

June 30, 2003

The Honorable Dennis J. Kucinich  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Kucinich:

On behalf of the Nuclear Regulatory Commission (NRC), I am responding to your April 29, 2003, letter regarding the NRC staff's inspection activities at the Davis-Besse nuclear power plant. You requested an individual response from each inspection team member. Each team member has reviewed this letter.

I share your concerns about the organizational performance at the Davis-Besse facility. To address those concerns, the NRC has developed an integrated strategy including inspection activities, special focused oversight, and senior management reviews. The inspection activities are designed to assess how the licensee is correcting and monitoring organizational performance and a safety conscious work environment. Focused agency oversight is provided under NRC Manual Chapter 0350, "Oversight of Operating Reactor Facilities in an Extended Shutdown as a Result of Significant Performance Problems." The oversight panel established under this Manual Chapter will review all relevant information and provide a recommendation to senior NRC management on the licensee's readiness for restart at the time the licensee advises that it is ready for restart.

In response to your initial concern, I would note that the concepts of "Safety Culture" and "Safety Conscious Work Environment" are separate, but related, and both are significant. Over the years, each has been addressed in a Commission policy statement. A safety conscious work environment is one element of the broader concept of safety culture.

The NRC has in place employee protection regulations (10 CFR § 50.7) to ensure that employees are free to raise safety concerns without fear of retaliation. The Commission believes it is appropriate at this time to develop guidance, in consultation with stakeholders, that would identify best practices to encourage a safety conscious work environment. The Commission further believes that the proposed guidance should emphasize training of licensee management on its obligations under the existing employee protection regulations and should provide information as to the recommended content of the training. In addition, in the area of safety culture, the NRC staff is monitoring developments abroad to ensure that the Commission remains informed about international efforts to measure and regulate safety culture and their effectiveness in developing objective measures that serve as indicators of possible problems with safety culture.

Your letter requested answers to six questions. Regarding your first three questions, you asked about NRC and licensee performance measures used at Davis-Besse and several other facilities to evaluate safety culture and for some comparisons among the facilities on the rigorosity of those measures. The NRC's oversight panel for Davis-Besse developed a special inspection plan that draws on a number of sources and builds on past experience

assessing performance in these areas. These sources include the many routine NRC inspections that provide insights into organizational performance including the employee concerns program, problem identification and resolution, operating experience, and procedure quality and usage. In the area of safety conscious work environment, the NRC has established specific inspection guidance in Inspection Procedures, IP 71152, "Problem Identification and Resolution" and IP 40001, "Resolution of Employee Concerns." The NRC also monitors concerns it receives and any substantiated cases of employee discrimination to provide further insight on whether the environment at a given facility is conducive to individuals raising safety concerns.

Previously at Millstone, and currently at Davis-Besse, the licensees used survey, interview, and observation techniques to assess the safety conscious work environment. FirstEnergy Nuclear Operating Company management also prepared its own approach to assessing and improving safety culture, since it was a key contributor to the vessel head degradation. This approach is detailed in its "Return to Service Plan" containing several component "building blocks" to address the various contributing causes that led to the degradation of the reactor vessel head. One of the "building blocks" is the "Management and Human Performance Improvement Plan," which includes actions to achieve improvement in organizational performance. Those actions include establishing a new senior management team for Davis-Besse, conducting leadership training with a focus on safety, implementing management observation and management monitoring programs, conducting periodic safety conscious work environment surveys, and establishing and holding staff accountable to new standards of excellence. The licensee also developed an internal methodology to assess the site's safety culture, partly using attributes documented in International Safety Advisory Group (INSAG) documents, INSAG-4, *Safety Culture* (1991) and INSAG-15, *Key Practical Issues in Strengthening Safety Culture* (2002). The methodology evaluates three major areas: (1) policy or corporate commitment to safety, (2) plant management commitment to safety, and (3) individual commitment to safety. Each major area is broken down into multiple attributes which are individually assessed against specific standards. Those assessments are utilized to develop an overall rating for the major areas. This process, including the attributes and standards, is currently under review by our inspection team. In addition, the licensee contracted with a consulting firm to independently evaluate the safety culture at Davis-Besse. FirstEnergy Nuclear Operating Company provided the independent contractor's evaluation to the NRC with a letter, dated April 23, 2003. The evaluation is accessible through the NRC's Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room). The ADAMS accession number for the document is ML031210501.

