

POLICY ISSUE (Information)

October 31, 1996

SECY-96-227

FOR: The Commissioners

FROM: James M. Taylor
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 Commissioners of the results of the staff's ongoing evaluation of 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

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feedback, along with any other feedback obtained, such as from letters and limited scope surveys, to determine whether broader (generic) actions are necessary. 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 by NRC individuals 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) 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 and the Institute of Nuclear Power Operations.

This paper reports on feedback received from licensees from September 1, 1995, through August 31, 1996.

DISCUSSION:

From September 1, 1995, through August 31, 1996, the staff received feedback from licensees on 391 specific issues from 52 reactor sites. Of the comments received, 42 percent were favorable and 35 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 five main categories: communications between the NRC staff and licensees, inspector professionalism, SALP, resource impact, and NRC's actions in response to Millstone. 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 25 percent of all comments received related to the effectiveness of communications between the NRC staff and licensees. Almost three-quarters of the licensees' comments on communications with the NRC staff were favorable, indicating that issues were communicated clearly and working relationships were effective. Comments particularly noted effectiveness of communication with resident inspectors. Several licensees indicated that inspector communication skills had improved greatly and were effective. Conversely, a few reported isolated instances of communication problems.

Comments focused on the following four areas:

- Reorganization of Regional Offices. The overwhelming majority of comments on the transition of plants from Regions II, III, and V to Region IV was positive. This reorganization represents a notable

accomplishment, given the large number of routine interactions between the NRC and its licensees. One licensee commented that communication with Region II branch chiefs was more frequent than with Region IV branch chiefs.

- Isolated Communication Problems. Several licensees complained about communication problems that involved NRC changing their position on technical issues, and/or not defining their concerns in a clear and timely manner. For, example, one licensee stated that NRR staff was not clear as to its specific concern pertaining to an auxiliary feedwater line break issue. Another licensee stated that NRR staff did not express initially the extent of its concern regarding the licensee's use of foam sealant in the service water system.
- Differences Between the Exit Meeting and the Inspection Report. Several licensees commented that inspection reports still portray a more critical assessment of licensee performance than that expressed at the inspection exit meeting.
- Effectiveness of Dual Communication Paths With Walnut Creek Field Office (WCFO) and Region IV. Two licensees complained that parallel communication with WCFO and Region IV was an impediment to communications and sometimes resulted in inconsistent "messages."

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, the large number of favorable comments, and relatively few unfavorable comments. The isolated communication problems discussed above were reviewed on a case-by-case basis by the appropriate NRC managers.

The significant revision to Inspection Manual Chapter (IMC) 0610, "Inspection Reports," in February 1996 and subsequent training at the regional offices are expected to result in continued improvement in this area. IMC 0610 revised inspection report guidance to facilitate improved integration of report findings and reduce confusion on the significance of inspection observations.

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. INSPECTOR PROFESSIONALISM

Feedback

Approximately a third of all feedback received related to inspector

professionalism. 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 85 percent rated the effectiveness of the resident inspection staff favorably.

Several licensees stated that region-based or Headquarters inspectors performing inspections, including integrated performance assessment process (IPAP) team inspections, maintenance rule inspections, and safeguards inspections, were professional, thorough, and objective and offered valuable insights to licensee management. Others stated that NRC inspections were of good quality, raised valid issues, and correctly characterized licensee's performance. Several licensees commented that they preferred performance-based inspections compared with traditional programmatic inspections; however, they feared NRC was moving toward compliance-based inspection in response to Millstone.

However, some (approximately 25 percent) of the comments in this area raised a concern regarding what they believed was unprofessional behavior on the part of a small number of inspectors. Examples include the perception that an inspector was too aggressive, that the threshold of security requirements was too variable, and disagreement with an inspector's characterization of an issue.

Evaluation and Action

Specific concerns identified by licensees were addressed by regional management. The staff continues to emphasize the importance of professionalism 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 resident counterpart meetings, workshops, and training courses. The professionalism and conduct of inspectors will continue to receive attention.

3. SALP

Feedback

Several licensees commented on NRC's systematic assessment of licensee performance (SALP) process. Nine of ten comments complimented the SALP process. The SALP process and reports were characterized as fair and accurate. However, one licensee perceived that inconsistencies exist in the SALP process within a region.

Evaluation and Action

On August 1, 1995, a Federal Register notice was published soliciting comments on the SALP program as changed in May 1993. Results or feedback was provided to the Commission on January 5, 1996. This feedback indicated that the changes resulted in a better SALP program

with findings clearly focused and clearly understood by licensees. The SALP observation program, where board members visit other regions to observe SALP implementation, will facilitate continued gains in consistency between regions.

4. RESOURCE IMPACT

Feedback

Several licensees stated that their resources were impacted by the scheduling of several inspections in a short period of time, especially if one of the inspections was an IPAP. A few licensees stated that there were too many inspections during the 6 months before the end of the SALP period. The IPAP prompted 14 regulatory impact comments, all from facilities at which an IPAP inspection had been completed. The comments indicate that although the IPAP inspection is a thorough inspection that produces an accurate assessment of licensee performance, the process involves considerable licensee resources.

