



RULEMAKING ISSUE (Affirmation)

98
MAY 11 1988
TIME RECORDED

January 29, 1988

SECY-88-33

For:

The Commissioners

From:

Victor Stello, Jr.
Executive Director for Operations

Subject:

RECONSIDERATION OF ENFORCEMENT POLICY PROVISION INVOLVING
REOPENING CLOSED CASES

Purpose:

To obtain Commission approval of a modification of the
Enforcement Policy in regard to reopening of closed
enforcement cases.

Summary:

During the October 20, 1987 testimony before the Subcommittee
on Nuclear Regulation, Chairman Zech, in response to questions
from Senator Breaux, committed to reexamine the provisions
in the General Statement of Policy and Procedure for Enforcement
Actions (Enforcement Policy) on reopening closed cases. The
staff has reconsidered the policy consistent with the Chairman's
testimony and proposes that the Commission adopt and publish
the modification described in this paper.

background:

In SECY 86-74 (February 7, 1986) the staff recommended that
the Commission adopt a policy for reopening of closed
enforcement cases stating:

"The staff believes that if additional information
indicates that a previously closed enforcement action
was inappropriate, the original action should be
withdrawn and the appropriate action taken unless the
deterrent benefits associated with such action would
be outweighed by the prejudice to the recipient."

In SECY 86-234 (August 7, 1986) the staff, recognizing the
reopening issue occurs so infrequently, concluded that the
reopening issue should not be in the policy but sought the
Commission's approval of the following guidance:

"If significant new information is received by the
NRC which indicates that an enforcement sanction was
incorrectly applied, that action could be reopened to
correct the record. For example, if new information
shows that a violation was less serious than originally

Contact: James Lieberman, OE
(x20741)

8802490122 XA

22PP

believed, the record could be changed to reflect a lesser sanction. If, on the other hand, significant new information indicates that the sanction was not severe enough to provide adequate deterrent effect, the record could be reopened to increase the sanction. However, if the licensee would be severely or unjustly prejudiced by a change in the enforcement sanction, then the need to correct the record and deter future misconduct would be balanced against this negative effect. Reopening an enforcement action is expected to occur only rarely and would require specific prior approval of the Director, IE."

The Commission on September 17, 1986 disapproved reopening to impose greater sanctions but agreed that reopening is appropriate if new information demonstrates a need to require additional remedial action to abate the effects of the prior violation. Commissioner Bernthal believed that reopening should be handled on a case-by-case basis. The Commission adopted the following language for publication in the Enforcement Policy:

"If significant new information is received by the NRC which indicates that an enforcement sanction was incorrectly applied, that action could be reopened to correct the record. Reopening should occur only (1) if remedial action, e.g., in the form of an order, is necessary to abate the continued harm of a violation to the public health and safety, the common defense and security, or the environment or (2) if new information shows that a violation was less serious than originally believed or that it did not occur. Enforcement action would not be reopened where the only change to the prior action would be to increase the severity level of a violation or to impose or increase a civil penalty. Reopening an enforcement action is expected to occur only rarely and would require specific approval of the Director, IE."

The Commission, on September 10, 1987 in response to SECY 87-152 (June 22, 1987), directed in regard to the reopening issue that the third sentence be revised to state, "Enforcement actions would normally not be reopened where the only change to the prior action would be to increase the severity level of a violation..." (emphasis added). The policy was published on September 28, 1987 with that change.

Eleven comments were received in response to the September Federal Register Notice, two of which addressed the reopening issue. Kerr-McGee Corporation stated that it was appropriate to provide a provision in the policy for reopening a closed

enforcement action but thought it was appropriate to hold a conference with the licensee before reopening a closed case. The staff would expect in most cases, if a sanction would be increased, an enforcement conference would be appropriate under the Enforcement Policy. Bishop, Cook, Purcell and Reynolds, on behalf of eighteen power reactor licensees, supported the provision as published, emphasizing the importance of "finality to enforcement actions."

