

STATE OF ILLINOIS
DEPARTMENT OF NUCLEAR SAFETY

1035 OUTER PARK DRIVE • SPRINGFIELD, ILLINOIS 62704
217-785-9900 • 217-782-6137 (TDD)

George H. Ryan
Governor



Thomas W. Ortziger
Director

December: 23, 2002

11/22/02
67FR70468

12

RECEIVED
NOV 23 11 AM 9:24
Rules and Directives

Mr. Michael T. Lesar
Chief, Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Dear Mr. Lesar:

Attached are public comments on the Third Year of Implementation of the Reactor Oversight Process, as requested in the Federal Register notice of November 22, 2002. The Illinois Department of Nuclear Safety appreciates the opportunity to make comments on what we consider to be a program of major importance in safeguarding the health and safety of the public.

If there are any questions about these comments, or further clarification is desired, please contact Mr. Gary Wright of my staff at (217) 785-9851 or wright@idns.state.il.us.

Sincerely,

Thomas W. Ortziger

TWO:sld

Template = ADM-013

E-RIDS = ADM-03
Call = M. Hanley (4543)



**SOLICITATION OF PUBLIC COMMENTS ON THE THIRD YEAR OF
IMPLEMENTATION OF THE REACTOR OVERSIGHT PROCESS (ROP)**

Questions related to specific Reactor Oversight Process (ROP) program areas:

- (1) Does the Performance Indicator Program minimize the potential for licensees to take actions that adversely impact plant safety?

Generally, licensees work to ensure that all their PI's remain green. So concentrating on the limited scope of activities covered by the PI probably minimizes actions that adversely impact plant safety in that particular area. But this concentrated attention potentially reduces that given to other important areas not specifically covered by the PI. It would be more accurate to say that the potential is reduced, but not minimized.

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

This is a question area not easily measured, and is one that might warrant more attention in developing a means to measure it; perhaps using industry historical databases. In any case, the two elements of PI's and inspections do not exclusively reinforce one another. We believe that operator training and near-miss LOCA's have safety significance. However, no inspection or PI caught a recent lapse in licensed operator training requirements or the Davis Besse hole-in-the-head event.

The NRC should be on guard for an attitude that if an inspection finding is perceived not to rise above the level of green, then there is no point in mentioning it in an inspection report. The inspection reports should be of sufficient detail that these deficiencies can be categorized and trended. It is important that the ROP not become pre-occupied with filling inspection hour quotas to the point where inspectors don't have the latitude to follow their instincts to recognize and pursue potential problems.

- (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?

No comment.

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

No comment.

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

Yes and no. Yes, the reports serve as a broad overview of a licensee's performance. But to be useful, as already mentioned, they are sometimes of insufficient detail to allow trending, or evaluation of the collective safety effects of several otherwise insignificant events.

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

The cornerstones are not directly comparable; therefore, they cannot yield equivalent results. The Davis Bessie reactor head event is an example where the answer would be no. Items screened away as low in significance added up to be very safety significant in the final analysis (reference memo Howell to Kane dated September 30, 2002, LESSONS LEARNED). Also, the way significance levels changed following the Indian Point steam generator tube rupture event (initially RED but eventually screened back to YELLOW) would indicate that significance is not easily determined. These two examples, plus the fact that cross-cutting issues play a part in any event and are not measured, makes us conclude that equivalence across cornerstones doesn't always exist.

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

Yes, we believe so.

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

The reports are written in a manner that is easily understood. Refer to above responses in regard to usefulness and relevance.

(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)?

Yes, the oversight process is predictable and objective. However, some think the process is too prescriptively driven and restrictive. For example, inspectors must ensure inspection hours cover an ROP activity, even if there is not much of real safety value to inspect in that area.

How the facts that go into an objective decision-making process are obtained is also important. For example, if facts are obtained from a PRA analysis that is done by personnel that are not familiar with the PRA's strengths and weaknesses and the plant itself, results could be skewed.

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

Yes, if the facts used to base risk decisions are adequately obtained (see question 9 above). However, after an SDP is implemented, licensees often provide better, more focused, and sometimes even less conservative data to contribute to final risk decisions.

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

Yes.

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

While there is general acknowledgment that the ROP, being risk-informed, performance-based and more objective, is better than the old, more subjective system of Systematic Assessment of Licensee Performance, there is not unanimous acknowledgment that it is providing adequate assurance.

In the deregulation-driven power shift from strict government regulation to industry self-regulation, the program has not yet evolved to the point where the outcome of adequate assurance is certain. The resulting shift seems to have changed the regulator's role to one of auditor, rather than a pro-active seeker of precursors that could lead to larger events. Unless event driven, licensees seem to be the gatekeepers of what is deemed serious enough to warrant attention.

Neither the ROP, nor licensee quality programs, connected enough dots to avert a near-miss at Davis Besse, even after the possibility of a problem was communicated by the regulator well in advance. In an effort to color-code everything into cornerstones, and to categorize them into well-organized safety significant categories, the real problem was not recognized until it was almost too late. The essence of having professional and independent oversight was lost. The fact is that the NRC has yet to issue a sanction as a result of Davis Besse. This proves the ROP system is slow to react, and a strict performance-based approach is not adequate. Yet both NRC and INPO have documented widespread management failures as root causes.

Therefore, IDNS continues to assert that adequate protection will not be assured for the whole family of nuclear plants until the ROP considers human performance in the cross-cutting issues in the process, and all licensees genuinely embrace risk-based regulation to the point where regulatory reforms no longer need to be voluntary.

