



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
ADVISORY COMMITTEE ON REACTOR SAFEGUARDS  
WASHINGTON, D. C. 20555

November 17, 1998

- The Honorable Shirley Ann Jackson  
Chairman  
U.S. Nuclear Regulatory Commission
- Washington, D.C. 20555-0001

Dear Chairman Jackson:

**SUBJECT: PROPOSED REVISION TO THE ENFORCEMENT POLICY**

During the 457<sup>th</sup> meeting of the Advisory Committee on Reactor Safeguards, November 4-7, 1998, we reviewed a draft Commission paper on the proposed revision to the NRC Enforcement Policy. During our review, we had the benefit of discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI). We also had the benefit of the documents referenced.

The current Enforcement Policy requires inspectors to document any identified violation of NRC regulations. For most Level I, II, III, and IV violations, the Policy requires that a Notice of Violation be issued. Licensees must respond to such notices, and the inspectors must track and document closure. Currently, a minor violation does not result in a formal Notice of Violation. Licensees are not required to respond to non-cited violations and inspectors close these violations at the time they are identified. The proposed revision to the Enforcement Policy would also allow Level IV violations to be non-cited, but with some identified exceptions.

Recommendations:

- We support the proposed revision to the Enforcement Policy and recommend that the Commission approve the proposed revision.
- We recommend that the staff develop explicit guidance with specific examples for implementing the revised Policy. This guidance should clearly explain the intent and expectations of the revised Policy.
- We recommend that the staff continue discussions with NEI on making other aspects of the Enforcement Policy more risk-informed and more objective.
- We support the staff's plan to monitor and assess the implementation of the revised Policy and would like the opportunity to review the results of the staff's assessment.

Discussion:

The vast majority of violations identified by inspectors are classified as Level IV, most of which are not risk-significant. Since the staff and licensees are expending resources in preparing, responding to, and closing out such violations, resources are not available for more safety-significant activities. The proposed revision to the Enforcement Policy would result in issuing a Notice of Violation for a Level IV violation only under limited, defined circumstances.

The revised Enforcement Policy criteria for issuing a Notice of Violation require subjective judgment. Inspectors must continue to rely on their training, knowledge, and experience for determining whether a violation is significant. A review of the inspectors' decisions by regional senior reactor analysts, regional managers, and the Office of Enforcement will be required to maintain consistency and to ensure that the established subjective criteria are followed and the goals of the revised Enforcement Policy are reached.

In the draft Commission paper, the staff states that the proposed changes to the Policy will contribute to a more risk-informed process by allowing licensees to resolve Level IV violations consistent with their safety and risk significance. We note that the revised Policy does not contain any requirement for additional risk assessments and, thus, is not greatly more risk-informed than the current policy.

Examples that provide clear direction to the inspectors should be developed. The examples should provide the inspectors sufficient guidance for identifying violations such that the inspection is focused on safe plant operations. The staff should clearly define how enforcement actions should change as past practices, associated risk analyses, and administrative requirements are superseded by the proposed Policy.

We agree with the staff that "regulatory significance" should continue to be considered in enforcement actions. The term "regulatory significance," however, should be scrupulously defined to identify those things that are essential for effective implementation of the Enforcement Policy.

The staff should integrate its efforts in changing the Enforcement Policy, 10 CFR Part 50, the assessment processes, and the inspection procedures to be more risk-informed. These activities are interrelated and changes are not likely to be consistent if made in isolation. Our review of these separate staff activities indicates that little, if any, integration is taking place among the different staff organizations responsible for these activities.

The NEI presented its proposed framework for a revised enforcement process that reflects the move by NRC toward risk-informed and performance-based regulation. One aspect of this proposal is to redefine Level I, II, and III violations on the basis of actual and potential consequences that would be derived from risk insights. Another aspect of this proposal is the use of quantitative risk data in the decision regarding escalation or mitigation of civil penalties. The NEI framework is one approach for developing a less subjective risk-informed Enforcement Policy. We believe that the staff should continue discussions with NEI on these aspects, but not pursue additional changes to the Enforcement Policy until after it has gained experience with the revised Policy.

We support the proposed revision to the Enforcement Policy. The staff plans to assess the implementation of the revised Policy, and we would like to have the opportunity to review the results of the initial assessment of the adequacy of the implementation when they become available.

Sincerely,



R. L. Seale  
Chairman

References:

1. Draft SECY, Memorandum (undated), from William D. Travers, Executive Director for Operations, NRC, for the Commissioners, Subject: Proposed Revision to the Enforcement Policy to Address Severity Level IV Violations at Power Reactors, received October 29, 1998 (Predecisional Draft).
2. SECY-98-256, Memorandum dated November 3, 1998, from William D. Travers, Executive Director for Operations, NRC, for the Commissioners, Subject: Proposed Revision to the Enforcement Policy to Address Severity Level IV Violations at Power Reactors.

