

June 1, 2004

MEMORANDUM TO: Davis-Besse Nuclear Power Station IMC 0350 Panel

FROM: John A. Grobe, Chairman, Davis-Besse Oversight Panel **/RA/**

SUBJECT: REVISED APRIL 3, 2003, MINUTES OF INTERNAL MEETING OF THE DAVIS-BESSE OVERSIGHT PANEL
(Revised Attachment)

The implementation of the IMC 0350 process for the Davis-Besse Nuclear Power Station was announced on April 29, 2002. An internal panel meeting was held on April 3, 2003. Attached for your information are the minutes from the internal meeting of the Davis-Besse Oversight Panel, Reactor Coolant System Leak Test Plan; Management and Human Performance Inspection Phase 3 Plan; closed RAM items; and the "Open" Action Items List.

Attachments: As stated

cc w/att: D. Weaver, OEDO
J. Caldwell, RIII
G. Grant, RIII
S. Reynolds, DRP
B. Clayton, EICS
DB0350

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OFFICE	RIII	RIII	RIII	
NAME	RBaker/dtp	JGrobe for CLipa	JGrobe	
DATE	06/01/04	06/ /04	06/01/04	

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MEETING MINUTES: Internal IMC 0350 Oversight Panel Meeting

Davis-Besse Nuclear Power Station

DATE: April 3, 2003

TIME: 12:00 p.m. Central

ATTENDEES:

J. Grobe	M. Phillips	G. Wright
D. Passehl	D. Hills	J. Hopkins
J. Jacobson	T. Mendiola	S. Thomas
T. Mendiola	J. Rutkowski	M. Parker

Agenda Items:

1. Discuss Plant Status and Inspector Insights

C. Thomas provided a briefing on current plant activities.

2. Discuss Reactor Coolant System Leak Test Plan

J. Jacobson presented his "Reactor Coolant System Leak Test" inspection plan. The Panel approved the plan with comments related to observing some operations department activities during the test. The approved plan is attached to these meeting minutes.

3. Discuss Management and Human Performance Inspection Phase 3 Plan

G. Wright presented his Management and Human Performance Inspection Phase 3 Inspection Plan. The Panel approved the plan, which is attached to these meeting minutes.

4. Discuss/Approve Allegation Restart Criteria

The Panel discussed the criteria for requiring an allegation to be resolved prior to restart. The Panel approved that the criterion for requiring an allegation to be resolved prior to restart is whether the concern "involves specific information that substantively calls into question the operability of a component required per the plant's Technical Specifications."

5. Discuss New Allegations

The Panel discussed three new allegations.

6. Discuss Possible New Action Item

The Panel discussed an issue related to RAM Items E-19 and L-85, which involve leakage from the reactor coolant pumps. The Panel approved transferring ownership of the RAM items to D. Hills, who will take action to address the results of the NRC's

evaluation in the resident inspector report. The Panel determined that no new action item was necessary.

7. Discuss Any Allegations for Which an Extension Was Requested

M. Phillips presented this discussion. There were no allegations for which an extension was requested.

8. Discuss RAM Closure Forms

The Panel approved closure of RAM items. The closure forms for the RAM items which were closed are attached to the minutes of this meeting.

9. Discuss Action Items

The Panel discussed the list of "open" action items. The Panel directed Action items 132, 143, 149, 150, 162, 163, 166, 179, 180, 181, 183, and 184 be closed due to the actions being satisfactorily accomplished or the action is already encompassed in another existing open action item.

Item 24a - Discuss making information related to HQ/licensee calls publicly available

Completion of Phase 3 sampling plan scheduled for Late April. Discuss again in late April.

Item 54a - Review TSP amendment and advise the panel on the need for a TIA on Davis-Besse

Messrs. Beckner, Grobe, Ruland, and Mendiola to discuss separately.

Item 132 - Consolidate RAM (Closed).

Item 143 - Prepare a special inspection plan for the NOP test (Closed).

Item 149 - SRI to coordinate with GWright inspection of corrective actions that have been completed by the resident staff. The intent is to find ways to allow GWright's inspection to take credit for what the resident staff already accomplished (Closed).

Item 150 - S. Burgess to develop a position paper on the state of plant risk when the plant attains Mode 4 for the first time. The purpose is to support NRC scheduling of major inspections until closer to Mode 2 (Closed).

Item 162 - Modified Containment Walkdown List assessment to look into effects on ILRT and NOP/NOT tests (Closed).

Item 163 - Flag Allegations requiring action prior to restart (Closed).

Item 166 - Once DRS has developed a draft CY-2004 baseline inspection schedule for Davis-Besse (in conjunction with the upcoming regional inspection planning meeting), DRS will present this to the 0350 panel for review (Closed).

Item 179 - Provide answer to questions and document in next inspection report: 1) Did NRC's O350 Panel review FirstEnergy's analysis to forego inspection and testing of two of the four reactor coolant pumps to assure compliance with Technical Specifications and regulatory requirements? (RAM Item E-23) 2) If so, what were the NRC findings? (RAM Item E-24) (Closed).

Item 180 - Draft a memo to NRR (Tad Marsh) to include in response to AMS RIII-03-0014 (Kucinich Petition) that RIII reviewed the petition and there are no new technical issues (Closed).

Item 181 - Provide an e-mail to the AAA re: chilling effect letter not needed and request her concurrence in that decision (Closed).

Item 183 - Research historical criteria for allegations requiring to be resolved prior to restart for other plants that have had similar problems (Closed).

Item 184 - Provide input to the resident inspection report (IR 03-04) regarding Checklist Items 1.a.; 6.a.; 6.e.; & 6.f. (Closed).

10. Discuss/Update Milestones and Commitments

The Panel reviewed and discussed upcoming milestones and commitments. No new items were identified.

Item Number	Action Item (Date generated)	Assigned to	Comments
24a	Discuss making information related to HQ/licensee calls publicly available	Panel	<p>Discuss by June 30, after safety significance assessment complete; 6/27 - Invite Bateman to panel mtg. To discuss what else is needed to closeout the CAL (i.e. quarantine plan); 7/2 - NRR not yet ready to discuss; 7/16 - See if procedures have changed on CAL closeout - does JD need to send letter?; 7/18 - Discussed - is there an applicable regional procedure?; 8/6 - Discussed. Need to determine the final approach on the core removed from the head and the final approach on the head before the quarantine can be lifted; 8/22 - Revisit action item after letter sent to licensee confirming plans with old vessel head (head may be onsite longer than originally anticipated); 8/29 - Memo to be sent to Region, with a letter to go out next week; 10/01- Discussed.</p> <p>1) Conduct NRC staff survey-due 10/7 2)Memo to NRR - due 10/11 3) Region to issue letter; 11/07- Letter required from NRR on head quarantine status; 11/19 - Letter in draft; 01/03 - A. Mendiola to look at phone conference writeups on quarantine decision making to determine if they can be released to the public; 01/07 - discussed; 01/21 - discussed; 01/31- A. Mendiola's action; 02/11 - Completion of Licensee Phase 3 sampling plan required; 02/21 - 17.5 Rem to cut samples, Less samples may be required; 04/03 - Completion of Phase 3 sampling plan scheduled for late April - discuss again then</p>

Item Number	Action Item (Date generated)	Assigned to	Comments
54a	Review TSP amendment and advise the panel on the need for a TIA on Davis-Besse (7/2)	D. Pickett	<p>7/9 - Discussed. Will wait for response from licensee; 7/16 - Discussed - added action item 54b; 8/6 - Sent to the licensee on 7/22 and a response is due by 8/22; 8/22 - Discussed - need to check if response has been received; 8/27 - Received response - DRS is reviewing - will fax to NRR for 54b; 8/29 - Discussed, DRS report of response to be issued to panel prior to item 54b; 10/1-Discussed. DRS coordinating with NRR 11/07-Discussed - On hold for draft with specific information; 12/10 - B. Dean believed B. Bateman thought a calculation for sufficient volume of TSP was completed to Technical Specification value. However questions whether the calculation was to Technical Specification or actual TSP level remain; 01/03 - Item under NRR review. Calculation completion expected on Jan 17. Allegation issue in RIII domain; 01/07 - Allegation Item #3 under NRR Review for Resolution; 01/21 - Item #3 is under Region III control for final letter, holding for NRR input; 02/11 - Writeup for NRR input provided 4 answers, going back to reviewer to ensure specific tasking is clear to answer allegation concerns. Action item 54c created; 02/21 - Allegation at 242 day mark. Effective expression of due date required; 04/03 - Messrs. Beckner, Grobe, Ruland, & Mendiola to discuss</p>

Item Number	Action Item (Date generated)	Assigned to	Comments
54c	In relation to action item 54a - Assess method to ensure Technical Specifications are adequate for a cycle, administrative controls vs. amending Technical Specifications (02/11)	A. Mendiola	02/11 - Address first meeting in March
73	Send feedback form on IMC 0350 procedure to IIPB (8/6)	Lipa Mendiola	8/6 - Generate feedback after panel meetings reduced to once per week; 8/29 - Discussed - no change; 10/1 - Discussed; 11/7 - D Passehl sent email to C Carpenter and D Coe indicating that we would be able to perform a review of the draft IMC 0350 during the first quarter of 2003; 12/3- discussed; 01/03 - 2 parts, short part- C. Lipa with P. Harris, long part- B. Dean; 01/07 - 2 nd larger response will require meeting between all parties; 01/21 - Communications with P. Harris; 01/31-Meeting with P. Harris on Feb 4; 02/11 - Many concerns identified by the panel for inclusion; 02/21 - July 1 due date for larger input.
97	Bulletins 2002-01 and 2002-02 response and acceptance (9/5)	NRR	11/07 - Discussed, further research and discussion required; 01/07 - RAI response expected Mid February; 01/31- On track; 02/11 - New Orders will supercede BL2002-01 and BL2002-02 responses with the exception of the BL2002-01 Boric Acid Corrosion program information request; 02/21 - Licensee RAI response delayed. Both Order and BL2002-01 Boric Acid Corrosion program responses to be tracked as RAM items.

Item Number	Action Item (Date generated)	Assigned to	Comments
126	Review Davis-Besse/Vessel Head Degradation web site content for ease of use by the public (11/07)	Strasma	02/11 - Checked, but revisiting item; 02/21 - Web site being reassessed.
127	Decision of the extent of the needs for resolution of the technical root cause (11/19)	W. Dean	12/10 - Completion date requested; 12/19 - Discussed - Est. delivery Jan. 31 st , put in Jan-Feb report 03-02; 01/31 - On track; 02/21 - J. Hopkins has the review. Through comprehensive review, A. Hiser determined OI concerns did not effect the technical root cause. Attachment of Technical Root Cause Review on next Inspection Report
132	Consolidate RAM (12/19)	C.Lipa/ A.Mendiola	Due Fri 1/17; 01/31 - Item open; 02/11 - working; 02/21 - to determine the need for ONE list; 04/03 - Closed.
133	12/29 Taping of debate	J.Collins/ D.Simpkins	01/03 - Licensee to deliver tape to J. Strasma; 02/24 - Tape sent
136	NRR acceptance of NOP criteria and method (01/03)	W. Dean	01/07 - Item discussed. Meeting summary of November 26, 2002, meeting has notation of NRR staff impressions of test plan. Once drafted, issue will be surveyed to staff to determine if consensus is correct; 01/21 - Meeting summary to discuss Flus System, Test agreement, and future inspections; 1/31 - T. Chan fwd to J. Hopkins; 2/11 - J. Jacobson questions need to be folded in (chem-wipes); 2/21 - Polling of staff discussed; 2/24 - Polling of staff by March 7; 3/25 - Staff to be polled after 4/4/03 meeting in headquarters, and meeting should address whether a rational basis exists that the bottom head is not leaking, and whether a critical flaw size will not appear during the next operating cycle.

Item Number	Action Item (Date generated)	Assigned to	Comments
138	Evaluate the effectiveness of the Comm Plan (01/07)	A. Mendiola, C. Lipa	01/31 - Ongoing; 02/21 - New EDO Comm Plan for Crisis Update, A. Mendiola to review for inclusion.
143	Prepare a special inspection plan for the NOP test (01/09)	J. Jacobson	02/21 - date to be determined; 04/03 - closed.
145	Prepare a special inspection plan for the restart readiness team inspection (01/09)	D. Passehl	02/21 - date to be determined
147	Generate a list of items to consider after restart as well as transition back to the normal 0350 when terminating the 0350 Panel. The items should include plans to augment inspection of corrective actions, inservice inspection, and safety culture monitoring (01/09)	D. Passehl	01/31 - working; 02/11 - Include dates and deadlines to Manual Chapter 0350 restart inspections planner
149	SRI to coordinate with GWright inspection of corrective actions that have been completed by the resident staff. The intent is to find ways to allow GWright's inspection to take credit for what the resident staff already accomplished (01/09)	S. Thomas	01/31 - open; 02/11 - Documented items in Resident Inspection Report; 02/21 - Good communications noted; Documentation in IR03-02; 04/03 - closed.
150	SBurgess to develop a position paper on the state of plant risk when the plant attains Mode 4 for the first time. The purpose is to support NRC scheduling of major inspections until closer to Mode 2 (01/09)	S. Burgess	04/03 - closed.

