

May 9, 2005

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FROM: Eric J. Leeds, Director **/RA/**  
Division of Preparedness and Response  
Office of Nuclear Security and Incident Response

SUBJECT: WITHDRAWAL OF EMERGENCY PREPAREDNESS POSITION  
(EPPOS) 4, "EMERGENCY PLAN AND IMPLEMENTING  
PROCEDURE CHANGES," DATED NOVEMBER 19, 1998.

The purpose of this memorandum is to inform you that, effective on the date of this memorandum, the Emergency Preparedness Directorate (EPD) is withdrawing Emergency Preparedness Position (EPPOS) 4, "Emergency Plan and Implementing Procedure Changes," which was originally issued on November 19, 1998. In response to experience gained by the Nuclear Regulatory Commission (NRC) staff conducting reviews of Emergency Plan changes, changes to NRC rules, and the institution of the Reactor Oversight Process (ROP), EPD has determined that EPPOS 4 is outdated and needs to be withdrawn. The EPD staff has prepared a technical justification for the withdrawal of EPPOS 4 (see attachment).

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EPPOS 4 was written to be used in concert with inspection procedure (IP) 82701, "Operational Status of the Emergency Preparedness Program," and was intended to provide a framework for the NRC inspector to: (1) determine whether an emergency plan change results in a decrease in effectiveness; (2) determine whether the emergency plan, as changed, results in the emergency plan no longer meeting the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50; (3) clarify how emergency action level (EAL) changes were reviewed and approved; and, (4) review changes to procedures that implement a licensee's emergency plan.

As a result of discussions with internal and external stakeholders, the EPD staff developed a Regulatory Issue Summary (RIS) 2005-02, "Clarifying the Process for Making Emergency Plan Changes," dated February 14, 2005. RIS 2005-02 was written to clarify the application of 10 CFR 50.54(q) and provide guidance to both the inspector and the licensee. Because some of the positions in EPPOS 4 that remain applicable are reflected in the RIS and the other positions of EPPOS 4 are outdated, EPPOS 4 no longer serves a useful purpose. Furthermore, because EPPOS 4 contains guidance that conflicts with current rules and inspection practices, rescinding EPPOS 4 will eliminate potential confusion.

Attachment: As stated

## **Technical Justification to Withdraw Emergency Preparedness Position 4, “Emergency Plan and Implementing Procedure Changes”**

Emergency Preparedness Position (EPPOS) 4, “Emergency Plan and Implementing Procedure Changes,” was issued on November 19, 1998. The intent of EPPOS 4 was to provide guidance to the NRC inspector in order to provide consistent application of NRC rules when using Inspection Procedure (IP) 82701, “Operational Status of the Emergency Preparedness Program.” While EPPOS 4 was an internal document, specifically written for NRC inspectors’ use, it was shared with the industry by allowing comments to be received from outside organizations.

Generic communications, including Orders, Bulletins, Regulatory Issues Summaries, and Information Notices, are more effective methods to convey agency policy to external stakeholders. Generic communications ensure NRC actions are effective, efficient, open, realistic, and timely. As a result of discussions with internal and external stakeholders, the EPD staff developed Regulatory Issue Summary (RIS) 2005-02, “Clarifying the Process for Making Emergency Plan Changes,” dated February 14, 2005. RIS 2005-02 was written to clarify the application of 10 CFR 50.54(q) and provide guidance to both the inspector and the licensee. The following comparison of EPPOS 4 and RIS 2005-02 justifies the withdrawal of EPPOS 4.

### Purpose

The purposes of EPPOS 4 were:

- < To provide guidance to the staff for the determination of whether a change to an emergency plan (1) constitutes a decrease in effectiveness or (2) results in the plan, as changed, no longer meeting either the planning standards of §50.47(b) or the requirements of Appendix E to 10 CFR Part 50 for the facility;
- < To provide guidance to the staff for the review of changes to procedures that implement a licensee's emergency plan; and
- < To provide guidance to the staff for the review of changes to licensees’ emergency action levels (EALs).

