

March 18, 2004

Howard Whitcomb III
Home Address Deleted
Under 10 CFR 2.790(a)]

SUBJECT: ALLEGATION NO. RIII-04-A-0020

Dear Mr. Whitcomb:

This refers to your letters dated February 14 and March 3, 2004, to James Caldwell, which documented several concerns pertaining to the Davis-Besse Nuclear Power Plant. You were concerned that: (1) the NRC has failed to respond to most, if not all, of your concerns; (2) the NRC is proceeding with a restart decision prior to receiving the findings of the Federal Grand Jury; (3) the problems of today were central to the 1985 event; (4) the cultural attributes involving a systemic refusal to perform maintenance has survived since 1985; (5) there is a lack of implementation or resolution of the NRC Lessons Learned Task Force; (6) the corrective action program is incomplete and the material condition of plant equipment remains unknown; (7) there are inadequacies in the Quality Assurance and Maintenance programs; (8) the licensee has established a corporate philosophy of production over safety; and (9) there is a conflict of interest with certain senior NRC managers and members of the Davis-Besse Oversight Panel. The enclosure to this letter documents your concerns as we understand them.

In addition to the concerns listed in the enclosure, you expressed concerns about the performance of several NRC employees. Performance issues associated with NRC employees are addressed by the NRC's Office of the Inspector General (OIG) and not the NRC allegation program. Therefore, in accordance with our administrative procedure, a copy of your letter was forwarded to the OIG. Since the OIG is an independent NRC organization, I do not know what reviews the IG may perform or how the OIG will communicate with you; therefore, if you want to determine what, if any, investigations the OIG will perform and what, if any, communications the OIG will have with you, you are encouraged to contact the OIG at 1-800-233-3497.

Additionally, you requested in writing to Mr. Caldwell and verbally to Ms. Lipa that your letters and attachments be included in the public record. Normally, issues that are captured by the allegation program are not placed in the public record. However, since you have requested that the information be placed in the public record and acknowledged that you do not object to the release of your name as the source of the concern, we honored your request and placed your letters dated February 14 and March 3, 2004, and associated attachments in the NRC Public Document Room (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The accession number for the February 14th letter is ML040701184 and the accession number for the March 3rd letter is ML040710265.

For Concerns 1, 3, 4, 6, 7, and 8, the information you provided was too general for us to follow-up. In order for the technical staff to begin its evaluation of these concerns we need

examples that support your concerns. You can provide written examples of the concerns to a Region III Allegation Coordinator at the street or E-mail address provided below. If you do not provide written examples within 30 days from the date of this letter, a Region III Allegation Coordinator will close Concerns 1, 3, 4, 6, 7, and 8.

The staff has completed its evaluation of Concerns 2, 5, and 9. For Concern 2, consistent with the NRC enforcement manual, enforcement actions are normally deferred pending the results of a Department of Justice investigation unless immediate action is necessary for health and safety reasons. The NRC staff has reviewed the investigations performed by the NRC's Office of Investigations, and concluded that there was no imminent threat to public health and safety. In addition, a senior NRC executive is monitoring the ongoing federal investigation to ensure that the NRC staff is promptly aware of any information that poses an immediate public health or safety concern; therefore, it was acceptable to proceed with a restart decision prior to receiving the findings of the Department of Justice. For Concern 5 the NRC continues to implement the recommendations of the NRC Lessons Learned Task Force; therefore, we did not substantiate there was a lack of implementation or resolution of the NRC Lessons Learned Task Force. Lastly, for Concern 9, an individual independent of me reviewed your conflict of interest concern and concluded there was not a conflict of interest regarding the NRC personnel you mentioned. If you disagree with the results of our evaluation for Concerns 2, 5, and 9, you can provide your written response to a Region III Allegation Coordinator at the street or E-mail address provided below.

