RECORD #324

TITLE: RECOMMENDING THIRD PARTY ASSISTANCE TO LICENSEES

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 15, 1993

MEMORANDUM FOR: Thomas T. Martin, Regional Administrator, RI
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FROM: James M. Taylor
Executive Director for Operations

SUBJECT: RECOMMENDING THIRD PARTY ASSISTANCE TO LICENSEES

Recently an issue arose surrounding individual NRC employees recommending consultants/contractors to licensees. The issue involved various licensees requesting assistance in obtaining help solving programmatic problems, particularly in the nuclear material/health physics area. In trying to be responsive to licensee needs, inspectors had provided assistance by recommending consultants who in their opinion could provide quality work. The NRC staff and management had informally determined that by recommending multiple consultants they were avoiding any potential conflict of interest. Subsequently, this issue was reviewed by the General Counsel. He, in consultation with the Office of Government Ethics, concluded that an NRC employee is prohibited from recommending the services of any particular person or organization for a project under NRC regulatory jurisdiction. Providing such a recommendation violates 5 C.F.R. 2635.702, which prohibits Federal employees from using public office for endorsement of any product, service, or enterprise.

As an agency, however, I believe we have an obligation to provide assistance where possible in helping individual licensees solve problems where the health and safety of the public is involved. I believe a balance can be struck between our responsibilities as regulators and being responsive to the commercial reactor and materials licensee communities' requests for outside assistance to improve troubled operation. With this in mind, I would ask each of you to develop office specific procedures to implement the enclosed guidance for recommending third party assistance to licensees. The guidance should be used for all future requests for assistance. Your procedures should address cases where programmatic problems are involved and identify regional and national sources of assistance to licensees. Examples of sources include the Nuclear News Buyers Guide or other industry reference documents, another licensee who has solved a similar problem, an appropriate professional society such as the Health Physics society (either national or local chapters), the

American Association of Physicists in Medicine, and the Society for Nuclear Medicine. The procedures should also address those cases where an immediate referral may be necessary. Examples include: (1) A situation where a moisture/density gauge is damaged and a source is exposed to the environment. (2) A problem where the full safety significance may not be known until substantial work has been performed, e.g., a university where multiple laboratories have the potential for being contaminated. (3) A case where there is a significant public perception of a problem, e.g., a case involving the spread of contamination from a site where, even though the health risk is low, there is a significant concern on the part of the public.

Once these procedures are developed, their implementation should be discussed at Fundamentals of Inspection courses and inspector counterpart meetings. It is important that the entire staff have a clear understanding of the principles involved in arriving at a correct referral decision. The enclosed guidance will be incorporated in the Field Policy Manual.

Original signed by
James M. Taylor

James M. Taylor
Executive Director
for Operations

Enclosure:
Guidance for Recommending Third
Party Assistance to Licensees

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*See previous concurrence

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Enclosure

GUIDANCE FOR RECOMMENDING THIRD PARTY ASSISTANCE TO LICENSEES

The following guidance is provided to assist employees who receive requests for assistance from licensees. This guidance should be disseminated to all staff members and specific implementing procedures developed. There are two cases presented. Case #1 is for use when a licensee has a programmatic problem. This case allows time for the licensee to conduct research in obtaining assistance. Case #2 is for use when an immediate health and safety problem exists.

Case 1: An NRC employee receives a request for third party assistance from a licensee.

1. The employee shall as soon as practical notify his or her management.

2. Following consultation with management, the staff member may refer the requestor to any of the following sources:

   a. The current version of the Nuclear News Buyers Guide. If not otherwise available to the requestor, a copy of the Buyers Guide can be obtained by contacting the American Nuclear Society (Attn: Accounting Department), 555 N. Kensington Ave., La Grange Park, Illinois 60525.

   b. A licensee that has solved a similar problem (consult with office/regional management prior to providing the name). When providing the name of a licensee who has solved a similar problem, take special care that a perception of conflict of interest is not created and that the licensee is not under an OI investigation for misconduct.

   c. An appropriate professional society such as the American Society for Mechanical Engineers or the Health Physics Society.

   d. For materials or medical licenses, the staff member may recommend the following professional groups as a reference source: (This list is not exhaustive and others may be added after confirming that they are willing to assist in identifying third party sources of assistance.)

      American Academy of Health Physics, Secretariat
      8000 West Park Drive
      McLean, Virginia 22102
      Telephone: 703-790-1745

      American Association of Physicists in Medicine
      335 E. 45th Street
      New York, New York 10017
      Telephone: 212-661-9404
      (moving to Washington, DC area in late 1993)

Society of Nuclear Medicine/American College of Nuclear Physicians
Government Relations
1101 Connecticut Avenue, NW
Washington, DC 20036
Telephone: 202-429-5120

American College of Medical Physicists
1891 Preston White Drive
Reston, Virginia 22091
Telephone: 703-648-8966

Note: Regions may want to keep a list of local chapters in their regions for referral purposes.

Case 2: An immediate health and safety issue exists and it is not practical to take the action detailed in Case #1.

1. Refer the licensee to an appropriate equipment manufacturer.

2. Consult with NRC management (NRR, NMSS, or regional office). Following management approval the employee may refer the licensee to one or more qualified consultants/contractors who can provide prompt safety assistance.[1] Special care should be taken in connection with providing recommendations concerning consultants with whom the recommending staff has a personal or long standing relationship.

3. Following the action, document the event and the justification for the action, and provide a copy to the EDO.

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[1]If the issue is so immediate that it would not be practical to consult with NRC management before referring the licensee to someone who could provide the necessary prompt safety assistance, the employee should make the referral first, and then inform NRC management and document the event and justification.