



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20545

July 5, 1985

MEMORANDUM FOR: Samuel J. Chilk, Secretary

FROM:

Ben B. Hayes, Director
Office of Investigations

SUBJECT: INCIDENT INVESTIGATION PROGRAM (SECY-85-208)

We have only recently had the opportunity to review the subject Commission Paper. As a result of this review, we have concerns which we wish to bring to the attention of the Commission. As we will explain below, we believe that the subject paper has policy implications which transcend the issue of the investigation of incidents and accidents.

SECY-85-208 states (at page 4, #14):

"The IITs will be specifically directed to emphasize fact-finding and determination of probable cause and not to specifically search for violations of NRC requirements in order to minimize any adversarial (sic) atmosphere during an investigation...."

Thus, the paper suggests that it would be possible for the NRC to conduct such investigations in a non-adversary manner. It further implies that an adversary atmosphere would be undesirable, but it does not state why this would be so. OI does not agree with either premise.

There is an inherent degree of dynamic tension between the regulator and those who are regulated. This flows from the realization on the part of the regulated entity that the regulator has considerable power and authority, and that the exercise of this power by the regulator could result in the imposition of certain sanctions. It is not likely that a utility or its employees would lose sight of this fundamental relationship while dealing with the NRC no matter what lengths we might go to to create a climate of trust and cooperation. The NRC's relationship with the industry will remain adversary in nature if for no other reason than the industry will perceive it as such even if we do not.

SECY-85-208 states that investigations should be conducted in a non-adversary manner. As we note above, NRC regulatory actions are inherently adversary in nature. An inspection by an NRC inspector or the asking of questions during an investigation by an NRC investigator creates some tension by virtue of the role either NRC representative plays in the regulatory process. No matter what interpersonal skills the NRC representative exhibits, the person being questioned would be unlikely to forget that his or her response could result in personal or corporate sanctions of some nature.

The thrust of SECY-85-208 is to attach unwarranted importance to licensee cooperation. Although voluntary cooperation by a utility or other regulated entity certainly is desirable, it is not essential. Cooperation should be considered a reasonable expectation by the NRC, not a prerequisite for effective regulation. An NRC regulated entity has an obligation to cooperate in all matters relating to NRC responsibilities to protect the public health and safety. This would be especially so regarding the gathering of information pertaining to major accidents, but is equally valid for the day to day regulation of the nuclear industry.

The objective is to conduct thorough investigations of major accidents or incidents in order to gather relevant information pertaining to the root causes of the event. Thus, NRC should undertake a process that is results oriented, i.e., would be expected to yield the information being sought, and should not subordinate this goal to a process that would be unduly sensitive to the preferences of the utility whose accident was being investigated. As in other NRC investigations, the Incident Investigation Team (IIT) should concentrate on collecting all evidence--testimonial, documentary, and physical--germane to the matter being investigated. At the same time, it is especially important that NRC not inadvertently suggest to the public or the industry that it believes that a licensee would withhold vital information from the NRC because it was displeased with the way NRC was conducting its investigation.

By the same token, it is not clear that such sensitivity by the NRC would result in any reciprocity on the part of the utility. Although the IIT established to investigate the Davis-Besse loss of feedwater transient attempted to establish a non-adversary atmosphere, the licensee still objected to the way in which the investigation was being conducted and introduced licensee attorneys into the interview process. Even the absence of OI investigators from the IIT did not dissuade the licensee from reacting in an adversary or self-protective manner.

OI takes exception to one other provision in SECY-85-208. The Staff would assign the IIT authority to pre-empt parallel investigations by other organizations if they "interfere with the IIT investigation".(Page 3, #11). We assume that this would include pre-emption of OI or OIA investigations as well. Perhaps it could also mean those by the FBI in those instances where the incidents involve suspected sabotage, or by other agencies at the state, federal, or local level. It is unclear how the NRC could do this with regard to outside agencies and not readily apparent why it would wish to do so. Moreover, not only do we have some problem regarding the implications for the independence of OI, it certainly is unclear as to (1) how one would interfere with an IIT investigation, and (2) who would decide when such interference takes place. We respectfully suggest that this concept be carefully scrutinized by the Commission.

In summary, clearly the NRC needs a coherent program in place for the investigation of major accidents. Our concern, however, is that SECY-85-208 would not ensure the adequate investigation of accidents or events. Further, it is

our belief that the tenor of the paper may create the impression that the NRC is backing away from the exercise of its considerable authority in the regulation of the nuclear industry. It would be far better for the NRC to establish an incident investigation program that would emphasize its determination to use all available tools to investigate and document the circumstances surrounding such incidents.

Lastly, we suggest that implementation of the NRC Incident Investigation Program be held in abeyance pending completion of the current Davis-Besse investigation. It is reasonable to assume that the experience gained during that effort may prove to be quite valuable in development of this program.

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