The purposes of the RIS 2005-02 are:

- < To clarify the definition of “decrease in effectiveness (DIE),” as stated in 10 CFR 50.54(q);
- < To clarify the process for making changes to emergency plans; and
- < To provide some examples of changes that would not constitute a DIE and some examples of changes that would constitute a DIE of an emergency plan for additional clarity.

While clarifying the meaning of “decrease in effectiveness,” RIS 2005-02, addresses how a decrease in effectiveness determination should be made by both the licensee and the inspector. RIS 2005-02 includes a section that discusses how to review lower tier documents

that implement the emergency plan. Emergency Action Levels (EALs) are discussed in further detail in this evaluation under “Clarification of Guidance Regarding Change to Emergency Action Levels.”

#### Emergency Plan Change Review Process

EPPOS 4 and RIS 2005-02 discuss changes to emergency plans in similar context, with the exception of an inspection report. EPPOS 4 states, “either an inspection report or a safety evaluation report could result in approval of the plan . . .” RIS 2005-02 states, “The inspector will perform a screening review of the change against the emergency plan; however, this will not constitute approval of the plan as changed.” Pursuant to IP 82701, inspectors performed a review of all substantive changes. With the adoption of the Reactor Oversight Process (ROP), which rendered IP 82701 inactive, the inspectors now perform only a sampling of emergency plan changes. RIS 2005-02 reflects the current practice as identified in Inspection Procedure (IP) 71114.04, “Emergency Action Level and Emergency Plan Changes.”

#### Use of the Term “Commitment” versus “Requirement”

In EPPOS 4, a decrease in effectiveness involves an “emergency planning commitment”; similarly, RIS 2005-02 uses the term “emergency preparedness (EP) requirement.” An emergency planning commitment, as defined in EPPOS 4, is a statement made by the licensee in the emergency plan that affects the licensee’s capability or resources for responding to an emergency. An EP requirement, as defined in RIS 2005-02, is a statement made in the emergency plan that addresses how a particular regulatory requirement will be met, with an emphasis on capabilities and timeliness of performing functions, consistent with EPPOS 4.

In addition, in July 1999, the Nuclear Energy Institute (NEI) issued NEI 99-04, “Guidelines for Managing NRC Commitment Changes,” which the NRC endorsed. This document introduced a new term, “regulatory commitment.” A regulatory commitment is defined as an explicit statement to take a specific action agreed to, or volunteered by, a licensee and submitted in writing on the docket to the NRC. This term conflicts with the term EP commitment as the term “regulatory commitment” is not legally binding. Commitments fall into two categories: (1) commitments addressing compliance with legally-binding NRC requirements such as regulations, license conditions, technical specifications, and orders; and (2) commitments which do not address compliance, but are voluntarily agreed to by the licensee. Given this change in the use of the word “commitment,” the EPD staff found it appropriate to use “requirement” in RIS 2005-02 as it reflects the standards in 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50.

#### Definition of Decrease in Effectiveness and Documentation of Changes

Both EPPOS 4 and RIS 2005-02 stress the need to justify changes made to emergency plans. EPPOS 4 states, “If the revised plan involves a reduction in commitment by the licensee without a commensurate reduction in the bases for that commitment, then that change constitutes a decrease in effectiveness of the plan.” Decrease in effectiveness is defined in RIS 2005-02 as, “a change in an emergency preparedness requirement that results in the degradation or loss of the capability to perform a function in a timely manner, as contained in the emergency plan.” Both EPPOS 4 and RIS 2005-02 specify that the bases for making changes to an emergency

plan need to be clearly stated and defined. Both documents recognize that changes may be for reasons such as new rules, change in guidance, or site specific needs.

