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NRC STAFF'S ACTIONS
REGARDING MIRG INTERVIEW
TRANSCRIPTS AND ITS HANDLING
OF AN ALLEGATION

CASE NO. 97-01S 4/2/97

OFFICE OF THE INSPECTOR GENERAL EVENT INQUIRY



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CASE NO. 97-01S

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EXECUTIVE SUMMARY

The Office of the Inspector General (OIG) initiated this event inquiry after receiving information which alleged there was a lack of sensitivity on the part of Region I staff in dealing with alleged and their concerns. OIG examined two specific instances which were reportedly indicative of Region I staff's lack of sensitivity with respect to its treatment of alleged and the handling of their allegations.

The first case addressed by this inquiry was an allegation that certain transcripts of interviews of Region I employees interviewed by the NRC Millstone Independent Review Group (MIRG) were prematurely released by NRC staff to discredit alleged. The MIRG evaluated the Region I staff's and Northeast Utilities Service Company's (NU) handling of employee concerns and allegations related to licensed activities at the Millstone Nuclear Power Station (Millstone). In October 1996, the news media published several articles containing excerpts from transcripts of MIRG interviews of Region I staff members which contained disparaging comments about alleged.

As part of this inquiry, OIG also reviewed a concern that the Region I staff had improperly referred an allegation, involving the operability of the Millstone Unit I low pressure coolant injection (LPCI) heat exchangers, to NU and that in the course of referring the issue, the identity of the alleged was revealed. The allegation regarding the LPCI was made to Region I in February 1996 and referred to NU in May 1996. The alleged and his attorney advised OIG that the LPCI issue should not have been referred to NU and that Region I staff did not follow agency procedures relevant to referring allegations to licensees. Additionally, the alleged and his attorney contended that the reference to an Adverse Condition Report (ACR) regarding the LPCI heat exchangers contained in the May 1996 NU letter of referral revealed the identity of the alleged to NU.

OIG found no indication that the MIRG interview transcripts were intentionally released by NRC staff to discredit alleged. OIG determined that a number of transcripts were placed in the NRC Public Document Room (PDR) on September 3 and 24, 1996, in accordance with procedures established at the onset of the MIRG review. The MIRG had planned to issue the MIRG report and transcripts concurrently. OIG determined that the MIRG review was completed in August 1996, and the MIRG report was forwarded to the Executive Director for Operations (EDO) on September 16, 1996. However, as a result of an unexpectedly lengthy review, the final MIRG report was not issued until October 24, 1996.

OIG also determined that the articles published in the news media between October 20 and 24, 1996, contained excerpts from three of the transcripts of MIRG interviews that were placed in the PDR on September 24, 1996. While the transcript of a Region I branch chief contained some negative comments about an alleged, Region I managers interviewed by OIG said they were confident that these views were not indicative of how the Region handled allegations.

OIG determined that Region I staff did not advise the alleged prior to referring the LPCI issue to NU in May 1996. The Region's failure to advise the alleged of the referral was not consistent with NRC procedures outlined in NRC Manual Chapter 0517 or in the draft Management

Directive (MD) 8.8 being followed by the Region in February 1996. OIG determined that Region I referred the LPCI issue to NU because the staff believed the allegor did not object to the referral. However, Region staff did not give adequate consideration to the remaining factors outlined in Manual Chapter 0517 or MD 8.8 for determining whether or not an allegation should be referred to a licensee.

OIG found that the reference to an ACR regarding the LPCI heat exchangers contained in the May 1996 letter of referral was not necessary to NU's understanding of the technical issue provided to NRC by the allegor. However, OIG determined that the reference was not specific enough to reveal the identify of the allegor to NU.

OIG also determined that Region I did not issue an acknowledgment letter to the allegor in a timely manner...MD 8.8 states that an acknowledgment letter should be sent to an allegor within 30 calendar days of receipt of an allegation. The allegation was received in February 1996 and the acknowledgment letter was dated August 19, 1996.

BASIS

The Office of the Inspector General (OIG) initiated this event inquiry after receiving information which alleged there was a lack of sensitivity on the part of Region I staff in dealing with alleged and their concerns. OIG examined two specific instances which were reportedly indicative of Region I staff's lack of sensitivity with respect to its treatment of alleged and its handling of their allegations.