Regarding the comparison of the situation at Millstone with Davis-Besse, the NRC staff believes that while both plants failed to adequately correct problems, the cause of that failure was generally different at the two sites. At Millstone, employees felt constrained from raising issues because of a fear of retaliation which is indicative of a poor safety conscious work environment. Employees at Davis-Besse on the other hand did raise issues, but they observed that these issues were not adequately addressed or were allowed to go uncorrected for long periods of time. While individuals continued to raise issues, little was done to address the issues they raised. Consequently, the effectiveness of the corrective action program was significantly reduced. Because the causes of the problems were different, the actions necessary to correct the underlying problems at Davis-Besse are distinctly different from Millstone.

Regarding your fourth question, you asked whether any employees raised allegations of retaliation, internally or with the NRC in the past 24 months; whether the company or NRC investigated those complaints; and if investigated, what were the findings. In cases where an individual raised a complaint solely to the company, the NRC may not be aware of the complaint, or how that complaint was resolved. Regarding complaints of retaliation over the past two years, the NRC or Department of Labor has received a total of 15 complaints of retaliation involving employees at Davis-Besse during the period February 2001 to April 2003. One complaint brought to the NRC in February 2001, involving an example of discrimination by a low level supervisor was, after investigation by the NRC's Office of Investigations, substantiated. Enforcement action was taken against both the company and the supervisor. No other completed investigations substantiated the associated complaints, while investigations are ongoing for six of the complaints.

Regarding your fifth question, you asked for the standard being used by the company in its internal investigations of retaliation, and if the NRC had determined the standard was acceptable. The NRC may not be aware of concerns brought solely to the company, however, it is important to point out that the licensee is required to comply with 10 CFR 50.7, "Employee Protection." You also asked if there was any evidence that terminations or other adverse actions at Davis-Besse, have resulted in a reluctance to raise concerns, and what standard was being used to determine if there is a "chilling effect" at Davis-Besse. The NRC has received 25 concerns alleging a "chilled environment" at Davis-Besse over the same time period. The NRC considers a "chilled environment" concern to be substantiated if an individual states that he or she is fearful of raising safety concerns and the employee's actions support their statements. For example, the concern would not be substantiated if the employee stated he was fearful, but the employee routinely raised issues in the licensee's corrective action program. Of the 25 "chilled environment" concerns, seven were substantiated and three remain under review. In all cases where the concern was substantiated, the licensee took prompt corrective action to alleviate the employee's concern and reinforce the licensee's stated policy that employees were to be free to raise safety concerns without any fear of retaliation.

Regarding your last question, as I indicated earlier, comparisons to Millstone are not pertinent given the differences in the root causes of the problems. The NRC's inspection team is conducting inspections to ensure that Davis-Besse thoroughly evaluated its past performance, identified all significant root causes, and is assessing the corrective actions to ensure they have been properly structured to address the root causes, and that methods to measure the effectiveness of the corrective actions have been developed. The team's activities are based on existing NRC inspection guidance to review the licensee's employee concerns program and safety conscious work environment, and internationally recognized guidance to evaluate the effectiveness of the utility's management and human performance corrective actions. Upon completion of the inspection, the team will issue a summary report, documenting assessments and conclusions. We will provide a copy of the inspection report to your office when it is issued.

The Honorable Dennis J. Kucinich

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The NRC's Davis-Besse oversight panel and senior management are staying abreast of the issues at Davis-Besse and will be involved in any restart decision. I trust this information is responsive to your concerns. The NRC takes its safety responsibility seriously. Please contact me if additional information is needed.

Sincerely,

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Nils J. Diaz