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Description of document:	Closing documents for Six (6) Nuclear Regulatory Commission (NRC) Inspector General (OIG) closed investigations, 2018-2019
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RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

NRC

NRC-2020-000196

RESPONSE NUMBER

1

RESPONSE
TYPE
☐

INTERIM

☒

FINAL

REQUESTER:

DATE:

04/10/2020

DESCRIPTION OF REQUESTED RECORDS:

A copy of the final report, Report of investigation and closing memo, as applicable, for each of the following NRC Office of the Inspector General (OIG) closed investigations: C-16-016, C-16-021, C-17-013, C-17-025, C-17-028, C-18-003, C-18-010, C-18-012, and C-19-012

PART I. -- INFORMATION RELEASED

- ☐ The NRC has made some, or all, of the requested records publicly available through one or more of the following means: (1) <https://www.nrc.gov>; (2) public ADAMS, <https://www.nrc.gov/reading-rm/adams.html>; (3) microfiche available in the NRC Public Document Room; or FOIA Online, <https://foiaonline.gov/foiaonline/action/public/home>.
- ☒ Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (See Part I.D -- Comments) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request.
- ☒ See Part I.D -- Comments.

PART I.A -- FEES

AMOUNT

\$0.00

- ☐ You will be billed by NRC for the amount indicated.
- ☐ You will receive a refund for the amount indicated.
- ☐ Fees waived.

- ☒ Since the minimum fee threshold was not met, you will not be charged fees.
- ☐ Due to our delayed response, you will not be charged search and/or duplication fees that would otherwise be applicable to your request.

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- ☐ We did not locate any agency records responsive to your request. *Note:* Agencies may treat three discrete categories of law enforcement and national security records as not subject to the FOIA ("exclusions"). See 5 U.S.C. 552(c). This is a standard notification given to all requesters; it should not be taken to mean that any excluded records do, or do not, exist.
- ☒ We have withheld certain information pursuant to the FOIA exemptions described, and for the reasons stated, in Part II.
- ☐ Because this is an interim response to your request, you may not appeal at this time. We will notify you of your right to appeal any of the responses we have issued in response to your request when we issue our final determination.
- ☒ You may appeal this final determination within 90 calendar days of the date of this response. If you submit an appeal by mail, address it to the FOIA Officer, at U.S. Nuclear Regulatory Commission, Mail Stop T-6 A60M, Washington, D.C. 20555-0001. You may submit an appeal by e-mail to FOIA.resource@nrc.gov. You may fax an appeal to (301) 415-5130. Please be sure to include on your submission that it is a "FOIA Appeal." Only a pre-registered user may file an appeal through FOIA Online, <https://foiaonline.gov/foiaonline/action/public/home>. A user who has not registered an account prior to filing the initial FOIA request may still submit their appeal by one of the above mentioned options.

PART I.C -- REFERENCES AND POINTS OF CONTACT

You have the right to seek assistance from the NRC's FOIA Public Liaison by submitting your inquiry at <https://www.nrc.gov/reading-rm/foia/contact-foia.html>, or by calling the FOIA Public Liaison at (301) 415-1276.

If we have denied your request, you have the right to seek dispute resolution services from the NRC's Public Liaison or the Office of Government Information Services (OGIS). To seek dispute resolution services from OGIS, you may e-mail OGIS at ogis@nara.gov, send a fax to (202) 741-5789, or send a letter to: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. For additional information about OGIS, please visit the OGIS website at <https://www.archives.gov/ogis>.

**RESPONSE TO FREEDOM OF
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PART I.D -- COMMENTS

According to the description of records as described, the Office of the Inspector General has provided the responsive records as retained by them. Also, three of the case, C-16-021, C-17-013 and C18-010, remain open, and the responsive records are being withheld in its entirety.

Signature - Assistant Inspector General for Investigations or Designee

Rocco J. Pierri

Digitally signed by Rocco J. Pierri

Date: 2020.04.10 14:03:27 -04'00'

2020-000196

DATE:

04/10/2020

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) REQUEST****PART II.A -- APPLICABLE EXEMPTIONS**

Records subject to the request are being withheld in their entirety or in part under the FOIA exemption(s) as indicated below (5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to an Executive Order protecting national security information.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and practices of NRC.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by the statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C. 4702(b), which prohibits the disclosure of contractor proposals, except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Other:
- ☐ Exemption 4: The withheld information is a trade secret or confidential commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information is considered to be another type of confidential business (proprietary) information.
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Exemption 5: The withheld information consists of interagency or intraagency records that are normally privileged in civil litigation.
- ☐ Deliberative process privilege.
- ☐ Attorney work product privilege.
- ☐ Attorney-client privilege.
- ☐ Exemption 6: The withheld information from a personnel, medical, or similar file, is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☒ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☒ (A) Disclosure could reasonably be expected to interfere with an open enforcement proceeding.
- ☒ (C) Disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☒ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ Other

PART II.B -- DENYING OFFICIAL

In accordance with 10 CFR 9.25(g)(1) of the U.S. Nuclear Regulatory Commission regulations, the official listed below has made the determination to withhold certain information, described below, responsive to your request.

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL
Rocco Pierri	Assistant Inspector General for Investigations	PII; Open investigation information	Inspector General

OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION




OFFICE OF THE
INSPECTOR GENERAL

**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

September 14, 2018

MEMORANDUM TO:

Concur: Case Closed 
Rocco J. Pierri
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT:

CONCERNS REGARDING RELEASE OF RADIOACTIVE
MATERIAL INTO THE GROUNDWATER AT INDIAN POINT
NUCLEAR GENERATING UNITS (OIG CASE NO. 16-016)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), self-initiated this investigation in response to a letter from U.S. Senator Kirsten Gillibrand to the NRC Chairman expressing concern over the 2016 accidental release of radioactive material into the groundwater at the Indian Point Energy Center (IPEC) in Buchanan, NY. Senator Gillibrand characterized this as the "latest incident in a troubling pattern of unplanned shutdowns, transformer problems, and releases of radioactive materials into the groundwater at these aging plants." The letter expressed concern that IPEC personnel were aware of related equipment problems as early as 2014, but failed to adequately repair or replace the equipment. Senator Gillibrand questioned whether additional NRC oversight was warranted for this aging plant, whether NRC's resident inspectors at IPEC were aware of the malfunctioning equipment that caused the recent leak, whether it was flagged as a potential issue prior to the leak, and why the problem was not repaired in 2014.

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OIG sought to assess whether the accidental releases of radioactive material into the groundwater, since 2014: (1) impacted public health and safety and (2) whether appropriate actions were taken in accordance with NRC's regulatory oversight.