In October 1996, OIG received several concerns involving the handling of transcripts of interviews of Region I employees interviewed by the NRC Millstone Independent Review Group (MIRG). Pursuant to a directive issued by the former NRC Executive Director for Operations (EDO), the MIRG was established to evaluate Region I staff's and Northeast Utilities Service Company's (NU's) handling of employee concerns and allegations related to the Millstone Nuclear Power Station (Millstone). NU is the NRC licensee for the three Millstone units. The final report of the MIRG, entitled: "Handling of Employee Concerns And Allegations At Millstone Nuclear Power Station Units 1, 2, & 3 From 1985 - Present" was issued on October 24, 1996. However, on October 20-24, 1996, several Connecticut newspapers published articles containing excerpts from transcripts of Region I staff members interviewed by the MIRG. The published excerpts contained some disparaging comments regarding alleged. It was alleged to OIG that the NRC "leaked" these transcripts prior to releasing the MIRG report to discredit alleged in the eyes of the public. Additionally, an attorney who represented a number of alleged interviewed by the MIRG questioned whether the negative views of alleged expressed in the transcripts had affected the Region's handling of technical issues raised by alleged. He further questioned whether these views had influenced the Region I staff's selection of which allegations received by the NRC were referred to NU for resolution. The attorney also questioned whether alleged could have any confidence that their allegations would be adequately handled given the staff's apparently negative view of them.

OIG received a separate allegation from an NU engineer and his attorney that Region I staff had improperly referred a safety concern to NU and in the course of doing so revealed the alleged's identity. Reportedly, in February 1996 the alleged informed Region I of a safety concern regarding the operability of the Millstone Unit 1 low pressure coolant injection (LPCI) heat exchangers. The alleged had observed scale (i.e., calcium carbonate deposits) on a LPCI heat exchanger tube and had questioned its impact on the heat removal capability of the LPCI heat exchangers. On May 14, 1996, Region I referred the LPCI issue to NU. Subsequently, the alleged and his attorney complained that the LPCI issue should not have been referred to NU and that Region I staff did not follow agency procedures relevant to referring allegations to licensees. In addition, they maintained that the May 14, 1996, NRC letter used to refer the allegation to NU revealed the identity of the alleged because it referenced an Adverse Condition Report (ACR) which had been prepared on the LPCI issue by the alleged.

DETAILS

I. NRC STAFF RELEASE OF TRANSCRIPTS OF INTERVIEW TO DISCREDIT ALLEGERS

On December 12, 1995, the former NRC Executive Director for Operations (EDO) established an internal review group to conduct an evaluation of Northeast Utilities Service Company (NU) and the NRC's handling of employee concerns and allegations related to activities at Millstone. NU is the licensee for the Millstone Nuclear Power Stations 1, 2, 3. The MIRG was tasked to evaluate both NU and the NRC's effectiveness in addressing employee concerns and allegations at Millstone from 1985 to 1996, and to identify root causes for continued employee concerns at Millstone. The MIRG reviewed both NRC and licensee allegation files, NRC inspection reports, enforcement actions, and investigations conducted by OIG and the NRC's Office of Investigations (OI). The MIRG also selected nine alleged from Millstone for in-depth case studies. Subsequently, the MIRG interviewed NU management officials, former and current NU employees who had raised safety concerns, and NRC Region I and Headquarters staff members.

In August 1996, the MIRG conducted a public meeting and met with alleged who had been interviewed by the MIRG to discuss its findings. On October 24, 1996, the NRC issued the MIRG report. The MIRG found that, "In general, an unhealthy environment, which did not tolerate dissenting views, and did not welcome or promote a questioning attitude, has existed at Millstone for at least several years." Also, it found that the environment at Millstone had resulted in repeated instances of discrimination and ineffective handling of employee concerns. In addition, the MIRG found that historically, allegations had not always received the level of NRC attention that was warranted and that there was an apparent attitude among the NRC staff that allegations were a "necessary burden that drew NRC attention from more important matters." Additionally, the MIRG identified a number of problem areas at NRC including inadequate sensitivity and responsiveness to alleged, inadequate discrimination follow-up, and ineffective allegation program implementation.

