UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
SAM NUNN ATLANTA FEDERAL CENTER
61 FORSYTH STREET SW SUITE 23T85
ATLANTA, GEORGIA 30303-8931

June 4, 2002

MEMORANDUM TO: Luis A. Reyes, Regional Administrator

FROM: Charles R. Ogle, Acting Deputy Director 6/4
Division of Reactor Safety

Jennifer Dixon-Herrity, Enforcement Specialist 6/4 - Phone call
Office of Enforcement

Bob Carroll, Sr. Projects Engineer 6/4/02
Reactor Projects Branch 1
Division of Reactor Projects

SUBJECT: DPV REVIEW PANEL - RESULTS OF REVIEW

Background- In his DPV [redacted] takes exception with the processing of a violation of 10 CFR 50.70 observed by the Turkey Point Resident Inspector on January 28, 2002, as an NCV. He contends that the issue, which involved announcing an inspector's presence contrary to the regulation, should have been processed as a violation. In the discussion contained in the DPV, [redacted] makes the following major points: E06

- Processing this issue as an NCV has generic or broad implications on the ability of the inspectors to monitor licensee activities as they normally occur.
- The licensee's investigation concluded that the event did not happen as described by the NRC. [redacted] suggests that this different conclusion regarding what happened, allowed the licensee to downplay the issue, thereby stopping any enforcement action. E06
- Processing an issue as an NCV based on entering the issue into the corrective action program, allows the licensee to take only token corrective actions and not address the underlying root cause or organizational culture which fostered the violation.

As a remedy, he suggests that the enforcement process be modified to require that the licensee address the issue. E06

Documentation- The panel reviewed the DPV filed by [redacted] Turkey Point [redacted] which documented the NCV in question, and the meeting minutes for the ARB of February 5, 2002, during which the issue was presented for OI consideration. Additional NRC documentation such as the management directive associated with DPVs, the statements of

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 6
FOIA- 2002-361

C/6

consideration for 10 CFR 50.70 and 10 CFR 50.5, the Enforcement Policy, and selected regional office instructions were also reviewed by members of the panel. The panel also reviewed the licensee's corrective action document which captured the issue.

Interviews- The following persons were interviewed by members of the panel:

[redacted] EA/O

Carolyn Evans - Regional Counsel/Enforcement Officer
Randy Musser- Acting Branch Chief
Son Ninh- Project Engineer/Acting Branch Chief
Victor McCree- Deputy Division Director DRP
Len Williamson- Acting OI Director

Findings-

1. The panel agrees that announcing the presence of NRC inspectors can impact the ability of the inspectors to monitor licensee activities as they normally occur. However, based on the information reviewed, the panel does not agree that processing this issue as an NCV had broad programmatic implications. The panel believes that a licensee should be able to effectively resolve issues such as this if its corrective action program is sound. The panel did not review any information to suggest that the Turkey Point corrective action program is not sound.

2. The panel agrees that the licensee's investigation arrived at a different conclusion as to what happened than did the residents. However, the panel did not find any evidence to suggest that this significantly impacted the resolution of the issue. Specifically, the panel believed that the licensee's corrective actions were sufficient. Further, the panel considered that the licensee's actions to conduct an independent investigation (though it did not initially include interviews of the residents) and a phone call made to the Regional Administrator by the Site Vice President, do not support the contention that the licensee downplayed the issue. In addition, the panel noted that enforcement action was taken when the NCV was issued. (The panel noted that this sent a clear message to the licensee that the NRC concluded that the event occurred as described by the residents.)

3. The panel agrees that the NCV criteria which requires only that an item be entered into the licensee's corrective action program, can lead to situations of inappropriate or marginal corrective actions. However, the panel believes that the ROP addresses this issue. If an inspector feels strongly that the licensee has somehow missed the mark on an issue, the issue can be included as the subject of the identification and resolution of problems portion of the appropriate baseline inspection procedure or as part of a formal problem identification and resolution inspection. In addition, if warranted, a violation for inadequate corrective actions can be issued. While not directly applicable to this issue, the panel also noted that the Enforcement Policy requires that compliance be restored as a condition of issuing an NCV. This helps decrease the likelihood of corrective actions wide of the mark.

4. Though not part of the DPV, the panel reviewed the handling of this issue against the NCV criteria identified in the NRC's Enforcement Policy. With respect to the NCV criteria related to willfulness, the panel had difficulty in following the decision-making process used by the NRC to determine that the violation was not willful. The interviews conducted by the panel revealed that a consistent decision-making process was not applied by key personnel in arriving at this decision. The panel felt that the nature of the violation and the fact that a supervisor was involved warranted the NRC having a clear basis to make the call regarding willfulness.

   In addition, the panel noted that when this issue was taken to the ARB, it was done before the completion of the licensee's investigation. Hence, it was not clear to the panel that the impact of the licensee arriving at a different conclusion as to what happened, was available for consideration by the ARB. The panel believes that this had the potential to impact the deliberations of the ARB.

   In response, the panel recommends the following actions be taken:

   A. The Enforcement Officer provide amplifying information to the Region II staff on what constitutes a willful violation. It is also recommended that this guidance address what mechanism should be used to determine if willfulness is involved in a violation.

   B. The ARB reconvene and review the licensee's investigation of this issue to discern if additional information is required by the NRC to establish if this violation was willful. Ex 6

5. During its review, the panel noted that the concurrence page for the inspection report, annotated by [redacted] to reflect his concerns with the processing of this issue as an NCV was not included in the ADAMS version of the report. The provisions of ROI 2210 were not invoked since he did concur with the report. Further, it does not appear that the practice of retaining comments recorded during the concurrence process is explicitly required by existing Region II procedures. However, the panel felt that not including this information could result in losing information associated with the concurrence process for a report. The panel recommends that an existing ROI be modified to identify the need to include comments on the concurrence page (as appropriate) in ADAMS.

6. From its review of the Enforcement Policy, the panel also believes that the issue should have been described in the inspection report as being processed through traditional enforcement as an issue that impacted the regulatory process as a Severity Level IV issue instead of as a No Color issue. Ex 6

Conclusion- The panel does not support [redacted] DPV; in that it does not believe that a change to the enforcement process is warranted. However, the panel feels that followup by the Region regarding willfulness is required.

cc: B. Mallett, DRA