



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

October 27, 1983

MEMORANDUM FOR THE FILES

FROM: Nunzio J. Palladino *NJP*

On October 6, 1983, I signed memoranda to Victor Stello and James Keppler expressing the Commission's views with regard to the matters involving them covered by the Hoyt/Aloot report. Neither memo was sent, however, pending legal review.

By memo dated October 17, 1983, Commissioner Gilinsky took exception to the October 6 memoranda. Because of Commissioner Gilinsky's views expressed in his October 17 memo, the Commission agreed to modify the October 6 memo to Mr. Stello. The Commission agreed to make no change to the memo to Mr. Keppler. The result is a new memo dated October 27, 1983 to Mr. Stello which is being sent to him today. In addition, I have prepared a response to Commissioner Gilinsky regarding my views on his October 17 memorandum.

The October 27 memorandum to Mr. Stello is the operative document; the other memoranda related to it are considered working documents leading to the final Commission position on this personnel matter.

cc: Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal

83 12010407
1p. XA

AUG 6 1981

MEMORANDUM FOR: Chairman Palladino
 Commissioner Gilinsky
 Commissioner Bradford
 Commissioner Ahearne
 Commissioner Roberts

FROM: James J. Cummings, Director
 Office of Inspector and Auditor

SUBJECT: OIA SPECIAL INQUIRY RE ADEQUACY OF IE INVESTIGATION
 50-358/80-09 AT THE WILLIAM H. ZIMMER NUCLEAR POWER
 STATION

Mr. Applegate's allegations with respect to my actions in this matter are as follows:

Page 16 of original GAP Petition

"For instance, Phillip stated that the NRC became aware of the allegations against Zimmer after Applegate called on February 28. On that date, Applegate called NRC Chairman Ahearne. In fact, however, the process had begun two weeks earlier on February 15, when Applegate called Inspection and Audit Director James Cummings to lodge his claims. Mr. Applegate called Cummings several more times before giving up in frustration and contacting the Chairman. The relevant telephone bill for Mr. Applegate's residence is attached as Exhibit 5.) Mr. Cummings received information which he apparently sat on."

Phillip Interview

"Senator Glenn's office provided him with the name of James Cummings, Director, OIA, NRC. Phillip then explained that Applegate claimed he contacted Cummings by telephone and related the information concerning the problems at the Zimmer site. Applegate also related to Phillip that he (Applegate) became frustrated with Cummings as a result of several telephone conversations with Cummings which culminated with Cummings' requesting that Applegate provide "something in writing" compiling the allegations. Phillip stated that Applegate thought about the request over a weekend and became angry. According to Phillip, Applegate stated that he was upset about the request because he (Applegate) had been incurring personal expenditures to

8202040398 388

bring the information to someone's attention and now he was requested to do more. Applegate said he then called Chairman Ahearne's office who apparently referred the matter to IE."

In view of the above, I think it appropriate for me to provide, for the record, my best recollection of the situation.

On February 19, 1981, Mr. Applegate called my office, spoke to my secretary, and asked that I return his call. After several telephone attempts by both Mr. Applegate and myself, we finally spoke two or three days later. My best recollection of the highlights of this conversation is as follows:

- Because of his investigation of the Zimmer Plant, he feared for his life and wanted me to provide for his transportation from Cincinnati, Ohio, to Washington, D.C., and to also provide for his protective custody.
- Applegate had been to both the Cincinnati FBI and the Cincinnati U.S. Attorney's office and had not received a satisfactory solution from these offices of his problem.
- He had currently locked himself in his home and was afraid to go outside because of the investigative reports he had written. He reasoned that if he could give these reports to someone in the Federal Government, then the pressure would be off him, i.e., they would be out of his control and that being the case he could go about his business with less fear.
- Applegate did not trust NRC and would definitely not deal with the NRC Regional Office.

I told Applegate that I could not provide either the transportation or protective custody that he sought, but that I would be happy to receive his written investigative reports regarding the Zimmer Plant. Applegate told me that my having a copy of his reports might solve his problems, but that he would have to think about it over the weekend and let me know of his decision.

After talking to Applegate I called the Cincinnati FBI office and verified that Applegate had been to their office seeking protective custody. The agent to whom I spoke characterized Mr. Applegate as apparently totally sane.

37042 Avon
Lake Villa, IL 60046
June 29, 1983

Helen F. Hoyt
Administrative Law Judge
U.S. Nuclear Regulatory Commission
Mailstop E-W 439
Washington, D.C. 20555

Dear Judge Hoyt:

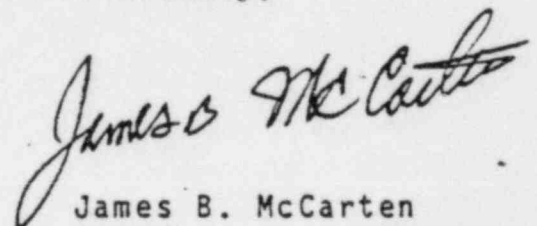
On June 7, 1983 I was interviewed at your request concerning your investigation of irregularities in the NRC's Office of Inspector and Auditor 1981 investigation of another NRC investigation at the William H. Zimmer nuclear power station in Moscow, Ohio.

During the course of this interview, which was transcribed by a court reporter, I provided information relative to the 1981 OIA investigation. But I also used this forum to inform the NRC about mismanagement of other OIA investigations, particularly the OIE investigation conducted at Zimmer in 1981. In light of recent congressional and DOJ criticisms of the NRC investigative program, and due to the forthcoming ASLB decision whether to hold licensing hearings, I feel that the information I provided to you should be reported immediately to the Commissioners and the ASLB panel on Zimmer. Also, as we discussed earlier I would like a copy of my transcript for my own records.

As you well know, I feel strongly that the testimony I gave would have a major impact on the decision to hold licensing hearings and perhaps trigger a wider investigation into Region III and OIA's handling of the Zimmer investigation from a safety standpoint, and also why the NRC did not vigorously pursue allegations of criminal misconduct by utility and contractor personnel at Zimmer. This second issue is very significant for the Commissioners in light of recent DOJ criticisms of NRC's performance in this area.

Thank you for your immediate attention to this serious matter.

Sincerely,



James B. McCarten

cc: Commissioners
Zimmer ASLB panel
Julian Greenspun, DOJ
Cong. Udall, House Interior Comm.

October 3, 1981



SECY-81-588

POLICY ISSUE (Notation Vote)

For: The Commissioners

From: Executive Director for Operations

Subject: INVESTIGATIVE JURISDICTION OF THE OFFICE OF INSPECTION AND ENFORCEMENT

Purpose: To clarify the authority of the Office of Inspection and Enforcement to conduct external investigations within the jurisdiction of the NRC.

Discussion: Two NRC offices have been delegated the authority to conduct investigations: the Office of Inspection and Enforcement (IE) and the Office of Inspector and Auditor (OIA). There has been a continuing lack of clarity regarding the investigative jurisdiction of IE as compared to that of OIA. This has resulted in problems affecting the effective functioning of both offices. The purpose of this paper is to (1) advise the Commission of this problem because of its impact on both IE and OIA operations and (2) to seek Commission clarification of its desires in this area.

It is my view that the distinction between the investigative responsibilities and authority of the two offices should be determined by whether the matter to be investigated is internal or external, rather than on the basis of whether potential criminality is involved. By internal I mean that the focus of the investigation involves the NRC and its employees or contractors; by external I mean that the focus of the investigation involves the licensed nuclear industry or a matter of NRC regulatory interest.

I believe that IE has and should have exclusive authority and responsibility for the conduct of all external investigations and that OIA has and should have similar exclusive authority for the conduct of internal investigations. In this regard the official Delegations of Authority embodied in the NRC Manual Chapters as well as Chapter 1 of 10 CFR pertaining to the two offices are instructive. Manual Chapter 0113 (as well as 10 CFR 1.30) pertains to OIA.

