

## **Non-Concurrence Process Record for NCP-2013-010**

The U.S. Nuclear Regulatory Commission (NRC) strives to establish and maintain an environment that encourages all employees to promptly raise concerns and differing views without fear of reprisal and to promote methods for raising concerns that will enhance a strong safety culture and support the agency's mission.

Individuals are expected to discuss their views and concerns with their immediate supervisors on a regular, ongoing basis. If informal discussions do not resolve concerns, individuals have various mechanisms for expressing and having their concerns and differing views heard and considered by management.

Management Directive MD 10.158, "NRC Non-Concurrence Process," describes the Non-Concurrence Process (NCP). <http://pbadupws.nrc.gov/docs/ML0706/ML070660506.pdf>

The NCP allows employees to document their differing views and concerns early in the decision-making process, have them responded to, and attach them to proposed documents moving through the management approval chain.

NRC Form 757, Non-Concurrence Process is used to document the process.

Section A of the form includes the personal opinions, views, and concerns of an NRC employee.

Section B of the form includes the personal opinions and views of the NRC employee's immediate supervisor.

Section C of the form includes the agency's evaluation of the concerns and the agency's final position and outcome.

NOTE: Content in Sections A and B reflects personal opinions and views and does not represent official factual representation of the issues, nor official rationale for the agency decision. Section C includes the agency's official position on the facts, issues, and rationale for the final decision.

The agency's official position (i.e., the document that was the subject of the non-concurrence) is included in ADAMS Accession Number ML13184A232.

Include one of the following statements:

This record has been redacted prior to discretionary release to the public.

NON-CONCURRENCE PROCESS

NCP TRACKING NUMBER  
NCP-2013-010

SECTION A - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL

TITLE OF SUBJECT DOCUMENT EA-13-068; DRESDEN REPORT 2013407; RESULTS OF OI REPORT 3-2012-020		ADAMS ACCESSION NO. ML13184A232
DOCUMENT SIGNER GARY L. SHEAR		SIGNER PHONE NO. (630) 829-9700
TITLE DIRECTOR OF REACTOR SAFETY	ORGANIZATION REGION III	
NAME OF NON-CONCURRING INDIVIDUAL(S) V. PATRICIA LOUGHEED		PHONE NO. (630) 810-4376
TITLE SENIOR ENFORCEMENT COORDINATOR	ORGANIZATION REGION III	

☒ DOCUMENT AUTHOR    ☐ DOCUMENT CONTRIBUTOR    ☐ DOCUMENT REVIEWER    ☐ ON CONCURRENCE

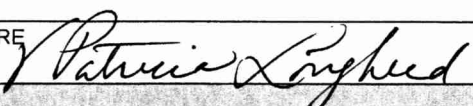
REASONS FOR NON-CONCURRENCE AND PROPOSED ALTERNATIVES

I disagree with two of the four examples in the choice letter to the licensee and am uncomfortable with escalating a third example. I recognize that the individuals were, at the time, members of the licensee's organization. I also recognize that the NRC normally holds the licensee responsible for acts of its employees. However, in this case, the conversations about the planning of the crime occurred primarily offsite. The individuals involved are the wrongdoer (charged in absentia), his alleged accomplice, and the individual who was either a co-conspirator or whom the other two were trying to recruit (depending on how the facts of the case are viewed.) There were no facts to indicate that the licensee, other than the three individuals mentioned, had any way to know of the planned crime without one of the three individuals coming forward. When questioned, one of the involved individuals directly contradicted another of the involved individuals about the supposed activity that took place onsite. No evidence was presented to say whether the two individuals actually worked together at any time (they were normally on separate shifts) or if there was ever an activity that would have placed them at the location where the supposed conversation occurred. However, the NRC (at the enforcement panel) credited this conversation as having occurring and the individual who eventually told the story as being truthful in stating that it occurred. This is in contrast to other parts of this individual's story, where the NRC decided he was not being truthful.

