

NUCLEAR REGULATORY COMMISSION

ORIGINAL

COMMISSION MEETING

In the Matter of: PUBLIC MEETING

DISCUSSION AND VOTE ON ENFORCEMENT
POLICY

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400 Virginia Ave., S.W. Washington, D. C. 20024

Telephone: (202) 554-2345

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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION

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4 PUBLIC MEETING
5 DISCUSSION AND VOTE ON ENFORCEMENT POLICY
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9 Nuclear Regulatory Commission
10 Room 1130
11 1717 H Street, N.W.
Washington, D. C.

12 Thursday, September 4, 1980

13 The Commission met, pursuant to notice, at 10:00 a.m.

14 BEFORE:

15 JOHN F. AHEARNE, Chairman of the Commission

16 VICTOR GILINSKY, Commissioner

17 PETER A. BRADFORD, Commissioner

18 NRC STAFF PRESENT:

19 LEONARD BICKWIT

20 HOYLE

21 H. SHAPAR

22 W. DIRCKS

23 V. STELLO

24 J. KEPPLER

25 E. HANBAHAN

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P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN AHEARNE: The Commission meets this morning to hear from the Executive Director, Operations and associated staff members, primarily from I&E, on the question of NRC enforcement policy. This dates back to a previous paper that came up on March 13th in a meeting that the Commission held on March 19th, a hearing on that paper, and as a result of it the Commission sent to the EDC a set of requests and asked for the paper to be redone, rethought through. It has been many months since then. Commissioner Bradford and myself had also sent fairly extensive comments down to the staff.

We now have in front of us the revision to that paper. We also have a memo from General Counsel and the Director of Office of Policy Evaluation providing comments on it, which I will at some point today ask them to address.

I am not sure where we are going to end up today. It is a meeting which is identified as a possible decision meeting. The decision that is in front of us is whether or not to accept two recommendations of the EDC. One is to make an interim policy and the second is to put this policy out for public comment.

Bill?

MR. DIRCKS: Well, there are two aspects to the

1 decision, and they are as you mentioned. But I would like
2 to address, if you don't mind, some of the points raised in
3 the General Counsel/OPE memo and take them on right away.

4 The concern that is expressed I think in the paper
5 is that when after the briefing that was given back in March
6 on this subject copies of the paper were picked up by
7 whoever was in attendance at that meeting, and we got
8 comments in from organizations, mostly industry
9 organizations. And I think the fear is that some of the
10 comments from the industry organizations affected the way
11 that the current proposed policy statement came out.

12 This was a concern that we were very much aware of
13 in our own activities, and I made a special point of talking
14 to Vic and his people and others about how much of an input
15 did these comments play and how much of a role did these
16 comments play in the development of their policy statement.

17 I was told that they did not enter into the
18 development of the policy statement that you have before
19 you, that the comments of the commissioners and the staff
20 were addressed in their outline of Appendix 3. But I think
21 that one exception was a comment, a technical comment,
22 expressed and taken into consideration of the development of
23 that policy statement and deals with the transportation,
24 some aspect of transportation.

25 So I wanted to make sure that you understood on

1 that point, that from the substantive standpoint it did not
2 affect the government understanding.

3 CHAIRMAN AHEARNE: Since you started by raising
4 the issue, Bill, let me just then ask: in this Attachment 3
5 which you referred to, after there is a list of all of the
6 comments, these people have commented, and which as you
7 identify were essentially a large number of industry people,
8 the statement then is the staff believes that substantially
9 all the concerns identified by these commenters have been
10 addressed?

11 MR. DIRCKS: Yes. That statement I am aware of,
12 and I think it needs some explanation. And, Vic, you can
13 correct me if I am wrong on this point, but what I gather,
14 in addressing the comments of the staff and the Commission,
15 staff and the commissioners, in addressing those comments,
16 resolving those concerns, the concerns that were expressed
17 by those industry comments were also addressed, but they
18 were not addressed directly.

19 CHAIRMAN AHEARNE: I don't want to belabor this.
20 However, the reference to the commissioner comments comes
21 after that statement, not before it.

22 MR. DIRCKS: Well, I think that is why I said that
23 perhaps that statement should have been expanded a bit, but
24 it is a fortuitous thing that it happened that way. It did
25 not happen, but let me go on and say we can understand the

1 concern of the Commission about how this might be perceived,
2 and we are looking at the suggestions made by the General
3 Counsel and the Office of Policy Evaluation. They lay out
4 three alternatives.

5 I think any one of those three would be an
6 approach to deal with this problem, and my own view is I
7 think the best way to get public comment is to go out for
8 public comment. So I would be inclined to go with number
9 three, option three, option C I think it is.

10 CHAIRMAN AHEARNE: C.

11 MR. DIRCKS: Well, anyhow I wanted to make that
12 point.

13 CHAIRMAN AHEARNE: All right.

14 MR. DIRCKS: And at least to reassure you on that
15 point that we did not address those industry comments, and
16 in fact those comments affect the development of the paper.

17 Vic, do you want to add anything to that?

18 MR. STELLO: Maybe to reinforce it, knowing that
19 this was a concern, I asked the principal drafters of the
20 paper a question: what would have happened and how would
21 the paper be different had we not received any of the
22 industry comments, none of them? And the answer that I get
23 back is that except for the one technical point on the
24 transportation issue the paper would be as it is.

25 I think you will recall that there were a number

1 of issues raised at the briefing. The extensive comments
2 that were received from the commissioners covered a broad
3 range of areas. And those same areas are areas that were
4 raised by the industry, that the largest industry --

5 CHAIRMAN AHEARNE: I am glad you commented also,
6 Peter.

7 (Chuckles.)

8 MR. STELLO: The principal thrust of their comment
9 was to clarify the way in which the flexibility that was
10 inherent in here was going to be used and show whether it
11 was structured. If you recall, we originally had it in a
12 footnote, in a very general statement --

13 CHAIRMAN AHEARNE: Yes.

14 MR. STELLO: -- which was a very large
15 discretionary element, and we had restructured the -- the
16 thrust of the industry concerns. That was also the concern
17 at the briefing we held at the Commission and they did come
18 about in their comments.

19 So I think in fairness the direction that the
20 Commission gave us to redo the paper laid the groundwork for
21 what you have in front of you.

22 CHAIRMAN AHEARNE: Yes.

23 MR. STELLO: I think, and I do support, that we
24 ought to do this in full public view. When you do that you
25 are going to get comments. I don't know how you close your

1 eyes to them unless you embargo them somehow until the
2 process is over. But if you are doing it in the full public
3 view, that is one of the problems that I think you are
4 beginning to face. But if we are really trying to get the
5 comments of the public, I think the right way clearly to get
6 them is to issue it for public comment.

7 CHAIRMAN AHEARNE: I would suggest that we will
8 get back to that issue at the end, but why don't we get on
9 with the basic policy issue, and then we will get back to
10 that.

11 MR. STELLO: Okay, then maybe it would be easiest
12 if we just allow Jim to start presentations. Is there
13 someone in there ready to give the slides?

14 MR. KEPPLER: Yes, Chuck is in there.

15 MR. STELLO: Okay.

16 MR. KEPPLER: I have got a short presentation to
17 discuss what we have done with the concerns raised during
18 the previous meeting by the Commission, members of the
19 staff. As Vic mentioned, we worked at resolving these
20 things with the other offices, and I would like to, I guess,
21 summarize where we came out on these matters.

22 The major areas of concern were the earlier
23 version of our revised enforcement policy put in the first
24 viewgraph.

25 With respect to the first point, use of

1 discretion, the revised policy expands and clarifies the
2 areas where the office directors exercise discretion in the
3 application of the enforcement of sanctions.

4 The policy also clarifies the areas of enforcement
5 which would be escalated to the Commission level.

6 Could I have the next viewgraph, please?

7 Specifically, the office directors are delegated
8 the authority to exercise judgment and discretion in
9 assessing enforcement actions consistent with the principles
10 of the policy statement and the related technical
11 considerations.

12 The Commission, in addition to receiving written
13 notification of all enforcement actions involving civil
14 penalties and orders, would normally be consulted in advance
15 of taking enforcement on cases involving actions affecting
16 operations that require balancing the NRC's concerns with
17 concerns that have broader health and safety, environmental
18 or security implications, need for power and things of this
19 nature.

20 Additionally, the Commission would be consulted
21 regarding all proposed civil penalties that exceed the
22 guidance set forth in the policy statement.

23 Could you go back to --

24 MR. STELLO: You might want to cite some examples
25 of how we have tried to build into the policy statement

1 those issues which we consider to be appropriate for the
2 Commission in becoming involved in the decisionmaking
3 process, what some of the examples are with regard to civil
4 penalties.

5 MR. KEPPLER: Well, I think a civil penalty case
6 like the Palisades case that occurred earlier, where
7 noncompliance existed for 18 months, if one applied a
8 cumulative daily factor to this this went up into the
9 multimillion dollar range. And what we tried to do is to
10 put a cap on the level at which, if the staff wanted to
11 issue a civil penalty above that level, we would come to the
12 Commission for guidance on that point.

13 MR. STELLO: That is \$300,000.

14 MR. KEPPLER: \$300,000 in this case. So we are
15 not saying we are proposing a cap be placed on it. We are
16 just saying this would be the level at which we would come
17 to the Commission and discuss going above that point.

18 Okay? Do you want to go back to the first
19 viewgraph, please?

20 CHAIRMAN AHEAPNE: Before you leave the office
21 director discretion, this might be the only time to raise
22 the question. I noticed that you have clarified what the
23 Director of Office of Administration has as his authority,
24 and he can issue orders where licensees violate Commission
25 regulations by nonpayment of fees. Has he ever done that?

1 MR. MURRAY: Yes. Routinely. Revocation of
2 licenses, 10 or 20 a month.

3 CHAIRMAN AHEARNE: To a power reactor?

4 MR. MURRAY: Never to a power reactor.

5 MR. SHAPAR: They seem to be able to pay.

6 COMMISSIONER BRADFORD: Let's see, the policy
7 itself says that a continuing severity level 1 or 2
8 violation ordinarily will not result in a civil penalty in
9 excess of three times the maximum.

10 What you have just said sounds rather different
11 from what is said in the statement itself. That is, it is
12 one thing to say it won't result in more than three times
13 the maximum unless approved by the Commission. It is
14 another to say it ordinarily won't happen.

15 MR. KEPPLER: But the intent is that the staff
16 would be free to issue civil penalties of up to \$300,000
17 without coming to the Commission for approval, and that was
18 somewhat of an arbitrary number. But we thought that if
19 cumulative noncompliance resulted in large civil penalties
20 above this amount that this would be appropriate to come to
21 the Commission to discuss. That was really the --

22 CHAIRMAN AHEARNE: I guess I would agree with
23 that, Commissioner Bradford, because the way it is phrased
24 on page 16 is a continuing severity level 1 violation will
25 ordinarily not result in civil penalty in excess of two

1 times, and that really is a difference.

2 MR. STELLO: I will at least identify some
3 things. The first one is a continuing violation, as in the
4 case of Palisades, to use the example that Jim has already
5 cited, can go on for a long time. In the case of Palisades
6 that was, as I recall, 417 days that that went on.

7 If you use \$100,000 a day, that is \$41 million. I
8 think at that point you raise the question as to whether the
9 financial viability of the company in the civil penalty.

10 CHAIRMAN AHEARNE: But, Vic, the issue we are
11 raising isn't the question of should or should not that
12 comment be given; the way Jim had originally described it
13 was to go above that you come to the Commission. And that
14 is quite clear.

15 But the way it says it here is it ordinarily won't
16 happen. But if it is going to happen, then it has to come
17 to the Commission, and that is the distinction.

18 MR. STELLO: Yes, and I am trying to explain why.
19 The question of financial viability is raised someplace. As
20 the fines get larger and larger and larger -- I am not a
21 financial expert but some judgment has to be applied as to
22 when you are coming into it.

23 CHAIRMAN AHEARNE: Sure.

24 MR. STELLO: At \$300,000 would seem some
25 reasonable level to set. Then again it is a matter of

1 judgment as to where to set it, to where this question is
2 being raised. As you get above that level, I think that
3 that question is more and more in front of you as to whether
4 or not you are raising it.

5 So what you --

6 COMMISSIONER GILINSKY: I think what John is
7 saying is that you are saying that not only is this going to
8 come to the Commission, but ordinarily the Commission is not
9 going to act on it.

10 CHAIRMAN AHEARNE: In other words, you are
11 prejudicing the --

12 MR. STELLO: Yes, and --

13 COMMISSIONER GILINSKY: -- what the Commission
14 will do, and I suppose maybe we can just leave that open.

15 CHAIRMAN AHEARNE: Yes. Why don't you just say a
16 continuing severity level 1 or 3 violation which would lead
17 to a civil penalty in excess of three times will be raised
18 to the Commission?

19 MR. STELLO: Okay. I was trying to arrive at how
20 some of the thoughts were in arriving at the number.

21 CHAIRMAN AHEARNE: Yes.

22 MR. STELLO: And the further we go there are more
23 factors, and I think that is appropriate that the Commission
24 become involved when you are going to go beyond it.

25 CHAIRMAN AHEARNE: Sure. We will change it.

1 MR. STELLO: Okay.

2 MR. KEPPLER: The second concern dealt with
3 enforcement against individual licensed operators. In the
4 earlier policy statement we had said that civil penalties
5 would not be used. We have further considered the merits of
6 assessing civil penalties against operators and summarized
7 other agencies' practices in this area.

8 The revised policy does not preclude the use of
9 civil penalties against operators, and we have put in the
10 table civil penalties guidance on the amount of civil
11 penalties that would be levied against licensed operators.

12 However, it remains our view that the most
13 effective way to achieve remedial action and improve safety
14 through enforcement against operators is through notices of
15 violation and suspension or revocation of licenses.

16 CHAIRMAN AHEARNE: Could I ask a couple of
17 questions on page 11 --

18 MR. KEPPLER: Sure.

19 CHAIRMAN AHEARNE: -- which addresses that
20 particular issue?

21 I have two questions. The last sentence says for
22 recurring operator involvement in severity level NRC also
23 considers suspension or revocation. I would have -- I guess
24 if you are going to explicitly point out the suspension and
25 revocation of license, I guess I would have had it for

1 involvement in severity level 1. I don't know why you would
2 need recurring involvement.

3 If there is a recurring involvement, I guess it
4 ought to be a lot stronger than "considers." But that
5 sentence seems to be much milder than it could have been.

