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March 14, 2014

2/12/2014  
79FR 8511  
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Ms. Marissa G. Bailey  
Director, Fuel Cycle Safety and Safeguards  
Office of Nuclear Materials Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** Industry Comments on Draft Guide 3044, "Acceptability of Corrective Action Programs at Fuel Cycle Facilities" (79 FR 8511; Docket: NRC-2014-0021)

**Project Number: 689**

Dear Ms. Bailey:

On behalf of the fuel cycle industry, the Nuclear Energy (NEI)<sup>1</sup> Institute appreciates the opportunity to provide comments on Draft Guide 3044 (DG-3044), "Acceptability of Corrective Action Programs (CAP) at Fuel Cycle Facilities." I trust you will find these comments generally consistent with those expressed by industry during the March 5, 2014 public meeting and useful as the U.S. Nuclear Regulatory Commission (NRC) staff proceeds to finalize it. We are pleased that staff modified the previous version of this guide (Draft NUREG-2154) in response to most of industry's comments, and we offer the general comments below and specific comments attached on DG-3044 for your consideration.

First, we appreciate the steps NRC has taken to allow for the disposition of relatively low risk inspection findings to an NRC-approved CAP, in lieu of issuing Severity Level IV violations. Specifically, we endorse the revised NRC enforcement policy to allow reliance on the licensee's CAP, and issuance of the two relevant guidance documents for comment (i.e., Draft NUREG-2154 and DG-3044). To that end, as has been previously noted, all fuel facilities have a CAP in place today and some are deciding whether to seek NRC approval of their CAP for these purposes. In that regard, we applaud the efforts of NRC and Louisiana Energy Services whereby NRC approved the CAP at LES as stated in the March 4, 2014 NRC letter to LES.

<sup>1</sup> The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

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Second, both industry and NRC have acknowledged and emphasized the importance of a comprehensive, effective CAP that yields predictable and reliable results on which to base corrective actions to prevent recurrence of events, incidents and problems. As such, the CAP is a key element of a fuel facility's operational management and oversight program. While industry recognizes that NRC considers an NRC-approved CAP to be a fundamental and necessary cornerstone of any enhanced oversight process for fuel facilities, industry continues to believe that both NRC's and industry's finite resources could be used more effectively and efficiently by making risk-informed enhancements to the current oversight process with or without an NRC-approved CAP.

Third, we continue to believe that the potential benefits of having an NRC-approved CAP might be outweighed for some facilities by several factors. For example: 1) the CAPs in place today meet the needs of the fuel facilities and their customers; 2) there is a lack of certainty with regard to the magnitude of program changes needed to meet NRC's expectations; 3) the reality that very few Severity Level IV violations are issued to any one facility or across the fleet in any one calendar year continues to raise the question of whether this effort is an effective use of limited NRC and industry resources; and 4) there are short- and long-term resource impacts associated with NRC review and approval of a facility's CAP and future NRC inspections. As you know, these industry messages--in the context of cumulative impacts--are not new, they are important and we continue to support them.

Finally, the draft Regulatory Analysis which accompanied DG-3044 is deficient in its scope, level of detail, and the statement regarding expected cost savings. Industry disagrees with the conclusion that development of an NRC-approved CAP for disposition of certain violations would yield cost savings for the industry. Quite the contrary is true when one considers the potential costs associated with CAP enhancements to meet NRC's expectations, NRC qualification inspections and reviews, and ongoing NRC inspections as part of program maintenance versus the costs associated with the very low number of Severity Level IV violations cited annually.

Thank you again for the opportunity to comment on DG-3044 and the public meeting held on March 5, 2014. If you have any questions, please feel free to contact me or Andrew Mauer at 202-739-8018; [anm@nei.org](mailto:anm@nei.org).

Sincerely,



Janet R. Schlueter

Attachment

c: Mr. Anthony T. Gody, Jr., R-II/DFFI, NRC  
Mr. Michael X. Franovich, NMSS/FCSS/PORSB, NRC  
Ms. Sabrina D. Attack, NMSS/FCSS/PORSB, NRC

## **Specific Industry Comments on Draft Guide-3044, "Acceptability of Corrective Action Programs at Fuel Cycle Facilities"**

Industry reviewed the draft guide and offers the following comments for the staff's consideration as it proceeds to finalize the document. We trust you will find these comments useful and generally consistent with those discussed during the March 5, 2014 public meeting.

