

February 12, 2007

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I
William D. Travers, Regional Administrator, Region II
James L. Caldwell, Regional Administrator, Region III
Bruce S. Mallett, Regional Administrator, Region IV
James E. Dyer, Director, Office of Nuclear Reactor Regulation
R. William Borchardt, Director, Office of New Reactors
Charles L. Miller, Director Office of Federal and State Materials and
Environmental Management Programs
Jack R. Strosnider, Director, Office of Nuclear Material Safety
and Safeguards
Roy P. Zimmerman, Director, Office of Nuclear Security and
Incident Response

FROM: Cynthia A. Carpenter, Director /RA/
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - "DISPOSITION OF
VIOLATIONS OF 10 CFR 50.47(B)(4) FOR FAILURE TO MAINTAIN A
STANDARD EMERGENCY ACTION LEVEL SCHEME"

Purpose:

This Enforcement Guidance Memorandum (EGM) pertains to the disposition of noncompliances of Title 10 of the *Code of Federal Regulations* (CFR) 50.47(b)(4) for failure to maintain a standard emergency action level (EAL) scheme and 10 CFR 50.54(q) which states that EAL changes resulting in a decrease in the effectiveness (DIE) of the emergency plan must be approved by the Commission before implementation.

Background:

The U.S. Nuclear Regulatory Commission's (NRC's) regulations at 10 CFR 50.47(b)(4) and Section IV.B of Appendix E to 10 CFR Part 50 require licensees to have in use a standard emergency classification and action level scheme. Furthermore, 10 CFR 50.54(q) states that EAL changes resulting in a decrease in the effectiveness of the emergency plan must be approved by the Commission before implementation.

The NRC has determined that some licensees have failed to maintain a standard EAL scheme as defined in Regulatory Guide 1.101, "Emergency Planning and Preparedness for Nuclear Power Reactors." Those licensees have an EAL scheme based on NUREG-0654, Appendix 1;

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but have made EAL changes incorporating portions of the NUMARC/NESP-007 EAL scheme methodology into their NRC-approved NUREG-0654, Appendix 1-based EAL scheme, resulting in a decrease in the effectiveness of the emergency plan for which prior Commission approval is required.

The topic of standard action level schemes was recently documented in NRC Regulatory Issue Summary 2007-01, "Clarification of NRC Guidance for Maintaining a Standard Emergency Action Level Scheme," dated January 10, 2007.

Action:

For those licensees who self-identify a DIE, which the NRC determines to be a non-willful change by the licensee, resulting from EAL changes described in this EGM, and who take immediate corrective actions, restore compliance, and take action to prevent recurrence by May 14, 2007, (i.e., 90 days of the date of this EGM), enforcement discretion is appropriate (i.e., the NRC will refrain from issuing enforcement action) when the changes are limited to the Unusual Event or Alert classification levels. The NRC considers conversion of NUREG-0654 EAL schemes to ones based on the NEI 99-01 EAL methodology to be an effective means to prevent recurrence of this issue.

Enforcement discretion under this EGM will also be considered on a case by case basis for changes affecting the Site Area Emergency (SAE) or General Emergency (GE) levels. For those EAL changes involving a SAE or GE in which enforcement discretion is not exercised, traditional enforcement will be used in accordance with the NRC Enforcement Policy. This issue will not be evaluated under the Significance Determination Process.

If a licensee's EAL change results in a DIE that is identified by the NRC during inspection activities which occur within 90 days of the date of this EGM (i.e., May 14, 2007), then the NRC will pursue enforcement action unless the licensee has completed corrective actions, restored compliance, and taken action to prevent recurrence within 90 days of the date of the inspection report that identified the DIE. (The NRC will also pursue enforcement action for those EAL changes resulting in a DIE when those changes by a licensee were determined to be willful.) If the licensee meets the above conditions for a DIE that is identified by the NRC during inspection activities, then enforcement discretion is appropriate when these changes are limited to the Unusual Event or Alert classification levels and will be considered on a case by case basis for changes affecting the SAE or GE levels.

Regardless of the status of enforcement actions, the NRC expects licensees to take immediate corrective actions to restore compliance in order to remove any potential safety issue. As noted above, the NRC considers conversion of NUREG-0654 EAL schemes to ones based on the NEI 99-01 EAL methodology to be an effective long-term corrective action that will prevent recurrence of this issue.

Inspectors should include language, similar to the following, in the inspection report cover letter to document the apparent violations.

During the inspection, apparent violations of requirements were identified. The NRC is exercising enforcement discretion because the issue was identified, and corrective

actions were implemented in accordance with EGM-07-003. The enforcement discretion will continue provided that the planned corrective actions are completed in accordance with EGM-07-003. Your completed corrective actions will be verified during future inspections.

The NRC will consider, on a case by case basis, extending the discretion period, in accordance with Section VII.B.6 of the NRC Enforcement Policy, for circumstances which are beyond a licensee's control.

Please contact Doug Starkey at 301-415-3456 or drs@nrc.gov if you have any questions.

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