Thank you for notifying us of your concerns. You can provide the information we requested by writing to Region III Allegation Coordinators (Jim Heller or Andrea Kock) at the U.S. Nuclear Regulatory Commission, Region III, at 801 Warrenton Road, Suite 255, Lisle, Illinois 60532-4351. Mr. Heller's E-mail address is JKH@nrc.gov and Mrs. Kock's E-mail address is ALK@nrc.gov. If you E-mail them, please send the information to both E-mail addresses and their common E-mail address which is OAC3@nrc.gov.

Sincerely,

/RA/

John A. Grobe, Chairman
Davis-Besse Oversight Panel

Enclosure: Closure information

- cc w/enclosure: 1. AMS File No. RIII-04-A-0020
- 2. NRC OIG

EXPRESS MAIL

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OFFICE	RIII	N	RIII	N	RIII:OI	N	RIII	N	RIII	N
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DATE	03/08/04		03/12/04		03/17/04		03/17/04		03/18/04	

OFFICIAL RECORD COPY

ENCLOSURE

AMS File No. RIII-04-A-0020

Our current understanding of your concerns is summarized below. If you have any additional or clarifying information related to these concerns, please contact the RIII Allegation Coordinator at 1-800-522-3025.

Concern No. 1:

You are concerned that the NRC has failed to respond to most, if not all, of your concerns which are well documented and are contained within the transcripts of the public record routinely maintained at the public meetings.

NRC Evaluation and Conclusion for Concern 1:

Several members of the NRC staff have reviewed this concern and determined that it is too general for us to follow-up without examples of the issues that you believe we did not address. The transcripts from the 0350 public meetings demonstrated that issues raised during the meetings were addressed at the meeting or, if not addressed, an action item established. If an action item was established, the issue was reviewed and then discussed either at a subsequent meeting, via a follow-up call with the individual who raised the issue, or during written communications with the individual. In addition, any issue that satisfied the NRC's threshold for classification as an allegation was placed in the allegation program.

An example of an issue that prompted a follow-up call with you, inclusion of the issue in the allegation system, and written correspondence with you was the issue you discussed during the January 30, 2003, public meeting. The issue pertained to the alleged slashing of a tire to a radiation protection technician's vehicle several days after the technician issued a stop work order. Your issue was the subject of allegation file RIII-2003-A-0009. As you recall, a Region III Allegation Coordinator contacted you to obtain additional information and informed you that we had previously evaluated a similar issue. You were then provided the results of our previous evaluation by certified letter that was dated February 27, 2003, and received in your office on March 4, 2003.

As previously stated and demonstrated above, it continues to be the goal of the Davis-Besse Oversight Panel to address all issues raised at public meetings. I believe the Davis-Besse Oversight Panel met this goal during the public meetings. It would not be an efficient use of NRC resources to revisit the transcripts of each public meeting in which you were an active participant. In order for the technical staff to further evaluate this concern, we need the examples where the NRC failed to respond to your concerns. You can provide written examples to a Region III Allegation Coordinator at the street or E-mail address provided in the letter. If you do not provide written examples within 30 days from the date of this letter, a Region III Allegation Coordinator will close this concern.

Concern No. 2:

You are concerned that the NRC is attempting to circumvent the process and proceed with making its restart decision prior to receiving the findings of the Federal Grand Jury and/or the public comments regarding the findings. You stated that the Grand Jury process may expose new problems which are unknown. You believed that no one knows the extent or significance of the problems identified through the Grand Jury investigation.

NRC Evaluation and Conclusion for Concern 2:

The NRC enforcement manual at section 7.6, "Department of Justice (DOJ) Referrals" states, in part, that as a general policy, if a matter has been referred to the DOJ, unless immediate

action is necessary for health and safety reasons, issuance of an enforcement action should be withheld to avoid potential compromise of the DOJ activities. To ensure that there was not an immediate health and safety concern, selected members of the NRC's technical, enforcement, and legal staffs have reviewed the results from the NRC's Office of Investigations (OI), and concluded that there was no imminent threat to public health and safety requiring action at this time. These conclusions were reviewed and accepted by senior NRC managers.

