

Significant Issues Addressed in Allegation Guidance Memorandum 2008-001, Revision 1

Background

In March 2007, the NRC received an allegation from a former contract security manager that security officers at Peach Bottom were sleeping on duty as a result of fatigue caused by excessive overtime. In addition to identifying one specific location where the officers were allegedly sleeping, the allegor indicated that the officers were using other nonspecified locations. The allegor requested that the NRC not contact him about the concerns, and the staff, respecting this request and following the then-existing common practice of honoring an allegor's request for no further contact, did not contact him to ask about other potential locations or to discuss other aspects of the concerns and the agency's proposed handling of them.

Using the NRC's current practice of engaging licensees with requests for information about allegation concerns whenever possible and appropriate, the staff requested that the licensee conduct an evaluation of the specific concerns raised in the March 2007 Peach Bottom allegation and provide a written response to the NRC for review, including documentation of any corrective actions that it had taken in response to the evaluation. The licensee did not substantiate the concerns. The NRC reviewed the licensee's response, gathered some additional information, and similarly was unable to substantiate the concerns.

Notwithstanding that assessment, the NRC received a second allegation in September 2007 from a reporter that included video evidence of a number of inattentive security officers at Peach Bottom in the ready room (a room where security officers who are not on patrol are allowed to read, study, or eat, among other things, but must remain ready to respond). The agency promptly dispatched an Augmented Inspection Team, and initiated a range of inspection and investigative activities to determine the extent of the condition and the required corrective actions. The NRC assessed the safety significance of this concern and issued a "white" finding in February 2008 (see ADAMS Accession No. ML080440012) with cross-cutting aspects in both the safety conscious work environment and human performance areas, as well as a civil penalty in January 2009 for the related violation following an investigation by the NRC's Office of Investigations (see ADAMS Accession No. ML083530084). In addition, because the September 2007 video evidence demonstrated that the March 2007 allegation, although less specific, was valid, the agency subsequently conducted several internal reviews to determine what could have been done better in response to the March 2007 allegation and what clarifications or modifications should be made to the NRC allegation process to provide the staff with better opportunities to discover such inappropriate activity earlier.

Lessons learned reviews included an assessment by the Agency Allegation Advisor, a Region I review team analysis, and a Senior Executive Review Panel (SERP) evaluation of the events related to the Peach Bottom allegations. The Commission approved recommendations for enhancing the Allegation Program resulting from these reviews, with additional direction, to discuss pending changes with internal and external stakeholders. The Office of the Inspector General (OIG) also conducted an Event Inquiry and issued a report identifying findings in four areas. A reconvened SERP

determined that actions identified in the previous SERP report, and approved by the Commission, addressed the areas of findings in the OIG report. The SERP also recommended that certain additional actions be taken by the staff to clarify current practices in the documents guiding the staff's implementation of the Allegation Program. In response to these events and the lessons learned, an Allegation Guidance Memorandum (AGM) was developed as interim guidance to the NRC staff responsible for handling allegations. The NRC staff issued Revision 0 of the AGM on December 29, 2008. Since that time, in accordance with Commission direction, the staff has engaged internal and external stakeholders and has developed draft Revision 1 that indicates by change bars in the right margins the key enhancements made to Revision 0 in response to stakeholder input.

Significant Issues Addressed in AGM 2008-001, Revision 1

The following is a summary of the significant issues that were addressed in the development of the AGM, including enhancements in response to stakeholder comments. The corresponding locations where the information can be found in the AGM (Enclosure 2) are provided in parentheses. As indicated in each section, the staff intends to update Management Directive (MD) 8.8, "Management of Allegations," with the programmatic information from the AGM.

Engaging Licensees with Allegation-Related Requests for Information (AGM pg 2 and Enclosures 3 and 9)

Senior NRC management has reconsidered the practice of requesting information and an evaluation of allegations from licensees and reaffirmed that it is appropriate. The practice remains that the staff should request from the licensee a written evaluation of allegation concerns in all cases involving an overriding safety issue, and for other allegation concerns whenever possible and appropriate after considering certain conditions. Specifically, for allegation concerns that do not involve an overriding safety issue, the NRC will normally refrain from requesting a written evaluation from the licensee in instances which could compromise an alleged's identity or an NRC investigation, if it is unlikely that the license will be able to perform an independent evaluation, or if a State or Federal agency providing the allegation does not approve of the request. Other items considered by the NRC in deciding whether or not to request written information from the licensee include feedback from the alleged, allegation history and trends, the efficiency and effectiveness of an NRC inspection or technical review, and past licensee performance in responding to allegation concerns.

