

EDO Principal Correspondence Control

FROM: DUE: 01/30/06

EDO CONTROL: G20060052  
DOC DT: 01/17/06  
FINAL REPLY:

Billie Pirner Garde  
Clifford & Garde Law Office

TO:

Commission

FOR SIGNATURE OF :

\*\* PRI \*\*

CRC NO: 06-0036

Chairman Diaz

DESC:

Safety Culture Initiatives

ROUTING:

Reyes  
Virgilio  
Kane  
Silber  
Dean  
Burns  
Cyr, OGC

DATE: 01/18/06

ASSIGNED TO:

CONTACT:

OE

Johnson

SPECIAL INSTRUCTIONS OR REMARKS:

Coordinate with OGC. Note: Immediate release of incoming to public/processed in ADAMS per SECY thru EDO/DPC.



LAW OFFICE

**CLIFFORD & GARDE**JOHN M. CLIFFORD\*  
BILLIE FIRNER GARDE\*\*1707 L STREET, N.W.  
SUITE 500  
WASHINGTON, D.C. 20036  
(202) 289-8990  
FAX (202) 289-8992\*ALSO ADMITTED IN MD  
\*\*ALSO ADMITTED IN TX, WI

January 17, 2006

VIA FACSIMILE AND REGULAR MAIL

The Honorable Nils J. Diaz, Chairman  
Edward McGaffigan, Jr., Commissioner  
Jeffrey S. Merrifield, Commissioner  
Gregory B. Jaczko, Commissioner  
Peter B. Lyons, Commissioner

RE: Safety Culture Initiatives

Gentleman:

Please accept this letter as notice of my concern about the position that the nuclear industry continues to take in opposition to the Nuclear Regulatory Commission (NRC) Staff's attempts to improve NRC oversight of licensee safety culture. The continued recalcitrance of the industry is, at this point, threatening the ability of the NRC to adopt a plan to evaluate safety culture at the nation's nuclear facilities. We are on the eve of the fourth anniversary of the Davis-Besse reactor head cavity discovery and the NRC still has no process to evaluate safety cultures as an indicator of safety significant issues. I bring this to your attention directly, and seek to speak to each of you on this important issue at your earliest convenience.

It was my belief, until a few days ago, that the NRC's Safety Culture task force, along with interested stakeholders and industry representatives were making solid progress in developing a collective understanding and agreement on how to enhance NRC oversight of safety culture at licensed reactors. This belief was based on my participation in a series of NRC Safety Culture Public Meetings over the past three months. Unfortunately, upon review of the most recent comments by the industry (<http://www.nrc.gov/what-we-do/regulatory/enforcement/sc-m10601003370.pdf>), it is obvious that the extensive progress we thought had been made was illusory. Not only does the industry continue to posture about its lack of a common understanding of the intended use of the safety culture components, it now states it is "premature" to comment on them. This is completely disingenuous. The industry letter directly contradicts the comments, positions and statements of its numerous participants in the past several meetings. While some disagreements were apparent, the groups participating in the public meetings were moving toward a "convergence" on how the oversight program could and

should be enhanced to address safety culture. In short, I am troubled by both the timing and the substance of the January 6, 2006 letter and its implications for the substantial amount of work that has been done by the Staff and the stakeholders.

### Background

As is well known, in February, 2002 the existence of a cavity in the reactor head at the Davis-Besse nuclear power plant became known to the public. Subsequent stress corrosion and cracking tests on the reactor head revealed that less than 1/8 inch of cladding was preventing a Loss of Coolant accident of unknown, and unacceptable, consequences. While an accident was avoided, the event revealed a number of serious fault lines in the NRC's oversight program, that had failed to identify and prevent the situation from developing.<sup>1</sup> One of those issues was the recognition that the safety culture at the Davis-Besse facility had not made safety the "overriding priority," and, in fact, had fallen below other cost and schedule issues in importance. In recognition of this the Commission took a number of significant steps, which included the August 30, 2004 issuance of SECY 04-011, "*Recommended Staff Actions Regarding Agency Guidance In The Areas of Safety Conscious Work Environment And Safety Culture.*" The staff was directed to enhance the Reactor Oversight Process (RÖP) treatment of cross-cutting issues to more fully address Safety Culture, and provided specific guidance and restraints<sup>2</sup> on how to accomplish this.<sup>3</sup>

---

<sup>1</sup> See, in general, OIG Report 02-03S, December 30, 2002, "*Event Inquiry Regarding NRC Regulation of Davis-Besse Regarding Damage to the Reactor Vessel Head;*" and Staff's September 30, 2002, "*Degradation of the Davis-Besse Reactor Vessel Head Lessons Learned Task Force.*"

<sup>2</sup> I do not agree with the restraints imposed on the Staff in SECY 04-0111, and find it more than ironic that the Commission would impose such limitations and restraints on the Staff in this endeavor.