CONTACT: W. Ward, IE
49-27246

~~8110270542~~
7 pp.

This Chapter and 10 CFR 1.30 establish OIA as an internal investigative and auditing organization.

In contrast, Manual Chapter 0127 (as well as 10 CFR 1.64), gives IE a broad external investigative mandate. Among other things, it confers on IE the responsibility to investigate licensees, their contractors or suppliers, applicants, individuals, and any organization subject to NRC jurisdiction. MC 0127 describes the purpose of these investigations as being "to ascertain the status of compliance with NRC requirements" and to "identify conditions...that may adversely affect the public health and safety, the common defense and security, the environment, or the safeguarding of nuclear materials and facilities." In addition, MC 0127 specifically charges IE to "investigate incidents, accidents, allegations, and other unusual circumstances involving matters in the nuclear industry which may be subject to NRC jurisdiction..." Neither the Manual Chapter nor the regulation limit IE's investigative role in matters that may involve potential criminality.

The issue of authority as specified in the NRC Manual and Regulations notwithstanding, there are several other compelling reasons that lead me to conclude that IE requires a clear external investigative mandate. For instance, it appears to me that it is inconsistent to have OIA perform external investigations, thus involving a Commission staff office in an operational activity. Commission policy has been to place operational activities under the cognizance of the Executive Director for Operations. Assigning external investigative authority to OIA represents a departure from this practice.

Even more important, however, is the impact of OIA involvement in external investigations on the inspection and enforcement program in general and on enforcement coordination in particular. Indeed, the problems already encountered in such investigations as South Texas, Nuclear

Pharmacy Incorporated, Stepan Chemical, Zimmer, and the various TMI investigations have demonstrated the need to have this conflict corrected. In these cases, all of which involved potential criminality as well as major health and safety issues, it is not clear that all developed information has been provided to IE or the Department of Justice, enforcement actions have been delayed, and licensees have been confused by having to deal with two sets of NRC investigators. The Department of Justice has been brought into some of these matters with only limited IE consultation regarding the program implication of such an action. The latter has caused elevated enforcement actions to be held in abeyance pending DOJ resolution of relatively minor criminality. There have also been occasions where DOJ has declined prosecution in cases where IE believed prosecution to be warranted for reasons of program impact.

Relatedly, there have been instances where IE Enforcement meetings with licensees have led to NRC/Licensee Agreements which were later challenged by DOJ. The Niagara Mohawk, Stepan Chemical, & Nuclear Pharmacy cases are examples where this has occurred.

These examples point out the need for IE's authority to deal directly with DOJ regarding those external matters that IE investigates. This would afford IE an opportunity to ensure that all relevant information is made available to DOJ in a manner sufficient for DOJ to understand the relationship of the data to the public health and safety. Such direct contact would also enhance mutual understanding of the respective roles of DOJ and NRC, and could be expected to shorten the length of time that it now requires to obtain a prosecutive determination. I believe these factors demonstrate that the present procedures that require IE to deal with DOJ via a third party are not satisfactory, and provide no discernable benefit to the NRC.

In the above-cited investigations, OIA involvement was predicated on evidence of apparent criminality.¹ It is my view that investigations of actual or potential criminality are only a subset of each of the larger categories of internal versus external investigations. Hence, it is instructive to examine the topic of criminality in light of our experience to date.

¹Pursuant to section 221(b) of the Atomic Energy Act, the FBI is required to investigate all alleged or suspected criminal violations of the Atomic Energy Act.

As it pertains to the NRC, actual or potential criminality can be considered as falling into two categories. The first category is encountered during inspections or investigations (or is brought to the attention of the NRC in some other fashion) and is only peripheral to NRC's principal interest or responsibilities. Examples of this type of criminal activity range from theft of private property or embezzlement of licensee funds to violations of specific federal laws, such as smuggling, counterfeiting, or evading payment of income tax. In such cases, we make the information available to the Federal, State, or local law enforcement agency having jurisdiction over the matter. NRC has neither the authority nor the desire to investigate such matters except to the extent that they may bear upon NRC statutory responsibilities.

In the second category are those instances of potential criminality that are clearly related to matters within the jurisdiction of the NRC. The vast majority of these involve potential violations of the Atomic Energy Act or the General Fraud Against the Government Statutes (such as 18 USC 1001 or 18 USC 371). Some examples of these are willful violations of NRC regulations made criminal by statute, records falsification, lying to an inspector or investigator, unlicensed possession of nuclear material, or attempts to deceive the NRC in order to obtain a license.

It is important to note that the vast majority of investigations conducted by IE involve, at least at the outset of the investigation, the possibility of criminality. IE is dealing with, or has dealt with recently, dozens of instances where the initial information indicated either possible falsification of records relied upon by the NRC or the knowing and willful violation of NRC regulations.

In each of these examples, the elements of potential criminality and NRC's regulatory interests are inextricably intertwined. No decisions can be made regarding either health and safety actions or criminal prosecution until there is an adequate amount of information available on which to base such a decision. It is my belief that the appropriate way to acquire this information is to initiate or continue an investigation concerning the matter at issue. By following this course of action IE would be able to ensure that it promptly possesses information of sufficient quantity and quality on which to make its decisions involving the health and safety of the public. At the same time, such an approach would not foreclose a future decision to pursue criminal prosecution. In that regard it should be noted that most instances of potential criminality encountered by IE are not of the "smoking gun" type. The

existing NRC-Department of Justice agreement covering criminal referrals provides guidelines for making such referrals and for the conduct of necessary health and safety investigations and the taking of necessary enforcement actions, even after such referrals.

In those rare cases in which prompt field response by the FBI might be warranted, such as theft of Special Nuclear Material (SNM) or sabotage, IE investigators could either assist the FBI or conduct a parallel investigation in coordination with the FBI as was done in the recent Beaver Valley investigation and three other cases in the past year. Provisions for such actions are currently contained in the NRC/DOJ agreement.

Whether or not criminality is involved, IE investigators need to collect sufficient information to support successful NRC enforcement actions. To this end, they need to identify and collect copies of pertinent records, and identify and interview persons who can provide substantive information. When warranted by the nature of the case, statements must be obtained. It should be noted that statements, or admissions, or other evidence obtained by IE investigators could be used for prosecutive as well as civil enforcement purposes. Thus, these IE investigations would enhance rather than hinder any subsequent criminal investigation or prosecution.

In summation, IE and OIA have both had difficulty regarding the respective investigative jurisdictions of the two offices. Thus I feel that this matter needs to be clarified by the Commission. I believe that the following points support the IE position:

- (1) The appropriate NRC Manual Chapters and Regulations presently give IE rather than OIA broad authority to conduct external investigations. This external authority is not further conditioned by whether the matter also involves potential criminality.
- (2) A thorough IE investigation could provide the basis for NRC health and safety as well as referral decisions.
- (3) External investigations, as an operational activity, belong under the cognizance of an EDO line office.
- (4) IE has the capability to conduct such investigations.

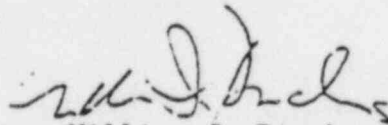
- (5) The current situation is having an adverse impact on the inspection and enforcement program and is causing confusion among licensees.
- (6) It is reasonable for IE to present the issues of a case directly to DOJ rather than through an intermediary. Such direct communication would facilitate mutual understanding and promote the ultimate objective of advancing the safety of nuclear activities.
- (7) The July 9, 1981 GAO report on OIA notes the need for OIA to concentrate on its legitimate internal audit role.

Recommendation:

I recommend that the Commission clarify the Delegations of Authority in MC 0113 and 0127, designating IE as the NRC agent for all investigations external to the agency and OIA as the NRC agent for all internal investigations. Further, both offices should have coordination and referral responsibilities with DOJ for matters falling within their respective jurisdictions.

