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Potential Revision to the Enforcement Policy

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Enforcement Policy

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Submitter Information

Name: Gary Williams
Address: United States,
Email: gary.williams3@va.gov

General Comment

See attached file(s)

7/23/2013
76 FR 44165

Attachments

VHA comments enforcement policy change

1

SUNSI Review Complete
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Add= J. Wray (SRW3)

NHPP general comments

The Veterans Health Administration (VHA) is a federal agency with a master materials license. A master materials licensee has regulatory authority to issue permits, complete inspections and investigations, and take enforcement actions similar to NRC.

For enforcement actions involving an individual who engaged in deliberate misconduct, VHA requires permittees to follow Office of Personnel Management guidelines to review and evaluate individuals for possible discipline. Those guidelines include opportunities for an individual to correct their previous non-conformances to regulatory requirements and have continued employment at the permittee. The corrective actions for a previous deficiency might include retraining and increased supervision.

NRC appears to focus more to punishment for an individual by assessing civil penalties and banning individuals from employment and use of enforcement actions as a warning to other individuals about what negative outcomes might result from a non-conformance to regulatory requirements. As an example, the last paragraph for EGM-11-005 dated December 5, 2011 states the following (*italics added*).

In considering the agency's ADR objectives and outlining a mediation strategy as described above, the NRC is able to enter into agreements with Licensees that *send a strong regulatory message* that the NRC expects regulatory compliance and prompt identification and correction of violations.

Also, NRC tends to encourage individuals to participate in the ADR process. The ADR approach prescribed in EGM-11-005 appears to predetermine a limited flexibility by the NRC to evaluate only the circumstances for a specific enforcement action as contrasted to a task to send a wider message.

NHPP response to specific questions

1. Given that an individual who has engaged in deliberate misconduct is offered the opportunity to participate in the NRC's Alternative Dispute Resolution (ADR) process, in which modifications to an individual sanction can include a ban for less than 1 year or a civil penalty, is there a benefit to modifying the Enforcement Policy?

Comment: No, a benefit to modifying the enforcement policy is not established by the background and discussion sections in the *Federal Register Notice*. NRC has ample methods and approaches to use during enforcement actions. If NRC considers new methods are needed, a proposed new method is to require a higher level of oversight or supervision for an individual. The benefit to this approach is that an individual might have continued employment and the oversight requires a commitment by the licensee to the corrective action.

Veterans Health Administration National Health Physics Program (NHPP)
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5. With respect to the use of either civil penalties or bans for less than 1 year, would there be any unintended consequences the NRC should consider? If so, provide examples.

Comment: NRC should consider the impact on individuals and the limited value to the overall enforcement process for these proposed new methods. NRC should focus to facilitating corrective actions for an individual and less to projecting messages to the regulated community.