On October 20-24, 1996, several Connecticut newspapers published articles containing statements or excerpts reportedly obtained from transcripts of interviews of Region I staff members conducted by the MIRG. The published quotations contained the opinions and observations of several Region I staff members regarding their handling of allegations and alleged. One newspaper article contained the following comment by one Region I manager: "I don't believe that we shy away from enforcing our regulations, ever. And that kind of statement (that the NRC has dragged its feet in enforcing safety regulations), I think has no truth to it. That has no bearing on how we operate in the agency." Also, this manager "took issue" with the claim by some whistle-blowers that the agency blindly refers allegations back to NU. Another Region I manager's published statements indicated disagreement with the characterization that the NRC was cozy with the nuclear industry. This manager stated that, "I don't want to hear this rubbish about being unresponsive to whistle-blowers." The newspaper articles also contained a statement by this manager that a prominent whistleblower at NU was "selfishly motivated" and that, "I think he's trying to make political hay, trying to get his name in lights again." In addition, one of the

newspaper articles stated that Region I staff members felt that the opinions of whistleblowers at NU did not necessarily provide an “accurate picture” of events at Millstone and that “despite the critical findings of numerous official inquiries over the past year, many regulators personally believe problems within the agency and at NU have been overblown or misunderstood.”

OIG reviewed the transcripts of MIRG interviews of the three Region I staff members whose continents appeared in the news articles. The MIRG interviews of the Senior Allegation Coordinator and the Director, Division of Reactor Projects (D.P.) pertained to the NRC allegation process. The transcript of the MIRG interview of a Region I Branch Chief contained several critical comments regarding a particular allegor. Specifically, the Branch Chief commented that the allegor was selfishly motivated and that for selfish purposes the allegor wanted to make an issue of the NRC lack of responsiveness to certain allegations. The Branch Chief further remarked to the MIRG that in regard to one allegation, the allegor was looking for an issue to get his name in lights again, and this allegor wanted to see reactors shut down until his issue was resolved. However, the Branch Chief asserted that the allegor was non-specific about identifying the problem. Additionally, in response to the claim that the NRC was not responsive to allegations, the Branch Chief told the MIRG that he did not, “Want to hear this rubbish about coziness, and I don't want to hear this rubbish about being unresponsive or not citing the right enforcement. The fact is, the regulator has to be reasonable.”

OIG determined that an Administrative Assistant from the Office of Nuclear Reactor Regulation (NRR), provided assistance to the MIRG, and was responsible for handling and distributing the transcripts of interviews. The MIRG Team Leader in conjunction with an attorney from the NRC's Office of the General Counsel (OGC) provided direction to the administrative assistant on how to handle the transcripts. All of those interviewed by the MIRG were allowed to review their transcripts for accuracy. After the interviewees reviewed their transcripts, the administrative assistant, the MIRG Team Leader, and the OGC attorney, redacted the transcripts to ensure that any privacy, proprietary, or safeguards information was protected from public disclosure.

The Administrative Assistant advised OIG that she began reviewing the transcripts after the field work had been completed and the report had been drafted by the MIRG. She selected the transcripts for review on a random basis, and she reviewed the least voluminous first. According to the administrative assistant, the MIRG Team Leader instructed her to send two groups of transcripts to the NRC Public Document Room (PDR). The first group of transcripts, documenting three public meetings and three interviews, were sent to the PDR on September 3, 1996. The second group of transcripts, consisting of nine transcripts of interviews of NU employees, NRC Headquarters and Region I staff, was sent to the PDR on September 24, 1996. OIG confirmed that these transcripts were placed in the PDR on September 25, 1996.

The MIRG Team Leader advised OIG that on March 21, 1996, the MIRG decided that all transcripts of interviews conducted by the group would be placed in the PDR. However, he said that in April 1996, he and the allegors' attorney reached an agreement that if any of the allegors wished to have their interview transcript withheld from public disclosure, the MIRG would honor their wish. According to the Team Leader, this option was extended to the NU employees

interviewed by the MIRG; however, the Team Leader stated that all MIRG transcripts of NRC employees were to be made public. He said the MIRG wanted to complete its work by August 16, 1996.

Accordingly, on July 15, 1996, the Team Leader instructed the administrative assistant to review by August 16, 1996, all transcripts that were to be placed in the PDR. The MIRG Team Leader said he wanted the transcripts ready for placement in the PDR by August 16, 1996, because he wanted to release the transcripts and the report at the same time. The Team Leader told OIG that on August 7, 1996, the MIRG had essentially completed its review, and public meetings were held at this time to discuss the MIRG findings. The MIRG report was written and sent to the EDO on September 16, 1996; however, the MIRG report was not issued until October 24, 1996. The Team Leader said that the MIRG's goal to have the report issued in August may have been overly optimistic and that he never anticipated such a lengthy review process.

