

December 3, 1997

FOR: The Commissioners

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Executive Director for Operations

SUBJECT: RESULTS OF THE STAFF'S EVALUATION OF ONGOING FEEDBACK FROM LICENSEES ON THE IMPACT OF NRC'S ACTIVITIES ON LICENSEES' OPERATIONS

## PURPOSE:

To inform the Commission of the results of the staff's evaluation of ongoing feedback received from licensees on the impact of the NRC's regulatory programs on licensees' operations.

## BACKGROUND:

In 1989, the NRC performed a comprehensive regulatory impact survey. The final results and corrective actions were reported in SECY-91-172, "Regulatory Impact Survey Report - Final," which was issued on June 7, 1991. On December 20, 1991, the Commission issued a staff requirements memorandum requesting that the staff develop a process for obtaining continuing feedback from licensees and that the staff submit the results to the Commission annually.

The process was described in SECY-92-286, "Staff's Progress on Implementing Activities Described in SECY-91-172, 'Regulatory Impact Survey Report - Final,' " which was issued on August 18, 1992. The feedback process affords licensees frequent opportunities to comment on regulatory impact. The feedback process requires deputy directors of projects in the Office of Nuclear Reactor Regulation (NRR) and regional division directors and their deputies to solicit informal feedback from their licensee counterparts during routine visits to reactor sites. The managers record this feedback, and the regions evaluate and take any necessary actions to address the identified concerns. The feedback forms are then forwarded to NRR. NRR evaluates this feedback, along with any other feedback obtained, such as from letters and limited scope surveys, to determine appropriate follow up actions. Implementation of this process began in October 1992.

In response to the "Nuclear Regulatory Review Study" by Towers Perrin, two additional feedback paths were implemented on July 11, 1995. The Office of the Executive Director for Operations (OEDO) established a formal process by which senior power reactor licensee officials could report regulatory action perceived to be inappropriate directly to the OEDO. Each region has developed a process for dealing with concerns related to inappropriate regulatory actions by the NRC staff. In this process, the regions receive, act on, resolve, or forward to other authorities (e.g., the Office of the Inspector General (OIG)) allegations of inappropriate actions by a member of the NRC staff involved in inspections or other matters related to NRC-licensed activities. Also, senior NRC managers receive feedback from staff interactions with senior officials of the Nuclear Energy Institute (NEI) and the Institute of Nuclear Power Operations (INPO).

This paper reports on feedback received from licensees, INPO, and NEI from

September 1, 1996, through August 31, 1997. The feedback is an example of a regulatory excellence initiative that NRR has ongoing and will continue to report on annually.

## DISCUSSION:

From September 1, 1996, through August 31, 1997, the staff received feedback from licensees on 164 specific issues from 39 reactor sites. Of the comments received, 42 percent were favorable and 54 percent were unfavorable. The remaining comments expressed neutral statements or pertained to licensees' concerns about possible future NRC direction. Subjects covered in feedback reports fell into four main categories: communications between the NRC staff and licensees, inspector conduct, clarity of 10 CFR 50.59 and design and licensing bases, and systematic assessment of licensee performance (SALP). A summary of the feedback received, the staff's evaluation, and the staff's proposed improvement actions follow.

## 1. FORMAL COMMUNICATIONS WITH LICENSEES

## Feedback

Approximately a third of all comments (53 of 164) received related to the effectiveness of communications between the NRC staff and licensees. About 20 percent of these comments (10 of 53) dealt with the clarity of NRC policy on 10 CFR 50.59 and design and licensing bases and will be discussed separately.

Almost two-thirds of the remaining licensees' comments (26 of 43) on communications with the NRC staff were favorable, indicating that issues were communicated clearly and working relationships were effective. Comments were overwhelmingly favorable with regard to communication with resident inspectors and regional management. Several licensees indicated that communication skills had improved and were effective. Conversely, a few reported isolated instances of communication problems, such as communication difficulty on complex issues, untimely inspector feedback on developing issues, or assessment at an exit meeting that was inconsistent with the assessment in the inspection report.

