

ATTACHMENT II

September 9, 1996

MEMORANDUM FOR: Hubert Miller, Regional Administrator

THRU: James T. Wiggins, Director  
Division of Reactor Safety

THRU: John R. White, Chief  
Radiation Safety Branch

FROM: Joseph T. Furia, Senior Radiation Specialist

SUBJECT: DIFFERING PROFESSIONAL VIEW

In accordance with NRC Directive 10.159, the following Differing Professional View (DPV) is submitted.

Title 10 CFR 50.73(a)(2)(i)(B) requires licensees to report through the LER system, "any operation or condition prohibited by the plant's Technical Specifications..." The requirements for establishment and control of locked/high radiation areas is generally found in the administrative section of plant Technical Specifications (TS). Additionally, the general requirements for implementation of radiation protection procedures are expressed in the administrative section of TS, and without clear understanding of intent, could be interpreted to mean that any matter involving procedural non-compliance may require reporting in accordance with 10 CFR 50.73.

Continuing lack of clarity on this matter was recently demonstrated when the Radiation Protection Manager (RPM) from a Region I utility contacted me to inquire on the reportability, in the form of an LER, of an evident failure to maintain certain high radiation areas controlled with regard to posting, barricades, or locked access. The RPM noted that draft NUREG-1022, "Event Reporting Systems 10 CFR 50.72 and 50.73: Clarification of NRC Systems and Guidelines for Reporting," previously circulated by the NRC for comment in 1991, was interpreted to require that only programmatic breakdowns of the program for locked/high radiation areas needed to be reported as an LER. The RPM indicated that this interpretation (position) was verbally reinforced by NRR representatives at a previous EPRI/NEI meeting. Since there are not large number of LERs dealing with radiological protection program implementation issues, as compared with actual findings and observations detailed in inspection reports, I am reasonably certain that most licensees are generally adhering to this unwritten guidance or understanding of the agency's expectations in this matter.

Regardless of the accuracy of the RPM's understanding in this matter, it appears that to continue in this manner puts the NRC staff in an extremely vulnerable situation relative to consistent application of regulatory requirements.

Recent discussions between James Wiggington, NRR, and John R. White, Chief, radiation Safety Branch, RI, indicate that the NRC HQ staff has generally

discouraged licensee's from filing LERs involving discrepant conditions involving certain administrative requirements in the Technical Specifications, including the control of high radiation areas unless the failure is indicative of a programmatic breakdown in performance. The rationale for such position, as we understand it, appears to be intended to limit reporting of discrepant conditions involving non-safety related requirements. However, I am not aware of any formal agency guidance or direction that currently promotes that position.

While I understand and appreciate the technical merits of constraining reporting requirements relative to safety significance, I am concerned that informal communication to the NRC staff and licensee's relative to the agency's expectation in this matter could appear as a case of regulatory inconsistency resulting from promulgating guidance that relies on a draft NUREG publication, internal NRC correspondence, undocumented staff consensus, and verbal communication to regional staff and licensees who have inquired on the matter.

Whether this is an accurate reflection of NRC intent and purpose in this matter is immaterial. Given the current regulatory climate, I believe that an approach that gives this perception is not in concert with the published expectations of the Nuclear Regulatory Commission, as recently expressed by the Chairman.

Accordingly, I believe the following should be accomplished:

- (1) The NRC staff should develop the agency's position on this matter based on a rationale that is supportable from a regulatory perspective, including rulemaking as necessary; and,
- (2) In the interim, promulgate formal guidance to the regional staff and licensees on the agency's expectations relative to this particular matter