Item Number	Action Item (Date generated)	Assigned to	Comments
154	Marty has action to followup by 1/21 with licensee to understand licensee's actions to address common mode failure issues (i.e., topical issues) and brief Panel. Then develop inspection plan to address topical issues (01/09)	M. Farber	02/21 - Date to be determined
156	Read Generic Safety Issue-191, "Assessment of Debris Accumulation on PWR Sump Pump Performance" (01/09)	J. Hopkins	01/21 - Determine status of GSI-191; 02/21 - Check GL98-04 response on coatings. Draft GL and Draft Reg Guide needs review for DB relevance; 02/24 - Request Response Review and Program Implementation to GL98-04; 03/04 - activity to be reassigned to Reactor Engineer who will close sump LER
162	Modified Containment Walkdown List assessment to look into effects on ILRT and NOP/NOT tests (01/21)	P. Lougheed	02/21 - Factor into ILRT plan; 04/03 - closed.
163	Flag Allegations requiring action prior to restart (01/21)	M. Phillips	02/11 - All of them require action. Resolve with one letter including Item 164; 02/21 - Develop criteria for Allegations considered Restart Items. Criteria needs Panel approval; 04/03 - closed.
166	Once DRS has developed a draft CY-2004 baseline inspection schedule for Davis-Besse (in conjunction with the upcoming regional inspection planning meeting), DRS will present this to the 0350 panel for review (01/31)	Panel	02/11 - currently in planning; 02/21 - inspection schedule letter due as soon as possible; 03/04 - in final; 04/03 - closed.
174	Review 2/4 transcript for Mr. Witt's recommendations (2/18)	R. Lickus	

Item Number	Action Item (Date generated)	Assigned to	Comments
175	LER licensee commitment on Containment Air Cooler Supplement for 01/31/03 (02/21)	J. Hopkins	02/21 - Attempt to get by end of February; 03/04 - Licensee wrote CR to address missed commitment
176	Determine which inspection will cover containment coatings (03/04)	C. Lipa	
178	Determine the type of backlog assessment that will be performed and by whom. Two attributes need to be considered: (1) the capability of the licensee to manage the backlog in an operating environment; and (2) the impact of the backlog on equipment reliability (03/04)	C. Lipa	
179	Provide answer to questions and document in next inspection report: 1) Did NRC's O350 Panel review FirstEnergy's analysis to forego inspection and testing of two of the four reactor coolant pumps to assure compliance with Technical Specifications and regulatory requirements? (RAM Item E-23) 2) If so, what were the NRC findings? (RAM Item E-24) (03/04)	S. Thomas	04/03 - closed.
180	Draft a memo to NRR (Tad Marsh) to include in response to AMS RIII-03-0014 (Kucinich Petition) that RIII reviewed the petition and there are no new technical issues (03/04)	D. Passehl	04/03 - closed.

Item Number	Action Item (Date generated)	Assigned to	Comments
181	Provide an e-mail to the AAA re: chilling effect letter not needed and request her concurrence in that decision (3/18)	M. Phillips	04/03 - closed.
183	Research historical criteria for allegations requiring to be resolved prior to restart for other plants that have had similar problems (3/25)	M. Phillips	04/03 - closed.
184	Provide input to the resident inspection report (IR 03-04) regarding Checklist Items 1.a.; 6.a.; 6.e.; & 6.f (3/25)	J. Hopkins	04/03 - closed.
185	Research the criteria for abnormal occurrences and report to the Panel (3/25)	C. Lipa	

RAM Item No. - E-01

Closed: Y

Date of E-Mail - 05/09/02

Author - Blanch

Description of Issue - If cracking on nozzle #3 was only axial, why did the nozzle fall over? In order to do this it had to have circumferential cracking?

Restart Checklist Item: N/A

Description of Resolution - Addressed in Mendiola letter to Blanch dated June 19, 2002. Cracking only axial, nozzle fell over due to machining of the J-weld, which caused loss of support to the nozzle. There was no circumferential cracking.

Reference Material - ADAMS Document Accession No. ml021560650 dated 6/19/02.

RAM Item No. - E-02

Closed: Y

Date of E-Mail - 05/09/02

Author - Blanch

Description of Issue - If the CRDM had not fallen over, was D-B planning to clean the head, or as in the past, restart with significant boron remaining on the vessel head?

Restart Checklist Item: N/A

Description of Resolution - Addressed in Mendiola letter to Blanch dated June 19, 2002. Licensee stated they planned to fully clean the head if the replacement head planned for 2004-2005 outage was not available by then.

Reference Material - ADAMS Document Accession No. ml021560650 dated 6/19/02.

RAM Item No. - E-03

Closed: Y

Date of E-Mail - 05/09/02

Author - Blanch

Description of Issue - If circumferential cracking initiates from the OD to the ID, then how is it that circumferential cracking is considered PWSSC? Can I assume that the circumferential cracking is the result of axial cracking?

Restart Checklist Item: N/A

Description of Resolution - Addressed in Mendiola letter to Blanch dated June 19, 2002. The use of the term PWSCC is intended to highlight that the cause is related to primary versus secondary water. Axial cracking is not required to initiate a circumferential crack.

Reference Material - ADAMS Document Accession No. ml021560650 dated 6/19/02.

RAM Item No. - E-04

Closed: Y

Date of E-Mail - 05/09/02

Author - Blanch

Description of Issue - Is it possible that a through wall axial crack may occur and remain visually undetected due to a tight interference fit at the top of the head and then cause undetected circumferential cracking during an operating cycle?

Restart Checklist Item: N/A

Description of Resolution - Addressed in Mendiola letter to Blanch dated June 19, 2002. The answer is yes, hence the reasoning for the NRC's issuance of Bulletin 2001-01.

Reference Material - ADAMS Document Accession No. ml021560650 dated 6/19/02.

RAM Item No. - E-05

Closed: Y

Date of E-Mail - 05/11/02

Author - Blanch/Corcoran

Description of Issue - Several places in AIT and D-B Root Cause Report state it was very hard to inspect the reactor vessel head; however, doesn't GDC 32 require access?

Restart Checklist Item: N/A

Description of Resolution - Addressed in Mendiola letter to Blanch dated June 11, 2002. The answer is D-B did not have to meet GDC 32, but they did conform to the intent of GDC 32.

Reference Material - ADAMS Document Accession No. ml021440118 dated 6/11/02.

RAM Item No. - E-06

Closed: Y

Date of E-Mail - 07/01/02

Author - Lochbaum

Description of Issue - D-B IPE submittal (1993 risk assessment) not available to public. D-B plant-specific LOOP not modeled

Restart Checklist Item: N/A

Description of Resolution - Addressed in Marsh letter to Lochbaum dated September 30, 2002. This information is being withheld as a result of the events of September 11, 2001, in accordance with COMSECY-02-0015 "Withholding Sensitive Homeland Security Information From the Public."

Reference Material - COMSECY-02-0015 "Withholding Sensitive Homeland Security Information From the Public" is being used as guidance. ADAMS Document Accession No. ml022610666 dated September 30, 2002.

RAM Item No. - E-07

Closed: Y

Date of E-Mail - 08/21/02

Author - Lochbaum to JAZ (NRR L-30)

Description of Issue - Chairman said LOCA risk is low, when in fact it was high, but the time period was short.

Restart Checklist Item: N/A

Description of Resolution - Closed based on issuance of SER to support extending operations beyond 12/31/01 till 2/16/2002. The SER discusses the risk characterization reasoning for extending the period for shutdown from 12/31/01 to 2/16/02.

Reference Material - December 3, 2002, letter to Lew Myers from John Zwolinski enclosing safety evaluation. In ADAMS with accession number ml023300539.

RAM Item No. - E-08

Closed: Y

Date of E-Mail - 08/21/02

Author - Lochbaum to JAZ (NRR L-31)

Description of Issue - Four of the five criteria (RG1.174) that licensees must satisfy for a risk-informed decision were not satisfied when the staff let D-B defer shutdown.

Restart Checklist Item: N/A

Description of Resolution - Closed based on issuance of SER to support extending operations beyond 12/31/01 till 2/16/2002. The SER discusses the reasoning used by NRC staff to defer the D-B shutdown.

Reference Material - December 3, 2002, letter to Lew Myers from John Zwolinski enclosing safety evaluation. In ADAMS with accession number ml023300539.

RAM Item No. - E-09

Closed: Y

Date of E-Mail - 10/02/02

Author - Gurdziel to Lipa

Description of Issue - Return to Service Plan dated Aug. 21, 2002 - all the pages are presented on ADAMS. Also, nothing in the plan is a commitment to the NRC.

Restart Checklist Item: N/A

Description of Resolution - No action. Although not formally stated as commitments, the NRC's 0350 restart panel considers the items in the Return to Service Plan, as amended, to be descriptions of what actions will be taken to ensure the plant is safe for restart. As such, failure to follow the plan jeopardizes the licensee's restart approval decision.

Reference Material - None.

RAM Item No. - E-13

Closed: Y

Date of E-Mail - 11/26/02

Author - Gurdziel to Lipa

Description of Issue - Weren't we supposed to hear by the middle of November 2002 if the total loss of structural material on a reactor vessel head was "significant."

Restart Checklist Item: N/A

Description of Resolution - Preliminary issuance of "red" findings letter to the licensee dated February 25, 2003. Based on issuance of the preliminary "red" finding, this issue is closed.

Reference Material - ADAMS Document No. ml030560426 dated February 25, 2003.

RAM Item No. - E-15

Closed: Y

Date of E-Mail - 12/19/02

Author - Gurdziel to Lipa.

Description of Issue - What is the FENOC definition of system health? Haven't seen much initiative to fix things, just assess condition.

Restart Checklist Item: N/A

Description of Resolution - The description of system health is addressed in the System Health inspection report (IR2002-013), which was issued on February 26, 2003. Also, the

licensee's building block describes this process and is publicly available via the NRC's Davis-Besse Head Degradation web page.

Reference Material - System Health Inspection Report 2002-013 dated February 26, 2003. In ADAMS with Accession No. ml030630314.

RAM Item No. - E-16

Closed: Y

Date of E-Mail - 12/19/02

Author - Gurdziel to Lipa

Description of Issue - What is the status of the containment air coolers (duct work eaten by acid, motors, heat exchangers)?

Restart Checklist Item: N/A

Description of Resolution - This item is also addressed by the closure of the containment air cooler LER 2002-008. However, the status of the coolers was evaluated during the system health inspection portion looking at the containment air cooling system. For purposes of tracking, the system health inspection report (2002-013) will be used to close this Gurdziel letter item, while the issues covering the overall return to service of operable containment air coolers will be tracked as part of follow up to LER 2002-008 and URI-03.

Reference Material - System Health Inspection Report 2002-013 dated February 26, 2003. In ADAMS with Accession No. ml030630314.

RAM Item No. - E-17

Closed: Y

Date of E-Mail - 12/19/02

Author - Gurdziel to Lipa

Description of Issue - When painting containment, did they use rollers as well as brushes?

Restart Checklist Item: N/A

Description of Resolution - No Action. The NRC does not intend to determine which method was used, i.e. brushes or rollers. The only action will be to determine the licensee has an evaluation that shows that whatever coatings are in containment are either qualified, or if unqualified, have been analyzed to ensure that they will not affect the operability of the sump in any LOCA scenario.

Reference Material - None.

RAM Item No. - L-01

Closed: Y

Date of Letter - 06/12/02

Author - UCS

Description of Issue - D-B failed to incorporate its analyses to address compliance with bulletins and generic letters into the UFSAR, and as such, the UFSAR is not in conformance with 10 CFR 50.71(e).

Restart Checklist Item: N/A

Description of Resolution - Per Meserve response to Lochbaum, D-B UFSAR needed to only be updated if the analyses requested by the NRC in response to the various bulletins or generic letters affected the existing design basis analysis or UFSAR component descriptions. Since this wasn't the case, an update was not required.

Reference Material: Meserve letter to Lochbaum dated December 20, 2002. In ADAMS as Accession No. ml022760202. Also see Dunlop memo to Lipa dated September 30, 2002, and attached to the PAL for the January 31, 2003, 0350 panel meeting.

RAM Item No. - L-02

Closed: Y

Date of Letter - 06/12/02

Author - UCS-01a

Description of Issue - Will the DB FSAR be in compliance with 10 CFR 71(e) prior to restart?

Restart Checklist Item: N/A

Description of Resolution - Yes. Per Meserve response to Lochbaum, "The staff continues to review each licensee's FSAR updates [which would include D-B] for conformance with the requirements of 10 CFR 50.71(e), and we will address any plant specific issues as appropriate."

Reference Material: Meserve letter to Lochbaum dated December 20, 2002. In ADAMS as Accession No. ml022760202.

RAM Item No. - L-03

Closed: Y

Date of Letter - 06/12/02

Author - UCS-01b

Description of Issue - What steps will the NRC staff take to ensure that its past decisions based on the incomplete, inaccurate D-B FSAR were proper?

Restart Checklist Item: N/A

Description of Resolution - If noncompliances are identified in UCS-01a, NRC will evaluate impact, if any. This can be inferred from last sentence in Meserve letter to Lochbaum dated December 20, 2002, which stated, "The staff continues to review each licensee's FSAR updates [which would include D-B] for conformance with the requirements of 10 CFR 50.71(e), and we will address any plant specific issues as appropriate."

Reference Material: Meserve letter to Lochbaum dated December 20, 2002. In ADAMS as Accession No. ml022760202.

RAM Item No. - L-04

Closed: Y

Date of Letter - 06/12/02

Author - UCS-02a

Description of Issue - Will the plant-specific evaluation of GSI-191 vulnerability recommended by the NRC staff to the ACRS in Sept. 2001 be completed for DB prior to restart?

Restart Checklist Item: 2.c.1

Description of Resolution - No. However, the licensee is reviewing issue (LER 2002-005 and Condition Reports 02-3859 and 02-5461). Per the statements made in Lochbaum's subsequent letter of February 10, 2003, this item is closed to Mr. Lochbaum's satisfaction as of February 10, 2003, based on modifications to be made to the sump and evaluations concerning sump clogging.

Reference Material - See Mr. Lochbaum's letter of February 10, 2003, which is in ADAMS as Accession No. ml030490043.