## Evaluation and Action

The staff concludes that the communication between NRC and licensees is generally effective and that communication problems represent isolated instances on the basis of the large number of interactions between the NRC and its licensees that occur on a routine basis and the relatively large number of favorable comments.

The staff is aware of the importance of timely and accurate communications and emphasizes this goal in the policy, guidance, and training for the inspection program. Effective communications will remain a challenge and will receive continuing attention from regional and NRR management.

## 2. CONDUCT OF INSPECTORS

### Feedback

Approximately a quarter of all feedback (34 of 164) received related to the conduct of inspectors. This area covers a wide range of inspector practices but does not include communication issues that are dealt with separately in the preceding section. The majority of comments complimented the NRC inspection staff, including the working relationship with licensees and the quality of inspection. Of the comments received in this area, more than 60 percent indicated that they viewed the effectiveness of the resident inspection staff favorably.

Several licensees stated that region-based or Headquarters inspectors performing inspections, including augmented inspection team inspections, maintenance rule inspections, and security and safeguards inspections, were professional, thorough, and well prepared. Others stated that NRC inspections were of good quality and correctly characterized the licensee's performance. Several licensees commented that they preferred performance-based inspections compared to traditional compliance-based inspections.

However, some commenters (13 of 34) raised concerns regarding what they believed were inappropriate actions by inspectors. Examples include the perception that an inspector was too aggressive, that the inspector's threshold for issuing violations was too low, and that an inspector overreacted to an allegation. Several licensees expressed concern over the continuity of licensee assessment with the high turnover of resident and region-based inspectors.

### Evaluation and Action

The staff concludes that inspector conduct problems are not widespread based on the large number of routine interactions between inspectors and licensees, the number of favorable comments received, and the relatively small number of unfavorable comments. Several unfavorable comments by licensees do not indicate inappropriate behavior. For instance, one licensee complained of the perceived lack of trust between the inspector and the licensee, while another complained that an engineering inspector devoted too much time to reviewing licensee's records.

Specific concerns identified by licensees were addressed by regional management, usually by individual counseling. The staff continues to emphasize the importance of proper behavior and proper demeanor. Standards for staff professionalism and behavior are addressed in the "NRC Principles of Good Regulation" and in the NRC technical staff performance expectations issued to each employee. These requirements are reinforced by senior NRC managers in the course "Fundamentals of Inspection" and related refresher courses and in inspector counterpart meetings, workshops, and training courses. The professionalism and conduct of inspectors will continue to receive attention.

## 3. CLARITY OF THE 10 CFR 50.59 PROCESS AND DESIGN AND LICENSING BASES

### Feedback

This subject received 10 unfavorable comments and no favorable. Comments expressed confusion regarding the scope of the current design and licensing bases and NRC's expectations for evaluations associated with 10 CFR 50.59. One licensee thought the Commission was not aware of the impact of its actions and questioned whether the Commission's actions in this area would result in improvements to overall plant safety.

### Evaluation and Action

In September 1996, the Millstone Lessons Learned Task Group identified confusion among licensees and staff pertaining to 10 CFR 50.59 regarding the scope, role, and definitions of key words and phrases. Additionally, the task group identified problems in the licensee's understanding of the design and licensing bases which the group surmised was widespread. Thus, it is not surprising that licensees expressed confusion in this area.

On February 12, 1997, the staff forwarded two Commission papers summarizing the staff's examination of the regulatory process in the areas of design and licensing bases, the use and content of the plant safety analysis report (SAR), and issues related to 10 CFR 50.59. In September 1997, the staff forwarded a Commission paper that evaluated the results from recent lessons learned reviews in this area. The staff is engaged in several improvement initiatives, including the following:

- Revised NRC Generic Letter (GL) 91-18, "Information to Licensees Regarding NRC Inspection Manual Section on Resolution of Degraded and Nonconforming Conditions," on October 8, 1997, to clarify NRC policy regarding the use of 10 CFR 50.59 in resolution of degraded and nonconforming conditions.
- Received public comments on draft NUREG-1606, "Proposed Regulatory Guidance Related to Implementation of 10 CFR 50.59 (Changes, Tests, or Experiments)." The draft NUREG outlined staff positions in 22 topic areas related to implementation of 10 CFR 50.59. The staff has not completed its analysis of the comments.

