



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005**

January 2, 2003

Commissioner James D. Boyd
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Dear Commissioner Boyd:

This responds to your letter dated December 30, 2002, in which you requested permission for the State of California to observe an upcoming inspection at the Diablo Canyon Nuclear Power Plant. That inspection, currently scheduled for the week of January 6, 2003, will be performed to verify the licensee's compliance with a United States Nuclear Regulatory Commission (NRC) Order issued on February 25, 2002, directing the adoption of certain interim compensatory measures (ICMs) to enhance the security of the facility.

I am pleased to inform you that I have approved the observation by your representative, Mr. Robert Greger. He and Mr. Gregory Pick, the NRC lead inspector, have already made initial preparations for coordinating the observation. Enclosed is a copy of the protocol that we will provide to Mr. Greger. Also enclosed is a copy of NRC Temporary Instruction 2515/148, "Inspection of Nuclear Reactor Safeguards Interim Compensatory Measures". This document, which contains Safeguards information, provides guidance for NRC inspectors to verify that nuclear power plant licensees are effectively implementing the ICMs imposed by the February Order. Temporary Instruction 2515/148 will be used to perform the inspection at Diablo Canyon. Mr. Greger may benefit from a review of the enclosed copy of Temporary Instruction 2515/148 prior to the inspection.

Your letter also requested that the State of California be provided with the Safeguards information versions of reports from other security compliance inspections at nuclear facilities in California. Accordingly, the Safeguards information version of NRC inspection report 50-361/02-013; 50-362/02-013, performed at the San Onofre Nuclear Generating Station the week of October 7, 2002, is enclosed.

I would like to draw your attention to the fact that the security and handling of Safeguards information is something that the NRC takes very seriously. Our regulations are very explicit about the measures that must be taken by those who are entrusted with Safeguards information to prevent its disclosure to unauthorized persons. These measures have been reviewed in a telephone conversation between Mr. Bill Maier and Ms. Barbara Byron of our respective staffs. I have enclosed a copy of the portions of Part 73 of NRC regulations dealing

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with the physical protection of plants and materials. I will depend on your assurance that the applicable measures in Part 73 will be followed.

You will be provided with the Safeguards information version of the Diablo Canyon inspection report when it is issued. As NRC Region IV completes future inspections of ICM compliance by California nuclear facilities, you will be provided with the Safeguards Information versions of those inspection reports. If you no longer desire to receive such reports or you have any questions about them, please contact Mr. Bill Maier of my staff at 817-860-8267.

Sincerely,

/RA/

Ellis W. Merschoff
Regional Administrator

Enclosures: as stated

cc (without enclosures):
Ed Bailey, Radiation Control Program Director
Radiologic Health Branch
State Department of Health Services
P.O. Box 942732 (MS 178)
Sacramento, California 94234-7320

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ENCLOSURE 1

PROTOCOL AGREEMENT FOR STATE OBSERVATION OF NRC INSPECTION

References:

USNRC Management Directive 5.2 - "Memoranda of Understanding With States"
USNRC Temporary Instruction 2515/148 - "Inspection of Nuclear Reactor Safeguards Interim Compensatory Measures"
10 CFR Part 73 - "Physical Protection of Plants and Materials"

General Protocol:

- This protocol shall apply only to the State of California's (the State) observation of the planned Nuclear Regulatory Commission (NRC) inspection of the Diablo Canyon site's compliance with the interim compensatory measures (ICMs) imposed by the NRC safeguards Order issued on February 25, 2002.

NRC Protocol:

- The Regional State Liaison Officer (RSLO) (Bill Maier - Telephone number 817-860-8267; E-mail wam@nrc.gov) will normally be the lead individual responsible for tracking requests for State observation, assuring consistency regarding these requests, and for advising the Regional Administrator on the disposition of these requests.
- The lead inspector (Greg Pick -Telephone number 817-860-8270; E-mail gap@nrc.gov) will communicate directly with the State observer on specific issues concerning the inspection.
- Limits on scope and duration of the observation period may be imposed if, in the view of the Regional Administrator, they compromise the efficiency or effectiveness of the inspection.
- The lead inspector will provide a briefing to the State observer on the regulations and policies concerning protection of Safeguards Information prior to the commencement of onsite inspection activities.
- The lead inspector will provide information on the inspection preparation, subject to the restrictions on Safeguards Information and licensee Proprietary Information, to the State observer in a timely manner.

