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Description of document: **Final reports and closing memoranda for selected closed investigations at the US Nuclear Regulatory Commission (NRC) Office of Inspector General (OIG), 2009**

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Mail Stop T-5 F09
Washington, DC 20555-0001
Fax: 301-415-5130
E-mail: FOIA.resource@nrc.gov
[FOIA Request Form](#)

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**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) / PRIVACY
ACT (PA) REQUEST**

2010-0124

1

RESPONSE
TYPE☐

FINAL

☒

PARTIAL

REQUESTER

DATE

MAR 29 2010

PART I. -- INFORMATION RELEASED

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☐ APPENDICES ☐ Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- ☐ APPENDICES ☐ Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- ☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852-2738.
- ☒ APPENDICES **A** ☐ 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 comments section) for a disclosure determination and direct response to you.
- ☒ We are continuing to process your request.
- ☐ See Comments.

PART I.A -- FEES

AMOUNT *

\$

* See comments
for details☐

You will be billed by NRC for the amount listed.

☒

None. Minimum fee threshold not met.

☐

You will receive a refund for the amount listed.

☐

Fees waived.

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

- ☐ No agency records subject to the request have been located.
- ☒ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- ☒ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Dorinda L. Sealing

**RESPONSE TO FREEDOM OF INFORMATION
ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

2010-0124

MAR 29 2010

PART II.A -- APPLICABLE EXEMPTIONS**APPENDICES****A**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- ☐ Low 2 Internal matters of a relatively trivial nature.
- ☐ High 2 Disclosure would risk circumvention of a legal requirement.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by 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., Section 253b, subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- ☐ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
- ☐ The information is considered to be confidential business (proprietary) information.
- ☐ 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 was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Disclosure will harm an identifiable private or governmental interest.
- ☐ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☐ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
- ☐ Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
- ☐ Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- ☐ Exemption 6: The withheld information 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 enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
- ☒ (C) Disclosure would constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names of individuals 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 (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Joseph A. McMillan	Assistant Inspector General for Investigations	Appendix A			<input checked="" type="checkbox"/>

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX A
DOCUMENTS WITHHELD IN PART PURSUANT
TO EXEMPTION 7(C) and 7(E)**

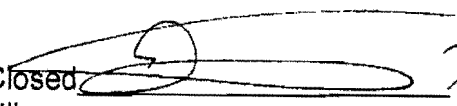
<u>Number</u>	<u>Date</u>	<u>Subject</u>
1.	7/02/09	Memorandum to - Release of Safeguards Information, Case No. 09-13 (4 pgs)
2.	3/31/09	Memorandum to File- NRC Allows the Nuclear Energy Institute Opportunity to Review and Edit Regulatory Issue Summary Documents, Case No. 09-04 (3 pgs)
3.	1/09/09	Memorandum to File- Concerns with NRC Chairman's Letter Re: Hemyc to Member of Congress, Case No. 08-40 (8 pgs)
4.	8/27/09	Memorandum to R. William Borchardt, Executive Director for Operations from Joseph A. McMillan, Assistant Inspector General for Investigations- Failure to Safeguard Sensitive NRC Allegation Information, Case No. 08-34 (15 pgs)
5.	7/15/09	Memorandum to File- Manipulation of Reactor Oversight Process, Case No. 08-28 (5 pgs)
6.	6/26/09	Memorandum to File- Joint Sensitive Investigation with the FBI, Case No. 08-21 (3 pgs)
7.	3/31/09	Memorandum to R. William Borchardt, Executive Director for Operations from Joseph A. McMillan, Assistant Inspector General for Investigations- Terminated NRC License for Distribution of Irradiated Gem Stones, Case No. 08-09 (6 pgs)
8.	9/23/09	Memorandum to File- Special Project: Yucca Mountain High-Level Waste, Case No. 07-48 (3 pgs)



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

July 2, 2009

OFFICE OF THE
INSPECTOR GENERAL

Concur: Case Closed  7/2/09
MEMORANDUM TO: Joseph A. McMillan
Assistant Inspector General
for Investigations

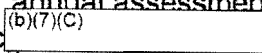
THRU:

FROM:

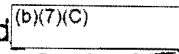
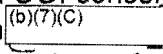
(b)(7)(C)

SUBJECT: RELEASE OF SAFEGUARDS INFORMATION
(CASE NO. 09-13)

Allegation

The Office of the Inspector General (OIG), US Nuclear Regulatory Commission (NRC) initiated an investigation based on an allegation from Commissioner Klein concerning an article that appeared on the Project On Government Oversight's (POGO) Web site on January 14, 2009, and a second article published in Energy Daily on January 15, 2009. The articles discussed the NRC's recent annual assessment of the Design Basis Threat (DBT), and Commissioner Klein was concerned that (1) the POGO article contained Safeguards Information (SGI) concerning the DBT and (2) that someone inside NRC had released sensitive information from the DBT annual assessment to Energy Daily or POGO. Additionally, a member of the public  sent Commissioner Klein an e-mail that questioned why the NRC has not strengthened the DBT and included the information from the POGO article believed to contain SGI.

Findings

OIG reviewed the POGO and Energy Daily articles and  e-mail to determine whether these documents contained SGI concerning the DBT. OIG learned that one sentence in the POGO article and in  e-mail, both making the same point is considered SGI, although the sentence is not factually correct. Moreover, the SGI information contained in the article and e-mail is widely known to hundreds of

11

individuals, most of whom work outside the NRC, and may date back as far as 1983 when the DBT was initially implemented; therefore, the SGI information could have come from any number of sources.

OIG determined that no NRC employee involved in the DBT annual assessment communicated DBT information to POGO or Energy Daily using his or her Government e-mail account or his or her Government landline telephones or wireless devices. Therefore, it is recommended that case be closed to the files of this office.

Basis of Findings

OIG reviewed the two articles published by POGO and Energy Daily. The January 14, 2009, POGO article ("POGO Urges Commissioners to Listen to Staff Experts This Time, Not Industry Lobbyists, and Strengthen the DBT") was authored by Peter Stockton and advocated for a more robust DBT. The second article, dated January 15, 2009, was authored by Jeff Beattie for Energy Daily ("NRC Staff Urging Tougher Reactor Security Standards") and described that NRC was considering changes to the DBT.

A senior manager in the Office of Nuclear Security and Incident Response (NSIR) told OIG that the POGO article contains one sentence that is considered SGI, although the sentence is not factually correct. Additionally, while the article did include information that was SGI, it did not include any information from the newly proposed changes to the DBT. OIG compared the POGO article to (b)(7)(C) e-mail and noted that the latter included the SGI sentence from the POGO article. The NSIR senior manager also said that the DBT was written in 1983, and that hundreds of individuals, both within NRC and the nuclear industry, have had access to the DBT over the years. The NSIR senior manager stated that most of the individuals with knowledge of DBT specifics are employed outside of the NRC.

OIG (b)(7)(E) (b)(7)(E) with Stockton or Beattie about the DBT between October 2008 and January 2009. First (b)(7)(E) accounts on February 18, 2009, to find any reference to Stockton or (b)(7)(C) This (b)(7)(E) (b)(7)(E) dated from September 30, 2008, to January 15, 2009. Out of these e-mails, approximately 1,000 emails contained a reference to POGO or (b)(7)(C) but none contained SGI. Next, OIG reviewed (b)(7)(E) This e-mail data captured (b)(7)(E) as of February 11, 2009. (b)(7)(E) OIG then (b)(7)(E) (e.g., POGO, Stockton, DBT, Beattie) and determined that (b)(7)(E) OIG reviewed all (b)(7)(E) (b)(7)(E) but did not find anything to indicate that NRC staff had provided SGI to unauthorized individuals.

OIG also reviewed (b)(7)(E)

(b)(7)(E)

to contact Stockton or Beattie

between October 2008 and January 2009. Stockton and Beattie's (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

OIG determined that

(b)(7)(E)

(b)(7)(E)

to Stockton or

Beattie were reflected on these records.

