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To: <nrcprep@nrc.gov>  
Date: Thu, Dec 12, 2002 8:15 AM  
Subject: Comments on ROP at 3

11/22/02  
67FR 70468  
(2)

Good Day:

Attached are UCS's comments on the Reactor Oversight Process's third year. I understand from the Federal Register Notice that the public comment period ends December 27, 2002.

UCS does not plan to mail the original letter. If this electronic copy is not sufficient and the NRC would prefer the hard copy, please let me know and I can mail out the original.

Thanks,

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# Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

December 12, 2002

Michael T. Lesar  
Chief, Rules and Directives Branch  
Office of Administration (Mail Stop: T6-D59)  
Nuclear Regulatory Commission  
Washington, DC 20555-0001

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Dear Mr. Lesar:

On behalf of the Union of Concerned Scientists, I submit the enclosed comments in response to a brochure dated November 15, 2002, signed by Cynthia A. Carpenter, soliciting comments on the third year of the Reactor Oversight Process.

Sincerely,

<ORIGINAL SIGNED BY>

David Lochbaum  
Nuclear Safety Engineer  
Washington Office

**Questions related to specific ROP program areas**

**1. Does the Performance Indicator Program minimize the potential for licensees to take actions that adversely impact plant safety?**

No. The lessons learned from Davis-Besse include longstanding, programmatic breakdowns in 50.59 safety evaluations and corrective action processes that contributed to a very serious reduction in plant safety margins. The PIs were blissfully ignorant of these problems. The PIs didn't minimize those many serious problems.

In addition, plant owners don't like greater-than-green PIs. So, they campaign with the agency to revise the thresholds or the definitions or the reset time or whatever it takes to put all performance into the GREEN box. By bending to this pressure, the NRC is NOT minimizing the potential for licensees to take actions that adversely impact plant safety. The NRC is, in fact, aiding and abetting actions that adversely impact plant safety.

Lastly, the PIs seem to be giving plant owners and the NRC with false senses of safety. For example, Davis-Besse had all GREEN PIs prior to discovery of the big hole in its reactor head. Mr. James Dyer, Regional Administrator for NRC Region III, said during a public meeting on August 15, 2002, that Davis-Besse did not get much regulatory attention in the years preceding this discovery because the agency thought it was a good performer. The PIs essentially gave the NRC GREEN-colored glasses that, according to Mr. Dyer, impeded the agency's efforts to "minimize the potential for licensees to take actions that adversely impact plant safety."

**2. Does appropriate overlap exist between the Performance Indicator Program and the Inspection Program?**

No. Too much of an overlap exists between the PIs and the Inspection Program. The PIs are focused on risk-significant areas. Too much of the Inspection Program is exclusively focused on risk-significant areas. As a result, real and potential problems are being overlooked. For example, the NRC inspection effort at Davis-Besse failed to identify numerous warning signs because they came from systems and components perceived to be non-risk-significant. The many Condition Reports written on the clogged filters for the radiation monitors inside containment did not get much NRC attention because that system and function has negligible importance in either core damage frequency or large early release frequency. But in this case, the licensee's repeated failure to properly diagnose the reason for the clogged filters delayed discovery of a very serious problem. The Inspection Program cannot complement the Performance Indicator Program if it treads in the exact same footsteps. When a brick wall is constructed, bricks in one row span halves of the two bricks in the lower row. This overlapping affords greater strength and robustness than if all the bricks in all the rows lined up. The PI Program and the Inspection Program would be better if they resembled a brick wall instead of a stack of bricks.

The baseline inspections are alleged to provide sufficient inspection effort to provide the NRC with a sufficiently clear picture, when viewed with the PI data, of licensee performance. Davis-Besse demonstrates the fallacy of that assumption. Instead of spending 6,000 to 12,000 inspection hours each year at troubled nuclear plants like Davis-Besse, it would be both smarter and safer to up the average number of inspection hours devoted to ALL, repeat ALL, nuclear power plants. In this way, NRC inspectors might just see the barn door as it is opening instead of devoting all those resources to watching the plant owner close the barn door.

