

From: Paul Gunter <pgunter@nirs.org>
To: <nrcprep@nrc.gov>, <mjm3@nrc.gov>
Date: Fri, Dec 20, 2002 6:03 PM
Subject: NIRS Comments on NRC Reactor Oversight Process

Attached please find NIRS comments on the NRC Reactor Oversight Process.

File was not successfully attached in previous transmission.

Paul Gunter, Director
Reactor Watchdog Project
Nuclear Information and Resource Service
1424 16th Street NW Suite 404
Washington, DC 20036
Tel. 202 328 0002

11/22/02
67FR 70468
⑥

Rules and Directives
Branch
OSYPS

2002 DEC 23 AM 11:52

RECEIVED

Template = ADM-013

E-RTDS = ADM-03
Call = M. Manley (MSM3)

Nuclear Information and Resource Service

1424 16th Street NW Suite 404

Washington, DC 20036

Tel. 202 328 0002

[http:// www.nirs.org](http://www.nirs.org)

December 20, 2002

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

BY EMAIL: < nrcprep@nrc.gov > and < mjm3@nrc.gov >

Comments of Nuclear Information and Resource Service (NIRS) on the Third Year of Implementation of the Reactor Oversight Process

Mr. Lesar:

Nuclear Information and Resource Service (NIRS) is providing comments to a request by the Nuclear Regulatory Commission (NRC) as published in the Federal Register: November 22, 2002 (Volume 67, Number 226) Page 70468-70470 entitled "Solicitation of Public Comments on the Third Year of Implementation of the Reactor Oversight Process."

NIRS contends that the agency has significantly failed in its mission to effectively and safely regulate civilian nuclear power in the United States. In fact, the agency has willfully neglected its responsibility to protect the public's health and safety and the environment. The agency continues to spend an inordinate amount of its staff and management resources in the promotion and defense of industry energy production schedules that in reality shields the industry economic interest from regulatory requirements intended to protect and promote the public health and safety. In so doing, the agency has prioritized electricity production over public health and safety and the environment. Over the past three years, NRC has repeatedly failed to adequately inspect and enforce licensee activities to ensure compliance with these safety requirements and the law. The NRC has repeatedly failed to uphold its responsibility to monitor and regulate licensee's performance, the primary responsibility for safe operation.

The NRC has inappropriately rationalized that the maturation of the industry is reason to abandon prescriptive and deterministic licensing regulation in favor of a more probabilistic process that allows for greater industry self-assessment and defeats effective and timely enforcement by the agency. In fact, larger and growing areas of uncertainty

with reduced margins of safety now exist within this regulatory approach as exemplified in the one specific area of age-related degradation of susceptible materials that fabricate key safety components vital to the protection of the public health and safety. As such, the NRC has misconstrued and mischaracterized such terms as “maturity” with “aging” and “deterioration” of nuclear power industry. Examples over the past three years under the new Reactor Oversight Process (ROP) stand as glaring examples to this steady regulatory retreat and the increased risk associated with this reluctant oversight process.

In April 2000, the same month that the NRC began to implement its so-called more “effective and efficient inspection, assessment, and enforcement approaches,” FirstEnergy, operators of the Davis-Besse nuclear power station near Toledo, Ohio, manufactured false and misleading Work Orders for the Pressure Vessel Head cleaning and bare metal inspections of Control Rod Drive Mechanism Vessel Head Penetrations and a long neglected boron corrosion management program. The NRC inspection, assessment and enforcement process as initially provided by its frontline onsite resident inspectors was nowhere to be found in verifying any of these vital tasks.

When the NRC was ultimately challenged in September 2001 by FirstEnergy responses to the associated safety risks regarding cracking of the Control Rod Drive Mechanism Vessel Head Penetration as outlined in NRC Bulletin 2001-01 and a requested utility waiver to provide for the continued operation of the Davis-Besse beyond a required inspection and reporting deadline, the NRC ultimately abandoned its own risk-informed procedures as incorporated into its oversight activities (Regulatory Guide 1.174) and overlooked the enforcement of the Davis-Besse reactor’s technical specifications in favor of an arbitrary electricity production-bias settlement that only benefited the financial interest of a safety-deviant utility. An Order drafted and finalized by staff and duly routed to the Commission requiring the shutdown of Davis-Besse applying the risk-informed procedures and criteria of Regulatory Guide 1.174 was abandoned in an utterly arbitrary and capricious decision by senior management. Such a risk-misinformed, risk-negligent and risk-bargaining approach to the oversight process not only inappropriately squanders staff resources but blatantly disregards their studied risk-informed product. Such arbitrary and company-biased judgments on the part of NRC management as currently dominates the ROP unduly jeopardize public safety in the continued operation of nuclear power facilities.

Further illustrating the failures of the NRC reactor oversight process by illuminating Davis-Besse and other examples over the past three years, the NRC abandoned its principles supposedly inherent in the ROP and defeated its performance goals.

