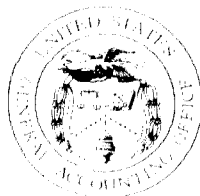


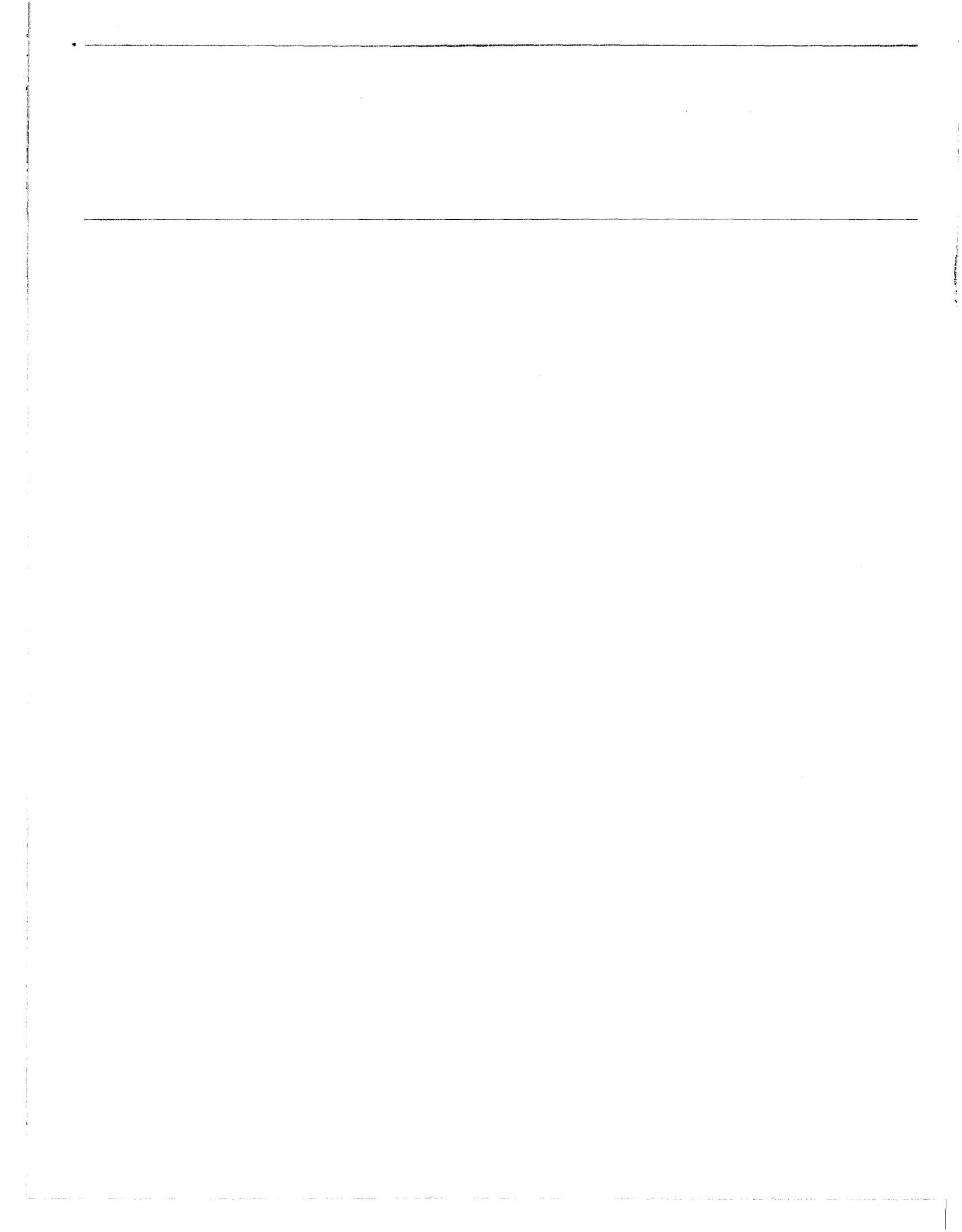
May 1991

NUCLEAR REGULATION

NRC's Relationship With the Institute of Nuclear Power Operations



144134



Resources, Community, and
Economic Development Division

B-241468

May 16, 1991

The Honorable
Peter H. Kostmayer
Chairman, Subcommittee on Energy
and the Environment
Committee on Interior and Insular
Affairs
House of Representatives

The Honorable
Edward J. Markey
House of Representatives

By letter dated May 11, 1990, you requested that we review the Nuclear Regulatory Commission's (NRC) relationship with the Institute of Nuclear Power Operations (INPO). INPO is an industry organization that, among other things, periodically evaluates nuclear power plant performance and operating safety. Your letter noted that INPO's evaluations can be a useful source of information for NRC and, if used properly, can supplement NRC's statutory mission to ensure the safe construction and operation of the nation's civilian nuclear power plants. However, you expressed concern that NRC may interact with INPO in a manner that is inappropriate for an independent agency charged with protecting the public interest—particularly if NRC considers INPO's actions as a substitute for its own proper regulatory mission.