3. **Do reporting conflicts exist, or is there unnecessary overlap between reporting requirements of the ROP and those associated with the Institute of Nuclear Power Operations (INPO), the World Association of Nuclear Operations (WANO), or the Maintenance Rule?**

UCS cannot comment on any overlaps with respect to INPO and WANO since these organizations, by policy, don't make their documents and reports publicly available. The few times we stumble across INPO/WANO documents and publicly comment about them are followed by threatening letters from King & Spaulding, their DC law firm. The NRC seems to be trying to set us up for another King & Spaulding letter with this question.

With respect to the Maintenance Rule, we don't believe there are either undue conflicts or unnecessary overlaps of reporting requirements.

4. **Does NEI 99-02, "Regulatory Assessment Performance Indicator Guideline" provide clear guidance regarding Performance Indicators?**

NEI says so, so it must be so.

5. **Is the information in the inspection reports useful to you?**

Yes. The quality of inspection reports has steadily improved throughout the ROP.

6. **Does the Significance Determination Process yield equivalent results for issues of similar significance in all ROP cornerstones?**

Yes, in two ways. First, inspection findings determined to be greater-than-GREEN take way too long to reach the final colorization regardless of which cornerstone they apply to. The SDP is unacceptably slow, period.

Second, the SDP results currently reflect the significance of identified *performance* shortfalls. But the nuclear industry is pressuring the NRC to mess up the SDP by making all inspection findings related, somehow, to core damage frequency or large early release frequency. This molding would be appropriate if the ROP reflected nuclear power plant safety levels. But the ROP was intentionally and deliberately designed to reflect licensee performance level. In some cornerstones, reactor safety levels and performance levels are linked. In other cornerstones, they are not. But to water down findings, the industry seeks to inappropriately apply PRA hand-waving to all inspection findings. The NRC must not permit the ROP to be undermined in this way.

7. **Does the NRC take appropriate actions to address performance issues for those licensees outside of the Licensee Response Column of the Action Matrix?**

Sometimes. The silly way in which the NRC erased the YELLOW finding earned by the Vermont Yankee licensee for its poor performance during an OSRE in August 2001 made a mockery of the whole process. Such shenanigans undermine the entire regulatory process and need to be eliminated as soon as possible. Likewise, the games over the D C Cook finding (RED to something else) is bogus.

The agency is not taking actions mandated by the Action Matrix. Instead, it is changing colors to make the Action Matrix response match what it wants to do. That's disgraceful. That was the primary fault with the ol' Senior Management Meeting process. Apparently, the bad process was renamed rather than replaced.

- 8. Is the information contained in assessment reports relevant, useful, and written in plain English?**

The inspection reports are pretty good, except for the boilerplate put into the transmittal letters. For example, the paragraph about security since 09/11 doesn't need to be included in each and every inspection report until the end of time.

The annual assessment letters and the PPRs (I forget what that acronym stands for) are useless. They contain many words, but don't say anything.

**Questions related to the efficacy of the overall Reactor Oversight Program (ROP)**

- 9. Are the ROP oversight activities predictable (i.e., controlled by the process) and objective (i.e., based on supported facts, rather than relying on subjecting [sic, subjective] judgement)?**

No. The SDP is broken. The output from the SDP is beyond subjective and approaching pure whimsy. Given the importance of the SDP to the overall ROP, the NRC's tolerance of this broken process is corrupting the entire ROP. After two years of band-aid fixes to the SDP that haven't worked at all, the NRC should scrap the SDP and try again.

- 10. Is the ROP risk-informed, in that the NRC's actions are graduated on the basis of increased significance?**

Nope, not with the current SDP they aren't. In its current incarnation, NRC's inactions are graduated on the basis of increased significance. One can best judge the significance of any finding by how long it takes the NRC to figure out which color to assign it. Forty-five days or less corresponds to a GREEN or non-color. Forty-six to ninety days equals WHITE. Ninety-one to one hundred fifty days is YELLOW. And over one hundred fifty days is RED. Because the NRC takes little action until it figures out which crayon to use, its response is inversely proportional to safety significance. That's absurd.

