

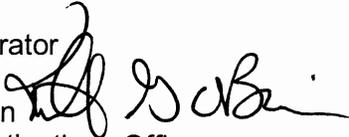


**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

REGION III
2443 WARRENVILLE ROAD, SUITE 210
LISLE, ILLINOIS 60532-4352

September 14, 2009

MEMORANDUM TO: Mark A. Satorius
Regional Administrator

FROM: Kenneth G. O'Brien 
Enforcement/Investigations Officer

SUBJECT: TASKING MEMORANDUM RE: DPO 2008-002,
PANEL RECOMMENDATIONS

As per your request, I have evaluated the recommendations made by a Differing Professional Opinion (DPO) Panel based upon its review of Allegation RIII-2007-A-0046 and two associated Allegation Review Boards (ARBs).

The results of my evaluations and any proposed changes to the allegation process are provided, as follows:

Recommendation 1: The issued raised by the DPO submitter involved an enforcement issue. Once the ARB determined that wrong-doing is not apparent, these types of issues should be redirected to the enforcement process, e.g., an enforcement panel.

Evaluation: As a part of the Region's allegation receipt, evaluation, and closure process, each concern is provided to the Office Allegation Coordinators (OACs), entered into the NRC's allegation tracking system, provided to the responsible technical staff for review and development of an action plan, and presented to an ARB for review and concurrence as to the proposed action plan. As a part of its initial handling of the allegation, the OACs draft a memo to the technical staff which requests a review of the involved materials to identify, "any safety concerns and/or enforceable items."

For the case at hand, the Division reviewed the intake information, identified possible concerns, including potential enforcement aspects, and a proposed a course of action to evaluate each of the identified concerns. For each of the identified concerns, the potential enforcement aspect involved incomplete and inaccurate information, 10 CFR 50.9, not potential wrong-doing, 10 CFR 50.5, as noted in the DPO Panel's Recommendations. In each case, the ARB concluded that the issues did not represent incomplete or inaccurate information that was material to the NRC. Therefore, the issues were closed with no further action, as the regulatory issue, which would have resulted in the concern being categorized as an allegation, was not substantiated. As a result, referral to the enforcement process was neither necessary nor appropriate.

Notwithstanding, the specifics of this allegation file, the DPOs Panel's recommendations are correct and appropriate. As such, the allegation process already includes and requires just such an action when an allegation is substantiated and involves a violation of NRC requirements. Therefore, the closure of an allegation, which is substantiated and includes the identification of a violation of NRC requirements necessitates that the staff document how the violation of NRC requirements was handled. Normally, this

information is provided to the alleged, as a part of the closure letter, is documented in the allegation file, and is checked by the OACs as a part of their auditing of the allegation file during the closure process.

As a final note, it may be valuable to recall that the issues for this case were unique in their nature and origin. Absent the ongoing Department of Justice case and the unavailability of the alleged, these issues would have not been included in the allegation process but would have been handled directly by the technical staff as a part of the normal inspection and enforcement processes. In that case, the issues would have been resolved as non-violations.

Given that the recommended course of action is already included as a part of the allegation process, I do not recommend any further action.

Recommendation 2: Unless it is not feasible to do so, the ARB should review the actual background documents involved in the concern being reviewed. In this case, the ARB relied solely on the SRI's [Senior Resident Inspector's] review of the consultant's report with no independent assessment of the content or relevance of the information.

Evaluation: In general, the intent of the recommendation is already accomplished by the ARB Chairperson, the involved technical staff, and the OAC, for allegations that involve materials which are provided to the NRC during the initial allegation receipt process. The current allegation receipt process would require that, for each allegation presented to an ARB, the ARB Chairperson receive the allegation file, which typically includes all of the materials provided to the NRC by a concerned individual. Prior to the ARB, these materials would have been reviewed by the OACs, the technical staff, the responsible Branch Chief, and the ARB Chairperson. These individuals represent a majority of the ARB, omitting only the Regional Counsel and the Office of Investigations representatives. In addition, these materials are available to the entire ARB, for review or referencing during the ARB, as the allegation file is present and may be referred to by any ARB member.

When materials are not provided as a part of the initial allegation receipt process, the review and evaluation of these allegation-related materials is normally limited to the involved inspection staff, and to a degree, their immediate management, the OACs and, the Divisional management responsible for issuance of the final closeout letter associated with the allegation. The level of review, by individuals other than the assigned inspection staff, of the materials used to evaluate an allegation, is a matter of individual choice and judgment, as with all inspection activities. The NRC does not normally capture and maintain copies of all documents used to perform its inspection activities. In the case of allegations, the staff will normally keep only unique records that may not be easily retrievable in the future.

For the case at hand, the concerns were received via a memorandum from an NRC staff member, without any accompanying materials. Additionally, the technical staff prepared its initial assessment of the concerns by reviewing some of the materials, both in the

Regional Office and at the reactor site, actions not normally accomplished until after the conduct of an initial ARB. Because of these unique circumstances, the technical staff proposed closure of the allegations as a part of the initial ARB and the materials relied upon to make this recommendation were neither provided by the NRC staffer nor included as supporting closure information in the allegation file.

Although Region III's practice would appear to be consistent with the DPO Panel's recommendation, my review of the Regional Procedure used to guide the conduct of ARBs did not include an explicit expectation that the ARB members review the allegation receipt information. Therefore, I would recommend that the Regional Procedure for the conduct of ARBs be revised to explicitly document an expectation that ARB members review the information provided during the initial receipt of an allegation.

Recommendation 3: Additional scrutiny should be exercised on the content and accuracy of ARB documentation (e.g., the ARB Chairperson and EICS [Enforcement and Investigations Coordination Staff] representative, or others, as appropriate, could be asked to review the ARB minutes and close-out actions to ensure that the minutes clearly and accurately reflect the actions taken by the ARB.) A number of errors and ambiguities were identified in the ARB minutes related to attendees, conclusions, and bases for ARB decision-making.

Evaluation: This finding and associated recommendation was also developed by staff and managers interviewed as a part of the DPO Panel's activities. As a result, the EICS staff and OACs involved in the conduct of ARBs have already informally made several changes to the practices employed relative to the conduct of ARBs. These include requiring the inclusion of due dates for all ARB required actions, increasing the documentation of discussions held during an ARB and the subsequent approved actions, including increasing the level of peer checking during and following the ARBs, and increased sensitivity by all of the involved parties as to need to ensure a comprehensive record of the ARB's efforts.

While it appears that the ARB membership and the OACs have already implemented many changes to their common practices for the conduct of ARBs and the development and maintenance of ARB minutes, these changes have not yet been captured as a part of the guiding Regional Procedure. Therefore, I would recommend that the Regional Procedure for the conduct of ARBs be revised to explicitly document the current practices implemented to increase the quality and detail of ARB minutes. I would further recommend that this item be assessed during an upcoming audit of the allegation program.