As agreed with your office, this letter addresses whether or not NRC (1) uses INPO evaluation reports in lieu of its own oversight of the nuclear power industry and (2) relies on INPO communications to alert industry of potential nuclear plant safety problems in lieu of issuing its own information notices to industry.

Results in Brief

Although NRC has access to INPO evaluation reports, we found no evidence that it currently relies on INPO evaluations in lieu of conducting its own inspections. NRC does not routinely use INPO evaluation reports as a basis for regulatory action or for its decisions to license nuclear power plant operations. However, in some instances NRC has not issued an information notice after finding that INPO had already alerted industry to a potential safety problem. Both INPO and NRC issue communications to alert industry to potential safety problems at nuclear power plants. To minimize duplication, under certain circumstances NRC has not issued

its own information notice if INPO already alerted industry about a potential problem. This has occurred about 12 times over the past 2 years. Although industry is notified about potential safety problems in such cases, the public may not be aware of them. While NRC's information notices are available to the public, INPO's reports are not. Therefore, NRC's decisions not to issue notices on the same matters reported on by INPO reduce the amount of nuclear power plant safety information available to the public.

Background

The Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), assigns utility companies the primary responsibility to properly build and operate commercial nuclear power plants. Because of the safety concerns that are associated with these facilities, regulations have been established to ensure that public health and safety are not jeopardized by their operation. Under the Atomic Energy Act, NRC issues operating licenses to commercial nuclear power plants. NRC oversees the safe construction and operation of these facilities by, among other things, developing regulatory standards, inspecting plants to ensure that utilities comply with the regulations, and issuing notices of violation and levying civil penalties when companies violate the regulations. Because each utility is ultimately responsible for the safe operation of its nuclear power plants, NRC requires each company to have programs and systems in place to ensure that public health and safety are protected from radiological danger.

In response to the 1979 Three Mile Island accident, the nuclear utility industry established INPO to assist utilities in improving the safety of plant operations. The President's Commission on the Accident at Three Mile Island (commonly referred to as "the Kemeny Commission") reported that merely meeting regulatory requirements was not enough and recommended that the industry "set and police its own standards of excellence to ensure the effective management and safe operation of nuclear power plants." Thus, INPO was created not to supplant the regulatory role of NRC but to provide the means whereby the industry itself could make its nuclear operations safer—"to promote excellence" in the operation of nuclear power plants. INPO considers its periodic evaluations of nuclear power plant performance and operating safety one of its most important functions. Its evaluations determine how well INPO's performance objectives and criteria, which are broader and seek a level of performance above the minimum level required by NRC's regulations, are being met.

Under its Significant Event Evaluation and Information Network (SEE-IN) program, INPO reviews and analyzes operating and construction experiences and events at nuclear power plants.¹ Events are screened for significance, and those with generic applicability to other nuclear power plants are communicated to the industry by various types of SEE-IN reports.

NRC also reviews and analyzes nuclear power plant experiences and events and notifies industry of those with generic applicability through either bulletins or information notices. A bulletin transmits information to, requests action by, and generally requires a written response by licensees and/or permit holders regarding matters of safety, safeguards, or environmental significance. A bulletin is issued when NRC staff determine that the safety significance of an event, condition, or circumstance is such that prompt corrective actions are needed or that licensees might not take appropriate actions unless they receive a bulletin. An information notice, also issued to licensees and/or permit holders, provides information that may be relevant to safety, safeguards, or environmental issues. An information notice is issued when NRC staff determine that licensees should be informed of an event, condition, or circumstance that may be both generic and potentially significant to safety, but not sufficiently significant to warrant licensees to confirm in writing that corrective actions have been or will be taken.

NRC and INPO have written several memorandums of agreement for general coordination of their respective activities. Under the agreements and companion appendixes, NRC can monitor and review INPO's efforts, but the memorandums are not legally binding. The most recent revisions to the memorandums were made in October 1988. Included among the revisions was an agreement that before issuing an information notice to industry on a specific event at a nuclear power plant, NRC would make "reasonable efforts" to review available INPO SEE-IN reports to determine if an NRC information notice to industry is needed.

NRC Does Not Routinely Use INPO Evaluation Reports

NRC does not routinely use INPO evaluation reports in lieu of its own inspections to carry out its oversight of the nuclear power industry. Although NRC staff stated that NRC would use INPO reports in "rare instances," NRC staffers could not cite any examples of occasions when NRC used INPO evaluation reports to carry out its oversight of the nuclear

¹Events reportable by licensees are described in 10 C.F.R. 50.73. Licensees are required to report events such as nuclear power plant shutdowns and deviations from a plant's technical specifications.

power industry. Our review of NRC's files of INPO documents and interviews with NRC and INPO officials did not disclose any evidence that NRC currently relies on INPO evaluations in lieu of conducting its own inspections. Both NRC and INPO maintain that NRC does not rely on INPO evaluations and that NRC conducts its regulatory activities independently.

