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Division of Policy and Rulemaking  
Office of Nuclear Reactor Regulation  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

DATE: September 20, 2010

SUBJECT: IDAHO STATE UNIVERSITY – NRC NON-ROUTINE INSPECTION REPORT  
NO. 50-284/2010-201 – Reply to March 9, 2010 Findings - Part 1 of 5

Dear Mr. Eads:

This submission is a review of the findings of the non-routine inspection conducted this year on the Idaho State University reactor. Interestingly, I could not even finish reading the NRC staff findings on the first issue without noticing clear evidence of flagrant criminal violations by the licensee. I will take the four issues that the NRC agree to examine and I will, one at a time in a series of responses delivered in separate envelopes so that the problems with each issue can be separately focused upon, systematically identify the issue and address a) the agreed upon violation, b) the NRC findings, and c) the discrepancy between the finds and the agreed upon violation. This letter deals only with the first issue.

- 1) Failure to conduct 10CFR50.59 safety review of the modification of the Controlled Access Area (CAA) boundary.
  - a) When a physical facility is altered to inherently affect safety or safeguard issues, a 10CFR50.59 safety review must be conducted. The CAA boundary becomes a very important part of the safeguard issues addressed in the Safety Analysis Report (SAR), a significant modification of this important barrier requires a 50.59 review. In this case punching a hole in the reactor room roof to create an access falls under special requirements defined in the Physical Security Plan (PSP), Worse yet, this access is concealed from ground view to make a preferred attack point, and is not monitored by any electronic systems. Specific to this violation, the PSP requires security staff check of ALL (not some) reactor room entries at random times within every 8 hour period, 24 hours per day, 365 days per year. The reason this MUST be done is that a 24-hour monitoring and alarm device does not exist as they do at all other licensed reactors. The failure to conduct a 50.59 review is a violation of CFR requirements, and led to a deviation from the PSP requirement. These are two violations.
  - b) NRC findings:
    - “It was not apparent that such a review was needed for either [the siphon breaker access or the personnel roof access hatch].

- The personnel roof access ladder and hatch was known to and discussed by the Reactor Safety Committee and documented in various license documents. [This was not an issue in the June 26, 2009 petition.]
  - At the time the modification was in place, the licensee developed a procedure to restrict access to the Reactor Room to be in compliance with the PSP.
- c) It will be helpful to refer to the US Criminal Code as I highlight the discrepancies with the first issue.

US Code Title 18 Section 1001

- (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
  - (2) makes any materially false, fictitious, or fraudulent statement or representation; or
  - (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

I should remind the NRC that I already have copies of the applicable documents and any alterations to these documents will fall under 18USC1001.

- To say that it is “apparent” that no 50.59 safety review was necessary is to establish that no safety or safeguard systems were affected by chopping a hole in the reactor room roof, that is to say that the CAA barrier is not designed to secure the nuclear materials in the reactor room and not designed to contain releases of Ar-41 or fission products from open core maintenance in the reactor room air. Of course, such a simple-minded statement is unadulterated gross incompetence. It is important to know to whom it was “apparent” that a 10CFR50.59 safety review was not required for the CAA modification so that we can start to build a case for the termination of the Idaho State University operating license. The guilty party was not mentioned in the NRC findings and we will need that information to see a chronic pattern for individuals spanning multiple administrations.
- It is blatantly obvious that if it were truly apparent that a 50.59 safety review was not needed, then there would be no reason for the licensee to “develop a procedure to restrict access to the Reactor Room to be in compliance with the PSP.” By claiming to “develop a procedure to restrict access to the Reactor Room to be in compliance with the PSP” the

licensee has admitted that it was “apparent” that a 50.59 safety review was required. These two NRC inspection findings are mutually exclusive unless there existed a willful violation. The NRC has no choice but to cite.