6 I gather that at least from I&E's view it is still
7 not really appropriate to place the responsibility on the
8 operator.

9 MR. KEPPLER: I wouldn't say that. I think that
10 the suspension -- well, I guess my personal view on the
11 matter is that the suspension of a license or revocation of
12 a license, if one did that, is a -- of action.

13 The reason we have a hangup, if you will, with
14 civil penalties against them is because, you recall we
15 talked the last time, we think it is going to be -- I guess
16 I feel it is going to be an incentive against getting
17 qualified people to be operators, but also the fact that the
18 unions have been talking to us, they set up arrangements
19 with a company perhaps so that the company paid the fine,
20 and the net effect would be lost that way.

21 CHAIRMAN AHEARNE: Well, you point out on the FAA,
22 where you have your chart on the treatment of individuals,
23 and it points out that they do have recourse against
24 individuals and pulling of the licenses. As you say, it is
25 a tough act, absolutely. But let me just say, if it was a

1 recurring operator involvement severity level 1 violations,
2 I would say it would be very probable that the license would
3 be revoked. Is that --

4 MR. KEPPLER: I would agree with that statement.

5 CHAIRMAN AHEARNE: Now the other item in that
6 paragraph, you have that a notice of violation may be
7 issued, assuming a failure to comply didn't result from
8 supervisory direction with respect to the relevant action.

9 I just raise the issue. I think what you are
10 saying is that if an operator is given an order to do
11 something which he knows to be wrong, it is all right if he
12 obeys the order.

13 MR. KEPPLER: I am saying that we believe the
14 action should be taken against somebody else, against the
15 company or --

16 CHAIRMAN AHEARNE: Then the answer to the question
17 is yes?

18 MR. KEPPLER: Yes.

19 CHAIRMAN AHEARNE: But you do believe that it is
20 all right to obey an order if you know the order to be
21 wrong, as long as it is an order?

22 MR. BICKWIT: I don't think that follows.

23 CHAIRMAN AHEARNE: That is what he said.

24 MR. BICKWIT: No. He said the action should be
25 taken against somebody else.

1 CHAIRMAN AHEARNE: Against someone else.

2 MR. BICKWIT: He wouldn't issue a notice of
3 violation. That doesn't mean he thinks it is okay. That
4 doesn't mean he thinks it is right.

5 CHAIRMAN AHEARNE: Well, it certainly, under the
6 enforcement policy it is not wrong.

7 MR. BICKWIT: Well, it can be wrong, but no
8 enforcement action will be taken. I just don't think that
9 follows.

10 COMMISSIONER BRADFORD: But do you necessarily
11 want to say even that much? It is entirely possible that an
12 operator ought not to have taken the action even if ordered
13 to do it, and it is possible that you might want to proceed
14 against both the person who gave the order and the person
15 who carried it out.

16 MR. STELLO: Let's take some examples where
17 clearly it is an important safety judgment to depart from a
18 requirement of the Commission, in the event you had an
19 incident going where the shift technical adviser or
20 supervisor suddenly says take that pump out of service and
21 the tech spec says you can't take it out of service under
22 these conditions. But clearly under those circumstances
23 the safe thing to do is to take it out of service. In that
24 case I don't think neither one, if that was clearly the safe
25 thing to do, although there was a literal noncompliance.

1 Let's now assume that the supervisor told the
2 operator to do that and it turns out he was wrong. Well,
3 what message do you want to send out to the industry? I
4 think the operators ought to be following the strategy that
5 is being set, to cope with the situation from the
6 supervisors. And if they now did something and in their
7 judgment it was wrong, I am sure they would tell them. But
8 then you would have to go to the individual who made that
9 decision and go to him. And he ought to be held accountable
10 for that decision rather than the operator who, under these
11 conditions, ought to be following the instructions he is
12 given.

13 I think that is --

14 COMMISSIONER GILINSKY: Isn't it that you are just
15 going to have to look at each of these situations on a case
16 by case basis, but --

17 MR. STELLO: You have to look at it -- you know,
18 it is Three Mile Island --

19 COMMISSIONER GILINSKY: Yes, but this tends to --

20 MR. STELLO: -- and look at all of the examples
21 there.

22 COMMISSIONER GILINSKY: Yes, but this tends to
23 skew things in a certain direction. And that is what I
24 gather the direction of the comments --

25 CHAIRMAN AHEARNE: Yes. For example --

1 COMMISSIONER GILINSKY: Maybe we ought to just
2 leave that out.

3 CHAIRMAN AHEARNE: The severity 3 is failure to
4 make a Part 21 report. I don't know whether that is going
5 to bring in operators or not, but the general --

6 MR. STELLO: Well, it wouldn't because he is not
7 the individual assigned that responsibility. Well, we could
8 leave it out, and that would --

9 CHAIRMAN AHEARNE: Yes, I would prefer to leave it
10 out.

11 MR. STELLO: -- be a solution to the problem, but
12 I think --

13 COMMISSIONER GILINSKY: It seems to me that there
14 must also be -- I mean, taking account of what you said,
15 there must also be circumstances where a man is getting an
16 order which he just ought not to be following.

17 CHAIRMAN AHEARNE: I think that is right.

18 COMMISSIONER GILINSKY: You know, there are cases
19 like that in the military too.

20 MR. STELLO: And there are cases like that, right.

21 COMMISSIONER GILINSKY: And it is very hard to
22 write detailed rules to cover all these cases.

23 CHAIRMAN AHEARNE: Yes. I would just leave it out.

24 MR. STELLO: Yes. I would hate to be in a
25 position that -- write a rule that says that the licensed

1 operators ought not to follow the instructions they get
2 either.

3 CHAIRMAN AHEARNE: Sure. No, no, I would myself
4 prefer to have it out.

5 MR. STELLO: Okay, just --

6 CHAIRMAN AHEARNE: The parenthetical.

7 MR. STELLO: The parenthetical. Just remove it.

8 CHAIRMAN AHEARNE: Done.

9 MR. STELLO: Okay.

10 MR. KEPPLER: And we will rephrase that last
11 sentence?

12 MR. STELLO: Yes, fix it up.

13 MR. KEPPLER: Okay, the third concern dealt with
14 the gradation of civil penalties. Considerable revision has
15 been made over the earlier draft in this regard.

16 Could I have the third viewgraph, please?

17 In determining the amount of the civil penalty to
18 be applied, we believe that the gravity of the violation
19 involved is the major item of concern, and have so tried to
20 emphasize this in the paper.

21 However, we have also concluded a number of other
22 factors warrant consideration in assessing civil penalties
23 and modifying factors have been proposed to account for the
24 duration of the noncompliance, how the problem was
25 identified, the financial impact on the licensee of a given

1 penalty, the good faith of the licensee, and the licensee's
2 prior enforcement history.

3 COMMISSIONER BRADFORD: What does good faith mean
4 apart from the other factors that are on that list?

5 MR. KEPPLER: That the licensee -- it is trying to
6 take into account the fact that the licensee may have spent
7 a great deal of money to try to correct a problem and deal
8 with a problem or hire manpower to deal and correct a
9 problem and still they might happen to have an inadvertent
10 noncompliance.

11 It is trying to give some recognition that he did
12 something to deal with a problem, the grossness of a problem.

13 I would not envision that being used very
14 frequently.

15 MR. STELLO: Okay, I think there is an issue maybe
16 that Howard ought to deal with in terms of where this comes
17 from.

18 MR. SHAPAR: It comes from the conference report.
19 That doesn't, I don't think that is responsive to your
20 question. You are asking what it means. And I am merely
21 telling you where it came from.

22 COMMISSIONER GILINSKY: Well, are you referring to
23 the element of negligence on the part of the --

24 MR. KEPPLER: No. I would -- looking at it from
25 the positive side of it, there can be an absence of good

1 faith, yes. But I would look for that to come up more in
2 the recurring enforcement history.

3 CHAIRMAN AHEARNE: Where would you embed -- it
4 seems noticeable by its absence on your list, and I thought
5 somewhat of a weakness in the policy -- was wilfulness. How
6 about a wilful violation?

7 MR. KEPPLER: Well, I guess you get down to how
8 you are using the word. But wilful could conceivably lead
9 to criminal considerations.

10 MR. SHAPAR: Also, wilfulness is an explicit basis
11 in the policy statement for making the action immediately
12 effective.

13 CHAIRMAN AHEARNE: Yes, but the policy statement
14 seems to in this list stress that good faith efforts will be
15 a mitigating positive. I would have thought that wilfulness
16 would be a very strong factor, negative.

17 MR. KEPPLER: Well, let me give you a case where
18 it could be negative. We go ahead and put out a circular or
19 a bulletin that alerts people, alerts operators not to go
20 into high radiation zones, and then a licensee may have a
21 violation where somebody gets overexposed because of that.
22 There have been ample warnings to the licensee to avoid this
23 kind of thing, they haven't taken actions to preclude it.
24 One might look at that as an absence of good faith.

25 CHAIRMAN AHEARNE: Well, let me be more explicit

1 in a case. You address on page 9: a violation involving
2 the failure to make a required report will be characterized
3 at the severity level of the matter not reported. I would
4 have thought you would have gone on to say: and if that
5 failure was wilful, it will be treated more harshly.

6 MR. SHAPAR: Of course, that raises the question,
7 wilfulness on whose part. If it is a lower level employee,
8 that could be one situation. If it is a top man, if it is a
9 top management level that could mean another.

10 CHAIRMAN AHEARNE: That is true.

11 MR. SHAPAR: So I think there are gradations even
12 there.

13 MR. KEPPLER: We actually intended that sentence
14 to be a very strong sentence.

15 CHAIRMAN AHEARNE: Well, no, it is.

16 MR. KEPPLER: By making the reporting requirements
17 equivalent to the seriousness of the act.

18 CHAIRMAN AHEARNE: It certainly is. But you start
19 out with a neutral situation, and that is an action either
20 occurs or doesn't occur, and you are going to assess a
21 violation. Now on one side you say but if they are making a
22 really good faith effort to attempt to redress that
23 situation you will take that into account. And all I was
24 saying is if the absence of good faith effort, which could
25 be interpreted as footdragging, and a judgment of really not

1 wanting to correct it or perhaps doing their best to
2 overlook the deficiency, would seem to be a negative --

3 MR. BICKWIT: But isn't it in there to some degree
4 on page 14 where you say civil penalties may be increased as
5 much as 25 percent. The licensee could reasonably have been
6 expected to have taken effective preventive measures and
7 doesn't.

8 CHAIRMAN AHEARNE: Yes. But the point was that
9 there are two places on page 9 and page 12 where wilful
10 violations are mentioned and there is no additional
11 strengthening that wilful violations will be treated more
12 harshly.

13 MR. KEPPLER: Okay, do you want to put on
14 viewgraph 4, please, table 1?

15 This viewgraph, which is table 1 of the report,
16 shows a revised scale of civil penalties for various groups
17 of licensees as a function of the gravity of the
18 noncompliance.

19 I would point out here that this table uses new
20 and lower dollar values from the earlier version with the
21 ability to increase or decrease the base civil penalties
22 based on the particulars of the case.

23 Any question on table 1?

24 COMMISSIONER GILINSKY: What is the difference
25 between a test reactor and a research reactor?

1 MR. KEPPLER: Test reactors are generally higher
2 power level --

3 COMMISSIONER GILINSKY: How do you define it?

4 MR. LAWROSKI: It is defined in the license.

5 COMMISSIONER GILINSKY: Oh, it is defined in the
6 license.

7 MR. SHAPAR: I think it is also mentioned in the
8 statute, power and test reactors requiring a mandatory
9 hearing.

10 CHAIRMAN AHEARNE: Yes.

11 COMMISSIONER GILINSKY: And what are research
12 reactors, below 5 megawatts?

13 MR. KEPPLER: There is actually some research
14 reactors that go up as 10 megawatts.

15 COMMISSIONER GILINSKY: Is a test reactor run by a
16 nonprofit organization?

17 COMMISSIONER BRADFORD: (inaudible)

18 (Simultaneous conversation.)

19 Let's say you discover a violation in any of those
20 categories. Let's say it is severity 1 and let's say
21 furthermore that the licensee reports it to you. Does that
22 mean that it automatically drops to half of those figures?

23 MR. KEPPLER: No, it means that the licensee
24 reporting it to us is not enough. If it was identified
25 through an accident, for example, or an incident of some

1 kind, we would not give credit of a reduction for a
2 licensee-identified problem.

3 What we mean by licensee identified, corrected,
4 and reported is that through some kind of system he finds
5 the problem before an incident occurs, corrects the problem
6 and reports the problem if appropriate. And then we would
7 give a reduction up to 50 percent.

8 CHAIRMAN AHEARNE: But it is not automatic?

9 MR. KEPPLER: No.

10 MR. STELLG: Reporting it is almost a requirement
11 in all instances. So reporting it by itself gives them no
12 credit. God forbid if he doesn't report it and we find that
13 out. Then I think we are even beyond severity level 1. You
14 might be taking thoughts of immediate suspension and notice
15 of revocation -- if he is failing to report, because now he
16 has two problems. He had a level 1 and he now failed to
17 report, so he had coincidentally two level 1's, because the
18 report that he failed to report -- remember that other
19 section -- we judge that on the basis of the severity level
20 for which it pertained to, which would be 1. So he
21 simultaneously commits two level 1's if he fails to report.

22 COMMISSIONER BRADFORD: What does he have to do to
23 boost the 80 up towards a 100, which is the theoretical
24 maximum?

25 MR. KEPPLER: Lack of good faith or previous

1 enforcement history.

2 MR. STELLO: Then you add 25 percent.

3 MR. KEPPLER: Then you add 25 percent. That is
4 why we wound up with the 80,000.

5 MR. STELLO: And then it keeps on going --

6 COMMISSIONER BRADFORD: Lack of good faith gets
7 you, puts, sends you up, and good faith takes you down. How
8 do you stay where you are?

9 MR. KEPPLER: By not using them. By not applying
10 it. It may not be an applicable modifying factor.

11 I would not envision things like good faith as
12 being used on a high frequency basis. When you look at the
13 cases that happen, and we will touch on some later,
14 generally these modifying factors don't come into play that
15 much.