When conditions do not inhibit the NRC from requesting information from the licensee with regard to an allegation, it is an effective approach to allegation evaluation because the licensees have primary responsibility for ensuring safe operation of the facility and can promptly address issues through ready access to site personnel, equipment, and documentation related to the concerns. Furthermore, engaging the licensee in the evaluation of an allegation provides NRC with unique insights into the licensee's handling of employee concerns, and provides the licensee with unique insights into their own safety culture. Requests are issued to senior licensee management and their responses are subject to the NRC's completeness and accuracy regulations. Responses are independently verified and validated by the staff and it is the staff's evaluation and conclusions that are provided to the alleged. In making the decision to issue a request for information (RFI), the NRC takes into consideration the alleged's

reasons for bringing the concern to the NRC's attention, including the safety significance of the concern raised, fears of retaliation, and past attempts by the alleged to have his or her concerns addressed internally. The unique circumstances surrounding each allegation are considered on a case-by-case basis by the NRC staff before deciding how to proceed. Historically, the NRC engages licensees with such requests in approximately 40 percent of allegations.

The discussion of this practice in Revision 1 of the AGM was enhanced in response to stakeholder comments. As articulated above, the guidance more effectively conveys both the underlying benefits of the use of such requests for information and the continued responsibility of, and independent verification by, the NRC staff to address the allegation concerns. The staff intends to include such enhanced language in the revision to MD 8.8, as well. In addition, as discussed below, a worksheet was developed to facilitate full consideration and documentation of factors inhibiting use of an RFI. The worksheet (AGM Enclosure 3) assists the NRC staff's determination as to whether an allegation concern should be inspected, investigated, evaluated by a licensee in follow up to an allegation-related RFI, or whether a combination of these actions should be employed.

Allegation Terminology (AGM pgs 3 -4)

Management Directive 8.8 currently uses the term "referral" to describe any instance when an allegation concern is assigned to an entity other than the NRC receiving office for initial review (e.g., to the licensee or another NRC office). Used in this general context, the term "referral" is misleading and could be misinterpreted by individuals not familiar with the NRC allegation process to mean that an allegation concern is being turned over in its entirety to another entity with no additional NRC oversight or review of that entity's evaluation and closure of the concern.

To address such a potential misconception, the term "Request for Information" (RFI) was introduced and will be used to describe the process of engaging the licensee with a request for information or an evaluation and to more clearly reflect that NRC maintains responsibility and authority to assess and respond to allegation concerns.

The staff intends to revise the respective terminology throughout the MD.

Contacting Allegers (AGM pgs 4-6)

Engaging the alleged throughout the allegation review process is beneficial because it helps ensure that the NRC and the alleged share a mutual understanding of the concerns raised; that the NRC obtains pertinent information from the alleged; that the alleged is informed of the NRC's intention to consider an RFI to the licensee, if appropriate; and that the NRC provides the alleged with its conclusions on the concerns after it has completed its evaluation to afford an opportunity for alleged assessment and feedback. Although an alleged's involvement is preferred, the agency recognizes that some individuals prefer to remain anonymous or, even when their identity is known, not to be contacted by NRC staff after initially raising a concern.

This circumstance occurred when NRC received the March 2007 Peach Bottom allegation (i.e., the alleged provided identifying and contact information but requested no further contact with the NRC). It has been a common NRC practice to honor such a

request for no further contact. Historically, this practice was viewed as a matter of common courtesy to avoid alienating an alleged from raising his or her concerns to the NRC in the future, and it presumed that no further information related to the allegation was needed from the alleged in order to evaluate the concerns raised. If the NRC determined that an alleged had provided a concern involving an overriding safety issue and that additional information was needed to evaluate the issue effectively, the NRC would attempt to contact the alleged, irrespective of the alleged's request for no further contact. After reassessing past practice, the NRC has determined that when an alleged has requested no further contact, the agency should make a reasonable effort to communicate with the alleged to ensure that it has obtained all pertinent allegation-related information and to discuss the value of his or her continued involvement in the allegation process. In response to stakeholder comments received, particular emphasis was added to encourage communications with the alleged as the NRC completes its evaluation so that the alleged can review the staff's efforts and conclusions and provide feedback.