Findings

OIG found the releases of radioactive material in the groundwater were within regulatory public health and safety limits. Additionally, OIG found that NRC has consistently provided both routine and supplemental inspection oversight, with emphasis during outages, as a result of these events (leaks). Even though the source of the leaks were within the Radioactive (RAD) waste system, which is not considered safety-related, NRC has issued three regulatory actions of which one pertains to future concerns with decommissioning. Specifically, the regulatory actions were: (1) a Non-Cited Violation (NCV) issued in November 2015, (2) an Unresolved Item (URI) issued in May 2016, and (3) a Notice of Violation (NOV) issued in January 2017.

Basis for Findings

Background

IPEC, located in Buchanan, New York, has provided energy to the New York area for approximately 50 years. The site currently has two operating pressurized water reactors (Units 2 and 3). Unit 1 was shut down in 1974 and is undergoing decommissioning. Units 2 and 3 remain operational with scheduled decommissioning in the 2020-2021 timeframe. IPEC's oversight is provided by the NRC Region I (RI) office located in King of Prussia, Pennsylvania.

Since 2005, IPEC has had a history of groundwater contamination from unintended releases of radioactive material. This issue continues today. The radioactive material, or isotope, that is typically identified is tritium. Tritium is a mildly radioactive type of hydrogen found in water that is released from nuclear power plants under controlled, monitored conditions. The NRC sets mandated standards for radioactive material that protect public health and safety.

Under its long-term monitoring plan, IPEC quarterly tests water samples from approximately 60 monitoring wells located throughout the plant site to determine radioactivity levels in the ground water. If the test results exceed the standards, IPEC has a regulatory process to follow that includes informing the NRC.

OIG learned that IPEC has identified several instances of elevated levels of radioactivity in the ground water, especially during the approximate biennial outage periods, when the plant is shut-down for maintenance. These instances began in 2010 and have occurred every 2 years since then. According to the NRC, to date, the ground water contamination events and elevated levels of radioactive material have been within

regulatory limits. The NRC has confirmed this finding by reviewing the bounding analyses performed by the licensee to ensure there is no safety impact to the public. Bounding analysis, as described in Regulatory Guide 1.21, is a mathematical evaluation where compliance can be demonstrated using conservative assumptions.

Review of Documents

In response to Senator Gillibrand's concerns about leakage, between 2014 and 2016, OIG identified and reviewed six NRC integrated inspection reports issued from August 2014 through January 2017 documenting NRC's oversight of four leaks, with separate sources, that occurred within this timeframe.

The first leak was identified during a March 2014 refueling outage when IPEC noted an increase in tritium concentrations in groundwater monitoring wells near the Unit 2 spent fuel pool. The source of the leak was a blocked flow drain in the RAD waste system that overflowed to the groundwater. This floor drain was receiving contaminated reactor coolant from the Unit 2 containment spray header system. The licensee identified an inappropriate outage practice as well as began extracting groundwater at a monitoring well to lower the localized concentration of tritium. On November 15, 2015, NRC issued a Green NCV of Title 10 of the Code of Federal Regulations (10 CFR) 20.1406(c), in that Entergy did not conduct operations to minimize the introduction of residual radioactivity into the site. IPEC identified a second leak of tritium into the groundwater based on monitoring well results obtain in February 2015. Although the source of this leak was not identified, the NRC did include this leak with the violation for the March 2014 previously discussed.

In January 2016, IPEC identified a third leak while preparing for the Unit 2 refueling outage. This leak was attributed to an inoperable RAD waste pump and a temporary drain path arrangement that was not fully evaluated to prevent potential groundwater contamination spills. Approximately 6 months later, in the June/July timeframe, and during the investigation of the source of the third leak, IPEC discovered a fourth leak. The source of this fourth leak was an obstructed RAD waste floor drain which spilled to the subfloor and contaminated the onsite groundwater. NRC enforced both the third and fourth leak by issuing IPEC an NOV of 10 CFR 20.1406 (c), "Minimization of Contamination," in accordance with their enforcement policy for IPEC's failure to conduct operations to minimize the introduction of residual radioactivity into the subsurface of the site (groundwater).

As of the reporting of this investigation, IPEC's NOV remains open and OIG learned that a fifth leak of ground water contamination was found in 2018.

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Region I Staff Interviews

(b)(7)(C) at IPEC, told OIG (b)(7)(C) approximately (b)(7)(C) when he was notified by an IPEC staff member in January 2016 that they found indications of radioactivity in a ground water sample obtained from one of the monitoring wells. (b)(7)(C) recognized this was a significant issue since he was familiar with IPEC's history of radioactive leaks into the groundwater. (b)(7)(C) told OIG that he immediately contacted his RI, Division of Reactor Projects (b)(7)(C). As prescribed in NRC Reactor Oversight Process Manual Chapter 0309, (b)(7)(C) and RI staff conducted a review of the tritium event to determine if a special inspection was warranted. Although, the criteria for a special inspection was not met, RI management agreed that a RI Special Inspector who performs Radiological (RAD) waste inspections was needed on site. Therefore, (b)(7)(C) Division of Reactor Safety, RI, was tasked to provide NRC oversight of this leak. Within a few days, (b)(7)(C) was onsite and he met with several IPEC staff members and (b)(7)(C). They all conducted a walk down of the area where IPEC believed the leak occurred. (b)(7)(C) reviewed condition reports and told OIG that he could not identify the source of the leak. Within a short period of time, IPEC formed a team to investigate the leak. Also during this time, the licensee performed a bounding analysis to ensure the radioactive material was within regulatory requirements and there was no danger to the public and the environment. OIG learned that (b)(7)(C) verified this bounding analysis.

(b)(7)(C) said while the IPEC team investigated the source of the leak, the NRC remained actively involved too. Specifically, (b)(7)(C) followed the leak investigation routinely by attending licensee meetings and briefings, reviewing the well water sample results posted electronically by IPEC, and tracking (b)(7)(C) inspection actions. (b)(7)(C) completed various RAD inspections at IPEC. Also, according to (b)(7)(C) this event was "kept....on the forefront" and tracked on the daily morning meeting board at Region I. These meetings included HQ's staff and Regional Division (b)(7)(C).

(b)(7)(C) told OIG that in July 2016, he was informed by IPEC of a new positive reading of radioactivity in a sampling well. This fifth leak had different radioactive material, which was indicative of another leak source. (b)(7)(C) immediately contacted RI management and discussed with the licensee the measured readings. Shortly thereafter, when (b)(7)(C) was performing scheduled routine inspections, IPEC personnel told him that the source of the two leaks were both within the RAD waste system. Specifically, IPEC identified two separate RAD waste drainage pathways that were blocked, which resulted in the groundwater contamination.

