to the industry as an attachment to Generic Letter 91-18, Revision 1, issued on October 8, 1997. The updated guidance will reflect relevant NRC regulatory process and regulation changes that have occurred since 1997. The NRC is seeking comment from interested parties on the clarity and utility of the proposed RIS and the draft updated guidance under the Supplementary Information heading. The NRC will consider the comments received in its final evaluation of the proposed RIS and updated guidance. Comments should address the contents of the guidance but not the regulations associated with it.

This *Federal Register* notice is available through the NRC's document management system (ADAMS) under accession number ML012420393. The draft updated guidance under the Supplementary Information heading is also provided in comparative text format on the NRC

Web site at < <http://www.nrc.gov/NRC/GENACT/GC/RI/DRAFT/index.html> > to better show the substantive revisions to the 1997 version of the guidance.

DATES: Comment period expires **[45 days after FRN is published]**. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555-0001, and cite the publication date and page number of this *Federal Register* notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T-6D59), Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION, CONTACT: Eileen McKenna at (301) 415-2189 or by e-mail to emm@nrc.gov.

SUPPLEMENTARY INFORMATION:

NRC REGULATORY ISSUE SUMMARY 2001-xx
RESOLUTION OF DEGRADED AND NONCONFORMING CONDITIONS
“GENERIC LETTER 91-18 PROCESS”

ADDRESSEES

All holders of operating licenses for nuclear power reactors, including those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and all holders of operating licenses for nonpower reactors, including those whose licenses no longer authorize operation.

INTENT

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to inform licensees that NRC Inspection Manual Part 9900, Technical Guidance, "Resolution of Degraded and Nonconforming Conditions," has been revised. The revised inspection guidance reflects relevant changes that have been made to NRC regulations and NRC policies and practices since 1997. This RIS requires no action or written response on the part of an addressee.

BACKGROUND INFORMATION

NRC staff inspection guidance on the resolution of degraded and nonconforming conditions at licensed reactor facilities is contained in NRC Inspection Manual Part 9900, Technical Guidance, "Resolution of Degraded and Nonconforming Conditions." This guidance has previously been provided to licensees for information, most recently in Revision 1 of Generic Letter (GL) 91-18, which was issued on October 8, 1997.

The NRC reviewed this inspection guidance to assess its currency and concluded that the guidance needed to be updated to reflect regulatory changes that have occurred since 1997, including the implementation of the revised reactor oversight process, the requirement that licensees appropriately assess and manage the increase in risk related to proposed maintenance activities (10 CFR 50.65(a)(4)), and the revision of 10 CFR 50.59 to remove ambiguity in the change control process. The attachment to this RIS contains the revised Part 9900 section on the resolution of degraded and nonconforming conditions. This guidance supersedes in its entirety the guidance previously provided in Revision 1 of GL 91-18. The Part 9900 guidance on operability that was originally provided in GL 91-18 has not been revised.

SUMMARY OF ISSUE

NRC Inspection Manual, Part 9900, Technical Guidance, "Resolution of Degraded and Nonconforming Conditions," provides guidance to NRC inspectors for reviewing the actions of licensees to restore or establish acceptable conditions following the discovery of degraded or nonconforming conditions in plant structures, systems, or components (SSCs). The governing NRC requirements for degraded or nonconforming conditions affecting the SSCs may collectively be viewed as a process for licensees to develop a basis for continued operation or to place the facility in a safe condition and take prompt corrective action. This process has not fundamentally changed from that outlined in the previous version of the Part 9900 guidance on resolution of degraded or nonconforming conditions. The attached revised Part 9900 guidance addresses related guidance and requirements for resolution of degraded and nonconforming conditions, and updates information that has changed as a result of changes to regulations or to NRC policies and procedures.

BACKFIT DISCUSSION

This RIS requires no action or written response and, therefore, is not a backfit under 10 CFR 50.109. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment was published in the *Federal Register* on September xx, 2001 (66 FR xxxxx), to give interested parties an opportunity to suggest ways for improving the guidance. The staff concludes that this RIS and the attached NRC inspection guidance are informational and pertain to a staff position that does not represent a departure from current regulatory requirements and practice.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not request any information collection.

Please refer any questions that you may have about this matter to the technical contact identified below.

