



NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 24, 1980

CHAIRMAN

MEMORANDUM FOR: Acting Executive Director for Operations
FROM: John Ahearne *J. Ahearne*
SUBJECT: ENFORCEMENT PAPERS

I have the following comments/questions regarding the enforcement papers:

Regarding SECY-80-139 (the I&E paper):

- Page 2: The first paragraph references enforcement actions available to NRC. I believe we must include criminal penalties as a potential enforcement action. We have in the past either been unsuccessful or not particularly diligent in the use of such, but certainly once we grant the possibility of willful noncompliance (as the paper does), we should include criminal penalties as potential enforcement action. I recognize that a potential criminal penalty involves referral to the Justice Department and then action by the courts. Nevertheless, the referral for criminal action should be one of our enforcement actions.

- Enclosure 1, page 1: The general statement of enforcement policy must utilize the phrasing of the PPPG. At the moment the PPPG is a draft, however, I assume that any paper coming up would attempt to indicate whether it is consistent with the draft PPPG and where it differs. (It must be followed by the staff once final.)

- Page 4, footnote 4: I believe the issue of discretion must be expanded. I agree with the EDO's comments in his March 18th memorandum regarding enforcement policy, accompanying the Standards paper on loss of safety function - namely, discretion in policy questions in such areas as cost, need for power, and national security should be reserved for the Commission. Staff discretion should be limited to the technical application of public health and safety criteria.

- Page 5, under Notice of Deviation: Is there any requirement that the licensee must respond to such a notice?

- Page 7, top of the page: I agree mitigating circumstances should be considered. However, I disagree that the notice of violation will not ordinarily be issued for violations which have been identified by the licensee and have been corrected and the correction documented or

POOR ORIGINAL

8009180291

Rec'd
Date... 3/25/80
Time... 2:21

for which corrective action has been promptly initiated. I would prefer to say that if the violations have been identified by the licensee and have been etc., etc., that these will be taken into consideration as mitigating factors prior to deciding on whether a notice of violation should be issued.

- Page 9, top of the page: Similarly, I would revise the last sentence of the first paragraph to read:

" . . . identification and correction of violation by the licensee, where present, will usually result in a reduction in the amount of the penalty."

That is, I would insert "usually" and eliminate "50%."

- Page 9, second paragraph: As Commissioner Gilinsky suggested at the meeting, the staff should check with, the FAA, to find out whether civil penalties are assessed to operators they regulate. I have not reached a position on whether civil penalties should be imposed on operators but I do not understand why we should make a blanket statement that "civil penalties will not be imposed on operators. . ."

- Page 13, Table 1: Consistent with my comment regarding page 9, I do not agree with the statement at the bottom of the table that civil penalties will automatically be reduced by 50%.

- Page 13, Table 1: As mentioned by Commissioner Hendrie in the meeting, when the Commission addressed the increase for civil penalties, I believe the Commission intended the large amounts to be available for use but not to automatically be the norm. I believe I&E has provided a mechanistic approach which automatically makes the high fine the norm. I think this undercuts the arguments we have made, both in the Commission and on the Hill, as to the rationale for having the penalties and also, in the long run, will not assist us in improving our enforcement actions. Consequently, I believe that any formula approach must have lower limits for the automatic application, while leaving open the potential for increases up to the higher limits that the proposed law would allow.

I presume that the authors of this enforcement policy package did read the transcripts of the Commission meetings in which the issues were discussed. If not, I would recommend they do so.

- Page 14, Table 2: I believe the right hand column should be labeled "Percent of Basic Penalty Normally Applicable," i.e., I would insert the word "normally," to allow for some variation.

- Page 27: Why is there no mention of a part 21 violation in attachment D?

- Enclosure 2: While heartily endorsing MPA's statement that the enforcement policy must incorporate the PPPG philosophy, I disagree with the method by which MPA apparently believes it should be included. At the bottom of page 1 of their enclosure, after commenting that the reader cannot determine whether the I&E paper satisfies the PPPG arguments, MPA goes on to say they should add certain types of information to the paper. A reader might conclude that adding that information would then lead to incorporation of the philosophy. I disagree. I do agree that they have asked good questions, but, except for the regionalization question, they are not ones that would lead to incorporating the PPPG.

With reference to the Standards paper, Total Loss of Safety Function Due to Human or Procedural Error:

- Page 3. Can you explain why a design error which may take a long time to fix is not a cause for immediate shut down but a human or procedural error is? This sounds the threat approach. Is it?

- Page 4. Item No. 3, under Proposal 3, mentions the recent reactivation of the "I&E Licensee Regulatory Performance Evaluation as the Systematic Assessment of Licensee Performance." Can the EDO explain a little more about that action?

- Enclosure B, page 1, II. Why is not the Licensee Event Report also sent to NRR?

- Enclosure B, page 2, third para: What ability does Administration have to modify, suspend, or revoke a license?

- Enclosure C, page 1, No. 1: This proposal is described as including "the same. . . corrective action requirements of proposals 1 and 2." Does this include the automatic shut down feature of proposal 1?

- Enclosure C, page 4, third para: ". . . the costs to the utility are recoverable by passing them on to the ratepayers. . ." This is not necessarily true. Whether or not financial penalties can be passed on to the rate payers is a decision of State Utility Commissions or of FERC. I believe we should petition such organizations to take the position such costs should not be passed on to the rate payers, but I do not agree that it is automatic that they are.

- Enclosure F: Mr. Minogue's letter to Director, NRR regarding the staff paper. Minogue's memorandum says "SD is lukewarm on all three proposals. . ." I do not believe that the author of Mr. Minogue's memorandum has read the description of proposal 3 of the paper. The paper (Enclosure C, page 5) describes this alternative as:

- focusing the sanctions taken on those creating the need for the sanction.
- providing public recognition.
- providing an early warning.
- minimizing the consequential impact on consumers and investors.
- easily understood as regulatory control.
- providing the strength and stability of enforcement actions of Proposal 1 and providing the flexibility of NRC action and retention of regulatory authority of Proposal 2.

The EDO must get the divisions together to iron out some of the problems that appear in the various proposals, answer the questions raised by Commissioners, incorporate the MPA request, and then come back to us with alternatives. I do not believe it necessary for the EDO to resolve these issues, but do believe it necessary for I&E, Standards, and NRR to come forward through the EDO with their comments.

cc: Commissioner Gilinsky
Commissioner Kennedy
Commissioner Hendrie
Commissioner Bradford
Secretary
NRR
ELD
OSD
OGC
OPE