In accordance with our enforcement policy, enforcement action against the licensee and individuals for issues associated with the vessel head damage will be deferred until completion of the ongoing federal investigation. We have established a working relationship with the DOJ that allows a senior NRC executive to monitor the ongoing federal investigation. This individual will ensure that the NRC staff becomes aware of information that may pose an immediate public health or safety concern. When this information becomes available to the staff, the information will be evaluated and appropriate action implemented. Therefore, based on the provisions that are included in the enforcement manual, we did not substantiate that there was an attempt to circumvent the process and proceed with a restart decision prior to receiving the findings of the ongoing federal investigation.

I am closing this concern since the NRC staff has reviewed the results of the OI Investigation and determined there was no imminent threat to public health and safety requiring action at this time. Should the senior NRC executive monitoring the ongoing federal investigation receive such information in the future, appropriate action will be taken.

Concern No. 3:

You are concerned that there are recurring problems today which were central to the event of June 9, 1985. You indicated that the performance of the auxiliary feedwater system continues to be problematic and suspect.

NRC Evaluation and Conclusion for Concern 3:

The concern, as presented in your letter, is too general for us to follow-up without examples of the recurring problems that you believe were central to the prior event. In order for the technical staff to begin its evaluation of this concern we need examples of current performance issues that support this concern. You can provide written examples of the concern to a Region III Allegation Coordinator at the street or E-mail address provided in the letter. If you do not provide written examples within 30 days from the date of this letter, a Region III Allegation Coordinator will close this concern.

Your letter alluded to the June 9, 1985, loss of feedwater event at Davis-Besse. The NRC conducted several inspections during the current extended outage which involved review of systems important to plant safety which included the auxiliary feedwater system. The NRC has no current operability concerns with the auxiliary feedwater system. The results of our inspections that addressed auxiliary feedwater and other safety systems issues were documented in NRC Inspection Reports (IRs), including system health assurance (IRs 50-346/02-14 and 50-346/02-13), backlog inspection (IR 50-346/03-24), the corrective action team inspection (IR 50-346/03-10), and the restart readiness assessment team inspections (IRs 50-346/04-04 and 50-346/03-11). The inspection results documented that the licensee's

reviews were conducted in an appropriate manner and resolution of identified deficiencies was acceptable. The resident inspectors also observed Technical Specification testing of the auxiliary feedwater pumps (IR 50-346/03-25) and identified no significant concerns. The inspection reports are available from the NRC's Public document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Concern No. 4:

You are concerned that the cultural attributes involving a systemic refusal to perform maintenance have survived since 1985 and still exist today.

NRC Evaluation and Conclusion for Concern 4:

The concern, as presented in your letter is too general for us to follow-up without examples of the cultural attributes that you believe have survived. In order for the technical staff to begin its evaluation of this concern, we need examples of current performance deficiencies that support this concern. You can provide written examples of the concern to a Region III Allegation Coordinator at the street or E-mail address provided in the letter. If you do not provide written examples within 30 days from the date of this letter, a Region III Allegation Coordinator will close this concern.

Concern No. 5:

You are concerned about lack of implementation or resolution of the NRC Lessons Learned Task Force that was published in November 2002.

NRC Evaluation and Conclusion for Concern 5:

The NRC Commissioners have had several meetings on the Davis-Besse Lessons Learned Task Force. Most recently, Commission Meeting Notice 2004-0087 documented that a Commission meeting was held on February 26, 2004, to discuss the status of the Davis-Besse Lessons Learned Task Force Issues. To give you the opportunity to observe the meeting, the Region III Public Affairs office contacted you on February 25, 2004, and left a voice mail message about the Commission meeting and how to access the webcast of the meeting.

I am closing this concern since the issue is being addressed by the NRC Commissioners.

