

January 25, 2008

MEMORANDUM TO: Deborah A. Jackson, Chief
Technical Support Branch
Special Projects and Technical
Support Directorate
Division of Fuel Cycle Safety
and Safeguards
Office of Nuclear Material Safety
and Safeguards

FROM: Dennis Morey, Inspector
Technical Support Branch
Special Projects and Technical
Support Directorate
Division of Fuel Cycle Safety /RA/
and Safeguards
Office of Nuclear Material Safety
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SUBJECT: SUMMARY OF THE PUBLIC MEETING WITH THE NUCLEAR ENERGY
INSTITUTE TO DISCUSS RECOMMENDED CHANGES TO NUCLEAR
REGULATORY COMMISSION ENFORCEMENT POLICY

On January 15, 2008, staff from the Division of Fuel Cycle Safety and Safeguards (FCSS) and Region II met with nuclear industry (fuel facility and Nuclear Energy Institute [NEI]) representatives in a working group to discuss United States Nuclear Regulatory Commission (NRC) enforcement policy related to fuel cycle facilities. The meeting was primarily a telephone conference to discuss proposed format of NRC Enforcement Policy Supplements.

MEETING SUMMARY

At the beginning of the meeting, D. Morey noted that the Federal Advisory Committee Act (FACA) issue discussed in the previous meeting was resolved and detailed meeting minutes would not be required. A summary of the meeting will be circulated for comment subsequent to the meeting.

D. Morey gave an update of the enforcement policy draft. The Office of Nuclear Material Safety and Safeguards (NMSS) submitted comments on a draft policy that was circulated to the offices by Office of Enforcement (OE). OE requested that the draft policy and comments remain internal. D. Morey noted that the NMSS comments included incorporation of ideas from the draft enforcement guidance memorandum that was discussed in previous meetings. A new section specific to fuel cycle issues was proposed.

Contact: Dennis Morey, NMSS/FCSS
(301) 492-3112

During the previous work group meeting, the comment was made to OE staff that supplements should be removed from the policy and placed into the enforcement manual to facilitate more frequent updates. OE discussed this comment at its counterpart meeting and noted that the supplements need to have Commission approval. OE staff developed an approach where higher-level examples are contained in the policy and parallel guidance level examples are contained in the enforcement manual. OE recently circulated drafts of policy and guidance for 13 proposed supplements and asked responsible offices to prepare draft versions of each. NMSS submitted proposed versions of both the policy and guidance examples which are enclosed. D. Morey requested comments from group members on the draft supplements.

S. Schilthelm commented that Regional inspectors are not likely to understand the subtleties of this guidance. D. Morey noted that NRC plans to coordinate training for inspection staff once the final form of the new supplements is established. The question was asked if there will be a change in how the supplements are implemented. The division of the supplements into two components is a change but the components should be employed in a manner similar to how enforcement reviews are normally done. The issue of whether or not items relied on for safety failing on its predicted frequency will be a violation was discussed. The intent of the proposed enforcement examples will be to focus on reduction in safety margin so that a failure on predicted frequency will not necessarily be a violation.

D. Morey requested that group members propose new language for examples and new examples, including examples for minor violations (MV). N. Parr noted that there seems to be agreement on the policy-level definition of Severity Level I, II, and III violations and the group concurred. The group focus then will be on the Severity Level IV and MV policy statements and the guidance-level examples.

PARTICIPANTS

Steve Shilthelm	BWXT
Mike Boren	USEC
Nancy Parr	Westinghouse
John Nagy	NFS
Dennis Morey	NRC HQ/NMSS/FCSS - Chair
Christopher Tripp	NRC HQ/NMSS/FCSS
Manuel Crespo	NRC - Region II

PROPOSED FUTURE ACTIONS

The group discussed when to reconvene. J. Nagy noted that the examples should establish a connection between the two levels of examples such as with a direct numerical linkage. J. Nagy will provide a write-up with examples.

