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PROPOSED RULE PR 2
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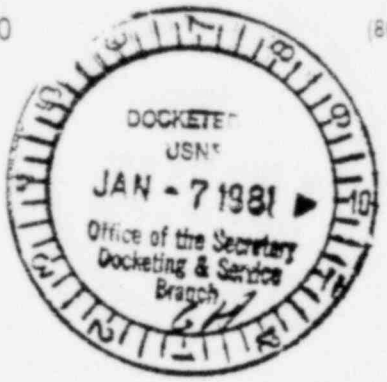

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Docketing and Service Branch

Gentlemen:

Notice in the Federal Register dated October 17, 1980 requested comments on 10 CFR Part 2, "Proposed General Statement of Policy and Procedure for Enforcement". In addition to responding to the nine specific questions listed in the notice, we offer the following more general comments for your consideration.

Our experience with the Commission's Inspection and Enforcement program has shown it to be thorough, fair and extremely constructive. Frequent rigorous inspections, discussions and exit interviews have reinforced mutual interests in assuring safe operation of this facility and, through sharing of experience, contributing useful knowledge to other licensees. In our opinion, the Commission has, and is effectively using, the authority and procedures necessary to enforce its regulations.

The proposed Policy indicates the Commission's desire that such enforcement be exercized equitably among all licensees, with widely differing facilities, and located within the jurisdictions of the Commission's various Regional Offices. We believe that this goal is achievable through existing avenues of communication between the Commission and licensees without need for the proposed new Policy or its codification in 10 CFR Part 2.

The proposed Policy would rigidly categorize, and impose pre-determined penalties for the entire gamut of potential violations. We are deeply concerned that such Policy will erode the present system of inspection and enforcement and will untimately result in a counterproductive, adversarial relationship. This would divert both the Commission and licensee from a focus on the primary safety concerns to a diffuse, and often arguable, myriad of less important details which could ultimately compromise a basic safety system.

Consequently, we urge that no such policy be issued.

If the Commission continues to believe that a codified policy of this type is needed, we request that the comment period on the proposed Policy be extended for at least an additional sixty days. We believe that such additional time is both required and warranted to develop constructive suggestions for needed modifications.

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In the interim, we offer the following initial responses to the Commission's nine questions:

(1) Is the policy fair and equitable?

No. Among many other things, no basic distinction is made between violations in a facility which is under construction and one which is in operation. A violation detected, reported and corrected by the licensee prior to operation poses no threat to the public. An arbitrary penalty under such circumstances would be particularly inequitable and potentially counterproductive. Other inequities, too numerous to mention, arise from the Policy's attempt to equate violations occurring in differing categories. To cite but one example, Supplement III categorizes breakdown of a security system (unknown to a potential, and probably non-existent, intruder) as Level II, and thus of supposed equal severity to an actual offsite radiological release five times greater than the technical specification limit.

(2) Is the policy understandable?

No. The policy statement contains numerous inadequately defined terms. In Supplement VI, "serious safety event" and "significant safety implication" are examples of highly subjective terms which are subject to varying interpretations. In Supplement III, the phrase "access could have been gained without detection" (which might better be worded "access is likely to be gained") is but one example of arguable wording.

(3) Are the Severity Levels appropriate?

No. Severity Levels V and VI appear particularly inappropriate and should be dropped in order to focus attention on more major concerns. In addition, the distinction between Levels I and II is often indistinct and arbitrary at best. In contrast, the Commission's longstanding classifications of "violation," "infraction" and "deficiency" are well understood. Their continued use would promote more effective enforcement.

(4) Are the different types of activities well-enough defined? Should there be others?

We do not believe that the different types of activities are well enough defined. Furthermore, we do not believe that sufficient definition can be obtained to allow for the promulgation of an enforcement policy.

(5) Are the distinctions among various types of licensees shown in Table 1 appropriate?

We do not believe that such distinctions as shown in Table I are appropriate. The level of the fine, if warranted, should be decided on a case-by-case basis. The factors which are relevant to determining the

extent of a violation or infraction would most likely be different for each case. For example, one licensee with a history of numerous infractions and violations may be fined for a violation/infraction at one level, while another licensee with a record of few or no violations/infractions be fined at a low level or no fine at all.

(6) Are the factors for determining the level of enforcement actions appropriate? Should there be others?

No. As previously stated, we believe that the attempt to rigidly categorize violations, penalties and enforcement actions is unwarranted.

(7) Is the degree of discretion allowed to Office Directors appropriate? Should there be more flexibility permitted? Less?

We would favor far more discretion allowed by Office Directors so that the specific circumstances surrounding each violation may be evaluated and dealt with equitably on a case-by-case basis. Equity of treatment by different Regional Offices could be assured through Commission coordination and communication.

(8) Are the Levels of civil penalties that require Commission involvement appropriate? Should they be higher? Lower?

The concept of fitting fines to an ability to pay is arguable of itself. However, such concept and the potential for unwarranted punitive fines, suggests that the levels requiring Commission involvement should be lowered. The Policy, if issued, should also provide a specific mechanism for appeal to the Commission of all civil penalties, made by Office Directors.

(9) Are the provisions for escalated action, set forth in Table 2, appropriate?

No. We suggest that Table 2 be deleted in its entirety. The Commission should not reduce its present flexibility to apply varying sanctions in appropriate response to a wide variety of violations.

We appreciate the opportunity which the Commission has accorded to comment. In summary, we believe that the proposed Policy is unwarranted, has a high potential of being counterproductive, and should not be issued.

Yours truly,

J. A. Buckham