Coordination:

The Offices of NRR, NMSS, RES, ADM and OELD concur in this recommendation. We have provided a copy of this paper to OIA for their information. OIA has indicated its desire to withhold written comment until such time as this paper is forwarded to the Commission.



William J. Dircks
Executive Director for Operations

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Monday, October 26, 1981.

Commission staff office comments, if any, should be submitted to the Commissioners NLT October 19, 1981, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

Distribution:

Commissioners
Commission Staff Offices
EDO
ELD
ASLBP

ENCLOSURE 5

AUG 6 1981

MEMORANDUM FOR: Chairman Palladino
 Commissioner Gilinsky
 Commissioner Bradford
 Commissioner Ahearne
 Commissioner Roberts

FROM: James J. Cummings, Director
 Office of Inspector and Auditor

SUBJECT: OIA SPECIAL INQUIRY RE ADEQUACY OF IE INVESTIGATION
 50-358/80-09 AT THE WILLIAM H. ZIMMER NUCLEAR POWER
 STATION

Mr. Applegate's allegations with respect to my actions in this matter are as follows:

Page 16 of original GAP Petition

"For instance, Phillip stated that the NRC became aware of the allegations against Zimmer after Applegate called on February 28. On that date, Applegate called NRC Chairman Ahearne. In fact, however, the process had begun two weeks earlier on February 15, when Applegate called Inspection and Audit Director James Cummings to lodge his claims. Mr. Applegate called Cummings several more times before giving up in frustration and contacting the Chairman. The relevant telephone bill for Mr. Applegate's residence is attached as Exhibit 5.) Mr. Cummings received information which he apparently sat on."

Phillip Interview

"Senator Glenn's office provided him with the name of James Cummings, Director, OIA, NRC. Phillip then explained that Applegate claimed he contacted Cummings by telephone and related the information concerning the problems at the Zimmer site. Applegate also related to Phillip that he (Applegate) became frustrated with Cummings as a result of several telephone conversations with Cummings which culminated with Cummings' requesting that Applegate provide "something in writing" compiling the allegations. Phillip stated that Applegate thought about the request over a weekend and became angry. According to Phillip, Applegate stated that he was upset about the request because he (Applegate) had been incurring personal expenditures to

8202040398
 3pp.

OFFICE						
NAME						
OFFICIAL USE ONLY						

bring the information to someone's attention and now he was requested to do more. Applegate said he then called Chairman Ahearne's office who apparently referred the matter to IE."

In view of the above, I think it appropriate for me to provide, for the record, my best recollection of the situation.

On February 19, 1981, Mr. Applegate called my office, spoke to my secretary, and asked that I return his call. After several telephone attempts by both Mr. Applegate and myself, we finally spoke two or three days later. My best recollection of the highlights of this conversation is as follows:

- Because of his investigation of the Zimmer Plant, he feared for his life and wanted me to provide for his transportation from Cincinnati, Ohio, to Washington, D.C., and to also provide for his protective custody.
- Applegate had been to both the Cincinnati FBI and the Cincinnati U.S. Attorney's office and had not received a satisfactory solution from these offices of his problem.
- He had currently locked himself in his home and was afraid to go outside because of the investigative reports he had written. He reasoned that if he could give these reports to someone in the Federal Government, then the pressure would be off him, i.e., they would be out of his control and that being the case he could go about his business with less fear.
- Applegate did not trust NRC and would definitely not deal with the NRC Regional Office.

I told Applegate that I could not provide either the transportation or protective custody that he sought, but that I would be happy to receive his written investigative reports regarding the Zimmer Plant. Applegate told me that my having a copy of his reports might solve his problems, but that he would have to think about it over the weekend and let me know of his decision.

After talking to Applegate I called the Cincinnati FBI office and verified that Applegate had been to their office seeking protective custody. The agent to whom I spoke characterized Mr. Applegate as apparently totally sane.

OFFICE						
CHANCE						
DATE						

OFFICIAL USE ONLY

Several days later, exact date not recalled, probably about February 25 or 26, Applegate again called my office, but I was not in the office to receive his call. He called again that same day and again I was not in to receive his call. During the course of his conversation with my secretary, during the second call, he asked for the name of my supervisor. My secretary provided this information to Applegate and then called former Chairman Ahearne's secretary alerting her that I would be away from the office all day and she might expect a call from Applegate. The next morning I was contacted by one of former Chairman Ahearne's staff and told that he had spoken to Applegate and had referred him to the Office of Inspection and Enforcement (IE). That same day I was subsequently contacted by Bill Ward, IE, who told me that he had spoken to Applegate and that Applegate had agreed to meet with Headquarters IE staff in Cincinnati in the next few days. In view of this arrangement I did not recontact Applegate.

Distribution:

OIA

OIA Reading

JCummings

OFFICE	OIA:					
SURNAME	JCummings:jw					
DATE	7/31/81					

OFFICIAL USE ONLY

February 10, 1983

MEMORANDUM FOR: Martin G. Malsch
Deputy General Counsel

FROM: James J. Cummings, Director
Office of Inspector and Auditor

SUBJECT: RESPONSE TO UDALL LETTER

Pursuant to the Commission's February 7, 1983, instructions I am attaching herewith additional detailed information with regard to OIA's handling of documents in connection with GAP's November 23, 1981, FOIA request.

Attachments:

1. Info re NRC's withholding of Harpster interv w/attns
2. Info re NRC's withholding of Dft Docs w/att

cc: Commission (5)

Distribution

1 OIA 83-21
1 OIA rdr

~~8305240267~~ 688

OFFICE	OIA						
NAME	JCummi	hah					
DATE	2/16/83						

Information Relating to FOIA Withholding
of the Terry Harpster Interview in Connection with
GAP's November 23, 1981 FOIA Request

The Office of Inspector and Auditor's (OIA) investigation into the Applegate allegations - "Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station" (OIA file 81-18) - was initiated in December 1980 and a final report issued August 7, 1981. The scope of this investigation, as defined by the Chairman in a December 15, 1980, memorandum, was quite specific. OIA was to determine whether the Office of Inspection and Enforcement (IE) staff had conducted an adequate investigation of Applegate's allegations. At the same time IE was directed to further investigate certain new safety issues raised by Applegate (see Attachment A - Ahearne memorandum to Cummings dated December 15, 1980).

In connection with OIA's investigation of Applegate's allegations, Terry Harpster, a former Region III IE Inspector, was interviewed by OIA Investigators David Gamble and John Sinclair on March 6, 1981 (see Attachment B). About July or August 1981 the Director, OIA, reviewed Harpster's interview in detail and decided that it was not relevant to determining the adequacy of IE's investigation but was relevant to another OIA investigation - "Zimmer Plant - Allegation re Deficient Construction" (OIA file 81-39) which had been opened in May 1981. This latter case dealt with much broader issues at Zimmer and addressed potential criminal issues which were being uncovered as a result of an ongoing IE investigation at the Zimmer plant. Accordingly, the Director, OIA, instructed that (a) an informational copy of the Harpster interview be maintained in the 81-18 file; (b) the Harpster interview not be made a part of the 81-18 report; and, (c) a copy of the Harpster interview be placed in the 81-39 file and be made a part of any report issued in that case. The interview of Harpster was not identified by OIA in connection with GAP's November 23, 1981, FOIA request because the Director concluded that because the interview was not relevant to file 81-18 it need not be identified. It should be noted that Harpster's interview was not removed from the 81-18 file after this decision had been made but rather a copy continued to be maintained in the 81-18 file. GAP was not prejudiced by this decision, however, since the Harpster interview would only have been identified but not released at that point in time. GAP apparently obtained a copy of the Harpster interview in July 1982.

