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69FR 7025

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From: "DUGGER, Charles M" <cmd@nei.org>
To: <nrcprep@nrc.gov>
Date: Fri, Mar 19, 2004 12:32 PM
Subject: Best Practices to Establish and Maintain a Safety-Conscious WorkEnvironment (69 Fed. Reg. 7025; February 12, 2004)

In response to the NRC's request in the above-cited Federal Register notice, the Nuclear Energy Institute, on behalf of the commercial nuclear energy industry, offers the following comments for the NRC's consideration as it evaluates whether to develop a "best practices" document addressing issues related to Safety-Conscious Work Environment (SCWE).

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Rules and Directives Branch

Attachment

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NUCLEAR ENERGY INSTITUTE

Charles M. Dugger
VICE PRESIDENT, NUCLEAR OPERATIONS
NUCLEAR GENERATION DIVISION

March 19, 2004

Mr. Michael T. Lesar
Chief, Rules and Directives Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Best Practices to Establish and Maintain a Safety-Conscious Work
Environment (69 Fed. Reg. 7025; February 12, 2004)

Dear Mr. Lesar:

In response to the NRC's request in the above-cited Federal Register notice, the Nuclear Energy Institute, on behalf of the commercial nuclear energy industry, offers the following comments for the NRC's consideration as it evaluates whether to develop a "best practices" document addressing issues related to Safety-Conscious Work Environment (SCWE).

In short, the industry does not support the agency's development of a best practices document. The NRC's 1996 policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety and Compliance Concerns Without Fear of Retaliation,"¹ clearly identifies the NRC's expectations for development of a SCWE; the policy statement, however, appropriately places responsibility for meeting these expectations on the licensee, through its program implementation. Further, it is anomalous for a federal agency, such as the NRC, to produce a best practices document². This is usually, and should continue to be, within the industry's purview, as a best practices document is based on and must be updated to reflect new data and experiential information. The industry also believes it is inappropriate for the NRC to develop a best practices document because—whether

¹ See 61 Fed. Reg. 24336 (May 16, 1996).

² A search of the NRC's ADAMS system did not yield any other best practices documents developed by the NRC of the sort proposed for SCWE.

Mr. Michael T. Lesar

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documented as a NUREG/REG Guide or simply listed on the agency's web site—the best practices are likely to become, at least informally, a regulatory standard applied to licensees. The Commission specifically chose not to pursue this step last year. Finally, the industry is concerned that the NRC's proposed approach will create a false public perception that there is a single "right way" to achieve well-functioning SCWE programs.

Despite the industry's opposition to an NRC best practices document, we believe that there is a benefit to making relevant industry documents available to anyone who wishes to use them. More specifically, upon completion of the industry's final review of NEI's "Nuclear Power Plant Personnel-Employee Concerns Program-Process Tools in a Safety-Conscious Work Environment," it will be posted on the NEI public website.

For these reasons, and as is expressed in greater detail in the attachment hereto, the industry respectfully requests that the NRC not go forward with the proposed best practices project.

If you have any questions about the industry's position or would like to discuss these comments further, please feel free to contact me at 202.739.8112.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles M. Dugger". The signature is written in a cursive style with a long horizontal stroke at the end.

Charles M. Dugger

Attachment

Industry Comments on the NRC's Development of a Best Practices to Establish and Maintain a Safety-Conscious Work Environment (SCWE)

I. Introduction

In March, 2003, the Commission issued a Staff Requirements Memorandum (SRM) directing the staff to develop guidance to identify best practices to establish and maintain a SCWE. The SRM followed the Commission's decision not to proceed with the Discrimination Task Group's recommendation to promulgate a SCWE rule. The SRM was clear that any best practices effort should be undertaken in consultation with stakeholders. That directive notwithstanding, in a May 23, 2003, letter to the NRC Chairman, NEI President Joe Colvin proposed that the agency defer any effort to develop guidance until the industry completed the activities it had undertaken in this regard. Mr. Colvin also committed that "[o]nce completed, the industry would seek the opportunity to discuss the results of its efforts with the Commission."