(b)(7)(C) told OIG that by September 2016, he felt strongly the NRC needed to do more than analyze the contamination since, "It's (tritium) gone in the ground at least four times in the last 2 years." Thereafter, (b)(7)(C) prepared the NOV. (b)(7)(C) said, "This is (C)"

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now [a] commitment to the NRC.” OIG learned that IPEC agreed to perform corrective actions such as harden the facility, implement preventive maintenance, prevent groundwater, protect and conduct, this kind of thing. On January 17, 2017, the NRC issued the NOV of 10 CFR 20.1406 (c), “Minimization of Contamination,” in accordance with its enforcement policy, for IPEC’s failure to conduct operations to minimize the introduction of residual radioactivity into the subsurface of the site (groundwater).

(b)(7)(C) described to OIG the future impact of these unintended radioactive leaks. He believed, based on his experience during RAD waste inspections, that plants are going to require extremely extensive and costly decommissioning. Since RAD waste systems are not safety-related, and hence have not been maintained to the same level, (b)(7)(C) called the site RAD waste condition “egregious.”

To provide further support of an NOV, RI (b)(7)(C) told OIG that it did not appear that the licensee was taking actions to prevent the recurrence of these events, so they decided to send a more appropriate message that would require higher management attention at the site and would require a written response. Additionally, with regard to safety related equipment and NRC’s regulatory oversight (b)(7)(C) said if the safety related equipment contributed to groundwater contamination, they were going to inspect it and the NRC was not constrained by a term like safety related.

By late 2017, IPEC was preparing for its 2018 outage. (b)(7)(C) informed OIG that the NRC proactively determined what ROP procedures they would use to inspect the RAD waste system which is not safety-related equipment and would normally be subject to inspection under HP procedures. The NRC decided to use: (1) IP-71111.04 Equipment Alignment and (2) IP-71111.18 Plant Modifications. Additionally, NRC resident inspectors periodically walked down the cross-connected systems of RAD waste and safety-components to ensure the equipment was operating safely and not leaking. Although the NRC had no findings while implementing these inspections, (b)(7)(C) told OIG that IPEC identified a new groundwater contamination leak in the June/July 2018 timeframe. As of the date of this investigation, IPEC is investigating the source of this new leak.

OIG did not develop evidence that the NRC staff did not provide oversight of the tritium leaks and groundwater contaminations at IPEC. Therefore, it is recommended that this case be closed to the files of this office.

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**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

March 7, 2019

MEMORANDUM TO: Concur: Case Closed
Rocco J. Pierri
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader (b)(7)(C)

FROM:

(b)(7)(C)
Senior Special Agent, (b)(7)(C)

SUBJECT: UNAUTHORIZED RELEASE OF AN NRC DIFFERING
PROFESSIONAL OPINION TO THE PUBLIC INTEREST
GROUP (OIG CASE NO. 17-025)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation in response to an allegation received from (b)(7)(C) (b)(7)(C) Office of Enforcement (OE), NRC, regarding a public release of Differing Professional Opinion (DPO) packages No. (b)(7)(C) while both agency reviews were in process.

The statutes and rules pertinent to this case are 18 USC § 1905, Disclosure of Confidential Information, and NRC Management Directive (MD) 3.4, Release of Information to the Public.

Findings

OIG found that an unknown source mailed to an external stakeholder a package that included redacted draft copies of dissenting views leading to the initiation of DPOs

(b)(7)(C) and a (b)(7)(C)
(b)(7)(C)

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(b)(7)(C) OIG found that none of the items released constituted a violation of law or NRC policy; the draft copies of dissenting views related to the DPOs did not have assigned docket numbers or display personally identifiable information (PII), and the 2.206 petition was already publicly available.¹ According to (b)(7)(C) NRC's Differing Professional Views Program, documented dissents do not become DPOs until the dissenting staff member officially files his/her differing view using NRC Form 680, the DPO is determined to meet the acceptance criteria, and the accepted DPO package is assigned an NRC case number.

Basis for Findings

Background/Chronology

A review of documents related to Differing Professional Opinions (DPOs) (b)(7)(C) and (b)(7)(C) as well as (b)(7)(C) revealed:

(b)(7)(C)

(b)(7)(C)

In response to the above, (b)(7)(C)

(b)(7)(C) NRC, filed (b)(7)(C) dated (b)(7)(C) respectively. (b)(7)(C) challenged the NRC's decision

(b)(7)(C)

Agreeing with (b)(7)(C) challenges, (b)(7)(C) Nuclear Reactor Regulation (NRR), NRC, filed a petition under 10 CFR § 2.206,

¹ According to NRC process, the agency publishes a notice in the *Federal Register* when it receives a 2.206 petition, which is initiated by any member of the public raising potential health and safety issues pertaining to activities subject to NRC's regulatory jurisdiction, and again when the decision on the matter is issued. For more details, see <https://www.nrc.gov/about-nrc/regulatory/enforcement/petition.html>.

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dated (b)(7)(C) (b)(7)(C) The NRC announced the dismissal of his 2.206 request via official agency letter dated (b)(7)(C)

Between (b)(7)(C) (b)(7)(C) Union of Concerned Scientists (UCS), received via mail a copy of (b)(7)(C) 2.206 petition and drafts of (b)(7)(C) DPOs. The documents had redacted personally identifiable content and none of the DPOs had NRC assigned numbers.

On or about (b)(7)(C) (b)(7)(C) filed with the NRC a Freedom of Information Act (FOIA) request asking for digital copies of a DPO dated (b)(7)(C) (i.e., DPO (b)(7)(C) (b)(7)(C) further noted his inability (at the time of request) to find his requested DPO in the NRC's Agencywide Documents Access and Management System (ADAMS) albeit its NRC form 680 showed that DPO was set to be accessible to the public.

As a result of the above, (b)(7)(C) contacted OIG via email on (b)(7)(C) alleging the DPO form for DPO (b)(7)(C) appeared to have been inappropriately released to the public. (b)(7)(C) noted that since all DPO records during the process are considered part of the pre-decisional material, and the referenced DPO was still in process, it was "not appropriate for (b)(7)(C) to have a copy."

Then on (b)(7)(C) (b)(7)(C) Office of Nuclear Reactor Regulation (NRR), NRC, adjudicated both DPO processes via official NRC letter explaining to the submitter the basis of his dismissal of both DPOs.

Interview of (b)(7)(C)

(b)(7)(C) Union of Concerned Scientists (UCS), (b)(7)(C) voluntarily revealed to OIG that on or about (b)(7)(C) he was alerted by his supervisor, (b)(7)(C) UCS, of her receipt at UCS's main offices in Cambridge, MA, of a pre-stamped NRC-Region IV imprinted envelope mailed to (b)(7)(C) by an unknown source containing several documents related to (b)(7)(C). In response to (b)(7)(C) request, (b)(7)(C) sent to him via email scanned PDF copies of the documents.

