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January 10, 2000

Mr. David L. Meyers
Chief, Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555

**Re: DG-1094: NRC Draft Regulatory Guide
Fire Protection for Operating Nuclear Power Plants**

Dear Mr. Meyers:

This provides comments by the Fire Protection Clearinghouse ("Clearinghouse")¹ on the subject draft regulatory guide. The Clearinghouse is concerned that the regulatory role of this guidance is not clear and sends a mixed message about compliance, as demonstrated by the following excerpts from DG-1094 and by the inclusion of many new regulatory positions. Unless the language is clarified and the new regulatory positions are shown to satisfy the criteria in the backfit rule, 10 C.F.R. § 50.109, this Regulatory Guide could become a basis for impermissible backfits. Examples of how this could occur are provided in the Attachment. Other regulatory concerns with DG-1094 are also addressed below.

Uncertainty in the Regulatory Role of DG-1094

¹ The Fire Protection Clearinghouse is a consortium of nuclear utility licensees representing approximately 20 nuclear power plants.

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Section D states that the compilation of interpretations in DG-1094 does not supersede any plant's fire protection licensing basis. Although Section D appears to recognize the regulatory role of the current fire protection licensing bases at the plants, Section D also, somewhat inconsistently, implies that the positions in this Regulatory Guide are required to be

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followed by all plants. Of particular concern is the following statement:
Licensees should consider reviewing their fire protection programs against the guidelines contained herein during a self-assessment or other internal review to provide reasonable assurance that the necessary elements of the program as described in the position statements, Regulatory Position C of this guide, have been considered. (emphasis supplied)

The emphasized text in the quote above is phrased in mandatory language and is just the kind of statement that licensees have previously identified as resulting in confusion regarding the regulatory implications of NRC issuances. In a case like this, where not all of the guidance is equally applicable to all of the plants, these directions are inappropriate and should be deleted.

Sources of Regulatory Interpretations

The Regulatory Guide does not differentiate among the various sources of potentially applicable regulatory interpretations. In the past, NRC views expressed in Information Notices have attained a level of regulatory impact that is inconsistent with the deliberate processes that are applied by the NRC to adopt generically applicable interpretations of regulatory requirements. Experience has shown that a coherent regulatory program requires the strict application of NRC processes for the adoption of generically applicable regulatory interpretations. Therefore, the informal NRC interpretations should be identified as such in the Regulatory Guide and NRC personnel should be required to determine whether an interpretation has generic applicability before it is proposed to be applied to a particular licensee's fire protection program.

Previously Accepted Compliance

10 C.F.R. § 50.48(b) explicitly provides for the NRC's acceptance of licensees' program elements which satisfy Appendix A to Branch Technical Position BTP APCSB 9.5-1, even where those program elements differ from the comparable requirements in 10 C.F.R. Part 50, Appendix R. This prior acceptance should not be undone by this Regulatory Guide.

Fragility

Fragility is a new concept in the NRC's characterization of fire protection programs. Fragility would be considered in any determination of the fire survivability and repair of systems, structures, and components subjected to fire damage. These uses of fragility are inconsistent with the underlying purposes of this Regulatory Guide because this Regulatory Guide is intended to be a compilation of the currently applicable deterministic fire protection requirements for which the fire

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survivability and repair have already been inherently considered. By contrast, the proposed uses of the concept of fragility may be appropriate for a risk-informed, performance-based regulatory methodology. Accordingly, the concept of fragility should be removed from this Regulatory Guide.

Section 1.44 Deviations

This provision would inappropriately apply inapplicable procedures and standards to licensees' requests for deviations from commitments to Sections II.G, III.J, and III.O of Appendix R. The criteria for exemptions do not apply to such deviation requests because those licensees' commitments are not the procedural equivalent of rules. Rather, the license amendment criteria in 10 C.F.R. §§ 50.90-92 may apply if deviations do not satisfy the criteria in 10 C.F.R. § 50.59 for changes which do not require prior NRC approval.

Reliance on Plant-specific Safety Evaluation Reports

In one case, a safety evaluation report ("SER") was relied on to identify new potential requirements. At page 103, footnote 413, the NRC relies on the SER for the Dresden Mobil Volume Redirection System to suggest the need for additional guidelines and criteria for the design, installation, and operation of flammable cryogenic and compressed gas systems. Such a plant-specific determination cannot be relied as the basis for a generic requirement absent a showing of the generic applicability of the determination.

