



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001
November 24, 1993

Docket No. 50-220

*See
Reports*

Ben L. Ridings
P.O. Box 1101
Kingston, Tennessee 37763

Dear Mr. Ridings:

I am responding to your letter dated October 13, 1993, in which you commented on the United States Nuclear Regulatory Commission's (NRC's) Director's Decision under 10 CFR 2.206 (DD-93-10) issued by Thomas E. Murley, Director, Office of Nuclear Reactor Regulation, on May 9, 1993, regarding your October 27, 1992, Petition concerning Nine Mile Point Nuclear Station Unit No. 1 (NMP-1). Although DD-93-10 became final agency action on June 3, 1993, the NRC staff has considered your comments and has provided responses to your comments in the enclosed, "NRC Staff's Response to Comments Related to Director's Decision under 10 CFR 2.206."

With regard to your allegation of past potential wrongdoings or improper actions by the United States Atomic Energy Commission/NRC staff, a copy of your October 13, 1993, letter has been referred to the NRC Office of the Inspector General for whatever review and action the Inspector General deems appropriate.

I trust this responds to your concerns.

Sincerely,

Steven A. Varga, Director
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

Enclosure:
NRC Staff's Response to
Comments Related to
Director's Decision under
10 CFR 2.206 with
Attachments 1-8

cc w/enclosure:
See next page

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WASHINGTON STATE DEPARTMENT OF
CORRECTIONS

DATE: November 24, 1993

*Distribution w/Enclosure: YEL Ticket #0930236

Docket File (50-220) (w/incoming and enclosure w/attachments 1-8)

NRC & Local PDRs (w/incoming and enclosure w/attachments 1-8)

PDI-1 Reading

Yellow Ticket File (w/incoming and enclosure w/attachments 1-8)

T. Murley/F. Miraglia, 12/G/18

L. J. Callan, Acting, 12/G/18

S. Varga

J. Calvo

R. A. Capra

J. Lieberman, 7/H/5

D. Brinkman (w/incoming and enclosure w/attachments 1-8)

C. Vogan

NRR Mail Room (YT#0930236) (12/G/18)

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C. Norsworthy

C. Cowgill, Region I

R. Barrett, 8/H/7

R. Jones, 8/E/23

OGC

L. Norton, NLN344 (w/enclosure w/attachments 1-8)

R. Cooper, RGN-I

J. Lee, 9/A/2 (w/enclosure w/attachments 1-8)

*Copies of Attachments 1-8 are available upon request from

D. Brinkman, 504-1409

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NRC Staff's Response to Comments Related to
Director's Decision Under 10 CFR 2.206

Comment: How could surveillance, emergency plan, and operation procedures possibly be correct when the technical specifications (TSs) and Updated Final Safety Analysis Report (UFSAR) are filled with contradicting statements regarding valve actuation signals?

Response: As stated on page 14 of DD-93-10, the NRC staff had previously identified, through its inspection program, administrative deficiencies in the TSs and UFSAR listings of the containment isolation valves similar to those identified in the October 27, 1992, Petition which was answered by DD-93-10. To the extent you sought correction of the TS tables to correctly list the Nine Mile Point Nuclear Station Unit No. 1 (NMP-1) containment isolation valves and their initiating signals, DD-93-10 stated that your Petition had been granted. That determination was based on the following.

An evaluation of NMP-1 compliance with the requirements of Appendix J to 10 CFR Part 50 was sent to Niagara Mohawk Power Corporation (NMPC) in a letter and attached safety evaluation of May 6, 1988. The NRC staff letter and the attached safety evaluation requested that NMPC submit a license amendment to revise the NMP-1 TSs to correct the administrative deficiencies. NMPC submitted the proposed license amendment in a letter of



November 20, 1990. After extensive reviews and revisions, including an onsite inspection by the NRC staff during February 1-5, 1993, License Amendment No. 140 to NMP-1 Facility Operating License DRP-63 was issued on April 12, 1993. License Amendment No. 140 corrected the containment isolation valve listings in the NMP-1 TSs. In addition, the containment isolation valve listings in the UFSAR (Tables VI-3a, VI-3b, and VI-3c) were corrected by NMPC in UFSAR Revision 11 which was issued on June 30, 1993. Copies of the May 6, 1988, letter; License Amendment No. 140; and UFSAR Tables VI-3a, 3b, and 3c (Revision 11) are included as Attachments 1, 2, and 3, respectively, for your information.