In a broad sense, the ultimate goals of NRC and INPO are the same in that both strive to improve the safety of nuclear power plants; therefore, both review similar areas of nuclear power operations. But their methods of achieving their respective goals are different. Unlike NRC, INPO issues no regulations and has no legal authority over the nuclear utilities. That role belongs solely to NRC. INPO expects its member utilities to meet certain objectives, but it does not prescribe the means to reach those objectives. Instead, INPO acts as a catalyst in generating peer pressure and the sharing of experience among member utilities to bring about improvements in nuclear plant safety.

NRC's written inspection procedures, as revised in August 1990, state that NRC should ensure that "INPO programs remain independent from the NRC inspection program to the maximum extent possible." According to the procedures, NRC's resident inspectors at each utility are required to (1) read INPO evaluation reports and document that they have read them, (2) determine if the results of the INPO evaluations are generally consistent with NRC inspection results, and (3) ensure that utilities have reported to NRC all significant safety issues identified by INPO. The procedures further state that resident inspectors are not to take possession of the INPO reports nor use them as a basis for regulatory action.

When deciding whether to issue an operating license for a nuclear power plant, neither NRC nor its Atomic Safety and Licensing Board routinely uses INPO evaluation results.² According to NRC staff, INPO findings are very general, and NRC resident inspectors are already aware of any significant safety problems being reported. NRC staff further said that rarely would NRC follow up on a specific INPO recommendation and that NRC normally develops information on significant safety issues independently of an INPO evaluation.

²For hearings to grant, amend, suspend, or revoke an NRC license, three-member Atomic Safety and Licensing Boards are drawn from the Atomic Safety and Licensing Board Panel. The Panel is composed of Administrative Judges, who may be lawyers, physicists, engineers, and environmental scientists; and Administrative Law Judges, who hear antitrust, civil penalty, and other cases and serve as Atomic Safety and Licensing Board Chairmen. NRC has delegated most of its authority to conduct public licensing hearings to its Boards.

NRC's Decisions Not to Issue Information Notices Reduce the Amount of Publicly Available Safety Information

To minimize duplications with INPO, under certain circumstances NRC has decided not to issue some information notices if INPO has already alerted industry to potential problems.³ However, INPO's reports to industry are not publicly available. Therefore, although industry has been alerted to potential problems, the fact that a certain condition, event, or circumstance may have generic applicability to the safety of nuclear power plants is not publicly disclosed.

When NRC identifies an event, condition, or circumstance that should be brought to the attention of licensees, the NRC staff reviews other notifications to industry, including those made by INPO, before deciding to issue an information notice. If the NRC staff's review determines that INPO has adequately informed industry about the identified event, condition, or circumstance with a SEE-IN report, the staff may decide not to issue an information notice. This decision is made because, according to NRC staff, issuing an information notice would be an unnecessary duplication of effort. However, in some cases NRC may decide to issue an information notice on the same event, condition, or circumstance as INPO's SEE-IN report even if INPO has adequately informed industry. NRC staff would make this decision if it determined that an NRC information notice would provide additional information, that the event is significant enough to warrant additional emphasis, or that NRC may follow up with a bulletin.

In each of the past 2 years, NRC has issued about 90 information notices. According to NRC staff, in about 12 instances over the past 2 years, NRC decided not to issue its own information notice because INPO had already alerted the industry to a potential problem. For example, in February 1990 NRC staff identified a need to issue an information notice to highlight recent problems associated with a particular type of low-pressure relief valve. Specifically, the staff planned to highlight concerns with improper nozzle settings at three different plants over a 5-year period. (An improper nozzle setting could cause excessive valve leakage or discharge, thereby resulting in a loss of a safety system to which it is attached and degrading a plant's ability to achieve and maintain a safe shutdown condition.) While NRC staff were preparing the draft information notice for issuance, INPO issued a SEE-IN report alerting industry to the problems experienced with this type of low-pressure relief valve,

³When nuclear reactor vendors alert industry to the potential problems they identify, NRC may similarly decide not to duplicate a vendor report. However, NRC makes all vendor reports it receives publicly available.

including problems associated with improper nozzle ring settings.⁴ Because NRC staff reviewed the INPO report and concluded that INPO had sufficiently alerted industry, NRC staff decided not to issue the information notice.