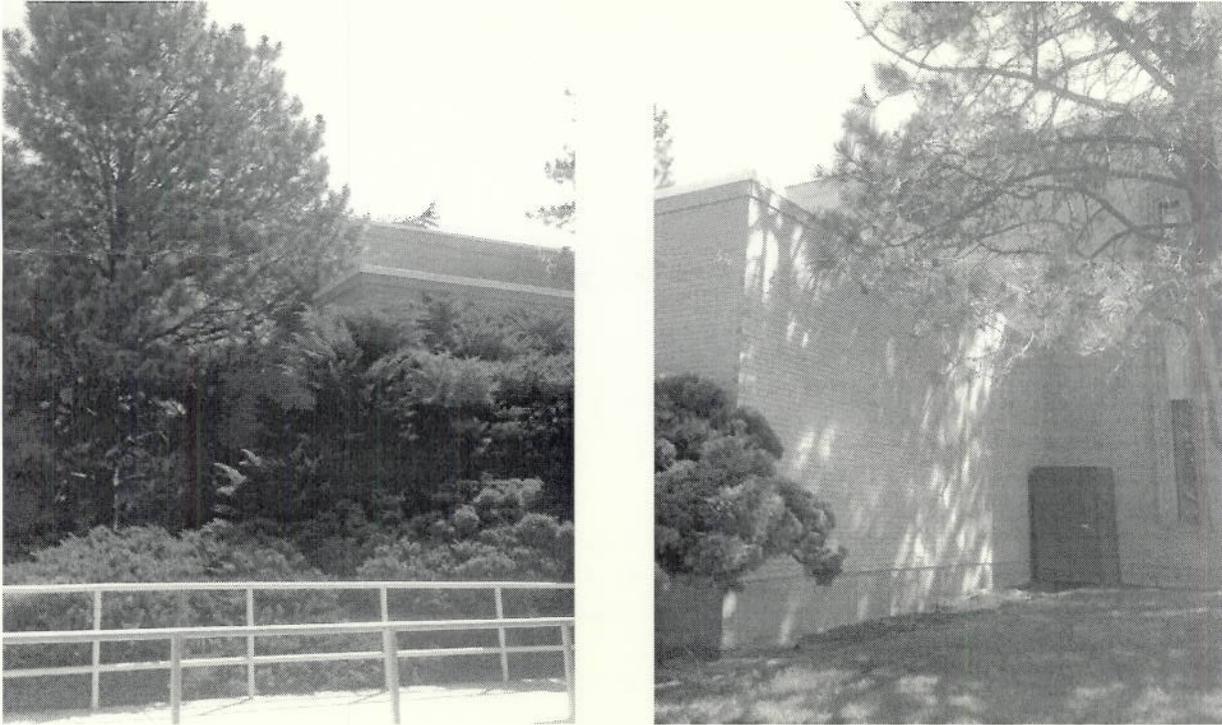
- I was the Reactor Supervisor from Dec 1991 until I resigned Mar 1993 to get away from the criminal activities and threats to me, and I can tell you unconditionally that there was no “procedure to restrict access to the Reactor Room to be in compliance with the PSP.” This finding is evidence of fraud. I will recommend a criminal investigation of the Idaho State University licensee.
- A simple check of the Annual Operation Reports in the year of the modification and adjacent years will prove that there was no “procedure to restrict access to the Reactor Room to be in compliance with the PSP” implemented for the roof accesses. Also, a claim that it was mistakenly omitted from the Annual Operation Reports is still fraud according to 18USC1001. I will recommend the House Energy Sub-committee investigate why this violation and criminal activities was allowed to continue for 17 years with the knowledge of the NRC.

The NRC failed to provide any basis that “It was not apparent that such a review was needed...” As ANY real engineer will testify “apparent” is not justification for failure to comply with regulations, especially nuclear regulations. The NRC finding failed to demonstrate that NOT checking the roof entrances to the reactor room satisfies the PSP requirement. The NRC findings failed to demonstrate that the PSP requirement to check ALL reactor room entrances at random times every 8 hours is NOT required. Therefore, the NRC was negligent on this issue.