16 COMMISSIONER BRADFORD: Let me ask it
17 differently. If the Commission simply said forget about
18 this category of good faith apart from the various other
19 points on the list, such as reporting past -- -- and simply
20 said those are going to be the measures of good faith, is
21 there any legal problem? I can't imagine that we would be
22 contravening the congressional intent if we just said that
23 good faith comprises those things that in any case seemed to
24 me to be the common sense measures of good faith and went
25 ahead with the schedule based on those and took the good

1 faith adjustment as a separate factor out of it entirely.

2 MR. KEPPLER: I think somebody else should --

3 MR. SHAPAR: I would think as long as we gave some
4 recognition to the concept, in some general manner, I don't
5 think we are going to thwart a Congress report that merely
6 uses the term "good faith" without any elucidation.

7 MR. KEPPLER: You might recall the earlier
8 version, we really didn't apply good faith and previous
9 enforcement history to the severity 1, 2, or 3 levels
10 before. And at that time we had the numbers 100,000 for the
11 upper.

12 MR. SHAPAR: Yes.

13 MR. KEPPLER: So we tried to factor in to count
14 what the law said along with the concerns that some of the
15 commissioners raised with respect to they didn't think that
16 the table should necessarily show the top level all the time.

17 MR. SHAPAR: If it was conspicuously absent, I
18 mean with no recognition being given of it at all, then I
19 think there might be --

20 COMMISSIONER BRADFORD: Yes. I understand what
21 you are saying.

22 MR. BICKWIT: But I think what you are saying is
23 that if you had a penalty for bad faith and no reference to
24 good faith whatsoever that would still be consistent with
25 the statute.

1 COMMISSIONER BRADFORD: Then there would be a
2 differential --

3 MR. SHAPAR: Because the statute really does
4 nothing more than mention this is one of the factors to any
5 reasonable recognition of it in some manner, I think would
6 pass muster.

7 MR. STELLO: But I also view this as an
8 opportunity to build in an incentive to find some way to
9 recognizing measure of goodness on behalf of the licensees,
10 which is after all what we are trying to do. Those
11 licensees who are really doing a very responsible job that
12 go beyond the minimum to find a way in which to recognize it
13 and reward it.

14 CHAIRMAN AHEARNE: Hopefully, that licensee is not
15 getting violations.

16 MR. STELLO: I can't believe that we will ever get
17 a perfect system. The best licensee, I imagine, is going to
18 have sometimes, when things will get to a problem. And then
19 when we get to that ideal world, even then I think you are
20 looking at rewarding when they really are those kinds of
21 licensees, really doing a very good job. And I think it
22 moors that opportunity to try to recognize it and build in
23 that incentive.

24 Now in terms of the dollars, I guess you can't
25 view it as much, as much as the intent, that ought to be the

1 expressed intent of the Commission to find a way to
2 recognize it.

3 COMMISSIONER BRADFORD: Yes, I don't have a
4 problem. In fact, I don't think I even have a problem with
5 your list of civil penalty factors, including the words
6 "good faith."

7 What is troubling me is the specific
8 identification of good faith as an item -- what is it -- 25
9 percent or up to 25 percent explicit reduction tied to it,
10 because I can't really see that good faith is that much
11 different from past enforcement history, from the way in
12 which the problem is identified and reported.

13 If you simply said that good faith was one of the
14 things along with past enforcement history, problem
15 identification, the list that you have here, it would be
16 considered in mitigating or in some cases dispensing with
17 the penalty, I would have no difficulty with that.

18 MR. STELLO: Well, maybe even a little bit more.
19 I can imagine two licensees, A and B, for an identical set
20 of circumstances, where the way in which A goes about
21 resolving his item of noncompliance and fixes his plant, he
22 spends \$10,000 in his plant to bring it into compliance and
23 he now meets literally the requirements, where the other
24 licensee will spend \$300,000, go way beyond our requirements
25 to do a much better job.

1 To me that is also a measure of good faith and
2 responsive to trying to do a better job. It builds in a
3 mechanism to recognize that. And I think we have to find a
4 way to build that into the system, to be able to recognize
5 it in the letters we write, that they have gone that extra
6 mile.

7 I think that it is trying to find a way for the
8 Commission to express that kind of an approach to the
9 problem.

10 COMMISSIONER BRADFORD: But would that be hampered
11 if you simply listed good faith among the civil penalty
12 factors without flagging it out for separate special good
13 faith mitigation?

14 MR. STELLO: Well, I think when you use that
15 expression formally in a letter or in a package, an
16 enforcement package itself, that that will somehow identify
17 that this licensee has done it, and it will be taken, I
18 think, by the licensee, although he has been slapped over
19 the wrist for doing something bad, but yet I did the best
20 job in light of the circumstances, where another licensee
21 who doesn't get it.

22 It is the formal recognition that I think has that
23 benefit.

24 COMMISSIONER BRADFORD: Right, but if you were in
25 a position to receive an \$80,000 fine and you reduced this

1 to 40 and in the letter explaining why it was 40 you said
2 that good faith was among the factors and explained why you
3 thought that --

4 MR. STELLO: Okay, then I think it would
5 accomplish what I just said. That could be done that way.

6 COMMISSIONER BRADFORD: As I understand the
7 present system, what might happen is you might go from 80
8 down to 60 based on the good faith consideration, and then
9 from 60 down to 30 based on --

10 MR. STELLO: Having identified it, corrected, et
11 cetera, yes. My point being that it would identify those
12 two steps.

13 COMMISSIONER BRADFORD: Right.

14 MR. STELLO: Okay, and that is what I was trying
15 to preserve.

16 COMMISSIONER BRADFORD: Well, as I said, my own
17 inclination would be to just put good faith --

18 CHAIRMAN AHEARNE: I think what you are putting --
19 on the bottom of page 12, where you have this collection of
20 things which sound like to be the positive mitigation, you
21 have the duration, how the problem is identified, financial
22 impact, the good faith of the licensee and the licensee's
23 prior enforcement history. And these are all things tied
24 together.

25 COMMISSIONER BRADFORD: You see the last sentence

1 in the footnote?

2 CHAIRMAN AHEARNE: Yes.

3 COMMISSIONER BRADFORD: 16.

4 CHAIRMAN AHEARNE: Timeliness and adequacy,
5 initiative, degree of culpability to tolerate, et cetera.

6 (Pause.)

7 So I guess I would have at least endorsed it. To
8 me good faith would have to be -- something like enforcement
9 history, that they are unseparable. So that if there were a
10 list of several things, that would fit better, just good
11 faith as being an extra --

12 COMMISSIONER BRADFORD: Yes, that is exactly what
13 I was --

14 MR. STELLO: Can I call it a degree of goodness
15 factor?

16 CHAIRMAN AHEARNE: Fine.

17 COMMISSIONER BRADFORD: You can call it good
18 faith. I have no problem with the concept of good faith.
19 It is just the business of --

20 MR. SHAPAR: Good faith or absence of it.

21 COMMISSIONER BRADFORD: No, it is fine with me
22 just to leave it as good faith. What I would eliminate is
23 the extra step reduction from 80 to 60 before you make your
24 50 percent cut, and so that what you are talking about is
25 good faith being among the factors that you assess in

1 deciding whether or not to reduce the fine by 50 percent.

2 CHAIRMAN AHEARNE: Okay, Jim, and I guess next you
3 talk about algebra.

4 MR. KEPPLER: Okay, you want to put the first
5 viewgraph back on, please?

6 The fourth concern dealt with the absence of
7 references to the Commission's proposed planning and policy
8 guidance. The revised policy now contains provisions of the
9 PPPG throughout the policy statement, and I think we have
10 tried to incorporate that in there.

11 With respect to criminal considerations we have
12 revised the policy to state clearly that alleged or
13 suspected criminal violations will continue to be referred
14 to the Department of Justice.

15 CHAIRMAN AHEARNE: We have this ongoing saga of
16 attempting to work out a memo of understanding with the
17 Department of Justice. Do I assume that this language at
18 least is not inconsistent with the --

19 MR. DIRCKS: It is consistent.

20 CHAIRMAN AHEARNE: Fine.

21 MR. DIRCKS: We should have a breakthrough any
22 hour now.

23 CHAIRMAN AHEARNE: Any year, any one of these
24 years, yes.

25 MR. KEPPLER: With respect to the role of

1 bulletins and other informal enforcement actions we believe
2 that the use of these tools has been generally effective in
3 achieving necessary corrective action, unidentified
4 problems. We are able to take these actions relatively
5 promptly. They have the advantage of focusing on
6 safety-related issues without the concern for specific legal
7 requirements associated with more formal escalated actions.

8 However, we have --

9 CHAIRMAN AHEARNE: Explain --

10 MR. SHAPAR: I think what he means is that because
11 they are not formal requirements certain legal formalities
12 need not be observed.

13 CHAIRMAN AHEARNE: I thought he was saying that
14 this is the way to keep the lawyers out.

15 MR. KEPPLER: No.

16 MR. SHAPAR: It is a very effective way of doing
17 it.

18 MR. KEPPLER: We have revised the policy to state
19 that the Commission expects scrupulous adherence to
20 commitments and notes that failure of a licensee to follow
21 any action submitted to an enforcement conference, requested
22 in a bulletin or a generic letter, stated in an immediate
23 action letter, identified in a notice of deviation will
24 result in appropriate enforcement action.

25 CHAIRMAN AHEARNE: And that we do have the

1 statutory authority to be able to do that?

2 MR. KEPPLER: Yes.

3 MR. SHAPAR: Well, this is something that I think
4 should be expanded on. What we have issued beforehand is a
5 request, if it is a bulletin or something like that, it is
6 not a binding legal requirement. But we thought it made
7 sense, so we asked him to do it. If he didn't, doesn't do
8 it and in fact the request was founded on good sense, then
9 yes, we have the legal authority to issue an order.

10 Presumably we could have issued the order in the
11 first instance.

12 CHAIRMAN AHEARNE: But we can't, or can we, issue
13 a civil penalty for not responding?

14 MR. SHAPAR: We cannot.

15 CHAIRMAN AHEARNE: We cannot. And so similarly in
16 an enforcement conference, any verbal agreements made or
17 requests made, that then can't be followed up with a civil
18 penalty?

19 MR. SHAPAR: That is correct.

20 COMMISSIONER BRADFORD: You have lately, as I
21 understand it, been requiring that responses to a bulletin
22 to be under oath?

23 MR. SHAPAR: And affirmation, yes.

24 COMMISSIONER BRADFORD: What about the business of
25 rolling the various forms of less formal requirements

1 bulletins, immediate action letters, what have you into some
2 single vehicle so that we weren't, for example, dealing with
3 bulletins as distinguished from circulars?

4 MR. SHAPAR: I think we have committed to coming
5 back to this issue sometime in the future.

6 COMMISSIONER BRADFORD: Yes.

7 MR. STELLO: But I think a short answer is that it
8 appears to be a need for different vehicles and ought to
9 have different names. If you are really asking a licensee
10 to take action and respond to something, that is preserved,
11 and you ask him to do so now, under oath and affirmation
12 with the bulletins. The circulars to put together some
13 information, it is important to let him be aware of
14 something that has happened so that he has the information
15 to act on before, acting with the notion that a circular may
16 evolve either into a bulletin or possibly even into an order
17 at some future time while we are trying to decide what to do.

18 And then there is the lesser important of all of
19 this, which is just simply getting out information, an
20 information notice. So that the scheme of the things that
21 are there seem to be very important and useful techniques.
22 To put them together into one I think will destroy the
23 purposes that each of them have and that they will all get
24 that same, either higher or lower threshold.

25 COMMISSIONER BRADFORD: Okay, let me ask the

1 question another way. Is there currently more than one type
2 of issuance that compels a licensee response but short of
3 the penalty structure? You have the bulletins.

4 MR. STELLO: We have the bulletin. You could
5 issue a 54F letter which would require a response. You
6 could just send a letter requesting information, NRR asking
7 the questions.

8 COMMISSIONER BRADFORD: Yes.

9 MR. STELLO: The letters.

10 COMMISSIONER BRADFORD: Yes, leave NRR out of it
11 -- within the I&E framework.

12 MR. STELLO: Basically it would be a bulletin and
13 a letter.

14 COMMISSIONER BRADFORD: And when would you use one
15 and when would you use the other?

16 MR. STELLO: I guess if I make a generalization I
17 am probably going to be wrong, but my recollection is that
18 the instances we used a letter were on the 50.54(F) -- what
19 comes to mind -- that is the time when we decided to go to
20 letters.

21 MR. MURRAY: 50.54(F) is for a single person. --
22 -- 50.54(F) as the basis of a bulletin, and that is a basis
23 for requiring the bulletin to be submitted under oath.

24 MR. STELLO: I am trying to answer the question
25 under what circumstances do we use the letters versus the

1 bulletins.

2 MR. MURRAY: Generic purposes.

3 COMMISSIONER BRADFORD: So that a bulletin is in
4 effect a 50.54(F) letter to a lot of licensees?

5 MR. STELLO: We have made specific reference from
6 time to time to 50.54(F), but when we don't make the
7 reference I don't know if that is the legal implication or
8 not, is it?

9 MR. SHAPAR: No.

10 CHAIRMAN AHEARNE: Is this conversation getting
11 somewhere?

12 COMMISSIONER BRADFORD: Yes, but not in a way
13 directly relevant to --

14 MR. DIRCKS: No, I think this is an area that we
15 have, that we owe you something on. It has taken a long
16 time, and I apologize for it.

17 COMMISSIONER BRADFORD: Let's let it pass for the
18 moment.

19 MR. KEPPLER: The last concern dealt with
20 environmental considerations, and the policy has been
21 revised to provide for escalated enforcement action at the
22 severity 4 and 5 levels for environmental violations, not
23 for any 1, 2 or 3 levels.

24 Another area that was somewhat controversial in
25 the earlier paper was table 2. You want to put that up,

1 please? It dealt with repetitive severity levels 1, 2 or 3
2 violations. We tried to clarify the policy and the use of
3 discretion in applying sanctions based on the circumstances
4 of these cases, some of which we used as examples earlier.

5 We provided a revised table here to give the
6 Commission an idea of example of progressive enforcement
7 actions that could be taken for recurring violations.

8 We think the key purpose of this table is to sort
9 of establish a threshold of safety beyond which affirmative
10 action is required on the part of the Commission.