At the time the Director, OIA, concluded that the Harpster interview need not be identified, he believed that his staff had coordinated his decision with NRC's Office of the General Counsel (OGC). The basis for that belief was the Director's prior instructions to his staff that all FOIA matters were to be coordinated with OGC. While the Director recalls that several discussions took place between himself and his staff on this matter, he does not recall any specific conversations with his staff wherein he verified that, in fact, coordination had taken place with OGC and that his decision had OGC's concurrence.

It may be controversial as to whether the decision in question was in fact discussed with GOC by CIA staff it is not controversial that the Harbster interview should have been identified by NPC in connection with GAP's November 23, 1981 FOIA request.

Director, OIA's Withholding
of Draft Documents in Connection with GAP's
November 23, 1981, FOIA Request

- . Although there had been previous telephonic contacts between the Director, OIA and (a) Cox Newspapers; (b) Mr. Applegate; and, (c) Mr. Devine of GAP regarding the public release of OIA's investigative report into the Applegate allegations - "Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station" - (OIA file 81-18) - the first written request for the report was by Cox Newspapers in September 1981.
- . In connection with this request OIA case file 81-18 was examined and found to contain, in addition to the expected normal final documents, various draft generations of final documents. Also in connection with this request an OIA staff member prepared a listing of documents which he believed were subject to the Cox FOIA request. The listed documents fell into the following categories:
 - . Final documents which were at that time contained in OIA case files.
 - . Final documents which belonged in OIA case files but at that time had not yet been filed.
 - . Various draft generations of final documents which were at that time contained in case file 81-18.
 - . Various draft generations of final documents which were at that time in the staff members possession and not in OIA case files.

As direct contact with Cox Newspapers determined that their only interest was in the final OIA report and any documents issued thereafter, it did not become necessary to consider the FOIA status of the various draft documents.

- . The Cox FOIA request however did reveal to the Director, OIA, that long standing written policy with regard to the handling of draft materials was not being followed. By way of background, on June 20, 1980, the Director, OIA, issued a memo to his staff which addressed minor organizational changes and administrative matters (see Attachment C). The following paragraphs of the June 20 memo are pertinent:

"4. Files

As you know, our files are becoming more crowded each day. Therefore every effort should be made to avoid duplication and to destroy or retire those files which are no longer needed. File folders are not to be used to store drafts or reports, interviews or memos. Once a communication is finalized, drafts, (except in the case of an officially transmitted audit memorandum or report) notes and other miscellaneous matters are to be removed from the office filing system - keep them at home if you wish.

In order to meet our responsibility under the Freedom of Information and Privacy Acts and to know what we have in our files, and more importantly to be able to retrieve it, every document must be logged in on the subject card. To achieve this every incoming document will be received by the secretary to the Director, date stamped and expeditiously delivered to the Director before any copies are made..."

The primary impetus for the June 1980 memo was the discovery that in many instances OIA investigators were utilizing the official case files as a storage receptacle for all types of handwritten notes and various draft generations of proposed outgoing correspondence. This situation was not only wasteful - clerical filing time/reduced storage capability - but more importantly, no useful purpose was served in maintaining such material. Accordingly, after resolving the Cox FOIA request, the Director, OIA, met with the investigative staff and reiterated the policy cited above. To insure that this policy was implemented OIA's investigative case files were reviewed and draft materials removed. Retention of such documents for personnel use was still permitted, but only if maintained off premises.

The first written request by GAP for OIA's investigative report into the Applegate allegations (OIA file 81-18) was dated October 7, 1981, and was received by the office after the actions discussed next above. At the same time Mr. Lowenstein received his copy of the report and associated documents, GAP also received the same materials.

On November 23, 1981, GAP submitted a broader FOIA request which is identified by NRC as FOIA 81-488. In connection with this request OIA case file 81-18 was again examined and found to contain only final documents. Additionally, in connection with this request it appears that several OIA staff members were questioned about documents concerning this request. The exact questions which were asked of the staff and their corresponding answers are in dispute as between the parties concerned. However, this controversy notwithstanding, the documents in question are clearly the various draft documents which were earlier identified by the OIA staff member in connection with the Cox FOIA request.

The Director, OIA, recalls a specific conversation with his Assistant Director for Investigations just prior to his signing an OIA response in connection with the GAP FOIA request. This conversation addressed the following: (a) OIA case file 81-18 did not contain any draft material; (b) staff investigators had been instructed that if they wished to retain any draft material they could do so if maintained off premises; and (c) that draft material had been removed from OIA case files. While the Director, OIA, can not specifically recall any other conversations on this subject until after the GAP lawsuit had been filed, he is nonetheless certain that if, in fact, a conversation or conversations did take place and he was aware of all the facts he would have strongly taken the position that insofar as the GAP FOIA request was concerned the draft

records in question were personal records and not agency records based on the following:

1. It was the clear, unmistakable intention of the June 1980 memo - verbally reinforced to the staff at various times - that the staff's retention of draft documents - after supersession - was permitted solely to accommodate those who for personal reasons desired to maintain a chron file of their work;
2. Intention notwithstanding, before any document can be considered an agency document, the agency must actually possess or control it. Such was clearly not the case with regard to these documents as the staff member was the only person who controlled and possessed the documents in question;
3. Common sense would seem to dictate that the Government should not be required to consider superseded draft documents as agency records only because an individual maintains a copy of that document for his personal use.

The Director, OIA - for the same reasons as was set forth with regard to the withholding of the Harpster interview - believed that his staff had obtained the concurrence of OGC in this matter. However, he cannot recall any specific conversations with his staff wherein he verified this concurrence. It is controversial as to whether the OIA staff discussed this matter with OGC.

December 15, 1980

CHAIRMAN

MEMORANDUM FOR: James J. Cummings, Director, OIA
FROM: John F. Ahearne *JA*
SUBJECT: THOMAS W. APPEGATE ALLEGATIONS

I request that OIA conduct an investigation into whether the Office of Inspection and Enforcement conducted an adequate investigation of the allegations presented to it by Thomas W. Applegate regarding activities at the William H. Zimmer Nuclear Power Station. The I&E findings are set forth in I&E Report No. 50-358/80/9 (July 2, 1980).

I also wish to advise you that I&E has commenced an investigation of the safety issues raised at pages 13 and 14 of the pleading which the Government Accountability Project of the Institute for Policies Studies recently filed with the Merit Systems Protection Board.

cc: Victor Stello, IE

ATTACHMENT A

8112080209 kff.

Terry Harpster, Reactor Preoperations Specialist, IE, on detail as a Special Investigator to the Subcommittee on Energy, Environment, and Natural Resources, Government Operations Committee, U.S. House of Representatives, was interviewed on March 6, 1981, by Investigators David Gamble and John Sinclair, OIA.

Harpster said he worked in Region III of NRC from 1974 through 1979. He said he was a technical support inspector initially for all plants in

Region III. He later became a project manager for particular plants: first for DC Cook Unit 2, then Monticello, then both Zimmer and Monticello at the same time. Harpster said he began his inspection activities at Zimmer in October 1977 as a preoperations start-up inspector. He said he was assigned to this position until he left Region III in September 1979; however, he had no real involvement with Zimmer after the Three Mile Island (TMI) accident in March 1979. Harpster said that a pre-operations inspector picks up a plant when construction is far enough along, i.e., about 60 percent completed, to review certain programs, e.g., the quality control program for preoperational work. Harpster said that Tom Vandel was his counterpart as the lead construction inspector. Vandel had inspected Zimmer prior to Harpster's arrival but there was a period of overlap when they both worked there. Harpster said John Manning worked with him as a preoperations inspector who he was training. Harpster said that Manning "took one look" and left the NRC because the program was so bad. He related that one of Manning's reasons for leaving was that he saw how little support the inspectors got on the job. Harpster understood that Manning left to attend the University of Arizona where he is working on his Ph.D. in metallurgy.

