

**From:** Allen Hiser  
**To:** Bill Bateman; F. Mark Reinhart; Jack Strosnider; Jin Chung; Keith Wichman; } NRR  
Lawrence Burkhart; Lawrence Chandler; Mitzi Young; Richard Barrett  
**Date:** 11/19/01 10:38AM OGC  
**Subject:** Re: EDO STAFF COMMENTS ON ORDERS

Larry,

I would recommend NOT making the change that you suggest. December 31, 2001, is not an "acceptable" operating time from a technical standpoint (e.g., we cannot demonstrate numerically that this is the 'correct' date, and we certainly cannot differentiate 12/31/01 from 01/01/02, or 01/19/02 or 03/31/02), but this timeframe represents regulatory discretion that seeks a balance between imposing a reasonable impact on plant operations (e.g., time for shutdown planning and contractor alignment by the licensees) and a conclusion that an immediate safety concern does not exist (which would result in immediate shutdown). These are the points that we made with both licensees in phone calls last Thursday.

If we state that December 31, 2001, is acceptable, then we will get into an argument regarding the basis for concluding that 19 days later is not acceptable for Cook Unit 2 and 90 days later is not acceptable for Davis-Besse, and that becomes a no win situation for us. I know that the draft Orders dance around the basis for the implicit acceptability of 12/31/01, but I think that we should maintain the ambiguity due to the judgemental nature of the date.

Allen

>>> Lawrence Burkhart 11/19/01 10:18AM >>>

The memo forwarding the D-B Order to the EDO was issued on 11/16/01. This morning I received comments from David Loveless of the EDO's staff.

The comments included: that the staff should specifically state the reason why it is acceptable for the licensee to operate until 12/31/01. Throughout the Order we do state the basis for the staff's judgment that 12/31/01 is the requirement for conducting the recommended inspections to support continued operations. We specifically state that "In light of these results [of inspections already conducted at NA 1 and 2, TMI-1, CR3, SPS1], operation of facilities considered to be highly susceptible to this cracking phenomenon beyond December 31, 2001, is unacceptable unless the recommended inspections to identify this potentially hazardous condition are completed and found acceptable by the staff." Therefore, it is implied throughout the order that operation until 12/31/01 is acceptable.

The basis for choosing December 31, 2001, is that it is the staff's best judgment based on the results of inspections and the uncertainties associated with this cracking phenomenon (and largely because we have not found any conditions of incipient failure of VHP nozzles).

If we do decide to add wording (which I am not convinced we should), I offer the following sentences to be added to the Order (on page 7 of the D-B Order at the end of the last paragraph - we can add at other places re: discussion of 12/31/01 also):

"The staff finds that operation until December 31, 2001, without performing the recommended inspections is acceptable and does not present a significant risk to the public health and safety. Operation beyond that time without performing the recommended inspections would eventually increase the probability of a vessel head penetration nozzle failure and loss-of-coolant accident to an unacceptably high level."

There were some EDO other comments that were relatively minor.

OGC/DE/DSSA, Please let me know your comments.

D-43

**CC:** Brian Sheron; Elinor Adensam; Gary Holahan; Giovanna Longo; Jacob Zimmerman;  
Jon Johnson; Samuel Collins