RAM Item No. - L-05

Closed: Y

Date of Letter - 06/12/02

Author - UCS-02b

Description of Issue - If L-4 is no, would the NRC staff be guilty of the same tolerance of degraded conditions that caused the current problem?

Restart Checklist Item: N/A

Description of Resolution - No. The issue is being properly corrected by the sump modifications being made to the facility.

Reference Material - None.

RAM Item No. - L-06

Closed: Y

Date of Letter - 06/12/02

Author - UCS-02c

Description of Issue - Will all the boric acid deposited inside containment at D-B be found and removed prior to restart?

Restart Checklist Item: 2.c

Description of Resolution - For the most part, yes; however, It is not feasible to remove every particle of boric acid from containment. Extensive walkdowns have identified those components potentially affected by the presence of boric acid. NRC Inspection of condition of containment documents licensee completion of efforts to remove boric acid from inside containment. These results are documented in the two extent of condition inspection reports, IR 2002-009 issued September 13, 2002, and 2002-012 issued November 29, 2002.

Reference Material - Inspection Report 2002-009 is in ADAMS as Accession No. ml022560237. Inspection Report 2002-012 is in ADAMS as Accession No. ml023370132.

RAM Item No. - L-07

Closed: Y

Date of Letter - 06/12/02

Author - UCS-02d

Description of Issue - If L-5 is no, what assurance exists that boric acid will not be transported to the sump and contribute to its failure?

Restart Checklist Item: 2.c

Description of Resolution - The concern that boric acid will clog up the sump post LOCA is unlikely because boric acid is soluble in water unlike paint chips and concrete dust and is therefore unlikely to plug sump strainers. Also, see NRC extent of condition inspection reports 2002-009 and 2002-012.

Reference Material - Inspection Report 2002-009 is in ADAMS as Accession No. ml022560237. Inspection Report 2002-012 is in ADAMS as Accession No. ml023370132.

RAM Item No. - L-09

Closed: Y

Date of Letter - 06/12/02

Author - UCS-03b

Description of Issue - If L-7 is no, what assurance exists against potential damage to safety equipment and components caused by maintenance activities?

Restart Checklist Item: 2.c

Description of Resolution - The inspection effort devoted to the SSDI and system health evaluated the status of safety equipment and components currently installed. For the long term future, the ROP includes inspection of the effectiveness of maintenance and implementation of 50.59, including an assessment of adequate screening for the need for safety evaluations. The SSDI and system health inspection reports were both issued by the same cover letter dated February 26, 2003, and are both in ADAMS with the same accession number.

Reference Material - Inspection Reports 2002-013 (System Health) and 2002-014 (SSDI) are in ADAMS as Accession No. ml030630314. Also, the long term evaluation is addressed in ROP inspection modules IP 71111.12; 71111.13; and 71111.02 which are available on the NRC's public web site.

RAM Item No. - L-10

Closed: Y

Date of Letter - 06/12/02

Author - UCS-04

Description of Issue - Will the CRDM mechanical flanges on the new head be replaced with seal welds prior to restart?

Restart Checklist Item: N/A

Description of Resolution - No Action. We are unaware of any licensee plans to seal weld CRDM flanges. This is a gasketed joint and would not lend itself to seal welding. Performance of improved gaskets has been acceptable.

Reference Material - None.

RAM Item No. - L-11

Closed: Y

Date of Letter - 06/12/02

Author - UCS-05a

Description of Issue - How many of the top 20 managers in place at D-B on Feb. 16, 2002 have left FENOC?

Restart Checklist Item: N/A

Description of Resolution - No action. The NRC does not regulate staffing or organizational structure of licensee management.

Reference Material - None.

RAM Item No. - L-12

Closed: Y

Date of Letter - 06/12/02

Author - UCS-05b

Description of Issue - Is the behavior of FE management at DB from 1996 through 2002 better or worse than Ms. VanCleave?

Restart Checklist Item: N/A

Description of Resolution - No action. The behavior of management is being evaluated via an ongoing OI investigation. If a willful violation is determined, the case will be evaluated on its own merits in accordance with NUREG-1600 "General Statement of Policy and Procedures for NRC Enforcement Actions."

Reference Material - None.

RAM Item No. - L-13

Closed: Y

Date of Letter - 06/12/02

Author - UCS-05c

Description of Issue - If VanCleave is better, will the NRC ban any FENOC managers and supervisors from working in the nuclear industry?

Restart Checklist Item: N/A

Description of Resolution - No action. The behavior of management is being evaluated via an ongoing OI investigation. If a willful violation is determined, the case will be evaluated on its own merits in accordance with NUREG-1600 "General Statement of Policy and Procedures for NRC Enforcement Actions."

Reference Material - None.

RAM Item No. - L-14

Closed: Y

Date of Letter - 06/12/02

Author - UCS-05d

Description of Issue - If VanCleave is worse, return to L-11 and try again.

Restart Checklist Item: N/A

Description of Resolution - No action. The behavior of management is being evaluated via an ongoing OI investigation. If a willful violation is determined, the case will be evaluated on its

own merits in accordance with NUREG-1600 "General Statement of Policy and Procedures for NRC Enforcement Actions".

Reference Material - None.

RAM Item No. - L-15

Closed: Y

Date of Letter - 06/12/02

Author - UCS-05e

Description of Issue - VanCleave was banned from work at all NPPs. Does the NRC care that fired FENOC managers and supervisors work at other NPPs?

Restart Checklist Item: N/A

Description of Resolution - No action. The behavior of management is being evaluated via an ongoing OI investigation. If a willful violation is determined, the case will be evaluated on its own merits in accordance with NUREG-1600 "General Statement of Policy and Procedures for NRC Enforcement Actions". In addition, the NRC does not regulate staffing levels of licensees.

Reference Material - None.

RAM Item No. - L-16

Closed: Y

Date of Letter - 06/12/02

Author - UCS-06a

Description of Issue - Will the results of the Congressional and OI investigations be publicly available prior to restart?

Restart Checklist Item: N/A

Description of Resolution - No action. Results will be made available in accordance with NRC policy of release of OI investigations. However, there is no guarantee that this will occur prior to restart. Results of Congressional investigations are released by Congress and not the NRC.

Reference Material - None.

RAM Item No. - L-17

Closed: Y

Date of Letter - 06/12/02

Author - UCS-06b

Description of Issue - If L-15 is no, how can near-by residents be assured that they were not placed in undue risk by management and workers at D-B?

Restart Checklist Item: N/A

Description of Resolution - No action. Results will be made publically available in accordance with NRC policy on release of OI investigations results. If a willful violation is determined, the case will be evaluated on its own merits in accordance with NUREG-1600 "General Statement of Policy and Procedures for NRC Enforcement Actions".

Reference Material - None.

RAM Item No. - L-18

Closed: Y

Date of Letter - 06/12/02

Author - UCS-07

Description of Issue - Will the acceptance of the interim head be conditional on commitment from FENOC to install the permanent head during outage when the steam generators are replaced?

Restart Checklist Item: N/A

Description of Resolution - Provided the Midland head is properly maintained and inspected, there is no requirement to replace this head. Inspection Report 2002-007, which was issued on November 29, 2002, documented acceptability of replacement head.

Reference Material - Inspection Report 2002-007, dated November 29, 2002, is in ADAMS as Accession No. ml023370100.

RAM Item No. - L-19

Closed: Y

Date of Letter - 06/12/02

Author - UCS-08

Description of Issue - What was the boric acid corrosion problem at a foreign reactor that caused the NRC to warn some plant owners in 1972?

Restart Checklist Item: N/A

Description of Resolution - No action. The facility in question was Beznau in Switzerland, which experienced boric acid corrosion.

Reference Material - AEC letter dated 1/18/72 to Yankee Atomic.

RAM Item No. - L-20

Closed: Y

Date of Letter - 06/19/02

Author - UCS

Description of Issue - Review of D-B UFSAR did not reveal results of safety analysis of several NRC GIs. Licensee not in compliance with 10 CFR 50.71(e).

Restart Checklist Item: N/A

Description of Resolution - Per Meserve response to Lochbaum, D-B UFSAR needed to only be updated if the analyses requested by the NRC in response to the various bulletins or generic letters affected the existing design basis analysis or UFSAR component descriptions. Since this wasn't the case, an update was not required.

Reference Material: Meserve letter to Lochbaum dated December 20, 2002. In ADAMS as Accession No. ml022760202. Also see Dunlop memo to Lipa dated September 30, 2002.

RAM Item No. - L-21

Closed: Y

Date of Letter - 06/19/02

Author - UCS

Description of Issue - The LLTF should examine the appropriateness of using short-duration risk assessments in regulatory space.

Restart Checklist Item: N/A

Description of Resolution - The LLTF performed such an examination and developed LLTF Action 3.3.7(3) on assessing risk in NRC decision-making process based on its review.

Reference Material - Both the LLTF report, dated September 30, 2002, and the SMRT Memo from Paperiello to Travers dated November 26, 2002, are available at the Davis-Besse news and correspondence page of the NRC website.

RAM Item No. - L-22

Closed: Y

Date of Letter - 06/19/02

Author - UCS

Description of Issue - The SDP process should not classify the D-B event as Green.

Restart Checklist Item: N/A

Description of Resolution - By letter dated February 25, 2003, the SDP process results were provided to the licensee. The issue was classified as a preliminary "red" finding.

Reference Material - Dyer to Myers letter dated February 25, 2003, which is ADAMS Accession No. ml030560426. The SDP basis is attached and included in the ADAMS document.

RAM Item No. - L-24

Closed: Y

Date of Letter - 07/03/02

Author - UCS-09b

Description of Issue - Will "acceptable" and "unsatisfactory" stop being synonymous to the NRC?

Restart Checklist Item: N/A

Description of Resolution - No action. The NRC does not consider "acceptable" and "unsatisfactory" to be synonymous.

Reference Material - None.

RAM Item No. - L-25

Closed: Y

Date of Letter - 07/03/02

Author - UCS-10a

Description of Issue - How many times must people around Davis Bess be subjected to American Roulette?

Restart Checklist Item: N/A

Description of Resolution - No action. The goal of the agency is to ensure safe operations such that reasonable assurance of safety exists at all times.

Reference Material - None.

RAM Item No. - L-26

Closed: Y

Date of Letter - 07/03/02

Author - UCS-10b

Description of Issue - What tangible steps will NRC take to prevent chronic and systemic management problems from causing another very, very serious near-miss - or worse - at D-B?

Restart Checklist Item: N/A

Description of Resolution - No action. The basis for authorizing restart will be documented via closure of restart checklist items via the Manual Chapter 0350 process. Also, the NRC will implement almost all of the LLTF recommendations, as stated by the Commission during the January 14, 2003, Commission meeting.

Reference Material - None.

RAM Item No. - L-27

Closed: Y

Date of Letter - 07/03/02

Author - UCS-11a

Description of Issue - Will the NRC allow the public to look at the 1993 D-B risk assessment?

Restart Checklist Item: N/A

Description of Resolution - This information is being withheld as a result of the events of September 11, 2001, in accordance with COMSECY-02-0015 "Withholding Sensitive Homeland Security Information From the Public." This was described to UCS via a letter from Marsh to Lochbaum dated September 30, 2002.

Reference Material - COMSECY-02-0015 "Withholding Sensitive Homeland Security Information From the Public" is being used as guidance, and ADAMS Document Accession No. ml022610666 dated September 30, 2002.

RAM Item No. - L-28

Closed: Y

Date of Letter - 07/03/02

Author - UCS-11b

Description of Issue - Why did NRC use 1993 D-B risk assessment to develop SDP worksheets when the updated 1999 plant safety assessment was readily available?

Restart Checklist Item: N/A

Description of Resolution - The SDP notebook was benchmarked against the current PRA model in July 2002. Revision 1 of the SDP notebook will be issued in the near future. Public availability will be assessed in accordance with the guidance described above. This was described to UCS via a letter from Marsh to Lochbaum dated September 30, 2002.

Reference Material - Marsh letter to Lochbaum dated September 30, 2002, which is ADAMS Document Accession No. ml022610666.

RAM Item No. - L-29

Closed: Y

Date of Letter - 07/03/02

Author - UCS-11c

Description of Issue - If the D-B risk assessment remains "secret" but is the basis for the SDP call, why should the public believe any NRC pronouncement on safety significance derived, in large part, on "secret" information?

Restart Checklist Item: N/A

Description of Resolution - This information is being withheld as a result of the events of September 11, 2001, in accordance with COMSECY-02-0015 "Withholding Sensitive Homeland Security Information From the Public." This was described to UCS via a letter from Marsh to Lochbaum dated September 30, 2002.

Reference Material - Marsh letter to Lochbaum dated September 30, 2002, which is ADAMS Document Accession No. ml022610666, and COMSECY-02-0015 "Withholding Sensitive Homeland Security Information From the Public".

RAM Item No. -L-30

Closed: Y

Date of Letter - 07/03/02

Author - UCS-11d

Description of Issue - If the D-B risk assessment remains "secret," will the NRC retain the 0350 Panel indefinitely to compensate for the public being unfairly excluded from access to key information?

Restart Checklist Item: N/A

Description of Resolution - No action. When the 0350 Panel decides that Davis Besse can be returned to the ROP, the Panel will be dissolved.

Reference Material - MC 0350, which is available on the NRC's public web page.

RAM Item No. - L-32

Closed: Y

Date of Letter - 07/03/02

Author - UCS-11f

Description of Issue - Will NRC revamp ROP to enable its inspectors to audit areas non-conservatively omitted from the plant-specific risk assessments?

Restart Checklist Item: N/A

Description of Resolution - No action. The ROP is risk informed. Inspectors are not restricted from inspecting areas found to be risk significant per the inspection guidance in the ROP.