<sup>3</sup> The Commission guidance included very specific directions and restraints:

- not using surveys of licensee personnel, but rather to "rely on inspector observations and other indicators already available to the NRC;"
- developing tools that allow the inspectors to rely on "more objective findings;"
- considering including enhancing problem identification and resolution initiatives;
- insuring that inspectors are properly trained in the area of Safety Culture, including developing "enhanced training program for its inspectors and resident inspectors on Safety Culture that uses both insights from INPO's work in this area and insights from the international community;
- specific inspection activities and methodologies for plants in the Degraded Cornerstone Column to address a licensee's Safety Culture (to include stakeholders in developing a process for making the determination and conducting the evaluation); and,

Thereafter the Staff established a Task Force and began a series of activities, including public meetings and engagement with stakeholders on enhancing the oversight of licensee safety culture. I, along with a few other members of the general public, as well as numerous industry representatives from licensees, Institute of Nuclear Power Operations (INPO) and the Nuclear Energy Institute (NEI), have been involved in the specific activities organized by the NRC Staff. The process has been extremely time-consuming and only a few, unpaid, members of the public have been able to participate.<sup>4</sup> Tomorrow is the fifth full day workshop and/or meeting to review

- 
- in making any changes, the staff should follow the established processes for revising the ROP, including involving stakeholders.

August 30, 2004 Memorandum To Luis A. Reyes, EDO.

<sup>4</sup> Although some of the Commissioners may be familiar with the background of myself and Eric Fries, I include it here as the foundation of the experience from which we address these issues. Eric Fries, principal of Equinox Consulting LLC, has over 28 years of experience with the commercial nuclear power industry the areas of startup, engineering, outage and project management, safety culture and SCWE. This included 16 years in the Nuclear Utilities' nuclear program at both Millstone and Haddam Neck. He witnessed first hand the degradation and collapse of the safety culture and SCWE at Millstone. During the Millstone recovery, he held project leadership positions that focused on organizational assessment, and development and implementation of actions to facilitate changing the organization's culture. He also served as the administrator, lead case reviewer, and member of the Millstone Executive Review Board. Since Millstone, Eric has focused on organizational assessment, including safety culture and SCWE assessment. He has also provided safety culture and SCWE consulting services including development of action plans and performance indicators, development of policy and process documents, and development and delivery of training material. Eric was a team member of the Salem and Hope Creek SCWE recovery efforts. Eric holds masters in nuclear engineering, an executive masters in management, a company SRO certification, and is a licensed Professional Engineer. He is the co-author of "Principles of Nuclear Power Plant Operational Safety" and "Assessing Organizational Safety Culture." He was a recipient of a 1980 INPO nuclear engineering fellowship.

I am a partner in the Washington, D.C. firm of Clifford & Garde, and began my legal career as a public interest lawyer with the Government Accountability Project (GAP). From 1997-1999 I was privileged to serve as one of the principal consultants with Little Harbor Consultants, Inc. (LHC) on the Independent Oversight Team of the Millstone nuclear power plant recovery efforts. Since that time I have been on similar task forces and assignments at the Maine Yankee plant, the Salem and Hope Creek SCWE recovery efforts within the NRC oversight arena. I have also participated in a three year SCWE assessment and oversight of a nuclear power plant in Spain; and done similar work in the oil and gas industry and throughout the Department of Energy complex. As a practicing attorney, I specialize in representing employees that have been the subject of illegal retaliation under the various federal employee protection laws that govern the nuclear, energy, chemical, oil and gas pipeline, aviation, and similar industries.

the staff's proposal. Yet we will be starting this fifth day with the same discussion points the industry presented on the first day. That is, the industry's position has been, and continues to be that the NRC should adopt in its entirety, the 2003 INPO Safety Culture Principles and Attributes as "an accurate reflection of what's important to safety culture" and that the staff should use the industry's definition of safety culture in conducting regulatory assessments of a licensee's safety culture.

There appears to be an almost universal determination by the industry to ensure that the NRC Staff does not make meaningful change to the Reactor Oversight Process which permits the Staff to do that which the Commission directed it to do, and what the public demands that it do, i.e., enhance the ROP to address safety culture in a meaningful way in all cases, and to increase oversight of this area when a plant is in a degraded cornerstone condition.

I am deeply concerned that the impact of the industry's letter and the industry's obvious strategy will be to encourage the Commissioners to push the Staff toward the industry's position, undermining the exhaustive effort that the Staff has collectively and individually taken to address this important matter. This approach appears to be directly contrary to the direction Congress has provided to the Commission to increase their direct oversight of licensee safety culture.

The industry's proposed approach is fundamentally wrong. The INPO Safety Culture Principles and Attributes are designed to assist its industry in achieving excellence in operations, safety and efficiencies. While safe operations and avoiding accidents is obviously one outcome of INPO's goals, it is simply a different set of goals than the NRC has in protecting public health and safety. INPO's work is done on a two year cycle. The process has no transparency as far as the public is concerned and limited transparency with regard to the NRC's role in licensee oversight. While the industry's work is laudable; and, if successful, will increase the safety performance of its members, it can not replace the need for NRC direct licensee oversight. Direct and real time oversight of licensee safety culture must become an integral part of the NRC's mission to ensure adequate protection of the public and the public's interests. If Davis-Besse taught us nothing else, it taught the NRC that it must maintain its own constant vigilance of licensee activities.