10 CFR 73.56(f)(3) is written as an individual responsibility and not a licensee responsibility. The licensee had a program in place and trained on that program. However, no program can stop people from planning or committing crimes. Furthermore, people planning on committing a crime are not likely to tell their employers they are about to commit a crime. Therefore, no matter what the licensee does, it cannot prevent someone such as the wrongdoer or his alleged accomplice. It should be noted that the same violation was proposed for all the individuals (and will eventually be issued as Orders to the two wrongdoers) as is being proposed to the licensee. Normally there is a difference between the violations proposed to the licensee and to the involved individuals. In this case, the violations are identical.

In regard to the third individual, the NRC made the determination that the individual's actions were deliberate. Again, the licensee had a program in place, trained on it and no program will stop people from committing deliberate acts. However, similar to the above, 10 CFR 73.56(f)(3) is still an individual responsibility. The licensee met its obligation by having a program in place and training on that program. Absent the individual telling someone what he knew (which he eventually did) there was no way for the licensee to know or otherwise prevent this from occurring. I do not disagree that the third individual's actions were deliberate, at least from the date when he learned of the carjacking and he chose not to come forward to management with information about the second individual. However, the third individual is a low level individual and NRCs practice is normally to not escalate deliberate

☒ CONTINUED IN SECTION D

SIGNATURE  DATE 6/11/13

SEE SECTION E FOR IMPLEMENTATION GUIDANCE

## NON-CONCURRENCE PROCESS

NCP TRACKING NUMBER

NCP-2013-010

## TITLE OF SUBJECT DOCUMENT

EA-13-068; DRESDEN REPORT 2013407; RESULTS OF OI REPORT 3-2012-020

## ADAMS ACCESSION NO.

ML13184A232

## SECTION B - TO BE COMPLETED BY NON-CONCURRING INDIVIDUAL'S SUPERVISOR

## NAME

Steven Orth

## TITLE

Enforcement/Investigations Officer

## PHONE NO.

(630) 810-4373

## ORGANIZATION

EICS/Region III

## COMMENTS FOR THE NCP REVIEWER TO CONSIDER

The subject case is complicated and unique. The issues were discussed at an enforcement panel on May 23, 2013, and extensive discussion occurred relative to the proposed individual and licensee actions. The members of the panel appeared to reach a consensus on the actions for each of the four individuals involved. The panel agreed that a violation to the licensee was the appropriate path (based on Enforcement Policy); [REDACTED]

[REDACTED] The panel agreed to issue the licensee a "choice letter" to ensure that the NRC had all available information to make a decision on the enforcement action to the licensee.

The behavior observation program has both licensee and individual elements, with a degree of overlap. Specifically, the licensee's program relies on actions and reports from its staff, so that the licensee can ensure that personnel having unescorted access to a nuclear power plant are trustworthy and reliable and do not pose a safety impact to the facility. Similar to Ms. Loughheed, I also recognize that self-reporting one's own aberrant behavior may not be a likely action. The program relies on the actions of individuals who observe the behaviors or who have reports of the behaviors, which corresponds to at least two of the four individuals involved in this case.

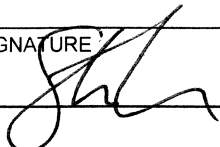
The NRC's Enforcement Policy holds licensees responsible for the actions of its employees, which is applied relatively consistently. In this case, the failures constituted violations of requirements for both individuals and the licensee. Consequently, the action proposed and endorsed by the enforcement panel considered these elements.

Ms. Loughheed participated in the development of the Region's initial enforcement proposal, which included a violation to the licensee. What appears to be major concerns is that the enforcement panel is considering escalated enforcement and that the choice letter now includes the inaction by all four of the licensee staff, instead of only the two persons not directly involved in the criminal activities.

At this stage of the enforcement process, a choice letter to the licensee appears to be a reasonable approach that is consistent with the NRC Enforcement Policy. The NRC has not made a final decision at this step. We have good evidence that an apparent violation occurred and should provide the licensee an opportunity to respond to the issues. Once the licensee responds to the issues, we will normally conduct an additional enforcement panel to consider the licensee's position, as well as additional views of the staff. While I encourage additional discussions with Ms. Loughheed to fully understand her perspectives, I also recommend issuance of the choice letter to the licensee to ensure we fully understand and may consider the licensee's position.

