

**From:** David Nelson (HQ-OE)  
**To:** PGunter@nirs.org  
**Date:** 9/25/03 11:44AM  
**Subject:** Response to question - past NRC Enforcement Policy regarding FSAR issues

Mr. Gunter - this is responding to your question following the 2.206 petition meeting on Sept. 17, 2003. You asked about the history/status of the post-Millstone NRC enforcement "amnesty" regarding design deficiencies.

As a result of the Millstone issues, the Commission revised the Enforcement Policy on October 18, 1996, to better define its policy regarding licensees' adherence to the Final Safety Analysis Report. This included additional guidance to address severity levels to categorize violations of 10 CFR 50.59 and 50.71(e) and reporting requirements, application of the corrective action factor in Section VI.B.2.c. of the Enforcement Policy, use of Section VII.B.3 of the Enforcement Policy, Enforcement Discretion for Violations Involving Old Design Issues, and applying enforcement discretion to increase sanctions in this area under Section VII.A.1 of the Enforcement Policy. I believe your question was in regard to the use of Section VII.B.3 of the Enforcement Policy, Enforcement Discretion for Violations Involving Old Design Issues.

The October 18, 1996 Enforcement Policy revision, 61 FR54461, can be viewed on the NRC web site at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/history/>. See, "10/18/96 Departure from FSAR". Once in the document, see section 4, "Old Design Issues" for a full discussion.

In summary, to encourage licensees to promptly undertake voluntary initiatives to identify and correct FSAR noncompliances, the NRC modified Section VII.B.3 of the Enforcement Policy to provide for:

- (1) The exercise of discretion to refrain from issuing civil penalties and, in some instances, citations for a two year period where a licensee undertakes voluntary initiative to identify and correct FSAR noncompliances that will be completed within that two year period, and
- (2) The exercise of discretion to escalate the amount of the civil penalties for FSAR/50.59 noncompliances identified by the NRC subsequent to the two year voluntary initiative period.

So, the "amnesty" you mentioned was special application of a pre-existing discretion provision of the Enforcement Policy, Section VII.B.3. The initial two-year window was deemed a reasonable time period for licensees to establish and implement their FSAR improvement programs, after which VII.B.3 discretion would no longer be applied for NRC-identified violations or for violations that should have been identified during the improvement process and, rather, escalation of enforcement sanctions would be considered.

Prior to the end of the two-year period, a June 30, 1998, SRM regarding SECY-98-087, Proposed Generic Letter 98-XX: Interim Guidance For Updated Final Safety Analysis Reports In Accordance With 10 CFR 50.71(e) was issued. This SRM directed the staff to extend the discretion period in conjunction with either endorsement of NEI guidance on FSAR updates or issuance of the draft GL for public comment. The SRM can also be viewed on the NRC web site at <http://www.nrc.gov/reading-rm/doc-collections/commission/srm/1998/1998-087srm.html>

Subsequently, the NRC staff and NEI reached closure on NEI 98-03, "Draft Industry Update Guidelines for Final Safety Analysis Reports," and the staff endorsed this guidance in Regulatory Guide 1.181 - "Content of the Updated Final Safety Analysis Report in Accordance with 10 CFR 50.71(e)" issued in September, 1999. This Reg. Guide can be viewed at <http://www.nrc.gov/reading-rm/doc-collections/reg-guides/power-reactors/active/01-181/#> 1 6

Thus, in accordance with the June 30, 1998, SRM, the enforcement discretion was extended 6 months from endorsement of the NEI guidance until March 2000. This was formally documented in the Enforcement Policy revision issued November 9, 1999, 64 FR61142. This can be viewed at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/history/> See, "11/09/99 Assessing Significance; Elimination of Regulatory Significance; 10 CFR 50.59; Responsibilities."

The current revision of the Enforcement Policy retains these aspects and dates in Section VII.B.3, such that discretion for NRC identified departures from the FSAR would not normally be applied for violations that reasonably should have been identified and corrected in the FSAR improvement process. However, each violation is assessed on its own merits and any enforcement action is dependent on the circumstances of the case. Notwithstanding the expiration of the specific Section VII.B.3 discretion for FSAR issues, the specific circumstances of a case may warrant discretion to either mitigate or escalate the enforcement sanction for a particular violation.

Please keep in mind that since the implementation of the Reactor Oversight Process, in accordance with the Enforcement Policy, civil penalties are not normally issued to commercial nuclear reactor plant licensees except for violations involving willfulness, actual consequences, or for violations that impact the regulatory process, i.e., prevent the NRC from fulfilling its responsibilities for oversight. Nonetheless, the NRC may apply its full enforcement authority where the action is warranted including (1) escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$120,000 per violation, per day.

I hope this is responsive to your question. Please contact me if I can be further assistance.

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**CC:** Frank Congel; James Luehman; Mel Fields