11 CHAIRMAN AHEARNE: Beyond revocation of a license
12 what is the further action that you had in mind?

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1 MR. KEPPLER: I'm sorry, I don't --

2 CHAIRMAN AHEARNE: Well, if I go across violation
3 one, I see I -- you know, you address revocation of the
4 license, which is at the second violation --

5 MR. KEPPLER: It's to show cause for the
6 revocation, (c) SC. We have not put in into this table
7 revocation as such.

8 CHAIRMAN AHEARNE: I see. So the revocation would
9 come under (d), then?

10 MR. KEPPLER: Yes.

11 CHAIRMAN AHEARNE: Okay.

12 MR. KEPPLER: Okay.

13 CHAIRMAN AHEARNE: Now, you would then argue that
14 a third violation, whereas the second violation would not be
15 a cause to make a revocation immediately effective, a third
16 violation might, right? Underlining "might."

17 MR. KEPPLER: I think if somebody had -- we had
18 reached the point of a third Severity I situation, that
19 rather than just stick in an arbitrary revocation, the issue
20 is so serious we think it'd be the type of issue that should
21 be discussed properly with the Commission and let them look
22 at the circumstances.

23 MR. BICKWIT: I just want to say that I think it's
24 very unlikely that you could sustain an immediately
25 effective revocation, in that you'd have to make the public

1 health, safety, or interest binding. I guess you could
2 sustain it on the grounds of willfulness. But if you didn't
3 have that, you couldn't sustain it on the grounds of health,
4 safety, or interest, because you could always immediately
5 effectively suspend the license and have a show cause with
6 respect to revocation.

7 CHAIRMAN AHEARNE: He is the SWAT team.

8 MR. KEPPLER: At the last meeting, you'll recall,
9 we showed a couple of Vu-graphs comparing enforcement
10 actions that have been taken over the past few years with
11 actions that would have been taken under, using the proposed
12 criteria. Because of the difficulty in trying to apply
13 modifying factors, such as good faith or past enforcement
14 history, to some of the older cases, I didn't attempt to
15 further compare those cases. But what we did do was to
16 compare some very recent cases that were taken during the
17 past few months with those that we would have using the new
18 proposed criteria. And we've got a couple of Vu-graphs here
19 to show this.

20 As a general statement, we think that the net
21 effect of the revised policy will be that the number of
22 civil penalties cases will be commensurate with the rate
23 that's been issued over the past several months. The dollar
24 amounts we don't see as being significantly different for
25 the smaller licensees; however, they will normally be

1 greater for the larger licensees.

2 One, this one slide here, just important to point
3 out, we issued a \$89,000 civil penalty for improper disposal
4 of material on 16 occasions. The policy would, if one
5 invoked 16 times, would be over the \$100,000 limit -- this
6 is Severity III level -- and we would come to the Commission
7 to discuss the recommended civil penalty for that case.

8 Do you want to put on the other slide, please?

9 I'm sorry?

10 CHAIRMAN AHEARNE: And the reason it's a hundred
11 rather than three hundred thousand?

12 MR. KEPPLER: Is because it's a Severity III.

13 CHAIRMAN AHEARNE: A Severity III.

14 MR. KEPPLER: Here's a case over here --

15 COMMISSIONER GILINSKY: Do you mind just looking
16 back to the previous one. The last item was something that
17 --

18 MR. KEPPLER: Go back to the other slide.

19 COMMISSIONER GILINSKY: -- happened at a major
20 university. Are you distinguishing there between the
21 ability of the university -- major universities and minor
22 universities -- to pay?

23 MR. STELLO: No, no, no, that was the -- it was --

24 COMMISSIONER GILINSKY: It just happened to be a
25 major university.

1 MR. STELLO: That's where that particular action
2 was taken. It was overexposure, and it was a civil penalty,
3 \$2,100, at a major university.

4 MR. KEPPLER: Okay. Want to put up the other one,
5 please?

6 Here's a case where -- we have the -- we have the
7 Pallisades case up there, the containment integrity problem
8 three, that we would have been to the Commission with. And
9 that would have been limited to \$300,000 if the staff issued
10 it.

11 CHAIRMAN AHEARNE: Now, why -- go down to the
12 construction reactor -- what is the link that previously had
13 you at 50.54(F) letter and now would take you to the order?

14 MR. KEPPLER: It's a Severity I. That violation
15 for that -- I forget which plant that is, but it -- what? --
16 yeah, Washington Public Power -- that was a Severity I
17 violation for our definition. And we would have issued an
18 order suspending operations there.

19 COMMISSIONER GILINSKY: What was the safety
20 structure -- a reactor that was improperly constructed?

21 MR. STELLO: Sacrificial shields?

22 MR. KEPPLER: Yeah, that's it. Sacrificial shield.

23 CHAIRMAN AHEARNE: I guess what I'm puzzling about
24 is, I can understand the adjustments in dollars, new law, et
25 cetera, I'm trying to understand, which I guess I haven't

1 really quite got a grasp on, what is the philosophical
2 difference that has led to it. Previously you issued a
3 letter, and now you would issue an order.

4 MR. KEPPLER: Oh, okay. Under the proposed
5 policy, it says order.

6 CHAIRMAN AHEARNE: I know what it says. I'm
7 asking --

8 MR. KEPPLER: That's why it's up there as
9 "order." When you actually sit down and you look at the
10 specifics, it doesn't preclude that we could have used
11 discretion and still sent the 50.54(F) letter. And that's
12 been so recent that I don't know that I would have done
13 anything different.

14 CHAIRMAN AHEARNE: Would the current existing
15 situation have prevented you from using an order?

16 MR. KEPPLER: No. No, I considered an order. And
17 after looking at it --

18 CHAIRMAN AHEARNE: So it's not a priori clear that
19 the action taken and the action in the proposed policy would
20 have been different?

21 MR. STELLO: That's correct.

22 MR. KEPPLER: That's correct. In that case.

23 MR. STELLO: The dollars would be.

24 CHAIRMAN AHEARNE: The dollars would be; I
25 understand that.

1 MR. KEPPLER: And, in fact, that's exactly the
2 point I'm making. It has been recent enough. I did look at
3 considering an order and decided it was appropriate to issue
4 and use discretion and go 50.54(F) and get some more
5 information first and then decide.

6 CHAIRMAN AHEARNE: Yeah. Which might also have
7 taken place with the proposed policy, in fact.

8 MR. STELLO: I would, if it were in effect today,
9 yes.

10 MR. KEPPLER: The second construction case is the
11 South Texas project.

12 I think we also feel --

13 CHAIRMAN AHEARNE: Interesting in the last one
14 that where -- was that thrown in to show that there is a
15 case where the present, the current -- the new proposed
16 policy would lead to a reduction in plants?

17 MR. KEPPLER: No, it was a very recent case, but
18 it's part of the basis of the conclusion that, along with
19 other cases that I said, the smaller licensees would not be
20 appreciably different in the amounts of money fined.

21 We do envision that the number of orders with the
22 new policy will probably be increased.

23 I guess, as a summary comment, I'd say that we
24 think that the policy in the long term, the application of
25 the policy in the long term will achieve the goals that are

1 set forth in the paper of making non-compliance more
2 expensive than compliance and thereby, I think, would -- we
3 believe it would increase the safety of the operations
4 overall. So.

5 COMMISSIONER BRADFORD: With regard to the
6 business of coming to the Commission at \$300,000, is the
7 right way to state the situation that when the mathematics
8 lead you to a number that comes out above \$300,000 you would
9 then automatically come to the Commission with regard to
10 what penalty to seek?

11 MR. STELLO: Yes.

12 COMMISSIONER BRADFORD: Does that -- okay.

13 MR. STELLO: When it's over \$300,000.

14 (Laughter)

15 COMMISSIONER GILINSKY: Do we really have to?

16 MR. STELLO: I thought the question was when you
17 apply all the factors and the number is in excess of
18 \$300,000 we'd be coming to the Commission.

19 COMMISSIONER BRADFORD: Yeah.

20 MR. STELLO: Yes.

21 COMMISSIONER GILINSKY: Including mitigating
22 circumstances --

23 MR. STELLO: Yes.

24 COMMISSIONER GILINSKY: -- and all that?

25 MR. STELLO: Yes. Taking all that into account,

1 if the number is bigger than \$300,000, we would come to the
2 Commission.

3 CHAIRMAN AHEARNE: You have, in the beginning of
4 the policy statement, a description that this will be the
5 procedures to be followed by the presiding officer of the
6 Atomic Safety and Licensing Appeal Board, so forth. In what
7 sense is this kind of a policy statement made binding on the
8 boards?

9 MR. SHAPAR: We're putting this out with all the
10 formalities of a rule. And it says it's going to be
11 codified in the Code of Federal Regulations. So, for all
12 practical purposes, it has the legal effect of a rule. And
13 it's binding not only on the boards but on yourselves. So
14 we are being perfectly clear about that. This is quite
15 unlike the existing policy statement, which is only a staff
16 position. This would no longer be a staff position; this
17 would have the Commission's imprimatur and would be binding
18 on all the subordinate creatures of the Commission and on
19 the Commissioners themselves, with respect to both the
20 initiation of enforcement action and the disposition of
21 adjudicatory proceedings.

22 CHAIRMAN AHEARNE: After it has worked its way
23 through the procedure of public comment, review --

24 MR. SHAPAR: And becomes an effective document.
25 Which it would not be here, although it, under the staff's

1 proposal it was put out as interim guidance for the staff.
2 And that's one of the matters I think you need to address
3 further, based on the preliminary remarks of this session.

4 CHAIRMAN AHEARNE: Vic, are you -- that completes
5 your presentation?

6 MR. STELLO: Yes. Well, I guess the
7 recommendation and the conclusion we reached --

8 CHAIRMAN AHEARNE: Yes, I know there's a
9 recommendation, but before we turn to our questions I wanted
10 to make sure that you were finished.

11 MR. STELLO: Yes, we are finished.

12 CHAIRMAN AHEARNE: Bill, let me ask, I guess I
13 sort of have, two basic questions, then I'll turn to my
14 colleagues.

15 First question is, why do you believe we ought to
16 put this into place as an internal rule?

17 MR. DIRCKS: I think it adds a system of order to
18 what has been essentially going on. We want to get some
19 sort of recognition that we have some order to the house.

20 COMMISSIONER GILINSKY: I assume you're saying
21 that it's better than what we have?

22 MR. DIRCKS: Right now what we have is,
23 essentially, Vic Stello operating -- in an effective mode --
24 but we would like to have --

25 (Laughter)

1 We would like to have some official recognition of
2 the policies that are going on.

3 I don't think we'd -- I think we need it
4 eventually. Now, if you're saying do we need it right away
5 --

6 COMMISSIONER GILINSKY: There's no question -- no,
7 I am, I focus strictly on the word "internal."

8 MR. STELLO: Can I, am I allowed to --

9 COMMISSIONER GILINSKY: No, I want to get his
10 answer.

11 MR. DIRCKS: I just think we -- it's a good way of
12 doing business, to have some orderly process recognized by
13 the Commission.

14 COMMISSIONER GILINSKY: Okay. The reason I wanted
15 to: he assigned it to us. *

16 MR. DIRCKS: Yes.

17 CHAIRMAN AHEARNE: Okay, Vic, yes?

18 MR. STELLO: Well, I guess the thought that's on
19 my mind is, on June 30th, signed into law, we had --

20 CHAIRMAN AHEARNE: Yes.

21 MR. STELLO: -- at our request \$100,000.

22 CHAIRMAN AHEARNE: Right.

23 MR. STELLO: And I think I'm going to have to
24 somehow tell the staff what to do.

25 CHAIRMAN AHEARNE: How to start using that.

1 MR. STELLO: This is a very convenient vehicle to
2 do that, and would have some harmony in what the five
3 regions, at least, pending development of a manual chapter,
4 having a way in which to view how to move forward for sure
5 with that \$100,000 civil penalty. And I think it's really,
6 if you will, as Bill said, it's kind of putting down on
7 paper the kinds of things that I have been trying to get
8 moving --

9 CHAIRMAN AHEARNE: Sure.

10 MR. STELLO: -- for the last year, and is a
11 convenient document that pretty well tries to articulate
12 what we've been doing for the past year, and would be a very
13 convenient and, I think, a important way for the staff to
14 move forward until the process gets us a final approved
15 piece of paper -- which could be quite lengthy. I have seen
16 the rule-making process, the comment process go on for a
17 considerable period of time. So this interim that I see
18 could be quite a long time.

19 CHAIRMAN AHEARNE: Well, let me see, it took about
20 five months to get --

21 MR. STELLO: This part.

22 CHAIRMAN AHEARNE: -- this turned around from last
23 time.

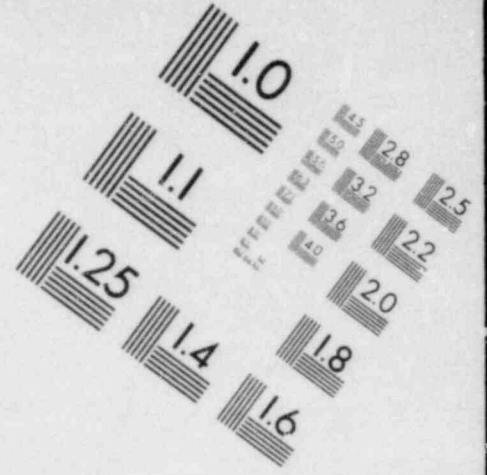
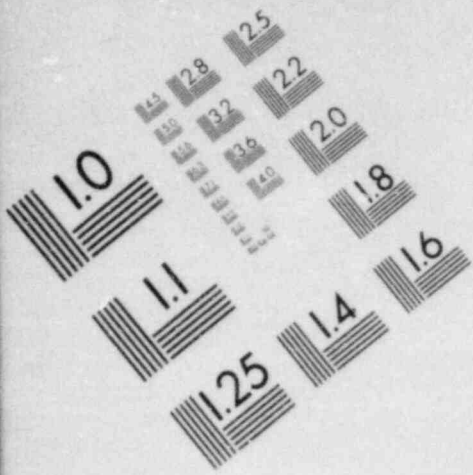
24 MR. STELLO: Right.

25 CHAIRMAN AHEARNE: That didn't even --

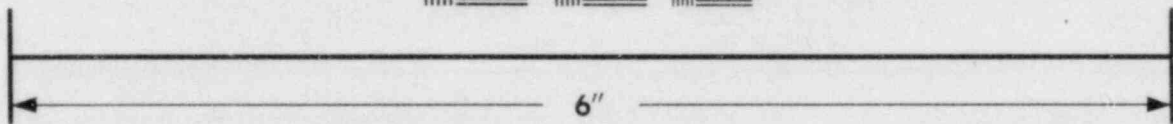
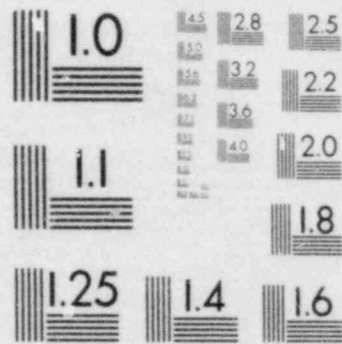
1 MR. STELLO: And that didn't even include public
2 comment.

