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RECORD #113

TITLE: Enforcement of Regulatory Guides

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NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

FEB 17 1977

To: PSS -
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WHITE
CLEMONS

MEMORANDUM FOR: J. P. O'Reilly, Director, Region I
N. C. Moseley, Director, Region II
J. G. Keppler, Director, Region III
E. M. Howard, Director, Region IV
R. H. Engelken, Director, Region V

FROM: Dudley Thompson, Acting Director, DFO

SUBJECT: ENFORCEMENT OF REGULATORY GUIDES

From time to time certain problems of enforcement have been encountered by the Regions with respect to licensees committing to Regulatory Guides in the SAR's or security plans in such a manner that they are not legally binding. Region III has pointed out in a memorandum dated September 28, 1976, (copy enclosed), that a licensee may state in its plan that it will accomplish certain functions according to the "intent" of a Regulatory Guide. The "intent" of the Guide, and whether the licensee met the "intent", may then be subject to interpretation by the various inspectors and the various licensees. Also, the Region III memo notes that many of the Guides adopt standards which use the terms "shall" be accomplished (required), "should" be accomplished (recommended), and "may" be accomplished (permissive).

The Office of the Executive Legal Director has been consulted concerning this matter. In order to be enforceable, regulatory requirements must be specific enough to be clearly understood. ELD advises that if a licensee states in its plan that the "intent" of the guide will be accomplished, or that they will "generally" follow the guide, we cannot enforce against such loosely worded statements except in rare situations where the licensee's condition of noncompliance is clearly obvious. Similarly, we can enforce against those sections of the Regulatory Guides referenced in the Regulations, which are stipulated as "shall" but we cannot enforce against those sections which are recommended ("should") or allowed as optional ("may"). As you know it has been the position of IE and the Legal Staff that Licensing should assure that those functions which the licensee must perform must be stated clearly in the requirement to assure that they are enforceable. Such licensing functions will likely require some legal review.

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It is requested that specific matters of this nature, involving enforcement problems which are encountered during inspections, be forwarded to IE Headquarters so that they can be brought to the attention of Licensing. It is only by alerting Licensing to the specific problems that are involved in this area that we can perhaps bring some resolution to enforcement policy matters of this nature.

Samuel E. Bryan for
Dudley Thompson, Acting Director
Division of Field Operations
Office of Inspection and Enforcement

NOTE

Enclosure:

Memo dtd 9/28/76

cc:

E. Volgenau, DIE
J. Davis, DD:IE
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Enforcement Coordinators
✓ I, II, III, IV, V
Colleen Woodhead, ELD

September 28, 1976

G. W. Roy, Chief, Field Coordination and Enforcement Branch,
Headquarters

ENFORCEMENT OF REGULATORY GUIDES

We recently encountered a situation where a licensee (Kewaunee), in submitting a security plan for approval by licensing, indicated that they would meet the intent of the provisions of Regulatory Guide 1.17. This wording was accepted by Licensing. During a recent security inspection of this licensee, it was determined that the licensee was not meeting a provision of the guide related to alarm systems. The licensee's response was that the matter in question was stated in the guide as something that "should be accomplished". That is, it was interpreted as a recommendation rather than a requirement. To resolve this particular question, we replied to the licensee, with ELD's concurrence, that the licensee was not meeting the intent of the Regulatory Guide and therefore corrective action on their part was required. This avoided, at least for the current time, a decision as to whether a "should" statement in a Regulatory Guide is enforceable when the licensee commits to following the "intent" of that guide.

The specific example given in the previous paragraph is typical of difficulties which the Regions face in enforcement of the provisions of regulatory guides. In cases where a licensee states in his application that he "generally" plans to follow a regulatory guide or that he plans to "meet the intent" of a regulatory guide, it is not clear as to the enforceability of that guide. This is further complicated when the NRC Regulatory Guide embraces an industry standard which specifically identifies action which "shall" be accomplished (required), which "should" be accomplished (recommended), and which "may be accomplished" (permissive). In general, this problem has appeared to surface primarily with regard to security requirements.

To aid the Regions in determining whether or not licensee failure to follow practices endorsed in regulatory guides constitute noncompliance, we suggest that the following action be taken:



September 28, 1976

1. Convey to Licensing the importance of defining clearly licensee commitments with respect to Regulatory Guides.
2. Develop and publish a complete policy position with regard to the enforcement of regulatory guides. It is our view that a statement of such an IE policy would be useful to the licensees as well as to the regional offices.

Please let me know if you have any questions on this matter.

Charles E. Norelius
Charles E. Norelius
Assistant to the Director

cc: Dudley Thompson, Acting
Director, DFO
W. Porter Ellis, IE:HQ
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