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- The lead inspector or his designee will review any written notes submitted by the observer prior to leaving the site at the end of each inspection day. The purpose of this review will be to identify any written Safeguards Information generated by the observer.
- The lead inspector will provide basic identifying information concerning the observer to the licensee prior to the inspection start date to verify the observer's need for site access (whether escorted or unescorted) during the inspection.
- The lead inspector or his designee will, at State request, perform a timely review of any written trip report, management debrief or summary generated by the observer to verify that it does not contain any Safeguards Information as defined in 10 CFR Part 73.2 of NRC Regulations.
- The lead inspector will make it clear to the licensee that any views expressed by the State observer are not necessarily endorsed by the NRC. The lead inspector will also make it clear that only NRC has regulatory authority for inspection findings and enforcement actions regarding radiological health and safety and common defense and security for reactor licensees.
- NRC inspectors will provide continuous escort duty for the observer, whenever in the Protected or Vital areas of the facility, if the observer is granted only escorted access status by the licensee.

State Protocol:

- The State's request to observe the inspection will be made in writing through the State's Governor-appointed Liaison Officer to the NRC (Commissioner James D. Boyd - California Energy Commission). The request will identify the specific inspection and the facility to be observed.
- The State will identify in the written request one (1) individual to observe the inspection and will select that individual based on the ability to satisfy NRC regulation 10 CFR Part 73.21(c) (Access to Safeguards Information). The State will be responsible for determining the technical and professional competence of its representative who accompanies NRC inspectors.
- The State observer will contact the licensee directly to provide necessary information to gain access to the site and to the Protected and Vital Areas of the facility. Any desire on the part of the State observer to obtain unescorted access to the Protected or Vital Areas of the facility will be coordinated directly with the licensee, without NRC involvement. The State will make advance arrangements with the licensee for site

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access training and badging (subject to fitness for duty requirements), prior to the actual inspection.

- The State observer will not receive for custody any written proprietary or safeguards information. The observer will not make copies of any proprietary or safeguards information he or she is given access to.
- The observer will not remove any physical items from the site without NRC or licensee approval.
- The observer will submit any written notes he or she generates concerning security matters that may contain Safeguards information to the lead NRC inspector or his designee prior to leaving the site at the end of each inspection day. This will be done to allow the NRC inspector to review the notes to determine if any Safeguards Information is contained in them. Any Safeguards Information so identified shall be destroyed prior to leaving the site.
- An observer's communication with the licensee will be through the lead NRC inspector or his designee.
- The observer, if granted only escorted access status to the Protected and Vital Areas of the facility, will remain in the company of NRC personnel throughout the time of the inspection spent in those areas.
- State observation may be terminated by the NRC if the observer's conduct interferes with a fair and orderly inspection.
- The State observer, in accompanying the NRC inspectors, does so at his or her own risk. The NRC will not be responsible for injuries or exposures to harmful substances which may occur to the State observer during the inspection and will assume no liability for any incidents associated with the accompaniment.
- The State observer will be expected to adhere to the same professional conduct standards as NRC inspectors during an inspection accompaniment. Questions by the observer on this point should be discussed with the lead inspector.
- If the State observer notices any apparent non-conformance with safety or regulatory requirements during the inspection, he or she will make those observations promptly known to the NRC lead inspector. Likewise, when overall conclusions or views of the State observer are substantially different from those of the NRC inspectors, the State will advise the lead inspector and forward those views, in writing, to the NRC Region IV office (point of contact: RSLO).

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**ENCLOSURES 2 AND 3 CONTAIN
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ENCLOSURE 1

- Under no circumstances should State communications regarding these inspections be released to the public or the licensee before they are reviewed by the NRC and the NRC inspection report is issued. State communications may be made publicly available, similar to NRC inspection reports, after they have been transmitted to and reviewed by NRC. The State will submit any written trip report, management debrief or summary to the lead NRC inspector for review prior to transmittal, to verify that it does not contain any Safeguards Information as defined in 10 CFR Part 73.2 of NRC Regulations.

Signature of NRC Lead Inspector Date

Signature of State Observer Date

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**ENCLOSURES 2 AND 3 CONTAIN
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ENCLOSURE 2

NRC TEMPORARY INSTRUCTION 2515/148

**INSPECTION OF NUCLEAR REACTOR SAFEGUARDS INTERIM COMPENSATORY
MEASURES**

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ENCLOSURE 3

NRC INSPECTION REPORT

50-361/02-013; 50-362/02-013

**DOCUMENT CONTAINS
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**ENCLOSURES 2 AND 3 CONTAIN
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ENCLOSURE 4

APPLICABLE PORTIONS OF 10 CFR 73 CONCERNING SAFEGUARDS INFORMATION

§73.2 Definitions.