Harpster said that when he picked up Zimmer the licensee (Cincinnati Gas and Electric Company) had little appreciation for the amount of resources needed for the plant. He said they barely met ANSI Standard 18.1 which is the criteria for staffing. Harpster explained that even this standard is a loose one which has since been upgraded. Harpster said that one of his jobs was to show the plant management what was required to get the plant off the ground. He said that his inspections documented a number of problems at Zimmer. Harpster said that, for example, the employee who was being placed in charge of the start up operation only had about three months of actual experience in the plant. He explained that the licensee counted as nuclear experience the amount of time operations employees were onsite during the construction of Zimmer. Another example was his impression that the plant personnel felt that, once the parts were bought for the plant, they did not need any support from their corporate offices. He also believed that many plant personnel felt a nuclear plant was similar to the operation of a fossil fuel plant. Harpster said that he tried to resolve some of these problems informally; including going up through the licensee management chain to Vice President Earl Borgmann, but with no luck.

...being set up
...with licenses a organization and
...only after he "assured"
...officials in Bethesda, particularly Irv Peltier who was
then project manager in NRR responsible for issuing the safety evaluation
report (SER). Harpster said that he presented his concerns at that
meeting and the utility agreed to upgrade their program. He recalled
that the specific response was to "buy" an engineer from General Electric
to assist them.

Harpster said that the overall problem was that NRC's licensing process
was rolling much faster than he could "ratchet" improvements at the
plant end. Harpster said that NRC's requirements were a "joke." He
said that NRR was about to issue the SER and they set up a meeting of
the Advisory Committee on Reactor Safeguards (ACRS) to which he was not
invited.

Harpster said he went up the Region III management chain and presented
his concerns. He said he attended the ACRS meeting anyway. He recalled
that when licensee officials were questioned by ACRS Chairman Bender,
they said several things that were not true. Harpster noted that not
only did he feel they were not true, but Manning also believed they were
not true. Harpster said he presented this conflict to his boss, Robert Warnick,
when he returned to the regional office. He said that he and Manning
later talked with one of the licensee officials who had testified to the
ACRS (Jim Schott who was the plant manager of Zimmer). During their
conversation, Harpster had Warnick read Schott's testimony to Schott
over the phone. He said that Schott then agreed that the testimony did
not convey the correct impression. Although Schott assured Harpster and
Manning that he would clarify this at the next ACRS meeting, he did not.
Harpster believed that Schott's subsequent testimony even aggravated his
earlier statements.

Harpster said he briefed his management on this matter. He recalled
that his Regional Director, James Keppler, sent a letter to the ACRS
informing them of the situation. Harpster understood that this letter
was later forwarded to the Atomic Safety and Licensing Board (ASLB).

Harpster explained that, after the ACRS meeting, he also informed Peltier
(in Manning's presence) of his concerns. He said that Peltier later
claimed that he did not recall Harpster's expressing his concerns to
him. Harpster explained that Peltier is a "pro-nuclear" "pro-licensing"
employee. He also explained that during a start-up of a nuclear plant,
NRR is on a very tight schedule; the IE inspector is often viewed by NRR
as an adversary when he uncovers deficiencies which NRR has already
"blessed."

Peltier told Harpster that he had informed the licensee about an IE
investigation underway on the subject of the licensee's testimony before
the ACRS. Peltier also informed Harpster that Charles Barth (attorney with
the Office of the Executive Legal Director) had called James Yore (Chairman
of the ASLB Panel) and told Yore to throw away Keppler's letter describing
the discrepancies. Harpster pointed out that these latter two matters
were the subject of a recent investigation by OIA. Harpster said in
summary that this was a situation where the system broke down: NRR
viewed IE as the "bad guys" trying to hold up plant licensing.

... was also written the heat on him by, for example, sending a letter to Joplin. Harpster also understood that the Chairman of the licensee sent a letter to President Carter and others. Harpster said that it was about this time that the TMI accident occurred. He said he was assigned to TMI and he has not been back to Zimmer since. Harpster said that, when he left, Zimmer still had problems. A principal one was that, as a practical matter, there was no QA program for operations. He said that all Zimmer had was one person assigned to this function and that person could not possibly do all that the job required.

Harpster said that realistically the IE modular inspection program does not deal with the things you have to focus on early in a plant's life. He said that an inspector must deal with the problems he knows are important and then deal with other problems in addition. Harpster said that he had to deal with the construction people somewhat at Zimmer. He said that the licensee had minimal involvement with the construction at Zimmer: everything was controlled by its contractor. He said that this is a problem because, after the plant is built and the contractor leaves, the licensee would not have any expertise to handle the plant. He said that for example there was no one on the licensee's corporate staff for reactor instrumentation and control systems. Harpster felt that this licensee was "in over its head."

Harpster said that people often bring matters to an inspector's attention. He said that an inspector can deal with some of these matters, but there are some which he cannot. Harpster said that sometimes so many things are wrong that a plant is out of control. Harpster concluded that "Zimmer was out of control." Harpster explained that a licensee's ability to get money for the construction of a nuclear power plant (by, e.g., the sale of bonds) is based upon the percentage of completion of the plant. He said that this results in a situation where the construction personnel attempt to turn things over as completed before they are ready. Harpster said that what then happens is that the licensee staff is not properly prepared or trained to handle them. He said when the licensee finds things that are wrong, they cannot fix or test them properly. What they must do is give the problems back to construction to be remedied. Harpster said this is indicative of a construction QC program that does not work. He said this is a situation which an NRC preoperations inspector tries to head off. He said that one example of this was that the licensee had not ordered any spare parts. According to Harpster the time required to obtain additional or replacement equipment is so long it causes a major problem to licensees trying to resupply or obtain back-up equipment.

Harpster said that sometimes plant management puts so much pressure on their personnel that the personnel cannot get things done. He said that these personnel then sometimes use NRC inspectors to accomplish the same things: they feed inspectors information so it appears that the inspector found the deficiency rather than the plant personnel. Harpster said that, from what he could see, it appeared that the construction program

Harpster said that Inspector Fred Harpster documented much of these problems from the operations side.

Harpster said that both the site construction manager, Mr. Gear (phonetic) and the site QA manager Mr. Schweirs were friends of Vice President Borgmann. Harpster believed that Schweirs was assigned by the licensee to keep the plant manager (Schott) under control. Harpster said Schweirs even called the regional office to try to get some of the IE inspection reports changed. Harpster said Schweirs also asked him to send IE inspection reports to him (Schweirs) so he could decide which matters would be sent on to Schott.

Harpster said part of the problem was that NRC does not have explicit regulations to inspect against. He said that the preoperations inspector is faced with the task of trying to get control of the site and helping the licensee to solve its problems. He said that the inspector only documents a small percentage of this "helping work." Harpster said the licensee had no people involved with preoperations and test acceptance. He said that everything was bought under contract so the contractor was able to do whatever it wanted. Harpster said the licensee then had no one who knew how to handle the problems that were "built-in."

Harpster said he tried to get the plant managers out to take tours of the plant. He said that one assistant plant manager said he was scared to tour the plant because of the convicted felons working out there. Harpster said that sometimes the licensee's own security force could not handle disturbances and they had to call the local sheriff's office. Harpster explained that there is some drinking of alcohol on all nuclear construction sites. However, the licensee at Zimmer did not have much control of things. Harpster said there were a lot of "tough guys" working at the plant and the situation got worse when they were drinking.

Harpster said that there are many allegations at any nuclear power plant; however, usually only a certain number are true. Harpster said that one could tell that there were a large number of problems at Zimmer because so many allegations were coming up.

Harpster said there was a lot of pressure on individual IE inspectors because of the momentum generated by the NRC licensing process. Harpster said that pressure is also created on construction personnel by the contractor's weld production schedules. He explained that the construction manager has to have a certain number of welds completed to keep the piping installation on schedule. He said that problems arise when the construction personnel are pushed. Harpster said that for a QC inspector to stop construction for any deficiencies, he would have to hold up many phases of the construction of a \$1 billion plant; so the QC inspectors normally do what they are told.