D. Morey noted that a meeting with Region II staff and management should be planned for after the next telephone conference, possibly spring or summer 2008, to bring the regional inspection staff onboard with the proposals for fuel cycle-related enforcement. Ongoing issues related to upgrading the fuel cycle oversight program were discussed relative to their impact on the enforcement policy revision effort.

NEXT GROUP MEETING

The working group plans to hold another conference call during the third week of February. This meeting will be a conference call only because NRC staff will be conducting an inspection.

Enclosures:

1. Supplement IX - Fuel Cycle Operations
2. Implementing Guidance for Supplement IX - Fuel Cycle Operations

cc: M. Boren, USEC
N. Parr, WEC
J. Nagy, NFS
F. Killar, NEI

D. Jackson

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SUPPLEMENT IX - FUEL CYCLE OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle operations.

A. Severity Level I Violations involve, for example:

1. Under 10 CFR Part 70, Subpart H, a high-consequence result occurs.
2. Significant injury or loss of life occurs due to a loss of control over licensed activities comparable to the occurrence of a high-consequence result.

B. Severity Level II Violations involve, for example:

1. Under 10 CFR Part 70, Subpart H, a high-consequence sequence is now “not unlikely.”
2. Under 10 CFR Part 70, Subpart H, an intermediate-consequence result occurs.
3. The substantial potential for a significant injury or loss of life occurs due to a loss of control over licensed activities comparable to the occurrence of a medium-consequence result or to a significant change in the risk of a high-consequence event occurring.

C. Severity Level III Violations involve, for example:

1. Under 10 CFR Part 70, Subpart H, a high-consequence sequence is now “unlikely.”
2. Under 10 CFR Part 70, Subpart H, an intermediate-consequence sequence is now “not unlikely.”
3. The substantial potential for injury occurs due to a loss of control over licensed activities comparable to a significant change in the risk of a medium-consequence result or to a change in the risk of a high-consequence event occurring.

D. Severity Level IV Violations involve, for example:

1. A failure to meet the requirements of 10 CFR 70.61, or Appendix A to 10 CFR Part 70, that does not result in a Severity Level I, II, or III violation.

E. Minor Violations involve, for example:

1. A failure to meet the requirements of 10 CFR 70.61, or Appendix A to 10 CFR Part 70, that does not result in a Severity Level I, II, or III violation and does not have a material impact on safety or licensed activities.

IMPLEMENTING GUIDANCE FOR SUPPLEMENT IX - FUEL CYCLE OPERATIONS

This guidance provides examples of violations in each of the four severity levels to assist in determining the appropriate severity level for violations in the area of fuel cycle operations.

A. Severity Level I Violations involve, for example:

1. The failure of a system designed to prevent or mitigate a serious safety event to be operable when required to perform its design function.
2. A nuclear criticality accident or violation or application of a safety limit as defined in 10 CFR 76.4, Technical Safety Requirements.

B. Severity Level II Violations involve, for example:

1. The failure of a system designed to prevent or mitigate a serious safety event to be operable.
2. The failure to establish, implement, or maintain all criticality controls for a single nuclear criticality scenario such that a nuclear criticality accident was possible.
3. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF₆ cylinder by unapproved methods).

C. Severity Level III Violations involve, for example:

1. The failure of a system designed to prevent or mitigate a serious safety event to be able to perform its intended function under certain conditions.
2. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time.
3. Failure to comply with NRC regulations resulting in a substantial potential for exposures due to radiation or contamination, or releases, including releases of toxic material, from licensed or certified activities in excess of regulatory limits.
4. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought.
5. Failure of the certificate holder to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance.

6. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient.
7. Failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario, such that a nuclear criticality accident was possible.

D. Severity Level IV Violations involve, for example:

1. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time.
2. Failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario.

E. Minor Violations involve, for example:

1. Infrequent and nonrepetitive instances of human error that do not change the likelihood or consequence of an accident sequence.
2. The failure to comply with a procedure or posting that does not result in a safety consequence.
3. The failure to adequately document an inspection that was otherwise performed in accordance with license requirement.