

Sarah Rich

From: Richard Conte, *RI*
Sent: Friday, December 19, 2008 3:47 PM
To: John Richmond
Subject: I GIVE UP - GOING TO TRY TO FORGET ABOUT THIS PLACE FOR THE WEEKEND
Attachments: BRIEF FOR ORA12-22-2008.doc

Darrell either left (room dark) or he is still talking to Sam from 230pm. Before he went in, he wanted the executive summary of the exit notes; we went over the areas we could not say or talk about in light of OGC and DIRs verbal guidance.

Since Sam has the executive summary, it is not that important to get brief package to him early.

We can put it together Monday. Darrell has the outline I sent to you earlier.

Here are the new procedure issue questions.

Received: from R1CLSTR01.nrc.gov ([148.184.99.7]) by R1MS01.nrc.gov
([148.184.99.10]) with mapi; Fri, 19 Dec 2008 15:46:41 -0500
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: Richard Conte <Richard.Conte@nrc.gov>
To: John Richmond <John.Richmond@nrc.gov>
Date: Fri, 19 Dec 2008 15:46:41 -0500
Subject: I GIVE UP - GOING TO TRY TO FORGET ABOUT THIS PLACE FOR THE
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Thread-Topic: I GIVE UP - GOING TO TRY TO FORGET ABOUT THIS PLACE FOR
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WEEKEND
Thread-Index: AcliGuVCrRSkdMP8ReCPijZArdjFLg==
Message-ID:
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**BRIEF FOR ORA
OYSTER CREEK COMMITMENT INSPECTION RESULTS
AND RELATED ISSUES**

TIME: Monday, December 22, 2008, 1000AM
LOCATION: ORA OFFICE

Purpose:

1. Discuss a summary of the results and as needed the details of any one or all three issues noted on the inspection.
2. Discuss the consensus plan for documentation (special case needed)
3. Discuss consideration of Part 50 vs. Part 54 Activities
4. Discuss plans to address lessons learned and potential Q&As for internal use then industry/NIE interface.

Success:

1. Understanding of matters discussed; responsiveness to questions received.
2. Develop actions for unanswered questions and for other considerations for calibration or mid-course corrections.
3. Understanding of next immediate steps (to January 2009)

Agenda:

1. Summary of the Inspection Results – Details on Selected Issues (refer to attachment 1)
2. Consensus Plan for Documentation (refer to Attachment 2 – easiest case example)
3. Discuss consideration of Part 50 vs. Part 54 Activities
 - a. More inspection needed for bases and origin of commitments related to the 3 issues noted
 - Strippable coating on reactor to prevent water in gap (USAR statement)
 - Monitoring and Actions of Trough Drain
 - AND Sand Bed Drains per facility instructions and procedures
 - Activities related to installation of filtration system that apparently effected coating
4. Discuss plans to address lessons learned and potential Q&As for internal use then industry/NIE interface (refer to attachment 3)
5. Next Immediate Steps:
 - a. Debrief with State of New Jersey – PM 12/22/08
 - b. Conduct Exit Brief with Amergen (NJ invited) – AM 12/23/08
 - c. Issue Report < Feb. 1, 2009, if possible
 - d. Discuss Lessons Learned with Counterparts – 1/27/09
 - e. Start of Team Planning for OC Team < PEO – 2/16/09

Attachment 1 – Exit Notes with Summary

Attachment 2 – Sample Write-up

Attachment 3 -

OYSTER CREEK COMMITMENT INSPECTION
Per IP 71003 – App. C MC 2515, Infrequent Procedures
LESSONS LEARNED AND KEY PROCEDURE ISSUES DEVELOPED
(As of 12/18/08)

DISCUSSION:

Because of a lack of consensus among key NRC staff stakeholders on the exit notes for the subject inspection, the Deputy Division Director of DRS assigned EB 1 action in order to build consensus in this area by developing and implementing an action plan. From the review a number of lessons were learned and there is a need to address a number of procedure issues.

(b)(5)

(b)(5)

INSPECTION PROCEDURE ISSUES:

The questionable areas surrounding the results of the OC commitments inspection were listed below. Consideration should be given to obtaining additional stakeholder input in the form of OE, for views on commitments and deviations, and DRIS, for views on assessment of commitments.

1. Is IP 71003 an ROP tool (2515 and reference to 0612) or is it a part of a licensing action (2516).
2. If 71003 is a 2516 tool, then what is the related documentation process to be used?
3. If 71003 is a 2516 tool, the what is the related assessment process to be used?
4. If IP 71003 is an ROP total, does the standard objective statement "to verify implementation" (section 01.01) mean to very adequate or proper implementation for which performance deficiencies can be formulated.
5. With respect to 4, and, if it is true that adequacy is to be verified (on a sampling basis) or we are to verify that the AMP has been implemented (section 02.a (1)), then to what level of detail is this to be done. It should be noted that, when the majority of 71003 is to be completed shortly before the period of extended operations, very little is in effect nor are there requirements for Aging Management Program (AMP) implementing procedures to be implemented until after the PEO.
 - a. Is having the procedure issued without a reasonable NRC review for adequacy sufficient to say the commitment was met or the program is ready to be implemented?
 - b. If a. is not true, then how much of a sample and review for adequacy of implementing procedures is enough to say the program is ready to implemented?
 - c. On status check is it ok for more than 30% of the implementing procedures for any one program to be in some form of review and approval in order for the team to conclude the AMP is ready for the PEO?
 - d. Should all the new programs being reviewed to the standard determined above?
 - e. How many modified programs need to be reviewed?
6. With respect to 4, and, if the answer is to NOT verify adequacy or proper implementation, then how does one reconcile that situation with sections 03.01.b 1 and 03.01.b.3
 - a. 0301.b.1 says to review supporting documentation to determine if the licensee has taken appropriate actions, including corrective action, to satisfy a particular licens condition or commitment. Appropriate technical expertise should be sought if needed.