Reference Material - See IMC 0305 which is available on the NRC's public web site.

RAM Item No. - L-33

Closed: Y

Date of Letter - 07/03/02

Author - UCS-12a

Description of Issue - Did FENOC violate ALARA by repeatedly deferring MOD 94-0025?

Restart Checklist Item: N/A

Description of Resolution - No. All exposures were significantly under the 5 Rem guidance for an ALARA finding.

Reference Material - MC 609, Appendix C, which is available at the NRC's public web page.

RAM Item No. - L-34

Closed: Y

Date of Letter - 07/03/02

Author - UCS-12b

Description of Issue - Does Region III have a different approach to worker radiation safety than Region IV, given the fact that Callaway was cited for the same poor radiation control practices that Region III let D-B get away with?

Restart Checklist Item: N/A

Description of Resolution - No action. The basis of the issue is false. Davis-Besse was issued two white findings and one green finding in the RP arena for deficiencies involving the radiation safety practices at the facility. These are documented in Inspection Report Nos. 2002-006 and 2002-016, both issued on January 7, 2003.

Reference Material: Inspection reports 2002-006 and 2002-016, both of which can be found in ADAMS at Accession No. ml030070606.

RAM Item No. - L-44

Closed: Y

Date of Letter - 07/15/02

Author - UCS-20a

Description of Issue - Will the NRC require FENOC to inspect containment vessel to determine no damage by contact to groundwater caused by a non-conforming condition?

Restart Checklist Item: 2.b

Description of Resolution - Per the statements made in Lochbaum's subsequent letter of February 10, 2003, this item is closed to Mr. Lochbaum's satisfaction as of February 10, 2003, based on the licensee sampling the water that came in contact with the containment liner.

Reference Material - See Mr. Lochbaum's letter of February 10, 2003, which is in ADAMS as Accession No. ml030490043.

RAM Item No. - L-45

Closed: Y

Date of Letter - 7/15/02

Author - UCS-20b

Description of Issue - If L-40 no, will NRC's MIC person independently evaluate the potential for MIC damage to the steel containment vessel before restart?

Restart Checklist Item: 2.b

Description of Resolution - Per the statements made in Lochbaum's subsequent letter of February 10, 2003, this item is closed to Mr. Lochbaum's satisfaction as of February 10, 2003, based on the licensee sampling the water that came in contact with the containment liner.

Reference Material - See Mr. Lochbaum's letter of February 10, 2003, which is in ADAMS as Accession No. ml030490043.

RAM Item No. - L-46

Closed: Y

Date of Letter - 7/15/02

Author - UCS-21a

Description of Issue - Did FENOC evaluate potential for containment concrete erosion from the non-conforming groundwater flow?

Restart Checklist Item: 2.b

Description of Resolution - Per the statements made in Lochbaum's subsequent letter of February 10, 2003, this item is closed to Mr. Lochbaum's satisfaction as of February 10, 2003, based on the licensee sampling the water that came in contact with the containment liner.

Reference Material - See Mr. Lochbaum's letter of February 10, 2003, which is in ADAMS as Accession No. ml030490043.

RAM Item No. - L-47

Closed: Y

Date of Letter - 7/15/02

Author - UCS-21b

Description of Issue - If answer to L-42 no, will NRC require FENOC to complete such an evaluation before restart?

Restart Checklist Item: 2.b

Description of Resolution - Per the statements made in Lochbaum's subsequent letter of February 10, 2003, this item is closed to Mr. Lochbaum's satisfaction as of February 10, 2003, based on the licensee sampling the water that came in contact with the containment liner.

Reference Material - See Mr. Lochbaum's letter of February 10, 2003, which is in ADAMS as Accession No. ml030490043.

RAM Item No. - L-56

Closed: Y

Date of Letter - 7/15/02

Author - UCS-28a

Description of Issue - Should the hydrostatic test in 2000 have identified leakage from CRDM nozzle #3?

Restart Checklist Item: N/A

Description of Resolution - The LLTF reviewed this issue and developed LLTF Action 3.3.4(8), which has been adopted by the Commission.

Reference Material - Both the LLTF report, dated September 30, 2002, and the SMRT Memo from Paperiello to Travers dated November 26, 2002, are available at the Davis-Besse news and correspondence page of the NRC website.

RAM Item No. - L-57

Closed: Y

Date of Letter - 7/15/02

Author - UCS-28b

Description of Issue - If answer to L-52 is no, should the NRC require licensees to revise hydrostatic testing procedures so they can find leakage?

Restart Checklist Item: N/A

Description of Resolution - The LLTF reviewed this issue and developed LLTF Action 3.3.4(8), which has been adopted by the Commission.

Reference Material - Both the LLTF report, dated September 30, 2002, and the SMRT Memo from Paperiello to Travers dated November 26, 2002, are available at the Davis-Besse news and correspondence page of the NRC website.

RAM Item No. - L-59

Closed: Y

Date of Letter - 8/05/02

Author - UCS (NRR #L-26)

Description of Issue - Release FOIA 2002-0229 to Paul Gunter and Public Document Room.

Restart Checklist Item: N/A

Description of Resolution - By letter from Travers to Lochbaum dated September 10, 2002, we stated that the FOIA to Paul Gunter had been released.

Reference Material - Letter from Travers to Lochbaum dated September 10, 2002, and in ADAMS as Accession No. ml022550222.

RAM Item No. - L-60

Closed: Y

Date of Letter - 8/05/02

Author - UCS (NRR #L-27)

Description of Issue - Requests that LLTF conduct public meetings at least 30 days after FOIA 2002-0229 is released.

Restart Checklist Item: N/A

Description of Resolution - Per the letter from Travers to Lochbaum dated September 10, 2002. Public meetings were held both at the site and with the Commission after issuance of the LLTF report.

Reference Material - Letter from Travers to Lochbaum dated September 10, 2002, and in ADAMS as Accession No. ml022550222.

RAM Item No. - L-61

Closed: Y

Date of Letter - 8/05/02

Author - UCS (NRR #L-28)

Description of Issue - Remove E. Hackett from LLTF and replace.

Restart Checklist Item: N/A

Description of Resolution - Per letter from Travers to Lochbaum dated September 10, 2002. Mr. Hackett was not considered to be biased and was not part of the management team that made the "continued operations until February" decision.

Reference Material - Letter from Travers to Lochbaum dated September 10, 2002, and in ADAMS as Accession No. ml022550222.

RAM Item No. - L-62

Closed: Y

Date of Letter - 8/05/02

Author - UCS (NRR #L-29)

Description of Issue - Evaluate E. Hackett's bias.

Restart Checklist Item: N/A

Description of Resolution - See resolution in letter from Travers to Lochbaum dated September 10, 2002. Mr. Hackett was not considered by be biased and was not part of the management team that made the "continued operations until February" decision.

Reference Material - Letter from Travers to Lochbaum dated September 10, 2002, and in ADAMS as Accession No. ml022550222.

RAM Item No. - L-63

Closed: Y

Date of Letter - 9/27/02

Author - UCS

Description of Issue - Prepare response for "NRC Needs New Glasses" letter.

Restart Checklist Item: N/A

Description of Resolution - No action. Neither the NRC nor Mr. Lochbaum could locate the referenced letter. As such, there is no document on which to reply.

Reference Material - None.

RAM Item No. - L-64

Closed: Y

Date of Letter - 08/11/02

Author - Gurdziel # 1

Description of Issue - Has anyone inspected the bottom of the vessel, vessel soleplate, baseplate, anchor bolts, and concrete pedestal for eroded areas?

Restart Checklist Item: 2.c

Description of Resolution - Yes. This was done as part of the Containment extent of Condition inspection and Boric Acid Corrosion extent of condition inspections. See Inspection Reports 02-09 and 02-12.

Reference Material - Inspection Report 2002-009 was issued on September 13, 2002, and is in ADAMS as Accession No. ml022560237. Inspection Report 2002-012 was issued on November 29, 2002, and is in ADAMS as Accession No. ml023370132.

April 3, 2003

INSPECTION PLAN

DAVIS BESSE RCS LEAK TEST

Inspection Report 50-346/2003013

Inspection Objectives

This inspection is being conducted as a part of the NRC's Manual Chapter 0350 activities. The primary inspection objectives will be to:

1. Evaluate conduct of operations during mode changes to NOP.
2. Review work performed by Framatome to demonstrate sensitivity of the NOP test with respect to lower head penetration crack detection and evaluate NOP test criterion.
3. Review applicable procedures for the conduct of the RCS leak test and related ASME Code requirements.
4. Observe conduct of the RCS leak test and verify applicable procedure implementation.
5. Observe leak detection inspection activities for the lower head penetrations post cool-down.
6. Review test data package and associated corrective actions resulting from the NOP test.

Onsite Inspection Dates: April 21 - 30 (approx), 2003
Exit TBD

Site Contacts: Bill Marini, Regulatory Assurance

Prepared By: _____
J. M. Jacobson, Metallurgical Engineer

Reviewed By: _____
D. Hills, Chief, Mechanical Engineering Branch

Approved By: _____
J. Grobe, Chairman, Davis-Besse Oversight Panel

Inspection Plan Details

- I. Inspectors:** J. Jacobson, Metallurgical Engineer
C. Phillips, Operator Licensing Examiner
Review of Framatome efforts and test criterion by NRR

II. Inspection Activity Schedule

Preparation: Off site reviews will commence March 31, 2003

Onsite Inspection: Week 1 - April 21, 2003

[Conduct of operations and walkdowns]

Week 2 - April 28, 2003

[Examination of lower head]

Exit Meeting: To Be Determined

Inspection Report Input Preparation:

Inspection report inputs should be developed during the first week following each inspection visit. Completed inputs should be provided to the lead inspector by the close of business Friday of the week following each onsite inspection visit.

A draft report will be completed for management reviewed, comment, and concurrence by approximately 3 weeks following the last week of onsite inspection.

III. Applicable Inspection Procedures and Other Guidance:

Inspection Procedure IP 93812, "Special Inspection" will provide overall guidance for this effort. Other inspection procedures listed below will be used for guidance as needed.

IP 71152	Identification and Resolution of Problems
IP 95002	Supplemental Inspection For One Degraded Cornerstone Or Any Three White Inputs In a Strategic Performance Area
IP 95003	Supplemental Inspection For Repetitive Degraded Cornerstone, Multiple Degraded Cornerstone, Multiple Yellow Inputs, Or One Red Input
IP 71715	Sustained Control Room and Plant Observations
IP 71111.11	Resident Inspector Quarterly Review of Licensed Operators' Requalification Testing and/or Training Activities
IP 71111.04	Equipment Alignment
IP 71111.13	Maintenance Risk Assessments
IP 71111.20	Refueling and Outage Activities
IP 71111.23	Temporary Plant Modifications

IP 71007 Reactor Vessel Head Replacement Inspection evaluating the conduct of operations during the test,

IV. Inspection Requirements

The inspection will focus on the effectiveness of test procedures, and associated procedure implementation. The inspection will include assessment of the licensee's overall efforts to locate RCS leaks and evaluation of programmatic enhancements implemented as a result of the reactor head degradation. In an effort to assess performance of plant operations staff prior to actual reactor start-up, this inspection will include observation of the heat up and pressurization plant evolutions. Results of this inspection will be factored into MC 0350 Oversight Panel Restart Checklist items 2.a, "Reactor Pressure Vessel Head Replacement" and 5.d, "Test Program Development and Implementation".

Specific inspection requirements will include:

- A) Review licensee procedures EN-DP-01500, "Reactor Vessel Inspection Procedure," DB-PF-03010, "RCS Leakage Test, and DB-PF-04154, "Augmented Leakage Test for RCS Components."
- B) Accompany licensee staff during RCS leak detection efforts while at pressure and evaluate procedure adherence and effectiveness.
- C) Evaluate lower head surveillance activities during pressurization phase.
- D) Review lower head examination activities post pressurization, including analysis of any chemistry samples.
- E) Review and evaluate the comprehensiveness and effectiveness of the licensee's implementation of corrective actions resulting from the test activities. Particular attention will focussed on the licensee's ability to determine the root cause of problems noted during the test activities as applicable.
- F) Review / monitor conduct of operations during test activities per Attachment.
- G) The following MC 0350 Restart Action Matrix items are associated with this inspection effort: L-76, L-82, L-92, C-16, CAL-04. Successful completion of the NOP leak test will provide information necessary to close these items.

V. RITS and Level of Effort

Docket No.	05000346
Report No.	2003-013

Approximately 80 hours of direct inspection effort is anticipated for each inspector's effort. Generally, individual inspection effort should be charged to IP 93812 with an IPE code of SEP for preparation efforts, ER for inspection efforts, and SED for documentation efforts.

VI. Findings

The safety significance of inspection findings will be determined through MC-0609, "Significance Determination Process," with additional information from the Risk-Informed Inspection Notebook for Davis Besse.

VII. Documentation

The report will be prepared in accordance with MC 0612, "Power Reactor Inspection Reports." Please review Appendix B, "Threshold for Documentation," in the above document to ensure consistency within the agency for findings. Observations / conclusions should be documented where warranted. The documentation will become the basis for updating / closure of Restart Checklist items mentioned above.

ATTACHMENT

In an effort to assess performance of plant operations staff prior to actual reactor start-up, this inspection will include observation of the heat up and pressurization plant evolutions. The following inspection procedures will be utilized as guidance for this effort.

71111.11-02 INSPECTION REQUIREMENTS

02.10 Resident Inspector Quarterly Review of Licensed Operators' Requalification Testing and/or Training Activities. At least once each quarter, observe testing and training for SROs and ROs, identify deficiencies and discrepancies in the training, and assess licensed operator performance and evaluator's critique. Emphasis should be placed on observing training on high-risk licensed operator actions, operators' activities associated with the emergency plan and previous lessons learned items or plant experiences. Review the licensee's JIT for mode change if possible.

