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50-458/459

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

January 24, 1997

MEMORANDUM TO: James Lieberman, Director
Office of Enforcement

FROM: Roy P. Zimmerman *Roy P Zimmerman*
Associate Director for Projects
Office of Nuclear Reactor Regulation

SUBJECT: REQUEST FOR VIEWS AND INTERPRETATIONS OF REGULATORY
REQUIREMENTS

In a memorandum from Joe Gray dated July 16, 1996, OE requested NRR and OGC views and interpretations of regulatory requirements related to pending enforcement actions for Hope Creek (EA 96-125) and River Bend (EA 96-175). These cases involve complex enforcement policy issues associated with (1) the relationship between appropriate use of plant administrative controls, inspection guidance for nonconforming conditions and operability, and timely corrections to technical specifications (TS), and (2) distinguishing compliance with particular actions specified in the TS from a pre-existing condition that reflect a failure to comply with significant aspects of limiting conditions for operation.

The request was made for case-specific circumstances. However, as was discussed in a meeting on August 28, 1996, these cases involve important compliance policies. Our comments on the use of administrative controls which were raised in the Hope Creek case will be addressed in a separate response. The purpose of this memorandum is to describe our views on the broader compliance policy concerns associated with the River Bend case. As requested, these views and interpretations have been coordinated with OGC, and they have no legal objection to the following comments.

It has been a long-standing policy that the allowed outage time (AOT) should begin upon discovery of an inoperability or degraded condition. However, as described in the attached memorandum from H. Thompson to R. Starostecki dated August 9, 1985, there has also been a long-standing recognition of the need to also consider potential enforcement based on the total duration that the condition may have existed (i.e., from the time of occurrence), where it can be readily determined, and the extent to which the licensee should have identified the condition earlier.

Toward this end, the staff suggests that the NRC's policies make a clear distinction between compliance with the TS action statements and compliance with the Limiting Condition for Operation. This distinction is evident in the general TS usage rules, as they are presented in the improved standard technical specifications:

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LCO 3.0.1 - LCOs shall be met during the MODES or other specified conditions in the Applicability, except as provided in LCO 3.0.2.

LCO 3.0.2 - Upon discovery of a failure to meet an LCO, the Required Actions of the associated Conditions shall be met, except as provided in LCO 3.0.5 and LCO 3.0.6. If the LCO is met or is no longer applicable prior to expiration of the specified Completion Time(s), completion of the Required Action(s) is not required unless otherwise stated.

We believe that the construction of these general rules is consistent with a view that, although a licensee may comply with a particular action requirement (as provided under LCO 3.0.2), it may still be appropriate to separately consider enforcement action for a failure to comply with the associated Limiting Condition for Operation (as provided under LCO 3.0.1). However, such a policy requires associated enforcement guidelines similar to the guidelines established by OE for operability in Section 8.1.1 of the NRC Enforcement Manual.

The following guidelines should be used for cases where the time of occurrence can be established and the licensee should have discovered the condition sooner:

1. If the time between the occurrence of the condition and the discovery of the condition is greater than the allowed outage time for that condition [$t_D - t_O > AOT$], then the licensee should be cited for a failure to satisfy the LCO. Depending on the total time and other factors revealed by the root cause evaluation, the severity level could be increased above Severity Level III. The citation should acknowledge that the licensee otherwise satisfied the technical specification required action(s) from the time of discovery of the condition.
2. If the time between the occurrence of the condition and the discovery of the condition is less than the allowed outage time for that condition [$t_D - t_O < AOT$], and upon discovery the required actions are completed within the AOT or the shutdown track is satisfied, there is not an LCO violation. This would be true even if the time between the occurrence of the condition and the completion of required actions is greater than the AOT. However, there may be a root cause issue warranting appropriate enforcement action.
3. If the time between the occurrence of the condition and the completion of required actions is less than the AOT, then there is no violation.

In determining whether to make a citation against the LCO, we believe that consideration should also be given to other citations such as root causes that may focus the corrective action. Depending on the regulatory and safety significance, the LCO, the root causes, or both should be combined into one escalated issue. However, there may also be cases where the significance dictates more than one escalated issue, one for the LCO and others for the root causes.

We believe that this approach will provide an appropriate means to better focus the inspection and enforcement efforts on the root cause of the problem. Accordingly, we recommend that this approach be appropriately incorporated into the Enforcement Manual.

cc: F. Miraglia
S. Varga
J. Roe
NRR Project Directors
L. Chandler, OGC
R. Cooper, RI
E. Merschoff, RII
W. Axelson, RIII
J. Dyer, RIV



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

August 9, 1985

MEMORANDUM FOR: Richard W. Starosteck, Director
Division of Reactor Projects, Region I

FROM: Hugh L. Thompson, Jr., Director
Division of Licensing, NRR

SUBJECT: TECHNICAL SPECIFICATION INTERPRETATION

Your memorandum dated July 15, 1985 requested an interpretation with regard to the point in time that the time limitations of Technical Specification action requirements are applicable. Also, a proposed interpretation related to this matter was provided for consideration as an enclosure.

It is NRR's position that the time limitation of action requirements are applicable from the point in time that it is recognized that the requirements of a limiting condition of operation are not met. This is as noted by your example and proposed interpretation. It was also noted in your memo that this issue is further complicated by recent trends in NRC enforcement which cite the historical inoperability of equipment as a factor in determining the significance of loss of function violations. In the example provided the cause for inoperability was due to maintenance that occurred prior to the time it was recognized that the component was inoperable. We agree that in such a case the basis for determining the safety significance in an enforcement action should not be limited to consideration of when it was recognized that the component was inoperable but rather on the actual total time that the requirements of the limiting condition of operation were not met. In the example you cited, the licensee should have taken appropriate measures to assure that the maintenance was performed correctly including testing to assure that components were operable.

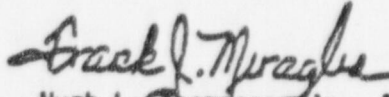
As a final comment with regard to the proposed interpretation enclosed to your inquiry, the Technical Specification Review Group is preparing additional guidance on the application of Section 3/4.0 of the Standard

CONTACT:
T. Dunning, TSRG
x29457

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August 9, 1985

Technical Specifications. This guidance will provide further clarification of time limitations related to limiting conditions of operation and surveillance requirements. This guidance should be available for use by Resident Inspectors and Regional personnel in the near future. -


for Hugh L. Thompson, Jr., Director
Division of Licensing

January 24, 1997

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J. Dyer, RIV

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