In another case, in December 1989 NRC staff identified a need to alert industry of a loss of off-site power caused by a lack of preventive maintenance and inadequate personnel training. In June 1989 inadequate water drainage between the startup auxiliary transformer and the turbine building caused a ground fault at the Brunswick nuclear power plant in North Carolina. In an effort to verify and clear the ground condition, the plant's maintenance crew improperly placed a jumper cable across the grounding transformer. As a result, two reactor recirculation pumps that are normally fed from the startup auxiliary transformer were lost and, as NRC requires, the licensee shut down the reactor to prevent possible reactor instability. While the draft information notice was being prepared for issuance, NRC staff learned that INPO had already issued a SEE-IN report on the loss-of-power event at the plant.⁵ In addition, NRC staff noted that INPO planned to issue another report on the losses of electrical power as a result of insufficient maintenance at three nuclear power plants. Because the information in NRC's draft information notice was already available to industry and INPO had a more detailed study underway, NRC staff decided not to issue the information notice.

In such cases, the public is not aware of the notification because INPO documents are not publicly disseminated. Under the NRC/INPO memorandums of agreement, NRC has agreed to protect INPO's proprietary information. NRC therefore does not make INPO SEE-IN reports available to the public. Thus, although the utilities are notified of the potential applicability of safety problems to their nuclear power plants, the public may not be aware of them.⁶

Although NRC staff told us that the NRC information notice need not be issued if industry is already aware of the problem, NRC's general policy

⁴INPO Significant Event Report 5-90, Premature Lifting and Excessive Blowdown of Residual Heat Removal Relief Valves, Feb. 23, 1990.

⁵INPO Significant Event Report 25-89, Loss-of-Offsite Power and Major Plant Transient Due to Lack of Preventive Maintenance, Sept. 27, 1989.

⁶Although INPO's evaluation and analysis would not be disclosed, much of the factual information related to an event is already available to the public; NRC independently requires its licensees to report event information directly to NRC. Licensee event reports to NRC are available to the public.

is to independently develop its documents and make its issued documents available to the public. In this regard, the NRC Manual states, in part, that

NRC documents must be developed and issued without improper licensee or other influence, or the appearance thereof, and must be made available to the public in a timely manner, consistent with NRC regulations, policies and procedures.⁷

Therefore, if NRC had issued the information notices without regard to whether INPO had already notified the industry, the notification to industry would have been made public.

Conclusions

The Congress has entrusted NRC with the responsibility for ensuring that civilian nuclear activities are conducted in a manner that will protect the public health and safety. We found no evidence that NRC is relying on INPO's evaluations in lieu of its own inspections to carry out its regulatory activities.

However, to minimize duplicating INPO's efforts, in about 12 cases over the past 2 years, NRC has decided not to issue its own information notices. Although this was done after NRC staff determined that industry had been adequately alerted to potential problems, INPO reports are not publicly available. As a result, the fact that NRC has deemed that certain information concerning an event, condition, or circumstance may have potential generic safety significance to nuclear power plant operations is not publicly disclosed. Therefore, information that may be important to the public's understanding of nuclear power plant operations is not publicly available.

Recommendation

To ensure that the public has full access to all information about potential safety problems, we recommend that the Chairman, NRC, issue information notices without regard to whether they contain the same or similar information as INPO's communications.

Your specific questions, and our responses, about NRC's relationship with INPO are presented in appendix I.


⁷See Supplement 25, "Policy on Release of Draft and Predecisional Documents and Information," to NRC Manual, Chapter 3203, "Distribution of Unclassified NRC Staff and Contractor-Generated Documents," Feb. 9, 1988.

To examine NRC's relationship with INPO, we conducted work at NRC headquarters in the Washington, D.C., metropolitan area and at INPO headquarters in Atlanta, Georgia. We examined INPO documents on file in NRC's INPO Document Control System and NRC's Public Document Room, as well as documents provided by the various NRC and INPO officials we interviewed. We interviewed NRC staff in various NRC offices that interact with INPO, including the Office of the Executive Director for Operations, the Office for Analysis and Evaluation of Operational Data, and the Office of Nuclear Reactor Regulation. We also met with INPO officials and discussed with them the INPO evaluations and their interactions with NRC. We reviewed congressional hearings and other documents pertaining to the NRC/INPO relationship, such as relevant court cases and memorandums of agreement between NRC and INPO.

We discussed the facts in this report with NRC and INPO officials and incorporated their views where appropriate. As requested, we did not ask NRC nor INPO to review and comment officially on this report. Our review was performed in accordance with generally accepted government auditing standards between June 1990 and February 1991.

Unless you publicly announce its contents earlier, we plan no further distribution of this report for 30 days from the date of this letter. At that time we will send copies to the appropriate congressional committees; the Chairman, NRC; the President and Chief Executive Officer, INPO; the Director, Office of Management and Budget; and other interested parties.

This work was conducted under the direction of Victor S. Rezendes, Director, Energy Issues, who may be reached at (202) 275-1441 if you or your staff have any further questions. Other major contributors to this report are listed in appendix II.