- 1) Obviously, NRC failed to maintain safety by establishing and implementing a regulatory oversight process that ensured that the Davis-Besse plant operated safely. Luck played a significant role in preventing an accident.
- 2) NRC further undermined public confidence by demonstrating a consistency and predictability in ruling in favor of the industry’s financial interest over public safety. An earlier NRC waiver of Indian Point steam generator inspections as required by technical specifications in June of 1999 lead to the steam tube rupture

in February 2000. The Office of the Inspector General report determined that efforts by NRC staff to issue Requests for Additional Information on the waiver to Consolidated Edison were chilled by the Director of Nuclear Reactor Regulation. Furthermore, in providing its December 3, 2002 "safety rationale" nearly a year after the NRC flip flop on the issuance of the Davis-Besse Order, the agency did not provide "timely and understandable information" on its technical basis for reversing itself on the Order, enforcement of compliance of the Davis-Besse Updated Final Safety Analysis Report, Code of Federal Regulation and the appropriate regulatory guides. With regard to the NRC goal of providing opportunities for meaningful involvement by the public, the agency's Davis-Besse Lessons Learned Task Force (LLTF) on the Davis-Besse debacle failed to appropriately interview and incorporate the analysis of such key public stakeholders as The Union of Concerned Scientists (UCS) and NIRS. Both NIRS and UCS were publicly assessing what went wrong with the agency's reactor oversight process that allowed FirstEnergy to recklessly operate Davis-Besse with severe and unacceptable degradation of safety margins, outside of Code of Federal Regulation, loss of defense-in-depth, increased core damage frequency and under false pretenses provided by the company. Both NIRS and UCS were active public stakeholders in revealing the NRC mishandling of FirstEnergy and Davis-Besse through the Public Petition Process for Emergency Enforcement (10 CFR 2.206), the Freedom of Information Act, through the public media and in direct correspondences with NRC. Yet the agency's ROP lessons learned task force inexplicably did not provide a meaningful opportunity for those stakeholders with involvement in the report. The only "meaningful" opportunities availed to the public dealt with the scope of the Davis-Besse LLTF not the content.

- 3) NIRS has noted no improvement in the effectiveness, efficiency and realism of the oversight process between the events February 2000 steam tube rupture at Indian Point and the March 2002 discovery of the boron corrosion event at Davis-Besse.
- 4) The agency has gone far beyond the reduction of "unnecessary" regulatory burden with a dangerous reduction of "meaningful" regulatory oversight. The Davis-Besse event of March 2002 and the Indian Point 2 steam tube rupture of February 2000 in the past three years indicate that NRC has wrongfully misconstrued "eliminating unnecessary regulatory burden" with amputating effective regulatory oversight and enforcement.

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 Performance Indicator Program characterized Davis-Besse as a good performer when in fact FirstEnergy had abandoned fundamental corrective action and maintenance programs. For example, FirstEnergy abandoned adherence to Generic Letter 88-05 and its boron corrosion action program. FirstEnergy similarly abandoned modifications to provide for corrosion inspection access of the Davis-Besse vessel head in an effort to achieve short term gains of increased capacity factors at the expense of ignoring the

inspection and maintenance of the primary pressure boundary at Davis-Besse. While NRC was consistently crediting Davis-Besse PIs with GREEN findings, the reactor pressure vessel head was experiencing a boron corrosion rate of 2" to 6" per 12 months.

(2) Does appropriate overlap exist between the Performance Indicator Program (PIP) and the Inspection Program (IP)?

NO. In fact, there is apparently too much overlap between Performance Indicators and inspections. The Davis-Besse event illuminates how unrealistic any number of assumptions used to risk inform the PIP can prove inaccurate and unfounded. Davis-Besse inspections of the entire vessel head were neglected because the vessel head was falsely assumed to be a low risk significant area of the primary pressure boundary. FirstEnergy argued in its waiver request to GL 2001-01 inspection reports that the top of the Davis-Besse reactor pressure vessel was a low risk area (the fact that there were no industry reports of CRDM nozzle cracking in the upper most portion of the vessel head penetrations was used as justification not to look.). Other symptoms and indicators were ignored because of the same "It Cant Happen Here" short-sited analysis (i.e. continuous clogging of containment and radiation monitor air filters). The PIP was used to in effect eclipsed an effective Inspection Process. While the PIP may reduce the regulatory burden and cost to licensee, broad inappropriate use effectively undermines necessary and deterministic inspections.

(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?

APPARENTLY NOT. The question remains where was the INPO and WANO inspection, oversight and guidance process during the years of vessel head degradation at the Davis Besse site? Apparently, the industry's own ultra-secret self-police force missed the chronic and severe deterioration of the Davis-Besse vessel head. Because the INPO and WANO reporting process is withheld from public disclosure, the entire ROP process, excluding safeguards materials, should be regarded as a publicly accountable process not a duplicitous process.

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

No response.

(5) Is the information in the inspection reports useful to you?

Yes. Detailed inspection reports lend to the transparency of the agency process, emerging safety issues, monitoring and resolution of previous identified issues.

