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From: Lesar, Michael
Sent: Friday, July 31, 2009 10:23 AM
To: Bladey, Cindy
Subject: FW: NRC Enforcement Policy Revision NRC2008-0497
Attachments: comments NRC Enf Policy June 09.doc

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Sent: Friday, July 31, 2009 10:22:27 AM
To: Starkey, Doug; Lesar, Michael
Subject: NRC Enforcement Policy Revision NRC2008-0497 Auto forwarded by a Rule

I appreciate that I am past the comment period, but hopefully there is still time to consider the attached comments.

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6/8/09

74 FR 27191

(6)

Best Regards

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Call = D. Starkey
(drs)*

COMMENTS ON NRC ENFORCEMENT POLICY

47 FR 27191 (June 8, 2009)

I appreciate the opportunity to provide comments on the draft Supplements to the NRC Enforcement Policy. These Supplements are important as they provide examples to categorize the significance of violations. The threshold for severity level III examples is particularly important as that is the threshold for escalated actions. The existing examples have been in effect for more than a decade. The NRC is now proposing substantial changes to the Supplements expanding them from seven categories to fourteen. Many of the examples remain the same but have been redistributed into different supplements. A number of new examples have been added and some examples have been changed. However, it is very difficult to understand these changes as there is no indication what specific changes have been made. One is not able to ascertain whether an example is a current, modified, or new example without examining and comparing each example to the existing examples.

The format of the draft Supplements makes it very hard for a commenter to understand the changes and make meaningful comments. Moreover, there is no explanation as to why the changes were made. This appears to be a change from past practice as past changes to the examples in the Supplements when they were put out for comment were explained (e.g., 64 FR 27310 (May 19, 1999) and 63 FR 26630 (May 13, 1998)). Commenters can only guess why changes were made. Given the impact that these examples have for the consistent administration of the NRC Enforcement program, the NRC should explain why the existing examples are being changed and the basis for the significance of the new examples. This is particularly important because in a number of cases the thresholds for escalated actions were increased or decreased.

While I have not made an exhaustive examination of every change from the existing Supplements, I offer the following examples of changes that in my judgment require an explanation, clarification, or modification:

1. 6.1.C.1 – a TS LCO violation is now a SL III violation. Previously only a significant failure to meet a TS LCO was a SL III violation. Given that a less significant TS LCO violation remains a SL IV, it is unclear what is now meant a “less significant failure” than a basic violation of the TS LCO. Why was this change made since every TS LCO violation is significant?
2. 6.2. B.1 and 3 relate to violations associated with changes in potential frequency of events. Not clear what is meant by a change (B.1 and C.2) substantial increase (C.3), a very substantial increase (B.3), and a significant increase (C.4). There are three basic frequency levels used by Part 70 licensees: highly unlikely, unlikely, and not unlikely. Do these examples

relate to the number of levels that the change represents, i.e., changing from highly unlikely to not unlikely might be a substantial change?

3. If a “very substantial increase” for a high consequence event is a SL II (B.3), a “substantial increase” for a high consequence event is a SL III (C.3), and a “significant increase” for an intermediate event is a SL III (C.4), what is a “significant increase” for a high consequence event or a “substantial increase” for an intermediate event?

4. Why were examples of criticality events not included in 6.2 given the specific requirements in Part 70.

5. 6.3.C. 8 and 9 were previously SLII. Similarly, 6.3.D. 7, 8, and 9 were SL III and now SL IV. Why were these SL’s changed?

6. What is the difference between 6.3.C. 5 and D.6? See item 1 above.

7. Why are there no examples of failure to make one and 24 hour reports in 6.2?

8. There are a number of examples in 6.4 that are relevant to fuel facilities but not included in 6.2 such as 6.3 C. 4, 12, 13, 14, and 15.

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9. Is a loss of control that has serious consequences (6.3.A 2) the same as 6.3.A.1?

10. If a breakdown in QA is a SL III under 6.5 and a isolated QA procedural violation is a SL IV, what SL would multiple QA procedural violations be?

11. What is the significance of “isolated” in example 6.4.D.3 as to the other examples in 6.4.D that do not have “isolated” as a modifier? Does example D.3 need to be more than minor significance as example D.1? Do these four examples improve the guidance from the existing construction level IV example?

12. Since 6.6 applies only to reactors and the examples have different SL’s than in 6.2, why isn’t 6.6 included in 6.1 similar to 6.2?

13. Why have the thresholds for contamination in 6.8 been changed? 6.8.A2 is 100 times the NRC limit, previously it was 50 times. 6.8.B3 is now 50 previously it was 10.

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14. Violations involving careless disregard have been deleted from 6.9. Previously careless disregard was described in examples of SL. See Supplement VII, examples B. 1 and 2 at SL II.

15. Given the threshold now in 6.9.B.1, why isn’t a SL I the same threshold but willful in contrast to deliberate in A.1?

16. Given the threshold now in 6.9.C.1, why aren’t there examples of deliberate and careless disregard for A and B examples?

17. Example 6.9 C.3 might be expanded to include result in a special inspection or other substantial inquiry.
18. Why are some examples of part 20 violations related to reporting in Supplement 6.7 and some in 6.9?
19. Why have the SL's in Supplement 6.10 been decreased? Supplement VII provided for a SL I violation if a senior corporate manager was involved? Now it is either a SL I or II. Similarly plant management or mid management was a SLII and now maybe a SL II or III violation.
20. What does "widespread" mean in the examples for 6.10? Is widespread more than isolated or are there levels in between? For senior or plant management why should it matter if it is isolated, more than isolated or widespread? It should not happen nor be tolerated.
21. What do the terms "relatively more adverse" or "relatively less adverse" mean? Does NRC mean here significant (e.g., change in salary, benefits, position, career potential, etc) or less significant (e.g., no impact on pay, career, position, etc) adverse action?
22. Why are the details of the examples different between supplements 6.11 and 6.12 given the relationship between strategic levels and categories of materials?
23. In 6.11.B 1 and B.2, what does significant determined by the NRC mean? Who in the NRC? How ill this be determined in adjudication? Can't there be some objectivity here so that there can be some chance of consistency applied?
24. Why is B.3 in 6.11 when it is also in 6.14.B.2?
25. Why is deliberate falsification of information in 6.6C 8 only a SL III? What level is an erroneous access decision based on inaccurate information?
26. Should there be an example of an inattentive security guard at a SL III?