J. Dexter Peach
Assistant Comptroller General

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Abbreviations

FACA	Federal Advisory Committee Act
FOIA	Freedom of Information Act
GAO	General Accounting Office
INPO	Institute for Nuclear Power Operations
NEIL	Nuclear Electric Insurance Limited
NRC	Nuclear Regulatory Commission
SEE-IN	Significant Event Evaluation and Information Network
SSFI	Safety Systems Functional Inspection
SSOMI	Safety Systems Outage Modification Inspection

Responses to Questions About NRC's Relationship With INPO

1. Does NRC rely on INPO evaluations to fulfill the agency's responsibility to inspect and/or otherwise oversee the industry?

Both NRC and INPO maintain that NRC does not rely on INPO evaluations and that NRC conducts its regulatory activities independently. INPO considers its periodic evaluations of nuclear power plant performance and operating safety one of its most important functions. Its evaluations determine how well INPO's performance objectives and criteria, which are broader and seek a level of performance above the minimum level required by NRC's regulations, are being met.

In a broad sense, the ultimate goals of NRC and INPO are the same in that both strive to improve the safety of nuclear power plants; therefore, both review similar areas of nuclear power operations. But the ways in which they achieve their respective goals are necessarily different. Unlike NRC, INPO issues no regulations and has no legal authority over the nuclear utilities. That role belongs solely to NRC. INPO expects its member utilities to meet certain objectives but does not prescribe the means to reach those objectives. Instead, INPO acts as a catalyst in generating peer pressure and sharing experience among member utilities to bring about improvements in nuclear plant safety. INPO periodically conducts operating plant evaluations at each plant (about once every 17 months). NRC does not receive copies of the evaluation reports, but NRC resident inspectors have access to them. As discussed later in response to question 2, NRC resident inspectors are now required to review the reports to ensure that they are aware of any problems identified.

Although our examination of documents and interviews of NRC and INPO officials disclosed no evidence that NRC currently relies on INPO evaluations in lieu of conducting its own inspections, in 1982 NRC reduced the number of Performance Appraisal Team inspections it conducted "in recognition that similar evaluations" were being carried out by INPO. A Performance Appraisal Team was a group of 6 to 10 experienced NRC inspectors who conducted special inspections of operating reactor facilities' management control systems to determine their adequacy. These inspections were separate from the approximately 6,000 inspections a year that NRC conducted as part of its inspection programs for verifying the safety of licensees' nuclear activities and their compliance with NRC rules and regulations. The Performance Appraisal Team focused on selected areas of plant activities, such as operations, maintenance, surveillance testing, design change and modification, and training. In addition, the inspections provided an independent check on NRC's regional

inspection effectiveness, assessed the adequacy of NRC headquarters' program guidance, and judged the effectiveness of INPO.

Before the reduction in fiscal year 1982, NRC had been increasing the number of Performance Appraisal Team inspections. NRC conducted Performance Appraisal Team inspections at three plants in fiscal year 1979 and in five plants in fiscal year 1980. In 1981 NRC increased the number of such inspections to 10. About that time, INPO had begun making its plant evaluations, and members of NRC's Performance Appraisal Team accompanied INPO personnel on some plant evaluations. NRC staff who were responsible for the Performance Appraisal Team inspections at that time told us that they found INPO's evaluations effective: INPO's evaluations were similar to, but more comprehensive than, NRC's Performance Appraisal Team inspections. Because INPO was conducting those evaluations, NRC decided to reduce the number of Performance Appraisal Team inspections to about three to six each year.

NRC discontinued Performance Appraisal Team inspections in 1985, but not because of INPO. The Performance Appraisal Team inspections were replaced with Safety Systems Functional Inspections (SSFI) beginning in 1985. In 1985 the Davis-Besse nuclear power plant in Ohio had an equipment failure in its feedwater system. NRC's inspection and enforcement program had identified a potential problem in 1979 and recommended that the utility install a third auxiliary feedwater pump to correct a design deficiency. However, NRC allowed the utility time to analyze alternatives, such as upgrading procedures and control systems, before taking the required corrective action. Before the pump was installed, the plant experienced a series of equipment failures and operator errors that made the feedwater system inoperable. According to NRC staff, NRC's inspection and enforcement program, which focused on management controls, did not detect the potential for the extensive equipment failures that subsequently occurred. The failures occurred despite a Performance Appraisal Team inspection of the Davis-Besse plant in July and August 1984.

NRC decided that a systems type of inspection, one that includes an examination of the hardware, would be preferable. Therefore, the SSFI and the Safety Systems Outage Modification Inspection (SSOMI) were developed. Generally, an SSFI is an in-depth inspection of a particular safety system, covering every aspect from design through testing and installation. The particular safety system inspected represents a sample of all the safety systems in the plant. The SSOMI is an in-depth inspection of modifications performed during a major plant outage to determine

whether the modifications have affected the plant systems' ability to perform the designed safety functions. If a safety problem is identified by an SSFI or an SSOMI, the management control system is examined to identify the "root cause"—the reason that the problem occurred.