OIG also reviewed

(b)(7)(E)

(b)(7)(E)

to contact Stockton or Beattie

between October 2008 and January 2009. Stockton and Beattie's

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

OIG determined that

(b)(7)(E)

(b)(7)(E)

to Stockton or

Beattie were reflected on these records.

Distribution:

File Location: X:\FY 2009\FY 09 Closed Memos\Case Files 09\09-13 Closed

Memo (b)(7)(C) SGI_07_02_09.doc

AIGI r/f

Case No. 09-13

OIG/AIGI (b)(7)(C)	OIG/AIGI (b)(7)(C)	OIG/AIGI (b)(7)(C)	OIG	OIG	OIG
		R. Raspa	J. McMillan	D. Lee	H. Bell
7/12/09	7/12/09	7/12/09	7/12/09	7/12/09	7/16/09

Official File Copy



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

March 31, 2009

OFFICE OF THE
INSPECTOR GENERAL

MEMORANDUM TO: Concur: Case Closed 3/31/09
Joseph A. McMillan
Assistant Inspector General
for Investigations.

THRU:

FROM:

(b)(7)(C)

SUBJECT: NRC ALLOWS THE NUCLEAR ENERGY INSTITUTE
OPPORTUNITY TO REVIEW AND EDIT REGULATORY ISSUE
SUMMARY DOCUMENTS (CASE NO. 09-04)

Allegation

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was initiated after James Riccio, Nuclear Policy Analyst, Greenpeace, sent a letter to the NRC Chairman and Commissioners, Congress, and OIG claiming that the Office of Nuclear Security Incident Response (NSIR) afforded the Nuclear Energy Institute (NEI) an exclusive opportunity to comment on and edit two NRC regulatory issue summaries (RISs). He also alleged that the draft RISs were not published in the *Federal Register* or made available on NRC's Documents for Comment Web page.

Findings

OIG determined that NSIR provided the public, including both Greenpeace and NEI, equal access to both draft RISs on the agency's Web site in accordance with Commission policy and that there was no requirement to post the RISs in the *Federal Register*. OIG also found that staff did not follow NRC Management Directive instructions to specifically post the RISs on NRC's "Documents for Comment" Web page, but have been reminded to do so in the future. It is recommended that this case be closed to the files of this office.

A/2

Basis for Findings

NRC Commission Policy Statement on Enhancing Public Participation in NRC Meetings states that the public notice of meetings will be posted on the NRC Web site and will include background documents or other materials that could be helpful to meeting attendees. NRC Management Directive 3.5, *Attendance at NRC Sponsored Meetings*, Part III, Part (C), Procedures for Noticing a Meeting, states that staff should ensure that documents available for public comment are posted on the "Documents for Comment," Web page on NRC's public Web site and that notices of meetings are posted on the Public Meeting Schedule Web page located on the public Web site.

OIG learned that NSIR responded to Riccio's concerns in a letter dated December 15, 2008. NSIR's letter conveyed that NRC held public meetings with NEI on March 14, 2008, and September 3, 2008, to receive comments from NEI and the public on the two RISs prior to finalization. The letter explained that although NRC posted notification of the meetings and the draft RISs on the agency's Public Meeting Schedule Web page in accordance with the Commission policy, there was a deviation from MD 3.5 in that the two draft RISs were not posted on the Documents for Comment Web page. The letter further explained that the staff did not publish the draft RISs in the *Federal Register* for public comment because these two generic communications did not communicate new policy and therefore, did not need to be noticed.

(b)(7)(C)

NSIR, told OIG that the RISs did not require a public comment period, a public meeting, or to be noticed in the *Federal Register* because the RISs were not communicating new policy but facilitating the licensee's understanding of current statutory requirements. (b)(7)(C) also noted that while NSIR did not post the RISs on the NRC Documents for Comment Web page, the staff provided the public with opportunities to comment upon and edit the drafts by posting them on the Public Meeting Schedule Web page and providing copies at the public meetings. Furthermore, the public, to include Greenpeace, was given a further opportunity to edit and comment on one of the RISs following NRC's receipt of Riccio's concern; however, no one provided any edits or comments during the additional 2-week period. The other RIS had already been finalized by the time Riccio sent his letter therefore, there was no opportunity to extend the comment period. (b)(7)(C) advised that NSIR and other staff were reminded to adhere to the internal guidance set forth in NRC MD 3.5.

Riccio told OIG that he routinely checks NRC's Document for Comments Web page to see if NRC has issued any new documents for comment, but does not typically look elsewhere on NRC's Web site for such information. He said that he was aware that NRC had provided an additional 2-week period to comment on one of the draft RISs, but opted not to comment

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Distribution:

File Location: X:\FY 2009\FY 09 Closed Memos\Case Files 09\09-04 Closed Memo (b)(7)(C) 03 26 09.doc AIGI r/f Case File 09-02

OIG/AIGI	OIG/AIGI	OIG/Raspa	OIG	OIG	OIG
(b)(7)(C)		R. Raspa	J. McMillan	D. Lee	H. Bell
3/3/09	3/3/09	3/3/09	3/3/09	3/3/09	3/3/09

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

OFFICE OF THE
INSPECTOR GENERAL

January 9, 2009

MEMORANDUM TO: Concur: Case Closed *[Signature]* 1/8/09
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

FROM:

(b)(7)(C)

SUBJECT: CONCERNS WITH NRC CHAIRMAN'S LETTER RE: HEMYC
TO MEMBER OF CONGRESS (OIG CASE NO. 08-40)

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was initiated after U.S. Congressman David Price and one of his constituents alleged that an NRC letter, dated April 7, 2008, from NRC Chairman Dale Klein to Congressman Price may have contained inaccurate information.

OIG documented investigative findings in a memorandum to the NRC Chairman, enclosure (1) pertains. OIG found that the April 7, 2008, letter contained inaccurate information and that weaknesses in the NRC process for validating information contributed to the inaccurate information contained in the April 7, 2008, letter.

OIG also sent a letter to Congressman Price regarding the findings of this investigation, enclosure (2) pertains.

Investigative issues have been resolved, therefore, it is recommended that this case be closed to file.

Enclosures: As stated.

A/B

MEMORANDUM TO: Concur: Case Closed _____
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

FROM:

SUBJECT: CONCERNS WITH NRC CHAIRMAN'S LETTER RE: HEMYC
TO MEMBERS OF CONGRESS (OIG CASE NO. 08-40)

This Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), investigation was initiated after U.S. Congressman David Price and one of his constituents alleged that an NRC letter, dated April 7, 2008, from NRC Chairman Dale Klein to Congressman Price may have contained inaccurate information.

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Investigative issues have been resolved, therefore, it is recommended that this case be closed to file.

Enclosures: As stated.

Distribution:

File Location: X:\FY 2009\FY 09 Closed Memos\Case Files 08\08-40 Closed

Memo (b)(7)(C) 12_31_08.doc

Case File 08-40

Historical File

OIG/AIGI	OIG/AIG (b)(7)(C)	OIG/Raspa	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)	R. Raspa	J. McMillan	D. Lee	H. Bell
1/ /09	1/ 7/09	1/ 7/09	1/ 8/09	1/ 9/09	1/ 9/09

Official File Copy



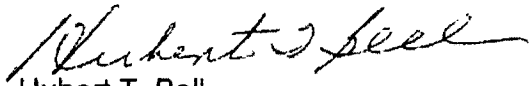
08-40

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

OFFICE OF THE
INSPECTOR GENERAL

January 9, 2009

MEMORANDUM TO: Dale E. Klein
Chairman

FROM: 
Hubert T. Bell
Inspector General

SUBJECT: HEMYC LETTER FROM CHAIRMAN KLEIN TO
CONGRESSMAN PRICE

This memorandum conveys the results of an Office of the Inspector General (OIG) investigation into an allegation that an April 7, 2008, letter from you to U.S. Congressman David Price contained inaccurate and misleading information about NRC's oversight of fire barrier materials.