3 CHAIRMAN AHEARNE: Bill, second question, and you
4 may end up again referring to Vic: Who is the -- well, is
5 there a resident enforcement philosopher? I'm trying to
6 find someone who could speak to what's the basic philosophy
7 that we are trying to have in our enforcement program. This
8 is, this type of a framework is, a necessary mechanism in
9 order to have I&E apply the statutory provisions. And I
10 have no -- I may have concern about the nuances and some of
11 the details, but I agree this kind of a framework is
12 necessary. But I'm still groping for the underlying
13 philosophy that we have with respect to enforcement. And I
14 wondered whether -- are you the guru? Is Vic? Is someone
15 in NPA? Is there any such? For example, is there someone
16 who is familiar with the background material in this field?
17 The Administrative Conference put out a study on this area.
18 Is there someone who has tried to wrestle through what is
19 our philosophy?

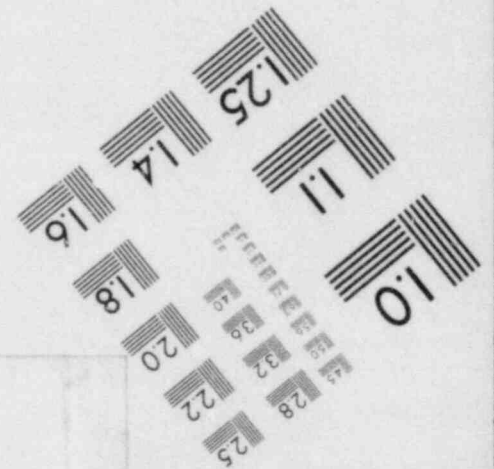
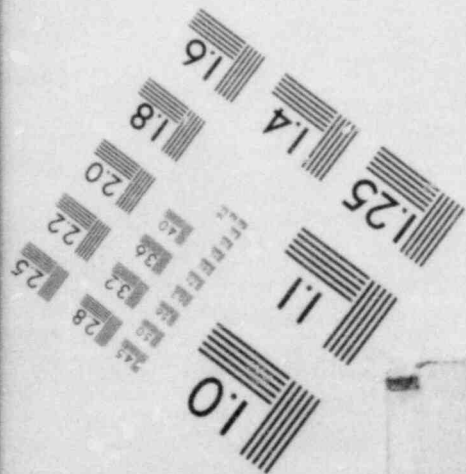
20 MR. DIRCKS: I think our -- as you know, John, our
21 philosophy has been an evolving philosophy with the Nuclear
22 Regulatory Commission. It's -- the pendulum has swung in
23 many directions. I don't think we have come to a point
24 where we have a resident guru on enforcement. Vic and I
25 have certainly shared our thoughts on the subject of

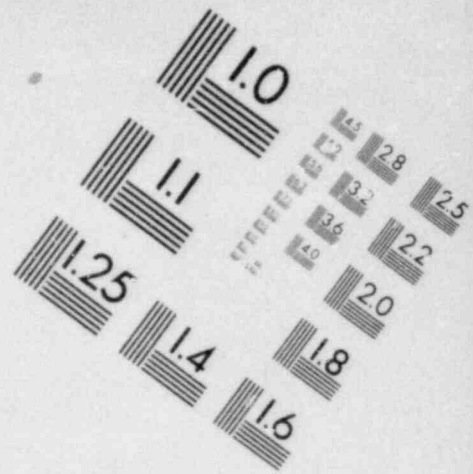
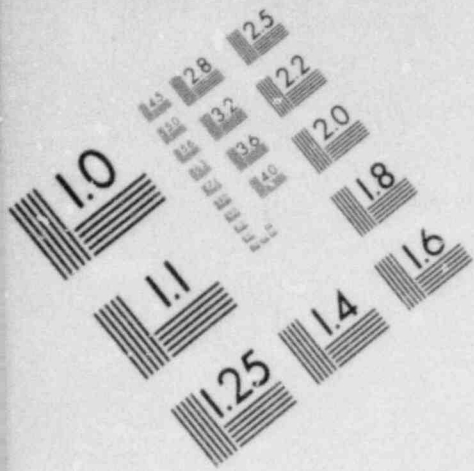


**IMAGE EVALUATION
TEST TARGET (MT-3)**

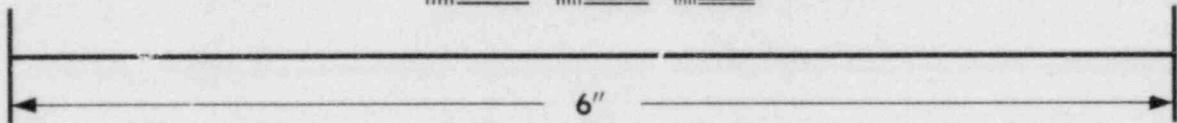
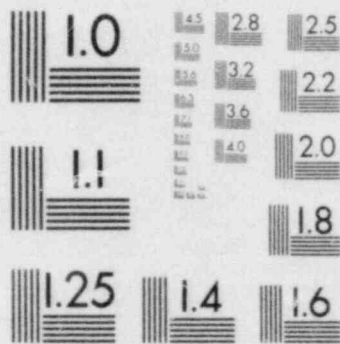


MICROCOPY RESOLUTION TEST CHART

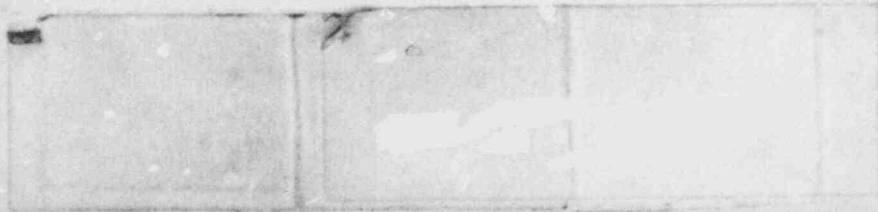
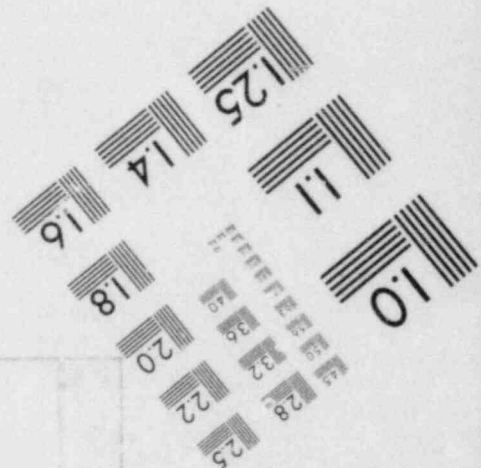
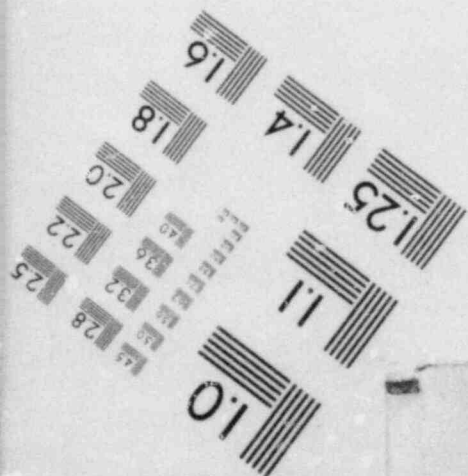




**IMAGE EVALUATION
TEST TARGET (MT-3)**



MICROCOPY RESOLUTION TEST CHART



1 enforcement, together with the helpings of Howard. We
2 haven't -- we don't have a resident philosopher on
3 enforcement. Vic is the operational official on
4 enforcement. He consults with me on many occasions on the
5 question of enforcement, and I have given him the benefit of
6 my views on it, on the agency enforcement policy.

7 COMMISSIONER GILINSKY: What's the question to
8 which you want an answer?

9 CHAIRMAN AHEARNE: What is the philosophy that
10 underlies our enforcement policy?

11 COMMISSIONER GILINSKY: Well, something beyond the
12 introduction here?

13 CHAIRMAN AHEARNE: Well, the introduction we put
14 together in the PPPG.

15 COMMISSIONER GILINSKY: Well, that means you're
16 the philosopher.

17 (Laughter)

18 MR. DIRCKS: But you're saying who interprets the
19 words and puts them in there?

20 CHAIRMAN AHEARNE: No, I was -- for example, I've
21 never read the Administrative Conference report. I skimmed
22 it when it came through, but I haven't really read it and
23 sat down and thought through it.

24 MS. SHAPAR: That has been looked at by my
25 office. Jim Mardian and his people have kept abreast of the

1 literature. Beyond that, the philosophy here is not
2 restricted to the PPPG. It mentions past decisions of the
3 Commission and those cases are cited.

4 So this is a distillation of whatever wisdom has
5 been able to be accumulated up to now.

6 COMMISSIONER GILINSKY: Vic, I want to ask you
7 about these appendices that go through the various severity
8 categories for reactor operations, facility construction,
9 and so on.

10 My first question is, are these intended, are the
11 various items intended to be examples or are these listings
12 supposed to be inclusive?

13 MR. STELLO: Examples. They're not inclusive.

14 COMMISSIONER GILINSKY: Okay.

15 MR. STELLO: You can't -- yeah.

16 COMMISSIONER GILINSKY: And then I want to ask
17 you, where would you put things like submission of false
18 statements, or material false statements of one kind or
19 another? The general counsel's memorandum lists that as
20 being something that might be missing in this package.

21 MR. STELLO: Well, the material false statement by
22 itself, it depends on what it relates to, the reactor or
23 whatever; and then within the severity level, what the issue
24 of the false statement is would set a tone for it. If a
25 material false statement were made with regard to a

1 violation of a safety limit -- which is conceivable, at
2 least, it could happen -- then that could be a Severity
3 Level I, or it could be significantly less serious in terms
4 of in relationship to the appendix. But then, of and by
5 itself, if there is a material false statement, that's
6 specifically covered and by regulation.

7 Howard? Howard?

8 MR. SHAPAR: What?

9 MR. STELLO: It's a statutory?

10 MR. SHAPAR: It's a statutory offense, for one
11 thing. And I think the real question here is whether or not
12 you can build up subcategories of severity for different
13 functions, for example, shutting off a safety system, as
14 contrasted with submitting a material false statement; I
15 don't happen to think it's going to be very productive, as a
16 personal view. In other words, these severity categories
17 apply to various different kinds of substantive categories.
18 Two examples that I mentioned are shutting off a safety
19 system or submitting a false statement. And I don't think
20 you can build little subcategories around these functional
21 areas. I don't think that would be very productive.

22 COMMISSIONER GILINSKY: I'm not sure I understand
23 what you're saying. Are you saying that this whole approach
24 is flawed? I don't think that --

25 MR. SHAPAR: No, no. No, I'm saying that if it

1 works for shutting down a safety system, it works for a
2 false statement just as well.

3 COMMISSIONER GILINSKY: Well, one example -- I'm
4 just trying to get a feel for how that might be handled --
5 we had a case in which there was a fairly hefty fine imposed
6 because of failure to submit reports at the CP stage. Have
7 you gone back and thought about how that might be handled
8 under the new framework? Or any similar examples?

9 MR. STELLO: No, we didn't.

10 COMMISSIONER GILINSKY: Because none of those were
11 covered in your slides.

12 MR. STELLO: Right. No, we didn't go back and
13 look at that one and try to estimate what the dollar value
14 or the action would have been on it.

15 COMMISSIONER GILINSKY: Well, I don't want to
16 insist on a specific number, but it does seem to me that
17 that's something we want to think about. I don't have any
18 sense for how that would be handled, or whether it would be
19 handled differently than it was handled, I mean, how it
20 would be handled under the new --

21 MR. DIRCKS: This material false statement thing,
22 that hinges directly on our relations with the Department of
23 Justice and the actions we ask them to pursue when we get a
24 case of --

25 COMMISSIONER GILINSKY: Well, except in that case

1 it was stipulated, the willfulness associated with that was
2 stipulated out, as I remember.

3 MR. SHAPAR: Well, a material false statement is a
4 basis, under the statutes, for revoking a license as the
5 ultimate enforcement sanction that you can take.

6 COMMISSIONER GILINSKY: But in that case we
7 imposed a fine. Right?

8 MR. SHAPAR: Yeah. That's correct. And it's
9 another example of --

10 COMMISSIONER GILINSKY: So where is the guidance
11 for how you might deal with that here?

12 MR. SHAPAR: I assume that you, Vic, that you
13 would look at the false statement violation and decide under
14 what severity category it fit?

15 COMMISSIONER GILINSKY: I mean, it seems to me
16 it's intrinsically --

17 MR. MURRAY: It says on page 9 that "Violations
18 not specifically identified by a severity level will be
19 placed at the level best suited to the significance of the
20 particular violation." And I think that's what Howard was
21 saying, basically.

22 COMMISSIONER GILINSKY: It seems to me, in any
23 statement that we put out, or, certainly, any final
24 statement, we would want to put emphasis on the importance
25 we place on full, complete, and accurate responses from

1 licensees. And we've certainly regarded material false
2 statements as being very serious violations in the past.
3 And I think we ought to underline that --

4 MR. SHAPAR: There's no reason why --

5 COMMISSIONER GILINSKY: -- for the future.

6 MR. SHAPAR: -- it shouldn't be done. I would add
7 one point, though. A material false statement can, by a
8 Commission decision, be the omission of information. So I'm
9 really pointing out that material false statement can vary
10 anywhere from failure to give some rather minor information
11 to --

12 COMMISSIONER GILINSKY: Sure.

13 MR. SHAPAR: -- a deliberate attempt to mislead.

14 COMMISSIONER GILINSKY: Sure. Right. And --

15 CHAIRMAN AHEARNE: In fact, you're saying, it's a
16 very broad term.

17 MR. SHAPAR: Yes.

18 COMMISSIONER GILINSKY: And maybe a statement
19 ought to take account of that, any statement included here.
20 But I do think it needs to be addressed.