- 11. Is the ROP understandable and are the processes, procedures, and products clear and written in plain English?**

No. The chair of the Pilot Program Evaluation Panel, Frank Gillespie, advocated that the ROP guidance be retained, and updated as needed, in a single place. Unfortunately, his recommendation when unheeded. It is a tremendously cumbersome process to root around the NRC's poorly-constructed website to find the various pieces of the ROP. When I have a question about some facet of the ROP, I am very, very, very, very, very seldom able to find it on the web. The answers may be understandable. They may be clear. They may be written in plain English. But I cannot find them. So, what's the point?

- 12. Does the ROP provide adequate assurance that plants are being operated and maintained safely?**

No, as evidenced by Davis-Besse getting all-GREEN ratings prior to discovery of the most serious safety problem since the Three Mile Island meltdown.

- 13. Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?**

Maybe, it certainly appears to be a real process.

**14. Does the ROP enhance public confidence?**

No. The NRC had a golden opportunity to do so with the ROP, but it lost that opportunity by (a) caving in to industry pressure almost every single time that a greater-than-green inspection finding is produced (this caving doesn't mean that the NRC always waters down the final significance, but taking longer than 90 days to determine the final color is in itself a caving symptom), (b) implementing the ROP inconsistently, (c) finding some lame excuse to not taking action when inspection findings are unexpectedly real (for example, the WHITE finding given to Quad Cities for failing its OSRE) and (d) preventing public participation in the process.

**15. Has the public been afforded adequate opportunity to participate in the ROP and to provide inputs and comments?**

Not sufficiently. Safeguards is one of only seven cornerstone areas of the ROP. Prior to 09/11, the NRC met with industry representatives and members of the public to discuss this important cornerstone. For example, the NRC held a series of public meetings to discuss the Physical Protection Significance Determination Process and proposed changes to it. But the NRC deliberately terminated public participation in the process, even to the extent that the agency refuses to meet with public interest group representatives and listen to our input. Instead, the agency is hiding behind the guise of national security to meet secretly with industry representatives and revise the ROP behind closed doors. The NRC Chairman, in a previous capacity, served on the DOE Human Radiation Task force. He knows better than most the horrendous problems that can result from undue government secrecy under the guise of national security. For him to lead the NRC down this unfair path is incomprehensible.

**16. Has the NRC been responsive to public inputs and comments on the ROP?**

No. The NRC established processes, such as the Frequently Asked Questions (FAQs), for responding to inputs and comments from licensees, but has failed to respond to public inputs and comments. UCS has repeatedly commented on certain aspects of the ROP, both in written comments and orally during public meetings, and has never, ever received a response—other than patronizing thanks for providing comments—to many of those oft-repeated comments. It seems to UCS that the only difference between us mailing these written comments to the NRC and our mailing them to the McDonalds across the street from NRC headquarters is that (a) NRC would have a better excuse for not responding if we mailed our comments to McDonalds and (b) we'd have a better chance of getting a coupon for free french fries.

**17. Has the NRC implemented the ROP as defined by program documents?**

Hard to tell. As noted in the answer to Question 11 above, the program documents are harder to piece together than confetti after a tickertape parade. The ROP program documents are so scattered that UCS has neither the time nor the interest in pulling them all together (even assuming we could find them) so as to then be able to evaluate NRC implementation against them.

**18. Does the ROP reduce unnecessary regulatory burden on licensees?**

Don't know, don't care.

**19. Does the ROP result in unintended consequences?**

Absolutely.

The NRC doesn't intend to take 90-plus days to determine the color for inspection findings, but it does.

The NRC doesn't intend to bar public participation from the process (if we are to believe the public pronouncements), but it does with respect to the safeguards cornerstone.

The NRC doesn't intend to allow plants to operate with big holes in their reactor heads, but it did.

The NRC doesn't intend to take longer than 90 days to produce an SDP color, but it does.

**20. Please provide any additional information or comments on other program areas related to the Reactor Oversight Process.**

The overhaul of the NRC website was a huge step backwards in terms of accessing the ROP. It was difficult to access ROP information before the web revamping – it is virtually impossible now. Prior to this disaster, I would refer reporters and elected officials to the ROP for information on how a specific site was performing. But the information is so difficult to find on the “new & improved” website that I very seldom bother to mention it anymore.