



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

File Investigation
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June 26, 1986

MEMORANDUM FOR: C. J. Helton, Jr., Director
Office of Analysis and Evaluation of Operational
Data

FROM: James Lieberman, Director and Chief Counsel
Regional Operations and Enforcement Division, OELD

SUBJECT: COMMENTS ON DRAFT INCIDENT INVESTIGATION MANUAL

We have provided Wayne Lanning with a mark-up of the draft Incident Investigation Manual on which your June 16th memorandum sought comment. I've also enclosed copies of the revised Confirmatory Action Letter and Order to be attached to IIT Procedure 1. We developed the letter and order based on comments provided to us by IE, NRR, and the regional offices. We have also made slight alterations in these documents to conform to guidance in the draft manual on the functioning of IIT's. You should discard, therefore, earlier versions of the documents that we provided to your staff.

Although most comments on the draft should be self-explanatory, a few matters merit comment here:

° A revised description of individual rights during interviews is attached as an insert for page 2 of IIT Procedure 3. The revision is a more comprehensive description of individual rights, counsel's participation, and third party attendance at interviews than is contained in the draft. With the suggested revisions, we believe that you will have met the recommendations in the Ad Hoc Davis-Besse Review Group's report (at pp. 12-13) to develop procedures that cover "the legal constraints and rights of licensees and employees" and "guidelines concerning the role of counsel or other advisors for personnel interviewed by an IIT". This particular portion of the procedure might be reproduced by itself for possible distribution to interviewees who have questions about these matters, similar to the handout on transcripts.

° In a couple spots we have suggested modifying language that suggests that the IIT does not investigate violations of NRC requirements, because the language may be misleading. While the IIT does not perform primarily a compliance inspection for

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purposes of determining the violations of requirements that may have occurred during an event and the licensee's corrective actions, the IIT can be expected as matter of course to examine technical specifications, regulations, procedures and other requirements that may have been applicable or invoked during the event. Ultimately, the IIT's findings may form the basis for enforcement action, as in the Davis-Besse case.

- ° We suggest that the proposed notice to plant employees, which describes the IIT and provides information on contacting the IIT, be issued and signed by the IIT team leader, rather than by licensee management. This step may enhance the perception of the team's independence in the eyes of some plant personnel.

- ° A brief introduction at the front of the manual would be helpful to explain the purpose of the procedures and the IIT program. In this introduction, we would suggest including a brief "disclaimer" to the effect that the procedures in the manual are guidance and may be deviated from by IIT's during the conduct of an investigation as the team leader, in consultation with AEOD, may find appropriate.

- ° You might include a copy of the NRC Manual Chapter 0513 in the procedures manual in view of the references to the manual chapter in a number of the procedures.

- ° Some sort of digest or index to the procedures would be helpful that would identify the assistance the IIT may request from licensees or NRC offices. Requests for assistance are identified in various procedures, but no one listing identifies, for example, all types of services that the licensee may be asked to provide. A listing with cross-references to particular procedures would be helpful.

- ° The numbering of procedures and exhibits and the distinction between IIS and IIT procedures is a bit hard to follow.

- ° Some matters may be appropriate for inclusion in future IIT procedures, such as granting confidentiality under appropriate circumstances to persons who provide information to the IIT and obtaining subpoenas in the event that an individual declines to be interviewed. For now the IIT Team leader should be delegated authority to grant confidentiality and be instructed to contact OGC if a subpoena issue arises.

Please call on us if you desire additional assistance with this project.

/s/

James Lieberman
Director and Chief Counsel
Regional Operations and Enforcement
Division, OELD

cc: W. Lanning, AECD
J. Snizek, DEDROGR
H. Denton, NRR
J. Taylor, IE
J. Davis, NRES
Regional Administrators

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OFC	: ROED	: ROED	:	:	:	:
NAME	: SBurns/tk	: JLieberman	:	:	:	:
DATE	: 6/26/80	: 6/26/86	:	:	:	:

INSERT for p.2 of IIT Procedure No. 3:

[REVISED GUIDANCE ON INDIVIDUAL RIGHTS AND THIRD PARTY ATTENDANCE AT INTERVIEWS]

9. Interviewees will normally be permitted at their request to have personal counsel or another individual accompany them during the interview. Otherwise, third parties, such as licensee management, company counsel, and union stewards, will not normally be permitted to attend the interviews. The interviewee may consult with counsel during the interview. Counsel's participation in the interview will be generally limited to advising his client and asking brief clarifying questions to ensure that his client has understood the questions asked by the IIT. If the counsel or other individual also represents or is to accompany another person being interviewed, the IIT will normally permit the attendance of that person if the IIT is satisfied that attendance will not appreciably compromise its investigation.