Concern No. 6:

You are concerned that the Corrective Action Program (CAP) is incomplete and the material condition of the plant equipment remains unknown.

NRC Evaluation and Conclusion for Concern 6:

The concern, as presented in your letter, is too general for us to follow-up without examples of how the CAP is incomplete and why you believe the material condition of the plant equipment remained unknown. In order for the technical staff to begin its evaluation of this concern we need examples of current performance deficiencies that support this concern. You can provide written examples of the concern to a Region III Allegation Coordinator at the street or E-mail address provided in the letter. If you do not provide written examples within 30 days from the date of this letter, a Region III Allegation Coordinator will close this concern.

As part of the corrective actions resulting from the reactor vessel head degradation, the licensee established a return to service plan to identify, monitor, and control all actions necessary for the safe and reliable return to service of Davis-Besse. A key element of the return to service plan was for the licensee to reestablish the CAP to ensure that future conditions adverse to quality were properly identified, evaluated and corrected. The NRC performed a comprehensive Corrective Action Team Inspection (CATI), to evaluate the licensee's effectiveness in correcting deficiencies within the CAP. While the CATI identified that deficiencies still existed within the CAP, the team concluded that the licensee's corrective action program was improved and acceptable to support plant restart. The deficiencies identified by the CATI were discussed with the licensee during two public meetings, on November 12 and December 10, 2003. As part of these meetings, the licensee made a number of commitments to further improve implementation of the CAP prior to restart and longer term as part of its Operational Improvement Plan for Cycle 14. The latest revision of the Operational Improvement Plan for Cycle 14 is dated February 19, 2004, and was placed in the NRC Public Document Room and is available from the NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. The accession number for the Operational Improvement Plan for Cycle 14 is ML040560558. The conclusions of the CATI were documented in NRC Inspection Report No. 50-346/03-10 which is available in ADAMS.

Concern No. 7:

You are concerned about inadequacies of the Quality Assurance and Maintenance Programs.

NRC Evaluation and Conclusion for Concern 7:

The concern, as presented in your letter, is too general for us to follow-up without examples to show why you believe there are inadequacies in the Quality Assurance and Maintenance Programs. In order for the technical staff to begin its evaluation of this concern we need current examples of deficiencies that support this concern. You can provide written examples of the concern to a Region III Allegation Coordinator at the street or E-mail address provided in the letter. If you do not provide written examples within 30 days from the date of this letter, a Region III Allegation Coordinator will close this concern.

Concern No. 8:

You are concerned that the licensee has established a corporate philosophy of production over safety.

NRC Evaluation and Conclusion for Concern 8:

The concern, as presented in your letter, is too general for us to follow-up without examples showing why you believe the licensee, at this time, continues to maintain a corporate philosophy of production over safety. In order for the technical staff to begin its evaluation of this concern we need examples of this concern. You can provide written examples of the concern to a Region III Allegation Coordinator at the street or E-mail address provided in the letter. If you do not provide written examples within 30 days from the date of this letter, a Region III Allegation Coordinator will close this concern.

Concern No. 9:

You are concerned that there is conflict of interest with certain senior NRC managers and the members of the Davis-Besse Oversight Panel because of past involvement with Davis-Besse.

NRC Evaluation and Conclusion for Concern 9:

Since you mentioned there was a conflict of interest with several NRC employees (including me), this concern was reviewed by members of the NRC staff independent of the individuals central to your concern. They concluded that Messrs. Grobe, Dyer, and Collins do not have a conflict of interest that precludes or limits their ability to carry out the current NRC regulatory responsibilities, including the restart of Davis-Besse. Moreover, the NRC decision making process for the restart of Davis-Besse was comprehensive, rigorous, and designed to ensure that all relevant information was gathered and analyzed by many NRC staff members. As the recent Confirmatory Order demonstrated, the NRC will continue to exercise considerable enhanced regulatory oversight of Davis-Besse.