

February 3, 1999

Mr. Joseph L. Epstein
[]
Westinghouse Electric Company
Waste Isolation Division
P. O. Box 2078
Carlsbad, NM 88221-2078

Dear Mr. Epstein:

The DOE-Carlsbad Area Office and the Office of Enforcement and Investigation performed a review on January 12 –13, 1999, of your Price-Anderson Amendments Act (PAAA) nuclear safety program. The review included your process for reportability evaluations of potential PAAA violations and the scope of implementation of Part 830.120 Quality Assurance (QA) requirements to activities planned for the Waste Isolation Pilot Project (WIPP) facility. The purpose of this review was to ensure that your plans were consistent with DOE's regulatory expectations in these areas. Our review was based on material you provided prior to and during our onsite evaluation and interviews with key managers responsible for implementation of these programs. Based on our review we have not identified any areas of noncompliance with nuclear safety requirements but have identified several issues where processes or intended application of requirements should be enhanced as your program matures.

Some of the issues identified by DOE relate to determining those cases or noncompliances that should be reported to DOE via the Noncompliance Tracking System (NTS). The intent of DOE's NTS reporting thresholds is for contractors to report those cases that are above the reporting threshold so that DOE is well informed of conditions and trends related to potential violations of PAAA nuclear safety requirements. DOE intends to make the determination of which cases it deems warrant further DOE evaluation or investigation, and not have contractors screen such cases to determine for DOE which cases it should review. We address these issues and DOE's position on changes in the process that would enhance your reportability determinations in an attachment to this letter.

Other issues relate to your interpretation of applicability of DOE QA requirements in 10 CFR Part 830.120 to activities at the WIPP facility. In the attachment we also discuss these issues and DOE's position on how it would consider applicability of QA requirements in an enforcement review.

No reply to this letter is required. However, DOE will continue to monitor performance in these areas and it may decide in the future to again review (1) your internally-tracked noncompliances that you determined to be non-NTS reportable and (2) your application of Part 830.120 to activities at WIPP.

Should you desire DOE consideration of mitigation in deliberations of enforcement action, it is recommended that your PAAA evaluation and reporting process be revised to address the above issues. If you have any questions, contact Susan Adamovitz of the Office of Enforcement and Investigation at 301-903-0125 or Sam Vega, DOE PAAA Coordinator for the Carlsbad Area Office at 505-234-7423.

Sincerely,

R. Keith Christopher
Director
Office of Enforcement and Investigation

Keith Klein
Acting Area Manager
Carlsbad Area Office

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ATTACHMENT

Summary of Observations

NTS Reportability

DOE's reportability guidelines contained in DOE's Nuclear Safety Enforcement Program Operational Procedure *Identifying, Reporting, and Tracking Nuclear Safety Noncompliances under Price-Anderson Amendments Act of 1988, June 1998*, reflect DOE's expectations on reporting, and communicate how DOE will consider self-reporting in any mitigation considerations in determining whether an enforcement action is warranted. The issue of reporting programmatic noncompliances into NTS is addressed in DOE's reporting guidelines. A programmatic problem is not one that requires multiple similar events or breakdowns to be considered programmatic.

As addressed in the guidelines, DOE is concerned with multiple similar breakdowns, even involving a single event, indicating a broader systemic problem. This systemic problem may need to be addressed in a more programmatic approach, such as revising processes or developing a procedural control. Our review of certain recent cases that you have screened indicates that multiple work process noncompliances in one case and radiological work control noncompliances in the other occurred. However, these noncompliances screened out as programmatic issues since other similar events had not been identified. Our suggestion at the time of the visit was that Westinghouse should re-evaluate the reportability determinations applied in these cases. It is suggested that Westinghouse also re-evaluate its PAAA screening process and internal guidance to ensure consistency with DOE's reporting guidance with respect to consideration of programmatic issues. DOE's intention is for such programmatic weaknesses to receive the appropriate level of DOE and contractor attention so they are corrected before they lead to a more serious event. Reporting of such matters does not mean that matter warrants enforcement action. In fact, in a number of cases, DOE has not found it necessary or appropriate to take enforcement action for self-identified programmatic issues that are corrected since this action reflects a proactive safety approach by the contractor.

NRB Screen

Your PAAA program has a reportability screening step performed by a panel of Westinghouse managers referred to as the Nuclear Review Board. Although the few cases in your file indicate that the Board is doing an appropriate job of reviewing the preliminary reportability considerations by your PAAA Coordinator, DOE notes that the function of such Boards at other sites has not consistently followed DOE's reporting objectives. To clarify DOE's NTS reporting objectives, if noncompliances are

determined to meet DOE's NTS reporting threshold, it is expected that these will be reported. From time to time DOE will review contractor's internal tracking processes to ensure that reportable issues have not been withheld from reporting to DOE via NTS. It is not expected that if an issue meets DOE's reporting threshold that some additional review of safety significance by a management review board should lead to a decision not to report. DOE intends to make its own determination of significance and need for a review by DOE. The contractor may, and is encouraged to do so, provide its analysis of safety significance within the NTS report to DOE.

Part 830 Applicability

It is DOE's intention that Part 830 be applied appropriately to activities in nuclear facilities. DOE's enforcement considerations for noncompliances in a nuclear facility will consider the extent to which Part 830.120 requirements should have been applied in determining the extent and significance of potential violations. Our review of your plans for implementing the quality assurance provisions of 10 CFR Part 830.120 to activities at WIPP has raised some questions of your understanding of the applicability of Part 830 to such activities.

In particular, section 5.0 of your 10 CFR 830.120 Quality Assurance Program Implementation Plan of September 19, 1997, includes a statement that the program applies to activities with the potential to cause radiological harm. Our discussions with some management personnel indicated that this statement may have been interpreted too narrowly to mean those activities in the nuclear facility that could cause immediate radiological harm. We also note that a similar definition of nuclear activity also appears in your PAAA program procedure (WP 15-RA.01, Rev.0) in screening potential issues for PAAA applicability. It should be noted that Part 830.120 contains no such limitation. Compliance with Part 830 is required for activities involving a reactor or non-reactor nuclear facility, and thus is required for all activities associated with the nuclear facility.

The issue of activities with the potential to cause radiological harm is used to establish whether a facility should be classified as a nuclear facility. If the facility performs no activities with the potential to cause radiological harm, and thus does not perform any of the activities listed in the definitions of Part 830 on non-reactor nuclear facility, then the facility does not need to be classified as a nuclear facility. If however the facility does perform activities with the potential to cause radiological harm, then it should be considered as a nuclear facility and Part 830.120 would apply to activities in the nuclear facility. The requirements of Part 830 are to be applied in a graded approach, commensurate with the importance to safety, magnitude of any hazard, and other factors, as noted in 10 CFR Parts 830.3 and 830.7. WIPP is classified, as noted in your implementation plan, as a Hazard Category 2 non-reactor nuclear facility. Accordingly, Part 830.120 should be applied to activities in WIPP in a graded approach.