During the February 1-5, 1993, onsite inspection of the NMP-1 containment isolation valve program, the NRC staff verified consistency between the valve actuation signals listed on the pertinent elementary reactor protection system wiring drawings and the valve actuation signals listed in the request for License Amendment No. 140. This inspection also verified that all valves listed in Procedure N1-ST-R2, "Loss of Coolant Accident and Emergency Diesel Generator Simulated Automatic Initiation Test," responded properly when last tested on July 9-11, 1992. This procedure required testing of all containment isolation valves required to actuate on a containment isolation signal initiated by either a reactor vessel low-low water level signal or high drywell



pressure signal which are the most common signals for initiating containment isolation. The NRC staff verified that similar test procedures were in place for all containment isolation valves and that these procedures were being used to verify proper isolation valve response to actuation signals. The details of the NRC staff's February 1-5, 1993, onsite inspection are discussed in Attachment 1 of combined Inspection Report No. 50-220/93-01 and 50-410/93-01, dated March 23, 1993, a copy of which is included as Attachment 4.

Various controls are used to assure the accuracy of NMP-1 procedures. NMP-1 TS 6.5.2.1 requires each procedure which affects nuclear safety to be prepared by a qualified individual/organization and to be reviewed by an individual/organization other than the individual/organization that prepared the procedure. TS 6.8.2 requires that each procedure be reviewed and approved, prior to implementation, by the NMPC branch manager (or higher levels of NMPC management) responsible for the functional area of the procedure; TS 6.8.2 also requires periodic review of each procedure. TS 6.5.2.2 requires changes to these procedures to be prepared and approved in a similar manner. NMPC has a procedure change process for implementing the requirements of TS 6.5.2.2. Additionally, the NRC inspection program routinely inspects NMP-1 procedures and implementation of the NMPC procedure change process on a sampling basis. It should be noted that programmatic



deficiencies affecting procedures were identified by both NMPC and NRC in the areas of ISI/IST, erosion/corrosion, maintenance, and surveillance in the 1988 time frame. These were resolved as part of the Restart Action Plan submitted by NMPC in December 1988. The problems included inaccurate procedures; ASME Class 1, 2, and 3 equipment not covered by procedures; and inadequate Quality Assurance and Engineering procedures related to the programs. The deficiencies were corrected before plant startup and removal of Nine Mile Point from the problem plant list. Subsequent licensee performance in this area has been substantially improved. In view of the above, the NRC concludes that current NMP-1 procedures are adequate.

Comment: Provide a copy of the safety evaluation and all supporting documents stating that the NMP-1 high pressure coolant injection (HPCI) system is not necessary at NMP-1, although the design basis requires it.

Response: As stated on page 11 of DD-93-10, NMP-1 does not have and does not need an emergency core cooling system (ECCS) HPCI system because the existing NMP-1 ECCS satisfies the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, without reliance on the feedwater system operating in the HPCI mode. The United States Atomic Energy Commission (AEC) Safety Evaluation Report (SER) dated December 27, 1974, concluded on page 9 that the NMP-1 ECCS satisfies the



requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K, without reliance on the feedwater system operating in the HPCI mode. A copy of this SER is included as Attachment 5. Also included as Attachments 6 and 7, respectively, are copies of the March 24, 1969, AEC staff report to the Commission's independent Advisory Committee on Reactor Safeguards (note last paragraph on page 163 stating that NMP-1 was not designed in accordance with the General Design Criteria but that there is reasonable assurance that the facility design meets the intent of the criteria) and UFSAR page VII-1 which clearly states that the HPCI system is not an engineered safety feature and that its use was not considered to show compliance with 10 CFR Part 50, Appendix K. These documents provided the basis for the conclusion stated on page 11 of DD-93-10 that the NMP-1 HPCI system is not part of the NMP-1 design basis and that use of the NMP-1 HPCI system is not required to show compliance with the requirements of 10 CFR 50.46 and 10 CFR Part 50, Appendix K.

Comment: Provide documentation which allows for use of a closed loop as the outboard barrier for a containment penetration. Currently, NMP-1 has miles of primary piping outside of the containment building, yet the license requires the outboard valve be within 40 feet of the penetration to reduce the possibility of being sheared by falling objects.