The IIT normally will not permit tape recording of the interview by the interviewee since the interview will be transcribed and the interviewee will be provided a copy of the transcript.

If the policy regarding the rights of interviewees is unclear and additional legal advice is necessary or desired, the team leader should contact the Assistant General Counsel for Enforcement in OGC.

Docket No. _____

[Licensee Name]*
[Address]

Dear _____:

On [date], [brief description of event]. Because of the potential significance of this incident to public health and safety, the NRC's Executive Director for Operations has formed an Incident Investigation Team (IIT) to investigate the circumstances surrounding the incident. [Include as appropriate a brief description of the event's significance].

This letter confirms the conversation on [date] between _____ and _____ of my staff related to this incident. With regard to the matters discussed, we understand that you have agreed to cooperate with the IIT and you have taken or will promptly take the following actions necessary to support this investigation:

- 1) The facility will remain in cold shutdown [or other appropriate mode description] until the Regional Administrator determines that there is sufficient understanding of the causes and consequences of the incident and appropriate corrective action has been taken such that the plant can safely return to operation.

* Bracketed or underlined areas must be completed.

- 2) The licensee will ensure that the equipment involved in the incident is not disturbed prior to release by the IIT. In this regard work in progress or planned on equipment that was called upon to function during the incident, including that which may have malfunctioned, will be held in abeyance so that evidence of the equipment's functioning during the incident will not be disturbed. Personnel access to areas and equipment subject to this quarantine will be minimized, consistent with plant safety. The IIT team leader may authorize a release, in whole or in part, of those areas or equipment subject to the quarantine upon a determination that the IIT has received sufficient information concerning the areas or equipment requested to be released or to permit necessary troubleshooting of the equipment. The licensee may take action involving quarantined equipment which it deems necessary to achieve or maintain safe plant conditions, to prevent further equipment degradation, or to test or inspect equipment as required under plant technical specifications or other requirements. To the maximum degree possible, the licensee shall coordinate such actions with the IIT team leader in advance or, if such coordination is not possible, the licensee shall notify the IIT team leader soon thereafter of actions taken.

- 3) All records will be preserved intact that may be related to the event and any surrounding circumstances that could assist in understanding the event. Such records shall be retained for at least two years following the event whether or not required to be retained by regulation or license condition.
- 4) The licensee will make available to the IIT for questioning such individuals employed by the licensee or its consultants and contractors with knowledge of the event or its causes as the IIT deems necessary for its investigation.
- 5) The licensee will ensure that any investigation to be conducted by the licensee or a third party will not interfere with the IIT investigation. The licensee will advise the IIT of any investigation to be conducted by the licensee or a third party. Reports of such investigation will be promptly provided to the IIT.

Issuance of this confirmatory action letter does not preclude the issuance of an order finalizing your commitments. The above commitments may be re-

laxed for good cause. If your understanding differs from that set forth above, please call me immediately.

Sincerely,

[Name]

Regional Administrator

cc: IIT Leader

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

[LICENSEE'S NAME] 1/

[Facility Name]

Docket No. _____

License No. _____

ORDER TO SHOW CAUSE (IMMEDIATELY EFFECTIVE)

I.

[Licensee's name] (the Licensee) holds License No. _____, which authorizes the Licensee to operate [or other appropriate characterization] the [name of facility] in [location].

II.

[Brief description of the incident in a paragraph or two]

111.

The NRC Executive Director for Operations has formed an Incident Investigation Team (IIT) to investigate the circumstances surrounding the inci-

1/ Bracketed and underlined areas must be completed.

dent described in Section II of this Order. An IIT was formed because [describe in one or two sentences the significance of the event].