71715-02 INSPECTION REQUIREMENTS

These inspection items don't come from a current inspection module and should be charged to IP 93812 (Special Inspections).

02.02 Inspection Items. For a period of time determined to be appropriate by regional management, observe operational activities conducted by the licensee. The inspector should obtain the licensed operators' views on what detracts from their ability to monitor and operate the plant. The inspector should evaluate the following conditions or practices as appropriate.

- a. Operators are attentive and responsive to plant parameters and conditions. Operators are aware of the reasons for annunciators that are in the alarm condition.
- b. Plant evolutions and testing are planned and properly authorized. When a more complex special evolution or non-routine evolution takes place, a pre-evolution briefing of the shift crew and other personnel affected by the evolution may be appropriate.
- c. Procedures are used and followed as required by plant policy.
- d. Equipment status changes are appropriately documented and communicated to appropriate shift personnel, when they occur.
- e. The operating conditions of plant equipment are effectively monitored, and appropriate corrective action is initiated when required.
- f. Backup instrumentation, measurements, and readings are used as appropriate when normal instrumentation is found to be defective or out of tolerance. Equipment out of service controls are adequate. **(Emphasis shall be placed on any instrumentation the licensee plans to use for leakage detection and level control)**
- g. Logkeeping is timely, accurate, and adequately reflects plant activities and status.
- h. Operators follow good operating practices and maintain shift professionalism in conducting plant operations. Operators are aware of ongoing plant activities and

surveillance testing. Administrative controls are adequate to ensure in-plant work activities are being performed with the knowledge of control room personnel.

- i. The control room environment is adequate for conduct of duties; i.e., lighting, noise levels, traffic volume, number of alarms, ventilation, heating and cooling are acceptable.
- j. Communication between workers and first line supervisors, as well as interdepartmental communications, are appropriate and follow any plant specific communications procedures.
- k. Shift turnovers are professional and provide the oncoming shift an adequate update from the last time they were on shift.
- l. Blocking/tagging and valve lineups are conducted in accordance with plant procedures and are adequate to provide isolation or proper system lineup for existing plant conditions.
- m. The administrative burden on the control room supervisor does not prevent adequate supervision of shift activities.
- n. Manipulation of plant controls that may effect changes is performed by licensed operators, or by individuals enrolled in an approved operator licensing training program who are under the direction and in the presence of a license operator.
- o. Overall material condition of the plant does not hinder the effectiveness of the operators in conducting normal plant evolutions as well as non-routine evolutions.
- p. Technical Specification limiting conditions for operation are satisfied. Entry into LCO action statements are controlled and tracked. Additional surveillance activities required by action statements are performed and tracked.
- q. Abnormal conditions and equipment problems are evaluated promptly to determine the impact on plant safety, equipment operability, and reportability. Plant management is informed of abnormal conditions as required by plant policies.

71111.04-02 INSPECTION REQUIREMENTS

02.01 Partial Walkdown

- a. Select a redundant or backup system/train or a remaining operable system / train with the highest risk significance for the current plant configuration (considering OOS, inoperable, or degraded condition); or a risk-significant system/train that was recently realigned following an extended system outage, maintenance, modification, or testing; or a risk-significant single-train system.
- b. Review documents to determine the correct system lineup. Consider plant procedures, including abnormal and emergency operating procedures and drawings.
- c. Verify that the critical portions of the selected system/train are correctly aligned, and identify any discrepancies.

71111.13-02 INSPECTION REQUIREMENTS

02.01 Risk Assessment and Management of Risk

- a. **Risk Assessment Performance.** Verify performance of RAs when required by §50.65(a)(4) and in accordance with licensee procedures, prior to changes in plant configuration for maintenance activities, including preventive maintenance, surveillance and testing, (and promptly for emergent work) during all modes of plant operation. Verify RA performance for configuration changes involving structures, systems, or components (SSCs) within the scope of the MR or the licensee-established limited RA scope allowed by §50.65(a)(4) with emphasis on higher-safety/risk-significant configurations. For emergent work, verify that the licensee performs the RA (to the extent practicable and commensurate with safety) before changing the plant configuration further, but in any case, promptly and to the extent practicable concurrently with, but without delaying, plant stabilization and restoration.
- b. **Risk Assessment Adequacy.** Verify the accuracy and completeness of the information considered in the RA. Verify the appropriate use of the licensee's RA tool, i.e., that the licensee uses it a manner consistent with (1) its capabilities and limitations, (2) plant conditions and evolutions, (3) external events and containment status, and (4) licensee procedures. Engage the licensee when necessary to have inadequate RAs promptly and correctly re-performed. For completed work for which the normal plant configuration has been restored, an omitted (or inadequate) RA may still need to be performed (or re-performed correctly) by the licensee (or the configuration in question evaluated independently by the NRC if possible) in order to determine the associated change in plant risk for significance determination purposes.
- c. **Risk Management.** Verify that the licensee recognizes, and/or enters as applicable, the appropriate licensee-established risk category or band according to RA results and licensee procedures. Verify that normal work controls or risk management actions (RMAs) as required are promptly and effectively implemented commensurate with the risk band in effect and in accordance with licensee procedures. Verify that the key safety functions for the plant mode of operation are preserved. Re-verify implementation of RMAs (or different RMAs) that may now be required by licensee procedures following performance (or re-performance) of previously omitted (or inadequate) Ras.
- d. **Review the licensee's contingency actions for excessive leakage and/or equipment failure. What criteria has the licensee established to end the test prematurely/determine if a failure has occurred? Has the licensee clearly established who the test director will be and what the test director's responsibilities will be? Have these contingencies, criteria, and responsibilities gone through on-site review?**

71111.20-02 INSPECTION REQUIREMENTS

02.06 Monitoring of Heatup and Startup Activities. Verify on a sampling basis that Technical Specifications, license conditions, and other requirements, commitments, and administrative procedure prerequisites for mode changes are met prior to changing modes or plant configurations. The inspector should review the establishment of the barriers by reviewing RCS boundary leakage and the setting of containment integrity. The inspector should walkdown containment prior to reactor heatup to verify that debris has not been left which could affect performance of the containment sumps.

03.06 Monitoring of Restart Activities. This activity should focus on the licensee having the required equipment available for mode changes to ensure that risk is kept to a minimum. The activity can be conducted by direct observation of system/equipment operation, documentation reviews, or a combination of both. The sampling should be adequate to provide reasonable assurance that the licensee is following the administrative program laid out to ensure that risk is maintained at a minimum level. The inspector should observe that Technical Specifications RCS boundary leakage requirements are met prior to the applicable mode changes and that containment integrity is established prior to entering the applicable Technical Specifications mode.

71111.23-02 INSPECTION REQUIREMENTS

The following inspection area is only required if the licensee must make temporary modifications to equipment to perform or monitor the test.

02.01 Selection of Temporary Modifications. Select temporary modifications to risk-significant systems. For purposes of this inspection, temporary modifications include jumpers, lifted leads, temporary systems, repairs, design modifications and procedure changes which can introduce changes to plant design or operations. Although the focus of this inspection is on active modifications, inspectors may choose to review a recently removed temporary modification for adequate restoration and testing.

02.02 Inspection

- a. Review the temporary modifications and associated 10 CFR 50.59 screening against the system design bases documentation, including Updated Final Safety Analysis Report (UFSAR) and Technical Specifications. Verify that the modifications have not affected system operability/availability. See Inspection Procedure 71111.17, "Permanent Plant Modifications," for additional attributes which may be considered for review. Inspect only those attributes which are significant for the particular modification being reviewed.
- b. Verify that the installation of the temporary modifications (if accessible) is consistent with the modification documents. Verify configuration control of the modification is adequate by verifying that the plant documents, such as drawings and procedures are updated.
- c. Review post-installation test results to confirm that the tests are satisfactory and the actual impact of the temporary modifications on the permanent systems and interfacing systems have been adequately verified by test. Also, review planned testing after removal of the temporary modifications.
- d. Verify that temporary modifications are identified on Control Room drawings and at that appropriate tags are placed equipment being affected by the temporary modifications.

- e. Verify that licensee has evaluated the combined effects of the outstanding temporary modifications in regard to mitigating systems and the integrity of radiological barriers.
- f. Examine drawings, design and operating procedures, operations logs for evidence of temporary modifications that have not been so evaluated or categorized.

April 3, 2003

APPROVAL SHEET FOR MANAGEMENT & HUMAN PERFORMANCE ASSESSMENT
PHASE 3

Inspection Dates:

Phase 3: March 20 through May 9, 2003

Exit: TBD

Applicable Inspection Procedures:

93812, "Emergency Response"
40001, "Resolution of Employee Concerns"

Inspection Procedure:

Prepared by: _____
G. C. Wright, RIII, DRP
Project Engineer/Team Lead

Reviewed by: _____
Christine A. Lipa
Chief, Projects Branch 4, DRP

Reviewed by: _____
Brent Clayton,
Management & Human Performance
Oversight Manager

Approved by: _____
Jack A. Grobe, Chairman,
Davis-Besse 0350 Oversight Panel

Approval to use IP 40001:

J. E. Dyer,
Regional Administrator,
Region III

Phase 3: Corrective Action Effectiveness.
This portion of the inspection will be accomplished by a special inspection consisting of NRC inspectors, specialists, and consultants

I. Inspection team make-up:

Team Leader: Geoffrey Wright, Region III
Team Members: Clare Goodman, NRR
Richard Pelton, NRR
Julius Persensky, RES
Lisamarie Jarriel, NRR
John Beck, Consultant
Michael Brothers, Consultant

II. Inspection Activities:

Docket = 05000346
Report No. = 50-346/2003012
Insp. Proc. = 93812
Inspection IPE = ER
Preparation IPE = SEP
Documentation IPE = SED
Travel = AT

Entrance Meeting: April 7
Inspection Time: March 20 & 21, April 7-11, and April 28 to May 9, 2003
Exit Meeting: TBD.

III. Inspection Deliverables:

This special inspection is designed to provide the NRC's 0350 Panel (Panel) with an evaluation of the processes the licensee is using to assess its safety culture, the actions and monitoring activities associated with improving its safety conscious work environment (SCWE), and the status of its employee concern program. The input from this inspection, when combined with other inputs, e.g., System Health inspections, Program Review inspections, Containment Health inspections, and the Corrective Action Team Inspection, will allow the Panel to make an informed decision on the effectiveness of the licensee's Management and Human Performance corrective actions. To that end, the following deliverables are expected from this special inspection.

A. Internal Assessment

The inspection team will provide the 0350 Panel with an assessment of the input parameters, evaluation techniques, and methods to develop conclusions used in the internal assessment.

B. External Assessment, i.e., Dr. Haber's Review

The inspection team will provide the 0350 Panel with an assessment of the input parameters, evaluation techniques, and methods to develop conclusions used in the external culture assessment.

C. Integration of Internal and External Assessments

The inspection team will provide the 0350 Panel with an assessment of the extent to which the licensee benchmarked and revised, where appropriate, their internal assessments against the external assessment. Further, the team will provide an assessment of the licensee's plans for future monitoring of safety culture.

D. Safety Conscious Work Environment (SCWE) and Safety Conscious Work Environment Review Team (SCWERT).

The inspection team will provide the 0350 Panel with an assessment of the licensee's current and future activities to promote the open identification of deficient conditions, to prevent retaliatory action, and to monitor the program's effectiveness.

E. Employee Concerns Program

The inspection team will provide the 0350 Panel with an assessment of the issues brought to the Employee Concerns Program, the methods to review issues, and the resolution of issues entered into the employee concern program. The team will also, to the extent practicable, provide an assessment of the reasons individuals are using the Employee Concerns Program.

F. Measures for monitoring the effectiveness of Management and Human Performance initiatives.

The inspection team will provide the 0350 Panel with an assessment of the licensee's metrics, evaluation techniques, goals, and methods for developing and implementing corrective actions associated with monitoring the effectiveness of the licensee's Management and Human Performance initiatives.

IV. Inspection Details

A. Internal Safety Culture Assessment (Restart Readiness Review Extended Plant Outage, DBBP-VP-0002, Rev. 2, 3/10/03)

- g. Evaluate the following attributes of the licensee's internal assessment tool "Restart Readiness Review Extended Plant Outage, DBBP-VP-0002, Rev. 2, 3/10/03:"

- a. The process used to perform the Safety Culture Assessment described in DBBP-VP-0002, Attachment 8, to determine its feasibility and appropriateness for evaluating safety culture;
 - b. the elements of Safety Culture listed in DBBP-VP-0002, Attachment 8, to determine their applicability and appropriateness;
 - c. the criteria in Appendix A. of Attachment 8 of DBBP-VP-0002 to determine their applicability, appropriateness, and comprehensiveness; and
 - d. any weaknesses in DBBP-VP-Rev. 2, that would limit its effectiveness as the tool to evaluate safety culture at Davis-Besse prior to restart.
- B. External Safety Culture Assessment, i.e., the assessment performed by the contractor.
1. Evaluate suitability of the following licensee's safety culture monitoring tool(s):
 - a. survey questions;
 - b. interview questions;
 - c. activity observation selection and plans, including sampling and techniques;
 - d. documents reviewed; and
 - e. sampling plan for all above.
 2. Evaluate implementation of the licensee's safety culture monitoring tool(s) to determine:
 - a. if each of the tools (survey, interview, and observation) was implemented as planned;
 - b. how individuals were selected to participate as described in the process; and
 - c. the qualifications of the personnel (DB and contractors) performing the assessment.
 3. Evaluate the methodology used to develop results and conclusions from the data to determine:
 - a. if the methodology is appropriate, applicable, and comprehensive;
 - b. if the methodology was applied consistently; and
 - c. if the statistical techniques applied to sampling and to the results were appropriate.
 4. Evaluate the results of the safety culture monitoring tools and the data collected by the contractor to determine:
 - a. if the results drawn from the surveys are consistent with the data collected;

- b. if the results drawn from the interviews are consistent with the data collected;
- c. if the results drawn from the observations are consistent with the data collected;
- d. if the overall conclusions drawn from implementation of the safety culture tool(s) are consistent with the data collected by the contractor.
- e. Evaluate the application of the convergent validity methodology to evaluate:
 - f. how individual issues were integrated into the overall conclusions; and
 - g. how outliers were evaluated and handled.