As background, you received a letter, dated February 15, 2008, from Congressman Price expressing his concerns about the adequacy of the agency's fire protection oversight following the release of my office's Special Inquiry report, "NRC's Oversight of Hemyc Fire Barriers." You responded in a letter dated April 7, 2008, and subsequent to your response, my office received an allegation that your letter contained inaccurate and misleading information.

OIG interviewed NRC staff; reviewed the draft versions of the April 7, 2008, letter as well as source documents; and found that the April 7, 2008, letter contained misleading information regarding (1) the purpose of a 1993 National Institute of Standards and Technology (NIST) small-scale fire barrier test of selected fire barrier materials and (2) the reasons for the NRC's delayed action following the results of the 1993 NIST test. Specifically, the letter incorrectly stated that "the purpose of the 1993 NIST test was to evaluate whether other materials, including Hemyc, were subject to the same failure mode as Thermolag." The letter also incorrectly stated that resources for followup on Hemyc could be delayed because the 1993 NIST test of Hemyc did not identify the same failure mode as Thermolag.

During the Special Inquiry and this investigation, OIG determined that the purpose of the NIST study was to evaluate the fire endurance performance of Hemyc and that Hemyc failed the relevant acceptance criteria. Therefore, OIG concluded that there was

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no agency justification for delaying followup on the 1993 NIST test of Hemyc because of differences in failure mode or for any other reason.

The investigation also determined that the staff did not intentionally provide inaccurate or misleading information to Congress; however, weaknesses in NRC's process for validating information contributed to the inaccurate information contained in the April 7, 2008, letter to Congressman Price. OIG found that there was no specific process for collecting and reviewing source material or for reviewing the April 7, 2008, letter after changes had been made. OIG also found that the (b)(7)(C) who wrote the letter while on a rotational assignment in your office was not knowledgeable of fire protection or its history. He relied on one Office of Nuclear Reactor Regulation (NRR) employee for information, which the (b)(7)(C) obtained through informal conversations and his interpretations of those conversations. The NRR employee was also unfamiliar with fire protection history and, to respond to the (b)(7)(C) needed to educate himself on what occurred in the past. The NRR employee relied on what he read and on informal conversations he had with other NRC staff. OIG further found that the information in the letter was never reviewed for accuracy by any other NRC employee familiar with these specific fire barrier issues. Further, the NRR employee never reviewed the final version of the letter prior to it being mailed to Congressman Price.

On July 15, 2008, you sent a second letter to Congressman Price reflecting the results of a further review by NRC of the OIG Special Inquiry findings and the issues raised by Congressman Price. OIG determined that this letter and its attachment corrected the misleading and inaccurate information contained in your April 7, 2008, letter.

OIG relayed the results of its investigation to your Legal Assistant who indicated that this issue is under review.

For additional information please contact Rossana Raspa, Senior Level Assistant for Investigative Operations, at 301-415-5954.

no agency justification for delaying followup on the 1993 NIST test of Hemyc because of differences in failure mode or for any other reason.

The investigation also determined that the staff did not intentionally provide inaccurate or misleading information to Congress; however, weaknesses in NRC's process for validating information contributed to the inaccurate information contained in the April 7, 2008, letter to Congressman Price. OIG found that there was no specific process for collecting and reviewing source material or for reviewing the April 7, 2008, letter after changes had been made. OIG also found that the (b)(7)(C) who wrote the letter while on a rotational assignment in your office was not knowledgeable of fire protection or its history. He relied on one Office of Nuclear Reactor Regulation (NRR) employee for information, which the (b)(7)(C) obtained through informal conversations and his interpretations of those conversations. The NRR employee was also unfamiliar with fire protection history and, to respond to the (b)(7)(C) needed to educate himself on what occurred in the past. The NRR employee relied on what he read and on informal conversations he had with other NRC staff. OIG further found that the information in the letter was never reviewed for accuracy by any other NRC employee familiar with these specific fire barrier issues. Further, the NRR employee never reviewed the final version of the letter prior to it being mailed to Congressman Price.

On July 15, 2008, you sent a second letter to Congressman Price reflecting the results of a further review by NRC of the OIG Special Inquiry findings and the issues raised by Congressman Price. OIG determined that this letter and its attachment corrected the misleading and inaccurate information contained in your April 7, 2008, letter.

OIG relayed the results of its investigation to your Legal Assistant who indicated that this issue is under review.

For additional information please contact Rossana Raspa, Senior Level Assistant for Investigative Operations, at 301-415-5954.

Distribution:

File Location: G:\FY 2009\FY 09 Chmn Memos_MIR\08-40 Memo to Chm_reHemyc_12_29_08.doc

Case File 08-40		Historical file r/f		AIGI r/f	OIG r/f	
OIG/AIGI	OIG/AIGI	OIG/AIGI	OIG/Raspa	OIG	OIG	OIG
(b)(7)(C)			R. Raspa	J. McMillan	D. Lee	H. Bell
1/1/09	1/ /09	1/7/09	1/7/09	1/8/09	1/9/09	1/9/09

Official File Copy



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

OFFICE OF THE
INSPECTOR GENERAL

January 9, 2009

The Honorable David E. Price
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Price:

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), conducted an investigation regarding your concerns and the concerns of one of your constituents relating to the accuracy of an NRC letter, dated April 7, 2008, to you from NRC Chairman Dale Klein. Chairman Klein's letter was in response to your concerns regarding the adequacy of the NRC's oversight of fire protection at nuclear power plants in the United States, following the issuance of my office's Special Inquiry report, "NRC's Oversight of Hemyc Fire Barriers," dated January 28, 2008.

My office found that Chairman Klein's letter contained inaccurate information regarding the purpose of a 1993 National Institute of Standards and Technology (NIST) test and the reasons for the NRC's delayed action following the results of this test. The letter incorrectly stated that "the purpose of the 1993 NIST test was to evaluate whether other materials, including Hemyc, were subject to the same failure mode as Thermolag." The letter also stated that resources for followup on Hemyc could be delayed because the 1993 NIST test of Hemyc did not identify the same failure mode as Thermolag. The staff did not have any direct support for these statements.


During the Special Inquiry and this investigation, OIG determined that the purpose of the NIST study was to evaluate the fire endurance performance of Hemyc and that Hemyc failed the relevant acceptance criteria. Therefore, OIG concluded that there was no agency justification for delaying followup on the 1993 NIST test of Hemyc because of differences in failure mode or for any other reason. The OIG also found that the staff did not intentionally mislead or provide inaccurate information to you.

On July 15, 2008, Chairman Klein issued a followup letter to you reporting results of the agency's further review of the Special Inquiry report. The letter included, as an attachment, a letter from Chairman Klein to me dated the same day. OIG determined that the July 15, 2008, letters corrected the inaccurate information provided in the April 7, 2008, letter by accurately describing the purpose of the 1993 NIST test and the reasons for NRC's delayed action following the results of the NIST test.

The investigation found that in this particular situation, weaknesses in NRC's process for validating information contributed to the inaccurate information contained in the April 7, 2008, letter. These weaknesses included no specific process for collecting and reviewing source material or for reviewing the letter after changes had been made. My office will report these weaknesses to the NRC Chairman in a separate letter.

For additional information, please contact Rossana Raspa, Senior Level Assistant for Investigative Operations, at 301-415-5954.

Sincerely,

A handwritten signature in black ink, appearing to read "Hubert T. Bell". The signature is fluid and cursive, with a large initial "H" and a long, sweeping underline.

Hubert T. Bell
Inspector General

cc: Chairman Klein, NRC

The investigation found that in this particular situation, weaknesses in NRC's process for validating information contributed to the inaccurate information contained in the April 7, 2008, letter. These weaknesses included no specific process for collecting and reviewing source material or for reviewing the letter after changes had been made. My office will report these weaknesses to the NRC Chairman in a separate letter.

For additional information, please contact Rossana Raspa, Senior Level Assistant for Investigative Operations, at 301-415-5954.

