



UNITED STATES
NUCLEAR REGULATORY COMMISSION

ANNOUNCEMENT NO. 52

DATE: July 11, 1995

MEMORANDUM TO: All NRC Employees

FROM: James M. Taylor *James M. Taylor*
Executive Director for Operations

SUBJECT: COMMUNICATION AND MANAGEMENT RESOLUTION OF INAPPROPRIATE
REGULATORY ACTIONS BY NRC STAFF

This memorandum forwards the Commission policy statement on communications between the NRC and licensees. It also provides the procedure for managing the resolution of concerns related to perceived inappropriate regulatory action by the NRC staff.

A recent industry report, the Towers Perrin Nuclear Regulatory Review Study, described examples in which NRC employees were said to have taken inappropriate regulatory action. The report also suggested that licensees fear reporting such information to the NRC and that fear of retaliation stifles open communications with the NRC. Additionally, a few respondents to the recent Regulatory Impact Survey of industrial and medical radioactive materials licensees indicated that they were reluctant to disagree with the NRC because of fear of retaliation. Although these reports did not provide sufficient information to enable the NRC to validate specific instances of retaliation, the agency considers such retaliation totally unacceptable and inappropriate.

The Commission has endorsed the attached policy to establish clearly its expectations for the NRC staff and licensees to have open and professional communication at all levels in our organizations. In the policy, the Commission also encourages licensees to raise issues regarding inappropriate regulatory action by a member of the NRC staff.

While avenues exist for any licensee employee to communicate with the NRC staff and management by phone, through written correspondence and in face-to-face meetings, a formal process has been developed for senior power reactor licensee officials to report perceived inappropriate regulatory action directly to the Office of the EDO. The process, which is contained in the attached procedure, will be used to guide senior NRC managers in obtaining and

evaluating issues raised by power reactor licensee officials. A similar process will be followed by senior NRC managers in the regions and in headquarters. It should be emphasized that this process is intended to be fair and objective in dealing with the staff and the affected licensee organization.

Finally, the NRC will inform licensees about this Commission policy statement and the process for managing reports of perceived inappropriate regulatory actions. The licensees will be encouraged to use existing avenues of communication to resolve such concerns, however, if normal communications fail or are determined inappropriate, use of this process will be strongly encouraged.

If you have any questions about this policy or the process discussed above, please feel free to contact Victor M. McCree, Chief Regional Operations Staff, Office of the EDO.

Attachments:

1. NRC Policy on Communications Between
the NRC and Licensees
2. Guidance for Management Resolution of
Inappropriate Regulatory Actions by
NRC Staff

NRC POLICY ON COMMUNICATIONS BETWEEN THE NRC AND LICENSEES

In 1991 the Commission established the NRC Principles of Good Regulation, a copy of which is attached for reference. As noted in the Principles, the Commission believes that good regulation must be transacted publicly and candidly and that open communications must be maintained with Congress, other government agencies, licensees, and the public. Regulatory actions should always be fully consistent with regulations and should be promptly, fairly, and decisively administered.

The Commission encourages and expects open communications at all levels between its employees and those it regulates. Licensees should feel unconstrained in communicating with the NRC. The Commission also expects that the NRC staff exercise initiative in maintaining open lines of communication and ensure that its regulatory activities are high quality, appropriate and consistent. The Commission recognizes that honest, well-intentioned differences in opinions between the staff and the licensee will occasionally occur, and therefore encourages open communications to foster an environment where such differences receive constructive and prompt resolution.

Open communication also extends to the reporting of perceived inappropriate regulatory actions by NRC staff when dealing with licensees. The Commission encourages licensees to provide specific information regarding such concerns.

The NRC will not tolerate inappropriate regulatory actions^{1/} by the NRC staff, nor will it tolerate retaliation or the threat of retaliation against those licensees who communicate concerns to the agency. NRC staff whose actions are found to be contrary to this policy could be subject to disciplinary actions in accordance with the NRC Management Directive 10.99, "Chapter 4171, Discipline, Adverse Actions and Separations," or in accordance with the Collective Bargaining Agreement Between the U.S. Nuclear Regulatory Commission and National Treasury Employees Union.

^{1/} Inappropriate regulatory actions include activities which exceed the agency's regulatory authority, involve improper application of agency requirements, or adversely affect the agency's regulatory functions.

Examples of inappropriate regulatory actions include, but are not limited to, unjustified inconsistent application of regulations and guidance by NRC staff or management that significantly affect licensee activities and inappropriate action on the part of NRC staff and management that disrupts effective communication with the licensee.



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NRC PRINCIPLES OF GOOD REGULATION

INDEPENDENT. Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.

OPEN. Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.

EFFICIENT. The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required, and must be a constant agency goal. NRC must establish means to evaluate and continually upgrade its regulatory capabilities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay.

CLEAR. Regulations should be coherent, logical, and practical. There should be a clear nexus between regulations and agency goals and objectives where explicitly or implicitly stated. Agency positions should be readily understood and easily applied.

RELIABLE. Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.



