

August 21, 2002

Mr. David A. Lochbaum  
Union of Concerned Scientists  
1707 H Street, N.W., Suite 600  
Washington, D.C. 20006-3919

Dear Mr. Lochbaum:

I am responding on behalf of the Nuclear Regulatory Commission (NRC) to your letter of May 14, 2002, concerning the Manual Chapter 0350 process. You also expressed concern about licensees' conformance with the Final Safety Analysis Report (FSAR), as highlighted in Information Notice 96-17, "Reactor Operation Inconsistent with the Updated Final Safety Analysis Report."

Inspection Manual Chapter (IMC) 0350, "Oversight of Operating Reactor Facilities in a Shutdown Condition with Performance Problems," provides guidance on the decision to implement the IMC 0350 process. Section 5.0.2 of IMC 0350 identifies three prerequisites for implementation of the process: (1) A plant's performance is degraded into the multiple/repetitive degraded cornerstone, or the unacceptable performance column of the action matrix; (2) the plant is in a shutdown condition; and (3) a regulatory hold is in effect, such as a Confirmatory Action Letter or an Order. IMC 0350 also contains a provision making it applicable to plants following a shutdown as a result of significant performance problems and/or after a significant plant event.

In considering implementation of the IMC 0350 process, the Office of Nuclear Reactor Regulation and Regional management assess the following: (1) expected length of the plant shutdown; (2) the degree to which the licensee has performed an extent of condition evaluation pertaining to the reasons for the shutdown; and (3) the amount of discovery still required of the licensee to identify all of the problems associated with the shutdown. Implementation of the IMC 0350 process is more likely if the licensee is in the discovery and extent of condition phase of the assessment than if the licensee has a complete understanding of the issues and has developed an appropriate course of action to resolve the issues.

In your May 14 letter, you recommend that the NRC communicate to the public its reasons for not convening an IMC 0350 panel under some circumstances. The decision to implement the IMC 0350 process is made whenever entry conditions are satisfied and on the basis of developing circumstances. The decision to not implement the IMC 0350 process is constantly reevaluated as new information is obtained. When conditions do not warrant entry into the IMC 0350 process, such situations are addressed through the reactor oversight process, including special inspections and audits, and stakeholders are kept informed in accordance with the program. The NRC affords stakeholders the opportunity to keep abreast of NRC's decision whether to implement the IMC 0350 process and question its basis by attending regulatory conferences.

If the decision is made to implement the IMC 0350 process, the basis is documented and communicated to the public. The NRC considers its implementation to be a significant action, and therefore, provides for appropriate communication with stakeholders to ensure that their concerns with regard to the licensee's restart activities can be appropriately factored into the NRC's restart review.

Your letter also states your belief that analyses, performed by licensees at NRC's request, should be reflected in periodic updates to FSARs in accordance with 10 CFR 50.71(e), and that such updates could prevent events such as the Davis-Besse reactor pressure vessel head degradation. The NRC considers updating of the FSAR essential in ensuring continuity and a common understanding of the licensing and design basis of a licensed facility. The NRC staff is reviewing this issue and will provide you a response upon completion of the review.

Sincerely,

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Richard A. Meserve