21 MR. SHAPAR: Okay.

22 COMMISSIONER GILINSKY: My other question has to
23 do with failure to inform the Commission of various sorts of
24 events. I notice on the safeguards appendix, Appendix 3,
25 you list under Severity I failure to promptly report an

1 actual or attempted theft or diversion of SNM or an act of
2 radiological sabotage. But there's nothing comparable under
3 reactor operations.

4 MR. STELLO: Well, yeah, there is. Remember,
5 earlier we had if there was a report and that -- you failed
6 to make the report, then the failure to make the report is
7 going to be judged according to the severity level which
8 that report dealt with. So it would automatically --

9 COMMISSIONER GILINSKY: I guess I missed that.

10 MR. STELLO: It's on page 9.

11 COMMISSIONER GILINSKY: Page where?

12 MR. STELLO: Nine.

13 COMMISSIONER GILINSKY: I see.

14 You make it required -- could you give me -- could
15 you get a little more explicit about that, so I can
16 understand it better?

17 MR. KEPPLER: Well, let's -- let's take --

18 COMMISSIONER GILINSKY: Give me a for-instance.

19 MR. KEPPLER: Take the case if a licensee failed
20 to report an overexposure and the overexposure was a
21 Severity I type overexposure. The failure to report would
22 also be judged as a Severity I non-compliance by itself.
23 So, in effect, you get \$200,000 -- two specific fines, one
24 for the failure to report, one for the overexposure.

25 COMMISSIONER GILINSKY: Well, but suppose there is

1 an accident which may or may not result from a violation on
2 the part of the licensee. I mean, yeah, you might have an
3 earthquake or something. And there is then a failure to
4 report promptly or to report the severity of the condition.
5 How would you handle that?

6 MR. STELLO: It'd be a Severity Level I.

7 COMMISSIONER GILINSKY: How does that --

8 MR. STELLO: That's what that means.

9 COMMISSIONER GILINSKY: I understand that's the
10 sense of what you were saying. But how does that follow
11 from it would be characterized by the severity level of the
12 matter not reported?

13 MR. STELLO: Okay, you're saying you had an
14 accident, an incident.

15 COMMISSIONER GILINSKY: Well, let's go back to --
16 yeah?

17 MR. STELLO: And he didn't report the incident.
18 He's required to report the incident. He failed to do so.
19 The failure to report it then becomes a Severity Level I
20 event.

21 COMMISSIONER GILINSKY: Because of what? The
22 release of radioactivity off-site greater than -- what if
23 there is no release of radioactivity greater than 10 -- I
24 mean, which of these items triggers your conclusion? That's
25 what I'm trying to understand.

1 MR. KEPPLER: Probably two.

2 COMMISSIONER GILINSKY: "A system designed to
3 prevent or mitigate a safety event not being able to perform
4 its entire safety function when actually called upon to
5 work." How does that follow -- I mean, how -- suppose there
6 is a --

7 MR. KEPPLER: You don't have an accident if you
8 don't have that.

9 MR. STELLO: No, he's talking about if a pipe
10 broke.

11 COMMISSIONER GILINSKY: Yeah.

12 MR. STELLO: All of the systems worked.

13 COMMISSIONER GILINSKY: Everything was complied
14 with, but nevertheless --

15 MR. STELLO: And they didn't -- they didn't tell
16 us --

17 COMMISSIONER GILINSKY: -- the pipe broke. Now --

18 MR. STELLO: They didn't tell us that the pipe
19 broke.

20 COMMISSIONER GILINSKY: For example. Or how
21 severe the accident was. Or whatever. Or failed to
22 transmit information we regard as important --

23 MR. STELLO: Okay.

24 COMMISSIONER GILINSKY: -- for making decisions
25 off-site.

1 MR. STELLO: Okay. What he is saying is, we don't
2 have listed in here an accident, specifically. I think
3 that's the point you're making.

4 COMMISSIONER GILINSKY: Right. Well, because
5 you're saying --

6 MR. KEPPLER: Failure to report an accident and
7 that causing --

8 COMMISSIONER GILINSKY: I'd like to see explicitly
9 an item under A, Severity I which would trigger the failure
10 to report being also a Severity I.

11 CHAIRMAN AHEARNE: Of course, it would have to be
12 a failure to report something important.

13 COMMISSIONER GILINSKY: Well, that's right. And
14 somehow the thing -- I think we're all more or less agreed
15 on how it ought to be, although we haven't pinned down the
16 details. But it isn't quite here, here in the appendices.

17 MR. KEPPLER: Your concern is the failure to
18 report something that doesn't result -- doesn't come about
19 as a result of a violation?

20 COMMISSIONER GILINSKY: For example. Yes. It
21 seems to me the failure to report itself is an extremely
22 serious violation --

23 MR. STELLO: It is.

24 COMMISSIONER GILINSKY: -- in certain -- I mean,
25 depending on the circumstances.

1 MR. STELLO: But it ought to be commensurate with
2 what it is that you failed to report.

3 CHAIRMAN AHEARNE: Yeah. But Vic, Vic's concern,
4 Commissioner Gilinsky's concern, is that you may have --

5 COMMISSIONER GILINSKY: Victor is all right.

6 CHAIRMAN AHEARNE: -- a significant -- there are
7 two Vics now -- you may have difficulties leading to an
8 accident and the accident may not -- if it had been reported
9 you may have concluded there's no violation there, it's just
10 an accident that happened.

11 COMMISSIONER GILINSKY: Or there may only be a
12 slight violation connected with it.

13 CHAIRMAN AHEARNE: Right. However, the fact that
14 it wasn't reported and doesn't link back to something, you
15 can't say, "Well, we'll treat that lack of reporting as
16 severe as the event itself," if the event itself isn't a
17 violation; then there's no linkage.

18 COMMISSIONER GILINSKY: I would simply include an
19 item, failure to report an item of serious safety
20 significance, or something like that.

21 MR. STELLO: Yeah. I see that the one -- you're
22 dealing with accidents which is covered specifically by
23 regulation: 50.72 reporting. And now I'm trying to wonder
24 whether we're trying to make these tables more comprehensive
25 than we can.

1 Let me think about that. I see your point. Let
2 me try to find a way. I'd like to have this general --

3 COMMISSIONER GILINSKY: You do have it covered in
4 the safety section.

5 MR. STELLO: Yeah. Yeah, well, that was, that
6 specifically called out --

7 COMMISSIONER GILINSKY: I would put a similar
8 explicit statement.

9 CHAIRMAN AHEARNE: Well, no, if I put an explicit,
10 it's that it's an actual or attempted theft or diversion of
11 SNM or act of radiological sabotage, which is a more
12 explicit --

13 MR. STELLO: I understand the problem. I don't
14 have an answer --

15 COMMISSIONER GILINSKY: Well, even that has a
16 certain amount of ambiguity: "attempted thefts" can be of
17 all sorts and there may be a question of interpretation and
18 so on.

19 But it seems to me that failure to report a
20 serious safety problem has got to itself be a Severity I
21 violation. Now, a less serious safety problem would fall in
22 Severity II.

23

24

25

ME
4
1 MR. STELLO: That's exactly what the statement on
2 page 9 was trying to do.

3 COMMISSIONER GILINSKY: But somehow it was coupled
4 to violations. And I think that --

5 MR. STELLO: Okay. I can change it. Unless
6 otherwise categorized in the appendices, a failure to make a
7 required report, whether it's a violation or not. That I
8 have no problem with. Would that do it for you?

9 COMMISSIONER GILINSKY: Well, let's think about
10 it. I mean --

11 MR. BICKWIT: It doesn't deal with material false
12 statements. Your statement on page 9 doesn't deal with
13 material false statements. If you're going to treat failure
14 to report, you might want to consider putting material false
15 statements on there, too.

16 MR. STELLO: Okay. If I could, I'd prefer to try
17 to find a way to broaden this. If you give me a chance to
18 think about it, I think maybe I can.

19 COMMISSIONER GILINSKY: Just to belabor what may
20 be the obvious, the failure to report should not -- the
21 determination of whether or not that's a violation should
22 not be tied to whether the event that is not being reported
23 is itself connected with a violation.

24 MR. STELLO: Yes, I understand that.

25 CHAIRMAN AHEARNE: But it should be tied with the

1 significance.

2 COMMISSIONER GILINSKY: But it should be tied to
3 the significance. And the promptness is, of course, a
4 factor that it would also turn on.

5 MR. STELLO: I see your point.

6 COMMISSIONER BRADFORD: Could you talk a little
7 about the justification for the maximums at the lower end of
8 the scale, how you arrived at the 8,000 for radiographers
9 and 15,000 for (Inaudible).

10 COMMISSIONER GILINSKY: All numbers that it's easy
11 to take 25 percent of.

12 (Laughter.)

13 MR. KEPPLER: I don't know that we had a rationale
14 other than to pick some numbers that we thought were
15 reasonable numbers in our mind.

16 MR. STELLO: I think it's important to say, you
17 know, what did you have in mind. Radiographers cover that
18 range, but most of them are fairly small companies relative
19 to a utility or a vendor. The impact of risk from
20 radiographers is generally limited to the radiographers
21 themselves. It's very infrequent that you ever see a
22 problem with a radiographer dealing with the general health
23 and safety of the public. It's usually concerning their own
24 environment.

25 On balance, then, on that end of the scale,

1 considering both the risk involved and the ability to pay,
2 it suggests that it ought to be a fairly, relatively
3 speaking, small dollar value.

4 COMMISSIONER BRADFORD: Let me ask it another way,
5 Vic. Can you be reasonably sure that an \$8,000 maximum
6 penalty is large enough to be a real deterrent in the case
7 of all radiographer operations? Of course, if you get a
8 higher maximum you can still factor in the ability to pay
9 consideration if we're dealing with ability to pay.

10 CHAIRMAN AHEARNE: If I could just add to that
11 question, could you also answer whether your policy would
12 preclude going higher or would it require coming to the
13 Commission on that?

14 MR. KEPPLER: I think on page 14 you'll find that
15 there's a statement that says that: "When determining the
16 amount of civil penalties for whom the table does not
17 accurately reflect the ability to pay, NRC will consider
18 necessary modification on a case by case basis."

19 MR. STELLO: But that's only down. The intent was
20 that that was down, I think.

21 MR. KEPPLER: I don't think so.

22 (Laughter.)

23 MR. STELLO: Well, I'll tell you, that's the
24 impression I get out of that.

25 COMMISSIONER GILINSKY: Incidentally, just to

1 inject a comment, you said earlier that if you thought that
2 the number of cases in which penalties were imposed would be
3 about the same, but the amounts might be a little higher.

4 MR. KEPPLER: In reactor cases, for large facility
5 cases, yes.

6 COMMISSIONER GILINSKY: Well, okay. I'll take
7 that. But it seems to me that if this policy is to be
8 effective, you really ought to be getting less cases.
9 You're trying to deter people from --

10 MR. KEPPLER: I think that would be the case over
11 the long run. I think that's a measure of how effective it
12 is.

13 COMMISSIONER GILINSKY: And it seems to me it's a
14 partial answer to Peter's question, is that if this doesn't
15 seem to reduce the number of cases of radiographers
16 overexposing themselves and others, then maybe the number is
17 too low.

18 MR. KEPPLER: Maybe.

19 MR. STELLO: Well, there's -- yes. You need to
20 look back at the basic requirements themselves. And this is
21 not the only vehicle. There are licensing elements
22 themselves that can be modified, that can reduce problems,
23 too.

24 I think the answer to your question, in fairness,
25 is that by looking at the accumulated experience as we move

1 forward and making that judgment from time to time. As Jim
2 says, this statement can be interpreted both ways, up or
3 down. Given that the record now says it's going to be up or
4 down, I think, why, if that's the case, you might have to
5 adjust it up or down.

6 COMMISSIONER BRADFORD: The record is mixed at the
7 moment. But if you say it'll be up or down, then the record
8 will be clear.

9 Let me see, though. John had asked whether the
10 8,000 meant that, if in your judgment you thought it should
11 be above that, you would come to the Commission on it. Of
12 course, if this becomes a regulation, in effect, then it has
13 to say that explicitly or else the Commission can't do
14 anything more about it than a board or than you can.

15 CHAIRMAN AHEARNE: That was really what I was
16 asking. I couldn't recall the words in here which would
17 either preclude going higher or require you to come to the
18 Commission to come higher. What is the --

19 MR. STELLO: No, it doesn't really address the
20 issue of coming to the Commission for it.

21 (Pause.)

22 MR. STELLO: It would be my intent that if I were
23 going to be departing from that in any routine way, for sure
24 I'd be down and talk to the Commission about it.

25 What I'm really trying to answer, which might be

1 the real substance of the enforcement policy, is, can we
2 make the judgment now that that dollar figure is sufficient
3 to really bring about the corrective action? My judgment
4 right now is yes. But I will need the passage of time and
5 look at the record and see if in fact that is the case. But
6 that's my judgment at the moment.

7 CHAIRMAN AHEARNE: Well, let me probe one further
8 point there. If this was -- let's say that this set of
9 words and this table go into -- I want to ask my lawyer
10 something.

11 (Laughter.)

12 CHAIRMAN AHEARNE: If this set of rules, words,
13 were to go to the public commentary and be approved, et
14 cetera, and then be in place, and we were to find a case
15 where a radiographer -- the issue was such -- or a licensee,
16 a specific licensee, not listed in these first three
17 categories of Vic's, did something that was sufficiently
18 egregious that, in addition to lifting their license, we
19 wanted to give them a severe penalty, would this preclude us
20 from going above \$8,000?

21 MR. BICKWIT: What page are you on?

22 It's a question of whether you've used -- you've
23 used the word "ordinarily" throughout this document. I
24 think if you've got "ordinarily" built into it, then you're
25 all right. If you don't, you don't; you're not all right.

1 MR. STELLO: You would want to lift the license in
2 addition to a civil penalty? I guess, you know, my feeling
3 would be that if you've lifted the license, what's the
4 purpose of the civil penalty? You aren't going to bring any
5 more corrective action, because --

6 MR. SHAPAR: Yes, but the question is whether or
7 not the document permits it.

8 CHAIRMAN AHEARNE: You might be able to point out
9 to other licensees the significance of that. And the
10 licensee -- and the license you may be lifting may be a
11 small part of a large organization. And you may want to get
12 across the point to other organizations that may have
13 similar licenses that in addition to losing the license
14 there may be financial penalties. And I was just asking
15 whether this would preclude going above \$8,000.