Sincerely,

Hubert T. Bell
Inspector General

cc: Chairman Klein, NRC

Distribution:

File Location: X:\FY 2009\FY Congressional Letters\08-40_Congr Price re
Hemyc_12_31_08.rtf

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Case File 08-40

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(b)(7)(C)			R. Raspa	J. McMillan	D. Lee	H. Bell
1/7/09	1/ /09	1/7/09	1/7/09	1/8/09	1/9/09	1/9/09

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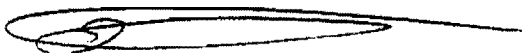


**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

August 27, 2009

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

FROM: 
Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: FAILURE TO SAFEGUARD SENSITIVE NRC ALLEGATION
INFORMATION (CASE NO. 08-34)

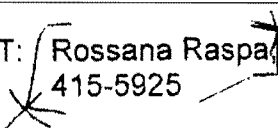
Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to mishandling of sensitive NRC allegation information.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits

cc:  w/o exhibits

CONTACT:  Rossana Raspa, OIG
415-5925

A/4

OFFICE OF THE INSPECTOR GENERAL
Report of Investigation



**Failure To Safeguard Sensitive NRC
Allegation Information**

(b)(7)(C)

Case No. 08-26
(b)(7)(C)


Joseph A. McMillan, Assistant Inspector General
for Investigations

08/25/09
Date

**THIS REPORT IS RELEASABLE ONLY BY THE U.S. NUCLEAR REGULATORY
COMMISSION, OFFICE OF THE INSPECTOR GENERAL.**

**THIS REPORT OR ITS EXHIBITS MAY NOT BE PLACED IN ADAMS WITHOUT
WRITTEN PERMISSION OF THE NRC OIG.
EXEMPT FROM RELEASE UNDER FREEDOM OF INFORMATION ACT
EXEMPTIONS (5), (6) OR (7) AND PRIVACY ACT EXEMPTIONS (j)(2) OR (k)(1)**

**Failure To Safeguard Sensitive NRC
Allegation Information**

Case No. 08-34

August 27, 2009

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STATUTES AND REGULATIONS

5 CFR, Section 2635.101 (5) Basic Obligation of Public Service

"Employees shall put forth honest effort in the performance of their duties...."

5 CFR, Section 2635.101 (B), (12) Basic Obligation of Public Service

"Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations...."

NRC Management Directive 3.4, Handbook 3.4, Part II - Release of Allegation Information

"Allegation information should not be released to the public and will not be released to the ADAMS Public Library without the approval of the regional or program office Allegation Coordinator, the Agency Allegation Advisor, or the Assistant Agency Allegation Advisor."

NRC Management Directive 8.8, Volume: 8 Licensee Oversight Program - Policy (8.8-01 and 8.8-02)

"It is the policy of the U.S. Nuclear Regulatory Commission to manage allegations concerning NRC-regulated activities in such a way as to protect the identities of individuals, where appropriate and possible, to preclude potential harassment and intimidation, reprisal or retaliation by employers against individuals raising concerns to NRC or stigmatization by co-workers or members of the public."

"The identity of an alleged or confidential source is not disclosed outside the agency unless (a) the alleged has clearly indicated no objection to being identified, (b) disclosure is necessary because of an overriding safety issue...."

NRC Management Directive and Handbook 12.5 Requirements

Passwords should never be displayed as clear text whether printed or displayed on a screen.

Passwords should never be written down, stored in clear-text on computer media storage, or shared with others.

SUBJECT

(b)(7)(C)

Nuclear Fuel Services
Erwin, TN

ALLEGATION

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this investigation based on an allegation from (b)(7)(C) (b)(7)(C) Nuclear Fuel Services (NFS), Erwin, TN, concerning improper handling of sensitive NRC allegation information. (b)(7)(C) said that when he and another (b)(7)(C) returned to their shared office at NFS, on February 12, 2008, they found an envelope containing an unlabeled 3½-inch computer disk under their locked office door. (b)(7)(C) said he placed the disk into his NRC-assigned computer to review the contents and found approximately 30 NRC allegation files.

During this investigation, OIG also examined the circumstances surrounding the discovery of another disk containing sensitive NRC allegation information by an NFS Vice President in an envelope in her office mail on March 18, 2008.

FINDINGS

FINDINGS

OIG determined that the 3½-inch floppy disk left under the NFS (b)(7)(C) office door on February 12, 2008, contained sensitive allegation information and was created by (b)(7)(C) a former NFS (b)(7)(C). (b)(7)(C) found that the disk was likely left by (b)(7)(C) in his desk and later found by (b)(7)(C) who was reassigned (b)(7)(C) desk sometime in 2005. In 2006, (b)(7)(C) left NFS to become a (b)(7)(C) Oconee Nuclear Power Station. (b)(7)(C) was unable to determine who left the floppy disk under the NFS (b)(7)(C) office door on February 12, 2008.

OIG determined that on or about March 18, 2008, an NFS Vice President received an envelope by interoffice mail that contained a 3½-inch disk that had been accessed by (b)(7)(C) on March 17, 2008. The envelope which was received by the NFS Vice President on March 18, 2008, contained a typed note that the disk was found in the desk of a former NFS engineer and should be returned to the NRC. The disk contained sensitive NRC allegation material compiled by (b)(7)(C) in 2004. (b)(7)(C) determined that the disk had been in the possession of and viewed by (b)(7)(C) on March 17, 2008.

OIG also determined that on February 5, 2008, (b)(7)(C) accessed on floppy disk media three allegation files that were not on either of the two 3½-inch floppy disks provided to (b)(7)(C). (b)(7)(C) did not report to Region II management that he had found or accessed these three files containing sensitive allegation information, which contrasts with his handling of the disks found on February 12, and March 18, 2008, respectively. (b)(7)(C) claimed that he may have found and accessed other disks containing allegation files that were in his desk (which previously belonged to (b)(7)(C)) but that he destroyed these disks.

OIG further determined that (b)(7)(C) admitted keeping his log-on identification and password written down on paper on his desk, despite knowing that this practice is contrary to established NRC policy on password protection.

BASIS FOR FINDINGS

Interview of (b)(7)(C)

(b)(7)(C) NFS, stated that on February 12, 2008, upon arrival at his office with (b)(7)(C) after lunch, he found an interoffice envelope that was addressed to (b)(7)(C) former (b)(7)(C) NFS (b)(7)(C) opened the envelope and found one disk labeled, "Millstone." (b)(7)(C) stated that he accessed the disk and found allegation information. (b)(7)(C) immediately informed (b)(7)(C) NFS (b)(7)(C) with whom (b)(7)(C) had shared an office since June 2006 (b)(7)(C) recalled that (b)(7)(C) came to his office and looked over his shoulders at his computer screen which displayed the files on the disk. He was not sure, but recalled (b)(7)(C) also took the disk to his computer and looked at the files that were on the disk. (b)(7)(C) told (b)(7)(C) to notify (b)(7)(C) (b)(7)(C) Region II, NRC. (b)(7)(C) notified (b)(7)(C) and sent him the disk.

(b)(7)(C) said he questioned several NFS employees who worked in the vicinity of the (b)(7)(C) office concerning whether they had left the disk in the (b)(7)(C) office; however, none of these individuals reported having any knowledge concerning the disk. (b)(7)(C) said he recalled questioning himself about how the person who left the disk at the (b)(7)(C) office could have known the disk belonged to (b)(7)(C) without having accessed the information on the disk.

(b)(7)(C) described another incident concerning a second disk containing allegation information that was found in March 2008. (b)(7)(C) said that (b)(7)(C) NFS, contacted him and stated that she received an envelope with a disk that contained allegation files created in 2004. (b)(7)(C) stated that (b)(7)(C) told him/she suspected that the disk came from (b)(7)(C) an NFS. (b)(7)(C) said (b)(7)(C) told him that (b)(7)(C) used to work next to the (b)(7)(C) office a few years prior. (b)(7)(C) told OIG he did not know (b)(7)(C).

(b)(7)(C) stated that his user computer access identification is (b)(7)(D). (b)(7)(C) explained that he never shared his user identification or computer password with anyone. Occasionally (b)(7)(C) said that he used one of the four computers in the (b)(7)(C) office but said he always used his own user identification and computer password. He said he has never logged on to a computer using another person's user identification and computer password.