2. What criteria does NRC use to determine whether to review INPO evaluation reports and maintain copies of them?

Until August 1990 NRC's criteria for reviewing INPO evaluation reports left much to the judgment of NRC's resident inspectors, and the criteria for maintaining copies of INPO reports were not written. In a letter dated April 2, 1990, the Subcommittee on General Oversight and Investigations, House Committee on Interior and Insular Affairs, expressed concern to the Chairman, NRC, that certain INPO reports related to safety at the Seabrook nuclear power plant in New Hampshire were not reviewed before the Commission granted a full-power license. In responding to that letter, NRC explained the details of its handling of INPO reports regarding Seabrook and stated that every INPO document did not need to be reviewed because existing NRC requirements for licensee reporting provided adequate assurance that NRC would be informed in a timely manner if INPO had identified any significant violation or safety deficiency.

Although the Commission recognized that licensees are required to report significant violations or deficiencies to NRC, the Commission subsequently decided that it would be prudent to ensure that NRC staff actually read all INPO evaluation reports. On August 22, 1990, NRC revised its Field Policy Manual, which, in part, clarified NRC's criteria for reviewing and maintaining INPO reports. NRC's Field Policy Manual No. 9 states that NRC should ensure that "INPO programs remain independent from the NRC inspection program to the maximum extent possible." Item #2 of the manual states, in part:

Senior Resident Inspectors should promptly read site-specific INPO evaluation reports as part of their licensee monitoring and evaluation activities. The objectives of this review are to determine if the results of the INPO evaluation are generally consistent with the results of similar evaluations conducted by NRC, and, to ensure that significant safety issues identified by INPO have been reported to the NRC as required by the NRC-INPO MOA [memorandums of agreement]. Significant differences between INPO and NRC evaluations and INPO identified safety issues should be brought to the DRP [Division of Reactor Projects] Section Chief's attention. The DRP Section Chief should review these reports during periodic site visits

Field Policy Manual No. 9, item #6, states, "NRC personnel should not take possession of INPO evaluation documents, make copies for NRC internal distribution, or use these documents to form a basis for regulatory action."

3. Does NRC or the Atomic Safety and Licensing Board, routinely or otherwise, use INPO evaluation results when deciding to issue an operating license for a nuclear power plant?

Neither NRC nor the Atomic Safety and Licensing Board routinely uses INPO evaluation results when deciding to issue an operating license for a nuclear power plant. NRC has delegated most of its authority to conduct licensing hearings to the Atomic Safety and Licensing Board. In an operating license proceeding, the scope of issues considered by the Board is generally limited to those contested issues raised by the opposing parties. Such issues are called "matters in controversy." Therefore, results of an INPO report would be disclosed to the Board only if the report addressed a matter in controversy.

NRC staff pointed out that under an Atomic Safety and Licensing Appeal Board decision, all parties are required to disclose relevant and material information on matters in controversy to the Atomic Safety and Licensing Board (see response to question 10). Therefore, licensees should disclose INPO report results to the Board if they are relevant and material to a matter in controversy. INPO is not a party to the licensing proceeding and is not obligated to make this disclosure. However, if subpoenaed by a party to the licensing, INPO may need to disclose the results of its evaluations. Further, NRC staff acknowledged that NRC resident inspectors who view INPO's reports may not be aware of all the matters in controversy before the Board. NRC staff were not aware of any safety issue covered by an INPO report having been raised as a matter in controversy in the past.

In an operating license proceeding, NRC staff review the entire licensing application and examine all issues, including those not brought before the Board for review as a matter in controversy. According to NRC staff, safety problems not related to a matter in controversy would not be disclosed to the Board but would be handled and resolved separately by NRC staff. The staff's review of all safety issues pertinent to the issuance of an operating license is contained in a safety evaluation that is published and made publicly available.

4. When NRC reviews INPO evaluations, what actions, if any, does NRC take as a result of the findings in them?

According to NRC staff, INPO findings are very general, and NRC resident inspectors are already aware of any significant safety problems being reported. NRC staff therefore said that NRC rarely would follow up on a specific INPO recommendation.

NRC's Field Policy Manual No. 9 provides guidance on reviewing INPO documents. The guidance states that (1) NRC should not normally reference nor track INPO findings, recommendations, and utility corrective actions; (2) resident inspectors should promptly read site-specific evaluation reports as part of their utility monitoring and evaluation activities; and (3) when NRC follow-up of INPO findings is necessary to ensure safety, guidance in Inspection Procedure 71707, entitled Operational Safety Verification, should be followed. This inspection procedure, which was revised effective August 1, 1990, specifies that resident inspectors are required to read all INPO reports when issued. The procedure also provides guidance to the resident inspectors on the appropriate follow-up action to be taken.

According to the inspection procedure, if NRC's review of INPO documents raises questions that could substantially affect nuclear safety in the short term, the resident inspector or regional supervisor, with agreement of the regional administrator, should request that the utility describe the corrective actions taken. NRC's inspection procedure also requires resident inspectors to document in a memorandum or note to the section chief that a review of an INPO report was completed.