Response: Your assertion that NMP-1 uses closed loops as outboard barriers for containment penetrations in lieu of containment isolation valves located outside the containment is incorrect. As shown in the current containment isolation valve listings (Revision 11 of UFSAR Tables VI-3a and VI-3b and TS Tables 3.2.7, 3.2.7.1, and 3.3.4 issued by License Amendment No. 140) there is at least one containment isolation valve located outside the containment in each containment penetration. The accuracy of these containment isolation valve listings was verified by the NRC staff during the February 1-5, 1993, onsite inspection.

Moreover, the NRC staff has reviewed NMP-1 Facility Operating License DPR-63, including the TS; the applicable sections of the UFSAR; Appendix J of 10 CFR Part 50; and General Design Criteria (GDC) 55, 56, and 57. Contrary to the assertion that the NMP-1 license requires the outboard containment isolation valves to be within 40 feet of the penetration, such a regulatory requirement does not exist. GDC 55, 56, and 57 require containment isolation valves outside containment to be located as close to the containment as practical; however, these GDC do not specify a maximum distance between the penetration and the isolation valve. Furthermore, as discussed in DD-93-10, the GDC do not apply to NMP-1.



Comment: On July 8, 1993, NRC Chairman Selin stated on public television that the NRC has no program in place to protect witnesses who come forward with safety concerns. Chairman Selin stated the NRC relied on the United States Department of Labor (DOL) to make decisions on conditions of employment. This is in direct violation of NRC Form 3, on public display, at every nuclear site in the United States.

Response: The NRC does have a program in place which includes efforts to prevent disclosure of the identities of persons who raise safety concerns to the NRC. As a general rule, the need-to-know principle is implemented for persons who contact NRC with safety concerns regarding the construction or operation of an NRC-regulated facility. This means avoidance of unnecessary use of the identity of that person and other identifying information in internal discussions and documents. In addition, if safety concerns are referred to the licensee, the documents released to the licensee generally do not contain information which could identify the individual. If the individual has been granted confidential source status, higher standards of control over the individual's identity apply. Confidential source status is granted when a Confidentiality Agreement is executed by the NRC and the individual.



The majority of employees who submit concerns to the NRC or raise issues to licensees do so without suffering retaliation from their employers. However, there are cases where retaliation has occurred. Section 210 (now recodified as Section 211) of the Energy Reorganization Act (ERA) of 1974 prohibits licensees, and their contractors or subcontractors, from practicing retaliatory employment discrimination against employees engaged in protected activities, e.g., raising of safety concerns to a licensee or the NRC. Discrimination includes discharge and other actions that relate to compensation, terms, conditions and privileges of employment. A licensee is subject to enforcement action (e.g., civil penalties, license suspension) by the NRC under the Atomic Energy Act (AEA) of 1954, as amended; the ERA; and the applicable provisions of the Commission's regulations (e.g., 10 CFR 50.7) for violations of these prohibitions by the licensee or its contractors and subcontractors. However, the AEA does not provide the NRC with the authority to provide a personal remedy to an employee. Personal remedies are provided through the DOL; such remedies may include reinstatement or back pay to an employee who has been subject to discrimination, compensatory damages, and attorney fees. As indicated in NRC Form 3, an employee who believes that discrimination has occurred may seek a personal remedy by filing a complaint with the DOL. The complaint must be filed within 180 days (formerly 30 days) after the alleged discrimination occurred.



Independent of the DOL process, the NRC evaluates the technical safety issues raised in the complaint and takes immediate action to protect the public health and safety if required.

The NRC Inspector General (IG), in a report issued July 9, 1993, found dissatisfaction with the current NRC and DOL regulatory processes among the persons interviewed by the IG. The NRC established a Review Team in July 1993 to perform a reassessment of the NRC program for protecting allegeders against retaliation to determine whether the Commission has taken sufficient steps within its authority to create an atmosphere within the regulated community where individuals with safety concerns feel free to engage in protected activities without fear of retaliation. To assist the NRC in evaluating current whistleblower protection activities and in recommending improvements in the regulatory process, the Review Team published a notice in the Federal Register on August 2, 1993, soliciting public comments and conducted public meetings from August through October 1993 in several areas of the United States. The review is expected to be complete within a few months.