Harpster said that this liaison person also "steers" the inspectors' activities. Harpster said that dealing with this liaison person does allow the inspector to get through NRC's modular inspection program very well. Harpster noted that there is no real internal audit of the NRC's inspection program.

Harpster described the "helping activities" that an IE preoperations inspector engages in as a process of getting all the procedures and controls in place. He said that this activity constitutes only about two lines in the IE procedures, but it is the largest part of a preoperations inspector's time.

Harpster estimated that the interest cost alone in holding up construction of a nuclear power plant for one day would be several hundred thousand dollars. He observed that, with the increased pressure on NRC to license power plants, he would expect even more pressure to be placed on IE inspectors. He said that pressures on the licensee personnel to make exceptions to the acceptance criteria in the preoperations tests are very real. He said it is difficult for an IE inspector to tell whether the licensee's exceptions are based on valid engineering analyses. He said that all inspectors cannot possibly be experts in all areas. Harpster said the inspectors must rely on the licensee's people to review the exceptions. Harpster said that this represents a flaw in the NRC's system because the licensee's reviewers are under the same pressure to approve exceptions. Harpster pointed out that the licensee, because it is a utility company, cannot pass on the amortization costs to the ratepayers until the plant reaches the point of completion, i.e., the stage of commercial operations.

January 5, 1983

MEMORANDUM FOR: L. Bickwit, General Counsel

FROM: James J. Cummings, Director
Office of Inspector and Auditor

SUBJECT: RESPONSE TO CONGRESSMAN UDALL'S DECEMBER 7, 1982, LETTER

In response to Congressman Udall's December 7, 1982 letter, I bring to your attention the following:

The Office of Inspector and Auditor's (OIA) investigation into the Applegate allegations - "Adequacy of IE Investigation 50-358/80-09 at the William H. Zimmer Nuclear Power Station (OIA file 81-18)" - was opened in December 1980 and a final report issued August 7, 1981. The scope of this investigation, as defined by the Chairman in a December 15, 1980, memorandum to me, was quite specific. OIA was to determine whether the Office of Inspection and Enforcement (IE) staff had conducted an adequate investigation of Applegate's allegations (emphasis added). At the same time IE was directed to investigate certain new safety issues raised by Applegate (see Attachment A - Ahearne memorandum to Cummings dated December 15, 1980).

In early August 1981 - almost a year and a half ago - OIA concluded that the overall IE investigation of Applegate's allegations was unsatisfactory. The basis for that finding was, among other things, that:

- the investigation failed to determine the correct status and history of several welds;
- the overall investigative effort was neither vigorous nor sufficiently broad in scope;
- the finding of "non substantiated" with regard to the allegation that defective welds in safety-related systems had been accepted is not consistent with the facts.

These findings are clear and unambiguous and, by any standard, the language is hardly that which would be used if OIA's objectives were to put either the NRC or CG&E in a favorable light.

As a result of OIA's August 1981 report and subsequent correspondence between OIA and the EDO, both the Commission and Congressman Udall's office were alerted to the potential problems regarding the Zimmer Nuclear Power Station. To now say that the exclusion of the Harpster interview from OIA's report contributed to the delay in public recognition of the true status of the Zimmer project is just not supported by the facts and is in my view a lame excuse now being offered to divert attention away from those who failed to recognize and take

8305240263
5 pp.

... was clearly identified some year and a half ago
... added.

In this regard I would like to provide you with the following quote from a July 23, 1981, letter to Chairman Hendrie from Edwin Harper, Deputy Director, O'S, discussing efforts to eliminate fraud and waste from Government: "One point, which I particularly want to call to your attention, is the result of a study done by one of our most experienced Inspectors General. He found that virtually every major public scandal over a period of several years had been preceded by an audit report that was available to management some six months prior to public exposes of the problem. The basic point of this letter is to encourage you to stay in touch with the activities of your 'Inspector General'."

- . In connection with OIA's Applegate investigation Terry Harpster, a former Region III IE Inspector, was interviewed by OIA Investigators David Gamble and John Sinclair on March 6, 1981. About July or August 1981 I reviewed Harpster's interview in detail for the first time and decided that it was not relevant to the Applegate investigation but was relevant to another OIA investigation - "Zimmer Plant - Allegation re Deficient Construction (OIA file 81-39)" which had been opened in May 1981. This latter case dealt with much broader issues and was to address potential criminal issues which were being uncovered as a result of an ongoing IE investigation at the Zimmer plant. Accordingly, I directed that the Harpster interview not be made a part of the 81-18 report and that a copy of the Harpster interview be placed in the 81-39 file and be made a part of any report issued in that case. I have again reviewed Harpster's March 6, 1981, interview and believe that my July/August decision was correct as the interview is void of any information which is related to the question of whether the IE staff had conducted an adequate investigation of Applegate's allegations (see Attachment B - Harpster interview dated March 6, 1981). Additional information on this subject is contained in my June 24, 1982, memorandum to Bert Davis, a copy of which was furnished to both the Commission and Dr. Myers in June 1982 (see Attachment C).
- . On its own initiative OIA brought potential criminal issues involving construction of the Zimmer plant to the Department of Justice's (DOJ) attention in May 1981 - almost two years ago. This too is hardly the action which would be taken by an office that was interested in placing the Zimmer project in a more favorable light or trying to delay public recognition of the alleged wrongdoing at the Zimmer site.
- . NRC is currently in Federal Court litigating Mr. Applegate's suit against the agency relative to his FOIA request. Until the court adjudicates this matter it would obviously not be in the Government's interest to discuss any aspect of this matter publicly.

Finally, given the onesidedness of the Udall letter and the publicity which Congressman Udall's office saw fit to afford the letter before getting a response from NRC, I can only conclude that the whole exercise was designed not to determine the true facts but to make a media splash. It is absurd that OIA is now being charged by Congressman Udall with covering up the Zimmer matter when in fact it was OIA's initial independent reporting of the Zimmer

ation - over a year and a half ago - which was the forerunner to disclosing the problems associated with the Zinner plant.

Attachments:
As stated above.

cc: Chairman Palladino
Commissioner Gilinsky
Commissioner Ahearne
Commissioner Roberts
Commissioner Asselstine
M. Chopko

Distribution
OIA File 81-18
OIA rdr

OFFICE	OIA						
SURNAME	JCummings/bab						
DATE	1/5/83						

OFFICIAL RECORD COPY

BILL DATE 05/10/81

TO:

REVIEWING OFFICIAL: CUSHINGS JAMES J
 ORGANIZATION.....OIA
 LOCATION.....LAND
 ROOM.....LA1200
 TOLL STOP.....LA1200
 CERTIFICATION CODE...4400

RETURN TO:

NRC TELECOMMUNICATIONS BRANCH

ROOM P-812

LISTED BELOW ARE ALL LONG DISTANCE CALLS, TOLL CALLS, CREDIT CARD CALLS AND COLLECT CALLS WHICH MUST BE CERTIFIED. FOR THOSE OFFICIAL BUSINESS CALLS PLACED IN THE BEST INTEREST OF THE GOVERNMENT, PLEASE PROVIDE THE NAME OF THE CALLER IN THE DESIGNATED COLUMN