5. When INPO finds significant safety concerns, does NRC pursue these matters and/or independently judge the importance of problems identified?

As mentioned in the response to question 4 above, NRC can follow up on specific recommendations when questions affecting nuclear safety arise. NRC staff with whom we spoke could not identify any such cases arising from resident inspectors' reviewing an INPO evaluation report. They advised us that as a result of their own inspection activities at the nuclear power plants, NRC resident inspectors are usually aware of the safety problems reported. In general, they stated that potentially significant safety problems would normally be those that licensees are already required to report to NRC under NRC regulations.

6. Who receives INPO reports? Do companies that provide liability insurance coverage to nuclear plants receive INPO reports?

INPO evaluation reports are provided to member utilities and to the Nuclear Electric Insurance Limited (NEIL). NEIL is a utility-sponsored group that provides replacement power insurance and property insurance to nuclear utilities.¹ Other insurers (American Nuclear Insurance, Nuclear Mutual Limited, Nuclear Electric Insurance Limited, and Mutual Atomic Energy Reinsurance Pool) that provide liability insurance to the nuclear power industry do not receive copies of INPO reports. INPO also provides NRC access to its reports, with the express condition that NRC not make them public without INPO's consent.

However, NRC staff pointed out that the memorandum of agreement with INPO cannot be relied upon to prohibit the disclosure of INPO reports for confidentiality or other reasons. Although NRC would not normally disclose INPO reports, NRC staff said that NRC would disclose INPO reports in its possession if required to do so by the Freedom of Information Act (FOIA) or other law.²

7. Would public disclosure of INPO's reports inhibit the results reported?

According to INPO officials, wider distribution of INPO reports would tend to decrease nuclear utilities' voluntary cooperation with INPO, hamper INPO's effectiveness, and detract from industry efforts to strive for excellence. They stated:

- INPO evaluation reports currently focus on exceptions to performance objectives and criteria. Public disclosure of reports that identify shortcomings on the basis of standards of excellence would be counterproductive.
- The openness and candor of utilities and individuals being evaluated would be reduced, thereby inhibiting INPO's ability to obtain detailed information from that utility and from other utilities in the future.
- Because a utility would be held publicly accountable, the utility's position becomes defensive to protect its financial viability and public credibility. To avoid criticism, the utility might shift its focus to do what must be done to meet requirements, rather than seek excellence (to

¹Replacement power insurance reimburses an insured utility for a portion of the increased cost of producing or purchasing electricity equivalent to the nuclear power generating capability lost.

²Certain INPO reports provided to NRC were held exempt from disclosure under FOIA. See Critical Mass Energy Project v. NRC, 731 F. Supp. 554 (D.D.C. 1990) (appeal pending).

make the operation of nuclear power plants safer than required). As a result, the overall industry performance level would not be as high.

- Public disclosure of INPO evaluations would position it in a regulatory role rather than its current role of encouraging and assisting utilities to improve their operations well beyond legal standards.

NRC staff referred us to INPO's position as stated above and to a March 1990 legal decision. In the Critical Mass Energy Project's Freedom of Information Act case (see footnote 2), the U.S. District Court for the District of Columbia found that NRC's efficiency and effectiveness would be impaired were it not permitted to honor its commitment to INPO to keep INPO's SEE-IN reports in confidence.

8. In dealing with INPO, is the NRC complying with the procedural standards contained in (1) FOIA, (2) the Government in the Sunshine Act, (3) the Administrative Procedure Act, and (4) the Federal Advisory Committee Act (FACA)?

We found no indication that the NRC-INPO relationship is not in compliance with FOIA (5 U.S.C. 552), the Government in the Sunshine Act (5 U.S.C. 552b), and the Administrative Procedure Act (5 U.S.C. 551 et seq.). FACA (5 U.S.C. App. 2) does not apply to INPO because it is not an "advisory committee" as defined in that act.

FOIA provides "any person" with an enforceable right of access to certain "agency records" upon request except to the extent that such records fall within one or more of nine exemptions contained in the act. INPO characterizes most documents and information that it provides to the NRC as proprietary. Under FOIA, trade secret and commercial or financial information obtained from a person/party that is privileged or confidential is exempt from disclosure (5 U.S.C. 552(b)(4)). In March 1990 a federal district court found that this exemption applies to proprietary documents and information provided by INPO to NRC (see footnote 2). Specifically, the court held that copies of reports issued under INPO's SEE-IN Program were exempt from disclosure under FOIA's "trade secret" or "commercial information" exemption. The most recent memorandum of agreement between NRC and INPO states that, "[c]onsistent with previous legal decisions . . . NRC will control distribution of INPO proprietary documents and information within the agency and will exert best efforts to protect it from unauthorized disclosure." We believe that, under this memorandum of agreement, proprietary INPO documents and information are exempt from FOIA, consistent with the court's ruling.