As used in this part:

Lock in the case of vaults or vault type rooms means a three-position, manipulation resistant, dial type, built-in combination lock or combination padlock and in the case of fences, walls, and buildings means an integral door lock or padlock which provides protection equivalent to a six-tumbler cylinder lock. Lock in the case of a vault or vault type room also means any manipulation resistant, electromechanical device which provides the same function as a built-in combination lock or combination padlock, which can be operated remotely or by the reading or insertion of information, which can be uniquely characterized, and which allows operation of the device. Locked means protected by an operable lock.

Need to know means a determination by a person having responsibility for protecting Safeguards Information that a proposed recipient's access to Safeguards Information is necessary in the performance of official, contractual, or licensee duties of employment.

Safeguards Information means information not otherwise classified as National Security Information or Restricted Data which specifically identifies a licensee's or applicant's detailed, (1) security measures for the physical protection of special nuclear material, or (2) security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities.

Security Storage Container includes any of the following repositories: (1) For storage in a building located within a protected or controlled access area, a steel filing cabinet equipped with a steel locking bar and a three position, changeable combination, GSA approved padlock; (2) A security filing cabinet that bears a Test Certification Label on the side of the locking drawer, or interior plate, and is marked, General Services Administration Approved Security Container on the exterior of the top drawer or door; (3) A bank safe-deposit box; and (4) Other repositories which in the judgement of the NRC, would provide comparable physical protection.

Vault means a windowless enclosure with walls, floor, roof and door(s) designed and constructed to delay penetration from forced entry.

Vault-type room means a room with one or more doors, all capable of being locked, protected by an intrusion alarm which creates an alarm upon the entry of a person anywhere into the room and upon exit from the room or upon movement of an individual within the room.

**DOCUMENT CONTAINS
SAFEGUARDS INFORMATION**

**ENCLOSURES 2 AND 3 CONTAIN
SAFEGUARDS INFORMATION
UPON SEPARATION THIS
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ENCLOSURE 4

§73.21 Requirements for the protection of safeguards information.

(a) *General performance requirement.* Each licensee who (1) possesses a formula quantity of strategic special nuclear material, or (2) is authorized to operate a nuclear power reactor, or (3) transports, or delivers to a carrier for transport, a formula quantity of strategic special nuclear material or more than 100 grams of irradiated reactor fuel, and each person who produces, receives, or acquires Safeguards Information shall ensure that Safeguards Information is protected against unauthorized disclosure. To meet this general performance requirement, licensees and persons subject to this section shall establish and maintain an information protection system that includes the measures specified in paragraphs (b) through (i) of this section. Information protection procedures employed by State and local police forces are deemed to meet these requirements.

(b) *Information to be protected.* The specific types of information, documents, and reports that shall be protected are as follows:

(1) *Physical protection at fixed sites.* Information not otherwise classified as Restricted Data or National Security Information relating to the protection of facilities that possess formula quantities of strategic special nuclear material, and power reactors. Specifically:

(i) The composite physical security plan for the nuclear facility or site.

(ii) Site specific drawings, diagrams, sketches, or maps that substantially represent the final design features of the physical protection system.

(iii) Details of alarm system layouts showing location of intrusion detection devices, alarm assessment equipment, alarm system wiring, emergency power sources, and duress alarms.

(iv) Written physical security orders and procedures for members of the security organization, duress codes, and patrol schedules.

(v) Details of the on-site and off-site communications systems that are used for security purposes.

(vi) Lock combinations and mechanical key design.

(vii) Documents and other matter that contain lists or locations of certain safety-related equipment explicitly identified in the documents as vital for purposes of physical protection, as contained in physical security plans, safeguards contingency plans, or plant specific safeguards analyses for production or utilization facilities.

(viii) The composite safeguards contingency plan for the facility or site.

**DOCUMENT CONTAINS
SAFEGUARDS INFORMATION**

**ENCLOSURES 2 AND 3 CONTAIN
SAFEGUARDS INFORMATION
UPON SEPARATION THIS
PAGE IS DECONTROLLED**

ENCLOSURE 4

(ix) Those portions of the facility guard qualification and training plan which disclose features of the physical security system or response procedures.

(x) Response plans to specific threats detailing size, disposition, response times, and armament of responding forces.

(xi) Size, armament, and disposition of on-site reserve forces.

(xii) Size, identity, armament, and arrival times of off-site forces committed to respond to safeguards emergencies.

(xiii) Information required by the Commission pursuant to 10 CFR 73.55 (c) (8) and (9).