DATE OF CALL	CONNECT TIME	CREDIT CARD NO. OR CHARGEABLE NO.	NO. CALLED FROM	PLACE	FROM NO. CALLED TO	PLACE CALLED	CHARGE	LEN CALL	CERTIFIABLE NAME OF CALLER
1 03 05	1238	492 7170	301 289 8968	OCN CTY	MD 301 492 7170	BETHESDA MD	\$3.65	9 *	<i>Ann Brown</i>
2 03 15	1159	492 7301	802 525 8888	BARTON	VT 301 492 7301	BETHESDA MD	\$6.28	12 *	<i>William</i>
3 03 13	1532	492 7301	802 525 8888	BARTON	VT 301 492 7301	BETHESDA MD	\$6.28	12 *	<i>J. C. ...</i>
4 03 14	1403	492 7301	301 524 1756	OCN CTY	MD 301 492 7301	BETHESDA MD	\$1.85	1 *	<i>...</i>
5 03 10	0950	492 7301	802 525 8888	BARTON	VT 301 492 7301	BETHESDA MD	\$2.92	4 *	<i>...</i>
TOTAL							\$20.98		

*(SIGNATURE OF APPROVING OFFICIAL)

FOR ALL LONG DISTANCE CALLS THAT ARE NOT CERTIFIABLE, THE ATTACHED NRC FORMS

8

MUST BE COMPLETED

* FOR LONG DISTANCE CALLS TO BE CERTIFIED, THE APPROVING OFFICER MUST HAVE BEEN AUTHORIZED IN WRITING BY THE HEAD OF THE DEPARTMENT OR AGENCY TO SO CERTIFY (31 U.S.C. 680A)

Attachment E

ENCLOSURE 8



1
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Page 2 of 5

PRINCIPAL STAFF	
✓ IE	2&IS
✓ /D	7AO
✓ /D	510
✓ DEPI	
DESTI	
DEP&OS	File

OCT 27 1981

MEMORANDUM FOR: E. B. Blackwood, Chief, Reactor Projects Section (RI & III),
RPRIB, DRRRI, IE

FROM: James H. Sniezek, Director, Division of Resident and
Regional Reactor Inspection, IE

SUBJECT: REACTOR CONSTRUCTION INSPECTION PROGRAM EVALUATION

You are designated to lead a team comprised of G. C. Gower, PDA, R. E. Shewmaker, PDA, and yourself for the purpose of evaluating the Reactor Construction Inspection Program and its implementation at the W. H. Zimmer Nuclear Power Station. The scope of this evaluation is enclosed.

Organizationally, you will report directly to me while conducting this evaluation. You have been relieved of duties as Chief, Reactor Projects Section (RI & III) so as to enable you to devote full-time effort to this project. I have been assured by N. C. Moseley, Director, DPDA, that Messrs. Gower and Shewmaker are available for full-time participation in the project, during which they will report to you.

I expect you to issue a draft report on or about December 1, 1981 and the final report by December 15, 1981.

James H. Sniezek, Director
Division of Resident and Regional
Reactor Inspection
Office of Inspection and Enforcement

Enclosure:
As stated

cc w/enclosure:

✓ J. G. Keppler, RIII
N. C. Moseley, IE
G. C. Gower, IE
R. E. Shewmaker, IE
R. C. DeYoung, IE

8207300248
4pp.

OCT 29 1981

REACTOR CONSTRUCTION INSPECTION PROGRAM EVALUATION

A. Objective

Determine the extent to which content and implementation of NRC inspection and enforcement programs may have affected or contributed to the accumulation of problems found during the IE investigation at the W. H. Zimmer Nuclear Power Station. Recommend appropriate action.

B. Background

The IE investigation (Report No. 50-358/81-13) of activities associated with the W. H. Zimmer Nuclear Power Station revealed several problems related to effectiveness of quality assurance programs. In the interest of learning from this experience, it is important to examine both content and implementation of the IE Reactor Inspection Program that was applied at Zimmer.

Several issues regarding effectiveness of the Reactor Inspection Program have arisen as a result of the investigation. Examples would include the effect of very close scrutiny at Zimmer on the number of findings relative to lower levels of effort at other construction sites, the extent to which the inspection program as written could or did identify the deficiencies revealed by the investigation, and possible improvements in the inspection program that could facilitate identifying earlier those symptoms of quality assurance breakdown within the expenditure of limited resources normally allocated to construction inspection.

- 2 -

This evaluation will constitute a systematic review of the inspection and enforcement history at Zimmer during construction. The activities described in the work plan below represent an initial estimate of the scope of this evaluation.

C. Work Plan

1. Review Zimmer Investigation Report and associated correspondence to identify specific problems that reasonably could have been detected and corrected through implementation of the construction inspection program.
2. Review the construction inspection program that was in effect over the Zimmer construction period.
3. Review the Quality Assurance Program for construction at Zimmer.
4. Review inspection reports, related correspondence and 766 file data that address construction at Zimmer.
5. Review construction deficiency reports and other reports from CG&E associated with construction at Zimmer.
6. Review the historical Outstanding Items File for Zimmer.

- 3 -

7. Discuss apparent anomalies and questions developed during the review of documentation with appropriate Region III management and inspectors.
8. Summarize findings and develop recommendations as appropriate.
9. Produce program evaluation report
 - Issue draft report
 - Discuss with Region III and IE:HQ Management
 - Issue final report



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

EXHIBIT 4
Page 1 of 2

April 29, 1981

MEMORANDUM FOR: James H. Snizek, Director, Division of Resident and
Regional Reactor Inspection

FROM: James G. Keppler, Director, Region III

SUBJECT: RECOMMENDATION FOR NOTIFICATION OF LICENSING BOARD-
WILLIAM H. ZIMMER NUCLEAR POWER PLANT (AITS F03017981)

The purpose of this memorandum is to recommend in accordance with MC 1530 that the Licensing Board for the William H. Zimmer Nuclear Power Plant be notified of an ongoing Region III investigation. The investigation began on January 12, 1981, and resulted from allegations received from an ex-Zimmer site worker on November 18, 1980, and from allegations received from Thomas Applegate through the Merit Systems Protection Board in a letter dated January 5, 1981. Investigation of these allegations has resulted in additional allegations and information from present and former Zimmer site workers.

Ten NRC inspectors/investigators have interviewed over 90 individuals and have spent over 1200 man-hours of field work. Investigation efforts to date have identified quality problems associated with structural beam welds, material traceability, conformance with welding code provisions, and several other quality control problems. These problems are described in Enclosure 1. To provide assurance that problems similar to those identified by the NRC investigators do not recur during future construction activities, the Licensee has committed to an extensive corrective action program. These commitments were documented in an Immediate Action Letter (copy enclosed as Enclosure 2) dated April 8, 1981.

Based on the investigation findings thus far, additional actions to confirm the quality of past construction work are warranted. To that end, an enforcement meeting was held with the licensee in the Region III office on April 10, 1981, in which the licensee described a program being developed to establish an acceptable level of confidence in the quality of past construction work. This program is expected to be finalized by the licensee and approved by Region III by June 1, 1981. A copy of that program will be provided to you for transmittal to the Licensing Board as soon as it has been finalized and accepted by Region III.

The investigation is expected to continue for at least another six weeks to two months. Although many of the findings thus far are new, potentially important, and potentially relevant to the Zimmer Licensing Board proceedings, we do not yet know (1) if the findings put a new or different light upon an issue before the Licensing Board or raise a new issue,

8105280087
XA 2pp.

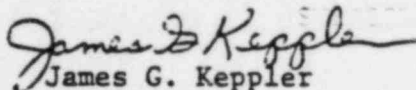
James H. Sniezek

-2-

April 29, 1981

(2) if the findings affect current staff positions, or (3) if the findings have possible applicability to other projects. We will make those determinations upon completion of the investigation and will provide those to you for transmittal to the Licensing Board.

Requested completion date for this Action Item is May 27, 1981.


