



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

April 2, 2004

CAL No. NRR-04-009

Mr. Ward L. Rigot, Facility Director
and Reactor Supervisor
Dow Chemical Company
1602 Building
Midland, MI 48674

SUBJECT: CONFIRMATORY ACTION LETTER - DOW TRIGA RESEARCH NUCLEAR
REACTOR - SITE-SPECIFIC COMPENSATORY MEASURES IMPLEMENTATION
PLAN

Dear Mr. Rigot:

By letter dated January 23, 2003, Mr. William D. Beckner of my staff initiated a process to address compensatory measures (CMs) related to security and safeguards at your facility. Mr. Beckner's letter requested that you develop a site-specific CM implementation plan. In accordance with that letter, you have provided us your final site-specific CM implementation plan dated November 21, 2003. It is our understanding that the background checks you reference in the November 21, 2003, plan include verification of identity, nationality, immigration status, and character and reputation. Further, it is our understanding that you have taken or will take the actions in accordance with the schedule as specified in your final plan.

Pursuant to Section 182 of the Atomic Energy Act, 42 U.S.C. 2232, you are required to:

- 1) Notify me immediately if your understanding differs from that set forth above;
- 2) Notify me if for any reason you cannot complete the actions within the specified schedule and advise me in writing of your modified schedule in advance of the change; and
- 3) Notify me in writing when you have completed the actions addressed in this Confirmatory Action Letter (CAL).

You may, under certain circumstances, request Nuclear Regulatory Commission (NRC) approval, in writing to change the commitment you made for any of the proposed actions you took to implement your site-specific CMs. The enclosed guidance provides the conditions under which the staff would consider approving changes to the proposed actions you took in response to implementing your initial site-specific CMs.

Issuance of this CAL does not preclude issuance of an order formalizing the commitments you have made in your final site-specific CM implementation plan or requiring other actions. In addition, failure to take the actions addressed in this CAL may result in enforcement action.

Mr. W. L. Rigot

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In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, and any response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> (the Public Electronic Reading Room).

To the extent possible, any correspondence between you and the NRC relating to your response to this CAL should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. Due to the direct relationship of the CMs, which the NRC has classified as unclassified-sensitive information exempted from public disclosure under the provisions of 10 CFR 73.21 (safeguards information), your site-specific CM implementation plan is considered safeguards information, and thus, is not authorized for public release. If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21. The use of non-sensitive cover letters to transmit safeguards information as a separate enclosure is encouraged.

Sincerely,



FOR
David B. Matthews, Director
Division of Regulatory Improvement Programs
Office of Nuclear Reactor Regulation

Docket No. 50-264
License No. R-108

Enclosure: As stated

cc: See next page

Dow Chemical Company

Docket No. 50-264

cc:

Office of the Mayor
333 West Ellsworth
Midland, MI 48640

Office of the Governor
Room 1 - Capitol Building
Lansing, MI 48913

Stan Dombrowski
Chair, Radiation Safety Committee
Dow North America
1803 Building
Midland, MI 48667

Mr. Richard A. Wagner,
Level 1 Manager
The Dow Chemical Company
TRIGA Nuclear Reactor
1602 Building
Midland, MI 48674

Conditions for requesting approval of Safeguards and Security Compensatory Measure Commitments - Research and Test Reactor Licensees

During the development of the Compensatory Measures (CM), the staff realized that changes to the initial commitments made during the implementation of the actions needed to meet the objective of the individual CMs. The following circumstances or conditions may result in a licensee's need to change its commitments:

1. The initial commitment was temporary and a more permanent measure was implemented. For example, routine monitoring of experimental and researcher activities were being performed once every four hours by an operator. A closed circuit TV monitoring system was installed which allowed the operator in the control room to monitor these activities more frequently. Prior to taking the action to implement the more permanent measure (change in commitment) the licensee should submit to the Nuclear Regulatory Commission (NRC) for approval: a) description of the commitment change and how it meets the objective of the CM; and b) a proposed schedule for implementing the change in commitment.
2. Identifying conditions where the original commitment does not accomplish the objective of the CM and a temporary change in commitment is needed in order to meet the objective. For example, all commercial package deliveries for the reactor are made to a central receiving area. The packages are inspected at this central facility. The licensee changes its business policy and the packages are now delivered to the reactor. The licensee needs to make a temporary change to its commitment, until it can develop a more permanent solution, to receive only expected deliveries at the door to the facility reception area and inspect them in this area prior to allowing them into a vital area. Upon taking this action the licensee should submit to the NRC: a) description of the necessity for this temporary change and a description of how they intend to restore the actions needed to meet the original commitment and the objective of the CM; and b) a proposed schedule for restoring the objectives of the original commitment and the CM.
3. Identifying that the implementation of the actions to meet the objective of a CM results in a personnel or reactor safety impact. For example, emergency exit/access door from the protected or vital areas is locked and barred shut such that it can not be used in the event of a facility emergency. This action has resulted in the facility not being able to meet its compliance with local fire codes. Upon discovery of such condition the licensee should submit to the NRC: a) description of the adverse safety condition that was caused by the implementation of the actions needed to meet the objective of the CM; b) proposal for correcting the adverse safety condition; c) a commitment describing your revised actions; and d) the schedule for re-establishing the objective of the CM.

Absent NRC approval of a change to the CM actions, all actions taken in response to the CMs and confirmed by the site-specific confirmatory action letter (CAL) shall be maintained until the Commission determines otherwise.

Enclosure