In response to other stakeholder comments received, additional guidance was added in Revision 1 to the AGM to address documentation of anonymous alleged contact information obtained through Caller ID and the necessity of informing alleged of such documentation. Also, the current practice of considering verbally contacting alleged to facilitate understanding of the actions taken to address their concerns, in addition to closure documentation, was further emphasized.

The staff intends to include the guidance for handling alleged wishing no further contact in the MD revision.

Allegation Request for Information Worksheet (AGM pg 7 and Enclosure 3)

Management Directive 8.8 requires the staff to consider a number of issues when deciding whether an allegation concern will be inspected by the NRC technical staff, investigated by OI, evaluated by a licensee in followup to an allegation-related RFI, or whether a combination of these actions will be employed. To assist the staff in making this determination and describing the basis for the Allegation Review Board (ARB)-assigned action, the staff developed a worksheet delineating current guidance and enhanced direction from lessons learned.

Enclosure 3 to the AGM, "Allegation Review Board Worksheet - Considering a Request for Information to the Licensee," was developed as a tool for use by the responsible Branch Chief or designee to support discussion at the ARB when an RFI is being considered. The worksheet includes enhanced direction to consider trends in allegations, NRC inspection and investigation history, and the inhibiting condition involving allegations against senior licensee management. The specific ARB decision regarding an RFI and the basis for that decision or the RFI worksheet will be included in the allegation file. In response to stakeholder comments the worksheet was further modified to add clarity and more specific consideration of previous inadequate RFI responses, particularly for licensees with facilities in multiple regions.

The staff intends to include in the MD revised language necessitating consideration of current inhibiting conditions, as well as enhanced direction to consider trends in allegations, NRC inspection and investigation history, and the inhibiting condition

involving allegations against senior licensee management. Reference to the worksheet will also be included. The worksheet itself will reside in the Manual.

Allegation Requests for Information Letters to the Licensee (AGM pgs 7-8 and Enclosure 4)

Management Directive 8.8 requires that the NRC convey in an RFI letter to the licensee its expectation that the licensee's evaluation of allegation concerns be thorough, objective, and sufficient in scope and depth to resolve the concerns. The letter requesting information from the licensee is expected to inform the licensee of the concern(s) in a level of detail that will enable the licensee to effectively evaluate the concern while continuing to protect the alleged's identity. In this regard, the information provided to the licensee regarding the Peach Bottom allegation of inattentiveness was limited in nature to protect the alleged's identity. In so doing, the agency did not provide certain information that may have assisted the licensee in its evaluation. Furthermore, the NRC determined that the licensee's response did not clearly indicate how it met the NRC's expectations on thoroughness and objectivity. In particular, it was not clear that the licensee's interviews with its workforce were of sufficient scope or appropriately representative of those who may have had knowledge of the inattentiveness.

Therefore additional guidance is provided in the AGM that ensures that if sufficient detail cannot be provided to the licensee without inappropriately jeopardizing the alleged's identity, an NRC inspection will be conducted. Also the staff is directed to request in RFI letters that the licensee, a) specifically address NRC expectations with regard to their evaluation, including the basis for determining the number and cross-section of individuals interviewed, and b) contact the NRC to ensure a common understanding of the scope of the allegation, NRC's expectations for follow up, and to discuss the licensee's plan for evaluating the concerns.

The staff intends to include this guidance in the MD, however the sample letter itself provided in Enclosure 4 of the AGM will only be included in the Manual.

Checklist for NRC Assessment of Licensee Response to RFI (AGM pgs 8-10 and Enclosure 5)

The NRC has historically conducted separate reviews and reached independent conclusions on allegation concerns for which information has been requested from a licensee via an RFI. However, guidance to NRC staff for performing this review has been unstructured, and the amount of detail that the staff has provided in allegation closure documentation regarding its review and conclusions to allegation concerns involving an RFI response has been varied. The reviews of lessons learned in the March 2007 Peach Bottom allegation identified that a more structured review process is necessary to support the staff's determination as to whether a licensee's response to an RFI is sufficiently comprehensive and whether any additional NRC followup action is warranted.

A checklist (AGM Enclosure 5) has been developed as a reference guide for the staff's use while performing its review of the licensee's response to an RFI. The checklist outlines areas that may be assessed by the staff and includes a number of questions to assist the staff reviewer in assessing the adequacy of the RFI response. Guidance is provided regarding the staff's actions should the review determine the licensee's response is inadequate, inaccurate, or otherwise unacceptable, including the temporary

suspension of issuing RFIs until appropriate action is taken to improve the licensee's responses to such requests. In response to stakeholder comments the staff added direction to ensure licensees are informed of response inadequacies so that proper corrective actions can be taken prior to any consideration of suspending the use of RFIs.