David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Technical Contact: Eileen McKenna, NRR
301-415-2189
E-mail: emm@nrc.gov

Attachments:

1. NRC Inspection Manual Part 9900, Technical Guidance, "Resolution of Degraded and Nonconforming Conditions"
2. List of Recently Issued NRC Regulatory Issue Summaries

Attachment 1

NRC INSPECTION MANUAL

PART 9900: TECHNICAL GUIDANCE

RESOLUTION OF DEGRADED AND NONCONFORMING CONDITIONS

DRAFT - AUGUST 2001

RESOLUTION OF
DEGRADED AND NONCONFORMING CONDITIONS

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RESOLUTION OF
DEGRADED AND NONCONFORMING CONDITIONS

1.0 PURPOSE AND SCOPE

To provide guidance to NRC inspectors on resolution of degraded and nonconforming conditions affecting the following systems, structures, or components (SSCs) normally described in the updated final safety analysis report (UFSAR):

- (i) Safety-related SSCs, which are those relied upon to remain functional during and following design basis events (a) to ensure the integrity of the reactor coolant pressure boundary, (b) to ensure the capability to shut down the reactor and maintain it in a safe shutdown condition, or (c) to ensure the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the 10 CFR Part 100 guidelines. Design basis events are defined the same as in 10 CFR 50.49(b)(1).
- (ii) All SSCs whose failure could prevent satisfactory accomplishment of any of the required functions identified in (i) (a), (b), and (c).
- (iii) All SSCs relied on in the safety analyses or plant evaluations that are a part of the plant's licensing basis. These analyses and evaluations include those submitted to support license amendment requests, exemption requests, or relief requests, and those

submitted to demonstrate compliance with the Commission's regulations, such as the regulations for fire protection (10 CFR 50.48), environmental qualification (10 CFR 50.49), pressurized thermal shock (10 CFR 50.61), anticipated transients without scram (10 CFR 50.62), and station blackout (10 CFR 50.63).

- (iv) Any SSCs subject to 10 CFR Part 50, Appendix B.
- (v) Any SSCs subject to 10 CFR Part 50, Appendix A, Criterion 1.
- (vi) Any SSCs explicitly subject to facility Technical Specifications (TS).
- (vii) Any SSCs subject to facility TS through the definition of operability (i.e., support SSCs outside TS).

This guidance is intended for NRC inspectors who are reviewing actions of licensees that hold an operating license. Although this guidance generally reflects existing staff practices, application to specific plants may constitute a backfit. Consequently, significant differences in licensee practices should be discussed with NRC management to ensure that the guidance is applied in a reasonable and consistent manner for all licensees.

If, during an inspection, an NRC inspector obtains information reasonably indicating a possible degraded or nonconforming condition affecting any of the SSCs listed above, the inspector should promptly inform the licensee so the licensee can promptly evaluate the SSC's status.

This guidance is only applicable to the discovery of degraded or nonconforming conditions. In some instances, however, a licensee may find it necessary to take actions that reduce the functional capability of SSCs in order to perform maintenance. For these cases, applicable guidance on the conduct of the pre-maintenance risk assessment and the management of the increase in risk caused by the maintenance activities (including the relationship with TS, risk assessment in accordance with 10 CFR 50.65(a)(4), and compensatory measures) is contained in Regulatory Guide 1.182 (see also Inspection Manual Part 9900, "Guidance on Voluntary Entry Into Limiting Conditions for Operation Action Statements To Perform Preventive Maintenance").

2.0 DEFINITIONS

2.1 Licensing Basis

The licensing basis comprises the set of NRC requirements applicable to a specific plant, and a licensee's written commitments for assuring compliance with and operation within applicable NRC requirements and the plant-specific design basis (including all docketed and still effective modifications and additions to such commitments over the life of the license). The licensing basis includes the NRC regulations contained in 10 CFR Parts 2, 19, 20, 21, 30, 40, 50, 51, 55, 72, 73, and 100 and the appendices thereto; orders; license conditions; exemptions; and TS. It also includes the plant-specific design basis information defined in 10 CFR 50.2 and documented in the most recent UFSAR (as required by 10 CFR 50.71) and the licensee's commitments remaining in effect that were made in docketed licensing correspondence such as

licensee responses to NRC bulletins, generic letters, and enforcement actions, as well as licensee commitments documented in NRC safety evaluations and licensee event reports.