(b)(7)(C) acknowledged receiving PDF copies of two DPOs and a 2.206 petition in which the respective filers (b)(7)(C) (b)(7)(C) showed that no PII was shared through his receipt of the documents by voluntarily providing to OIG copies of the (b)(7)(C)-related documents mailed to him.

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(b)(7)(C) further explained despite PII redactions found in the mailed documents, the issues articulated as part of their disclosed content allowed him to associate the 2.206 petition (a public document) to (b)(7)(C) and the DPOs to Region IV. However, it was not until the DPOs were adjudicated and publicly released in (b)(7)(C) that he discovered the identity of the DPO submitter. (b)(7)(C) maintained he did not know who had mailed the documents to him.

Interview of Differing Views Program Representative

OIG learned from (b)(7)(C) (b)(7)(C) Office of Enforcement (OE), NRC, that documented information—regardless of the medium—reflecting a staff member's dissent is considered nothing more than the dissenter's personal views of potential issues and not a DPO. (b)(7)(C) explained that documented dissents, including those captured via NRC Form 680, become DPOs only after (1) the dissenting staff member officially files his/her differing professional views using NRC Form 680 (with appended supportive material, if needed) with the DPVP/OE, (2) the reviewing DPVP official (typically the DPVP's PM) concludes that the filed dissent meets the acceptance criteria, and (3) the accepted package receives an assigned NRC case number. Once a filed dissent goes through the previous process, it then becomes an agency record.

(b)(7)(C) indicated that her understanding of the DPO process is that writings that are not part of the actual package accepted by the NRC fall outside the DPO process. As a result, if a dissenter shares his/her differing views with others, such action would be apart from the DPO process and MD 10.159.²

Interview of (b)(7)(C)

After confirming his 2.206 filing against (b)(7)(C) (b)(7)(C) recalled becoming aware of the (b)(7)(C) issue in December 2016, by way of emails related to his division's role in the event. Also as a result of his email review, he learned about the DPOs (b)(7)(C) filed for the (b)(7)(C) matter. Consequently, he asked (b)(7)(C) to share with him a copy of his DPOs.

(b)(7)(C) said that (b)(7)(C) complied with his request, but the review of both DPOs did not add anything new to his views on the (b)(7)(C) matter. (b)(7)(C) also denied any involvement in the mailing (to (b)(7)(C)) of the DPO drafts and 2.206 petition.

² OIG's review of MD 10.159 did not reveal information contradicting (b)(7)(C) conclusions.

Conclusion

Based on the facts identified in this case, as reported above, showing that the materials shared with the public did not affect the NRC' proprietary interest nor were associated to any violation of agency process or regulation, it is recommended that this case be closed to the files of this office.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

September 14, 2018

MEMORANDUM TO:

Concur: Case Closed
Rocco J. Pierri,
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT:

NRC's Failure to Apply License Renewal Rules in a
Consistent Manner (OIG CASE NO. 17-028)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted this investigation based on an allegation from representatives of the Union of Concerned Scientists (UCS) that differences between the reactor coolant system (RCS) Alloy 600 aging management programs under the renewed operating licenses at the Point Beach and Ginna nuclear power plants reflected violations of NRC regulations. Specifically, either regulation 10 CFR 50.100, "Revocation, Suspension, Modification, Amendment of Licenses and Construction Permits, Emergency Operations by the Commission" or regulation 10 CFR 50.109, "Backfitting" are being violated.

Findings

OIG did not find that the NRC is violating 10 CFR 50.100 or 10 CFR 50.109 in how it is implementing the reactor operating license renewal rule. OIG did not substantiate that differences in practices at Ginna and Point Beach constitute a violation of NRC regulations. OIG found that the Ginna and Point Beach licenses were renewed under

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the same revision of the applicable NRC requirements; and thus, the differences in the two plants' Alloy 600 aging management programs were because one plant voluntarily made non-mandatory changes while the other chose not to.

Basis for Findings

Background

The allegation asserts that the Point Beach program, which is more robust than that at Ginna, is a 10 CFR § 50.109 "Backfitting" requirement. To impose a backfit requirement necessitates a specific and documented cost-benefit review process, which UCS alleges was not done in the Point Beach license renewal process, in violation of NRC regulations. The allegation goes on to assert that if the Point Beach Alloy 600 aging management program was a backfit deemed necessary for adequate protection, then Ginna would be in violation of NRC 10 CFR § 50.100 regulation by not maintaining a similar program under its renewed operating license because such a program would also be necessary for adequate protection due to the similarities of the plants.

OIG learned that NRC does change regulatory guidance documents, not the regulations themselves, to impose additional criteria that must be satisfied in order to get a renewed license. However, internal NRC guidance for revising Regulatory Guides (RG) includes considerations for the backfit rule. If the analysis determines a new requirement is necessary, the staff identifies the updated guidance as "mandatory" and all licensees are required to oblige to the new requirement. To date, no license renewal guidance has been classified as mandatory. Regarding the two nearly identical plants, Ginna and Point Beach, which were licensed under the same revisions of NRC guidance, OIG learned that NRC renewed the Ginna operating license without an Alloy 600 aging management program but Point Beach voluntarily committed to such a program.

10 CFR § 50.109, "Backfitting," limits the ability of the NRC to impose upon licensees new requirements "which may result from a new or amended provision in the Commission's regulations or the imposition of a regulatory staff position interpreting the Commission's regulations that is either new or different from a previously applicable staff position." In simplest terms, new NRC regulatory requirements that are based on changes or revisions to applicable NRC regulations, or to NRC staff regulatory guidance documents, some NRC "NUREG" publications, and other Commission or NRC staff papers, may only be imposed retroactively on licensees under certain conditions. In most instances, before imposing the new or revised requirements, a formal regulatory cost-benefit analysis must be conducted by the NRC showing that the "substantial" increase in protection from the new requirements justifies the added operating cost to the licensee. For example, one of NRC's internal guidance documents that is non-public and is titled, "Research Office Instructions, TEC-004, Regulatory Guide Review, Development, Revision and Withdrawal Process," describes the process NRC staff

follow for updating RG. It states that unless the revised RG is classified as “mandatory,” existing licensees are not required to use the new version of the RG.

Regarding the other regulation cited by the allegor, 10 CFR § 50.100, “Revocation, suspension, modification of licenses, permits, and approvals for cause,” provides the basis for the NRC to revoke, suspend, or modify, in whole or in part, a license for any material false statement in the application or in the supplemental or other statement of fact required of the applicant.

