

57

RECORD #57

TITLE: Avoidance of Mischaracterization of Effect of Certain  
Communications to Licensees

FICHE: 24125-357



UNITED STATES  
 NUCLEAR REGULATORY COMMISSION  
 WASHINGTON, D. C. 20555

① Copies to all Directors  
 EVS R-V

FEB 5 1981

MEMORANDUM FOR: Harold R. Denton, Director  
 Office of Nuclear Reactor Regulation

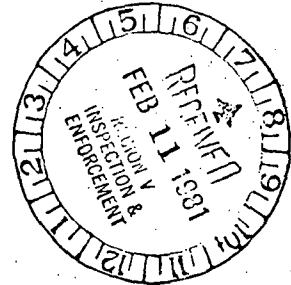
John G. Davis, Director  
 Office of Nuclear Material Safety and Safeguards

Victor Stello, Jr., Director  
 Office of Inspection and Enforcement

Ray G. Smith, Acting Director  
 Office of Standards Development

FROM: Howard K. Shapar  
 Executive Legal Director

SUBJECT: AVOIDANCE OF MISCHARACTERIZATION OF EFFECT OF CERTAIN  
 COMMUNICATIONS TO LICENSEES



I have noted that in several recent letters to licensees and NUREG guidance and acceptance criteria documents which ELD has been asked to review, the action requested of licensees, or the guidance and criteria contained in the staff document, were set forth as "requirements." For example, a recent draft NUREG document referred to the criteria contained therein as "requirements" or "required" some 65 times. As I have often advised you, staff positions communicated to licensees are not binding requirements unless formally issued as regulations or set forth in orders. At the same time, I have observed that less formal methods of communicating a staff position will often lead to voluntary licensee action leading to the desired result.

Fundamental fairness, however, dictates that licensees and the public are accurately informed as to when something is in fact a requirement, and when we are merely setting forth guidance or establishing criteria or asking licensees voluntarily to do something. To avoid future confusion as to the status of staff documents, I request that you advise your staff that such guidance, criteria and requests should not contain any language that states or implies that they are requirements.

To further mitigate possible confusion on this point, NUREG guidance and criteria documents should contain a statement similar to the one that is set forth on the face sheet of all Regulatory Guides which makes it clear that, among other things, different methods may be used and that the Regulatory Guides "... are not substitutes for regulations, and compliance with them is not required ...." Since the statement used in the Regulatory Guides is intended to cover all Regulatory Guides regardless of their nature or the

subject matter being addressed, the statement to be used in NUREG guidance and criteria documents can probably be shorter and more specific. The following are examples of how the statements could be framed to be NUREG specific and yet adequate to set forth the necessary caveat that they are not requirements.

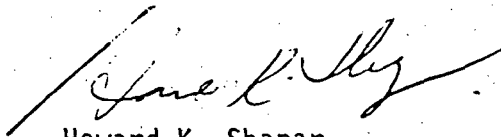
In the case of a NUREG criteria document:

NUREG-\_\_\_\_\_ is being issued to establish criteria that the NRC staff intends to use in evaluating whether an applicant/licensee meets the requirements of [cite]. NUREG-\_\_\_\_\_ is not a substitute for the regulations, and compliance is not a requirement. However, the use of criteria different from those set forth herein will be accepted only if the substitute criteria provide a basis for determining that the above-cited regulatory requirements have been met.

In the case of a NUREG guidance document:

NUREG-\_\_\_\_\_ is being issued to provide guidance that the NRC staff believes should be followed to meet the requirements of [cite]. NUREG-\_\_\_\_\_ is not a substitute for the regulations, and compliance is not a requirement. However, an approach or method different from the guidance contained herein will be accepted only if the substitute approach or method provides a basis for determining that the above-cited regulatory requirements have been met.

While such disclaimer language is probably not necessary in all request letters sent to licensees (though it may be appropriate in many generic letters), care should be taken not to mislead addressees as to the nature of the request being made.



Howard K. Shapar  
Executive Legal Director

cc: W. J. Dircks



NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

*Stillo*

MAR 9 1981

*Copies to all Divs*

MEMORANDUM FOR: Chairman Hendrie  
Commissioner Gilinsky  
Commissioner Bradford  
Commissioner Ahearne

FROM: William J. Dircks  
Executive Director for Operations

SUBJECT: USE OF NUREG'S TO ISSUE NEW REQUIREMENTS OR QUASI-REQUIREMENTS

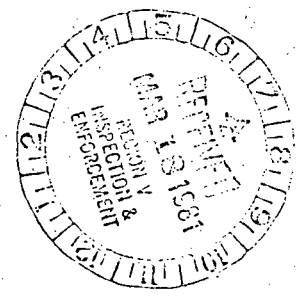
*EVS*

In a staff requirements memorandum of February 19, 1981, Subject: SECY-81-19 - EMERGENCY RESPONSE FACILITIES, staff views on the issue raised by the General Counsel regarding the use of NUREG's to issue new requirements or quasi-requirements were requested.

The Executive Legal Director has repeatedly emphasized to the program offices within the staff that binding requirements can be imposed in only three ways--by rule, by order, or by decision of an appropriate Commission adjudicatory body. At the same time, he has pointed out that actions desired of licensees may frequently be carried out in response to a less formal initiating action, such as a simple letter request or an IE Bulletin. The key difference, of course, is enforceability. Accordingly, the staff agrees with the thrust of the General Counsel's memorandum of January 30, 1980--that there is a disturbing trend toward promulgation of "quasi-requirements" in documents such as NUREG's, with resultant confusion on the part of the regulated industry and the staff as to what binding requirements are actually in place at any given time.

I believe, however, another key dimension of the problem should be emphasized. That is, fundamental fairness dictates that licensees and the public should be accurately informed as to when something is in fact a requirement, and when we are merely setting forth guidance or establishing criteria or asking licensees voluntarily to do something. That subject was recently dealt with in the February 5, 1981, memorandum from the Executive Legal Director to the other Office Directors. A copy of that

Contact:  
G. H. Cunningham, III  
492-7203



Memorandum, with which I agree, is attached. The guidance therein is currently being followed by the staff.

(Signed: William J. Dircks)

William J. Dircks  
Executive Director for Operations

Enclosure:

2/ 5/81 Memo ELD to Office Directors

cc: OGC  
OPE

DISTRIBUTION:

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Denton, NRR

Stello, IE

Davis, NMSS

Smith, SD

|      |                                       |                            |                            |  |  |  |  |
|------|---------------------------------------|----------------------------|----------------------------|--|--|--|--|
|      | ELD <i>WJK</i><br>GHCunningham<br>MJD | ELD <i>WJK</i><br>HKShapar | EDO <i>WJK</i><br>WJDircks |  |  |  |  |
| DATE | 3/4/81                                | 3/7/81                     | 3/6/81                     |  |  |  |  |