

164

RECORD #164

TITLE: Inspector Access to Facilities

FICHE: 02960-031

0702/8  
P.V.



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

MAY 13 1980


MEMORANDUM FOR: C. M. Upright, Acting Chief, RONS Branch, RII  
C. E. Norelius, Assistant to the Director, RIII

FROM: Dudley Thompson, Executive Officer for  
Operations Support, IE

SUBJECT: INSPECTOR ACCESS TO FACILITIES  
(AITS F02300051H12 & F03080779)

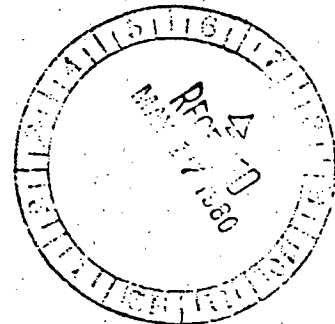
REFERENCES: 1. Memo Upright to Gower dated 11-2-79  
2. Memo Norelius to Gower dated 12-4-79

In response to the referenced requests, Richard G. Bachman, ELD, has provided guidance on 10 CFR 50.70, specifically those sections dealing with "immediate unfettered access" and "liability for damages." Enclosed are copies of Mr. Bachman's two memorandums for your use as appropriate. Copies of the above referenced requests are also enclosed for benefit of others that have shown interest in this matter.

  
Dudley Thompson  
Executive Officer for  
Operations Support, IE

- Enclosures:
1. Memo, Bachman to Gower  
dtd 3-6-80
  2. Note, Bachman to Thompson  
dtd 5-6-80
  3. Reference Memos

cc w/enclosures:  
Regional Directors  
E. L. Jordan, ROI  
S. E. Bryan, ROI  
G. C. Gower, X00S  
R. C. Paulus, X00S





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

March 6, 1980

MEMORANDUM FOR: George Gower, Acting  
Executive Officer for Operations  
Support, IE

FROM: Richard G. Bachmann, Attorney  
Office of Executive Legal Director

SUBJECT: INSPECTOR ACCESS TO FACILITIES

This is in response to your memo to Jim Murray dated December 13, 1979, and is a followup to our telephone conversation of February 28, 1980. 10 CFR 50.70(b)(3) requires a licensee or construction permit holder to afford an NRC inspector "immediate unfettered access, equivalent to access provided regular plant employees" (emphasis supplied). It is our view that if the licensee requires a training program of reasonable duration, or the presence of an escort during a reasonable site familiarization phase for regular plant employees, the inspector would be required by the current regulation to have such training and escort.

As far as inspector liability is concerned, Part 14 of the Commission's regulations provides detailed procedures for filing a claim for any damages "caused by the negligent or wrongful act or omission of any employee of the Nuclear Regulatory Commission while acting within the scope of his office or employment". 10 CFR 14.1.

A handwritten signature in dark ink, appearing to read "R. G. Bachmann", is written over a horizontal line.

Richard G. Bachmann, Attorney  
Rulemaking and Enforcement Division  
Office of Executive Legal Director

May 6, 1980

Note to Dudley Thompson, IE

IMMEDIATE UNFETTERED ACCESS

This is in response to your memorandum dated April 3, 1980, and my telephone conversation with George Gower on April 17, 1980. You have requested our opinion on the meaning of the phrase "immediate unfettered access" in 10 CFR 50.70(b)(3) as it applies to inspectors gaining access to a facility. (My previous memorandum dated March 6, 1980, on the same regulation addressed restrictions on inspectors after they were on-site.)

The supplementary information supplied with the publication of 10 CFR 50.70(b)(3) as a final rule on August 16, 1979, (44 FR 47918) states:

In order to assure that the resident inspector or regionally based inspectors are afforded the opportunity to conduct unfettered reviews of work in progress it is necessary and the regulation requires, that properly identified inspectors be provided immediate access to the facility (the same as regular licensee employees).

\* \* \*

A briefing on site-specific radiological protection practices, security and emergency response actions is appropriate and sufficient for unescorted access to other than vital areas, radiation areas and areas contaminated with radioactive material, for those NRC personnel who infrequently visit a site.

It seems clear that once an inspector has received the above-mentioned briefing, upon properly identifying himself at the gate, he should be allowed immediate unescorted access to the facility. A licensee has no authority to detain an NRC inspector on the excuse of obtaining an escort. However, it is also clear that a nonresident inspector could be required to have an escort to gain access to vital areas, radiation areas, and contaminated areas. The licensee might argue that there would be no way of controlling the inspector's movements after he is admitted to the facility. This may have to be worked out on a case-by-case basis with the licensees. But assuming a particular inspector does not intend to enter the prohibited areas without an escort, any delay caused by the

licensee at the facility entrance, in excess of that borne by regular employees,  
is a violation of Commission regulations.