Ginna, located in upstate New York, and Point Beach, located in Wisconsin, are plants with similar, although not identical reactor designs, and whose operating licenses were renewed in May 2004 and December 2005, respectively. Both license renewals were made pursuant to 10 CFR Part 54, which has not been changed since May 1995; so there was no issue of backfitting any changes in the Part 54 regulatory requirements associated with the license renewals. However, NUREGs 1800, “Standard Review Plan (SRP) for Review of License Renewal Applications for Nuclear Power Plants,” and 1801, “Generic Aging Lessons Learned (GALL) Report,” which are companion NRC regulatory staff guidance documents applicable to license renewal, were changed in September 2005. The two NUREGs were revised again in December 2010. OIG learned that NRC has internal guidance, which is intended for internal use and not for external distribution, for revising RGs. This guidance incorporates backfit considerations. Specifically, Research Office Instructions, TEC-004, title “Regulatory Guide Review, Development, Revision, and Withdrawal Process.”

These two NUREGs have been changed simultaneously and in a coordinated manner in part to incorporate ongoing lessons learned from operating experience in the area of aging management as applied to plants continuing in operation after license renewal, particularly with regard to the aging management of components. Particular focus was devoted to the aging management of the material Alloy 600, a nickel-steel alloy once commonly used in the nuclear industry, which was found, in a series of incidents in the 1990s and early 2000s to be particularly susceptible to certain kinds of deterioration over time in operation in nuclear power plants¹.

Review of License Renewal Documents

OIG reviewed the applicable license renewal documents, including the Ginna and Point Beach Safety Evaluation Reports (SER), Updated Final Safety Analysis Reports (UFSAR), and License Renewal Applications (LRA) and confirmed that, consistent with the allegation, there are substantial differences between the two plants’ Alloy 600 aging management programs, with Point Beach having significantly more references to Alloy

¹ See also NUREG-1823 (April 2005) “U.S. Plant Experience with Alloy 600 Cracking and Boric Acid Corrosion of Light-Water Reactor Pressure Vessel Materials.” The heavily publicized 2002 Davis-Besse issue was largely attributable to Alloy 600 deterioration under operational conditions.

600, and more procedures and inspection activities devoted to it, than Ginna. For example, in the Point Beach LRA, there are 73 references to Alloy 600, and 91 in the SER. However, OIG also found 16 different references to, and requirements related to, Alloy 600 aging management issues in the Ginna SER and 15 such references in the Ginna LRA. The Ginna documentation also indicated that, "The only Alloy 600 and Alloy 82/182 materials in the RCS at Ginna are located in the reactor vessel and the replacement steam generators." Thus, the differences between the two plants' license renewal documentation regarding Alloy 600 are not as significant as characterized in the allegation, which asserted that Ginna's documentation was silent, or nearly silent, on the topic. It was also noted that Ginna had replaced a significant portion of its Alloy 600 components, such as the reactor pressure vessel head, with more advanced materials prior to its license renewal.²

In addition, OIG learned, through review of the licensing documentation for both plants and the official NRC timelines for these renewals, that while the final NRC approval for Point Beach license renewal, on December 22, 2005, came after the issuance of Revision 1 to NUREGs 1800 and 1801 in September 2005, both plants' final renewal SERs in fact cite exclusively Revision 0, dated July 2001, as a supporting reference, as do both plants' LRAs. The Point Beach renewal application was filed in February 2004, and most of the NRC review was complete as of September 2005. No citations to the September 2005 NUREG revisions were identified anywhere in any of the Point Beach documentation. Thus, the backfit issue is not applicable because the two renewal processes were in fact undertaken without an intervening change in the NRC regulatory positions as applied at each plant. Therefore, Point Beach's actions were not a response to the revision in the SRP or GALL, but rather the licensee's voluntary adoption of evolving industry standards as applied to its own facility. Therefore, the lack of a formal cost benefit analysis regarding the adoption by Point Beach of an Alloy 600 aging management program, or a determination that the Alloy 600 aging management program was necessary for compliance or adequate protection, does not reflect a violation of NRC backfit or license renewal regulations.

Contact with Licensee Staff

OIG also interviewed the Point Beach licensee's (b)(7)(C) who (b)(7)(C) He confirmed that to the best of his recollection, Point Beach followed Revision 0 of NUREGs 1800 and 1801 in developing its Alloy 600 aging management program for operation post-renewal. He did not attribute the nature and extent of the Point Beach Alloy 600 aging management program to a backfit, and confirmed that the Point Beach licensee had not contested or challenged the requirement as inappropriate under backfit regulations, or to his knowledge considered doing so. He confirmed that the program had not been

² See NRC Integrated Inspection Report 05000244/2003006 for details of the Ginna RPV head replacement

subjected to a cost-benefit analysis of the type set forth in 10 CFR § 50.109. He indicated that Point Beach had initiated its Alloy 600 Aging Management Program as a self-initiated, voluntary commitment. This program had been ongoing in its present form since 2010/2011, which was the beginning of the period of extended operation under the renewed license, as the original license was effective until 2010. The Point Beach manager said that Point Beach had a relatively small quantity of Alloy 600 in existing structures and that much of that material that had previously been present in plant structures had been replaced with other alloys after the problems with it had been disclosed. Every outage, the licensee conducts Alloy 600 component testing “as found” and “as left,” including electronic and visual exams of Alloy 600 welds, which are also required during In-service Inspection. He confirmed that NRC had inspected the program on several occasions with no findings. Point Beach follows all applicable and current industry and NRC developed codes and guidelines regarding Alloy 600 and associated types of welding materials/techniques. The (b)(7)(C) was not aware of how other plants monitor their Alloy 600, and was not aware of any discussion of contesting NRC findings or requirements on the basis that other plants have different practices or lack Point Beach’s Alloy 600 aging management requirements.

NRC Backfit Resolution Efforts

OIG learned that the backfit issues are currently being resolved via a large-scale and agency-wide effort that is ongoing. OIG interviewed (b)(7)(C) Office of Nuclear Regulatory Research and (b)(7)(C) of the Committee to Review Generic Requirements, who provided background and status on the currently pending revisions to Management Directive (MD) 8.4 and NUREG-1409, which provide NRC staff with guidance for the handling of backfit issues, including how to correctly apply 10 CFR § 50.109. (b)(7)(C) briefly described the Byron-Braidwood issue, which was an instance in which an NRC-overseen requirement, which the licensee and the broader nuclear industry technical community perceived as too onerous, was successfully challenged by the licensee, overturning what NRC had argued was an application of the compliance exception. While this was the most notable instance of a widely publicized and challenging backfit issue at NRC, (b)(7)(C) stated that situations such as this represented the “tip of the iceberg,” potentially, with many relatively minor technical issues arising at plants industry wide that could have been contested by licensees, but were not. (b)(7)(C) indicated that in response to such issues and potential issues, the referenced revisions to backfit staff guidance had been initiated. (b)(7)(C) said that the NUREG-1409 revision was behind schedule, with the original intent having been to release both MD 8.4 and NUREG-1409 simultaneously, but this had not occurred. A draft, revised MD 8.4 (last revision was issued in October 2013) is currently available pending approval, but a revised NUREG-1409 (of which the current revision is dated July 1990) has not been released. (b)(7)(C) said that he had been interacting extensively with industry representatives such as the Nuclear Energy Institute and with nuclear safety stakeholders, specifically including UCS, who had been and were continuing to make extensive comments and recommendations regarding the pending

NRC backfit regulations. This in part had led to the referenced delays. (b)(7)(C) said that Part 54 regarding license renewals was a challenged area for backfit in general. He cited the NRC Commission's actions dating to 2014 or 2015, in which rulemaking for Part 54 was considered for the purpose of incorporating issues of backfit directly into renewal procedures, but that this initiative was voted down by the Commission.

