

August 27, 2010

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS – SECY-09-0190 – MAJOR REVISION
TO NRC ENFORCEMENT POLICY

The Commission has approved publication of the revised Enforcement Policy in the *Federal Register* notice, subject to the following comments and changes.

(EDO) (SECY Suspense: 9/27/10)

1. After publication of the Enforcement Policy in the Federal Register, the staff should continue to review the policy for accuracy and consistency, both internally and with other agency documents. The next proposed revision to the enforcement policy should be provided to the Commission within 18 months of the effective date of this revision to the policy. The next proposed revision should address the following:
 - a) Civil Penalties for lost sources (page 15) – Loss of control should be added to the list of violations for which discretion should be considered in Section 3.6. The language stating that violations will normally be assessed a Civil Penalty (CP) should be removed to avoid any impression that the CP will be assessed without regard to the circumstances surrounding the violation.
 - b) The language regarding Predecisional Enforcement Conferences (PEC) should be revised to provide clear and consistent guidance that allows licensees and individuals to respond to apparent violations before final escalated enforcement action is taken. Appropriate changes to the policy should be made consistent with this principle, including the following:
 - Consistent criteria should be provided for determining whether pre-decisional enforcement conferences will be offered.
 - The policy states (at page 24) that when the NRC is considering escalated enforcement action the NRC will typically offer a PEC. Additionally, it states that the NRC may request a conference when additional information is needed.
 - The policy then states (at page 25) that if the NRC concludes that it has sufficient information to make an informed enforcement decision involving a licensee, contractor or vendor, a PEC will not normally be held. This is not consistent with the statement above for escalated enforcement.
 - The policy also states (at page 25) that individuals will normally be provided an opportunity to address apparent violations before escalated enforcement action. Since individuals may be licensees, contractors or vendors, this should be reconciled with the statements above.

- The policy states (at page 25) that while written responses to proposed enforcement actions are permitted, the NRC may take final enforcement action before receiving the response. In order to ensure that enforcement actions are fully informed, the policy should provide that the agency will consider responses before taking enforcement actions to the extent feasible.
- c) The staff should ensure that rewording has not created inconsistencies, ambiguities or inadvertently changed the policy. For example:
 - The description of the points when post-investigation ADR may be offered in the policy should be consistent with the description in the enforcement manual.
 - The criteria for determining whether pre-decisional enforcement conferences will be offered are not consistent
 - The new wording for issuance of immediately effective orders states, at page 22, that they are made immediately effective when required to protect public health and safety and security or if the violation or conduct causing the violation is willful. This language implies that all willful violations will be immediately effective; however, it is not clear whether this was intended to be a change in policy or not.
 - d) Additional guidance, such as criteria and examples, should be developed and included to assist the staff in determining when daily civil penalties are appropriate.
 - e) The staff should evaluate whether the civil penalties for uranium conversion facilities could be tied to the inventory of process chemicals and other materials maintained by the facility. The Commission paper transmitting the next revision to the enforcement policy should contain an analysis of the civil penalties for conversion facilities and should present options for the Commission's consideration.
 - f) The staff should propose revisions to provide fuel cycle licensees with credit for effective corrective action programs.
2. Staff should prepare a road map identifying the changes from the last revision of the Enforcement Policy and explaining the basis for each substantive change. This roadmap should be provided to the Commission with the next revision of the policy. In addition, a road map explaining the basis for each substantive change should be provided to the Commission with all future Commission papers proposing revisions to the Enforcement Policy and Allegation Policy.
 3. The revised Enforcement Policy, and all future revisions to the Enforcement Policy, should be signed out by the Secretary of the Commission to make clear that this is the Commission's policy and not a staff policy.
 4. The staff should ensure that all of the agency's ADR guidance and implementing procedures are publicly available in one easily identifiable location on the NRC web site and ensure that the ADR information from these sources is consistent and complete. This action should be completed within 6 months of the effective date of this SRM.
(EDO) (SECY Suspense: 2/28/11)
 5. In light of recent events related to the Vogtle early site permit (Units 3 and 4), the staff should reevaluate the portions of the Enforcement Policy associated with construction activities (e.g., reactor or uranium enrichment plants), including under what conditions

enforcement discretion can be used in cases involving the holder of a LWA or COL. The staff should report back to the Commission on the results of that review, including proposed policy options within 9 months of the effective date of this SRM.
(EDO) (SECY Suspense: 5/27/11)

6. The staff should make the following changes to the Enforcement Policy before the policy is published in the *Federal Register*.
 - a. On page 3, paragraph 1, revise the last sentence to update the instructions for accessing the Enforcement Manual (provide ADAMS ML and instructions for accessing public ADAMS).
 - b. On page 7, last paragraph, revise line 2 to read ' ... justice. After an apparent **a potential**'
 - c. On page 8, 1st full paragraph, revise line 1 to read ' ... or severity. **Severity levels are assigned to violations processed under traditional enforcement.** The severity'
 - d. On page 8, paragraph d., revise the *Federal Register* notice, to clarify that it is revising the Policy Statement that was published in the *Federal Register* on December 18, 2000 (65 FR 79139).
 - e. On page 10, paragraph a., revise lines 2 and 3 to read ' ... security consequences, (i.e. e.g., **violations that created the substantial potential for serious safety or security consequences or violations that involved systems event**).'
 - f. On page 10, paragraphs b., c., and d., change "i.e.," to "e.g.,".
 - g. On page 11, paragraph 2.2.4., revise lines 3 and 4 to read ' ... significance and **any** , if the associated violations **s** involv**ing**es traditional enforcement , they are also assigned'
 - h. On page 43, paragraph d.1., revise lines 2 and 3 to read ' ... Part 55, or ~~isolated or limited~~ cases of' Revise line 5 to read ' regulatory decision **as a result of the originally submitted information** or an unqualified'
 - i. On page 61, paragraph 10., revise lines 1 and 2 to read ' ... fails to **contact the local law enforcement agency and does not attempt to** establish a prearranged response plan with the local law enforcement agency, or a'
 - j. On page 65, paragraph d.1., revise to read '~~A licensee fails to have implementing procedures that are clear, concise, and readily available;~~ **Failure to prepare, implement, and maintain written procedures that describe the methods to be used in implementing the FFD policy;**'
 - k. On page 66, revise the definition of "Demand for Information (DFI)" to read ' ... 2.204, **requires** is an Order requiring a licensee'
 - l. On page 67, revise the definition of "Licensee" to read '**Licensee** means a person or entity authorized to conduct activities under a license issued by the Commission.
 - m. On page 67, revise the definition of "Noncited Violation (NCV)" to read ' ... violation **or a violation associated with a Green ROP finding** that is'
 - n. On page 70, Table A, revise item a to read ' ... gaseous diffusion **uranium enrichment plants, ...**' Revise item c, lines 3 and 4 to read ' ... mills, and **gas centrifuge and laser** uranium ...'
 - o.** Civil Penalty Assessment Process (page 17) –The language should be revised to avoid any confusion regarding the burden of proof for determining penalty assessment. In a hearing, the staff bears the burden of justifying the basis for any CP.

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR