

UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
WASHINGTON, D.C. 20555

July 24, 1987

NRC INFORMATION NOTICE NO. 87-33: APPLICABILITY OF 10 CFR PART 21
TO NONLICENSEES

Addressees:

All NRC licensees.

Purpose:

This notice is provided to inform addressees of a potential generic problem concerning the applicability of 10 CFR Part 21 to certain fabrication, erection, installation, modification, inspection, testing, and training services provided to licensees. It is expected that recipients will review the information for applicability to their facilities and consider actions, if appropriate, to preclude similar problems. However, suggestions contained in this information notice do not constitute NRC requirements; therefore, no specific action or written response is required.

Description of Circumstances:

During recent NRC inspections at the Byron Station, Units 1 and 2, it was noted that the licensee, Commonwealth Edison Company (CECo), had failed to appropriately apply the requirements of 10 CFR Part 21 to onsite contractors. These contractors provided fabrication, erection, installation, modification, maintenance, inspection, and testing services for the Byron facility. During interviews with senior CECo management, the NRC was informed that CECo had made the decision not to specify applicability of the requirements of 10 CFR Part 21 for any of their onsite contractors. During a separate NRC inspection, it was also noted that Iowa Electric Light and Power Company (IELP) had failed to appropriately apply the requirements of 10 CFR Part 21 to a local vendor that had repaired/rewound Class 1E electrical equipment for the Duane Arnold Nuclear Power facility. IE Information Notice 85-101, "Applicability of 10 CFR 21 to Consulting Firms Providing Training," was previously issued on December 31, 1985, to inform licensees and consultants of a potential generic problem concerning the applicability of 10 CFR Part 21 to certain training activities provided by consultants. The notice was issued after an NRC vendor inspection of a company which provided consulting services, including training, to the nuclear industry disclosed that licensees had failed to appropriately apply the requirements of 10 CFR Part 21 to the consultant providing the training.

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Concurrence Copy

Discussion:

The Commission is taking this opportunity to emphasize the responsibilities of licensees under the requirements of 10 CFR Part 21, "Reporting of Defects and Noncompliance." 10 CFR Part 21 establishes procedures and requirements for the implementation of Section 206 of the Energy Reorganization Act of 1974, as amended. Section 206 imposes reporting responsibilities on directors and responsible officers of firms constructing, owning, operating or supplying the components of any facility or activity which is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended. The focus of Section 206 goes beyond those entities licensed or regulated by the Commission to all entities that engage in the activities described in the regulation.

10 CFR 21.3(c) states that the terms "constructing" or "construction" include the design, manufacture, fabrication, placement, erection, installation, modification, inspection, or testing of a facility or activity that is subject to 10 CFR Part 21 and consulting services which are related to the facility or activity that are important to safety. 10 CFR 21.3(1) states that the terms "supplying" or "supplies" means contractually responsible for a basic component used or to be used in a facility or activity subject to 10 CFR Part 21. 10 CFR 21.3(a)(3) states that "in all cases 'basic component' includes design, inspection, testing, or consulting services important to safety that are associated with the component hardware, whether these services are performed by the component supplier or others." Hence, onsite and offsite construction services are subject to the provisions of 10 CFR Part 21 whenever these services are associated with a basic component as defined in 10 CFR 21.3(a)(1). Although 10 CFR Part 21 obligations are applicable, whether or not the contractor has been contractually obligated to the provisions of 10 CFR Part 21, licensee procurement of such services should nevertheless specify the applicability of 10 CFR Part 21 as stated in 10 CFR 21.31 unless such services fall under the definition of "commercial grade item" as defined in 10 CFR 21.3(a)(4). Any deviation discovered following the suitability for application review performed to dedicate a commercial grade item for a safety-related application would be required to be evaluated by the dedicating or subsequent user organization and, if appropriate, reported pursuant to the requirements of 10 CFR Part 21.

Further discussion and guidance on this matter is provided in NUREG-0302, Revision 1, "Remarks Presented (Questions/Answers Discussed) at Public Regional Meetings to discuss Regulations (10 CFR Part 21) for Reporting of Defects and Noncompliance," published in October 1977.* This publication provides NRC staff remarks on 10 CFR Part 21 as well as some legislative and legal discussions on 10 CFR Part 21 and its impact upon reactor, material, fuel cycle, and export licensees and related suppliers.