- b. 03.01.b.3 says to evaluate those commitments not met for NRC enforcement action using MC 0308 Reactor Oversight Process Basis Document and IMC 0609 significance Determination Process (implied is the use of 0612 which makes 0308 and 0609 jell including deviations from standards). The premise for evaluation and assessment is the determination that something was inadequately done.
7. Does the following question need to be addressed by the 71003 team; and, if so, why isn't it an objective of the procedure: Were the commitments implemented such that there is **REASONABLE ASSURANCE** the affects of aging are managed?
 - a. Is this too high a level as an objective of the IP 71003?
 - b. Is the more important question for the 71003 team as follows: Is the licensee ready for the period of extended operations.
 8. Is it true that there is no standard in license renewal rule called "adequate" or "inadequate"?
 9. Is there a difference between NRC's treatment of regulatory commitments made as a part of Part 50 correspondence vs. Part 54 correspondence?
 10. How do we determine failures to implement license renewal commitments in light of the endorsed definitions and above noted standards? The agency endorsed reference is:

NEI 99-04 (endorsed by RIS 2000-17, dated September 21, 2000):

"A Regulatory Commitment means 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. Licensees frequently communicate their intent to take certain actions to restore compliance with Obligations, to define a certain method of meeting Obligations, to correct or preclude the recurrence of adverse conditions, or to make improvements to the plant or plant processes. A Regulatory Commitment is an intentional undertaking by a licensee to (1) restore compliance with regulatory requirements, or (2) complete a specific action to address an NRC issue or concern (e.g., generic letter, bulletin, order, etc.). With respect to corrective actions identified in a NOV response or LER, the specific method(s) used by licensee to restore compliance with an obligation are not normally considered a Regulatory Commitment. The regulatory commitment in this instance is the promise to restore compliance with the violated obligation."

This is not to be confused with a license condition or other requirement which is officially defined as an "obligation" as follows:

"Obligation refers to any condition or action that is a legally binding requirement imposed on licensees through applicable rules, regulations, orders and licenses (including technical specifications and license conditions). These conditions (also referred to as regulatory requirements) generally require formal NRC approval as part of the change-control process. Also included in the category of obligations are those regulations and license conditions that define change-control processes and reporting requirements for licensing basis documents such as the updated FSAR, quality assurance program, emergency plan, security plan, fire protection program, etc."

NOTE: Nothing in the above reference addresses whether the commitments were relied on or made within the current licensing bases but they may be in effect by the very nature of the commitment at the time of the 71003 team just before the PEO.

11. If a license is not renewed and IP 71003 is conducted, how can you formulate performance deficiencies since the licensing action has not been taken on these commitments?
 - a. Should we be only discussing factual based observations without context of meeting or not meeting the commitment and with no assessment of significance – how would this look and how receptive would the public be to the issue being written up without context, assessment, or action by NRC staff?
 - b. How can we proclaim a finding if we are still deciding over wording in an SER listing of commitments – Should we not be waiting for a renewed license and waiting until they enter the period of extended operation before you can proclaim it a "finding".

- c. Until we know what is acceptable, should the issue be written as Unresolved – see definition of URI in MC 0612 (information needed in order to determine acceptability, violation or deviation)?

IMC 0612 Section 03 definitions for an Unresolved Item:

"An issue about which more information is required to determine if it is acceptable, if it is a finding, or if it constitutes a deviation or violation. Such a matter may require additional information from the licensee or cannot be resolved without additional guidance or clarification/interpretation of the existing guidance (e.g., performance indication reporting guidance.

12. Why is the inspector talking/documenting the apparent failures to meet commitments if these areas are indeed minor performance deficiencies - appears to be contrary to MC 0612?

- a. Is there agreement that a commitment is a standard for which any licensee and in particular, Amergen, had reasonable control?
- b. Can we call them performance deficiencies with or without a renewed license?

IMC 0612 Section 03, Definitions, for Performance Deficiency states:

"An issue that is the result of a licensee not meeting a requirement or standard where the cause was reasonably within the licensee's ability to foresee and correct, and that should have been prevented. A performance deficiency can exist if a licensee fails to meet a self-imposed standard or a standard required by regulation." ... it goes on to discuss that cross cutting aspects in and of themselves are not performance deficiencies... mostly causal attribute information.

NOTE: Nothing in the above reference addresses whether the commitments were relied on or made within the current licensing bases

- c. Why document these issues if they are minor?

IMC 0612 Section 05 as an exception in a box:

EXCEPTION: "A minor violation or finding may be documented when it is necessary to close a licensee event report or to close an unresolved item, or if related to an issue of agency wide concern (e.g., in documenting the results of a temporary instruction). If it is necessary to document a minor violation, then it is done in accordance with the guidance contained in the Enforcement Manual."