(b)(7)(C) explained that he never told (b)(7)(C) his computer password, and (b)(7)(C) never shared his computer password with him. (b)(7)(C) said he has never seen (b)(7)(C) user identification or computer password or (b)(7)(C) desk within the (b)(7)(C) office. (For further details, see Exhibits 1, 2 and 3.)

Interview of (b)(7)(C)

(b)(7)(C) explained to OIG that on March 18, 2008, while going through (her) in-box (she) found an interoffice envelope addressed to (her). When (she) opened the envelope, (she) found a disk along with a typed note stating, "You may want to return this to the NRC, it was found in the desk of an engineer that no longer works here." (b)(7)(C) accessed the disk, realized that it contained NRC allegation information, and immediately closed the file. (b)(7)(C) said that the following day, (she) contacted the NRC (b)(7)(C) office to inform them about the disk (she) received.

(b)(7)(C) stated that (b)(7)(C) came to pick up the disk and asked (her) where the disk came from. (b)(7)(C) told (b)(7)(C) that (she) did not know but that (she) thought the handwriting on the interoffice envelope resembled that of (b)(7)(C) an NFS employee. (b)(7)(C) told OIG that (she) mentioned (b)(7)(C) name to (b)(7)(C) despite being unsure if the handwriting was his because (b)(7)(C) was persistent in his questioning about where the disk came from.

(b)(7)(C) recalled that when (she) accessed the file, (she) noted that the allegation information on the disk comported with the timeframe that (b)(7)(C) was assigned as the NFS (b)(7)(C).

(b)(7)(C) explained that no NFS employee should enter the (b)(7)(C) office to use their computers. Furthermore, (she) said that when the (b)(7)(C) are not in their office, they typically lock their doors. (b)(7)(C) said that NFS personnel who clean the (b)(7)(C) office have been instructed not touch or use any government property located within the office. (b)(7)(C) stated that these employees retrieve trash from the offices and are instructed not to enter the offices unless the office is occupied. (For further details, see Exhibit 4.)

Review of Records

OIG conducted a forensic analysis of the 3½-inch floppy disk found by (b)(7)(C) on February 12, 2008. On the disk were 61 files. Thirty of the files had either been overwritten or were corrupt; however, OIG could identify their file names. The remaining 31 files included 9 duplicate files and 22 unique files that contained 9 completed NRC Allegation Reports with Allegor Identification Sheets, 2 blank Allegation Reports with Allegor Identification Sheets, 6 Attachments or addendums to Allegation and Evaluation Reports, 1 Licensee Report, 2 Allegation Evaluation Reports, 1 Allegation Action plan, and 1 NRC Inspection Manual. Comparison of the file names from the 3½-inch floppy disk with information OIG found during an analysis of (b)(7)(C) hard drive revealed that his hard drive contained two link files that corresponded to the files names listed on the 3½-inch disk. Both files were located in (b)(7)(C) "Recent Documents" folder and were created on February 12, 2008.

[Investigator's Note: Link files are shortcuts to documents but are not the documents themselves. The link files are created when the system user opens a document by

double clicking on the file. The link file is stored in the 'Recent Documents' folder. Each user that has a log-on for a computer has their own 'Recent Documents' folder. On the hard drive, the folder is located at 'C:\Documents and Settings\<user>\Recent'.]

During the course of this investigation, OIG received from Region II a second 3½-inch floppy disk and a memo from (b)(7)(C) to Region II management dated March 19, 2008. (b)(7)(C) sent the disk with the accompanying memo to Region II explaining how the disk was found. The memorandum stated that on March 18, 2008, (b)(7)(C) (b)(7)(C) NFS, found the floppy disk in (her) mail, contacted the (b)(7)(C) (b)(7)(C) office when (she) determined that the floppy disk contained NRC allegation information, and provided the disk to the (b)(7)(C) OIG received the floppy disk from NRC Region II in a damaged condition.

OIG sent the floppy disk that (b)(7)(C) discovered in (her) office mail to the Department of Defense Computer Forensic Lab (DCFL) for repair and data recovery. The DCFL report stated that the data on the damaged floppy disk was not recoverable. However, DCFL was able to recover a directory listing showing files names of the data on the floppy disk. OIG compared the file names DCFL identified on the 3½-inch disk with information on (b)(7)(C) hard drive and identified six link files that corresponded to file names listed in the DCFL analysis. All six files showed a creation date of March 17, 2008, which was 1 day prior to (b)(7)(C) discovery of the disk in (her) mail, and were located in (b)(7)(C) 'Recent Documents' folder.

OIG also determined there were three additional link files on (b)(7)(C) hard drive that were not reflective of the files on either of the two 3½-inch floppy disks provided to OIG, but appeared to be associated with allegation information from other disks. The three link files were similar in name, format, and size as the six link files associated with the second 3½-inch disk analyzed by DCFL. The three link files were located in (b)(7)(C) "Recent Documents" folder and were created on February 5, 2008, which was 7 days prior to the discovery of the first floppy disk. (For further details, see Exhibits 5 and 6.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that he has worked at NFS for 28 years in various divisions. He said he had not worked with or interacted with (b)(7)(C) on a consistent basis since approximately 1997 when he worked in the NFS Safety Division. He recalled submitting some paperwork to (her) office in approximately April 2009 relating to NFS excavation of low-level waste (contaminated soil) that was being packaged and transported to a facility in Utah. Other than this (b)(7)(C) has not sent anything to (b)(7)(C) (b)(7)(C) said that he did not provide a floppy disk to (b)(7)(C) (For further details, see Exhibit 7.)

Interview of (b)(7)(C)

(b)(7)(C) Region II, NRC, said he served as the NFS (b)(7)(C) from (b)(7)(C) In

approximately (b)(7)(C) began supervising (b)(7)(C). He said that he and (b)(7)(C) had a cordial and professional relationship. However, (b)(7)(C) stated that he was not satisfied with (b)(7)(C) performance and counseled (b)(7)(C) for furnishing their relationship with the licensee by writing up an inspection finding against the licensee about an issue which the licensee had already identified to the NRC and was working to resolve.

(b)(7)(C) explained that during his tenure at NFS, he was responsible for daily oversight of plant operations which required NRC response to events and allegations at the plant. He wrote his reports on his computer and sent the reports by e-mail or fax to Region II. He created 3½-inch floppy disk backups of the information and reports on his computer. (b)(7)(C) claimed that he had no more than two disks that he used to back up information, and he did not recall if the disks were labeled. (b)(7)(C) acknowledged that he created the disks found by (b)(7)(C).

(b)(7)(C) told OIG he never shared his disk with (b)(7)(C). (b)(7)(C) recalled that he received new office furniture at NFS in 2003, and he said that when (b)(7)(C) came to NFS in 2005 he was given (b)(7)(C) old desk. (b)(7)(C) explained that he may have left the backup disks in his old desk. (b)(7)(C) believes that (b)(7)(C) found both disks in his old desk, and he believes (b)(7)(C) is trying to make him look bad because he received a promotion to branch chief in Region II. (b)(7)(C) said that it is unlikely that the disks were found at any other location other than his old desk in the (b)(7)(C) office.

(b)(7)(C) also told OIG that in (b)(7)(C) prior to departing NFS for (b)(7)(C) (b)(7)(C) as the new (b)(7)(C) he burned information from his hard drive onto CDs to use as sample documents in his new job. (b)(7)(C) further stated that he made a diligent effort to erase his allegation files from his NFS computer. He said he did not share with (b)(7)(C) his 3½-inch floppy disks that contained backup allegation information. (For further details, see Exhibit 8.)

