

November 7, 2007

MEMORANDUM TO: Chairman Klein
Commissioner Jaczko
Commissioner Lyons

FROM: Luis A. Reyes */RA/*
Executive Director for Operations

SUBJECT: RESPONSE TO STAFF REQUIREMENTS MEMORANDUM
DATED JUNE 25, 2007, ON THE BRIEFING OF THE RESULTS
OF THE AGENCY ACTION REVIEW MEETING - MATERIALS

PURPOSE:

This memorandum is in response to Staff Requirements Memorandum (SRM), "Briefing on Results of the Agency Action Review Meeting – Materials," dated June 25, 2007. The SRM directed the staff to provide the Commission with a chart which discusses each Agreement State's civil penalty authority for enforcement of nuclear regulations and requirements and noting any major differences in Agreement State approaches and alternatives to civil penalties and their effectiveness to ensure requirements are enforced.

DISCUSSION:

In order to obtain the information requested by the Commission, the Office of Federal and State Materials and Environmental Management Programs (FSME) issued an All Agreement States Letter (FSME-07-081) on August 8, 2007. All the Agreement States, as well as New Jersey, Pennsylvania, and Virginia provided responses to the Letter and FSME staff reviewed and compiled the requested information.

Enclosed is a table denoting each State, the State authority responsible for issuing civil penalties as applicable, the civil penalty process, the maximum monetary penalty, civil penalty assessment process, and any additional enforcement sanctions.

Based on the responses received, the majority of Agreement States have the authority to issue a civil penalty. In general, the legal authority for issuance of civil penalties resides with either the Attorney General, Assistant Attorney General or with the Radiation Control Programs. In most states, there is an established maximum penalty and the process used to determine the

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monetary penalty is based on a process that is similar in many respects to the U.S. Nuclear Regulatory Commission's (NRC) Enforcement Policy. Some states do not consider the size and type of the licensee when determining the civil penalty. In addition, many states will mitigate the amount of the civil penalty provided the licensee voluntarily discloses the violation and takes immediate and effective corrective actions, similar to NRC's Policy. Although three Agreement States do not have civil penalty authority, two states implement an alternative to the civil penalty process which involves assessing additional inspection fees for activities to ensure compliance. Both Agreement States stated that they believe their programs are sufficient to ensure compliance with the regulatory requirements. Based on the information provided by the Agreement States, we cannot make a determination on the effectiveness of the alternative enforcement approaches.

Additionally, FSME has reached out to the Organization of Agreement States (OAS) to discuss sharing information relative to enforcement issues and actions. On November 1, 2007, a presentation on the Texas' enforcement program was provided by the OAS' Chairperson during the annual Office of Enforcement Counterpart meeting. Reciprocal information exchanges related to escalated enforcement actions were discussed, including the sharing of information related to banning individuals from working in licensed activities.

Enclosure:
Agreement States Civil
Penalty Table

cc: SECY
OGC
OCA
OPA
CFO

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Distribution:
 DMSSA r/f RidsFsmeOd
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