

February 15, 1994

Docket No. 50-333
License No. DPR-59
EA 93-306

Mr. Harry P. Salmon, Jr.
Resident Manager
New York Power Authority
James A. FitzPatrick Nuclear Power Plant
Post Office Box 41
Lycoming, New York 13093

Dear Mr. Salmon:

SUBJECT: NRC INSPECTION REPORT NO. 50-333/93-29

On January 18, 1994, we forwarded to you the subject inspection report. The inspection was conducted by J. Noggle of this office on December 13 - 20, 1993. In the report transmittal letter, we noted that one apparent violation had been identified, but that, pending further review of this matter by the NRC, the apparent violation was considered an unresolved item.

The apparent violation resulted from a radioactive waste shipment that originated from your facility on December 8, 1993 and arrived at the Barnwell Disposal Site at Barnwell, South Carolina on December 10, 1993. Upon arrival, the shipment was determined by the receiving State of South Carolina licensee to be in excess of the external non-fixed radioactive contamination limits specified in NRC regulations.

As a result of further consideration of the apparent violation, we have determined that the apparent violation should be considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), 10 CFR Part 2, Appendix C.

An enforcement conference to discuss this apparent violation has been scheduled for February 25, 1994. This enforcement conference will be held in the NRC Region I office in King of Prussia, Pennsylvania. The decision to hold an enforcement conference does not mean that the NRC has determined that a violation has occurred or that enforcement action will be taken. The purposes of this conference are to discuss the apparent violation, its cause(s) and safety significance; to provide you the opportunity to point out any errors in our inspection report; and to provide an opportunity for you to present your proposed corrective action(s). In particular, we expect you to address your past experience with similar incidents of waste shipments from your facility arriving at the burial site with external non-fixed contamination levels in excess of NRC requirements, and any actions taken either previously or upon the

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occasion of the December 8, 1993, shipment to determine the root cause of the excessive external contamination. In addition, this is an opportunity for you to provide any information concerning your perspectives on 1) the severity of the violation, 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy, and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII. You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the apparent violation is required at this time.

This enforcement conference will be open to public observation in accordance with the Commission's two-year trial program as discussed in the enclosed *Federal Register* notice. Although not required, we encourage you subsequent to the conference to provide your comments on how you believe holding this conference open to public observation affected your presentation and your communications with the NRC. In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be placed in the NRC Public Document Room.

Sincerely,
Original Signed By:
Charles W. Hehl

Charles W. Hehl, Director
Division of Radiation Safety
and Safeguards

Enclosure: As stated

cc:

R. Schoenberger, President
W. Josiger, Acting Executive Vice President - Nuclear
G. Goldstein, Assistant General Counsel
J. Gray, Jr., Director, Nuclear Licensing - BWR
Supervisor, Town of Scriba
C. Donaldson, Esquire, Assistant Attorney General, New York Department of Law
Director, Energy & Water Division, Department of Public Service, State of New York
K. Abraham, PAO (2)
Public Document Room (PDR)
Local Public Document Room (LPDR)
Nuclear Safety Information Center (NSIC)
NRC Resident Inspector
State of New York, SLO Designee

bcc:

Region I Docket Room (with concurrences)

C. Cowgill, DRP

P. Eselgroth, DRP

R. Urban, DRP

B. Welling, DRP

B. Cook - FitzPatrick

D. Holody, RAO

V. McCree, OEDO

R. Capra, NRR

J. Menning, NRR

E. BEACH, NMSS
C. HAUGHVEY, NMSS

bcc: (VIA E-MAIL)

M. Shannon (MXS1)

RI:DRSS

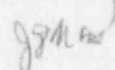
Noggle



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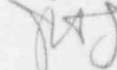
Bores



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Joyner



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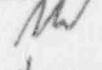
Helm



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RI:DRSS

Weber



2/14/94

ADDRESSES: Send comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Service Branch.

Hand deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, MD between 7:45 a.m. to 4:15 p.m., Federal workdays.

Copies of comments may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-504-2741).

SUPPLEMENTARY INFORMATION:

Background

The NRC's current policy on enforcement conferences is addressed in Section V of the latest revision to the "General Statement of Policy and Procedure for Enforcement Actions," (Enforcement Policy) 10 CFR part 2, appendix C that was published on February 18, 1992 (57 FR 5791). The Enforcement Policy states that, "enforcement conferences will not normally be open to the public." However, the Commission has decided to implement a trial program to determine whether to maintain the current policy with regard to enforcement conferences or to adopt a new policy that would allow most enforcement conferences to be open to attendance by all members of the public.

Policy Statement

Position

The NRC is implementing a two-year trial program to allow public observation of selected enforcement conferences. The NRC will monitor the program and determine whether to establish a permanent policy for conducting open enforcement conferences based on an assessment of the following criteria:

- (1) Whether the fact that the conference was open impacted the NRC's ability to conduct a meaningful conference and/or implement the NRC's enforcement program;
- (2) Whether the open conference impacted the licensee's participation in the conference;
- (3) Whether the NRC expended a significant amount of resources in making the conference public; and
- (4) The extent of public interest in opening the enforcement conference.