Interview of (b)(7)(C)

(b)(7)(C) told OIG that he left his office on February 12, 2008, with (b)(7)(C) to get lunch and tour the NFS facility. (b)(7)(C) explained that upon leaving their shared office, the internal door to the (b)(7)(C) office was locked. However, an external door to the hallway was unlocked. Upon return to their office (b)(7)(C) said that (b)(7)(C) found that an interoffice manila envelope containing a 3½-inch floppy disk had been slipped under the door in the (b)(7)(C) office. (b)(7)(C) said the name (b)(7)(C) appeared on the envelope. (b)(7)(C) was the former NFS (b)(7)(C) and (b)(7)(C) had worked with (b)(7)(C) for approximately 1 year as (b)(7)(C). (b)(7)(C) placed the disk in the computer, and he and (b)(7)(C) accessed and viewed the disk and found several files containing allegation information. After determining the disk contents, he and (b)(7)(C) contacted Region II staff, and sent the disk and a memorandum to Region II as instructed by Region II management.

~~OFFICIAL USE ONLY – OIG INVESTIGATION INFORMATION~~

(b)(7)(C) related that a month after the first disk was found, the (b)(7)(C) office received a call from (b)(7)(C) who reported that she received a 3½-inch floppy disk in the mail. The envelope was similar to the one left under the (b)(7)(C) office door containing a 3½ inch floppy disk, and (b)(7)(C) recalled that (b)(7)(C) told (b)(7)(C) that she recognized the handwriting on the envelope as that of (b)(7)(C) an NFS employee. (b)(7)(C) told (b)(7)(C) that when she accessed the disk, she found files containing allegation information.

(b)(7)(C) and (b)(7)(C) accessed the disk which (b)(7)(C) provided to them, and found that it contained allegation information from 2004, whereas the first disk contained allegation information from 2002. (b)(7)(C) said that the first time that he saw the second disk was the day he received it from (b)(7)(C) said he and (b)(7)(C) sent the disk to Region II staff as they had been instructed to do with the first disk.

Regarding the second 3½-inch floppy disk which OIG forensic analysis revealed had been accessed on (b)(7)(C) computer a day prior to (b)(7)(C) receipt of the disk, (b)(7)(C) denied accessing the disk prior to (b)(7)(C) receipt of the disk in the mail. (b)(7)(C) speculated that someone could have come into the (b)(7)(C) office and accessed the disk by using his identification (b)(7)(C) reiterated that he had not seen or accessed the disk prior to (b)(7)(C) providing it to him and (b)(7)(C)

(b)(7)(C) told OIG that he keeps his log-on identification and password written down on paper on his desk, and stated that he knows this practice is contrary to NRC policy on password protection. Additionally, (b)(7)(C) said that he and (b)(7)(C) know each others' passwords and that at times (b)(7)(C) has used (b)(7)(C) password to access NFS computers. (b)(7)(C) acknowledged that he should not share his password with anyone.

(b)(7)(C) could not recall if (b)(7)(C) ever used floppy disks in his capacity as a (b)(7)(C) however, he said he did not use floppy disks. OIG questioned (b)(7)(C) about the three link files located on (b)(7)(C) hard drive that were not on the two 3½-inch floppy disks provided to OIG. He said he may have accessed other disks that were in his desk when he became the (b)(7)(C). However, he said he destroyed (shredded) the other disks and did not report this information to Region II management as he did with the two subsequent disks that contained allegation information. (For further details, see Exhibits 9 and 10.)

Department of Justice Coordination

Neil SMITH, Assistant United States Attorney, U.S. Attorney's Office, Eastern District of Tennessee, was briefed on this case and declined prosecution in lieu of administrative action.

EXHIBITS

1. Memorandum of Interview, (b)(7)(C) dated May 20, 2008.
2. Memorandum of Interview, (b)(7)(C) dated January 5, 2009.
3. Memorandum of Interview, (b)(7)(C) dated August 10, 2009.
4. Transcript of Interview (b)(7)(C) dated October 22, 2008.
5. OIG Forensic Analysis of Floppy Disk, dated March 31, 2008.
6. Forensic Analysis of (b)(7)(C) hard drive, dated July 12, 2008, with attachments.
7. Memorandum of Interview, (b)(7)(C) dated June 1, 2009.
8. Memorandum of Interview, (b)(7)(C) dated May 20, 2008.
9. Memorandum of Interview, (b)(7)(C) dated May 20, 2008.
10. Transcript of Interview (b)(7)(C) dated October 22, 2008.

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

FROM: Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: FAILURE TO SAFEGUARD SENSITIVE NRC ALLEGATION
INFORMATION (CASE NO. 08-34)

Attached is an Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), Report of Investigation pertaining to mishandling of sensitive NRC allegation information.

This report is furnished for whatever action you deem appropriate. Please notify this office within 120 days of what action you take based on the results of this investigation. Contact this office if further assistance is required.

The distribution of this report should be limited to those NRC managers required for evaluation of this matter. Neither the Report of Investigation nor its exhibits may be placed in ADAMS without the written permission of the OIG.

Attachment: Report of Investigation w/ exhibits

cc: (b)(7)(C) w/o exhibits

CONTACT: Rossana Raspa, OIG
415-5925

Distribution:

File Location: X:\FY 2009\FY 09 ROIs\08-34\Cover Memo.doc

Case File 08-34 Historical File AIG r/f, memo only MAGNUM

OIG	OIG	OIG	OIG	OIG	OIG
(b)(7)(C)	(b)(7)(C)	R. Raspa	J. McMillan	D. Lee	H. Bell
8/27/09	8/27/09	8/25/09	8/25/09	8/25/09	8/25/09

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OFFICE OF THE
INSPECTOR GENERAL

July 15, 2009

MEMORANDUM TO: Concur: Case Closed
Joseph A. McMillan
Assistant Inspector General
for Investigations

THRU:

FROM:

SUBJECT: MANIPULATION OF REACTOR OVERSIGHT PROCESS
 (CASE NO. 08-28)

The Office of the Inspector General (OIG) received an allegation from the Union of Concerned Scientists (UCS) and Greenpeace that the U.S. Nuclear Regulatory Commission (NRC) was manipulating the Reactor Oversight Process (ROP). These groups claimed this was done to avoid subjecting plants to higher levels of oversight under the ROP because NRC lacked or did not want to devote resources to complete additional plant inspections. The allegation specifically referred to the way in which NRC processed an issue for Kewaunee Nuclear Power Plant (Kewaunee)¹ that prevented moving the plant from Column 3 to Column 4 of the ROP's action matrix,² allegedly because NRC lacked or did not want to devote the additional resources to complete additional inspections.

¹ The initial allegation provided to OIG by UCS and Greenpeace indicated three plants were involved in the alleged manipulation (Kewaunee, Fort Calhoun, and Cooper.) However, David Lochbaum from UCS subsequently provided information that Kewaunee was, in fact, the only example of the alleged manipulation.

² The action matrix is a tool used in the NRC's ROP; it is described in IMC 0308 Attachment 4 and briefly under the "Basis of Findings" section of this report.

A15

Findings

OIG did not substantiate the allegation that NRC manipulated the ROP to prevent Kewaunee from moving to a higher column in the ROP action matrix because of a lack of resources. It is recommended that this case be closed to the files of this office.

Basis of Findings

NRC uses the ROP to evaluate licensee performance and determine what, if any, additional regulatory actions (including inspections) are required for increased regulatory oversight as plant performance declines. Specifically, there are four columns in NRC's action matrix, the tool used to categorize licensees into groups warranting different levels of NRC inspection and oversight based on plant performance. In Column 1 (Licensee Response Column), plants receive the standard baseline regulatory oversight program of inspections and reviews, and the level of oversight increases incrementally through Columns 2, 3, and 4.

OIG learned that inspection findings identified by NRC inspectors (using the Significance Determination Process, or SDP) and licensee performance indicators (for example the Mitigating Systems Performance Index, or MSPI) was measured by licensees and reported to the NRC are evaluated for input into the action matrix. Inspection findings or performance indicators that are risk significant are color coded white, yellow, or red. Indicators that are not risk significant are color coded green. The action matrix counts the number of risk significant findings and performance indicators for a plant and moves the plant progressively through Columns 2, 3, and 4 as the numbers increase.

To review this allegation, OIG interviewed 11 headquarters and regional staff. These individuals were familiar with the circumstances surrounding the diesel generator failure at Kewaunee, and with the ROP.