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SIGNATURE



DATE

6/12/13

SEE SECTION E FOR IMPLEMENTATION GUIDANCE

## NON-CONCURRENCE PROCESS

NCP TRACKING NUMBER

NCP-2013-010

## TITLE OF SUBJECT DOCUMENT

EA-13-068; DRESDEN REPORT 2013407; RESULTS OF OI REPORT 3-2012-020

ADAMS ACCESSION NO.

ML13184A232

## SECTION C - TO BE COMPLETED BY DOCUMENT SPONSOR

## NAME

Steven Orth

## TITLE

Enforcement/Investigations Officer

PHONE NO.

(630) 810-4373

## ORGANIZATION

EICS/Region III

## SUMMARY OF ISSUES

The non-concurring individual raises a concern with the appropriateness of holding the licensee responsible and issuing an escalated violation for its staff's failure to report aberrant behavior, as required by 10 CFR Part 73.56(f). The individual's view is that the licensee staff's failure to report these observed behaviors constitutes violation of a requirement that should only apply to the individual, [REDACTED]. In addition, the non-concurring individual suggests that it would not be reasonable to believe that the individuals demonstrating aberrant behaviors would essentially self-report each other.

## ACTIONS TAKEN TO ADDRESS NON-CONCURRENCE

The individual's supervisor has had discussions with the non-concurring individual to understand her views on the case.

The individual also participated in the May 21, 2013 Enforcement Panel, which provided an avenue to voice an opinion on the enforcement path forward for the issues. However, the individual later indicated that she felt uncomfortable raising the issue in that forum, given the momentum of some of the participants.

The Enforcement/Investigations officer suggested (and the non-concurring individual accepted) an offer to discuss the views at a meeting with other Region III personnel involved in the case. The non-concurring individual met with the document signer (Gary Shear) on June 11, 2013. The Enforcement/Investigations Officer, Acting Branch Chief of the technical area, and the Acting Regional Counsel also attended the meeting. At the conclusion of the meeting, Mr. Shear thanked all participants for their input and indicated that he would carefully consider all views on the matter.

SIGNATURE--DOCUMENT SPONSOR

TITLE

ENFORCEMENT/INVESTIGATIONS OFFICER

ORGANIZATION

EICS/Region III

DATE

6/12/13

SIGNATURE--NCP REVIEWER

Patrick London

TITLE

Deputy Director

ORGANIZATION

Dir. of Reactor Safety

DATE

7.8.13

## NCP OUTCOME

Non-Concurring Individual: ☐ CONCURS ☒ NON-CONCURS ☐ WITHDRAWS NON-CONCURRENCE (i.e., discontinues process)

## AVAILABILITY OF NCP FORM

Non-Concurring Individual: ☒ WANTS NCP FORM PUBLIC ☐ WANTS NCP FORM NON-PUBLIC

\* AFTER ALL ACTIONS FINAL

☐ CONTINUED IN SECTION D

SEE SECTION E FOR IMPLEMENTATION GUIDANCE

**NON-CONCURRENCE PROCESS**

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**SECTION D: CONTINUATION PAGE**

CONTINUATION OF SECTION

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A

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B

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C

violations for low level individuals where the licensee has taken action, such as terminating their access and placing them in PADS.

[REDACTED] I did not object to the original proposal of a SL IV to the licensee for the low level individual and the onshift individual, although I really see the violations as being more of an individual failure. However, I am willing to follow the normal NRC practice. My non-concurrence stems from expanding the violation to the two wrongdoers and escalating the significance because a crime was committed offsite.

I believe that issuing an escalated violation to the licensee sends the wrong message. It was not the licensee's responsibility to prevent the crime from happening. Even if the third individual had come forward at the time the two wrong-doers first talked to him, the two individuals could have denied everything. As the individual feared, given his relative position, and the other two individual's positions, the licensee could have done an evaluation, no action could have been taken and the crime would still have happened. I don't believe there is any way to tell what would have happened. However, since the NRC is departing from its normal precedent, I feel that the NRC is proposing to issue an escalated violation to the licensee only so that it can say that it is "doing something" and that's not the reason to issue violations. It appears the NRC is deviating from standard only because of the publicity of the case. That is not good precedent.

Paragraph on non-concurrence process removed.

**SEE SECTION E FOR IMPLEMENTATION GUIDANCE**