*NUREG-0302, Rev. 1, is available through the NRC/GPO Sales Program, U.S. NRC, Washington, D.C. 20555, (202) 275-2060.

No specific action or written response is required by this information notice. If you have any questions about this matter, please contact the Regional Administrator of the appropriate regional office or this office.

Charles E. Rossi
Charles E. Rossi, Director
Division of Operational Events Assessment
Office of Nuclear Reactor Regulation

Technical Contacts: Jaime Guillen, NRR
(301) 492-8933

M. P. Phillips, RIII
(312) 790-5530

R. S. Love, RIII
(312) 790-5593

Attachment: List of Recently Issued NRC Information Notices

LIST OF RECENTLY ISSUED
INFORMATION NOTICES 1987

Information Notice No.	Subject	Date of Issuance	Issued to
87-32	Deficiencies in the Testing of Nuclear-Grade Activated Charcoal.	7/10/87	All nuclear power reactor facilities holding an OL or CP.
87-31	Blocking, Bracing, and Securing of Radioactive Materials Packages in Transportation.	7/10/87	All NRC licensees.
87-30	Cracking of Surge Ring Brackets in Large General Electric Company Electric Motors.	7/2/87	All nuclear power reactor facilities holding an OL or CP.
87-29	Recent Safety-Related Incidents at Large Irradiators.	6/26/87	All NRC licensees authorized to possess and use sealed sources in large irradiators.
87-28	Air Systems Problems at U.S. Light Water Reactors.	6/22/87	All nuclear power reactor facilities holding an OL or CP.
87-27	Iranian Official Implies Vague Threat to U.S. Resources.	6/10/87	All nuclear power reactor facilities holding an OL or CP, research and nonpower reactor facilities, and fuel fabrication and processing facilities using or possessing formula quantities of special nuclear material.
87-26	Cracks in Stiffening Rings on 48-Inch Diameter UF ₆ Cylinders.	6/11/87	All uranium fuel fabrication and conversion facilities.
87-25	Potentially Significant Problems Resulting from Human Error Involving Wrong Unit, Wrong Train, or Wrong Component Events.	6/11/87	All nuclear power reactor facilities holding an OL or CP.

OL = Operating License
CP = Construction Permit

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*SEE PREVIOUS CONCURRENCES

D/DOEA:NRR

CEROS 87

07/1/87

*OGCB:DOEA:NRR

JGuillen

06/25/87

*C/OGCB:DOEA:NRR

CHBerlinger

05/27/87

*AGCE:OGC

SChidake1

06/01/87

*PPMB:ARM

TechEd

05/08/87

*Region III

RLove

05/11/87

*DFCMACUS:NMSS

RCunningham

05/ /87

*ABC/VIB:DRIS:NRR

EMerschoff

05/ /87

*OE:EDO

JLieberman

06/25/87

*DD:DRIS:NRR

BGrimes

06/18/87

*all of the above persons have reconcurred by phone on 7/20/87
with the exception of S. Chidake1 and Tech Ed.*

S Chidake1 indicated no legal objections by phone on 7/21/87

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07/ /87

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06/25/87

CUB 7/14/87
*C/OGCB:DOEA:NRR

CHBerlinger

05/27/87

*AGCE:OGC

SChidakeI

06/01/87

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TechEd

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05/11/87 *6/25/87*

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MHarwell
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DD:DRIS:NRR
BGrimes *By Phone*
06/18/87

*DFCMACUS:NMSS
RCunningham
05/ /87
AGCE:OGC
SCHidake1
06/01/87

OE:EDO *HJW*
JLieberman *for*
~~05/ /87~~ *6/25/87*
Region III
RLove *By Phone*
05/11/87

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Attachments:

1. IE Information Notice No. 86-101
2. List of Recently Issued NRC Information Notices

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06/ /87	05/11/87	05/ /87	05/ /87
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JGuillen	MHarwell	SChidake1	EMerschhoff
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EMerschhoff *- by phone*
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