2.2 Design Basis

Design basis is that body of plant-specific design basis information defined in 10 CFR 50.2.¹

2.3 Degraded Condition

A condition of an SSC, potentially affecting operability, in which quality or functional capability has been reduced by mechanisms such as aging, erosion, corrosion, or improper operation or maintenance.

2.4 Nonconforming Condition

A condition of an SSC, potentially affecting operability, that involves a failure to meet requirements or licensee commitments because of such factors as improper design, testing, construction, or modification. The following are examples of nonconforming conditions:

1. A condition fails to conform to one or more applicable codes or standards specified in the UFSAR.

¹Guidance and examples for identifying 10 CFR 50.2 design bases are contained in Regulatory Guide 1.186, which endorses Appendix B to the Nuclear Energy Institute (NEI) document NEI 97-04, "Guidance and Examples for Identifying 10 CFR 50.2 Design Bases."

2. As-built equipment or as-modified equipment does not meet UFSAR descriptions.
3. Operating experience or engineering reviews demonstrate a design inadequacy.
4. Documentation required by NRC requirements such as 10 CFR 50.49 is unavailable or deficient.

2.5 Full Qualification

Full qualification is conformance to all aspects of the licensing basis, including codes and standards, design criteria, safety analyses, and commitments.

2.6 Operable/Operability

The Standard Technical Specifications define OPERABLE or OPERABILITY as follows:

“A system, subsystem, train, component, or device shall be OPERABLE or have OPERABILITY when it is capable of performing its specified functions and when all necessary attendant instrumentation, controls, electrical power, cooling or seal water, lubrication or other auxiliary equipment that are required for the system, subsystem, train, component, or device to perform its function(s) are also capable of performing their related support function(s).”

This definition of OPERABLE and OPERABILITY specifically applies to SSCs covered by TS and to those support systems that fall within the definition. However, the same definition may be applied generically to all SSCs covered by this guidance when discussing their operability (ability to perform their functions).

3.0 BACKGROUND

A nuclear power plant's SSCs are designed to meet NRC requirements, satisfy the licensing basis, and conform to specified codes and standards. For degraded or nonconforming conditions of these SSCs, the TS may require the licensee to take actions. The provisions of Criterion XVI of 10 CFR Part 50, Appendix B, may apply, requiring the licensee to promptly identify and correct conditions adverse to safety or quality. Collectively, these requirements may be viewed as a process for licensees to develop a basis to continue operation or to place the plant in a safe condition and take prompt corrective action. Reporting may also be required in accordance with 10 CFR 50.72, 50.73, and 50.9(b), 10 CFR Part 21, and the TS.

Changes to the facility in accordance with 10 CFR 50.59 may be made as part of the corrective action required by Appendix B. The process displayed in the attached chart, "Resolution of Degraded and Nonconforming Conditions," identifies these and other provisions that a licensee may follow to restore or establish acceptable conditions. These provisions are success paths that enable licensees to continue safe operation of their facilities.

4.0 DISCUSSION OF NOTABLE PROVISIONS

4.1 Public Health and Safety

All success paths, whether specifically stated or not, are directed first at ensuring public health and safety and second at restoring the SSCs to the licensing basis of the plant as an acceptable level of safety. Identification of a degraded or nonconforming condition that may pose an immediate threat to public health and safety requires the plant to be placed in a safe condition.

Technical Specifications address the safety systems, installed instrumentation, and process variables and provide Limiting Conditions for Operation (LCOs), Actions, Surveillance Requirements, Design Features, and Administrative Controls required to ensure public health and safety.

4.2 Operability Determinations

NRC Inspection Manual Part 9900, "Operable/Operability: Ensuring the Functional Capability of a System or Component," provides guidance on licensee responsibilities to assess whether systems or components continue to be operable when degraded or nonconforming conditions have been identified. The basis for continued operation (as supported by an operability determination) is further discussed in Sections 4.5 and 4.6 below.

Other situations where operability must be assessed include the discovery of an error in a design calculation, nonconformance with an industry standard, or an incorrect underlying assumption for ensuring the operability of a structure, system, or component. With the explicit

inclusion of an affected requirement in facility TS, the introduction of any discrepancies can result in the affected requirement being nonconservative or the inability of a licensee to satisfy an LCO or surveillance requirement (depending upon the nature of the issue). Guidance related to non-conservative TS is provided in Administrative Letter 98-10, "Dispositioning of Technical Specifications That Are Insufficient to Assure Plant Safety." If a licensee does not satisfy an LCO or surveillance requirement that is included explicitly in the TS, then associated actions are taken or relief is sought (see section 4.6 below).