In each case a rationale/basis for the change is established, and is documented in a format that can be reviewed. This rationale had been lacking when inspectors and Headquarters personnel conducted decrease in effectiveness determinations prior to available guidance. Therefore, EPPOS 4 and RIS 2005-02 contain essentially the same message in relation to a DIE determination and the justification and documentation of such.

#### Planning Standards and Alternative Methods

Both EPPOS 4 and RIS 2005-02 address (1) whether the planning standards and requirements continue to be met and (2) the provision for an alternative method for complying with the regulations. In addition, the RIS as well as EPPOS 4 point out that a decrease in effectiveness determination is not based on whether the standards and requirements continue to be met.

#### Changes to Procedures Which Implement the Emergency Plan

Both EPPOS 4 and RIS 2005-02 discuss items that are relocated from the emergency plan into a lower tier document. The RIS clarifies the intent of 50.54(q) in that if relocated items implement the Emergency Plan, those items that were relocated must still adhere to the 50.54(q) process regarding any revisions that may be made.

#### Clarification of Guidance Regarding Changes to Emergency Action Levels

EPPOS 4 contains guidance that is out-of-date with respect to NRC review and approval of EAL changes. EPPOS 4 states, "The 10 CFR 50.54(q) process, which allows licensees to make certain changes without prior Commission approval, does not extend to EALs, this is a significant clarification." In addition, EPPOS 4 stipulated the previous Office of the General Counsel (OGC) determination that licensees were required to obtain State and local agreement and NRC approval for any proposed revisions to their EAL classification schemes prior to implementation. It was subsequently determined that licensees can make changes to EALs via 10 CFR 50.54(q) and the Office of Enforcement (OE) issued an Enforcement Guidance Memorandum, EGM-02-001. In addition, a rule change to Appendix E to 10 CFR Part 50 effective as of 04/26/05 permits licensees to make changes to EALs in accordance with 10 CFR 50.54(q) and removes the requirement to obtain State and local governmental authority agreement of EAL changes except when initially implemented. Therefore, the guidance in EPPOS 4 pertaining to EAL changes is in direct conflict with the current regulations and guidance on EAL changes.

The NRC endorsed NEI guidance for changes to EALs in RIS 2003-18 "Use of NEI 99-01, 'Methodology for Development of Emergency Action Levels,' Revision 4, dated January 2003" and subsequently developed a process for submittal and review of licensee changes to EALs in Supplement 1 to RIS 2003-18 dated, July 13, 2004. RIS 2003-18 acknowledges changes to EALs are subject to 10 CFR 50.54(q). However, since RIS 2003-18 provides clarification of how EAL changes should be made, RIS 2005-02 references the EAL change process in RIS 2003-18.

### Backfit Consideration

Prior to issuing RIS 2005-02, the EPD staff considered whether it would constitute a backfit. The Committee to review generic communications (CRGR) informally reviewed RIS 2005-02 and determined that a backfit did not exist. According to 10 CFR 50.109(a)(1), a backfit includes a staff position interpreting the rules that is new or different from a previously applicable staff position, that is imposed on a licensee. The EPD staff compared EPPOS 4 to RIS 2005-02, current regulations and practices, as well as pertinent policy, the initiation of the ROP program, and NRC rule changes, and concluded that a backfit did not exist. Therefore, rescinding EPPOS 4 does not constitute a backfit because RIS 2005-02 reflects current practices, rules, policy, aspects of the ROP, and incorporates the applicable portions of EPPOS 4.

### Summary

EPPOS 4 is being withdrawn due to: (1) the revision of Appendix E to 10 CFR Part 50, which contradicts the guidance on EAL changes contained in EPPOS 4; (2) NRC endorsement of NEI EAL guidance, NEI 99-01 revision 4; (3) consistency of 10 CFR 50.54(q) application by the inspector and the licensee through RIS 2005-02; (4) the use of generic communications to effectively interact with the industry; and (5) the adoption of the ROP, which rendered IP 82701 inactive.

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SISP Review Completed by: Kevin Williams Date: 03/21/05

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\*See previous concurrence

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