A review of the INPO principles, and a comparison to the NRC staff's proposed components, is illustrative. INPO principles, at times, are extremely subjective platitudes, without definition or objective indicators necessary for solid evaluation. For example, the INPO principles and attributes do not contain components for assessing or addressing the measurable indicators for the free flow of information, the existence of a Safety Conscious Work Environment (SCWE), willingness to raise nuclear safety concerns, and freedom from retaliation and harassment. There is only one bullet, tucked under the attribute of trust, which even addresses the issue. These attributes would not have identified the problems at Davis-Besse before 2002 and the problems at Salem/Hope Creek in 2004. I can't imagine that the Congressional oversight committee concerned about the NRC's actions to improve its oversight will tolerate the Commission defaulting to the industry to police its own safety culture issues.

This is not a hypothetical debate. INPO issued its principles and attributes in 2003. The INPO principles were developed with no public or NRC input [there was a retired NRC EDO on the committee] and, in one case I am aware of, overtly ignored substantive input from a highly qualified industry executive. The principles are not even available to the public on a routine basis. The industry has had the opportunity to implement these principles throughout the industry since that time. To listen to INPO and NEI representatives one would believe that the problems that led to Millstone, Davis-Besse and Salem Hope Creek no longer exist.<sup>5</sup> Yet, there have been and continue to be serious safety culture problems at licensees across the country, from serious retaliation behaviors to other conduct indicative of the lack of a safety culture.. At one plant under increased INPO scrutiny and an NRC Corrective Action Letter, the safety culture continues to degrade unabated with management behaviors attempting to achieve "excellence through intimidation," increasing employee retaliation, decreasing performance across the board and downwardly spiraling public confidence. Self-assessments of poor safety culture have gone unaddressed by the licensee, INPO and the NRC. Without a regulatory framework to address site safety culture, it remains the responsibility of individual employees to publicly disclose such issues in order to get acceptable oversight and regulatory intervention. This is counter-productive. This would not be necessary if a safety culture assessment process was incorporated into the ROP, as suggested by the Commission and proposed by the staff.

In short, I urge the Commission to reject industry pleas for intervention and relief. The Staff is doing an excellent job, against a steady industry headwind, of keeping the safety culture ship on course. While we don't agree with every suggestion that the Staff has made, they have folded our comments into the process. The staff work on this has been extraordinary.

Sincerely,



Billie Pirner Garde

cc: Luis A. Reyes, Executive Director of Operations  
Michael B. Johnson, Director of Enforcement  
Graham B. Wallis, Chairman of the  
Advisory Committee on Reactor Safeguards.<sup>6</sup>

---

<sup>5</sup> The NRC should also not ignore the "lessons learned" from the other catastrophic disaster of the past few years, the loss of the Columbia, one of which was that NASA had a "fatal blind spot," that is, it didn't think it had a safety culture problem. Prior to Columbia, NASA, as an essentially self-regulating agency, believed—much as INPO does—that it learned the lessons of its own previous disasters. Yet, tragically, as we all now know it was simply doomed to repeat it. The NRC cannot justify to the public that it had relied upon the industry to define safety culture and then to assess itself.

<sup>6</sup> It should be noted by the ACRS that the Safety Culture Task Force activities have not, and will not, address the serious situation of the lack of understanding of basic safety culture and

cc: The Honorable George Voinovich  
Chairman, Subcommittee of Clean Air, Climate Change  
And Nuclear Safety  
317 Hart Senate Office Bldg  
Washington, D.C. 20510

The Honorable Joe Barton  
Chairman, Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Edward J. Markey  
2108 Rayburn House Office Building  
Washington, D.C. 20151

David Lochbaum  
Union of Concerned Scientists  
1707 K Street, NW, Suite 600  
Washington, D.C. 20036

---

a lack of understanding of the safety conscious work environment expectations at numerous materials license facilities throughout the country. A review of the numerous Enforcement Actions issued recently to Materials Licensees reveals serious flaws and unacceptable consequences in these areas that must be addressed.

8286  
JFA

---

# CLIFFORD & GARDE

LAW OFFICE

1707 L STREET, N.W., SUITE 500  
WASHINGTON, D.C. 20036-5631  
TELEPHONE: (202) 289-8990  
FACSIMILE: (202) 289-8992

## *Fax Cover Sheet*

To: **Chairman Nils Diaz**  
Fax No.: **(301) 415-1757**  
Number of Pages Including This Page: **7**  
From: **Billie P. Garde**  
Date: **January 17, 2006**  
Message: **RE: Safety Culture Initiatives**

This telecopy document is for the use of the individual named above. If the reader of this message is not the intended recipient, or is the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this document is strictly prohibited. If you have received this telecopy in error, please notify us by telephone and return the original document to us by mail at the above address. Thank you.

---

CHAIRMAN REC'D  
06 JAN 17 PM 12:42