16 MR. HANRAHAN: Aside from the "ordinarily," it
17 says you can raise it by 25 percent, which may put a limit
18 on going beyond the 25 percent.

19 MR. STELLO: I think, with all of the factors,
20 given all the factors, can you go beyond whatever that is?

21 CHAIRMAN AHEARNE: And I guess the answer is, if
22 there's no modifying word like "ordinarily" thrown in, then
23 this does block it?

24 MR. BICKWIT: I can't find it at the moment, but
25 I'm sure it's there. It seems to be all over the place.

1 MR. SHAPAR: It's sprinkled through the document.
2 Let me point out one thing else, though, and that
3 is court review of this thing. If this intends to do
4 anything, it intends to tell the world how you're going
5 about doing your business. And you get a strong impression
6 from the document this is the kind of penalty you're going
7 to be imposing. And unless there are very strong reasons
8 from departing from the impression which you've given, then
9 I think you may have trouble in the courts.

10 CHAIRMAN AHEARNE: Oh, I appreciate that. I was
11 worried about the situation where you might have a very
12 strong reason and it is now binding, so you can't do
13 anything. Some future Commission being faced with -- being
14 told, well, in the future you may want to do that, and so we
15 can modify this thing that we've already embedded into the
16 regulations.

17 MR. SHAPAR: And I think the response to that kind
18 of a worry is to make sure that the "ordinarilies" are
19 sprinkled in --

20 CHAIRMAN AHEARNE: Appropriately.

21 MR. SHAPAR: -- appropriately.

22 Can't we cover that by (Inaudible) instead of
23 (Inaudible).

24 CHAIRMAN AHEARNE: We could handle it by a
25 (Inaudible).

1 MR. BICKWIT: On page 14 it says the dollar values
2 shown on Table 1 are those normally imposed for violations
3 at these severity levels and for the types of licensees
4 indicated.

5 MR. SHAPAR: And the last sentence says, however,
6 the orders generally issued for this severity level of
7 violations.

8 CHAIRMAN AHEARNE: So you feel that that would
9 handle that problem?

10 MR. BICKWIT: Yes, I would.

11 CHAIRMAN AHEARNE: I'm sorry, Peter. I
12 interrupted your question.

13 (Pause.)

14 CHAIRMAN AHEARNE: Peter, you're still up.

15 COMMISSIONER BRADFORD: How are safeguarding
16 violations treated if you have a research or test reactor
17 that has significant quantities of special nuclear material
18 on hand and it doesn't properly safeguard it? Is that still
19 governed by the ceilings in here? I'm asking it the wrong
20 way.

21 Which of the ceilings in here then apply to that?

22 MR. KEPPLER: It would apply by the class of
23 licensee. I think --

24 MR. STELLO: It would be a research reactor.

25 MR. KEPPLER: Research reactor, if that's what it

1 was.

2 COMMISSIONER BRADFORD: So that -- let's see. If
3 there were such a situation, a research reactor which failed
4 to adequately safeguard a significant quantity of SNM, it
5 would have a much lower penalty than a fuel facility.

6 MR. KEPPLER: Than a fuel facility.

7 COMMISSIONER GILINSKY: I must say, that troubles
8 me.

9 COMMISSIONER BRADFORD: It's hard to say that, at
10 least in that illustration, the levels are controlled by the
11 equivalent risk, without looking at the other factors, like
12 ability to pay.

13 COMMISSIONER GILINSKY: I mean, God, if somebody
14 steals a significant quantity of highly enriched uranium
15 from a university reactor, that can cause as much damage as
16 just about anything that we deal with.

17 MR. STELLO: But don't you need to cover that by
18 passing a requirement that will make them safeguard the
19 material. For the most part, if memory serves me right,
20 there are only just a couple or three reactors, when I
21 remember keeping track of them, all of which were to make
22 arrangements to reduce their inventories. I'm not sure that
23 this question even applies any more. Does it?

24 CHAIRMAN AHEARNE: I think there may be one or two
25 that still --

1 MR. STELLO: That still are in it? But I thought
2 the intent was to remove this from being a question.

3 COMMISSIONER GILINSKY: Well, that would be the
4 best solution.

5 MR. STELLO: That's what I thought we were doing.

6 CHAIRMAN AHEARNE: That's what I thought we were
7 trying to do.

8 MR. STELLO: Well, we know we started with six,
9 and it went down to three.

10 CHAIRMAN AHEARNE: Yes.

11 MR. STELLO: And I didn't know whether we got all
12 the way or not yet.

13 CHAIRMAN AHEARNE: Yes.

14 MR. STELLO: Which is what I think we ought to
15 do. Don't let's look for an enforcement policy to get that
16 answer, is what I'm suggesting.

17 COMMISSIONER GILINSKY: Well, I agree with that, I
18 mean, with trying to eliminate the problem.

19 COMMISSIONER BRADFORD: I guess I'm still sort of
20 groping around toward understanding the rationale of the
21 ceiling at the lower end of the table. With regard to the
22 relationship between the \$16,000 ceiling for the research
23 reactor and the \$40,000 for the test reactor, what's at play
24 there? Is there a sense that a research reactor is roughly
25 half as dangerous?

1 MR. STELLO: For the most part, the research
2 reactors operate at significantly lower power than test
3 reactors. I used to remember how many there are, but there
4 are not very many, quote, "test" reactors: MIT and -- oh, I
5 guess where standards is getting up there, there are few.
6 And I don't have the list. But they get up into the
7 megawatt range, and the risk starts going up into the
8 megawatt range. And they have fairly complex systems in the
9 test reactors, where research reactors for the most part,
10 they don't.

11 Test reactors were considered significant enough
12 to require mandatory hearings for construction permits under
13 the statute.

14 MR. STELLO: I understand the difficulty you're
15 having, because we had the same difficulty in trying to make
16 this judgment. And it's not an easy judgment to make. It's
17 a very difficult one. And I don't know any better way to go
18 about it than we did, and it really is a matter of judgment.

19 I really hope that the comment period will produce
20 some insight on how to do that. And I've been playing
21 around with making sure that we send letters, which I know I
22 personally committed to, to the university community and
23 make sure that they are aware of this regulation, since they
24 don't normally get Federal Register notices. Maybe we will
25 get some insight and help.

1 COMMISSIONER BRADFORD: What was the highest --
2 without this policy, what would the highest fine that you
3 could impose on a research reactor be under your current
4 practices? That's the wrong way of asking it: Under your
5 practices as of a year ago?

6 MR. MURRAY: The answer is the maximum for a
7 single violation for a university would be \$1,000, compared
8 to \$5,000 for a -- that would be university where you had an
9 overexposure.

10 If you had a research reactor at a university, it
11 would be \$3,000 for a single violation.

12 COMMISSIONER BRADFORD: And that would include a
13 safeguarding violation?

14 MR. MURRAY: That's correct.

15 MR. SHAPAR: I have a definition of testing
16 facility, if anybody is still interested.

17 COMMISSIONER BRADFORD: I sure won't interrupt
18 this rapid pace.

19 MR. SHAPAR: It's a nuclear reactor, thermal power
20 level in excess of 10 megawatts or a thermal power level in
21 excess of one megawatt if the reactor is to contain certain
22 items, like a circulating LOCA center.

23 CHAIRMAN AHEARNE: Peter?

24 COMMISSIONER BRADFORD: I don't have anything
25 more.

1 CHAIRMAN AHEARNE: I guess we then should move to
2 the two major decision questions facing us. The first is on
3 the question of making it on an interim basis.

4 Vic, if we do not make it an interim basis, what
5 would you do?

6 MR. STELLO: I was worried somebody was going to
7 ask me that question.

8 CHAIRMAN AHEARNE: Good, then you've got an answer.
9 We talked about it yesterday.

10 MR. STELLO: Yes, we did.

11 CHAIRMAN AHEARNE: There's at least one vote on
12 this side for not making it on an interim basis.

13 MR. STELLO: The thinking that's now in the paper,
14 as I explained before, pretty much articulates what I've
15 been trying to build up over the past year. We are going to
16 be getting some cases shortly which involve violations after
17 June 30th and the \$100,000 civil penalty would come up.

18 The general structure and the thinking that's in
19 the policy paper generally is what I feel. So I would have
20 to feel that that's what would guide me.

21 CHAIRMAN AHEARNE: So the staff practice would
22 continue.

23 MR. STELLO: Yes.

24 CHAIRMAN AHEARNE: So the distinction would be
25 that you would be doing it as the I&E policy and for the

1 large amounts, I guess, in general practice you would notify
2 the Commission in advance, and we could then enter into it
3 --

4 MR. STELLO: Yes.

5 CHAIRMAN AHEARNE: -- if we wished to.

6 MR. STELLO: Yes.

7 CHAIRMAN AHEARNE: I guess, for me, I'd be more
8 comfortable doing it that way than endorsing this as a
9 policy.

10 Victor?

11 COMMISSIONER GILINSKY: Well, I would have taken
12 the other question first, the question of whether you want
13 to publish it or not. (Inaudible).

14 But on the question of whether or not it ought to
15 be an interim policy, it seems to me that what Vic is saying
16 is interim policy. And I really don't see the objection to
17 endorsing an interim policy, except on the basis that, as I
18 gather from Len's memo, that it somehow was arrived at with
19 at least seemingly an excessive industry input. I mean, is
20 that the basis?

21 MR. BICKWIT: Apparently, it has an input. The
22 perception would be such, in light of the statements in the
23 paper.

24 CHAIRMAN AHEARNE: I guess -- well, but since I
25 don't feel like putting it in interim policy, it was

1 independent of that. It's more that I think -- my sense is
2 that this is the direction I&E is going, independent of
3 whether the Commission endorses its policy. It's still an
4 I&E policy. And I would be happier with a little bit more
5 massaging of the program before I would agree that it would
6 become Commission policy.

7 And I think that Vic will be applying these
8 standards in I&E and when the large fines come he'll be
9 raising it to us. And I'm just not yet set on what the
10 formal Commission policy ought to be. So it really is --

11 COMMISSIONER GILINSKY: I'm not sure I understand
12 the distinction. I'm not sure I disagree with you.

13 It seems to me you are blessing this policy,
14 unless you're telling I&E to do something different.

15 CHAIRMAN AHEARNE: No, I'm saying that I have no
16 problem with my understanding that Vic will be applying this
17 basic framework. But he will be coming to us I think a
18 little bit more often than he would had we endorsed this as
19 an official Commission policy.

20 COMMISSIONER BRADFORD: Not only that, but in
21 hearings before any boards, the boards will be free in a
22 sense that they wouldn't be if we had formally adopted the
23 document.

24 CHAIRMAN AHEARNE: I guess I don't understand
25 that.

1 MR. SHAPAR: That is only because the
2 recommendation was only interim guidance for the staff.

3 COMMISSIONER GILINSKY: In effect, we are
4 approving it as interim guidance for the staff, and he said
5 that's the guidance he's going to be using. And you're
6 saying, well, go ahead and do that.

7 CHAIRMAN AHEARNE: I guess what you're saying is
8 that I could join you or you could join me, and we'd both be
9 equally satisfied.

10 COMMISSIONER GILINSKY: Yeah. I'm just trying to
11 understand where the difference comes.

12 CHAIRMAN AHEARNE: I'll view that as a (Inaudible).

13 COMMISSIONER GILINSKY: So I mean, he's going to
14 apply it and I think it's okay. It seems to be an
15 improvement or at least a little more structured system than
16 we have now.

17 COMMISSIONER BRADFORD: Well, first of all, there
18 are a number of things that I think we agreed on today that
19 are modifications or clarifications of the document. I
20 assume that in its modified form that it would be applied
21 and not in its present form.

22 CHAIRMAN AHEARNE: Well, since I voted not to have
23 it be applied (Inaudible).

24 COMMISSIONER GILINSKY: Well, Len and Howard, I'm
25 just trying to understand what the distinction here is.

1 They're saying that the question is -

2 CHAIRMAN AHEARNE: There's clearly a distinction,
3 because otherwise the EDO would not have asked us to
4 formally approve this as an interim policy.

5 COMMISSIONER GILINSKY: For the staff.

6 CHAIRMAN AHEARNE: That's right. The staff is
7 going down this step. This is the staff policy.

8 COMMISSIONER GILINSKY: This is being polite.

9 CHAIRMAN AHEARNE: And I'm saying that I have no
10 problem with this being the I&E's policy that they're
11 using. I understand that they're using it. I'm not
12 interjecting opposition to it. But I don't wish to bless
13 this as an interim policy.

14 COMMISSIONER GILINSKY: But you are -- but you
15 aren't. I mean, you're saying that -- am I missing
16 something here?

17 COMMISSIONER BRADFORD: Well, I think I took it
18 that the EDO asked several things here, or a couple,
19 anyway. They wanted to publish it for public comment, adopt
20 it as an interim policy. I take it they preferred not to
21 wait and go through a precomment, comment period. And as I
22 understand it, it's not all or nothing. We could say, go
23 ahead and publish for comment, the Commission approves that,
24 we could say the Commission approves its use as an interim
25 staff policy as modified this morning. And --

1 CHAIRMAN AHEARNE: I think you're the swing vote,
2 Peter.

3 COMMISSIONER BRADFORD: Before I cast my vote,
4 I've got one other factual question that I'd overlooked
5 before. Am I right in understanding that the effect of the
6 policy as it applies under Part 21 would be such that, for
7 example, the whole -- the maximum amount that B&W could be
8 penalized would be \$100,000?

9 MR. STELLO: No, it could have been more.

10 COMMISSIONER BRADFORD: Could have been more?

11 MR. STELLO: Yes.

12 COMMISSIONER BRADFORD: How does that work?

13 (Simultaneous conversation.)

14 CHAIRMAN AHEARNE: How many violations were there?

15 MR. STELLO: As I recall, there were two.

16 COMMISSIONER BRADFORD: But one was run over a
17 series --

18 MR. STELLO: Yes. It was run over, as I recall --

19 COMMISSIONER BRADFORD: Over a year.

20 MR. STELLO: Yes.

21 COMMISSIONER BRADFORD: That's where the large
22 amount of money entered in.

23 MR. STELLO: Yes.

24 COMMISSIONER BRADFORD: But it's a Severity III?

25 MR. STELLO: Well, there again, it's a failure to

1 report, and the item that was failed to report in this
2 instance was -- yes.

