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Citizens and Scientists for Environmental Solutions

January 8, 2002

Mr. Michael R. Johnson, Chief
Inspection Program Branch
Division of Inspection Program Management
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

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SUBJECT: INTERIM COMMENTS ON REACTOR OVERSIGHT PROCESS

Dear Mr. Johnson:

Thank you for mailing me your letter dated November 15, 2001, soliciting comments on the second year of implementation for the reactor oversight process (ROP). It was my intention to submit formal comments on the process and provide responses to the specific questions posed by the NRC staff in the associated *Federal Register Notice*. In responding to similar solicitations in the past, I reviewed information such as the daily event reports to determine whether incidents were captured by the performance indicators or inspection findings. The removal of this information from the NRC website and the lack of this information in the NRC's Agencywide Document Access Management Systems (ADAMS) prevents me from completing this effort.

I contacted Mr. Michael J. Maley on your staff in early December about my difficulty in responding to the public comment solicitation. Mr. Maley extended the comment deadline from December 28, 2001, until January 7, 2002, for me on the belief that the ROP information would be restored to the NRC website during the third week of December. I contacted Mr. Maley yesterday to let him know that I could not meet the extended deadline because the ROP information was still missing from the NRC website. Mr. Maley explored additional alternatives (a.k.a. Plan C) with me. I greatly appreciate Mr. Maley's persistent efforts to facilitate my submittal of comments on the ROP.

Before your call this morning, I had planned to defer submitting comments until after the information was restored to the NRC website. I realize that the timing of this restoration is far beyond your control. Therefore, I have opted to submit the comments I have collected so far now on behalf of UCS and to submit additional comments (including the responses to the specific questions posed in the FRN) when the website is restored. UCS remains convinced that the reactor oversight process is the right tool for the NRC to be using. Resolution of the comments and concerns UCS raises can make the effort more effective and efficient.

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Temp file = ADM-013

E-RTDS = ADM-03
Addr = M.J. Maley (MSM3)

Our interim comments on the reactor oversight process:

1. **Internal self-assessments:** UCS has always liked the formal inclusion of internal self-assessments within the reactor oversight process. From the internal self-assessments that we have reviewed, it appears that these NRC efforts have considerable value. For example, we point to the December 3, 2001, memo from Ms. Christine A. Lipa to Mr. Geoffrey E. Grant titled "Self-Assessment Results: Inspection Report Thresholds." An NRC team assessed 51 inspection findings from 26 inspection reports issued by Region III. This team concluded that there were signs of over-reporting, of under-reporting, and of inconsistent reporting. UCS did not assess these 26 inspection reports in parallel and therefore cannot affirm or refute those conclusions. Nevertheless, such conclusions are most often reflective of simply calling them as one sees them with no pre-conceived notions. The memo recommended procedural and training changes to improve future performance. Thus, it appears to UCS that this self-assessment, along with many others like it, promote consistency and improved evolution of the ROP. We urge the NRC to continue these self-assessments. In addition, while these self-assessments are currently available in ADAMS, *we recommend that the NRC staff consider adding these self-assessments to the ROP portion of the restored website.*
2. **Action Matrix:** UCS has always liked the concept of the Action Matrix, which clearly links licensee performance to NRC response. However, UCS was always concerned about whether the NRC staff would in fact abide by these 'mandated' actions. As we feared, that's not been the case. For example, UCS submitted a letter titled "Broken Promises" and dated October 23, 2001, to the NRC Chairman and Commissioners. We protested that the NRC staff essentially promised the public that it would conduct a series of inspections at the worst-performing nuclear plant in the United States, but had deferred those inspections following a request by the plant owner. The fastest way for the NRC to lose public confidence is to fail to fulfill its promises. *We recommend that the NRC stop deviating from the Action Matrix and stop breaking promises to the public.*
3. **Cone of Silence:** The 1960s sitcom *Get Smart* had a recurring gag using a prop called the Cone of Silence. This transparent, plastic, dome-like device descended from the ceiling so the Control chief could privately converse with a Control agent without Chaos hearing. It never worked.

The reactor oversight process was recognized by the NRC staff, the industry, and at least elements of the public as being evolutionary. There was a prescribed process for developing, testing, and implementing changes to the ROP that involved the NRC staff, the industry, and the public. But that process was abandoned when the Commission did not like the fact that Quad Cities would get a YELLOW or RED violation for failing its Operational Safeguards Readiness Evaluation (OSRE). So, the interim physical protection significance determination process (PPSDP) was fabricated under the NRC's version of the Cone of Silence to bestow a WHITE finding. As in 1960s Hollywood, it didn't work. Ample evidence suggests that the Commission may have gotten what it wanted using the interim PPSDP for Quad Cities, it did not work for the OSRE findings at Farley or Oyster Creek. As indicated in my letter dated September 4, 2001, to Mr. Alan Madison, *UCS considers the interim PPSDP to be fundamentally broken and recommends that it be expeditiously revised using — rather than shamelessly skirting — the promised public process.*

4. **Preliminary Significance Determination Process Results:** In the current significance determination process (SDP) for inspection findings, the NRC staff evaluates risk using information in its possession. When this staff evaluation results in a non-GREEN finding, the licensee has the opportunity to submit additional and/or clarifying material. Typically, licensees contend that less severe color findings are warranted based on the new material. The Advisory Committee on Reactor Safeguards (ACRS) commented to the effect that the NRC staff's evaluation is only as good as the risk models used to crunch the numbers and expressed some concerns about those models. Others, such as Commissioner McGaffigan, raised concerns about the impact on public confidence from initial NRC colors appearing to be negotiated to lesser levels. Some advocate that the NRC withhold the preliminary SDP colors from the public and only release the final colors.

UCS concedes that it is troubling when the NRC staff and the licensee staff are orders of magnitude



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apart on their initial risk determinations. That apparent disparity does undermine confidence in the process. But hiding that disparity behind a curtain does not improve confidence. It merely swaps the reason for the public's mistrust.

Despite the baggage associated with preliminary colors sometimes fading, public confidence would best be served by continuing to conduct the process in the open. The public confidence impact when preliminary colors are challenged but not revised by the NRC staff may be undervalued by those critical of conducting this effort in the open. In any case, the best way to minimize the problem would be to reduce the frequency of times that preliminary colors are later revised. The NRC staff's risk models could be further improved. Continued clarification and documentation on credit for operator actions and recovery times would also help. The greatest gain, of course, would be realized by licensees putting their current risk models and plant safety assessments on the docket so that the NRC staff would have ready access to that vital information. *UCS recommends that the NRC take steps to reduce the number of times that preliminary colors are revised rather than take steps to hide the negotiations.*

As soon as possible after information is restored to the NRC website, I will submit additional comments including specific responses to the questions posed by the NRC staff in the *Federal Register Notice*.

Sincerely,

David Lochbaum, Nuclear Safety Engineer
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