C. Integration of Internal and External Assessments

1. Review and compare the integration of the internal and external assessments and evaluate the following areas:
 - a. how the findings from implementation of DBBP-VP-0002, Rev. 2, internal safety culture assessment will be compared with the findings from implementation of the external safety culture monitoring activity;
 - b. if the process described in DBBP-VP-0002 is of the appropriate scope and depth as the baseline established by the external safety culture monitoring activity;
 - c. if the elements described in DBBP-VP-0002 capture the same safety culture elements as the baseline established by the external safety culture monitoring activity;
 - d. how the licensee will incorporate the findings from implementation of DBBP-VP-0002, Rev. 2, internal safety culture assessment, into their corrective action program; and
 - e. Identify any weaknesses in DBBP-VP-Rev. 2, that would limit its effectiveness as the tool to periodically evaluate safety culture at Davis-Besse.
2. Review the licensee's long term implementation strategy to determine and evaluate:
 - a. whether the "Restart Readiness Review Extended Plant Outage," DBBP-VP-0002, Rev. 2, 3/10/03, is an appropriate tool to perform the periodic assessments
 - b. the licensee's program for monitoring safety culture in the future, and approach for identifying and responding to trends;
 - c. the safety culture assessment tools, if other than DBBP-VP-0002, which will be used for future periodic safety culture assessments;
 - d. the frequency and sampling for future periodic safety culture assessments;

- e. the qualifications of personnel who will conduct future periodic safety culture assessments;
 - f. the criteria for action from future periodic safety culture assessments; and
 - g. how the findings from this baseline assessment and future periodic safety culture assessments will be incorporated into the licensee's corrective action program;
- D. Safety Conscious Work Environment (SCWE) and Safety Conscious Work Environment Review Team (SCWERT) Implementation.
 - 1. Use the following material as guidance in the review:
 - a. Inspection Procedure 71152 "Identification and Resolution of Problems" Section 03.03d "Assessment of Safety Conscious Work Environment" (Attachment 2); and
 - b. NRC: Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation (Attachment 3).
 - 2. Evaluate metrics to monitor program effectiveness;
 - 3. Define interview population – numbers and distribution;
 - 4. Evaluate the licensee's performance against its policy NOPL-LP-2003 "Policy for Maintaining a Safety Conscious Work Environment (SCWE);"
 - 5. Evaluate the effectiveness of the Training programs for employees and contractors; and
 - 6. Evaluate the effectiveness of internal communications.
- E. Employee Concerns Program Implementation
 - 1. Evaluate the licensee's ECP using the following guidance:
 - a. Inspection Procedure 40001, Resolution of Employee Concerns, (Attachment 1);
 - b. NRC Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation (Attachment 3); and
 - c. NEI 97-05
 - 2. Evaluate metrics to monitor program effectiveness.
- F. Measures for monitoring the effectiveness of Management and Human Performance initiatives.
 - 1. Review the licensee's metrics for monitoring the effectiveness of corrective actions in the Management and Human Performance area and evaluate:
 - a. the appropriateness of monitored items;
 - b. the criteria used to assess effectiveness; and
 - c. the process used when item does not meet criteria

2. Review the licensee's actions to address areas which do not meet goals or metrics with declining trends and evaluate:
 - a. the system used to address issues;
 - b. how the issues are tracked;
 - c. how well the issues handled; and
 - d. the effectiveness of the corrective actions.

V. Brief 0350 Oversight Panel on findings and conclusions from inspection.

VI. Exit Meeting

VII. RAM items to be addressed by the full Management and Human Performance Inspection Plan, i.e., all three phases of the inspection effort.

1. E-22
2. E-25
3. SUP-08
4. SUP-09
5. SUP-10
6. SUP-11
7. SUP-19 in part

Attachments

- 1. Inspection Procedure 40001, Resolution of Employee Concerns**
- 2. Assessment of Safety Conscious Work Environment, Extracted from IP 71152**
- 3. NRC: Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation**

Attachment 1

INSPECTION PROCEDURE 40001 RESOLUTION OF EMPLOYEE CONCERNS

40001-01 OBJECTIVE

To Evaluate the licensee's process for resolving safety-related¹ concerns reported by licensee or contractor employees while preventing any retaliatory action against those employees.

40001-02 INSPECTION REQUIREMENTS

NOTE: Implementation of this inspection procedure requires the approval of the appropriate Regional Administrator.

02.01 Inspection Preparation

1. Allegation History. Review the allegation history of the site before performing the inspection. Determine any positive or negative aspects of the licensee's handling of allegations. The inspection should include concerns that are the subject of allegations reviewed by the NRC as well as concerns that were not submitted to the NRC.
2. Process for Resolving Concerns. Review procedures that govern the licensee's Employee Concerns Program (ECP) and focus on the information flow process. Review the licensee's process for receiving, evaluating, dispositioning, tracking and documenting concerns. This review should be based on the licensee having an ECP in place and the pertinent procedures being available to the inspector. The inspector should conduct this review before the inspection.
3. ECP Organization. Review whether the licensee's process for resolving concerns ensures a suitable level of independence between the ECP and line organizations.

02.02 Evaluation of the Licensee's Process for Resolving Employee Concerns. On the basis of available documents and data, Evaluate the overall performance of the licensee by focusing on them licensee's effectiveness in (1) processing and resolving safety related concerns and (2) protecting from retaliation those employees who raise concerns.

1. Documentation of Concerns. Examine safety-related concerns reported by employees within the last 2 years. Evaluate pertinent documentation of the receipt, review, and closure of each safety-related concern selected for this examination. This review should Evaluate the technical adequacy of the licensee's review and closure of the concerns.

NOTE: Any allegations brought to inspectors by employees during the inspection should be forwarded to the regional office allegation coordinator (OAC) for processing through the NRC¹ allegation review process. At no time during the NRC review should the confidentiality of any employee be jeopardized.²

2. Corrective Actions. Evaluate the adequacy of corrective actions associated with the closure of selected safety related concerns. Contact the appropriate employees to discuss their satisfaction with the adequacy of the corrective actions.

NOTE: Discussions with employees should be held only if employees voluntarily agree to discuss their concerns with the NRC. Inspectors should expend maximum effort to protect the identity of those employees contacted including contact by phone and/or offsite meetings.

3. Prioritization of Concerns. Evaluate whether concerns are prioritized on the basis of safety significance.
4. Feedback to Employees. Evaluate the adequacy and timeliness of feedback to employees regarding the review and resolution of their concerns. Contact appropriate employees to discuss their satisfaction with the feedback process regarding their concerns.
5. Independent ECP Staff Review. Evaluate the ability of the licensee's staff administering the ECP to impartially review, track, disposition, and record concerns independent of the employee's line organization.
6. Environment for Reporting Concerns. Evaluate if and how the licensee publicizes the ECP as an avenue for employees to report concerns when they are reluctant to report them to their line organization. Evaluate how employees are assured that confidentiality will be preserved, if they wish to maintain confidentiality. Evaluate how all employees, including new employees, are made aware of procedures that govern accessibility to, reporting concerns to, and implementation of the ECP. Evaluate whether departing or dismissed employees are debriefed regarding any remaining concerns.
7. Protection Against Retaliation. Determine whether sufficient controls are in place to protect those employees who identify concerns from any type of retaliatory action. Ascertain whether management supports measures to ensure achievement of that end. Contact appropriate employees to discuss their satisfaction with the protection against retaliation afforded to them by the ECP and licensee's management.

¹ For this inspection, we will not limit our review to safety related concerns

8. Expertise of ECP Staff. If problems with the handling of concerns are identified, Evaluate whether the ECP staff can promptly respond to and correctly resolve a variety of concerns. Evaluate the extent of the ECP staff's reliance on line organizations and consultants. Determine whether training is provided for all personnel involved in the handling of concerns.

1. Self-Evaluation. Evaluate the licensee's monitoring and auditing of the ECP by internal and external organizations, and determine whether lessons learned are provided as feedback to management.

02.03 Reporting. Identify any negative findings about the licensee's processing and reporting of concerns to NRC management before the final exit interview with the licensee. Determine whether more extensive follow up review should be performed or if more issues should be forwarded to the OAC. Keep NRC management informed of significant adverse findings.

40001-03 GUIDANCE

General Guidance

An ECP is an avenue independent of the line management process for licensee and contractor employees to report safety concerns to their employers without fear of retaliation. NRC regulations do not include specific guidance or requirements for the establishment of an ECP. The applicable regulatory requirement in Section 50.7 of Title 10 of the Code of Federal Regulations (10 CFR 50.7) and in the Energy Reorganization Act, Section 211, is not to impede or hinder the reporting of safety-related concerns by employees of licensees or contractors and subcontractors. To the extent that safety-related concerns are being dispositioned through the ECP, evaluation of the process falls under 10 CFR Part 50, Appendix B, Criterion XVI. Some licensees have well-established ECPs, while others have none at all. The ECPs in existence do not adhere to one universal format and range from those lacking formality to those that are very well defined. Increased NRC interest in this area resulted in the development of Temporary Instruction 2500/028, "Employee Concerns Program," in 1993 and the modification of Inspection Procedure 40500, "Effectiveness of Licensee Controls in Identifying, Resolving, and Preventing Problems," Section 03, to aid inspectors in reviewing licensee programs for the phenomenon known as the "chilling effect" (a term that refers to the negative effect a hostile environment may have on employees³ raising concerns to the NRC or on those who may want to raise concerns). This inspection procedure should be used to evaluate whether a licensee has adequately resolved safety-related employee concerns without retaliation against those employees who raise concerns.

Inspectors are directed not to attempt to enforce the programmatic elements presented in this inspection procedure. Any problems identified concerning a licensee's processing of concerns are to be reported as observations. Inadequate resolution of concerns should be evaluated for impact on plant safety, if time permits. If time does not permit evaluation, the licensee and NRC management should be informed of the staff's concerns with the licensee's resolution.

³ For this inspection revise wording to read "...have on employees willingness to raise concerns to the NRC or the licensee..."

Allegations received by inspectors during the review should be forwarded to the regional OAC, as appropriate⁴.

Specific Guidance

03.01 Inspection Preparation. Determine whether the licensee is responsive and sensitive to those issues that employees believe could affect the safe operation or shutdown of a nuclear facility or endanger the health and safety of the public. These attributes can be determined in part by assessing whether a licensee's ECP comprises programmatic elements that ensure a responsive, effective operation. The inspector should review ECP procedures and data and submit pertinent questions to the licensee before the site inspection.

1. Allegation History. In reviewing the allegation history, determine the number of technical and wrongdoing (e.g., harassment, intimidation, discrimination) employee concerns reported to the ECP staff and allegations reported to the NRC over the last 2 years. Compare the number of technical and wrongdoing concerns or allegations received by the ECP⁵ staff with those received by the NRC for the last 2 years and note any parts of the organization that reported concerns to the NRC but not to the ECP staff.

2. Process for Resolving Concerns. In reviewing the licensee's ECP procedures, determine whether the following programmatic elements are present:

Corporate policy disseminated on employee concerns and protection of employees against retaliation.

Information on how licensee and contractor employees can access the ECP.

Methods for reporting concerns (e.g., in person, mail, fax, telephone).

Assurance of employee confidentiality.

Measures to protect employees from retaliation.

Assignment of staff independent from line organizations for fair and impartial evaluation of employees concerns.

Methods for prioritization, evaluation, tracking, resolution, documentation and feedback regarding employee concerns exist and are adhered to while concerns are being resolved.

3. ECP Organization. Ascertain whether the ECP organization is independent of line organizations and whether the ECP staff is competent. Determine the ECP manager reporting chain and whether:

The ECP staff is responsible for investigating, evaluating, tracking, and resolving each concern, and guidance is provided on when and how ECP staff can call on other sources of expertise.

Qualifications of ECP counselors and investigators are established.

⁴ For this inspection, revise to delete "...as appropriate."

⁵ For this inspection, revise to read "...received by the licensee staff..."

03.02 Assessment of the Licensee's Process for Resolving Employee Concerns. Select a minimum of 10 and maximum of 20 safety-related employee concerns and evaluate the licensee's (1) processing and resolving safety-related concerns and (2) protecting from retaliation those employees who raise concerns.

NOTE: This assessment should be done by interviewing ECP staff, reviewing applicable ECP files, and, where necessary, conducting employee interviews.

1. Documentation of Concerns. Review ECP files (files containing records of employee concerns) for selected safety-related concerns, and determine whether:

All safety concerns are formally documented (not resolved on the phone). Controls exist requiring records of pertinent conversations and meetings. Sufficient detail is documented to determine the safety impact of the concern, where possible.

Sufficient records exist on the processing of the concern, including records on receipt of concern, interviews, assignment to staff, summaries of telephone conversations, resolution, and feedback to the employee.

Records are maintained in an officially designated secure location accessible only to internal auditors, ECP staff, and authorized management.

2. Corrective Actions

Perform an independent review of the adequacy of corrective actions associated with the closure of selected safety-related concerns. Contact appropriate employees, particularly when a concern does not appear to have been adequately resolved, to discuss their satisfaction with the closure of their concerns. Focus on the following:

Review selected corrective actions to determine whether licensee actions committed to in response to employee concerns were adequate.