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

Not Necessarily. The SDP process is unduly slow in establishing preliminary color findings and final risk determinations. In several licensee cases, NRC took more than nine months to resolve findings during which the predominant color finding was a de facto "grey." NIRS finds no acceptable reason for these types of delays other than an indication of extensive and inappropriate negotiations between the regulator and the purported regulated.

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

NO. The NRC is inconsistent in its response to performance issues as an apparent result of a flexible negotiation process between NRC management and the licensee. NRC management is too liberal in its application of discretionary enforcement for violations or the distribution of "Get Out Of Jail Free" cards to license.

(8) Is the information contained in assessment reports relevant, useful, and written in plain English?

It is helpful that NRC presents this information in English.

(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 subjective judgment)?

NO. The ROP is a process of negotiation between the NRC and the licensee in collaboration with the combined resources of the Nuclear Energy Institute. The nature of negotiation and its goal of "getting to yes" is inherently unpredictable and subjective. The fact that NRC and the licensee have prioritized production over public safety through a series of contortions, convolutions that ignore regulatory requirements and guidance provides for a "creative" process biased in favor of a common agenda.

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

NO. As exemplified by the waiver of Davis-Besse's compliance to NRC Bulletin 2001-01 and the agency's flip flop on the issuance of an Order based on Regulatory Guide 1.174, the agency has demonstrated a willingness to accept a risk-misinformed process in spite of its own guidelines and Code of Federal Regulation.

(11) Is the ROP understandable and are the processes, procedures and products clear and written in plain English?

NO. It is incomprehensible that the ROP produced all GREEN findings for the Davis-

Besse nuclear power station leading up to the discovery of extensive damage to the CRDM vessel head penetrations and the reactor pressure vessel head. The process, the procedures and the products were entirely based on misleading and false assumptions.

(12) Does the ROP provide adequate assurance that plants are being operated and maintained safely?

NO. The Davis-Besse event not only shattered any public audience alert to the ROP but it significantly damaged the agency's self-confidence in its regulatory judgment. As outlined in the remarks of Dr. George Apostolakis, MIT and chair of the NRC Advisory Committee on Reactor Safeguards, before the Nuclear Safety Research Conference on October 30, 2002, "Recent events have shaken our confidence in our assumption. The NRC and DBNPS failed to adequately review, assess and follow-up on relevant operating experiences. DBNPS failed to assure that plant safety issues would receive appropriate attention. The NRC failed to integrate known or available information into its assessments of DBNPS's safety performance."

(13) Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process?

The NRC should expose and fully disclose the extent of negotiating that transpires during the ROP by opening up the process to public participation rather than sequester the process behind closed doors.

(14) Does the ROP enhance public confidence?

NO. For the above stated reasons.

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

NO. The above statement is true only if it is applied to a definition of the "public" as the licensee. For example, NIRS and other public interest groups have been shut out of the ROP for Physical Protection Significant Determination Process. Prior to 9/11, NIRS participated as a public stakeholder in plant security meetings and witnessed the industry's aversion, to-the-man, in allocating sufficient and needed resources to the physical security of nuclear power stations as determined by NRC Operational Safeguard Response Evaluations. Since 9-11, all public stakeholders have been barred from the ROP on security matters. There is no doubt in our minds that industry is continuing its agenda to minimize and reduce security costs in spite of the clear and present danger without the public advocacy participation.

(16) Has the NRC been responsive to public inputs and comments on the ROP?

NO. The public interest community has repeatedly submitted comments to NRC to no avail. NIRS expects no more from NRC with regard to these comments.

(17) Has the NRC implemented the ROP as defined by program documents?

NO RESPONSE

(18) Does the ROP reduce unnecessary regulatory burden on licensees?

YES. This is a rhetorical question. NIRS would only qualify that the ROP sets out to not only reduce "unnecessary" regulatory burden but any burden of regulation at all. NIRS contends that the reduction of regulatory burden and the elimination of regulatory enforcement is to be the sole purpose of the process under the guise of increased oversight.

(19) Does the ROP result in unintended consequences?

YES. It has further undermined the public confidence in the NRC that it can or is even willing to effectively manage nuclear reactor safety and enforcement regulations intended to protect the public health and safety. It is now amply clear that the agency only intended to please the nuclear industry.

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

Has the NRC established any threshold for the identification of reckless operator performance what-so-ever within the ROP other than allowing an operator to melt down the core that provides for enforcement action including the suspension or revocation of a reactor operating license? No. How is it that such provisions exist for a common drivers license to protect the public safety from irresponsible drivers but not nuclear reactor managers and operators? Does the ROP require a catastrophic nuclear accident to occur before it will establish such a benchmark? Probably so.

The lack of NRC public accountability and its patronizing public responses along with its continued collaborative pursuit of a common agenda with an aging and increasingly deteriorated industry under greater financial pressure are converging paths on such a nuclear disaster.

NRC should genuinely pursue its mandate to uphold the public health and safety as its primary mission rather than continue as the promoter, apologist and shield for the financial and expansionistic interests of the nuclear industry.

Thank you,

Paul Gunter, Director
Reactor Watchdog Project