- Performed preliminary review of NEI 96-07, "Guidelines for 10 CFR 50.59 Safety Evaluations," sent to NRC on July 21, 1997. NEI 96-07 is a revision to NSAC 125, "Guidelines for 10 CFR 50.59 Safety Evaluations," with some changes based on experience and on NUREG-1606.

Evaluating enforcement policy for implementation of 10 CFR 50.59 and 10 CFR 50.71(e), as well as establishing a 10 CFR 50.59 Enforcement Panel to help ensure a consistent approach to 10 CFR 50.59 issues.

- Developing guidance on updating SARs to ensure that plant-specific SARs are appropriately updated to reflect changes to the design bases, including effects of new analyses.
- Proposing rulemaking on 10 CFR 50.59 to clarify unreviewed safety question determinations..
- Considering NEI 97-04, "Design Bases Program Guidelines," which NEI sent to the NRC on October 8, 1997. NEI 97-04 provides additional examples of design-bases information and directly addresses the reportability of conditions outside the design basis of the plant.

This area is receiving considerable attention from senior management, and additional activities are anticipated to clarify NRC expectations regarding compliance with regulatory requirements.

#### 4. SALP

##### Feedback

Thirteen comments were received on NRC's SALP process and were almost evenly split between favorable and unfavorable comments. Favorable comments characterized the SALP process and reports as fair and accurate. However, several licensees perceived that SALP scores were too low or not consistent with other plants. One licensee complained that the plant support section of their SALP was not accurate. Separate from this process, the licensee pursued this issue with the responsible region who revised the plant support section of the SALP, but did not change the assigned score.

##### Evaluation and Action

Several initiatives are underway to improve the performance assessment process. NRR periodically monitors SALP scores to evaluate the consistency of SALP scores between the regions. Additionally, the SALP observation program, in which board members visit other regions to observe SALP implementation, will facilitate continued gains in consistency between regions. The staff is conducting an integrated review of all components of the assessment process to improve overall effectiveness and efficiency. A major objective of this review is to develop a revised, integrated process that provides greater objectivity and scrutability than existing assessment processes. The team will consider these SALP comments as they develop improvements.

##### ADDITIONAL FEEDBACK

In addition to soliciting feedback from licensees during site visits, the staff routinely provides opportunities for the industry to provide feedback on the impact of NRC programs and processes. During the period covered, feedback was provided by NEI and licensing managers from boiling-water reactors (BWR), as well as breakout sessions conducted during the NRC Regulatory Information Conference. A discussion of the feedback received follows.

NEI wrote a letter in July 1997 that expressed a concern with the impact of the NRC staff's generic communications on industry resources. The agency process for identification and resolution of generic issues is outlined in NRC Management Directive 8.5, "Operational Safety Data Review." As part of this process, all generic letters and bulletins are subjected to several levels of review before issuance. These actions include (1) review by the NRR/AEOD/RES Events Assessment Panel; (2) review by the Committee To Review Generic Requirements; (3) review by the Office of the General Counsel; (4) review by the Advisory Committee on Reactor Safeguards, if requested; (5) publication in the Federal Register with a request for public comments; and (6) Commission review through a Commission information paper. The NRC staff formally responded to this issue in a letter to NEI dated November 26, 1997.

During a meeting with licensing managers from BWRs, the following concerns were expressed:

- The NRC is becoming more compliance oriented (i.e., focusing more on licensee compliance with the final safety analysis report [FSAR]), and the threshold for notices of violations has dropped (i.e., deviations are now cited as violations). Collectively, these issues have a cumulative effect that distracts industry and tends to desensitize industry to more safety-significant issues.
- Some licensees complained that some inspectors were not documenting who identified specific issues in inspection reports; thus, licensees were not getting credit for identifying issues first.