The Government in the Sunshine Act generally requires that meetings of each federal agency headed by a collegial body, a majority of whose members are appointed by the President with the advice and consent of the Senate, shall be open to public observation unless covered by 1 of the 10 exemptions contained in the act. A "meeting" generally requires that a quorum be present. Further, the act requires, under most circumstances, that the agency publicly announce, at least 1 week prior to the meeting, its time, place, and subject matter; whether it is to be open or closed; and the names and telephone numbers of a designated agency official who can respond to requests for additional information. This notice must be published in the Federal Register. According to NRC, when INPO meets with a quorum of the Commission, it follows the procedures contained in the Sunshine Act (see, 53 Fed. Reg. 26367 (July 12, 1988)).

The Administrative Procedure Act, among other things, provides for public participation in rulemaking. There has been concern that INPO has unduly influenced NRC in rulemaking procedures. NRC contends that it does not afford INPO unique involvement in the preparation of regulations. NRC has on occasion provided INPO with the opportunity to review a draft regulation or guideline. However, NRC states that if INPO or any other group is provided with a copy of a draft regulation or guideline for comment, that draft regulation or guideline is also placed in NRC's Public Document Room. (See Supplement 25, "Policy on Release of Draft and Predecisional Documents and Information," to NRC Inspection Manual Chapter 3203, "Distribution of Unclassified NRC Staff and Contractor-Generated Documents," (Feb. 9, 1988)). We believe this policy should ensure that no draft regulations or guidelines will be provided to one party unless they are made available to the general public as well.

FACA regulates the formation and operation of advisory committees by federal agencies. Under FACA, an "advisory committee" includes any committee or similar group (1) that is established or utilized in the interest of obtaining advice or recommendations for the President or one or more federal agencies and (2) which is not composed wholly of full-time federal officers or employees. NRC contends that INPO is not an "advisory committee" within the meaning of the act. According to NRC, meetings between NRC staff and organizations such as INPO are governed by an NRC policy statement (50 Fed. Reg. 41480, Oct. 1, 1985), which provides that such meetings are for the purpose of exchanging information and data generally relating to the safety of nuclear power plants. Further, the policy statements make clear that such meetings "are not for the purpose of obtaining the organizations' advice or recommendations on regulatory issues or policies within the scope of the NRC's

responsibilities . . .” (Id.) Meetings held for the purpose of exchanging facts or information are not governed by FACA (see 41 C.F.R. 101-6.1004(1) (1990)).

The current NRC-INPO memorandum of agreement provides that coordination meetings between NRC and INPO are for information exchange only. The agreement states that “[m]eetings are not to be construed as requests or opportunities for (or used by the NRC for obtaining) the advice or recommendations of INPO or its personnel on policy or regulatory issues within the scope of the NRC’s responsibility.” Further, the agreement provides that minutes of all coordination meetings will be placed in the public document room.

Both NRC and INPO contend that any advice or recommendations made by INPO on regulatory or policy matters have been made through established Commission procedures. We could find no evidence to the contrary. Accordingly, we agree with NRC that the INPO-NRC relationship is not covered under FACA.

9. Does the memorandum of agreement between NRC and INPO prohibit the disclosure of INPO reports?

As stated in response to the previous question, the memorandum of agreement between NRC and INPO states “(c)onsistent with previous legal decisions . . . NRC will control distribution of INPO proprietary documents and information within the agency and will exert best efforts to protect it from unauthorized disclosure.” INPO’s SEE-IN reports are considered proprietary information, and NRC does not make them available to the public.

10. Is NRC required to disclose all positive and negative information to the Atomic Safety and Licensing Board and the Atomic Safety and Licensing Appeal Board during their proceedings?

The duty to keep the Atomic Safety & Licensing Board and the Atomic Safety & Licensing Appeal Board (jointly referred to as Board) advised of significant changes and developments (both positive and negative) relevant to a proceeding is generally referred to as the “McGuire obligations.” According to NRC, under these obligations parties to the Commission proceedings, including NRC,

have an absolute obligation to alert adjudicatory boards in a timely fashion to material changes in evidence regarding: 1. new information that is relevant and material

Appendix I
Responses to Questions About NRC's
Relationship With INPO

to the matter being adjudicated, 2. modifications and rescissions to evidentiary submissions, and 3. outdated or incorrect information on which the Board might rely (Tennessee Valley Authority (Browns Ferry Nuclear Station Units 1, 2, & 3) ALAB-677, 15 NRC 1387 (1982)).

NRC defines "relevant" as "bearing upon, connected with, or related to" an admitted matter in controversy. "Material" is defined as "tending to influence or having the capability to affect the outcome" of such an issue. In an operating license proceeding, the "McGuire obligations" extend only to matters in controversy before a Board. Because the scope of nuclear power plant construction proceedings are broader, in such proceedings, the obligations may extend beyond contested issues.

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