On February 19, 2004, NRC staff held a public workshop to discuss the NRC's development of a best practices document. Representatives of NEI, on behalf of the industry at large, industry counsel with particular expertise in SCWE matters, including proposed enforcement for violations of 10 CFR 50.7, and a reactor licensee's Employee Concerns Program manager participated in the workshop.

Determining the wisdom of an NRC effort to produce a best practices document necessarily begins with a discussion of (1) the priority the industry already accords to maintaining a work environment in which employees freely identify safety issues; and (2) whether documents that compile basic principles and best practices for SCWE are already available to reactor licensees. Section II below addresses these two issues, as well as NEI's commitment to post on its web site NEI 97-05, "Nuclear Power Plant Personnel-Employee Concerns Program-Process Tools in a Safety Conscious Work Environment." The NRC should further consider whether, by developing a best practices document, the agency is inadvertently creating an informal regulatory standard; whether this effort would represent an efficient and effective use of NRC resources; and whether the agency's development of such a document could potentially create a false public perception. These points are discussed in Section III below.

II. SCWE is a Priority for the Commercial Nuclear Industry

The commercial nuclear industry clearly recognizes that safe and commercially successful nuclear generation depends on an environment in which workers freely identify and communicate safety concerns to management. The nuclear industry's clear recognition of this precept is evidenced by the substantial resources licensees

devote to promoting a SCWE at each nuclear plant. That is, the industry's recognition of the importance of SCWE is embodied in the number, quality and type of programs licensees have implemented over the course of the past two decades. For example, all licensees maintain and publicize in various ways their policy or policies to promote a SCWE. To effectuate those policies, all licensees train nuclear workers to understand their responsibility to identify safety concerns. Licensees also train managers and executives to ensure that they develop the necessary supervisory skills to respond appropriately to and resolve identified safety concerns. All licensees offer an alternative to line supervision for workers to communicate concerns, and most licensees provide multiple avenues, ranging from employee concerns programs, hotlines, ombudsman programs, and open door policies, to the option to report concerns to the NRC. Licensees, to varying degrees, survey their workforces and perform various self assessments to identify SCWE issues. Licensees, in various forums, share information on successful SCWE-related methods and programs and identify problems and issues related to handling safety concerns.

Although licensees became keenly aware of the need to address SCWE-related issues more than two decades ago, the programs, policies and training put into place—to ensure an open work environment exists at nuclear power plants—have been even more finely honed over time. Certain changes were made in response to the NRC's 1996 policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety and Compliance Concerns Without Fear of Retaliation."¹ And, as experience and organizational development research have created additional data and greater insight, licensees have continued to adjust their programs, policies and training to handle current issues properly and prevent others from arising in the future.

Its overall success in this area notwithstanding, the industry recognizes the benefit of a continual effort to strengthen existing SCWE practices. As such, the industry has captured and, on an ongoing basis, updates valuable information related to a well-functioning Employee Concerns Program (ECP) in NEI 97-05, "Nuclear Power Plant Personnel Employee Concerns Program-Process Tools in a Safety-Conscious Work Environment." This "tool box," as it is known within the nuclear industry, is in the final stages of its second revision. It is comprehensive enough to add value to an established program, yet versatile enough to help a licensee develop a start-up program. Like most good practices documents, it is intended to provide base options that can be used as is or particularized to meet a licensee's individual ECP needs. It is not intended, however, to dictate the specific contours of an entire ECP program.