(2) *Physical protection in transit.* Information not otherwise classified as Restricted Data or National Security Information relative to the protection of shipments of formula quantities of strategic special nuclear material and spent fuel. Specifically:

(i) The composite transportation physical security plan.

(ii) Schedules and itineraries for specific shipments. (Routes and quantities for shipments of spent fuel are not withheld from public disclosure. Schedules for spent fuel shipments may be released 10 days after the last shipment of a current series.)

(iii) Details of vehicle immobilization features, intrusion alarm devices, and communication systems.

(iv) Arrangements with and capabilities of local police response forces, and locations of safe havens.

(v) Details regarding limitations of radio-telephone communications.

(vi) Procedures for response to safeguards emergencies.

(3) *Inspections, audits and evaluations.* Information not otherwise classified as National Security Information or Restricted Data relating to safeguards inspections and reports. Specifically:

(i) Portions of safeguards inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system or that disclose uncorrected defects, weaknesses, or vulnerabilities in the system. Information regarding defects, weaknesses or vulnerabilities may be released after corrections have been made. Reports of investigations may be released after the investigation has been completed, unless withheld pursuant to other authorities, e.g., the Freedom of Information Act (5 U.S.C. 552).

**DOCUMENT CONTAINS
SAFEGUARDS INFORMATION**

**ENCLOSURES 2 AND 3 CONTAIN
SAFEGUARDS INFORMATION
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PAGE IS DECONTROLLED**

ENCLOSURE 4

(4) *Correspondence.* Portions of correspondence insofar as they contain Safeguards Information specifically defined in paragraphs (b)(1) through (b)(3) of this paragraph.

(c) *Access to Safeguards Information.* (1) Except as the Commission may otherwise authorize, no person may have access to Safeguards Information unless the person has an established "need to know" for the information and is:

(i) An employee, agent, or contractor of an applicant, a licensee, the Commission, or the United States Government. However, an individual to be authorized access to Safeguards Information by a nuclear power reactor applicant or licensee must undergo a Federal Bureau of Investigation criminal history check to the extent required by 10 CFR 73.57;

(ii) A member of a duly authorized committee of the Congress;

(iii) The Governor of a State or designated representatives;

(iv) A representative of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who has been certified by the NRC;

(v) A member of a state or local law enforcement authority that is responsible for responding to requests for assistance during safeguards emergencies; or

(vi) An individual to whom disclosure is ordered pursuant to §2.744(e) of this chapter.

(2) Except as the Commission may otherwise authorize, no person may disclose Safeguards Information to any other person except as set forth in paragraph (c)(1) of this section.

(d) *Protection while in use or storage.* (1) While in use, matter containing Safeguards Information shall be under the control of an authorized individual.

(2) While unattended, Safeguards Information shall be stored in a locked security storage container. Knowledge of lock combinations protecting Safeguards Information shall be limited to a minimum number of personnel for operating purposes who have a "need to know" and are otherwise authorized access to Safeguards Information in accordance with the provisions of this section.

(e) *Preparation and marking of documents.* Each document or other matter that contains Safeguards Information as defined in paragraph (b) in this section shall be marked "Safeguards Information" in a conspicuous manner to indicate the presence of protected information (portion marking is not required for the specific items of information set forth in paragraph §73.21(b) other than guard qualification and training plans and correspondence to and from the NRC). Documents and other matter containing Safeguards Information in the hands of contractors and agents of licensees that were produced more than one year prior to

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**ENCLOSURES 2 AND 3 CONTAIN
SAFEGUARDS INFORMATION
UPON SEPARATION THIS
PAGE IS DECONTROLLED**

ENCLOSURE 4

the effective date of this amendment need not be marked unless they are removed from storage containers for use.

(f) *Reproduction and destruction of matter containing Safeguards Information.* (1) Safeguards Information may be reproduced to the minimum extent necessary consistent with need without permission of the originator.

(2) Documents or other matter containing Safeguards Information may be destroyed by any method that assures complete destruction of the Safeguards Information they contain.

(g) *External transmission of documents and material.* (1) Documents or other matter containing Safeguards Information, when transmitted outside an authorized place of use or storage, shall be packaged to preclude disclosure of the presence of protected information.

(2) Safeguards Information may be transported by messenger-courier, United States first class, registered, express, or certified mail, or by any individual authorized access pursuant to §73.21(c).

(3) Except under emergency or extraordinary conditions, Safeguards Information shall be transmitted only by protected telecommunications circuits (including facsimile) approved by the NRC. Physical security events required to be reported pursuant to §73.71 are considered to be extraordinary conditions.

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