Determine whether employees voicing safety-related concerns believe the corrective actions addressed the identified concerns.

Perform an independent review of the adequacy of the licensee's resolution of a sample of the concerns selected for review. Focus on the following:

Did the licensee investigate and resolve each issue raised by the employee.

Was the scope and depth of the licensee's review adequate to address the questions raised.

Was the licensee's review timely given the safety significance of the issue and the operating status of the plant.

3. Prioritization of Concerns. Determine whether concerns are screened and assigned priorities on the basis of safety significance. Determine whether issues of the highest safety or organizational significance receive the highest priority.

4. Feedback to Employees. Determine whether adequate and timely feedback is provided to employees raising concerns to the ECP staff. Focus on the following:

formal acknowledgement of receipt and specific details of the concern
interim status of review of concern
results of review and resolution of concern

5. Independent ECP Staff Review. Determine whether the ECP staff provide an impartial and independent review the employees' concerns (independent of the employee's line organization) and whether ECP procedures provide formal guidance for accomplishing an independent review of employees' concerns. Lack of guidance could result in employees obtaining opinions or resolutions from individuals in the line organization that the employees did not agree with in the first place.
6. Environment for Reporting Concerns. During discussions with ECP staff and employees, determine:
 - Whether employees are encouraged to report concerns.
 - Whether information provided (e.g., purpose and function of the ECP, procedures governing its operation, and persons who have access to it) is consistent.
 - To whom and how to raise a concern.
 - Whether the ECP is independent.
 - Whether confidentiality of employees is maintained.
 - Whether first-line through senior management endorses and supports the ECP.
 - Whether employees understand the accessibility, confidentiality, and protection against retaliation provided by the ECP.
 - Why certain parts of the organization (on the basis of allegation history) choose to report concerns to the NRC but not the ECP staff.

CAUTION: If, during your review of the licensee's allegation history, you find that the licensee has pending harassment, intimidation, or discrimination case(s) before either the Department of Labor (DOL) or NRC's Office of Investigations, do not document a finding of "no chilling effect" as a result of your inspection. Similarly, if the licensee has recently been issued a Notice of Violation by the NRC, or been found liable by a final DOL adjudicative body for violations pertaining to harassment, intimidation, or discrimination, a finding of "no chilling effect" should not be issued. If you are unclear or not certain about the meaning of specific issues identified in the licensee's files, you should consult with the NRC Regional Office Allegation Coordinator (OAC) for guidance before reaching any inspection findings.

7. Protection Against Retaliation. Determine whether the licensee's or contractor's employees are encouraged to report safety-related concerns without fear of retaliation; also, whether:
 - No retaliation is permitted.
 - Employees are informed that the ECP is an acceptable alternative method for raising safety concerns and that its use by co-workers is not to be viewed negatively.
 - Control measures or policies are implemented.
 - Formal controls exist to inform senior management of instances of reported retaliation.
 - Management supports measures and becomes involved in the resolution of concerns.

Each concern is treated as legitimate unless proven otherwise.

How individual confidentiality is maintained, including confidentiality of those entering or leaving the ECP office.

Employees requesting confidentiality are alerted that despite the ECP's efforts to protect their identity, the narrow focus of their concern could potentially cause their identity to be revealed.

The ECP staff hours accommodate employees' schedules and flexibility for offsite interviews is considered.

An "appeal process" has been implemented to preserve the affected employee's protected activities and personal remedies.

8. Expertise of ECP staff. Examine the training of ECP and plant staff by reviewing training records and lesson materials. Determine whether:

The ECP staff receives training on how to conduct investigations and interviews of employees while protecting their confidentiality.

First-line management receives training on handling concerns and are required to meet an established training grade.

All levels of management receive training on "lessons learned."

All plant staff receive initial indoctrination and periodic refresher training on the basic concepts and purpose of the ECP.

Management receives training on how to foster an atmosphere that encourages employees to readily express their concerns.

- i. Self-Assessment. In determining how effectively management and the ECP staff oversee the ECP, review the following:

Monitoring and auditing of the effectiveness of the ECP by internal and independent review organizations.

Encouragement and evaluation of employee feedback.

Dissemination of the results to management and the staff.

ASSESSMENT of employee satisfaction with reporting safety concerns to the ECP.

- 03.03 Reporting. Safety-significant inspection findings should be promptly identified to the appropriate regional management and, if appropriate, the OAC, for consideration of follow up action. Significantly adverse findings should also be discussed with appropriate NRR management.

40001-05 REFERENCES

10 CFR 50.7, "Employee Protection"

Energy Reorganization Act of 1974, Section 211, "Employee Protection"

END

Attachment 2

Assessment of Safety Conscious Work Environment Extracted from IP 71152.

- a. Assessment of Safety Conscious Work Environment. In conducting interviews with or observing other activities involving licensee personnel during the inspection, be sensitive to areas where employees may be reluctant to raise concerns. Although the licensee may be implementing an employee concerns program regarding the identification of safety issues, the possibility of existing underlying factors that would produce a "chilling" effect or reluctance to report such issues could exist and the inspector should be alert for such indications.

Below is a list of questions that can be used when discussing PI & R issues with licensee individuals to help Evaluate whether there are impediments to the establishment of a safety conscious work environment. It is not intended that inspectors conduct formal interviews solely for the purpose of evaluating the work environment, but rather, that the inspectors make use of the questions listed below during discussions with licensee individuals concerning other attributes of the inspection. It is expected that during this inspection, discussions/interviews will be held with both licensee management and staff. If, as a result of the interviews or observations, the inspector becomes aware of specific examples of employees being discouraged from raising safety or regulatory issues within the licensee's or contractor's organization or to the NRC, the inspector should get as complete a set of facts as possible. If the inspector becomes aware of a reluctance of employees to raise safety or regulatory issues unrelated to a specific event or incident, continue pursuing the issue during the remaining interviews and try to determine the reason employees are reluctant to raise issues. However, if any indication of a "chilling" effect is suspected, inform regional management for further review and follow-up. Inspectors should be sensitive to the need to appropriately capture and forward any allegations that may be received during the inspection.

SUGGESTED QUESTIONS FOR USE IN DISCUSSIONS WITH LICENSEE INDIVIDUALS CONCERNING PI & R ISSUES

The following are suggested questions that may be used when discussing PI & R issues with licensee individuals. It is not intended that these questions be asked verbatim, but rather, that they form the basis for gathering insights regarding whether there are impediments to the formation of a safety conscious work environment.

Suggested Questions

- a. How would the individual raise a safety or regulatory issue (e.g. inform supervisor, corrective action program, employee concern program (ECP), NRC)?
- b. Why would they pick that approach (e.g. supervisor's preference, trying to keep numbers down, system difficult to use)?
- c. Has the person ever submitted an issue to the corrective action program or the ECP? Was the issue adequately addressed? If not, did he or she pursue the issue? If not, why not?

- d. Does the individual know whether employee concerns are tracked to completion and whether employees are informed of the result?
- e. Does the individual believe the licensee's corrective action programs are successful in addressing issues submitted?
- f. Is the individual aware of any specific instances in which another employee submitted an issue to the corrective action program or ECP and considered the licensee's response incomplete or unacceptable or was retaliated against for pursuing the issue? (Try to get enough specific information to follow up with the other employee.)
- g. Does the individual believe there has been a change in the amount of time necessary to resolve corrective action issues or employee concerns?
- h. Is the individual aware of or have there been interactions with NRC personnel that suggest that some employees may be hesitant to raise concerns or present information to the NRC?
- i. Is the individual aware of any events that would discourage employees from raising concerns (e.g. chastisement for submitting issues to corrective action program, ECP, or NRC; supervisors holding up submittal of concerns). Has there been an unexplainable change in the number or nature of concerns raised by employees to the licensee's corrective action program or employee concern program or the NRC?
- j. Are there any unofficial corrective actions or tracking systems that exist because the existing formal systems are thought to be ineffective? (Unofficial corrective actions that bypass the recognized corrective action program have been previously in engineering and health physics areas.)

Attachment 3

NRC: Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation - Federal Register Notice

U.S. Nuclear Regulatory Commission

Policy Statement for Nuclear Employees Raising Safety Concerns Without
Fear of Retaliation - Federal Register Notice

[Federal Register: May 14, 1996 (Volume 61, Number 94)]

[Notices]

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NUCLEAR REGULATORY COMMISSION

Freedom of Employees in the Nuclear Industry to Raise Safety Concerns
Without Fear of Retaliation; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this policy statement to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors.

DATE: May 14, 1996

SUPPLEMENTARY INFORMATION:

Background

NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of potential safety concerns¹ and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility.

In the past, employees have raised important issues and as a result, the public health and safety has benefitted. Although the Commission recognizes that not every concern raised by employees is safety significant or, for that matter, is valid, the Commission concludes that it is important that licensees' management establish an environment in which safety issues are promptly identified and effectively resolved and in which employees feel free to raise concerns.

Although hundreds of concerns are raised and resolved daily in the nuclear industry, the Commission, on occasion, receives reports of individuals being retaliated against for raising concerns. This retaliation is unacceptable and unlawful. In addition to the hardship caused to

the individual employee, the perception by fellow workers that raising concerns has resulted in retaliation can generate a chilling effect that may discourage other workers from raising concerns. A reluctance on the part of employees to raise concerns is detrimental to nuclear safety.

As a result of questions raised about NRC's efforts to address retaliation against individuals who raise health and safety concerns, the Commission established a review team in 1993 to reassess the NRC's program for protecting allegers against retaliation. In its report (NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," January 7, 1994) the review team made numerous recommendations, including several recommendations involving issuing a policy statement to address the need to encourage responsible licensee action with regard to fostering a quality-conscious environment in which employees are free to raise safety concerns without fear of retribution (recommendations I.A.-1, I.A.-2, and I.A.-4). On February 8, 1995, the Commission after considering those recommendations and the bases for them published for comment a proposed policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," in the Federal Register (60 FR 7592, February 8, 1995).

The proposed policy statement generated comments from private citizens and representatives of the industry concerning both the policy statement and NRC and Department of Labor (DOL) performance. The more significant comments related to the contents of the policy statement included:

The policy statement would discourage employees from bringing their concerns to the NRC because it provided that employees should normally provide concerns to the licensee prior to or contemporaneously with coming to the NRC.

The use of a holding period should be at the discretion of the employer and not be considered by the NRC in evaluating the reasonableness of the licensee's action.

The policy statement is not needed to establish an environment to raise concerns if NRC uses its authority to enforce existing requirements by pursuing civil and criminal sanctions against those who discriminate.

The description of employee concerns programs and the oversight of contractors was too prescriptive; the expectations concerning oversight of contractors were received as the imposition of new requirements without adherence to the Administrative Procedure Act and the NRC's Backfit Rule, 10 CFR 50.109.

The need for employee concerns programs (ECPs) was questioned, including whether the ECPs fostered the development of a strong safety culture.

The suggestion for involvement of senior management in resolving discrimination complaints was too prescriptive and that decisions on senior management involvement should be decided by licensees.

In addition, two public meetings were held with representatives of the Nuclear Energy Institute (NEI) to discuss the proposed policy statement. Summaries of these meetings along with a revised policy statement proposed by NEI were included with the comments to the policy statement filed in the Public Document Room (PDR).

This policy statement is being issued after considering the public comments and coordination with the Department of Labor. The more significant changes included:

The policy statement was revised to clarify that senior management is expected to take responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved as opposed to being personally involved in the resolution of these matters.

References to maintenance of a "quality-conscious environment" have been changed to "safety-conscious environment" to put the focus on safety.

The policy statement has been revised to emphasize that while alternative programs for raising concerns may be helpful for a safety-conscious environment, the establishment of alternative programs is not a requirement.

The policy statement continues to emphasize licensees' responsibility for their contractors. This is not a new requirement. However, the policy statement was revised to provide that enforcement decisions against licensees for discriminatory conduct of their contractors would consider such things as the relationship between the licensee and contractor, the reasonableness of the licensee's oversight of the contractor's actions and its attempts to investigate and resolve the matter.

To avoid the possibility suggested by some commenters that the policy statement might discourage employees from raising concerns to the NRC if the employee is concerned about retaliation by the employer, the statement that reporting concerns to the Commission "except in limited fact-specific situations" would not absolve employees of the duty to inform the employer of matters that could bear on public, including worker, health and safety has been deleted. However, the policy statement expresses the Commission's expectation that employees, when coming to the NRC, should normally have provided the concern to the employer prior to or contemporaneously with coming to the NRC.

Statement of Policy

The purpose of this Statement of Policy is to set forth the Nuclear Regulatory Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their own management and the NRC without fear of retaliation. A safety-conscious work environment is critical to a licensee's ability to safely carry out licensed activities.

This policy statement and the principles set forth in it are intended to apply to licensed activities of all NRC licensees and their contractors², although it is recognized that some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of a method to raise concerns outside the normal

management structure such as an employee concerns program) may not be practical for very small licensees that have only a few employees and a very simple management structure.

The Commission believes that the most effective improvements to the environment for raising concerns will come from within a licensee's organization (or the organization of the licensee's contractor) as communicated and demonstrated by licensee and contractor management. Management should recognize the value of effective processes for problem identification and resolution, understand the negative effect produced by the perception that employee concerns are unwelcome, and appreciate the importance of ensuring that multiple channels exist for raising concerns. As the Commission noted in its 1989 Policy Statement on the Conduct of Nuclear Power Plant Operations (54 FR 3424, January 24, 1989), management must provide the leadership that nurtures and maintains the safety environment.