Because OIG found that the staff did not apply the license renewal rules in an inconsistent manner, it is recommended that this case be closed to the files of this office.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 20, 2019

MEMORANDUM TO:

Concur: Case Closed
Rocco J. Pierri
Assistant Inspector General
for Investigations

(b)(7)(C)

THRU:

Team Leader (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT:

ALLEGED RELEASE OF PRE-DECISIONAL INFORMATION BY
NRR STAFF (OIG CASE NO. 18-03)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an anonymous allegation that someone in the (b)(7)(C) Office of Nuclear Reactor Regulation (NRR), communicated predecisional information to Exelon regarding NRC's draft response to a Byron Nuclear Generating Station appeal of a severity level IV violation under Title 10 of the *Code of Federal Regulations* 50.59 (10 CFR); Changes, Tests, and Experiments. The specific violation was for a failure to obtain a License Amendment for changes to design bases on diesel generator surveillance frequencies. It was alleged that due to the release of this predecisional information, Exelon was having a direct impact on the disputed violation by causing the NRC not to follow its documented process.

The potential violations relevant to this allegation are provisions in 5 CFR 2635, Standards of Conduct; 18 United States Code 1905, Disclosure of Confidential Information; and NRC Management Directive (MD) 3.4, Release of Information to the Public.

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Findings

This investigation did not develop evidence to support the claim that NRC staff released predecisional information to a licensee or that Exelon improperly influenced NRC not to follow its enforcement process. The (b)(7)(C) believed that industry contacted NRC headquarters to lobby its case on why the issue did not warrant a violation. The (b)(7)(C) had no knowledge of any undue influence by the industry.

Basis for Findings

Background/Chronology

On May 19, 2017, NRC completed an Evaluations of Changes, Tests, and Experiments inspection at Byron Station (owned by Exelon Generation Company), and issued a severity level IV, Non-Cited Violation (NCV) for failure to obtain a license amendment for changes to its design bases on diesel generator surveillance frequencies (Agency Documents Access and Management System [ADAMS] Accession No. ML17180A534). Exelon disputed the violation on July 31, 2017, proclaiming the violation was contrary to NRC Principles of Good Regulation as it called for a redundant licensee evaluation of the same change and was an inconsistent application of NRC regulations (ML17212B154).

On December 21, 2017, NRC upheld its decision to issue the violation in response to Exelon's disagreement with the inspection finding (ML17355A561). Exelon appealed NRC's decision to uphold the violation on February 8, 2018 (ML18039A707). NRC later decided to review Exelon's appeal on April 9, 2018, due to new arguments and information that Region III (RIII) could not have reasonably expected Exelon to have raised earlier (ML18100A222). On July 23, 2018, NRC withdrew the NCV based on an independent panel's review of the issue, and concluded that the 50.59 violation, as written could not be supported (ML18204A144).

Interviews of NRC Staff

OIG interviewed an individual who claimed to be the ALLEGER and requested anonymity. ALLEGER told OIG that the NRC Design Bases Assurance inspection that took place at the Waterford Steam Electric Station (owned by Entergy), Unit 3 (WF3), from October to November 2017, identified an unresolved item for the licensee's failure to perform a 10 CFR 50.59 safety evaluation and subsequently obtain a license amendment for changes to the surveillance testing frequency of the emergency diesel generators. ALLEGER said that NRC issued Byron a severity level IV violation for the same reason during the June 2017 Byron Station, Units 1 and 2 – Evaluations of Changes, Tests, and Experiments baseline inspection.

According to ALLEGER, WF3 protested the unresolved item (failure to submit a license amendment for changes in surveillance frequency) during the exit interview even though the issue already entered in its Corrective Action Program for resolution. WF3 argued that a 10 CFR 50.59 evaluation was not necessary because the change was outside its Institute of Electrical and Electronics Engineers Standard license commitment. ALLEGER said WF3

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argued that making a surveillance frequency change in accordance with the requirements of the Technical Specification Surveillance Frequency Control Program did not require a subsequent 10 CFR 50.59 evaluation. According to the ALLEGER, this was the same argument that Byron was using to appeal its violation, which could have only been known from information contained within NRC's draft (predecisional information) response to Byron's appeal.

According to ALLEGER, during discussions a couple of days before the December 14, 2017 exit interview, WF3 rebutted the unresolved item using language similar to that used by the NRC in its draft response to Byron's appeal, such as Updated Final Safety Analysis Report (UFSAR) commitments. The NRC draft response to Byron's appeal reflected: "For instance, the UFSAR stated that Byron Station complied with Revision 3 of Regulatory Guide (RG) 1.9, "Selection, Design, Qualification, and Testing of Diesel-Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants," which endorses Institute of Electrical and Electronic Engineers (IEEE) Standard 387-1984, "IEEE Standard Criteria for Diesel-Generator Units Applied as Standby Power Supplies for Nuclear Power Generating Stations." Because these statements were embodied in the UFSAR, they were submitted in writing on the docket to the NRC in accordance with 10 CFR 50.71, "Maintenance of records, making of reports." Therefore, the NRC staff determined that these explicit statements were NRC commitments."

The ALLEGER said WF3 argued that RG 1.9 and IEEE Standard 387-1984 were not regulatory commitments, which meant WF3 did not need to go through the 10 CFR 50.59 process to change the surveillance frequency for the diesel generators, before the NRC mentioned that as the reason for the unresolved item. The ALLEGER claimed that WF3 knew what was written in the NRC's draft response to Byron and that WF3 prepared its argument in accordance with the draft response because in the ALLEGER's experience no licensee has ever tried to parse the definition of commitment from the UFSAR. Normally the NRC staff and licensees regard the UFSAR as a commitment. According to the ALLEGER, it was out of the ordinary to argue that what was contained in the UFSAR was not a regulatory commitment.