James G. Keppler
Director

Enclosure: IAL dtd 4/8/81 to
CG&E fm RIII

cc w/enclosure:

J. Lieberman, Deputy Director
Rulemaking & Enforcement
Division

M. Meadows, AITS Cord., IE



IMMEDIATE ACTION LETTER
UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION III
799 ROOSEVELT ROAD
GLEN ELLYN, ILLINOIS 60137

EXHIBIT 6
Page 1 of 3

April 8, 1981

file
Zimmer

Docket No. 50-358

Cincinnati Gas and Electric
Company
ATTN: Mr. Earl A. Borgmann
Senior Vice President
Engineering Services and
Electric Production
139 East 4th Street
Cincinnati, OH 45201

Gentlemen:

This refers to concerns identified during the ongoing investigation at the Zimmer site which were discussed with you and members of your staff on March 27, 1981, by R. F. Warnick and members of the investigation team and which Mr. Warnick and I discussed with you on March 31, 1981, in the Region III office. The investigation began on January 12, 1981, and is expected to continue for several more weeks. The results of the investigation will be documented in two or more investigation reports.

The NRC's concerns relating to ongoing construction related activities are the subject of this Immediate Action Letter. This letter documents the following corrective measures which we understand you have initiated or plan to take concerning the problems identified by the NRC:

1. Concerning QA Staffing

CG&E will increase the size and technical expertise of the CG&E QA organization by adding individuals qualified in the areas of radiography and nondestructive testing, piping supports and hangers, welding, structural design and fabrication, electrical design and construction, and metallurgy. We understand CG&E will utilize temporary personnel qualified in these areas until permanent staff members have been hired.

2. Concerning Independence and Separation Between Kaiser Construction and Kaiser QA/QC

CG&E will take action by April 15, 1981, to assure independence and separation of the QA/QC function performed by Kaiser from the construction function. Region III will be informed of actions taken.

3. Concerning QC Inspections

Using the personnel described in item 1 above, CG&E will conduct 100% reinspections of QC inspections conducted by Kaiser and other contractors after the date of this letter. This will continue until the

8104240622
6 pp.

Cincinnati Gas and Electric
Company

-2-

April 8, 1981

revised CG&E audit program as described in item 10, below, is implemented by these qualified individuals and RIII releases this requirement.

4. Concerning QC Inspection Procedures

All QC inspection procedures will be reviewed and revised (where appropriate) by qualified design engineers and QA personnel. These reviews will be conducted by personnel independent of the construction organization to confirm that the procedures include appropriate inspection requirements and applicable hold points. The construction activities controlled by these QC inspection procedures will not be performed after the date of this letter until the applicable procedure has been reviewed and approved.

5. Concerning Training

QA/QC personnel at the Zimmer site will receive training on any new procedures and practices resulting from actions taken to fulfill provisions of this letter prior to implementation of the procedures. In addition, refresher training will be given prior to June 1, 1981, on (a) the identification and documentation of nonconformances, deficiencies, and problems, (b) the procedure for resolving nonconformances, deficiencies, and problems, (c) the feedback mechanism for informing the identifying individual of the resolution of the nonconformance, deficiency, or problem, and (d) the avenue of appeal should the identifying individual disagree with the adequacy of the resolution.

6. Concerning Deviations from Codes and FSAR Statements

Prior to May 1, 1981, the procedures governing the identification, reporting, and resolution of deviations from Codes and FSAR statements will be reviewed for adequacy and revised as appropriate. The procedures will require CG&E to review and approve the resolution of any such deviations.

7. Concerning the Voiding of Nonconformance Reports

The procedures governing nonconformance reporting will be reviewed for adequacy. The review will be accomplished not later than April 10, 1981. The disposition of each nonconformance report together with appropriate justification will be documented.

8. Concerning QA/QC Records

The review and alteration of existing QA and QC records has been stopped. These records will be controlled by CG&E until a program defining records

Cincinnati Gas and Electric
Company

-3-

April 8, 1981

control, usage, and adequacy has been prepared by CG&E and agreed to by RIII.

9. Concerning Conditions Averse to Quality

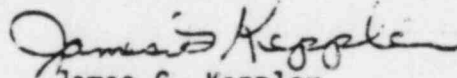
CG&E will perform a 100% review of all surveillance and nonconformance reports written by contractor personnel after the date of this letter. This program will continue until RIII releases this requirement.

10. Concerning the Audit Program

The existing CG&E audit program will be reviewed and revised by June 1, 1981, to include technical audits of construction work and more comprehensive and effective programmatic audits.

Please inform us immediately if your understanding of these items is different from that stated above.

Sincerely,


James G. Keppler
Director

cc:
Mr. J. R. Schott, Plant
Superintendent
Central Files
Reproduction Unit NRC 20b
AEOD
Resident Inspector, RIII
PDR
Local PDR
NSIC
TIC
Harold W. Kohn, Power
Siting Commission
Citizens Against a Radioactive
Environment
Helen W. Evans, State of Ohio

CHRONOLOGY OF RIII/OIA/DOJ INTERFACES

2/3/81 RIII telephoned DOJ to discuss Applegate allegations about drunks, gambling, firearms, prostitution, etc. to determine DOJ jurisdiction regarding those matters and to determine if DOJ was interested in pursuing those matters.

2/17/81 OIA (Cummings) visited RIII to discuss the roles of OIA and RIII in responding to Mer. t Systems Protection Board matter.

2/25/81 RIII telephoned DOJ to discuss 2/26 meeting in RIII with Applegate and Devine and invite DOJ to attend.

2/25/81 Premeeting on Applegate/Devine issues with OIA (Schneblin).

2/25/81 Applegate/Devine meeting in RIII with OIA (Schneblin) in attendance.

2/26/81 RIII informally discussed potential criminal concerns with OIA (Schneblin).

3/3/81 RIII telephoned DOJ to give results of Applegate/Devine meeting.

3/81 OIA (Sinclair and Gamble) visited RIII to discuss current RIII investigation results.

4/17/81 RIII briefed FBI on Applegate issues and informed FBI that NRC was investigating falsification and OIA would be handling it.

4/22/81 RIII and OIA met with DOJ to discuss falsification issues.

4-5/81 OIA conducted conference calls with DOJ regarding criminal investigation approach.

5/5/81 OIA telephoned RIII to discuss parallel proceedings issue and to offer assistance in investigation.

5/6/81 OIA telephoned RIII to state OIA would participate in criminal aspects of investigation.

5/15/81 OIA telephoned RIII to discuss parallel proceedings issue.

5/26/81 Memo from DOJ to OIA resolving parallel proceedings issue.

5/26-28/81 OIA visited RIII to interview investigation team.

6/1/81 Memo from OIA to RIII regarding DOJ resolution of parallel proceedings issue.

6/2-11/81 OIA and RIII onsite. RIII briefed OIA on criminal aspects. OIA conducted interviews, some of which were attended by RIII.

7/7-8/81 OIA continued interviews on site, some of which were attended by RIII.

8/18/81 Memo from OIA to DOJ forwarding a copy of the draft investigation report.

9/4/81 OIA and RIII met with DOJ to discuss investigation report. DOJ concurred that release of the report for civil purposes would not compromise future potential criminal action by DOJ. DOJ advised OIA to discontinue criminal investigation pending completion of civil investigation to avoid parallel proceedings problems.

9/9/81 Memo from DOJ to OIA regarding results of 9/4/81 meeting.

9/17/81 Memo from OIA to DOJ in response to 9/9/81 memo from DOJ to OIA stating disagreement with parallel proceedings issue but that OIA would discontinue pursuit of criminal matters until civil actions were completed.

12/3/81 Memo from OIA to DOJ forwarding a copy of 81-13 as issued.

3/19/82 Memo from DOJ to RIII requesting advice on when RIII expected to complete inspection and submit a final report.

3/22/82 Memo from RIII to OIA regarding coordination of investigation effort.

3/24/82 Memo from RIII to DOJ advising it of anticipated completion date for investigation.

4/21 & 5/7/82 Memos from DOJ to RIII regarding DOJ request for a meeting with RIII and OIA to discuss civil and criminal investigation plans.

5/20/82 RIII and OIA met with DOJ to discuss the status of and plans for the ongoing investigation.

ENCLOSURE 10