Evaluation and Action

A typical inspection schedule increases the number of inspections during the 6 months before the end of the SALP period to provide for an accurate assessment of licensee performance for the SALP report. The NRC staff will continue to forward a schedule of upcoming inspections to licensees as an attachment to its periodic plant performance reviews.

The IPAP was implemented last year as one of several initiatives to improve NRC's integration of performance insights. NRR is currently assessing the effectiveness of IPAP inspections to identify any needed improvements to the process on the basis of a year of experience and is planning to significantly reduce the frequency of IPAP inspections. The regulatory impact comments pertaining to IPAP effectiveness will be considered during the 1-year assessment of the IPAP.

5. NRC'S RESPONSE TO MILLSTONE

Feedback

The NRC's response to Millstone received a considerable number of unfavorable comments. In general, the industry perceived the NRC as shifting its inspection priorities to emphasize licensee compliance with the final safety analysis report (FSAR). In addition, several licensees expressed confusion regarding the scope of the current licensing basis and NRC's expectations for evaluations associated with 10 CFR 50.59. A few licensees feared that industry resources would be expended in verifying and updating the accuracy of the FSAR in lieu of initiatives to improve plant safety.

Evaluation and Action

In response to the issues brought to light by Millstone, the NRC initiated reviews in several areas to identify lessons learned. To evaluate licensee implementation of FSARs, the NRC placed special focus on reviewing the FSAR during routine inspections. This represented a shift in emphasis that was likely the source of the feedback. In light of problems identified, the staff has extended interim inspection guidance indefinitely, pending a permanent change to the inspection manual.

A lessons learned task group was established to integrate the findings from the various lessons learned reviews and to develop long-term recommendations for changes to existing programs and policies. The task group completed Part 1 of the report describing the group's review, findings, and recommendations. Part 2 will discuss policy issues for Commission consideration, including such issues as what should be the licensing basis for operating plants. Final NRC decisions and necessary policy changes should address licensees concerns in this area.

6. REPORT OF INAPPROPRIATE NRC ACTIONS TO OEDO OR REGIONAL ADMINISTRATORS

Four cases of inappropriate behavior were reported to a regional office during this reporting period. One case was referred to OIG and involved a dating relationship between an inspector and a licensee employee. OIG conducted an investigation and then referred the matter back to the region to handle as a professional performance issue. A second case, involved inappropriate professional communications and was the subject of an OIG consultation, but OIG returned the case to the region to resolve as a professional performance issue. The remaining cases were not referred to OIG. These cases dealt with a minor professional performance issue and inappropriate remarks by an inspector. No other reports of inappropriate behavior were received by the regions or OEDO.

7. OTHER COMMENTS

In addition to soliciting feedback from licensees during site visits, the staff seeks out opportunities to obtain further feedback on NRC programs and processes. Examples include a letter received from a participant of an open enforcement conference and breakout sessions conducted during the Regulatory Information Conference. A discussion of the feedback received follows.

In a public predecisional enforcement conference, the observations of an attorney concerning a whistleblower were covered in detail. The observer relates how insufficient communication before the open enforcement conference affected the licensee and describes the effect of opening enforcement conferences to the public in a letter dated August 26, 1996.

This particular conference was unusual in that special arrangements were afforded the complainants and their legal counsel that was not communicated to the licensee until its representatives arrived at the NRC regional office for the conference. This lack of communication resulted in some confusion on the part of the licensee and forced some licensee personnel who were unable to change travel plans to miss a meeting following the conference.

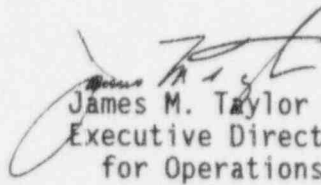
The commenter contends that open enforcement conferences affect the substance of the discussion as both licensees and the NRC must take into account that there are other audiences. As a result, information that is already well understood by the NRC must be explained for the benefit of the public, or the presentation must be shortened to avoid topics or depths of discussion that are difficult to explain briefly. Also, the information can easily be taken out of context or may be perceived to be more detrimental in the public arena than the escalated violation and civil penalty. The commenter pointed out that NRC standards for completeness and accuracy only apply to licensees and that even baseless charges must be addressed because they may be given some level of credence by the NRC. Allowing the public to listen by telephone will exacerbate these difficulties because of the likelihood of press interest. The conferences will become media events rather than open fact-gathering processes.

The commenter asserts that licensees should be advised of the enforcement meeting process in advance so that they can prepare properly, make informed travel arrangements, and allow the licensee to express its views on the process contemplated by the NRC. The commenter points out that a licensee may waive the option of an enforcement conference if it determines that the risks of the public meeting are too great to justify participation. Licensees are not able to make an informed decision about whether and how to participate if they are not informed of the enforcement conference process.

The Office of Enforcement (OE) has completed a review of the results of the pilot program on open enforcement conferences and is developing recommendations for the Commission. In its review, OE considered the merits of the letter previously discussed, along with other feedback in the broader context of improving the enforcement process. In addition, OE is in the process of answering the August 26 letter on whistleblower participation in open enforcement conferences.

Topics of discussion at the NRC Regulatory Information Conference in April 1996 included inspection program performance-based changes, enforcement policy: experience to date, the performance review process, self-assessment, and the integrated performance assessment program. Breakout sessions were held to obtain feedback from meeting attendees on these and other topics.

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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