The NRC places a high value on employees in the nuclear industry being free to raise potential safety issues to their management. The NRC, the regulated industry, and the public have benefitted from the issues raised by employees of licensees and their



contractors. While the NRC encourages employees to raise safety issues first to their employers, employees must also feel free to raise safety concerns any time directly to the NRC. In addition, the NRC needs to assure that its actions will cause licensees to foster an atmosphere where such individuals will be encouraged to come forward with information. Much of this is happening already, but there may be more that we can and should do in order to further encourage individuals to come forward. The findings of the IG and the Review Team will assist in this determination.

The records of interviews and public statements made by Chairman Selin do not indicate that a statement was made on July 8, 1993, but Chairman Selin did conduct his annual press conference on July 7, 1993, for which television cameras were present and which might have received television coverage. Therefore, for the purposes of the following discussion, it is assumed that the statements you recall viewing on July 8, 1993, were those made at that annual press conference. A transcript of that annual press conference is included as Attachment 8.

The transcript of that annual press conference contains no statement by Chairman Selin asserting that the NRC has no program to protect witnesses who come forward with safety concerns. Chairman Selin's statements relating to prohibited employment discrimination are correct and consistent with the regulatory



framework described above. Chairman Selin's statements are based on the NRC's statutory authority, as described above, to protect public health and safety by imposing civil penalties on licensees or issuing orders to licensees or their agents, contractors, or subcontractors who discharge or otherwise discriminate against an employee because the employee engaged in a protected activity, which is distinct from the DOL's separate but complementary authority to order reinstatement of, or the payment of compensatory damages to, such an employee.

The NRC's relationship with the DOL has been formalized to implement this process as follows: In 1982, the NRC entered into a Memorandum of Understanding (MOU) with the DOL to facilitate coordination and cooperation concerning the employee protection provisions of Section 210 (now Section 211) of the ERA. This MOU specifies that the DOL will provide NRC with copies of complaints, decisions, and orders associated with a complaint and that, "DOL has the responsibility under Section 210 . . . to investigate employee complaints of discrimination." The Procedures for Implementing MOU between the NRC and DOL state that the, "NRC will not normally initiate an investigation of a complaint if DOL is conducting, or has completed, an investigation and found no violations," adding that NRC may initiate an investigation when necessary if DOL concludes that a violation occurred. This approach is intended, in part, to conserve resources by avoiding



duplication of effort between Federal agencies. The MOU clearly provides that the DOL will provide any personal remedies to the employee, such as reinstatement or the payment of compensatory damages, while the NRC will take whatever action is appropriate to protect public health and safety.

With respect to your statement that Chairman Selin's statements violate NRC Form 3, Form 3 does reflect the NRC's statutory authority as embodied in the NRC's regulations and states that: (1) while employees may report violations to the NRC, complaints of discrimination should be filed with the DOL; (2) the NRC may conduct its own investigation where necessary; and (3) if the NRC or the DOL finds that unlawful discrimination occurred, the NRC may take enforcement action against an employer. Chairman Selin's statements at the annual press conference are consistent with these statements in Form 3.



November 24, 1993

Docket No. 50-220

Ben L. Ridings
P.O. Box 1101
Kingston, Tennessee 37763

Dear Mr. Ridings:

I am responding to your letter dated October 13, 1993, in which you commented on the United States Nuclear Regulatory Commission's (NRC's) Director's Decision under 10 CFR 2.206 (DD-93-10) issued by Thomas E. Murley, Director, Office of Nuclear Reactor Regulation, on May 9, 1993, regarding your October 27, 1992, Petition concerning Nine Mile Point Nuclear Station Unit No. 1 (NMP-1). Although DD-93-10 became final agency action on June 3, 1993, the NRC staff has considered your comments and has provided responses to your comments in the enclosed, "NRC Staff's Response to Comments Related to Director's Decision under 10 CFR 2.206."

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I trust this responds to your concerns.