The MIRG Team Leader told OIG that the transcripts were released in accordance with the process developed by the MIRG early in their review. Also, he said the entire matter of releasing the transcripts was driven by his over-riding concern to maintain the MIRG's credibility with allegers and the public. Therefore, he felt it was important to place the transcripts in the PDR in accordance with the commitment that the transcripts would be placed there at the conclusion of the MIRG review. The MIRG Team Leader stated that, in hindsight, the MIRG report should have been placed in the PDR before the transcripts. The MIRG Team Leader told OIG he never thought that certain comments made by a Region I Branch Chief would be viewed negatively by the public or that they would adversely affect public perception of the NRC staff. The Team Leader said that during the MIRG interview, the Branch Chief discussed his experiences in handling allegations, and, while his comments were well-intentioned and sincere, the Branch Chief expressed his frustrations in dealing with allegers. The MIRG Team Leader told OIG that he believed the Branch Chief had historically handled allegations based on their technical merits but that perhaps the Branch Chief was not adequately sensitive to allegers.

OIG interviewed the Region I Branch Chief whose critical comments appeared in the newspapers. The Branch Chief advised OIG that the MIRG selected him for interview because of his involvement with Millstone during the early 1990s. He speculated that based on specific questions and topics chosen by the MIRG, he concluded that the MIRG had already interviewed a certain allexer and were following-up on the allexer's views. He explained that the MIRG questioned him concerning how the staff had handled a number of specific issues, including Rosemont transmitters, boiling water reactor (BWR) water level and motor operated valves (MOV) that had been raised by this allexer. The MIRG also inquired into how the staff had responded to this allexer's concerns. The Branch Chief told OIG that he did not intend to discuss this allexer or his opinion of the allexer during the MIRG interview. The Branch Chief commented that he wanted to discuss NRC's handling of allegations and the larger issues of the agency's enforcement of regulations and responsiveness to allegations. However, it was obvious that the MIRG wanted to discuss this particular allexer and had already defined the areas of discussion. The Branch Chief related, that the MIRG questioned him concerning specific allegations and their resolution. Consequently, with the exception of an inspection he conducted

in 1990 involving the employee safety concerns program at Millstone, all of the allegations he discussed with the MIRG involved the one particular alleged.

According to the Branch Chief, he offered the MIRG his personal observations and opinions regarding this particular alleged because he was familiar with that alleged's issues. The Branch Chief told OIG that he tried to relate the alleged's behavior to these allegations and how they were handled by the NRC. His comments to the MIRG were based on his observations of the alleged's public behavior and were offered in retrospect. He added that his comments did not represent his attitude or state of mind in addressing these allegations at that time, nor do they represent his current view of alleged. However, the Branch Chief stated that he should not have speculated on the alleged's motivation for raising allegations. The Branch Chief told OIG that his comments were not aimed at other "prominent whistleblowers." The reference in his transcript to other prominent individuals pertained to certain individuals who were involved in whistleblower cases during the 1990 time period when the Branch Chief conducted an inspection of the NU employee safety concerns program at Millstone.

The Branch Chief told OIG that the publication of portions of his transcript in the news media was very embarrassing for him. He acknowledged that his comments did not reflect well on Region I. Both the media and some alleged have concluded his comments reflect the views of other Region I staff members; however, he asserted this was not true. The Branch Chief said that all allegations received by the NRC should be resolved on their merit and not evaluated based on personal opinions of alleged by NRC staff.

OIG interviewed three Region I managers, including the Deputy Regional Administrator, who stated that the Branch Chief's comments to the MIRG regarding whistleblowers appeared to ascribe motives to alleged's raising safety concerns. These three managers agreed that ascribing motives to an alleged for reporting an allegation was inappropriate and that the staff must evaluate the technical aspects of all allegations. All three managers said that they did not believe the Branch Chief's comments were indicative of how he handled allegations in the past, and they were confident that when reviewing allegations the Branch Chief only considered the technical merits of the allegations.

The Deputy Regional Administrator also told OIG that he did not believe the Branch Chief's comments reflected how Region I has handled allegations. He said the expectation has always been that the staff must not ascribe motives to alleged since ultimately each issue must be reviewed fully to determine whether the issue is safety significant. The Deputy Regional Administrator recalled that after the newspaper articles were published, he reminded Region I managers during the daily morning meetings of the need to not ascribe motives when dealing with alleged. He said that he was confident that the NRC allegation review process had appropriate checks and balances which precluded the ability of one individual to direct the allegation process. He noted that several Region I managers were involved in the allegation process and reviewed the staff's handling of allegations.

