

# PUBLIC SUBMISSION

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## General Comment

Comments on the September 2008 Draft Enforcement Policy  
I appreciate the opportunity to comment on the recent revision to the Enforcement Policy. In my view the draft policy provides an overview of the policy but not the detail that I would expect the Commission to provide the staff in order to have a consistent national policy. I appreciate the need to have a readable policy but in my view this draft policy oversimplifies the enforcement policy. It leaves many details to the discretion of the staff to include in the Enforcement Manual which in the past has been a staff controlled document. Thus, the fundamental question is whether the Commission or the staff controls the agency philosophy for enforcement.

The policy should specify who within the agency has the responsibility for the consistency of enforcement decisions. It does not tell the staff or the public, who is accountable to the Commission for the NRC enforcement program. For example, the draft policy provides that the Director of the Office of Enforcement needs to approve or be consulted with: 1) dispositioning a willful violation as an NCV, 2) where the staff does not offer ADR, and 3) where the staff exercises discretion for a willful violation involving an extended shutdown or work stoppage. Consequently, the clear implication of the draft is that for all other aspects of the policy, such as issuing civil penalties and orders, the Director of the Office of Enforcement need not be consulted or approval obtained. Consistency of enforcement actions has always been a challenge within the NRC. Given the breadth of NRC licensed activities, the management styles of the various regional administrators and office directors, and a multitude of new NRC employees with

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relatively limited experience, the need for oversight is imperative to run a consistent program. The policy should be clear that it is the Commission expectation that the Director of the Office of Enforcement be responsible for that oversight. The Director should be held responsible for all enforcement actions but especially escalated actions and the discretion not to take such action. Absent such clear authority from the Commission, different regions and offices will take different approaches. The policy should be changed to specify the responsibility for enforcement actions. There needs to be an executive with a single focus for this responsibility. The public deserves to know who is responsible. Licensees and those subject to enforcement should know who are the decision makers. They should not need to consult NRC delegations of authority in the Management Directives of the agency to obtain that information.

In simplifying the policy many details from the current policy have been left out. Most significant is the lack of detail to explain the escalated process and its flow chart. The concepts of identification and corrective action are not straight forward. The agency spends countless hours debating these concepts as it applies them to a particular case. Having the staff and the public understand the Commission's philosophy in these areas are important to have a consistent program.

It would be helpful to understand why the Commission is removing its guidance concerning action against individuals, inaccurate and complete information, and the escalated enforcement process. I appreciate that having a simpler enforcement policy with the details in the Enforcement Manual makes it easier for the staff to change direction and fine tune guidance without the need to consult with the Commission and prepare SECY papers. At the same time the Enforcement Manual is a staff not Commission document. In adjudications, licensing boards are not bound to follow staff documents. Similar to regulatory guides, licensing boards are not bound to the Enforcement Manual. For example, Judges will be free to reach their own views on issues involving identification and corrective action as the draft policy does not provide useful guidance in these areas.

In sum, in my view the Commission should provide more detail information on how it expects the staff to carry out its enforcement program. Both the staff and the public deserve to have a better understanding of the Commission's expectations.

Jim Lieberman