The June 26, 2009 petition letter does NOT state that either a) the failure to conduct a 50.59 review or b) the existence of a modified roof access “allowed random student access to the roof of the reactor room.” This statement is just plain silly and is beneath the level of a professional engineer. The June 25, 2009 petition letter did state that anyone has easy access to the roof. That is a fact demonstrated by the photographs below taken on June 20, 2010. Not only is there easy access on one side without so much as a ladder, by climbing on the maintenance shack, but also on the other side access is concealed and assisted by a tree. The June 26, 2009 petition did state that once access to the roof has been gained, all of the subsequent activities on the roof are concealed with a 3-foot barrier around the roof. It then becomes very easy to open the hatch or the siphon breaker door at leisure without any worry of being detected. There is no monitoring whatsoever. I know because I was responsible for this facility and satisfactorily passed the senior licensing exam!

Also, the hatch ladder interior to the reactor room is a violation of OSHA requirements to have safety guards to enclose personnel access above one story, particularly at the top of the ladder where personnel must hold a ladder rung with

one hand while fumbling with the keys to unlock the hatch with the other hand, all at a height of 2 stories above the reactor room floor. I will agree that OSHA regulations are not the concern of the NRC, but clearly the NRC inspectors have no concern for the safety of operations staff and facility visitors. That is precisely the root cause of why the facility is among the most dangerous facilities in the country.



Photos showing easy roof access the outside of the reactor room, taken June 20, 2010.

I now make the following requests from the NRC that I will send to the House Energy Subcommittee:

- 1) Idaho State University claims there was from the initial modification “a procedure to restrict access to the Reactor Room to be in compliance with the PSP.” Therefore, there MUST be procedure forms with my signature as Reactor Supervisor for approval. Provide copies of these forms with my signature between Dec 1991 and Mar 1993. These forms do not exist because there was not a procedure.
- 2) Provide a copy the checklist approved by the Reactor Safety Committee that was completed and signed by facility management and approved by the Reactor Safety Committee, which systematically examines the safety and safeguard issues to determine that a 50.59 safety review was not required. I need to compile a list of the names responsible for these violations to turn over to the House Energy Sub-committee and correlate with other more serious criminal activities for which documentation is yet to be connected together. If the document does not exist, as I know it does not, then I want an explanation of why the word “apparent” was used to commit fraud [18USC1001].

- 3) Provide a complete justification of why the NRC believes that modifying the CAA, which is part of the licensing document and integral part of the safeguard and safety systems, is “apparently” not required to be 50.59 reviewed, particularly in light of the PSP requirement to check all reactor room entrances at specified intervals.
- 4) Provide a copy of the results of the air-tightness testing of the hatch and the siphon breaker access to prove that radiation released in the reactor room air will not leak to the exterior of the building through the accesses. Note: existing open core maintenance procedures release fission products into the ambient atmosphere, as well, gaseous Ar-41 production is constant during operation. Explain how not testing the air tightness of the reactor room accesses complies with the ALARA requirements of 10CFR20.
- 5) Provide a complete justification of why the NRC believes that the PSP requirement for security to check EVERY reactor room access at random times during every 8-hour interval is NOT required, particularly when the roof access is NOT monitored electronically. And explain why a locked but unmonitored access hidden from security detection (but not from the general public) would never be considered for unlawful entry, while the concern by the licensee and the NRC exists because the multiply locked front door is checked as required by the PSP.
- 6) Regardless of lack of NRC jurisdiction, provide a complete justification of why the NRC believes that OSHA safety requirements governing the safety cage for the personnel escape hatch is not applicable to the Idaho State University licensee.

It should be very easy to comply with the documents requests, if they do indeed exist. The problem is that the documents do not exist as stated. The failure to produce the documents will prove the licensee has engaged in fraud.

The licensee and NRC logic is contradictory on a number of points and I believe allowing Congress to read the actual justifications would be quite revealing and prompt immediate action from Congress.

I can justify the contradictory logic on this one issue as inexperience of people who have not been involved in non-power reactor operations as long as I have. However, this is just the first of four issues examined in this petition. I have three more issues to examine. If I find another occasion of gross omission then I will have to recommend that the NRC personnel involved in this enforcement action be disciplined. If I find a third instance, then I will recommend that the NRC staff responsible for this pattern of gross misconduct be immediately placed on unpaid leave while a criminal investigation ensues.

Regards,



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