II. NRC REGION I REFERRAL OF A SAFETY CONCERN TO A LICENSEE INCONSISTENT WITH NRC REGULATIONS.

On June 28, 1996, an engineer at Northeast Utilities (NU), contacted OIG and questioned Region I staff's actions in referring a technical concern to the licensee. The technical concern involved the operability of the Millstone Unit 1 low pressure coolant injection (LPCI) heat exchangers. The engineer had observed scale (i.e., calcium carbonate deposits) in one of the LPCI heat exchanger tubes and had questioned its impact on the heat removal capability of the LPCI heat exchangers. The engineer advised that he reported the LPCI issue to NU in approximately November 1995 and to Region I in February 1996. The engineer said that his main concern when he reported the LPCI matter to NRC was not the technical issue. Rather, he claimed that he reported his concern to the NRC as an example of the reluctance on the part of NU employees to report safety concerns and the ineffectiveness of the NU Nuclear Safety Concerns Program (NSCP) to take corrective action. He maintained that although the NSCP advised him that the LPCI heat exchangers would be performance tested during the current refueling outage, NU had not taken any action to schedule the testing.

The engineer told OIG that Region I referred the LPCI issue to NU on May 14, 1996. The engineer maintained that the May 14, 1996, NRC letter which referred the allegation to NU identified him as the alleged. He noted that the enclosure to the letter to NU stated that, "We believe that an ACR (Adverse Condition Report) was recently written on this issue." The engineer questioned why the ACR was referenced in the letter since it was not relevant and did not provide any additional information to the licensee. Moreover, he said that the reference was a clear way of connecting him to the safety concern since he had written the ACR.

The engineer also contended that Region I's referral of the LPCI issue to NU was inappropriate because of NU's history of not properly handling safety concerns. He questioned the agency's expectation in referring the LPCI issue to NU, given the licensee's history.

The engineer told OIG that he initially discussed the LPCI issue with a Region I Project Engineer sometime between February 8 and 24, 1996. He did not recall whether the Project Engineer asked if he objected to the NRC referring the LPCI issue to NU. He said he initially learned that NRC had referred the LPCI issue to NU in June 1996. The engineer advised OIG that he did not receive an acknowledgment letter from the NRC regarding the LPCI issue. He stated that while he received a letter dated August 19, 1996, from Region I, he did not consider this to be an acknowledgment letter since it was too untimely.

OIG reviewed the May 14, 1996, Region I letter referring the LPCI allegation to NU. In boiler plate language, the letter requested that NU conduct inspections or investigations as necessary to reasonably prove or disprove the concern that had been referred. The details of the LPCI concern were documented in an enclosure to this letter. With respect to the LPCI issue, the enclosure stated:

The second concern addressed the operability of the Unit 1 low pressure coolant injection

(LPCI) heat exchanger (HX). We believe that an ACR was recently written on this issue. The LPCI system engineer identified scale and/or a coating on the interior of the LPCI HX. This coating may impact the heat transfer coefficient of the HX and ultimately, the performance of the HX during an accident. You should answer the question of how you ensure the efficiency of other HX and how NU controls and monitors the degradation of heat transfer surface coefficients.

OIG reviewed NRC Manual Chapter 0517, Management of Allegations, dated April 14, 1993; final revisions to draft Management Directive (MD) 8.8, Management of Allegations dated December 1995; and the current MD 8.8, dated May 1, 1996. These publications outlined factors to be considered by the NRC staff when deciding whether to refer an allegation to a licensee for resolution. These publications state that consideration should be given to (1) the licensee's past record/history in dealing with allegations, and the likelihood that the licensee will effectively investigate, document and resolve the allegation; (2) whether the release of the information could bring harm to the allegor; and (3) whether the allegor has voiced objection to releasing the information to the licensee.

NRC Manual Chapter 0517 stated that, "Before referring an allegation to an applicant, licensee, or vendor, an effort should be made to contact the allegor and advise him/her of the planned referral." Additionally, both the draft December 1995 and current May 1996, MD 8.8 stated that, before referring an allegation to a licensee, all reasonable efforts should be made to inform allegors or confidential sources of the planned referral. This notification may be given orally and subsequently documented in an acknowledgment letter. The allegor or confidential source should be informed that the NRC will review and evaluate the licensee's activities and response and that the allegor or confidential source will be informed of the final disposition.

Both the draft and final MD 8.8 stated that, "Within 30 calendar days of receipt of an allegation, the OAC (Office Allegation Coordinator) or other designated staff member (with OAC concurrence) should respond to allegor or confidential source by letter, formally acknowledging receipt of the allegation and confirm the NRC's understanding of the specifics of the allegation." The directive also stated that acknowledgment letters may be customized to contain information on several issues including NRC's limitations to protect the allegor's identity and the potential to refer allegations to the licensee. While an acknowledgment letter was not a requirement under NRC Manual Chapter 0517, the manual chapter stated that the allegor should be promptly advised, "by a letter, telephone call, or personal meeting" of the NRC's follow-up action.