In developing this policy statement, the Commission considered the need for:

- (1) licensees and their contractors to establish work environments, with effective processes for problem identification and resolution, where employees feel free to raise concerns, both to their management and to the NRC, without fear of retaliation;
- (2) improving contractors' awareness of their responsibilities in this area;
- (3) senior management of licensees and contractors to take the responsibility for assuring that cases of alleged discrimination are investigated and resolved; and
- (4) employees in the regulated industry to recognize their responsibility to raise safety concerns to licensees and their right to raise concerns to the NRC.

This policy statement is directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. It is intended to reinforce the principle to all licensees and other employers subject to NRC authority that an act of retaliation or discrimination against an employee for raising a potential safety concern is not only unlawful but may adversely impact safety. The Commission emphasizes that employees who raise concerns serve an important role in addressing potential safety issues. Thus, the NRC cannot and will not tolerate retaliation against employees who attempt to carry out their responsibility to identify potential safety issues.

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that employees of licensees or their contractors have been discriminated against for raising concerns and to take enforcement action if discrimination is substantiated. The Commission has promulgated regulations to prohibit discrimination (see, e.g., 10 CFR 30.7 and 50.7). Under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor also has the authority to investigate complaints of discrimination and to provide a personal remedy to the employee when discrimination is found to have occurred.

The NRC may initiate an investigation even though the matter is also being pursued within the DOL process. However, the NRC's determination of whether to do so is a function of the priority of the case which is based on its potential merits and its significance relative to other ongoing NRC investigations⁴.

Effective Processes for Problem Identification and Resolution

Licensees bear the primary responsibility for the safe use of nuclear materials in their various licensed activities. To carry out that responsibility, licensees need to receive prompt notification of concerns as effective problem identification and resolution processes are essential to ensuring safety. Thus, the Commission expects that each licensee will establish a safety-conscious environment where employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

A safety-conscious environment is reinforced by a management attitude that promotes employee confidence in raising and resolving concerns. Other attributes of a work place with this type of an environment may include well-developed systems or approaches for prioritizing problems and directing resources accordingly; effective communications among various departments or elements of the licensee's organization for openly sharing information and analyzing the root causes of identified problems; and employees and managers with an open and questioning attitude, a focus on safety, and a positive orientation toward admitting and correcting personnel errors.

Initial and periodic training (including contractor training) for both employees and supervisors may also be an important factor in achieving a work environment in which employees feel free to raise concerns. In addition to communicating management expectations, training can clarify for both supervisors and employees options for problem identification. This would include use of licensee's internal processes as well as providing concerns directly to the NRC5. Training of supervisors may also minimize the potential perception that efforts to reduce operating and maintenance costs may cause supervisors to be less receptive to employee concerns if identification and resolution of concerns involve significant costs or schedule delays.

Incentive programs may provide a highly visible method for demonstrating management's commitment to safety, by rewarding ideas not based solely on their cost savings but also on their contribution to safety. Credible self assessments of the environment for raising concerns can contribute to program effectiveness by evaluating the adequacy and timeliness of problem resolution. Self-assessments can also be used to determine whether employees believe their concerns have been adequately addressed and whether employees feel free to raise concerns. When problems are identified through self-assessments, prompt corrective action should be taken.

Licensees and their contractors should clearly identify the processes that employees may use to raise concerns and employees should be encouraged to use them. The NRC appreciates the value of employees using normal processes (e.g., raising issues to the employee supervisors or managers or filing deficiency reports) for problem identification and resolution. However, it is important to recognize that the fact that some employees do not desire to use the normal line management processes does not mean that these employees do not have legitimate concerns that should be captured by the licensee's resolution processes. Nor does it mean that the normal processes are not effective. Even in a generally good environment, some employees may not always be comfortable in raising concerns through the normal channels. From a safety perspective, no method of raising potential safety concerns should be discouraged. Thus, in the interest of having concerns raised, the Commission encourages each licensee to have a dual focus: (1) on achieving and maintaining an environment where

employees feel free to raise their concerns directly to their supervisors and to licensee management, and (2) on ensuring that alternate means of raising and addressing concerns are accessible, credible, and effective.

NUREG-1499 may provide some helpful insights on various alternative approaches. The Commission recognizes that what works for one licensee may not be appropriate for another. Licensees have in the past used a variety of different approaches, such as:

- (1) an "open-door" policy that allows the employee to bring the concern to a higher-level manager;
- (2) a policy that permits employees to raise concerns to the licensee's quality assurance group;
- (3) an ombudsman program; or
- (4) some form of an employee concerns program.

The success of a licensee alternative program for concerns may be influenced by how accessible the program is to employees, prioritization processes, independence, provisions to protect the identity of employees including the ability to allow for reporting issues with anonymity, and resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees may be a necessary element of these programs.

This Policy Statement should not be interpreted as a requirement that every licensee establish alternative programs for raising and addressing concerns. Licensees should determine the need for providing alternative methods for raising concerns that can serve as internal "escape valves" or safety nets.⁶ Considerations might include the number of employees, the complexity of operations, potential hazards, and the history of allegations made to the NRC or licensee. While effective alternative programs for identifying and resolving concerns may assist licensees in maintaining a safety-conscious environment, the Commission, by making the suggestion for establishing alternative programs, is not requiring licensees to have such programs. In the absence of a requirement imposed by the Commission, the establishment and framework of alternative programs are discretionary.

Improving Contractors' Awareness of Their Responsibilities

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10 and 50.5 and the rules on

reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7).

Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against both the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee. In considering whether enforcement actions should be taken against licensees for contractor actions, and the nature of such actions, the NRC intends to consider, among other things, the relationship of the contractor to the particular licensee and its licensed activities; the reasonableness of the licensee's oversight of the contractor environment for raising concerns by methods such as licensee's reviews of contractor policies for raising and resolving concerns and audits of the effectiveness of contractor efforts in carrying out these policies, including procedures and training of employees and supervisors; the licensee's involvement in or opportunity to prevent the discrimination; and the licensee's efforts in responding to the particular allegation of discrimination, including whether the licensee reviewed the contractor's investigation, conducted its own investigation, or took reasonable action to achieve a remedy for any discriminatory action and to reduce potential chilling effects. Contractors of licensees have been involved in a number of discrimination complaints that are made by employees. In the interest of ensuring that their contractors establish safety-conscious environments, licensees should consider taking action so that:

- (1) each contractor involved in licensed activities is aware of the applicable regulations that prohibit discrimination;
- (2) each contractor is aware of its responsibilities in fostering an environment in which employees feel free to raise concerns related to licensed activities;
- (3) the licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and
- (4) contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation.

Involvement of Senior Management in Cases of Alleged Discrimination

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees, including personnel actions by contractors, who have raised concerns have a well-founded, non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate, non-discriminatory reasons. If employees

allege retaliation for engaging in protected activities, senior licensee management should be advised of the matter and assure that the appropriate level of management is involved, reviewing the particular facts and evaluating or reconsidering the action.

The intent of this policy statement is to emphasize the importance of licensee management taking an active role to promptly resolve situations involving alleged discrimination. Because of the complex nature of labor-management relations, any externally-imposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the licensee's responsibility, and that early resolution without government involvement is less likely to disrupt the work place and is in the best interests of both the licensee and the employee. For these reasons, the Commission's enforcement policy provides for consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. (59 FR 60697; November 28, 1994).

In some cases, management may find it desirable to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending reconsideration or resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on-site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the action is being reconsidered or the dispute is being resolved. However, inclusion of the holding period approach in this policy statement is not intended to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary.

A licensee may conclude, after a full review, that an adverse action against an employee is warranted. The Commission recognizes the need for licensees to take action when justified. Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from non-prohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

Responsibilities of Employers and Employees

As emphasized above, the responsibility for maintaining a safety-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission normally expects employees in the nuclear industry to raise safety and compliance concerns directly to licensees, or indirectly to licensees through contractors, because licensees, and not the Commission, bear the primary responsibility for safe operation of nuclear facilities and safe use of nuclear materials. The licensee, and not the NRC, is usually in the best position and has the detailed knowledge of the specific operations and the resources to deal promptly and effectively with

concerns raised by employees. This is another reason why the Commission expects licensees to establish an environment in which employees feel free to raise concerns to the licensees themselves.

Employers have a variety of means to express their expectations that employees raise concerns to them, such as employment contracts, employers' policies and procedures, and certain NRC requirements. In fact, many employees in the nuclear industry have been specifically hired to fulfill NRC requirements that licensees identify deficiencies, violations and safety issues. Examples of these include many employees who conduct surveillance, quality assurance, radiation protection, and security activities. In addition to individuals who specifically perform functions to meet monitoring requirements, the Commission encourages all employees to raise concerns to licensees if they identify safety issues so that licensees can address them before an event with safety consequences occurs.

The Commission's expectation that employees will normally raise safety concerns to their employers does not mean that employees may not come directly to the NRC. The Commission encourages employees to come to the NRC at any time they believe that the Commission should be aware of their concerns¹⁰. But, while not required, the Commission does expect that employees normally will have raised the issue with the licensee either prior to or contemporaneously with coming to the NRC. The Commission cautions licensees that complaints that adverse action was taken against an employee for not bringing a concern to his or her employer, when the employee brought the concern to the NRC, will be closely scrutinized by the NRC to determine if enforcement action is warranted for discrimination.

Retaliation against employees engaged in protected activities, whether they have raised concerns to their employers or to the NRC, will not be tolerated. If adverse action is found to have occurred because the employee raised a concern to either the NRC or the licensee, civil and criminal enforcement action may be taken against the licensee and the person responsible for the discrimination.

Summary

The Commission expects that NRC licensees will establish safety-conscious environments in which employees of licensees and licensee contractors are free, and feel free, to raise concerns to their management and to the NRC without fear of retaliation.

Licensees must ensure that employment actions against employees who have raised concerns have a well-founded, non-discriminatory basis. When allegations of discrimination arise in licensee, contractor, or subcontractor organizations, the Commission expects that senior licensee management will assure that the appropriate level of management is involved to review the particular facts, evaluate or reconsider the action, and, where warranted, remedy the matter.

Employees also have a role in contributing to a safety-conscious environment. Although employees are free to come to the NRC at any time, the Commission expects that employees will normally raise concerns with the involved licensee because the licensee has the primary responsibility for safety and is normally in the best position to promptly and effectively address the matter. The NRC should normally be viewed as a safety valve and not as a substitute forum for raising safety concerns.

This policy statement has been issued to highlight licensees' existing obligation to maintain an environment in which employees are free to raise concerns without retaliation. The expectations and suggestions contained in this policy statement do not establish new requirements. However, if a licensee has not established a safety-conscious environment, as evidenced by retaliation against an individual for engaging in a protected activity, whether the activity involves providing information to the licensee or the NRC, appropriate enforcement action may be taken against the licensee, its contractors, and the involved individual supervisors, for violations of NRC requirements.

The Commission recognizes that the actions discussed in this policy statement will not necessarily insulate an employee from retaliation, nor will they remove all personal cost should the employee seek a personal remedy. However, these measures, if adopted by licensees, should improve the environment for raising concerns.

Dated at Rockville, Maryland, this 8th day of May 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission

Throughout this Policy Statement the terms "concerns," "safety concerns" and "safety problem" refer to potential or actual issues within the Commission's jurisdiction involving operations, radiological releases, safeguards, radiation protection, and other matters relating to NRC-regulated activities.

Throughout this Notice, the term "licensee" includes licensees and applicants for licenses. It also refers to holders of certificates of compliance under 10 CFR Part 76. The term "contractor" includes contractors and subcontractors of NRC licensees and applicants defined as employers by section 211(a)(2) of the Energy Reorganization Act of 1974, as amended.

An employee who believes he or she has been discriminated against for raising concerns may file a complaint with the Department of Labor if the employee seeks a personal remedy for the discrimination. The person may also file an allegation of discrimination with the NRC. The NRC will focus on licensee actions and does not obtain personal remedies for the individual. Instructions for filing complaints with the DOL and submitting allegations can be found on NRC Form 3 which licensees are required to post. The NRC and DOL have entered into a Memorandum of Understanding to facilitate cooperation between the agencies. (47 FR 54585; December 3, 1982).

Training of supervisors in the value of raising concerns and the use of alternative internal processes may minimize the conflict that can be created when supervisors, especially first line supervisors, perceive employees as "problem employees" if the employees, in raising concerns, bypass the "chain of command."

In developing these programs, it is important for reactor licensees to be able to capture all potential safety concerns, not just concerns related to "safety-related" activities covered by 10 CFR Part 50, Appendix B. For example, concerns relating to environmental, safeguards, and radiation protection issues should also be captured.

When other employees know that the individual who was the recipient of an adverse action may have engaged in protected activities, it may be appropriate for the licensee to let the other employees know, consistent with privacy and legal considerations, that (1) management reviewed the matter and determined that its action was warranted, (2) the action was not in retaliation for engaging in protected activity and the reason why, and (3) licensee management continues to encourage them to raise issues. This may reduce any perception that retaliation occurred. The expectation that employees provide safety and compliance concerns to licensees is not applicable to concerns of possible wrongdoing by NRC employees or NRC contractors. Such concerns are subject to investigation by the NRC Office of Inspector General. Concerns related to fraud, waste or abuse in NRC operations or NRC programs including retaliation against a person for raising such issues should be reported directly to the NRC Office of the Inspector General. The Inspector General's toll-free hotline is 800-233-3497.

Except for the reporting of defects under 10 CFR Part 21 and in the area of radiological working conditions, the Commission has not codified this expectation. Licensees are required by 10 CFR 19.12 to train certain employees in their responsibility to raise issues related to radiation safety.

The Commission intends to protect the identity of individuals who come to the NRC to the greatest extent possible. See "Statement of Policy on Protection, the Identity of Allegers and Confidential Sources."

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