NRC has focused considerably more attention on licensees' compliance with the FSAR and the updated final safety analysis report (UFSAR) as a result of numerous problems identified in this area. Enforcement policy was revised in October 1996, which resulted in most discrepancies with the FSAR being considered violations under 10 CFR 50.59 in lieu of their being treated as deviations from an FSAR commitment. Thus, it is not surprising that some licensees felt the enforcement threshold had changed in this area.

In order to gain better agency-wide consistency in the area of 50.59 violations, NRC established a 50.59 Review Panel to review all proposed violations of 10 CFR 50.59. The NRC is, and must remain, committed to protecting the health and safety of the public and, as such, must continue to pursue licensee's compliance with existing regulations, especially when emerging events reveal compliance and safety problems.

With respect to the second issue, IMC 0610 requires inspectors to document in inspection reports who identified specific issues. This information is recorded in the plant issues matrix (PIM) as described in IMC 0304, "Plant Performance Review." Licensees will be able to verify and discuss PIM information with the regional offices when PIMs are made available to the public beginning in mid 1998. As a part of routine monitoring of inspection activities, NRR will review a sample of inspection reports to ensure that inspectors are following these IMCs.

Topics of discussion at the NRC Regulatory Information Conference in April 1997 included enforcement issues, 10 CFR 50.59 issues, design-basis FSAR and vertical-slice A/E inspections, and integrating performance with the plant issues list, and each region individually discussed interactions with licensees and communications issues. Breakout sessions were held to obtain feedback from meeting attendees on these and other topics.

#### REPORTING OF INAPPROPRIATE NRC ACTIONS TO THE OEDO OR TO REGIONAL ADMINISTRATORS

In July 1995, the Executive Director for Operations issued a procedure for managing the resolution of concerns raised by licensees related to perceived inappropriate regulatory action by NRC staff and stated that the regions would follow a similar process. This action was taken in response to the Towers Perrin Nuclear Regulatory Review Study, which described examples in which NRC employees were said to have taken inappropriate regulatory action. During this reporting period no reports of inappropriate behavior by NRC employees were received by the OEDO; 31 cases were reported to the regions from power reactor licensees.

Three cases were reported to Region I, none were substantiated. Sixteen cases were reported to Region II in which four cases were substantiated, eight cases were not, and four cases are still open. Two cases were reported to Region III, each case was substantiated in part. Ten cases were reported to Region IV, none were substantiated. The vast majority of cases involved professional performance issues such as the inspector's professional skills conducting inspections or communicating with licensee personnel. OIG investigated one case in Region I, five cases in Region II, and two cases, in part, in Region IV.

#### Evaluation and Action

All four regions have written procedures for dealing with complaints of improper action by NRC employees that are fundamentally similar. Each procedure requires a determination if the issue should be pursued by the OIG or the region. If the allegation is referred to the OIG, the matter is handled in accordance with Management Directive 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals." For allegations reviewed by the region, the regional administrator approves a course of action including any specific remedial actions.

These results may indicate a lack of consistent implementation between the regions. To improve consistency between the regions, the staff will develop a generic procedure for dealing with complaints. This procedure will provide guidance for regional monitoring of complaints to identify patterns that may be indicative of issues with individual licensees or inspectors. The results of regional monitoring will be forwarded to NRR for evaluation and reporting in the annual Commission paper on regulatory feedback.

The staff has implemented improvements to address regulatory impact concerns and continues to make progress in eliminating those activities and practices that inappropriately affect licensees' operations. The staff will continue to solicit, evaluate, and address feedback and to identify and resolve specific and generic concerns related to the impact of NRC's regulatory actions on licensees' operations. It will report any significant concerns to the Commission, as appropriate.

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