The NRC's Agency Allegation Advisor advised OIG that the NRC policy is to refer as many allegations as possible to licensees. He stated that the principal consideration in NRC's handling of allegations involves protection of an allegor's identity. The Agency Allegation Advisor told OIG that in determining if an allegation should be referred to a licensee, the staff should first assess whether the allegor objects to the referral. He added that if the allegor advised the NRC staff that he did not object to the referral, there was a "100 percent certainty" that the allegation would be referred to the licensee. The Agency Allegation Advisor stated that the decision to refer

an allegation to the licensee should be followed by an NRC inspection to review the licensee's response.

The Agency Allegation Advisor told OIG that the official NRC procedures for referring an allegation to a licensee in effect at the time when the allegation at issue were made to Region I were those contained in Manual Chapter 0517. He noted that the Manual Chapter was renamed MD 8.8; however, NRC Regions did not have to implement the May 1, 1996, MD 8.8, until July 1996. He said that Region I's referral of the LPCI issue should have been in accordance with the Manual Chapter and noted that Manual Chapter 0517 did not require the Region to issue an acknowledgment letter. He told OIG that in accordance with the Manual Chapter, Region I should have made an effort to contact the allegor before referring the issue to the licensee. He said that even though the allegor indicated that he did not object to the referral, the Region should have advised the allegor of the planned referral. However, the Agency Allegation Advisor stated that in February 1996 if Region I decided to follow the procedures outlined in draft MD 8.8, they should have followed all of those procedures. He added that the current MD 8.8 required that the NRC send the allegor an acknowledgment letter and inform the allegor of the planned referral. He told OIG that both of these notifications may be accomplished in the acknowledgment letter.

An OIG review of the Region I allegation file pertaining to the LPCI issue revealed that the Region staff responsible for handling allegations received the LPCI allegation on February 15, 1996. The records reflect that the Region I Project Engineer who initially received the allegation indicated that the allegor did not object to the issue being referred to the licensee. On February 21, 1996, a Region I Allegation Review Board (ARB) reviewed the LPCI issue. The ARB decided to refer the allegation to NU and to conduct an inspection of the operability of the LPCI heat exchangers after the licensee completed its review. The ARB also decided that an acknowledgment letter would be prepared and issued to the allegor by March 15, 1996. The allegation file contained a copy of the acknowledgment letter dated August 19, 1996.

OIG determined that the NRC Project Engineer who received the safety concern was responsible for documenting the allegation as well as providing a recommendation to the ARB concerning how the allegation should be handled. The Project Engineer told OIG he recommended that the NRC refer the LPCI issue to NU. He said that the allegor never voiced a concern about being identified with the LPCI issue. The Project Engineer maintained that he discussed with the allegor whether he had any concerns with referring the matter to NU. He also recalled discussing the possibility of the NRC conducting a random inspection of ACRs. He said that the allegor never indicated a concern with the NRC inspecting the LPCI issue or referring the issue to NU. In addition, he noted that he had met with the allegor on several occasions in the past, and he had never expressed an interest in confidentiality on any issue.

The Project Engineer stated to OIG that the referral of the LPCI matter to NU was appropriate. He said he drafted the May 14, 1996, referral letter to NU and documented that an ACR had been initiated involving the LPCI issue because he wanted to clearly identify the issue to the licensee. He disagreed with the allegor's contention that the reference to the ACR "fingerprinted" him. The Project Engineer noted that just because an individual initiated an ACR did not mean that the

same individual provided an allegation to the NRC. In addition, the Project Engineer told OIG that the allegor would have been connected to the LPCI issue whether the NRC inspected the issue or referred it to the licensee because NU was already aware of the issue. He told OIG that he specifically recalled discussing with the allegor the fact that he would be connected to the LPCI issue.

The Project Engineer stated to OIG that an acknowledgment letter should have been sent to the allegor before the NRC referred the LPCI issue to NU. The Project Engineer further noted that the acknowledgment letter provided the allegor an opportunity to object to the referral. He commented that if the NRC had issued the letter and given the allegor the opportunity to respond, there would have been no question as to whether or not he objected to the referral. The Project Engineer said that although he drafted the May 14, 1996, referral letter, neither he nor the Region I Senior Allegation Coordinator reviewed the final version of the letter.