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

Improved efficiency: Yes the ROP is more efficient. Baseline inspections, monitoring PI data, and action matrices make the ROP more efficient and predictable. The one exception is the significance determination process that still needs improvement.

Improved effectiveness: No, the ROP is not more effective for reasons mentioned above.

Improved realism: No, because the ROP is not adequate to address the real root cause of any serious safety issue; human performance failure.

(14) Does the ROP enhance public confidence?

From public meeting attendance, it seems the general public remains ambivalent about the ROP process, and has confidence in government regulators to do effective oversight for them. Those with the most radiological safety risk living near a plant also have economic reasons factored into their radiological safety risk-acceptance attitudes. So if the ROP has enhanced general public confidence, it is difficult to measure. IDNS passed out 11,700 doses of potassium iodide pills in our emergency planning zones in 2002. This indicates that there are a fair number of people still skeptical about nuclear power and governmental oversight.

From an informed public standpoint, access to ROP results through the Internet is a positive. IDNS continues to applaud the NRC for the openness of their regulatory activities and the access to information afforded by the staff and web pages.

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

Yes, theoretically. Almost all NRC activities are available for public participation at some level, and almost all important regulatory changes go out for public comment. So opportunities abound, and it is to NRC's credit that they seek such participation.

If there is a weakness in regard to public participation, few of the informed public outside the industry has the luxury of a full time representation in Rockville, which is what it takes to participate in the dialogue at all the various forums in which policy reforms are developed. It is our perception that the industry develops and drives regulatory changes in dialogue with the staff, and most meetings and workshops are held in Rockville. So, although there is ample opportunity to participate, it is not at a practical level for IDNS. The downside of this is that moderating voices are not heard at the developmental stages of new policy. Incidentally, web casting and archiving meetings is a valuable tool for those who can't be present, and we encourage expansion of this capability.

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

NRC has been responsive to IDNS comments on the ROP in the sense that our comments were acknowledged, if not adopted. In our February 22, 1999 comment letter we repeated previous comments that if participants were going to adopt PRA principles, and NRC was going to have a policy to that effect, licensees should be required to have a rigorous and current PRA. Furthermore, PI thresholds should be derived from the plant specific PRA. Use of PRA's is still voluntary.

Based on the performance history of Illinois plants under the old system, we noted that it is hard to inspect management effectiveness without being subjective, and agreed that PRA's provide focus but do not tell the whole story. We also recommended a "management effectiveness" cornerstone with PI's be established to monitor human performance and cross-cutting issues. If not adopted, then at least some inspections should be focused on areas of management effectiveness. So we can say that NRC has responded to IDNS comments, but not always in positive ways.

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

Yes.

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

Yes it does. Does it reduce regulatory burden too much in a deregulated business environment? Some think so. The Davis Besse incident might be seen as a wake-up call that the focus on the bottom line is overshadowing the focus on safety at some licensees. That the regulator was seduced into participating in this is significant.

The principle in performance-based regulation that something significant has to happen before a response is warranted is only valid if the regulations cover safety-significant root causes at a threshold low enough to be effective. It was the subjectivity in evaluating management effectiveness in the old system that set the safety bar so high. We believe it is time to question whether it is now too low.

(19) Does the ROP result in unintended consequences?

There may be some potential unintended consequences caused by PI guidance. Licensees naturally operate to the PI's, to the point of using green PI's as a management incentive. An unintended consequence might be that non-conservative decisions might be made to avoid a PI hit. For example, the 72-hour requirement to call a pending forced outage a planned outage may cause the licensee to make non-conservative decisions to keep a degraded unit on-line. Confirmation of this is that White finding submittals are met with considerable resistance.

There is also some potential to use risk to justify poor decisions. For example, risk analysis was used to justify a twenty-four inch opening in a primary containment in Mode 1 at one plant.

The ROP and performance-based regulation are not good predictive programs. This is an unintended consequence. Davis Besse showed that a plant can be operating in the green band and have an event just waiting to occur. The ability to determine precursors from compliance-based findings has been removed from the inspector's toolbox, and licensee quality assurance programs may not be picking up the slack.

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

Industry operational and safety performance has dramatically improved in the last few years, especially at the Illinois plants. We attribute this to excellent management attention and focus. We certainly don't see a need to revert back to the old compliance-based regulatory program. We continue to believe in the efficacy of risk and performance based regulation.

However, recent events have afforded the opportunity to see where gaps exist. The ROP is worth fine-tuning, and that process is far from over. It is also becoming evident that some subjectivity is desirable in cross-cutting areas that are not monitored effectively by objective means. Trending ability is reduced in the ROP, especially in the cross-cutting issues where problems show up first. It is critical to a regulator that performance trending in key areas be accomplished. While difficult, we don't believe this is too hard to accomplish. The industry cannot be expected to be self-policing in holding member managements accountable for unsatisfactory performance.

The ROP is very structured by design and does not afford the NRC inspectors much time or latitude to follow their instincts into perceived problem areas. As stated, introducing some subjectivity back into the regulatory process might be beneficial. Also, since the vast majority of inspection findings are documented as "very low safety significance", there is always the threat that inspectors will become frustrated and not put maximum effort into their inspections.

We still believe a PI for steam generator tube leakage is desirable, and improvements need to be made in the oversight of corrective action programs. Finally, it is a confidence builder to see a continued effort to standardize the PRAs, as decisions are now being made relying on PRA's of inconsistent quality.