The staff intends to include in the MD language clarifying staff expectations with regard to independently verifying and validating the licensee's response to an RFI and reference the checklist and additional guidance included in the Manual.

Resident and Non-Resident Inspector Knowledge of Allegation Activity (AGM pgs 10-11)

Resident inspectors communicate current plant conditions daily with responsible NRC management and promptly share significant safety and security issues that require immediate action or attention. When an immediate safety or security concern is raised through an allegation, responsible NRC management informs the resident inspector of the concern. The ARB also periodically assigns resident and other nonresident inspectors to evaluate specific allegation concerns as part of their inspection activity. However, to limit the dissemination of information that could identify an alleged, the NRC has not historically made the status of all open allegations known to all inspection staff. Assessment of the March 2007 Peach Bottom allegation identified that improved information sharing with both resident and nonresident inspectors regarding allegations may have afforded additional opportunities to identify inattentiveness among security officers.

Therefore, the AGM specifies that resident inspectors are informed of all open allegations related to their assigned facility as well as any ARB assigned actions related to the concerns. Similarly, other inspectors performing an inspection at a facility will be informed of open allegations and past allegation trends pertaining to areas to be inspected.

The staff intends to include in the MD direction to management that they so inform their inspection staff of allegation-related information.

Public Discussion of Specific Allegation-Related Information (AGM pgs 11-12)

Typically, communication of the NRC's allegation evaluation and conclusions is limited to the alleged who raised the concern and to a small number of NRC and licensee individuals, with a need-to-know and who participated in the evaluation. This is in keeping with an important objective of the NRC Allegation Program to protect an alleged's identity. If the allegation involves a security concern, the NRC may further limit the communication of information. However, in certain cases, dissemination of allegation-related information to a broader audience has been necessary and has proven beneficial in obtaining a more comprehensive response. Although rare, such an approach used in the appropriate circumstances can improve public confidence by more openly discussing program activities while continuing to protect the identity of the alleged.

Therefore, in response to stakeholder input, guidance was added to Revision 1 of the AGM to highlight the current practice of considering more public discussion of allegation program activities when appropriate. The staff is directed to consider whether the

benefit of disclosing the fact that an allegation prompted the NRC's evaluation outweighs inherent potential negative consequences related to the Allegation Program integrity with regard to alleged identity protection. Even if more publicly addressed, the identity of the alleged that initiated the concern is protected as dictated by the program, and the NRC staff is directed to consult with the alleged whenever possible to ensure that it considers any objection to a more public discussion of the issues.

The staff intends to include this guidance and direction in the MD.

Allegation Closure Documentation Involving a Licensee Response to an RFI (AGM pg 12)

When the staff has completed its evaluation and determined that sufficient information is available to determine the validity of the allegation concerns, closure documentation is prepared. Historically, the staff's documentation has not clearly indicated the NRC's evaluation of the licensee's response and the NRC staff's independent verification, inspection, or investigative efforts to address the allegation concern.

The staff is directed in the AGM, therefore, to clearly indicate in closure documentation a summary of the licensee's response, the NRC staff's independent verification, inspection, or investigative efforts to validate the licensee's response, and specifically describe the staff's evaluation and conclusions based on all pertinent information, including the licensee's RFI response. The AGM directs the staff to provide specific details as necessary to convey the extent of the NRC evaluation and the safety/security and regulatory significance of any substantiated concerns.

The staff intends to include this direction in the MD. Sample letters provided in the AGM will be included in the Manual.

Allegor Responses after Closure (AGM pgs 12-13)

A "response after closure" (RAC) is defined as a verbal or written communication from the alleged to the NRC staff indicating that the NRC's closure of the allegation was, in some way, insufficient, inaccurate, or otherwise unacceptable to the alleged. Since each RAC indicates that the alleged believes that the NRC response is inadequate in some aspect, it is appropriate for the staff to engage NRC senior management in a discussion regarding the agency's response to each alleged who provides a RAC. Although current practice in most cases, the MD does not currently direct the staff to engage NRC senior management with the receipt of each RAC.

The AGM, therefore, specifically directs the staff to discuss with senior management during an ARB the appropriate followup to information provided by the alleged in a RAC.

The staff intends to include this direction in the MD.