In addition to providing general concepts related to the SCWE issue and how the NRC and DOL administer relevant statutes and regulations, the tool box contains examples of various documents demonstrating various approaches licensees have

¹ See 61 Fed. Reg. 24336 (May 16, 1996).

found to be effective in addressing specific issues. The following information contained in the tool box illustrates its breadth. Examples of procedures include: policy statements; checklists; surveys; and, job descriptions for ECP staff. In addition, there are suggestions for investigating claims; maintaining confidentiality; training; performing a self-assessments; using performance indicators and trending; using an independent third party investigator responding to NRC request for information; and, handling differing professional opinions.

As Mr. Colvin's May 23, 2003 letter to the Chairman clearly stated, the industry's voluntary actions demonstrate its strong support for the principles set out in the NRC's policy statement. The industry has voluntarily implemented programs to meet the policy statement's broad-based expectations. Furthermore, the industry already had developed material that encompasses—in some instances at a high level, in other instances with greater detail—many of the issues the NRC staff suggested be covered in a good practices document during its workshop.

Thus, upon completion of the industry's final review of the tool box, NEI will post it on its public web site, making the document available to anyone who wishes to view it. We are confident that the industry's tool box provides useful guidance and promotes approaches that are sufficiently flexible to meet the needs of a variety of ECP programs, including those of non-reactor licensees.

We note, however, that it is uncontested that no program or set of SCWE-related programs will be successful without appropriate management behavior, leadership and nurturing. Even implementing the features of a best practices document is no substitute for management commitment and constant vigilance by employees. No document can capture every SCWE practice, and no one way is the only "right" way to establish and maintain a SCWE or an ECP. We even recognize that there are other good practices that could be added to the tool kit. Despite these notes of caution, providing the industry's document on NEI's public web site should help achieve the Commission's interest in ensuring all licensees, not just reactor licensees, have access to information that can help them develop and maintain a SCWE. Relying on the industry's combined experiences (and an already existing document) also would eliminate the need for the NRC to expend its resources to develop one of its own and maintain and update it as additional information and lessons learned come to light.

III. It Is Inappropriate for the NRC to Produce a Best Practices Document

The industry believes it is inappropriate for the NRC to develop a best practices document because, whether it is documented as a NUREG/REG Guide or simply listed on the agency's website, it is likely to become, at least informally, a regulatory standard applied to licensees—a step the Commission specifically chose not to pursue last year.

The industry also believes that the NRC's development of a best practices document is not an appropriate use of agency resources. In order to develop a comprehensive document, the agency would have to expend a substantial amount of its own resources and, likely, call upon many other stakeholders. In addition, as noted above, a best practices document necessarily requires re-evaluation and updating as licensees gain even greater SCWE experience, together with advances in organizational development and other research disciplines that may provide additional insight.

The NRC's proposed approach also is likely to create a false public perception. The NRC's mere publication of the document would apply the regulator's imprimatur. Furthermore, it is hard to envision that such a document would not be used as a "checklist" of sorts by the Commission itself, agency inspectors and the public. Members of the public may be left with the impression that this document represents the "right way" to achieve well-functioning SCWE programs. Even if the NRC document included clear caveats—explaining that the document is not exhaustive and other good practices may be equally effective—the NRC's publication of the document invites the public to inquire why all licensees are not adopting all identified practices.

Finally, it was apparent during the February 19, 2004, workshop that the NRC is, at least in part, motivated to develop a best practices document out of concern that licensees other than reactor licensees have not made sufficient progress in the area of SCWE. Although the industry has no position on the NRC's underlying concern in this regard, if the agency believes there is a need to encourage improvements by other classes of licensees, there are a host of other approaches that will more efficiently, and potentially even more effectively, accomplish that objective. As just one example, the agency could issue an information notice to the classes of licensees about which it is concerned, reiterating the Commission's expectations as identified in the 1996 policy statement. Such an action would serve to emphasize—to the targeted classes of licensees—the need to establish and maintain a SCWE without expending significant NRC resources to create a best practices document.

IV. Conclusion

For the reasons stated, the industry respectfully requests that the NRC not go forward with the proposed best practices project.