Sincerely yours,

Sheldon L. Trubatch
Counsel to the Fire Protection Clearinghouse

Attachment A
Backfit Observations

Implied Backfit

In issuing DG-1094 for comment, the NRC stated that the guidance was developed to "provide a comprehensive fire protection guidance document, and to identify the scope and depth of fire protection that the [NRC] staff has determined to be acceptable for operating nuclear plants." To provide that comprehensive guidance, the "positions and guidance provided are a compilation of fire protection requirements and guidelines from the existing regulations and staff guidance. In addition, new guidance is provided where the existing guidance is "weak or non-existent." By combining existing and new guidance, the NRC Staff concludes that its proposed positions and guidance provide "an acceptable level of fire protection for operating nuclear power plants." Moreover, the Staff suggests that this guide may be used for licensee self-assessments to provide "reasonable assurance that the necessary elements of the program described in the positions statements, Regulatory Position C of this guide, have been considered."

Finally, regarding licensee implementation of the Regulatory Guide, the NRC Staff states that "[e]xisting fire protection programs, or elements thereof, need not be changed to meet the positions contained within this guide to the extent that these existing programs or elements have been found to be acceptable to the NRC, alternative positions are proposed, and any changes to these accepted programs or elements are reviewed in accordance with the criteria of 10 C.F.R. § 50.59." However, the guide also states that "it presents the best available methods for meeting fire protection requirements and objectives that are acceptable to the Commission, and will be used in the evaluation of fire protection programs for operating nuclear plants. Nothing in this guide prohibits a licensee from proposing alternative method(s) for complying with specified petitions of the Commission's regulations."

These quotes cause the positions in the Regulatory Guide to appear to be mandatory, and therefore, to potentially impose multiple backfits with adherence the backfit rule. To avoid this potential for unregulated backfits, this Regulatory Guide should clearly state that licensees are not be required to justify any differences between their fire protection programs and positions in the Regulatory Guide. Rather, NRC personnel should be required to demonstrate that a position in the Regulatory Guide is applicable to a plant before suggesting that a plant's fire protection program is not in compliance with NRC requirements.

New Guidance

Section A of the Regulatory Guide explicitly states that "new guidance is provided where the existing guidance is weak or non-existent." Appendix J: Guidance Source Citations, identifies the "new text" which has been incorporated in the guidance. The extent of this new guidance and the potential for backfits is clear from the over 50 references to new or modified texts.

Each of these references is a potential backfit. Also of concern are open-ended statements like the following on page 96, footnote 388. "Automatic suppression should be provided consistent with other safety considerations." Because licensees will be inspected for noncompliance with this new guidance, or an agreed-on alternative, this guidance has the effect of establishing new NRC Staff positions as official interpretations of the fire protection rule. However, neither a rulemaking proceeding nor backfitting analysis was conducted by the NRC in proposing to apply these new positions to licensees. The appropriate procedures should be followed by the NRC before it imposes new requirements on licensees.

General Design Criteria

Four General Design Criteria ("GDC"), 3, 15, 19, and 23, are stated to be applicable to all plants. Reg. Guide, Sections 2.1.1 - 2.1.3 (*sic*, should be 2.1.4). GDC 3 may have been backfit to all plants by 10 C.F.R. § 50.48. However, unless GDCs 15, 19, and 23 were explicitly backfit by other NRC requirements or by specific licensee commitments, those GDC do not apply as a general matter to pre-GDC plants. Accordingly, this regulatory position is a backfit.

Self-imposed Station Blackout

Section 4.2.3 suggests that a self-imposed station blackout ("SBO") to deal with a fire may result in a relative risk which may greatly exceed the actual risk posed by a fire. This suggests that the NRC may be preparing another assault on the prior acceptability of self-imposed SBO. Any change in NRC position on the acceptability of self-imposed SBO to deal with a fire should be accompanied by the required showings under the backfit rule.

Fragility

Section 4.2.4 identifies the fragility of SSCs to heat, smoke, and fire (ignition) as matters of concern. Fragility may be a concern as plants convert to solid-state systems, but a reasonable set of regulatory requirements can be developed only after the NRC follows the appropriate, disciplined, backfit process, which is designed to support reasoned decisionmaking.

NFPA Codes

NFPA Codes are referenced throughout the regulatory guide. Section 1.4.7 recites guidance in Generic Letter 86-10 and properly states that any references to NFPA or other codes are limited to the codes of record for each plant. Any attempt to apply any other version of a code which is more burdensome than the code of record would be an impermissible backfit

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unless the applicable NRC procedure is followed. Unspecified is how licensees are expected to behave when there is no code-of-record for the NFPA Code cited in the Regulatory Guide. Any attempt to apply a code which is not part of the plant's licensing basis would also be a backfit.