In some cases, a design calculation or industry standard is used to define surveillance acceptance criteria but the specifics are not explicitly included in the TS (e.g., the TS surveillance requirement is to verify a capability for providing power or cooling and a reference document or the TS bases discuss the details of how this is determined). If an error in a calculation or nonconformance with an industry standard is found in these cases, the licensee should assess operability. If the affected SSC is determined to be inoperable, the TS define the appropriate actions. If, however, the affected SSC is determined to be operable, plant operation may continue, and the discrepancy resolved as further discussed in this guidance.

4.3 The Licensing Basis and 10 CFR 50, Appendix B

The design and operation of a nuclear plant must be consistent with its licensing basis.

Whenever degraded or nonconforming conditions of SSCs subject to Appendix B² are identified, Appendix B requires prompt corrective action to correct or resolve the condition. The

²Appendix B is only applicable to safety-related SSCs. However, NRC expects licensees to take corrective action for any nonconformances with the UFSAR consistent with Appendix B, Criterion XVI, in a time frame commensurate with safety.

licensee must establish a schedule for completing the corrective action. The timeliness of the corrective action should be commensurate with the safety significance of the issue. The time period within which corrective action must be completed begins with the discovery of the condition, not when it is reported to the NRC.

In determining whether the licensee is making reasonable efforts to complete corrective action promptly, NRC will consider whether corrective action was taken at the first opportunity, taking into account safety significance, effects on operability, significance of degradation, and what is necessary to implement the corrective action. Factors that the NRC may consider are the amount of time required for design, review, approval, or procurement of the repair or modification; the availability of specialized equipment to perform the repair or modification; and whether the plant must be in hot or cold shutdown to implement the actions. The NRC expects licensees to explicitly justify time periods longer than the next refueling outage in the deficiency tracking documentation.

4.4 Discovery of an Existing but Previously Unanalyzed Condition or Accident

In the course of its activities, the licensee may discover a previously unanalyzed condition or accident. Upon discovery of an existing but previously unanalyzed condition or accident that significantly degrades plant safety, the licensee is required to report it in accordance with 10 CFR 50.72 and 50.73, and put the plant in a safe condition. (See NUREG-1022, Revision 2, for guidance on conditions considered to significantly degrade plant safety.)

For a previously unanalyzed condition or accident that is considered a significant safety concern but is not part of the design or licensing basis, the licensee may subsequently be required to take additional action after consideration of backfit issues (see 10 CFR 50.109(a)(5)).

4.5 Establishing a Basis for Continued Operation

The license authorizes the licensee to operate the plant in accordance with applicable regulations, license conditions, and the TS. If an SSC is degraded or nonconforming but operable, the TS establish an acceptable basis to continue to operate.³ When safety-related equipment is affected, the licensee must promptly identify and correct the condition adverse to safety or quality in accordance with 10 CFR Part 50, Appendix B, Criterion XVI.

The basis for a licensee's authority to continue to operate arises because the TS contain the specific characteristics and conditions of operation necessary to avoid the possibility that an abnormal situation or event will give rise to an immediate threat to public health and safety. If the TS are satisfied, and required equipment is operable, and the licensee is correcting the degraded or nonconforming condition in a timely manner, continued plant operation does not pose an undue risk to public health and safety.

³An exception to this general statement is the case of a facility that is experiencing significant performance problems that have led to issuance of a confirmatory action letter or order preventing that licensee from continuing to operate or resuming operation until approval is granted by the NRC.

When a licensee finds itself in noncompliance with a regulation, immediate action such as shutting down the plant is not necessarily required, unless otherwise specified by NRC requirements. In such situations, the licensee should first determine if there is an immediate safety issue as a result of the noncompliance with a regulation. The licensee should further determine what other NRC requirements apply to the situation (e.g., 10 CFR Part 50, Appendix B, Criterion XVI, or 10 CFR 50.12) and take the required action.

