



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

July 18, 2005

EGM 05-002

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I
William D. Travers, Regional Administrator, Region II
James L. Caldwell, Regional Administrator, Region III
Bruce S. Mallett, Regional Administrator, Region IV
James E. Dyer, Director, Nuclear Reactor Regulation
Jack R. Strosnider, Director, Nuclear Material Safety and Safeguards
Roy Zimmerman, Director, Nuclear Security and Incident Response
Paul Lohaus, Director, Office of State and Tribal Programs

FROM: Michael R. Johnson, Director **/RA/**
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - INTERIM GUIDANCE
FOR DISPOSITIONING UNRESOLVED ITEMS ASSOCIATED WITH
10 CFR 50.47(b)(10)

The purpose of this memorandum is to provide guidance for exercising enforcement discretion in dispositioning any existing unresolved item (URI) or future inspection findings related to a licensee's implementation of 10 CFR 50.47(b)(10), involving protective action recommendations (PARS) for sheltering that the licensee corrected on or before June 8, 2005.

A review of licensee emergency plans (EP), implementing procedures and notification forms was conducted to evaluate to what extent licensees considered sheltering when recommending protective actions to offsite agencies. The review disclosed that licensees were implementing the requirements of 10 CFR 50.47(b)(10), applying varied approaches which, in some cases, appeared inconsistent with regulatory requirements. The U.S. Nuclear Regulatory Commission (NRC) staff determined that a generic issue existed in the industry, in that the guidance provided in EPA-400, "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents" and NUREG-0654/FEMA-REP-1, Revision 1, Supplement 3, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants" allowed licensees to draw dissimilar conclusions regarding how the regulations could be satisfied.

The staff issued Regulatory Issue Summary (RIS) 2004-13, "Consideration of sheltering in licensees' range of protective action recommendations," as a means to assist with licensees' understanding of the regulatory requirements for compliance with 10 CFR 50.47(b)(10). The staff followed up with RIS 2004-13, Supplement 1, to further clarify the regulatory requirements and announce a 90 day period of enforcement discretion from the date of issuance of the RIS 2004-13, Supplement 1 (i.e., June 8, 2005) for licensees that needed to

reconsider sheltering as part of their range of protective actions. The enforcement discretion is intended to give licensees sufficient time to evaluate this issue and update their range of protective actions that includes the consideration of sheltering, which may necessitate changes to their EP. The staff has concluded that these actions are prudent because threat conditions have changed since the events of September 11, 2001, and because there may be confusion regarding the regulatory requirements on the part of licensees.

Based on the NRC's recognition of the need to clarify the requirements, licensee performance prior to June 8, 2005, will not be considered a performance deficiency. Existing URIs and future inspection findings that document performance deficiencies and/or nonconformances related to sheltering, that were corrected prior to June 8, 2005, should be dispositioned accordance with the guidance provided below.

Licensees are required to develop a range of protective actions that includes the consideration of sheltering. Region inspections of licensees' EPs must confirm that documentary evidence of the sheltering consideration exists and decisions based on those considerations have been implemented. Documentation of sheltering considerations must clearly communicate the reason(s) the decision has been made to shelter or implement an alternative approach to sheltering. Licensees who have acted in good faith and have provided sheltering PARs to States who have not responded to the licensee prior to the expiration of the discretion period thereby preventing the licensee from incorporating these agreement(s) in their respective EPs, will be evaluated on a case-by-case basis but normally will not be cited for non-compliance with regulatory requirements. However, licensees who are eligible for discretion under this specific circumstance shall document in timely manner, any change made necessary to their EP by the State response.

The following language is to be included in the text of the report discussing the inspection finding when exercising enforcement discretion in accordance with this Enforcement Guidance Memorandum (EGM).

"A violation of [insert the applicable regulation or section of the Emergency Plan] was identified. Because the violation was identified during the discretion period, we are exercising enforcement discretion in accordance with Section VII.B.6 of the NRC Enforcement Policy and are therefore, not issuing any enforcement action for this violation."

This EGM will remain in effect until December 31, 2007. If you have any questions, contact Michael R. Burrell at 301-415-2740 or e-mail at (mrb3).

cc: Chairman Diaz
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons
L. Reyes, EDO
M. Virgilio, DEDMRS
W. Kane, DEDR
W. Dean, OEDO
B. Sheron, NRR
B. Boger, NRR
M. Weber, NSIR
E. Leeds, NSIR
N. Mamish, NSIR
M. Federline, NMSS
C. Miller, NMSS
R. Pierson, NMSS
L. Camper, NMSS
W. Brach, NMSS
SECY

DISTRIBUTION:

MJohnson, OE

JLuehman, OE

OE Staff

Enforcement Coordinators

RI, RII, RIII, RIV, NRR, NMSS, NSIR (also by e-mail)

EGM File

OE r/f

ADAMS ACCESSION NUMBER: **ML050870017*****See previous concurrence**☒ Publicly Available☐ Non-Publicly Available☐ Sensitive☒ Non-Sensitive

OFFICE	OE:ES	OE:SC	OGC	NSIR	OE:D
NAME	MBurrell*	CNolan*	JMoore*	NMamish*	MJohnson
DATE	03/28/05	03/30/05	04/13/05	06/17/05	07/18/05

OFFICIAL RECORD COPY