In the Kewaunee case, OIG learned that the licensee first documented a diesel generator fuel leak on June 28, 2006, and attempted to repair the deficiency. On August 17, 2006, during a 2-hour surveillance test, the fuel leak worsened, causing the diesel generator to be declared inoperable by the licensee. On August 18, 2006, the licensee repaired the diesel generator and declared it operable. There were a total of 51 days from the time when the leak was first discovered until the diesel generator was declared operable after the failed surveillance test. When NRC reviewed this event as an inspection finding (using the SDP), the diesel generator was characterized as inoperable for 51 days and given a white finding color. The NRC staff believed that the same total inoperability time should have been used for the performance indicator (MSPI) reported by the licensee. However, the licensee reported the diesel generator as inoperable for 1 day as part of the performance indicator reporting.

The licensee disagreed with NRC's position regarding the performance indicator and appealed the NRC decision. An appeal hearing, which included oral presentations and written summaries, was conducted by the Director, Division of Inspection and Regional Support (DIRS), Office of Nuclear Reactor Regulation (NRR), in accordance with NRC policy; however, this individual was promoted to a different position before a decision was made. A new DIRS Director later ruled in favor of the licensee, which resulted in the diesel generator being characterized as inoperable for 1 day instead of 51 and the performance indicator was determined to be green instead of white. The DIRS Director who ruled in favor of the licensee told OIG that he was assigned as DIRS Director toward the end of appeal process and made the final decision without hearing oral presentations. OIG learned that the DIRS Director reviewed available documents and consulted with NRC staff members regarding the issue and ultimately ruled in favor of the licensee. He also consulted with the previous DIRS director. The DIRS director told OIG that the availability of NRC staffing resources was not a factor in his decision to rule in favor of the licensee.

Five NRC headquarters and regional staff members interviewed for this case told OIG that they disagreed with the ruling, but acknowledged there were reasonable arguments on both sides. However, three of the staff members told OIG that they thought the ruling for the licensee was partially the result of NRC management not wanting the licensee to move columns within the action matrix and cause NRC to use resources for additional inspections. However, these staff members acknowledged they were speculating that NRC management was concerned about the impact the additional inspections would have had on NRC inspection resources. Furthermore, none of the staff members could cite specific evidence of NRC ever having prevented a plant from moving columns due to resource issues, including in this case.

OIG interviewed six senior level NRR managers, including the Director and Deputy Director of NRR. Several of these managers stated that the individual who hears the oral presentations during the appeal process ideally should be the one to make the final decision regarding the appeal. However, the managers were comfortable with a new individual rotating into the position during an ongoing appeal and making a final decision. All six senior level NRR managers stated that they have never directed anyone to consider inspection resources when reviewing ROP evaluations, including the Kewaunee case. These NRR managers stated that they expected the DIRS Director to make a decision based on the technical merits of the issue. Moreover, they said that resources are not an issue when a licensee moves columns within the action matrix because the additional resources needed for inspections are always available from other regions and headquarters staff.

Additionally, OIG briefed the Director and Deputy Director of NRR regarding the perception among some staff that ROP decisions are sometimes based on the availability of NRC resources. Both the Director and Deputy Director told OIG that they

were unaware of this perception and would ensure that all NRR staff members were reminded that decisions within NRR regarding the ROP do not consider the availability of NRR staffing resources.

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Case No. 08-28

OIG/AIGI (b)(7)(C)	OIG/AIGI (b)(7)(C)	OIG/AIGI (b)(7)(C)	OIG/AIGI R. Raspa	OIG/AIGI J. McMillan	OIG D. Lee	OIG H. Bell
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Findings

This investigation revealed no information to indicate any wrongdoing by the NRC employee. (b)(7)(C) advised OIG that no information suggesting criminal misconduct by (b)(7)(C) had been identified during the FBI investigation. Based on the absence of NRC staff wrongdoing and the lack of further investigative leads or requests for FBI assistance, it is recommended that this case be closed to the files of this office.

Basis of Findings

(b)(7)(C) (b)(7)(C) provided the following NRC records to (b)(7)(C) pertaining to (b)(7)(C)

- Leave and Earning Statements
- E-mail records and personnel security file records
- Personnel records and NRC network drive records
- Telephone records

(b)(7)(C) also provided (b)(7)(C) computer files obtained from two imaged NRC computer hard drives based on search terms provided by (b)(7)(C)

(b)(7)(C) informed (b)(7)(C) that the FBI's continued investigation involving (b)(7)(C) had not identified further investigative leads or evidence of criminal wrongdoing. Additionally, (b)(7)(C) had no further requests for OIG assistance relative to (b)(7)(C)

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Case File No. 08-21

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(b)(7)(C)	(b)(7)(C)	R. Raspa	J. McMillan	D. Leach	H. Bell
6/24/09	6/24/09	6/24/09	6/25/09	6/25/09	6/24/09

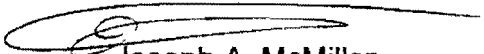


**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

March 31, 2009

MEMORANDUM TO: R. William Borchardt
Executive Director of Operations

FROM: 
Joseph A. McMillan
Assistant Inspector General
for Investigations

SUBJECT: TERMINATED NRC LICENSE FOR DISTRIBUTION OF
IRRADIATED GEMSTONES (CASE NO. 08-09)

The Office of the Inspector General (OIG), Nuclear Regulatory Commission (NRC), conducted an investigation into a 2007 allegation that there were irradiated gemstones, not regulated by NRC, widely available in the U.S. and that NRC did not know whether the gemstone radioactivity levels were within NRC-regulatory limits. According to the allegation, these gemstones were available to the public even though the last NRC license for distributing irradiated gemstones had been terminated.

Background

NRC began regulating the distribution of irradiated gemstones during the 1980s. Irradiated gemstones fall under NRC's regulatory jurisdiction because the process of enhancing the stones' color, in a nuclear reactor or an accelerator, can make the gems radioactive. After irradiation, the stones are typically set aside for a couple of months to allow radioactivity to decay. NRC requires that the initial distribution of these stones be by an NRC-licensed distributor. This distributor is expected to conduct radiological surveys of each batch of gemstones to ensure that any residual radioactivity falls below regulatory limits. After initial distribution, the stones do not need to be regulated and subsequent distributors, jewelers, other retailers, and consumers do not need to be licensed.

NRC's Office of Federal and State Materials and Environmental Management Programs (FSME) issues exempt distribution licenses to companies licensed for initial distribution of irradiated gemstones. These licenses are issued for 10 years, at which point licensees have the option to renew.

In October 2006, NRC Region I received an allegation that various companies were purchasing irradiated gemstones from suppliers and selling the irradiated gemstones in the U.S. without exempt distribution licenses. NRC reviewed and substantiated this allegation. In 2007, NRC began taking steps to regain control over the irradiated gemstone industry. Efforts have included conducting public meetings to inform the jewelry industry and other stakeholders about NRC's irradiated gemstone regulatory requirements; conducting inspections of gemstone vendors and distributors, which found gemstone radioactivity levels were within regulatory limits; and development of a fact sheet, a Regulatory Issue Summary (RIS), and an Enforcement Guidance Memorandum (EGM) to convey background information and NRC regulatory requirements concerning the distribution of irradiated gemstones.

Because NRC's review confirmed that the allegation was accurate, and there was no dispute over the fact that the industry was unregulated for approximately 5½ years, OIG focused its review on the circumstances surrounding the termination of the last licensee to hold a distribution license.

Details

OIG learned that NRC issued approximately five exempt distribution licenses to entities during the late 1980s, but that by late 2001, due to marketplace changes, all the licensees had terminated their licenses. The last entity to terminate its exempt distribution license, in December 2001, was the University of Missouri Research Reactor Center (MURR).