In developing a basis for continued operation, licensees should consider matters such as the following:

- the availability, reliability, and operability of redundant or backup equipment
- compensatory measures, including limited reliance on administrative controls
- the safety function and the events protected against
- conservatism and margins
- probability of needing the safety function
- probabilistic risk assessment (PRA) or Individual Plant Evaluation (IPE) results that determine how operating the facility in the proposed manner will impact the core damage frequency or conditional core damage probability
- plant-specific and industry experience, testing, and research

The NRC concern with respect to a licensee's basis for continued operation is that the operability decision be correct, the documentation of the licensee's actions be appropriate, and any required submittals to the NRC (see below) be complete. The licensee's documentation of

its basis for continued operation is normally proceduralized through the existing plant record system and is subject to NRC inspection (Inspection Procedure 71111.15).

4.6 Justification for Continued Operation

Under certain defined and limited circumstances, the licensee may find that strict compliance with the TS or a license condition would cause an unnecessary plant action not in the best interest of public health and safety. NRC review and action is required before the licensee takes actions that are not in compliance with the license conditions or the TS, except in certain emergency situations when 10 CFR 50.54(x) and (y) are applied. A Justification for Continued Operation (JCO) is the licensee's technical basis for requesting authorization from the NRC to operate in a manner that is prohibited (e.g., outside TS or license conditions). The preparation of a JCO does not constitute authorization to continue operation. See Part 9900 guidance on Notices of Enforcement Discretion (NOED) for information on the NRC process for exercising enforcement discretion with regard to limiting conditions for operation in power reactor TS or license conditions.

Other documents or processes that are not equivalent to and do not perform the same function as the JCO defined above may also be referred to as JCOs. For example, NRC generic communications may provide direction on how to establish bases for continued operation for specific issues, and licensees may not be required to submit these determinations to the NRC. In Generic Letter 88-07, "Environmental Qualification of Electrical Equipment," and Generic Letter 87-02, "Seismic Adequacy," these determinations are referred to as "JCOs." Licensees should continue to follow earlier guidance regarding the preparation and use of these

determinations for specific issues. When reviewing licensee actions in response to a degraded or nonconforming condition, the NRC considers the content of the documentation, not its name.

4.7 Reasonable Assurance of Safety

For SSCs that are not expressly subject to TS and are determined to be inoperable, the licensee should assess the reasonable assurance of safety using considerations similar to those discussed in Section 4.5 above. If reasonable assurance of safety exists, then the facility may continue to operate while prompt corrective action is taken.

4.8 Evaluation of Compensatory Measures

When evaluating the impact of a degraded or nonconforming condition on plant operation and on the operability of SSCs, a licensee may decide to implement a compensatory measure as an interim step to restore operability or to otherwise enhance the capability of SSCs until the final corrective action is completed. This guidance concerns interim measures implemented before maintenance to restore the condition of the SSC has begun (also see Section 4.9 below).

Reliance on a compensatory measure for operability should be an important consideration in establishing the "reasonable time frame" for completing the corrective action process. The NRC normally expects that conditions requiring interim compensatory measures to demonstrate operability will be resolved more quickly than conditions that do not require compensatory measures to show operability, since reliance on interim measures suggests a

greater degree of degradation. Similarly, if an operability determination relies upon operator action, NRC expects the nonconforming condition to be resolved expeditiously.

With respect to the use of compensatory measures, the approved regulatory guidance (Regulatory Guide 1.187, endorsing NEI 96-07, Revision 1) for implementating the revised 10 CFR 50.59 rule states:

“If an interim compensatory action is taken to address the condition and involves a temporary procedure or facility change, 10 CFR 50.59 should be applied to the temporary change. The intent is to determine whether the temporary change/compensatory action itself (not the degraded condition) impacts other aspects of the facility or procedures described in the UFSAR.”

In considering whether a compensatory measure may affect other aspects of the facility, a licensee should pay particular attention to ancillary aspects of the compensatory measure that may result from actions taken to directly compensate for the degraded condition.

As an example, suppose a licensee plans to close a valve to isolate a leak. Although that action would stop the leak, it may affect flow distribution to other components or systems, complicate required operator responses, or have other effects that should be evaluated before the compensatory measure is implemented. In accordance with 10 CFR 50.59, if the evaluation determines that implementation of the compensatory action itself would involve a TS change or otherwise require NRC approval under the evaluation criteria, NRC approval, in accordance

with 10 CFR 50.90 and 50.92, is required before implementation of the compensatory action. If any SSC would not be operable (in accordance with the TS) unless the compensatory measure was in place, the licensee must follow the TS requirements (see also Section 4.6 above).