- 1) **CAP approval process:** During the April 2013 meeting, industry offered an alternative to the resource- and time-intensive license amendment process described in the earlier version of this guidance, i.e., Draft NUREG-2154. *We are pleased that NRC considered the alternative and modified the guidance to streamline the process whereby a licensee may submit a license amendment committing to the RG, and stating its readiness for an NRC review of its CAP without submitting extensive, detailed information to NRC in advance of an NRC program review. The revised process represents a more efficient means to meet the intended goal.*
- 2) **Conversion of Draft NUREG to Regulatory Guide (RG):** Last April, we also suggested that NRC convert the Draft NUREG into a RG since a RG is typically the primary source of comprehensive information for licensees and applicants filing for an NRC license or requesting a licensing action. *We are pleased that NRC agreed with this suggestion and converted the document to RG. This will allow licensees and applicants to commit to the RG via a license amendment thus reducing the time and resources for both NRC and industry.*
- 3) **Specific Comments:**
  - a. Section C, first paragraph – NRC states that when a licensee commits to this section of the RG, the licensee is committing to treat all "should" statements as "shall." Industry disagrees with this prescriptive, non-performance based approach. Rather, as stated in Section D of this document and by NRC staff on numerous occasions, a RG provides one method by which a licensee may demonstrate compliance and alternative methods to demonstrate compliance may be deemed acceptable by NRC. *Therefore, this statement should be deleted from the RG.*
  - b. Section C, item 1.a. – Industry commented on Draft NUREG-2154 that the term "independence" or "independent" needed to be clarified. Specifically, we suggested that a performance-based approach be taken when defining this term so that regardless of what group, person, organization, or consultant etc., performs the necessary review of the CAP, the person(s) has the experience and expertise to conduct such comprehensive reviews and, in some cases, make technical judgments on the information at hand and the adequacy of the CAP processes used. *No modifications to the text were made in DG-3044 and this comment is not contained in the Draft NUREG-2154 comment resolution summary table dated August 2013. Therefore, it is not clear whether the staff considered this comment. If not, we respectfully request that the staff do so.*
  - c. Section C, item 2.b.ii. – *Industry has two comments on this section.*  
*First, the regulatory basis for the statement that a nonconformance is a failure to meet a contract requirement is not clear. A contract has many requirements that have no relation to the item's safety or security attributes. To call out this as a nonconformance in the context of a CAP process*

is not warranted.

*Second*, the current wording regarding adverse conditions is much broader and more prescriptive than either the current language in 10 CFR Part 50, Appendix B or 10 CFR Part 71, section 71.133. Specifically, both 10 CFR Parts read, "conditions adverse to quality (safety or security), such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected." Further, in an August 2011 document on attributes of an effective CAP, the following language was proposed to address this issue:

The CAP policies, programs and/or procedures ensure that:

1. Employees are informed and aware of the requirement to identify and report safety and security issues, including regulatory compliance issues, related to a variety topics and areas including human performance, facility and equipment conditions, programs and procedures, administrative and regulatory limit exceedances, and similar activities or conditions that have potential or actual safety and security consequences.

*Industry suggests that, for additional clarity, NRC either rely on the 2011 proposed language (preferred) or existing Parts 50 and 71 language to address this issue.*

- d. Section C, item 3.d. – The language implies that the CAP include a process for reporting issues to NRC when required and, potentially, any issue which is reportable to NRC must be administered by the CAP. *Industry disagrees with this premise since the CAP can be a source of input to a reporting procedure or protocol but the CAP does not assure required reporting.*
- e. Section C, item 4.b.(2) – *Two edits in italics are suggested to read as follows: (2) the extent of condition.....other items, conditions, and activities including activities ~~work~~ in progress.....be taken.*
- f. Section C, item 5.b. – *Add the words "or management" after resolution.*
- g. We are pleased to note that DG-3044 addresses several of industry's comments such as:
  1. The terms "causal analysis," "in writing," and "out of control process" were deleted. However, the phrase "processes outside their control parameters" was added in Section C.2(b)(ii). It should be noted that product or quality specifications usually dictate "control parameters," and exceeding one of them is less significant than having an out of control process and most likely would not be related to a safety or security issue. *Therefore, industry suggests that NRC either use comparable language found in Part 50, Appendix B or Part 71, section 71.133 or, alternatively, delete this newly introduced phrase in its entirety to avoid confusion.*
  2. The guide was modified to acknowledge that, when documenting security-related events in the CAP database, the CAP might need to simply reference where the information is stored and available for review.

3. Industry suggested that the terms "prompt" and "nonconformance" be defined. NRC offers the following definitions and *industry suggests edits as indicated below*.
- i. *Prompt - performed or executed ~~without delay~~, in a turnaround commensurate with an issue's significance, and in as brief a time period as is reasonably achievable.* Industry suggests that "without delay" be deleted since it could be subject to interpretation during inspection and NRC's intent appears to be stated in the last phrase of the definition.
  - ii. *Nonconformance - A failure to meet a contract requirement related to ~~NRC activities~~ safety and security attributes to meet an NRC commitment ~~(e.g., a failure to meet the specifications included in a procurement document)~~.* The word "activities" is too broad in this context. The example in the parenthetical should be deleted since it is too prescriptive and adds no value to the definition. It should be recognized that: 1) based on the licensee's determination, non-conformances may or may not be significant in terms of safety or security; and 2) licensees must meet many other requirements that are outside NRC's jurisdiction.
- h. Appendix D – Several examples in D-2 are overly broad and, from industry's perspective, not representative of the "significant condition" level. Specifically, industry suggests that bullets 2–5 be removed from section D-2 and moved to a new section D-3 entitled, "Classification of Other Conditions Adverse to Safety and Security." Additionally, CASS examples should be added for completeness since SCASS examples are provided.