The Region I Senior Allegation Coordinator (SAC) advised OIG that the February 1996 ARB considered all of the factors for referring an allegation to a licensee outlined in MD 8.8 and that the referral of the LPCI issue was consistent with these procedures. He noted that in February 1996, Region I was following procedures contained in the draft MD 8.8, (December 1995), rather than those contained in NRC Manual Chapter 0517. He commented that the procedures contained in the draft MD 8.8 and the final MD 8.8 that was issued by the NRC on May 1, 1996, were essentially the same.

The SAC explained to OIG that during ARB meetings, the participants reviewed the factors for referring an issue to a licensee to determine whether there was any one factor that would preclude them from making the referral. He noted that he typically reviewed with the ARB participants each of these factors. The SAC stated that the primary reason for the ARB's decision to refer the LPCI issue to NU was that the Project Engineer who received the allegation said the allegor did not object to the referral. The SAC said that the NRC's policy is to refer as many allegations as possible to licensees; therefore, the ARB typically considered whether there was any reason not to refer an issue. He added that while Region I received a lot of allegations concerning NU, the staff did not historically have a problem with NU's resolution of technical issues. Nevertheless, the SAC stated Region I would not have referred the LPCI issue to NU if the allegor had objected to the referral. He said that the Region viewed the fact that the allegor did not specifically object to the referral as the allegor's approval to refer it. The SAC note SAC noted that he could not think of any instance in which the NRC referred an issue to the licensee over the allegor's objection.

The SAC stated that the ARB generally attempts to issue an acknowledgment letter to the allegor within 30 days of receiving the allegation. However, the acknowledgment letter was not sent to the allegor in this case until August 19, 1996. The SAC told OIG that it took an inordinate amount of time to issue the acknowledgment letter because of the large amount of information provided by the allegor. He added that he wanted the letter to be comprehensive in acknowledging all of the allegor's correspondence to the staff as well as identifying the staff's planned course of action. The SAC told OIG that the acknowledgment letter should have been issued before the NRC referred the LPCI issue to NU.

The SAC told OIG that the Region I Division of Reactor Projects (DRP) staff was responsible for issuing the May 14, 1996, referral letter and that either he or the Project Engineer should have concurred with the letter. He commented that he almost always concurred with referral letters, and he could not explain why he did not receive the letter for concurrence before it was issued to NU. The SAC stated that if he had reviewed the referral letter, he may have asked if an acknowledgment letter had been issued to the alleged and he may have asked about the need to advise the alleged of the NRC's decision to refer the issue to NU.

The Chief of the Special Inspection Branch, NRR was detailed to Region I from approximately January 1, 1996 to May 15, 1996, where he assumed responsibility for chairing the ARBs. While the Branch Chief did not specifically recall the February 21, 1996, ARB meeting, he said that the ARB typically discussed the factors to be considered before referring an allegation to a licensee. He recalled that ARB members usually question whether the alleged had a problem with referring an issue to the licensee and that the SAC typically reminded the ARB of the need to advise the alleged of the referral.

The Branch Chief, DRP, responsible for Millstone was also the Region I Office Allegation Coordinator (OAC). The Branch Chief told OIG that as the OAC he was the focal point for the technical resolution of allegations. The SAC was responsible for issuing an acknowledgment letter to the alleged, and the Project Engineer was generally responsible for reviewing the technical merits of the allegation and for recommending a course of action to the ARB for the disposition of the allegation.

The Branch Chief told OIG that the NRC should have issued an acknowledgment letter to the alleged before referring the matter to NU. He commented that the acknowledgment letter should have been issued before the referral letter as part of a coordinated effort. However, the Branch Chief maintained that the ARB's decision to refer the LPCI issue to NU was appropriate and consistent with NRC procedures given the highly technical nature of the issue and its potential safety significance.

The Branch Chief said that the reason the NRC's May 14, 1996, letter made reference to the ACR was to allow NU to clearly identify the issue. He stated that whether the NRC specifically mentioned the ACR or described the safety issue in detail, the licensee would have known that the alleged had raised the issue and connected him to it. The Branch Chief speculated that if the NRC had reviewed the ACR during the course of an NRC inspection, NU would have still connected the alleged to the LPCI issue. The Branch Chief maintained that the NRC did not intentionally expose the alleged's identity and that there have been instances when ACRs have been initiated by someone other than an alleged.