4.9 Maintenance Activities

After identifying a degraded or nonconforming condition, a licensee will typically perform corrective maintenance to restore the facility to its as-designed condition. Paragraph 50.65(a)(4) requires licensees to assess and manage the increase in risk that may result from proposed maintenance activities. The conduct of maintenance may also involve other temporary procedure or facility alterations to allow the maintenance to be performed or to reduce risk. Such alterations include jumpering terminals, lifting leads, and using temporary blocks, bypasses, or scaffolding. These temporary alterations associated with maintenance are to be assessed as part of the 10 CFR 50.65(a)(4) risk assessment and, consistent with NRC regulatory guidance, a separate 10 CFR 50.59 review of the risk reduction measures is not required (except under limited conditions; see Regulatory Guide 1.182 endorsing Section 11 of the NEI (formerly the Nuclear Management and Resources Council (NUMARC)) document NUMARC 93-01, "Assessment of Risk Resulting From Performance of Maintenance Activities," for further information).

4.10 Final Corrective Action

The licensee is responsible for corrective action. A licensee's range of corrective action may involve (1) full restoration to the UFSAR-described condition such as through performance of corrective maintenance (see Section 4.9 above), (2) NRC approval for a change to the licensing

basis to accept the as-found condition as is, or (3) some modification of the facility other than restoration to the condition as described in the UFSAR. If corrective action is taken to restore the degraded or nonconforming condition, no 10 CFR 50.59 evaluation is required. The 10 CFR 50.59 process applies when the final resolution of the degraded or nonconforming condition differs from the established UFSAR requirement. At this point, the licensee plans to make a change to the facility or procedures as described in the UFSAR. The proposed change is now subject to the review process established by 10 CFR 50.59. A change can be safe, but still require NRC approval. The proposed final resolution may require staff review and approval without affecting the continued operation of the plant, because interim operation is being governed by the processes for determining operability and taking corrective action (Appendix B).

In two situations, the identification of a final resolution or final corrective action triggers a 10 CFR 50.59 review, unless another regulation applies (e.g., 10 CFR 50.55a): (1) when a licensee decides as the final corrective action to change its facility or procedures to something other than full restoration to the UFSAR-described condition, and (2) when a licensee decides to change its licensing basis, as described in the UFSAR, to accept the degraded or nonconforming condition as its revised licensing basis. Each of these situations is discussed in greater detail below.

Change to Facility or Procedures

In the first situation, the licensee's proposed final resolution of the degraded or nonconforming condition includes other changes to the facility or procedures to cope with the uncorrected or

only partially corrected nonconforming condition. Rather than fully correcting the nonconforming condition, the licensee decides to restore capability or margin by making another change. In this case, the licensee must evaluate the change from the UFSAR-described condition to the final condition in which the licensee proposes to operate its facility. If the 10 CFR 50.59 evaluation concludes that a change to the TS is involved or the change meets any of the evaluation criteria specified in the rule for prior NRC approval, a license amendment must be requested, and the corrective action process is not complete until the approval is received or some other resolution occurs.

Change to the Licensing Basis

In the other situation the licensee proposes to change the licensing basis to accept the as-found nonconforming condition. In this case, the 10 CFR 50.59 review covers the change from the UFSAR-described condition to the existing condition in which the licensee plans to remain (i.e., the licensee will exit the corrective action process by revising its licensing basis to document acceptance of the condition). If the 10 CFR 50.59 evaluation concludes that a change to the TS is involved or the change meets any of the evaluation criteria specified in the rule for prior NRC approval, a license amendment must be requested and the corrective action process is not complete until the approval is received or some other resolution occurs. To resolve the degraded or nonconforming condition without restoring the affected equipment to its original design, a licensee may need to obtain an exemption from 10 CFR Part 50 in accordance with 10 CFR 50.12 or relief from a design code in accordance with 10 CFR 50.55a. The use of 10 CFR 50.59, 50.12, or 50.55a in fulfillment of Appendix B corrective action

requirements does not relieve the licensee of the responsibility to determine the root cause, to examine other affected systems, and to report the original condition, as appropriate.

In both of these situations, the need to obtain NRC approval for a change does not affect the licensee's authority to operate the plant. The licensee may make mode changes, restart from outages, etc., provided that necessary equipment is operable and the degraded condition does not violate the TS or the license. The basis for this position was previously discussed in Section 4.5.