Richard G. Bachmann  
Attorney  
Rulemaking and Enforcement Division

cc:  
George Gower  
Guy Cunningham



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
101 MARIETTA ST., N.W., SUITE 3100  
ATLANTA, GEORGIA 30303

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MEMORANDUM FOR: G. C. Gower, X00S

FROM: C. M. Upright, Region II

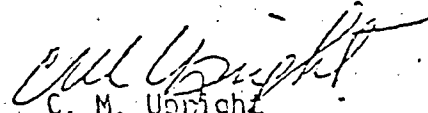
SUBJECT: INSPECTOR ACCESS TO FACILITIES (AITS F02300051H12)

Several new requirements were added to 10 CFR 50.70 on August 17, 1979. Item 50.70(b)(3) states that licensees shall afford immediate unfettered access to inspectors identified by the Regional Director as likely to inspect the facility.

To assure uniform enforcement of this new requirement, we request that guidance on the intent of "immediate unfettered access." During a recent backshift inspection, an inspector previously identified in writing to the licensee by the Region II Director was held up one and one-half hours. This is obviously not equivalent to access provided regular employees and we plan to issue a citation. As we see it, the problem will be meeting the intent of "immediate access" and Headquarters guidance on this point is requested.

There are several different views on "unfettered access". Specifically, we need to know if this means unescorted access or something else.

We would appreciate a response by November 15.

  
C. M. Upright  
Assistant to the Director

cc: G. L. Snyder, RI  
C. E. Norelius, RIII  
W. E. Vetter, RIV  
A. D. Johnson, RV



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
799 ROOSEVELT ROAD  
GLEN ELLYN, ILLINOIS 60137

December 4, 1979

MEMORANDUM FOR: George C. Gower, Acting Executive Officer for Operations Support, IE

FROM: Charles E. Norelius, Assistant to the Director

SUBJECT: INSPECTOR ACCESS AND RELIABILITY AT LICENSEE FACILITIES  
(AITS F030S0779)

Attached is a letter dated October 22, 1979 from Wisconsin Electric Power Company which relates to the question of "unfettered access" by inspectors, and also which raises the question of inspector liability if his actions during unescorted activities result in damage to the facility. We are aware that you are currently reviewing similar questions on "unfettered access" for Region II. We would appreciate being informed of the results of that review.

Secondly, we request your assistance in responding to the question of liability of inspectors at the facility.

We plan to acknowledge receipt of the licensee's letter and indicate that his questions are under review by the HQ staff and that we will respond at a later date.

*Charles E. Norelius*

Charles E. Norelius  
Assistant to the Director

Attachment:  
As stated



**Wisconsin Electric** POWER COMPANY  
231 WEST MICHIGAN, MILWAUKEE, WISCONSIN 53201

October 22, 1979

Mr. J. G. Keppler, Regional Director  
Office of Inspection and Enforcement  
Region III  
U. S. NUCLEAR REGULATORY COMMISSION  
799 Roosevelt Road  
Glen Ellyn, Illinois 60137

Dear Mr. Keppler:

POINT BEACH NUCLEAR PLANT  
INSPECTOR ACCESS

Recently a Region III inspector questioned the Point Beach Nuclear Plant procedures for accommodating inspectors as related to the requirements of 10 CFR 50.70(b)(3). This section specifies, "(3) The licensee or construction permit holder shall afford any NRC resident inspector assigned to that site, or other NRC inspectors identified by the Regional Director as likely to inspect the facility, immediate unfettered access, equivalent to access provided regular plant employees, following proper identification and compliance with applicable access control measures for security, radiological protection, and personal safety."

Wisconsin Electric intends to meet the requirements of the regulation by providing access to authorized inspectors to all areas of the plant where plant or inspector safety are not compromised and to allow inspector access to any plant employees for discussions related to carrying out the inspector's duties. The new regulation differs from the proposed regulation in that it demands "unfettered" access and deletes the sentence which provided for establishing the purpose and scope of the inspection so that planning can be done to facilitate an efficient inspection. No public comment was requested with respect to this matter. We are, of course, determined to cooperate with your inspection program consistent with assuring plant safety and the safety of all visitors to the plant, including NRC inspectors. Accordingly, we plan to implement this regulation by furnishing an escort for your inspectors following an entrance meeting.

OCT 24 1979



Mr. J. G. Keppler

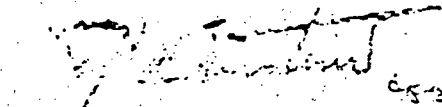
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October 22, 1979

We believe that the NRC does not indemnify the utility or the public against any damage which might involve the actions of the inspector; therefore, we believe it necessary to provide an escort unless the inspector is so familiar with the plant, and the plant personnel with the inspector, that we determine such escort requirement can be waived. If unannounced inspections take place outside normal working hours, it may be necessary to call in an escort if the inspector desires access to plant areas outside the normal work stations of on-duty personnel. We do not believe that the minor delay which might be involved under such circumstances is in conflict with the regulations in view of the safety and security considerations already discussed. If the inspection is announced in advance, we would plan to have an escort available without delay.

We would be pleased to discuss this matter further with you if you so desire.

Very truly yours,



Executive Vice President

Sol Burstein