ALLEGER informed OIG that during a meeting with WF3, WF3 personnel told the ALLEGER that (b)(7)(C) Division Reactor Safety, RIII, was leading the review of Byron's dispute. According to ALLEGER, names of reviewers are not normally shared with licensees. Since the draft response to Byron's appeal was sent to NRR for review, the ALLEGER speculated that a (b)(7)(C) from NRR or NRR technical staff, who reviewed the draft response, engaged with Exelon and divulged predecisional information. ALLEGER could not provide any further information regarding who potentially would have released the predecisional information or why they would have released the predecisional information.

(b)(7)(C) told OIG that he (b)(7)(C) into the dispute by Byron for a severity level IV violation they were issued during the June 2017 Byron Station, Units 1 and 2 – Evaluations of Changes, Tests, and Experiments baseline inspection. The violation was for failure to perform a 10 CFR 50.59 safety evaluation and subsequently obtain a license amendment for changes to the surveillance testing frequency of the emergency diesel generators.

(b)(7)(C) said that ALLEGER told him that WF3 mentioned his name as the (b)(7)(C) into Byron's dispute. (b)(7)(C) did not know how WF3 knew that information

as it is not normally released. (b)(7)(C) provided the draft response to Byron's dispute of the violation to NRR for review. He did not know if predecisional information had been released but believed that industry was contacting NRC headquarters to lobby its case on why this should not be a violation. (b)(7)(C) told OIG that he did not release predecisional information and that he did not have any information on who would have potentially contacted NRC.

(b)(7)(C) told OIG that he had no proof predecisional information had been released and was not concerned about industry lobbying as NRC processes were not affected and were carried out in accordance with regulation and/or policy. He said that in the end, NRC upheld its decision to issue Byron the violation.

[Agent's Note: The interview of (b)(7)(C) was conducted on March 13, 2018, in-between the time that the NRC originally upheld its decision to issue the violation and the time that the NRC withdrew the violation.]

(b)(7)(C) Office of Enforcement (OE), who was assigned the Byron issue regarding the severity level IV 10 CFR 50.59 NCV, told OIG that his duties as (b)(7)(C) assigned to this matter was to ensure the process was followed and that a determination was made in a timely manner. (b)(7)(C) told OIG that the NRC followed process and that he had no knowledge of any undue influence by the industry on NRC's process to resolve this dispute. (b)(7)(C) did not know and could not provide any information on the release of predecisional information to the industry.

In a subsequent interview after the withdrawal of the NCV, (b)(7)(C) told OIG that the appeal process does not allow for a second appeal but that the decision was made by (b)(7)(C)

(b)(7)(C) to consider this as a continuation of the first appeal. It was decided to accept the request as a continuation of the first appeal due to RIII clarifying and changing the wording of the NCV in its December 21 response to Exelon's first appeal. According to (b)(7)(C) the original NCV did not give Exelon a clear understanding of the violation.

According to (b)(7)(C) he was (b)(7)(C) Office of Nuclear Security and Incident Response during Exelon's initial appeal of the NCV issued to Byron. (b)(7)(C) said while at Headquarters he was not involved in the issuance of the NCV or the response to the appeal in December 2017, the same time frame (b)(7)(C)

(b)(7)(C) said he became involved as (b)(7)(C) when in February 2018, Exelon again disputed the NCV, and stated its disagreement with RIII's decision to uphold the NCV. Exelon requested that the NRC staff further review the disputed violation due to Exelon's understanding and interpretation of some aspects of Nuclear Energy Institute (NEI) 04-10 and NEI 99-04 not being consistent with that of the NRC. Exelon claimed that applying the NRC's interpretation limits the efficiencies and benefits gained from incorporation of NEI 04-10 into the Technical Specifications, with no improvement in safety.

After consultation with OE, the Office of the General Counsel, and the Office of the Executive Director for Operations, (b)(7)(C) accepted Exelon's request for further review as an initial appeal because the inspection report that documented the NCV did not fully articulate the basis for the violation. RIII acknowledged this limitation in its response to Exelon's initial appeal, noting that the initially-documented NCV, "included an explanatory statement that was open to interpretation," and provided additional information to justify the NCV.

The explanatory statement open to interpretation was: "Specifically, the licensee failed to provide a basis for why a change to the surveillance frequencies of emergency diesel generators described in the Updated Final Safety Analysis Report did not require prior NRC approval." The NRC staff interpreted the intended message of the explanatory statement based on a review of licensee documents associated with the disputed NCV. The additional information and analysis relied upon by RIII to uphold the NCV was not previously provided to Exelon in writing. In turn, Exelon's February 2018, appeal asserts detailed new arguments and information that RIII could not have reasonably expected Exelon to have raised earlier, given how the NCV was first documented.

According to (b)(7)(C) Exelon was notified of the withdrawal of the NCV in a letter dated July 23, 2018. The withdrawal was based on a review conducted by an independent panel that determined through review of NRR Office Instructions that Byron's UFSAR Appendix A is part of a mandated licensing bases document and not a set of regulatory commitments and that a 10 CFR 50.59 evaluation was not required because the NRC staff had previously granted the licensee authority, through Byron Amendment No. 171, to change the specific Emergency Diesel Generator surveillance frequencies in accordance with the Surveillance Frequency Control Program.

(b)(7)(C) told OIG that he had no knowledge of any release of predecisional information, that he did not release any predecisional information, and that he was not influenced and had no knowledge of any industry influence regarding this NCV or the withdrawal of the NCV.

OIG verified that the documents (b)(7)(C) referred to in his interview confirm the statements made in his testimony.

The information provided to OIG during the course of this investigation was not substantial enough to warrant further investigation.

This investigation did not develop evidence to support the claim that NRC staff released predecisional information to a licensee or that Exelon improperly influenced NRC not to follow its enforcement process. Therefore, it is recommended that this case be closed to the files of this office.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 20, 2018

MEMORANDUM TO:

Concur: Case Closed
Rocco J. Pierri
Assistant Inspector General
for Investigations

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, (b)(7)(C)

SUBJECT:

POTENTIAL LEAK OF SENSITIVE INFORMATION BY
OFFICE OF INTERNATIONAL PROGRAMS EMPLOYEE
(OIG CASE NO. 18-012)

Allegation

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on notification from the (b)(7)(C)

(b)(7)(C) Office of the Chief Information Officer (OCIO), that during a routine monitoring of the NRC network traffic, it discovered that (b)(7)(C)

(b)(7)(C) Office of International Programs (OIP), NRC, improperly sent an email from his NRC email account to an external email account (b)(7)(C) that contained an attachment marked "For Official Use Only - Security Related Information (FOUO-SRI)." OIG previously investigated (b)(7)(C) for maintaining a copy of OIP's network drive on a personal external drive without permission from the NRC, Case 15-021. Therefore, OIG initiated this investigation to determine the circumstances surrounding this incident, and if he had previously transmitted any other sensitive NRC information to an unauthorized external email account.