Two-Year Trial Program for Conducting Open Enforcement Conferences; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this policy statement on the implementation of a two-year trial program to allow selected enforcement conferences to be open to attendance by all members of the general public. This policy statement describes the two-year trial program and informs the public of how to get information on upcoming open enforcement conferences.

DATE: This trial program is effective on July 10, 1992, while comments on the program are being received. Submit comments on or before the completion of the trial program scheduled for July 11, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

I. Criteria For Selecting Open Enforcement Conferences

Enforcement conferences will not be open to the public if the enforcement action being contemplated—

- (1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;
- (2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;
- (3) Is based on the findings of an NRC Office of Investigations (OI) report; or
- (4) Involves safeguards information, Privacy Act information, or other information which could be considered proprietary.

Enforcement conferences involving medical misadministrations or overexposures will be open assuming the conference can be conducted without disclosing the exposed individual's name. In addition, enforcement conferences will not be open to the public if the conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility. Finally, with the approval of the Executive Director for Operations, enforcement conferences will not be open to the public in special cases where good cause has been shown after balancing the benefit of public observation against the potential impact on the agency's enforcement action in a particular case.

The NRC will strive to conduct open enforcement conferences during the two-year trial program in accordance with the following three goals:

- (1) Approximately 25 percent of all eligible enforcement conferences conducted by the NRC will be open for public observation;
- (2) At least one open enforcement conference will be conducted in each of the regional offices; and
- (3) Open enforcement conferences will be conducted with a variety of the types of licensees.

To avoid potential bias in the selection process and to attempt to meet the three goals stated above, every fourth eligible enforcement conference involving one of three categories of licensees will normally be open to the public during the trial program. However, in cases where there is an ongoing adjudicatory proceeding with one or more intervenors, enforcement conferences involving issues related to the subject matter of the ongoing adjudication may also be opened. For the purposes of this trial program, the

three categories of licensees will be commercial operating reactors, hospitals, and other licensees, which will consist of the remaining types of licensees.

II. Announcing Open Enforcement Conferences

As soon as it is determined that an enforcement conference will be open to public observation, the NRC will orally notify the licensee that the enforcement conference will be open to public observation as part of the agency's trial program and send the licensee a copy of this Federal Register notice that outlines the program. Licensees will be asked to estimate the number of participants it will bring to the enforcement conference so that the NRC can schedule an appropriately sized conference room. The NRC will also notify appropriate State liaison officers that an enforcement conference has been scheduled and that it is open to public observation.

The NRC intends to announce open enforcement conferences to the public normally at least 10 working days in advance of the enforcement conference through the following mechanisms:

- (1) Notices posted in the Public Document Room;
- (2) Toll-free telephone messages; and
- (3) Toll-free electronic bulletin board messages.

Pending establishment of the toll-free message systems, the public may call (301) 492-4732 to obtain a recording of upcoming open enforcement conferences. The NRC will issue another Federal Register notice after the toll-free message systems are established.

To assist the NRC in making appropriate arrangements to support public observation of enforcement conferences, individuals interested in attending a particular enforcement conference should notify the individual identified in the meeting notice announcing the open enforcement conference no later than five business days prior to the enforcement conference.

III. Conduct of Open Enforcement Conferences

In accordance with current practice, enforcement conferences will continue to normally be held at the NRC regional offices. Members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures For Providing Security Support For NRC Hearings And Meetings" published November 1, 1991 (56 FR 58251). These procedures provide that visitors may be

subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed.

Each regional office will continue to conduct the enforcement conference proceedings in accordance with regional practice. The enforcement conference will continue to be a meeting between the NRC and the licensee. While the enforcement conference is open for public observation, it is not open for public participation.

Persons attending open enforcement conferences are reminded that (1) the apparent violations discussed at open enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at open enforcement conferences or the lack thereof, are not intended to represent final determinations or beliefs.

In addition to providing comments on the agency's trial program in accordance with the guidance in this notice, persons attending open enforcement conferences will be provided an opportunity to submit written comments anonymously to the regional office. These comments will subsequently be forwarded to the Director of the Office of Enforcement for review and consideration.

Dated at Rockville, MD, this 7th day of July 1992.

For the Nuclear Regulatory Commission,
Sammuel J. Chalk,
Secretary of the Commission.
[FR Doc. 92-16233 Filed 7-9-92; 8:45 a.m.]
BILLING CODE 7590-01-26

31754

Corrections

Federal Register
Vol. 57, No. 138
Friday, July 17, 1992

NUCLEAR REGULATORY COMMISSION

Two-Year Trial Program for Conducting Open Enforcement Conferences; Policy Statement

Correction

In notice document 92-16233 beginning on page 30762 in the issue of Friday, July 10, 1992, on page 30762, in the second column, under DATES, beginning in the fifth line, "July 11, 1992" should read "July 11, 1994".

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