Sincerely,
Original signed by:
Steven A. Varga, Director
Division of Reactor Projects - I/II
Office of Nuclear Reactor Regulation

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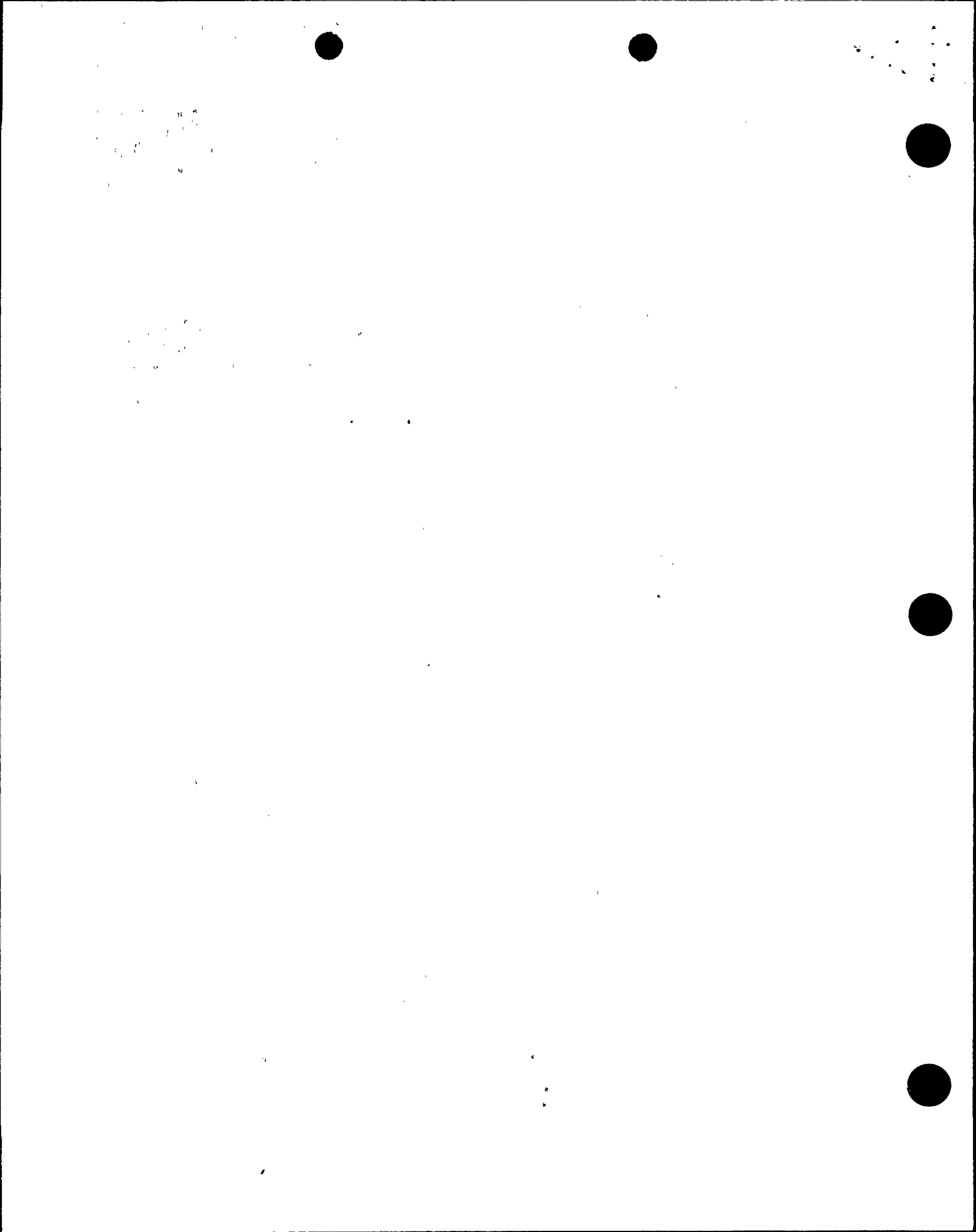
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See attached sheet

*See previous concurrence

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KC
NMP-1

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BEN L. RIDINGS
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TO:

MURLEY

FOR SIGNATURE OF :

** YEL **

VARGA

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MURLEY
MIRAGLIA
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MAILROOM 12G18

ASSIGNED TO:

CONTACT:

DRPE

VARGA

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- RESPONSE TO 2.206 PETITION
- ARB MEETING MIGHT BE NEEDED TO DETERMINE NEW ALLEGATIONS/MATERIAL FOR IG

Please review the due date immediately:

If the due date does not allow adequate time to respond to this ticket, you may request a revised due date. The request must have prior approval from the appropriate Associate Director or NRR Deputy Director and must include a valid justification. Contact NRR mailroom with the new due date (Kevin Bohrer, ext-3072).

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