OIG interviewed MURR staff who explained that MURR terminated its exempt distribution license primarily for economic reasons. According to MURR staff, it was too costly to engage in distribution of gemstones, and the effort to do so was having a negative impact on the institution's research and education mission. However, MURR had a separate NRC license, which allowed it to continue to irradiate gemstones. This license also allowed MURR to transfer the gemstones to another NRC licensee. Thus, MURR continued to irradiate gemstones, but entered into a contractual arrangement involving another NRC licensee¹ that could receive the irradiated gemstones from MURR. Under the contract, after gemstones were irradiated at MURR, they were transferred to the contracted licensee and held in a storage facility until the radioactivity levels were considered low enough to export the gemstones outside of the U.S., where NRC has no regulatory authority.

¹ Qualitek, Inc., contracted with MURR to irradiate gemstones and with International Isotopes, Inc. (II Inc.), which held an NRC possession license, to send the gemstones outside the U.S.

MURR notified an NRC license reviewer in the Office of Nuclear Material Safety and Safeguards (NMSS)² by letter that it sought to terminate its exempt distribution license. OIG interviewed the NRC license reviewer, who recalled informing his supervisor that MURR was the last entity that possessed an exempt distribution license for irradiated gemstones and that MURR requested to terminate this license.

OIG interviewed the license reviewer's supervisor, who did not recall being told that MURR had been the last entity to hold an exempt distribution license for irradiated gemstones. However, the supervisor told OIG that he had the impression that around the time MURR terminated its license, other companies were also terminating their licenses or letting them expire because the market had changed and there was less consumer interest in irradiated gemstones. The supervisor recalled thinking that some companies probably continued to distribute irradiated gemstones despite not having a valid NRC exempt distribution license. However, he said that NRC is not proactive in identifying consumer markets that require NRC licenses. He said that to be proactive would require resources that the NRC does not have available.

OIG interviewed FSME staff members concerning the circumstances that permitted irradiated gemstone distribution to be unregulated for approximately 5½ years. According to FSME staff, following the terrorist attacks of September 11, 2001, NRC was increasingly focused on safety and security issues. Licensing issues pertaining to irradiated gemstones were considered a low priority in comparison with efforts to deal with sealed sources, which posed a higher risk than gemstones based on their radioactivity levels. Staff felt that irradiated gemstones did not pose a health and safety threat to the public because of their relatively low radioactivity levels.

FSME staff also explained to OIG that regulation of irradiated gemstones was simplified somewhat by the Energy Policy Act of 2005, which broadened the scope of NRC's regulatory authority to include gemstones irradiated in accelerators. Prior to enactment of this legislation (November 30, 2007), NRC had regulatory authority over gemstones irradiated in nuclear reactors, but not those treated in accelerators. FSME staff told OIG that it was sometimes difficult to ascertain how the irradiated gemstones were processed. This was important because prior to November 30, 2007, NRC was authorized to ensure only that gemstones irradiated in reactors were within regulatory limits, and the agency had no authority over gemstones irradiated in accelerators.

FSME staff believes NRC has regained control over the distribution of irradiated gemstones because the agency has issued exempt distribution licenses to five³ entities viewed as the primary distributors of irradiated gemstones. NRC has also drafted a RIS on the distribution of irradiated gemstones, which will be issued to licensees and

² NMSS had oversight responsibility for the distribution of irradiated gemstones prior to the establishment of FSME in 2007.

³ Additional license applications are currently under review.

Agreement States to clarify existing regulations on irradiated gemstone distribution. In addition, an EGM has been drafted to provide guidance with respect to enforcement of the distribution of irradiated gemstones. According to FSME staff, these efforts help to heighten industry awareness of NRC regulatory requirements so that entities can identify themselves as initial distributors, if appropriate, and pursue the necessary licenses, if they do not have them. While NRC cannot be sure if it has issued licenses to all entities that should have them, FSME managers said the agency's efforts are sufficient and appropriate, given the safety significance of the issue.

A FSME manager told OIG that NRC is also working with the Department of Homeland Security, Customs and Border Protection (CBP), to encourage CBP staff to determine whether irradiated gemstone imports are being sent to licensed distributors. The manager said that CBP staff have been provided copies of all NRC exempt distribution licenses and are expected to verify whether prospective recipients of gemstone shipments are licensed to distribute irradiated gemstones before releasing the shipments to their destination.

To prevent the irradiated gemstone industry from becoming unregulated in the future, the FSME manager said that each exempt distribution licensee is now required to submit an annual report to NRC that details type, quantity, and radioactivity levels of irradiated gemstones they distribute. FSME staff will review these reports for increases and decreases in market trends. Furthermore, when a licensee surrenders its license, NRC will contact the licensee to determine why they are no longer interested in holding a license and assess how this rationale aligns with industry trends. Moreover, the manager said FSME staff are now expected to inform NRC management as necessary about any concerns gleaned from licensees and market changes. These procedures are described in FSME Policy and Procedure 1-09, Revision 1, dated July 2008, which include a specific step to notify the Division Director, Materials Safety and State Agreements, via Staff Annual Summary Report, if the last license is terminated.

The FSME Director told OIG that based on the low level of radiation present in irradiated gemstones, distribution of these gemstones is not a significant safety issue. Nevertheless, he said it is a regulatory requirement, and that NRC therefore needs to maintain its oversight authority. The Director believes that FSME staff are aware of the issues and would follow good knowledge management practices to share information about a last license termination so that NRC could respond appropriately.

Conclusion

The distribution of irradiated gemstones was unregulated for about 5½ years, from December 2001 to mid-2007. During this time, irradiated gemstones were widely available in the U.S. marketplace without NRC regulatory oversight. This situation occurred because the last licensee terminated its license and this went unnoticed by

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NRC management. However, NRC has taken steps to regain control over this industry and has written procedures in place requiring staff to alert agency management if, in the future, a last exempt distribution license is terminated.

This information is provided for your review and consideration. Please inform us of any agency action taken in response to this memorandum.

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

OFFICE OF THE
INSPECTOR GENERAL

September 23, 2009

MEMORANDUM TO:

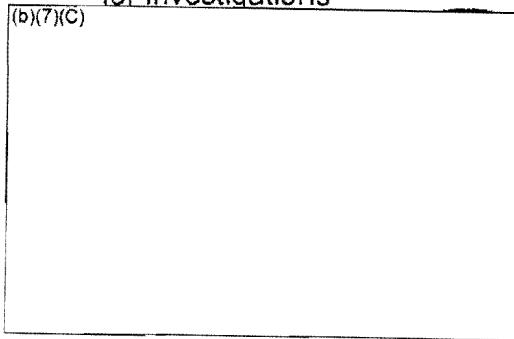
Concur: Case Closed
Joseph A. McMillant
Assistant Inspector General
for Investigations

for: [Signature]

THRU:

FROM:

(b)(7)(C)



SUBJECT:

SPECIAL PROJECT: YUCCA MOUNTAIN HIGH-LEVEL
WASTE (CASE NO. 07-48)

The Office of the Inspector General (OIG), U.S. Nuclear Regulatory Commission (NRC), initiated this project May 2007, to monitor developments associated with the Yucca Mountain Project.

OIG did not identify or received any allegations of NRC fraud, waste, abuse or individual misconduct since the inception of this project. However, as part of this project, the Senior technical Advisor (STA) reviewed the Atomic Safety and Licensing Board Panel (ASLBP) memorandum and order (LBP-09-06) addressing standing and admissibility of contentions in the Yucca Mountain, Nye County, Nevada, high-level waste case. The memorandum discussed the procedural and factual nature of each of 318 contentions and evaluated the facts of each contention against the elements for admissibility under the legal standards set forth in NRC regulations and case law.

There were only two contentions that identified alleged concerns about Department of Energy integrity and management capability respectively; no issues regarding integrity or management were raised regarding NRC management or staff. The remaining contentions focused on technical issues not relevant to fraud, waste, abuse or individual misconduct.

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Based on the fact that the current administration is reassessing the high-level waste program and considering alternatives to geologic disposal at Yucca Mountain, it is recommended that this project be closed.

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Based on the fact that the current administration is reassessing the high-level waste program and considering alternatives to geologic disposal at Yucca Mountain, it is recommended that this project be closed.

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Case No. 07-48

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