United States
Nuclear Regulatory Commission

EDO Procedure:

**Guidance for Management Resolution of
Inappropriate Regulatory Actions
By NRC Staff**

Office of the Executive Director for Operations
June 29, 1995

GUIDANCE FOR MANAGEMENT RESOLUTION OF INAPPROPRIATE REGULATORY ACTIONS BY NRC STAFF

A. Purpose/Discussion

Avenues exist for any licensee employee or official to communicate with the Nuclear Regulatory Commission about staff regulatory actions that are perceived as inappropriate. These avenues include contact with regional and headquarters staff and management by telephone, through written correspondence and in face-to-face meetings. To augment those communication channels, this procedure establishes a formal process within the Office of the Executive Director for Operations (OEDO) for senior power reactor licensee managers (licensee officials¹) to report concerns involving perceived inappropriate regulatory actions by the NRC staff.

However, this procedure is not intended to prevent or inhibit any licensee employee or official from reporting perceived inappropriate regulatory actions by an NRC employee(s) to the regions, headquarters offices, or the Office of the Inspector General (OIG).

This procedure establishes guidance for the OEDO to receive, act on and resolve issues raised by licensee officials regarding perceived inappropriate regulatory actions by NRC staff, and is intended to be fair and objective in dealing with the NRC staff and the affected licensee organization. The Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research (DEDR), and the Chief, Regional Operations and Program Management Staff (CROS) have been designated as points of contact to facilitate the EDO's ability to resolve such concerns.

This procedure should be used to guide senior level NRC management in obtaining and evaluating reports of perceived inappropriate regulatory actions, in identifying and addressing NRC programmatic and personnel weaknesses, and in assuring that NRC regulatory functions are carried out effectively. Licensees are encouraged to provide specific information regarding the activities of concern, the identity of the affected NRC employee(s) and the identity of involved licensee officials and employees.

One of the primary means of addressing the cause(s) of inappropriate regulatory activities, should such a concern be substantiated, is to report the fact that such activities occurred, disclose the findings, develop recommendations and implement corrective measures to prevent similar occurrences. While the circumstances regarding a finding of inappropriate regulatory actions by an NRC employee(s) may be publicly disclosed, the identity of the individual(s) involved would remain confidential, to the extent permissible.

¹For the purposes of this process, senior power reactor licensee managers (licensee officials) include those persons who occupy the positions of plant manager and above.

B. Action

NOTHING IN THIS GUIDANCE IS INTENDED TO LIMIT LICENSEE OFFICIALS FROM CONTACTING THE OFFICE OF THE INSPECTOR GENERAL DIRECTLY TO REPORT FRAUD, WASTE, ABUSE OF AUTHORITY, OR OTHER WRONGDOING. OIG MAY BE CONTACTED DIRECTLY IN WRITING OR BY USING THE OIG HOTLINE (800-233-3497).

1. Upon receipt of information from a licensee official regarding perceived inappropriate regulatory actions by the NRC staff, the DEDR or the CROS will:
 - (a) Elicit and record as many specific details as possible about the claim of inappropriate action, including the name, mailing address, and telephone number of the licensee official and other individuals who might provide additional or corroborating information.
 - (b) Inform the licensee official that while their concern will be handled discreetly, the review may make it necessary to further involve the licensee official and other involved licensee employees, and the affected NRC employee(s) and other involved NRC employees in agency administrative actions should a serious NRC personnel issue arise.
 - (c) Inform the licensee official that the EDO will provide written feedback, if appropriate, on the disposition of the issue.
 - (d) Open a file regarding the concern.
2. The DEDR or the CROS will coordinate the resolution of the concern. The DEDR also may direct other agency managers to inquire into the concern. The following steps are guidance and are not necessarily intended to be implemented in the order listed.
 - (a) Prior to conducting inquiries, the DEDR or the CROS will discuss the matter with the Office of the Inspector General (OIG) to ensure that any issues under the OIG's jurisdiction are addressed.

Should the OIG indicate that it will initiate an investigation into any portion of the concern, further staff follow up in that area will be held in abeyance pending outcome of the investigation, unless the matter requires prompt staff action. The staff will coordinate with the OIG should prompt action in parallel with the OIG be deemed necessary.
 - (b) Inform the affected employee(s) of the issue(s) and obtain the employee's version of the events orally or in writing, as appropriate.

- (c) Advise the affected employee not to contact any licensee employee or official to pursue resolution of the issue.
 - (d) Decide whether the employee(s) should be assigned other work unrelated to the licensee and/or work activity identified in the concern pending resolution of the concern.
 - (e) Conduct further follow up actions, if any, to ascertain additional facts and to evaluate the significance of the issue, (e.g., interview licensee official(s), other licensee employees, and NRC co-workers, evaluate work patterns, etc.). Advise and consult with NRC management in the region and program offices as necessary and appropriate to resolve the concern.
 - (f) When the review is complete, the DEDR will:
 - (1) If the issue is found to be without merit, inform the employee(s), in writing, of that conclusion.
 - (2) If the issue is substantiated, develop recommendations, as appropriate, for corrective actions, and
 - (i) Develop a plan, including a schedule for implementation, to execute any remedial actions;
 - (ii) Advise the employee(s) of the findings; and
 - (iii) Initiate the corrective action plan.
3. The EDO will notify the licensee official in writing, if appropriate, indicating whether or not the issue was substantiated. Although the letter may indicate the corrective actions initiated resulting from a validated concern, no details of any personnel action should be included. A copy of all correspondence related to the issue will be placed in the designated EDO file.