5.0 ENFORCEMENT

If the licensee, without good cause, does not correct the degraded or nonconforming condition at the first available opportunity, the staff will determine whether the licensee has failed to take prompt corrective action in accordance with 10 CFR Part 50, Appendix B, Criterion XVI. If the NRC concludes that the Appendix B requirements were not met or the operability determination is not valid, the NRC staff will take appropriate regulatory action, consistent with the NRC oversight process and the enforcement policy for reactors.

Completing corrective action within a reasonable time frame does not prevent the NRC from taking action for the root causes of the degraded or nonconforming condition or for violations of other regulatory requirements. The nonconforming condition may have resulted from earlier changes performed without a 10 CFR 50.59 evaluation or from inadequate reviews. The staff may determine that the discovered nonconforming condition involves a change to the TS or otherwise requires prior approval as specified in 10 CFR 50.59. In such cases,

enforcement action is appropriate to address the time from when the degraded or non-conforming conditions were created until the time of discovery. The NRC's action will take into account the safety significance of the facility conditions that existed while the SSC was in the degraded or nonconforming condition.

6.0 REFERENCE

See the attached chart, "Resolution of Degraded and Nonconforming Conditions."

END

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/ADAMS/index.html>. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1-800-397-4209 or 301-415-4737 or by e-mail to pdr@nrc.gov.

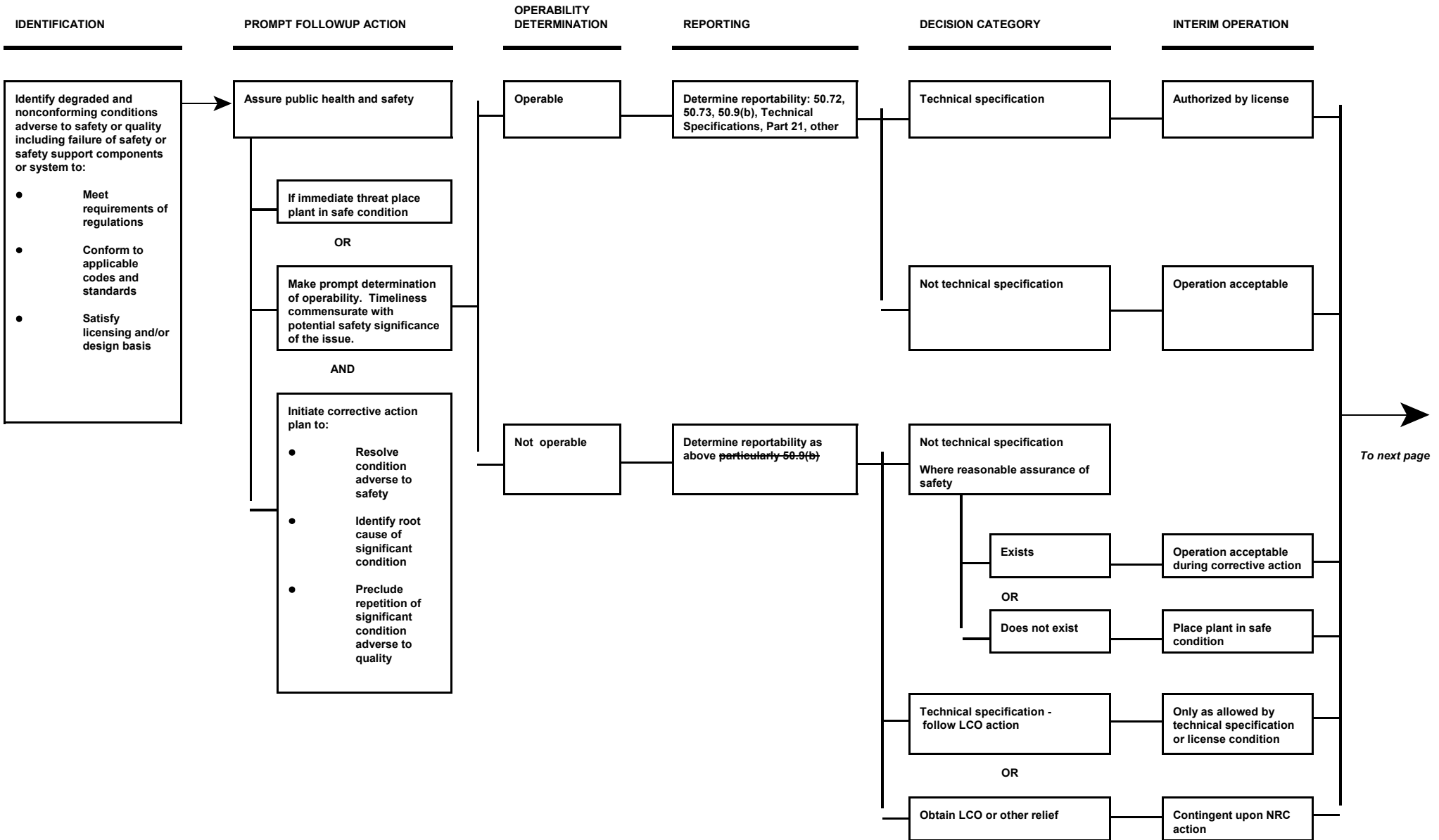
Dated at Rockville, Maryland, this 5th day of September 2001