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The potential violations relevant to this allegation are NRC Management Directive 2.7, "Personal Use of Information Technology, NRC Agency-wide Rules of Behavior for Authorized Computer Use" and 5 CFR 2635.101, "Basic Obligation of Public Service."

Findings

OIG found that (b)(7)(C) violated NRC policy when he sent to his personal email account a copy of the NRC's 2018 draft Continuity of Operations Plan (COOP), which he was assigned to review as part of his official duties. (b)(7)(C) was counseled by his manager not to do it again. (b)(7)(C) did not recall sending the COOP to his personal email account, but speculated it was inadvertent because his NRC email account and personal email account are the same except for the domain name. OIG did not identify any other computer security infractions within the past 3 years recorded by (b)(7)(C) regarding (b)(7)(C).

Basis of Findings

On (b)(7)(C) forwarded the 2018 draft COOP from his NRC email account, (b)(7)(C)@nrc.gov, to his personal email account (b)(7)(C). At OIG's request, the NRC Computer Security and Incident Response Team (CSIRT), (b)(7)(C) checked for any other computer security incidents by (b)(7)(C), and did not identify any involving him as of March 16, 2018.

(b)(7)(C), (b)(7)(E)

(b)(7)(C) OIP, and (b)(7)(C) stated that (b)(7)(C) was responsible for OIP's input to the 2018 draft COOP. (b)(7)(C) stated the only part of the document that he considered sensitive was the alternate work location in the event of an emergency at NRC headquarters. (b)(7)(C) stated on (b)(7)(C) he verbally counseled (b)(7)(C) for emailing the 2018 draft COOP to his personal email account. In addition, based on the advice of OCIO, he required (b)(7)(C) to retake NRC computer security training in iLearn. (b)(7)(C) stated he is having (b)(7)(C) give a presentation to the entire OIP at its scheduled (b)(7)(C) All-Hands training about proper email usage.

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(b)(7)(C) stated he had previously received a 2-week suspension for the incident investigated by the OIG (OIG Case 15-021), and had attempted to ensure he did not commit any further violations. (b)(7)(C) stated he did not remember sending the document to himself. (b)(7)(C) speculated it was inadvertent because his personal email account was the same as his NRC email account with the only difference being the domain name (b)(7)(C) verses (b)(7)(C)@nrc.gov).

[Investigative Note: Microsoft Outlook stores email addresses, so it is possible (b)(7)(C) inadvertently clicked on the wrong email address when he was sending the document to himself as the stored emails pop up as suggestions when typing in recipients, which makes it easy to inadvertently select].

Because NRC has already addressed the policy violation with (b)(7)(C), and OIG found (b)(7)(C) may have inadvertently sent to the COOP to his personal email account, it is recommended that this case be closed to the files of this office.



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

July 3, 2019

MEMORANDUM TO:

(b)(7)(C)

THRU:

(b)(7)(C)

Team Leader, (b)(7)(C)

FROM:

(b)(7)(C)

Special Agent, Team B

SUBJECT:

RELEASE OF PROPRIETARY EXPORT CONTROLLED
INFORMATION IN VIOLATION OF NRC MANAGEMENT
DIRECTIVES (OIG CASE No. 19-012)

Allegation

The Office of Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), was notified by (b)(7)(C) New Reactors (NRO), U.S. Nuclear Regulatory Commission (NRC), of an inadvertent transmittal of a file that contained proprietary export-controlled information to (b)(7)(C) an NRC contractor personal email account. (b)(7)(C) identified (b)(7)(C) NRO NRC, as the employee who inadvertently transmitted the information. (b)(7)(C) also relayed that (b)(7)(C) instructed (b)(7)(C) to delete the file from his personal email account.

Findings

OIG substantiated that on (b)(7)(C), (b)(7)(C) used his NRC official email account to send a proprietary export-controlled information table to (b)(7)(C) personal email account. OIG confirmed, through key witness interview, that (b)(7)(C) inadvertently forwarded the proprietary export-controlled information table to (b)(7)(C) and NRO took the appropriate actions to address the issue.

Basis for Findings

Based on the review of (b)(7)(C) NRC Personal Storage Table file, OIG learned on (b)(7)(C) (b)(7)(C) used his personal Yahoo email account to initiate an official communication with (b)(7)(C) to (b)(7)(C) NRC official email account. On the same date, (b)(7)(C) used his NRC email account to reply to (b)(7)(C) initial email and attached a table titled, (b)(7)(C). The information within the attachment was determined to be proprietary export-controlled and on (b)(7)(C) (b)(7)(C) instructed (b)(7)(C) to delete the email with the sensitive attachment, verbally admonished (b)(7)(C) for using his personal email account to conduct official business, and reported the issue to his supervisor (b)(7)(C).

OIG interviewed (b)(7)(C) regarding her knowledge of the inadvertent transmittal of a sensitive attachment by (b)(7)(C). (b)(7)(C) confirmed that (b)(7)(C) initiated the official email conversation with (b)(7)(C) by using his personal email account. (b)(7)(C) reported (b)(7)(C), using his NRC email account, replied to (b)(7)(C) email with an attachment of the NuScale Power proprietary volume table information for a specific reactor vessel. (b)(7)(C) said (b)(7)(C) was unaware that (b)(7)(C) used his Yahoo email account to initiate the email conversation until it was brought to (b)(7)(C) attention by (b)(7)(C). (b)(7)(C) stated (b)(7)(C) instructed (b)(7)(C) to delete the proprietary table word document and reminded (b)(7)(C) to use his NRC email account for official conversations. (b)(7)(C) said she notified the spillage to her management team immediately after (b)(7)(C) informed her of the incident.

OIG learned from NRC's Division of Facilities and Security, Office of Administration, that (b)(7)(C) had one security incident on record involving the loss of accountable NRC property (Personal Identity Variation card in 2014).

NRC's Computer Security Incident Response Team (CSIRT), confirmed to OIG that on (b)(7)(C) (b)(7)(C) notified CSIRT of an inadvertent transmittal of export-controlled information by (b)(7)(C) and the recipient of the email was instructed to delete the received email.

As a result of the inadvertent transmittal of export-controlled information, NRO educated the staff on the use of NRC email for all government conversations. Additionally, NRO has designated a separate room within their office for the storage of proprietary information and implemented the use of the Controlled Unclassified Information classification caveat to further safeguard sensitive information.

Because this investigation did not identify employee intentional misconduct and the employee, and his office responded appropriately to the incident it is recommended that this case be closed to the files of this office.