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RECORD #244

TITLE: Enforcement Discretion by NRC Concerning Violations
that are Self-Identifying



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
475 ALLENDALE ROAD
KING OF PRUSSIA, PENNSYLVANIA 19406

OCT 24 1990

Docket No. 50-309

Mr. Charles D. Frizzle, President
Maine Yankee Atomic Power Company
83 Edison Drive
Augusta, Maine 04336

Dear Mr. Frizzle:

On July 13, 1990, I sent you a letter and Notice of Violation for violations of NRC requirements associated with an event at the Maine Yankee facility involving a lack of adequate radiological control of work activities at your facility. The violations and the associated event, which included elevated dose rates and unplanned radiation exposure, had been discussed during an enforcement conference on June 27, 1990.

At the enforcement conference, you contended that the NRC should exercise enforcement discretion and not issue a Notice of Violation because, in part, the violations were licensee-identified. In my July 13, 1990 letter transmitting the notice, I stated that the exercise of enforcement discretion in this case was not appropriate since "the violations were clearly self-identifying in that the workers, who had received the unplanned, unmonitored radiation exposures, personally informed radiological controls personnel that they were receiving radiation exposure that was not being properly monitored by their dosimetry."

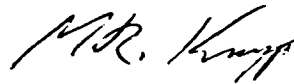
While the NRC continues to maintain that the exercise of enforcement discretion was not appropriate in this case, the explanation provided in my July 13, 1990 letter was incorrect. Contrary to my letter of July 13, the NRC does consider the problems to be licensee-identified. The NRC wishes to encourage licensee identification and correction of problems to the maximum extent possible, whether through formal audit and oversight programs or other forms of identification, including identification of problems which may be considered "self-identifying".

In this case, the problems were identified by Maine Yankee through your representatives who were contractor personnel. Since they notified radiological controls personnel of their concerns about higher than expected radiation doses in their work area, the violations were licensee-identified.

With regard to the use of enforcement discretion by the NRC, the exercise of such discretion requires that the problems be both licensee-identified and corrected in a timely way. In this case, timely action was not taken by the radiological controls personnel, and it was not until later that the elevated dose rates and unplanned radiation exposures were discovered. Therefore, on this basis, the exercise of enforcement discretion is not appropriate. We do note that you later took prompt and vigorous corrective actions (as recognized in our July 13 letter) following your confirmation of the unplanned, unmonitored radiation exposures of the workers.

I trust that the above discussion clearly describes the NRC position on licensee-identified violations and our reasons for not exercising enforcement discretion in this case. I regret any difficulties which my July 13 letter may have caused Maine Yankee Atomic Power Company.

Sincerely,



Malcolm R. Knapp
Director, Division of Radiation Safety and
Safeguards

cc:

J. Randazza, Assistant Chairman of the Board
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SEP 2 5 1990

NOTE TO: ✓ Dan Holody, RI
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Cindy Pederson, RIII
Gary Sanborn, RIV
Al Johnson, RV

SUBJECT: INSIDE NRC ARTICLE OF JULY 30, 1990

After publication of a July 30, 1990 "Inside NRC" article on an enforcement action taken against Maine Yankee a number of regional personnel called this Office to question the article's characterization of the NRC staff's position on worker identified problems. As stated by the enclosed article, the NRC staff does not consider worker identified problems as "licensee identified."

Worker identification of a violation has been and continues to be licensee identification. We want to encourage identification of violations whether by a worker just asking questions or by a worker who is assigned the responsibility. In either case, the public benefits by having the violation identified. In this particular case, the workers, early on in the event identified to radiological controls personnel that they were concerned about higher than expected radiation dose rates in their work area. No action was taken by those notified and it was not until later that elevated dose rates and unplanned radiation exposures were discovered. The NRC staff in its letter to the licensee was attempting to explain why this violation, which could have been non-cited was cited. The reason for that was simply to emphasize the fact that had the workers' earlier concern about a potential problem not gone unheeded the unplanned exposures would have been avoided. The language of our letter was not concise enough and resulted in the misleading article. In addition to putting out this note to you to clarify the position within the NRC staff, I understand that a letter will be sent to "Inside NRC" reiterating our position that worker identification is, in fact, licensee identification.