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

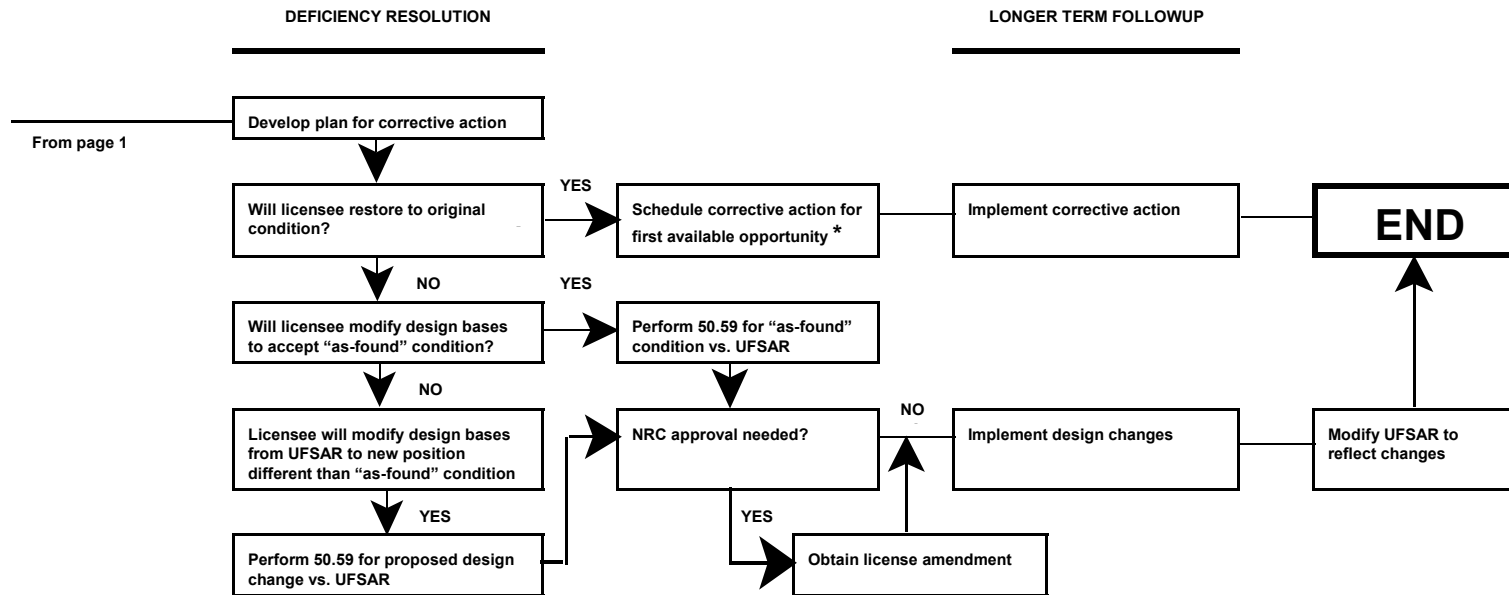
RESOLUTION OF DEGRADED AND NONCONFORMING CONDITIONS



Notes:

- Generic communications may provide guidance specific to an issue but counter to the generally accepted approach herein. Examples of deviations from the above approach include NRC Generic Letter 88-07 on environmental qualification of electrical equipment and NRC Generic Letter 87-02 on seismic adequacy (see Section 4.6)
- For guidance on compensatory actions taken to maintain operability see Section 4.8

RESOLUTION OF DEGRADED AND NONCONFORMING CONDITIONS (continued)



* See Section 4.3