The Director DRP, Region I told OIG that the NRC's reference to the ACR in the May 14, 1996, letter was not unusual. He noted that the NRC often linked safety a concern to available specific information so the licensee could clearly identify the issue being referred. The Director related that the NRC can not review all allegations reported to the agency, and ultimately the licensee must conduct the work to resolve the issue. The Director explained that by referring allegations to

licensees, the NRC puts the licensee on notice that the agency is interested in the matter and its resolution. According to the Director, licensees know that the NRC will review the issue if they fail to adequately address the safety concern.

The Director stated that the NRC never intended to connect the alleged to the LPCI issue. When deciding to make the referral, the NRC had to balance what the licensee already knew against the risk to the individual. He noted that the licensee was already aware of the issue and that the alleged had already identified himself within the organization by raising the LPCI concern. Moreover, the alleged had indicated to the NRC that he did not object to having the LPCI issue referred to NU. According to the Director, whether NRC reviewed the issue or referred it to NU, the alleged would have still been connected with the issue.

The Director told OIG that when he signed the NRC May 14, 1996, letter referring the LPCI issue to NU, he did not notice that the SAC had not concurred with the letter. However, the Director said that he did not believe this omission was of any consequence. He added, however, that if the SAC had reviewed the letter, he may have possibly contacted the alleged to confirm his wishes with respect to the referral.

The Deputy Director for Inspection in the Special Projects, (formerly the Director of Millstone Oversight, Region I) said that he did not believe the NRC's referral of the LPCI issue to NU disclosed the identity of the alleged to the licensee. He further stated that in his view, the reference to the ACR in the May 14, 1996, letter was appropriate. He told OIG that he did not believe the NRC's reference to the ACR identified the alleged to NU because the issue could have been reported to the NRC by various sources. He added that the ACR mentioned a number of individuals at the site, such as the Systems Engineer and the Maintenance Supervisor, who were familiar with the LPCI issue and could have referred the matter to the NRC.

The Deputy Director told OIG that any time the NRC refers an issue to a licensee, there is potential for identifying the source of the allegation. However, he said that the NRC staff is mindful of protecting the identity of the alleged, even though the agency knows that the alleged has raised the issue internally and is associated with that issue. In the instant case, NU knew the identity of the individual who had raised the LPCI issue. According to the Director, it would have been difficult for the alleged not to be associated with the LPCI issue because (1) he raised the issue internally at NU, (2) he told a number of NU employees about the issue, and (3) he reported the issue to the NU Nuclear Safety Concerns Program.

FINDINGS

1. OIG found no indication that the MIRG interview transcripts were intentionally released by NRC staff to discredit alleged. OIG determined that a number of transcripts were forwarded to the NRC Public Document Room (PDR) on September 3 and 24, 1996, in accordance with procedures established at the onset of the MIRG review. The MIRG had planned to issue the MIRG report and transcripts concurrently. OIG determined that the MIRG review was completed in August 1996, and the MIRG report was forwarded to the EDO on September 16, 1996. However, as a result of an unexpectedly lengthy review, the final MIRG report was not issued until October 24, 1996.
2. OIG determined that the articles published in the news media between October 20 and 24, 1996, contained excerpts from three of the transcripts of MIRG interviews of Region I staff which were placed in the PDR on September 24, 1996. While the transcript of a Region I Branch chief contained some negative comments about an alleged, Region I managers interviewed by OIG said they were confident that these views were not indicative of how the Region handled allegations.
3. OIG determined that the Region I staff did not advise the alleged prior to referring the LPCI issue to NU in May 1996. The Region's failure to advise the alleged of the referral was not consistent with NRC procedures outlined in NRC Manual Chapter 0517 or in the draft MD 8.8 being followed by the Region in February 1996. OIG learned that Region I referred the LPCI issue to NU because the staff believed the alleged did not object to the referral. However, Region staff I did not give adequate consideration to the remaining factors outlined in Manual Chapter 0517 or MD 8.8 for determining whether or not an allegation should be referred to a licensee.
4. OIG determined that the reference to an ACR regarding the LPCI heat exchangers contained in the May 1996 letter of referral was not necessary to NU's understanding of the technical issue provided to NRC by the alleged. However, OIG determined that the reference was not specific enough to reveal the identify of the alleged to NU.
5. OIG determined that Region I did not issue an acknowledgment letter to the alleged in a timely manner. MD 8.8 states that an acknowledgment letter should be sent to an alleged within 30 calendar days of receipt of an allegation. The allegation was received in February 1996 and the acknowledgment letter was dated August 19, 1996.