3 COMMISSIONER GILINSKY: So I think it gets back to
4 the conversation that we had before, and I think that whole
5 failure to report area is going to get --

6 MR. STELLO: Yes. And my initial reaction is I'm
7 more inclined to put it in one, because the subject that was
8 failed to report, which is what the statement on page 9
9 deals with.

10 COMMISSIONER GILINSKY: I think there's a
11 qualification ...

12 MR. STELLO: Yes. That's why I say -- where it
13 says, paragraph 3, where they were not otherwise more
14 serious.

15 COMMISSIONER GILINSKY: Let me just ask, before
16 Peter does that, is there any practical difference in
17 following either of these courses, as best we can figure out
18 what they are from the conversation? My impression is there
19 isn't. There is no principle of Occam's razor.

20 MR. HANRAHAN: In one case you approve its use; in
21 the other case you countenance its use.

22 MR. SHAPAR: I think there's no practical
23 difference, but I think that the objects may be important.

24 MR. BICKWIT: I think there's a practical
25 difference.

1 MR. SHAPAR: What's the practical difference?

2 MR. ZICKWIT: Oh, just that it's a difference of
3 degree, but the question is that in one case you're giving
4 clearer guidance to the staff than in another and the staff
5 will be more likely to run with clear guidance than with
6 fuzzy guidance.

7 MR. SHAPAR: I think the guidance is clear. The
8 guidance is going to come out in the same place, and I don't
9 think anybody misread that.

10 COMMISSIONER GILINSKY: I'm saying that I would
11 approve it in the way that the approval was asked for, as
12 interim staff guidance.

13 CHAIRMAN AHEARNE: Yes.

14 COMMISSIONER GILINSKY: That doesn't mean to
15 approve this as a final Commission policy, and I expect
16 there will be changes that I will want to have made here.

17 CHAIRMAN AHEARNE: I understand that.

18 Now, after we've all had our chance to lobby
19 Peter, Peter?

20 (Laughter.)

21 COMMISSIONER BRADFORD: Well, I don't want either
22 of you to take this personally.

23 (Laughter.)

24 COMMISSIONER BRADFORD: But I have no difficulty
25 with the staff's receiving the document as modified by our

1 discussions this morning as its interim guidance, and we
2 might as well say so expressly.

3 CHAIRMAN AHEARNE: I think the decision is that we
4 have approved your recommendation for this being interim
5 staff guidance.

6 All right, now let's move to the second issue, on
7 putting it out to comment or going through -- what was your
8 term, a pre-comment comment? I guess I would have to come
9 out for going ahead and putting it out for comment. It
10 seems to me that at this stage -- the process, I disagree
11 with OGC on, or OPE, whoever came up with it. It would only
12 take a few weeks to go through a meaningful second round of
13 precomment comment. I think it would take several months to
14 do that.

15 So I would prefer to just go ahead and put this
16 out for formal comments. Particularly if we've already
17 endorsed it as interim staff guidance.

18 COMMISSIONER BRADFORD: I don't take that as being
19 inconsistent with OGC's Option C, with the possible
20 exception of the business of whether or not it's been
21 endorsed. It seems to me --

22 CHAIRMAN AHEARNE: No, right. It's the Option C,
23 yes.

24 Yes?

25 MR. HANRAHAN: I hope you include a public

1 meeting.

2 COMMISSIONER BRADFORD: What is it about this item
3 as distinguished from the bunch of others that were put out
4 for comment that you think the regional meetings -- on
5 emergency preparedness, for example, I think the regional
6 meetings issues are fairly clear.

7 MR. HANRAHAN: No, I think it's just a good policy
8 to do that on major Commission policies, and this is
9 certainly a major Commission policy.

10 CHAIRMAN AHEARNE: I wonder if I -- on that issue,
11 I think I'd like to ask Joe Fouchard, who has recently
12 picked up an additional responsibility on the public
13 outreach, if he would care to comment on that particular
14 aspect.

15 MR. FOUCHARD: I think Enforcement policy --

16 CHAIRMAN AHEARNE: Microphone, please.

17 MR. FOUCHARD: Sure.

18 CHAIRMAN AHEARNE: Your name?

19 (Laughter.)

20 MR. FOUCHARD: Does somebody want to administer
21 the oath?

22 Enforcement policy is clearly one in which there
23 is a great deal of interest nationwide. Life does exist
24 West of the Alleghenies. And I think we should go out and
25 talk to people in the various regions about what we are

1 proposing to do.

2 It is easier to talk to people when your heels are
3 not dug in. I think our heels are a little bit dug now.
4 But nevertheless, this is interim policy. It's subject to
5 change. And I think we should give people the opportunity
6 to give us their views.

7 I noticed there was one proposal that an industry
8 group address the Commission. Somebody indicated that a
9 couple of the public interest groups should be added to
10 that. I think there are public interest groups outside of
11 Washington, and I think there are industry interests outside
12 of Washington. I think there are state interests outside of
13 Washington. I would just give them the opportunity.

14 I don't know whether anything meaningful will come
15 of it or not, Peter. But I think it's worth a try.

16 COMMISSIONER BRADFORD: Okay. Well, Joe, as far
17 as that panel presentation, if it comes to that, it seems to
18 me that the form we followed on the emergency preparedness
19 --

20 MR. FOUCHARD: Yes, very good.

21 COMMISSIONER BRADFORD: -- would make sense here,
22 too. That is, to do it at the end of the comment period
23 rather than at the beginning.

24 MR. FOUCHARD: Yes. But I think you also might
25 want to follow the same procedures that you did on emergency

1 planning, and that is, go out and actively seek
2 participation.

3 CHAIRMAN AHEARNE: Ed or Joe, what kind of comment
4 period would you think then would be appropriate?

5 MR. FOUCHARD: Oh, John, I haven't thought that
6 through. I think, since you've already approved it for use
7 as interim guidance, I think you ought to use a minimum of
8 60 days, since you're going to be using it anyway. I don't
9 remember what was in the paper.

10 COMMISSIONER BRADFORD: I would say 90,
11 realistically. Once you start talking about regional
12 meetings --

13 MR. FOUCHARD: I would think 60 would be a minimum.

14 COMMISSIONER BRADFORD: Yes. I do resist the
15 phrase that our heels are a little bit dug.

16 MR. FOUCHARD: Yes, that's right.

17 COMMISSIONER BRADFORD: I mean, it seems what we
18 have is a new law, and there has to be some policy for
19 applying it. We can't just say we're going to flip coins
20 until --

21 MR. FOUCHARD: I think it's important, if you're
22 going to ask people to come in and talk to you, for you to
23 tell them in advance that you are open-minded about their
24 changes. If you're just going out for the purpose of saying
25 that you went out, don't do it. *

1 COMMISSIONER BRADFORD: I agree with that
2 completely.

3 CHAIRMAN AHEARNE: I would hope that whenever we
4 go out for a comment, we always do it with an open mind --

5 MR. FOUCHARD: I would also.

6 CHAIRMAN AHEARNE: -- to be receptive to the
7 comment.

8 MR. BICKWIT: Well, in this case it sounds like
9 we're even more open, because the proposal, as I understand
10 it, is for staff to put it out for comment, rather than for
11 the Commission itself to submit a proposal.

12 MR. SHAPAR: That wasn't Vic's suggestion, but I
13 gather it was yours.

14 MR. BICKWIT: That was Option C, and -- well,
15 maybe we ought to focus on that. Where is the Commission on
16 that question?

17 CHAIRMAN AHEARNE: I would have no problem with
18 the Commission putting it out for comment.

19 COMMISSIONER BRADFORD: I guess I'm not sure what
20 the phrase "Commission endorsement" means beyond the
21 business of saying that it's all right for I&E to use it on
22 an interim basis. That is, when we put any item out for
23 comment we don't formally endorse it.

24 CHAIRMAN AHEARNE: Yes.

25 MR. BICKWIT: It's true. The fact is that a

1 proposal has a leg up over something that wasn't proposed.

2 CHAIRMAN AHEARNE: Well, we've gone through this
3 lengthy meeting, I guess --

4 MR. BICKWIT: I understand that. The distinction
5 would be you give it somewhat less of a leg up if you put it
6 out as a staff proposal rather than as a Commission
7 proposal, to which the Commissioners will attach some kind
8 of --

9 CHAIRMAN AHEARNE: I would guess, then, the
10 language in putting it out should be that the Commission is
11 requesting comment on this. This is the staff-proposed
12 enforcement policy, which is being used on an interim basis,
13 and that would seem to cover that.

14 MR. BICKWIT: That would be fine.

15 CHAIRMAN AHEARNE: Peter?

16 COMMISSIONER BRADFORD: Yes, that's okay.

17 CHAIRMAN AHEARNE: Okay. Why don't we plan that.
18 I would assume that whatever goes on will be as modified at
19 today's meeting. All right?

20 COMMISSIONER BRADFORD: Yes.

21 CHAIRMAN AHEARNE: All right. We have been --

22 COMMISSIONER BRADFORD: Let me ask one other
23 question. On the emergency preparedness, did we go through
24 any special requests for comments from FEMA? It occurs to
25 me that on something like this it would be well to

1 specifically request comments from other agencies that
2 enforce regulations of this type -- the EPA.

3 CHAIRMAN AHEARNE: We can certainly do that.

4 MR. STELLO: I already indicated, we definitely
5 want to send it out, for example, to the universities.

6 COMMISSIONER BRADFORD: Yes.

7 CHAIRMAN AHEARNE: But also, as Peter suggested --

8 MR. STELLO: EPA and FAA --

9 CHAIRMAN AHEARNE: The ones that you mentioned.

10 All right. So we have endorsed your
11 recommendation, basically. Okay.

12 (Whereupon, at 12:06 p.m., the meeting was
13 adjourned.)

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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
Commission Meeting

in the matter of: Public Meeting - Discussion and Vote on Enforcement
Policy

Date of Proceeding: September 4, 1980

Docket Number: _____

Place of Proceeding: Washington, D. C.

were held as herein appears, and that this is the original transcript
thereof for the file of the Commission.

Suzanne R. Babineau

Official Reporter (Typed)

Suzanne Babineau

Official Reporter (Signature)

MAJOR AREAS OF CONCERN

USE OF DISCRETION

ENFORCEMENT AGAINST OPERATORS

GRADATIONS OF CIVIL PENALTIES

PPPG

CRIMINAL CONSIDERATIONS

"INFORMAL" ENFORCEMENT ACTIONS


ENVIRONMENTAL CONSIDERATIONS

DISCRETION

I. OFFICE DIRECTORS

- . SEVERITY LEVEL OF VIOLATIONS
- . APPROPRIATE ENFORCEMENT SANCTIONS

II. COMMISSION

- . BALANCING BROAD PUBLIC HEALTH AND SAFETY CONSIDERATIONS
 - . LARGE CIVIL PENALTIES
- 

CIVIL PENALTY FACTORS

GRAVITY OF VIOLATION

DURATION OF VIOLATION

PROBLEM IDENTIFICATION

FINANCIAL IMPACT

GOOD FAITH

PRIOR ENFORCEMENT HISTORY

TABLE 1
Base Civil Penalties

<u>Types of Licensees</u>	<u>Severity Levels of Violations</u>				
	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>
Power reactors Fuel facilities and Transport, Category I (Safeguards)	\$80,000	\$80,000	\$40,000	\$15,000	\$5,000
Test reactors Fuel facilities and Transport, Categories II/III (Safeguards) Spent fuel transport and fixed site (Safeguards) Fuel facilities and transport (non-Safeguards)	40,000	40,000	20,000	7,500	2,500
Research reactors Critical facilities	16,000	16,000	8,000	3,000	1,000
All other licensees and persons subject to civil penalties	8,000	8,000	4,000	1,500	500

TABLE 2
 Examples of Progression of Escalated Enforcement
 Actions For Violations in the Same Activity Area
 Under the Same License

Severity of Violation	Number of similar violations from the date of the last inspection or within the previous year (whichever is greater)		
	<u>1st</u>	<u>2nd</u>	<u>3rd</u>
I	a+b	a+b+c	d
II	a	a+b	a+b+c
III	a	a	a+b

a - Civil Penalty

b - Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.

c - Show cause for modification or revocation of the license, as appropriate.

d - Further action, as appropriate.

COMPARISON OF ESCALATED ENFORCEMENT CASES

<u>TYPE OF LICENSEE</u>	<u>PROBLEM</u>	<u>ACTION TAKEN</u>	<u>ACTION UNDER PROPOSED POLICY</u>
POWER REACTOR	IMPROPER DISPOSAL OF LICENSED MATERIAL ON 16 OCCASIONS	\$89,000	*
POWER REACTOR	FUEL MOVED WITHOUT SECONDARY CONTAINMENT INTEGRITY; IDENTIFIED, REPORTED AND CORRECTED BY THE LICENSEE	\$13,000	\$ 20,000
POWER REACTOR	WEAKNESSES IN RADIATION PROTECTION PROGRAM, (PREVIOUS MANAGEMENT MEETINGS)	\$21,000	\$ 35,000
MAJOR UNIVERSITY	OVEREXPOSURE	\$ 2,100	\$ 10,000 AND ORDER

* POLICY LIMITS CIVIL PENALTY TO \$100,000 WITHOUT COMMISSION INVOLVEMENT.

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TYPE OF LICENSEE	PROBLEM	ACTION TAKEN	ACTION UNDER PROPOSED POLICY
POWER REACTOR	TRANSPORTATION - EXCESSIVE EXTERNAL RADIATION	\$ 4,000	\$ 40,000
POWER REACTOR	CONTAINMENT INTEGRITY BREACHED FOR 18 MONTHS	\$450,000 AND ORDER	* AND ORDER
POWER REACTOR	OVEREXPOSURE DURING ENTRY UNDER REACTOR VESSEL	\$ 12,000	\$ 50,000
POWER REACTOR (CONSTRUCTION)	SAFETY STRUCTURE IMPROPERLY CONSTRUCTED	\$ 61,000 AND 50.54 (F) LETTER	\$100,000 AND ORDER
POWER REACTOR (CONSTRUCTION)	BREAKDOWN IN QUALITY CONTROL IN MULTIPLE AREAS FOR FOUR MONTHS	\$100,000 AND ORDER	*AND ORDER
DISTRIBUTOR OF MEDICAL ISOTOPES	OVEREXPOSURE	\$ 5,700	\$ 5,000

* POLICY LIMITS CIVIL PENALTY TO \$300,000 WITHOUT COMMISSION INVOLVEMENT.