Original Signed By
James Lieberman
Jim Lieberman, OE

Enclosure: As Stated

cc: J. Cunningham, NRR
M. Knapp, RI

bcc: J. Sniezek, EDO
H. Thompson, EDO

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utilities at \$9-million per unit. Additionally, NRC estimated plant workers would be exposed to a several hundred person-rem dose to install the equipment.

In a commission information paper (Secy 90-232), NRC staff said it is concerned that without PORVs, these C-E plants won't have any diverse means to remove decay heat directly from the primary system using the feed-and-bleed method.

Staff also said that safety could be enhanced significantly if the utilities installed these systems because plant operators would have additional ability to stop high pressure melt scenarios that could lead to early containment failure from direct containment heating phenomena or tube failures in the steam generators.

But despite these concerns, staff said, its analysis indicated that installing PORVs did not satisfy backfit rule tests.

NRC CITES MAINE YANKEE FOR WEAKNESSES IN RADIATION PROTECTION

NRC has cited Maine Yankee Atomic Power Co. for four violations involving radiological work activities at Maine Yankee after workers were inadvertently exposed to radiation levels of 550 to about 1,600 millirem in May.

"Circumstances surrounding this event demonstrate weaknesses in your planning, oversight, and control of radiological work," said Malcolm Knapp, NRC director of the division of radiation safety and safeguards, in a July 13 letter to Maine Yankee President Charles Frizzle. "A potential for the workers...to receive whole body occupational radiation exposures in excess of regulatory limits was also identified."

Maine Yankee inadequately surveyed and evaluated an area for radioactivity where three contractors were working on a valve. The workers laid across a grating, not knowing that there were radiation levels of up to 180 millirem/hour, NRC said. Consequently, they "received unplanned, unmonitored radiation exposures ranging from about 550 millirem to about 1,600 millirem," according to the violation notice.

Though an ALARA technician was told of the workers' exposure levels, the workers were allowed to return to work on the valve. They were not, however, overexposed, falling within acceptable radiation exposure limits of 3 rem per quarter, said Walter Pasciak, NRC's Region I chief of the facilities radiation protection section.

Evidently, the radiation control people did not realize that the contract workers would be working over the grating, and consequently they did not survey the area for radioactivity, Pasciak said. The workers were also unaware that there was contaminated material in the trench under the grating, he said.

Maine Yankee spokesman Duggan Kimball said the scope of work on the valve changed to include not only adjusting the valve's packing, which is above the piping, but also disassembling the valve and getting at the valve seat, which is below.

NRC cited the utility for a second violation because the workers lacked proper doseimeters, and radiation surveillance was not performed hourly as required. "The workers also were not adequately informed of 'precautions or procedures to minimize their exposure,' such as not lying over the grating.

Finally, the agency cited Maine Yankee because an operator did not wear a respirator while draining a valve during an outage. The utility required a respirator in that area, though one is not necessarily needed, said Pasciak. Utility staffers could revise their radiation work permits to avoid future violations of this sort, he said. All the violations were a severity level IV (with I being the most severe and V the least), and NRC did not fine the utility.

NRC is concerned about implementation of the utility's corrective actions. "It is important that certain of the long-term actions be implemented promptly to ensure that near-term radiological work is adequately planned and controlled," Knapp said in his letter. "We understand that, among other items, a standard checklist will be performed prior to issuing a radiation work permit to authorize radiological work," he said.

Maine Yankee is still evaluating what corrective actions will be taken, Kimball said.

NRC also criticized Maine Yankee for insisting that the violations were "licensee identified" instead of "self-identified." The violations were clearly identified by the workers, which makes them self-identified, according to the July 13 letter. Licensee identified would have meant that the radiation protection personnel discovered the problem first. "Your persistence in maintaining this position, when the facts clearly indicate otherwise, gives rise to our concern that you do not fully comprehend the important distinction between licensee-identified and self-identified violations," Knapp said. Maine Yankee was not prepared to comment on this and is studying the issue very carefully, said Kimball.

—Jennifer Nelson, New York