The investigation is required to obtain necessary information to assure sufficient understanding of the cause of the event so that a determination may be made as to what plant-specific corrective actions will be sufficient to provide reasonable assurance that operation of the facility will not create an undue risk to the public health and safety and to identify any generic concerns for consideration at other facilities. The licensee's full cooperation is required during the investigation to permit a complete and timely investigation. [Indicate whether CAL was issued and reason why this Order is being issued in view of previous CAL; e.g., violation of terms of CAL or desire to formalize CAL commitments by order]

Accordingly, I have determined that the public health, safety, and interest require (1) that operation of the facility be suspended until the Director [or Regional Administrator] finds that there is sufficient understanding of the incident and the licensee has taken sufficient corrective actions such that the facility may safely return to operation and (2) that the licensee take certain actions to ensure that the IIT can thoroughly investigate the incident. Therefore, this Order is being made immediately effective.

IV.

In view of the foregoing, pursuant to sections 103 [or appropriate section for materials license], 161(b), (c), (i), and (o), 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in

10 CFR §2.202 and Part 50, [or other appropriate regulations] IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY, THAT:

- A. The licensee shall maintain the facility in cold shutdown [or other appropriate mode description] until the undersigned Director [or appropriate Regional Administrator] determines that there is a sufficient understanding of the causes and consequences of the incident and sufficient corrective action has been taken such that resumption of operations poses no undue risk to public health and safety;
- B. The licensee will ensure that the equipment involved in the incident is not disturbed prior to release by the IIT. In this regard the licensee shall hold in abeyance any work in progress or planned on equipment that was called upon to function during the incident, including equipment that may have malfunctioned, so that evidence of the equipment's functioning during the incident will not be disturbed. The licensee shall minimize, consistent with plant safety, personnel access to areas and equipment subject to this quarantine. The IIT Team Leader may authorize a release, in whole or in part, of those areas or equipment subject to the quarantine upon a determination that the IIT has received sufficient information concerning the areas or equipment requested to be released or to permit necessary troubleshooting of the

- equipment. The licensee may take action involving quarantined equipment which it deems necessary to achieve or maintain safe plant conditions, prevent further equipment degradation, or to test or inspect equipment as required under plant technical specifications or other requirements. To the maximum degree possible, the licensee shall coordinate such actions with the IIT team leader in advance or, if such coordination is not possible, the licensee shall notify the IIT team leader soon thereafter of actions taken.
- C. The licensee shall preserve intact all records that may be related to the event and any surrounding circumstances which could assist in understanding the event. Such records shall be retained for at least two years following the event whether or not required by regulation or license condition to be retained;
- D. The licensee shall make available to the IIT for questioning such individuals employed by the licensee or its consultants and contractors with knowledge of the event, its causes, or consequences as the IIT deems necessary for its investigation;
- E. The licensee shall ensure that any investigation to be conducted by the licensee or a third party will not interfere

with the IIT investigation. The licensee shall advise the IIT of any investigation to be conducted by the licensee or a third party. Reports of such investigation shall be promptly provided to the IIT.

V.

The undersigned Director [or appropriate Regional Administrator] may relax or terminate any of the above conditions for good cause.

VI.

The licensee may show cause, within 30 days after issuance of this Order, why it should not have been required to comply with the provisions specified in Section IV by filing a written answer under oath or affirmation setting forth the matters of fact and law on which the Licensee relies. The Licensee may answer this Order, as provided in 10 CFR §2.202(d), by consenting to the provisions specified in Section IV above. Upon the Licensee's consent to the provisions set forth in Section IV of this Order or upon failure of the Licensee to file an answer within the specified time, the provisions set forth in Section IV shall be final without further order.

The Licensee, or any other person whose interest is adversely affected by this Order, may request a hearing within 30 days of the date of this Order. Any answer to this Order or any request for a

hearing shall be submitted to the Director, Office of Inspection and Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555. A copy shall also be sent to the Assistant General Counsel for Enforcement at the same address and to the Regional Administrator, [Address]. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR §2.714(d). If a hearing is requested by the Licensee or any person who has an interest adversely affected by this Order, the Commission will issue an order designating the time and place of any such hearing. Any answer or request for a hearing shall not stay the immediate effectiveness of Section IV of this Order.

In the event a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

FOR THE NUCLEAR REGULATORY COMMISSION

_____, Director
Office of Inspection and Enforcement

Dated at Bethesda, Maryland,
this _____ day of _____ 198 ____.