Discussion:

Senator Breaux questioned the basis for reopening a case based on new information if a sanction would be reduced but not if a sanction would be increased. The Chairman stated that the word "normally" was intended to put judgment into the decision and that if new evidence showed that a matter was more severe than we thought, we could increase the severity level and make a more severe penalty. The Chairman committed to look into the matter and let the Committee know the result of the reevaluation. The relevant transcript pages are in Enclosure 1.

Whether or not to reopen a completed enforcement action requires the exercise of sound discretion and judgment. It is difficult in the absence of a specific case to establish what action, if any, should be taken as a result of new information. Considerations in making a determination to reopen a closed case might include: whether the licensee knew or should have known of the information at the time the original action was closed, the time that has passed since the action was closed, whether the doctrine of res judicata applies, the opportunities available to learn of the information earlier and the reason for NRC not obtaining it earlier, the significance of the new information, the extent of the change to the enforcement action warranted by the new information, the resources necessary to reopen the case, the need for an increased sanction to provide additional deterrence for the impacted licensee and other similar licensees, whether the licensee acquiesced to the original enforcement action, whether remedial action is needed to abate the effect of the original violation, whether the original violation in fact occurred, and whether the licensee would be severely or unjustly prejudiced by a reopening decision (apart from receiving a more severe sanction).

Recognizing that this is an issue which has arisen very infrequently in the past and should continue to arise very infrequently and that there are many considerations relevant to a reopening decision on the basis of new information, the staff recommends that the Commission not set out in advance the circumstances when the Commission believes it is appropriate to reopen a case. We would then have the

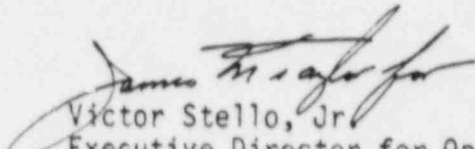
flexibility to increase or decrease sanctions as appropriate on the basis of new information.

Therefore, section V.F. of the Enforcement Policy should be modified to make it clear that the decision to reopen a case is to be made on a case-by-case basis. A draft notice to so modify the policy is set forth in Enclosure 2.

Coordination: The Office of General Counsel has no legal objection to this paper.

Recommendation: That the Commission approve for publication in the Federal Register the modification to the Enforcement Policy set forth in Enclosure 2.

Note: Upon resolution of this issue, the Congressional Committees will be informed.


Victor Stello, Jr.
Executive Director for Operations

Enclosures:

1. 10/20/87 Transcript
2. Federal Register Notice

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Wednesday, February 17, 1988.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Wednesday, February 10, 1988, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an Open Meeting during the Week of February 22, 1988. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

DISTRIBUTION:

Commissioners
OGC (H Street)
OI
OIA
GPA
REGIONAL OFFICES

EDO
OGC (WF)
ACRS
ASLBP
ASLAP
SECY



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 18, 1987

NOTE TO: Jim Lieberman, Director
Office of Enforcement

FROM: Mike Callahan *[Signature]*
Congressional Affairs, GPA

SUBJECT: TRANSCRIPT OF 10/20/87 BREUX HEARING - REVIEW OF ENFORCEMENT
POLICY

As you requested, here is the portion of the subject hearing transcript which covers Sen. Breux's request to review a portion of the NRC's enforcement policy and the Chairman's commitment to do so.

1 give you an example of just a couple of them.

2 First of all, did the licensee itself report the
3 violation, or was it necessary for us to find out ~~what~~
4 about the violation? If the licensee itself reported the
5 violation, it does make a difference. It depends on what
6 he said, how long it had been taking place and whether
7 there was a good-faith effort to take action immediately.

8 If he reported himself, if he took immediate action to
9 correct it, those things are considered in ~~the~~ mitigating
10 ~~of~~ a possible penalty. In addition, the performance of ~~the~~
11 operator ^{10/23} over time is considered. Some of our plants do
12 operate in a truly outstanding manner over many, many
13 years, and if a violation is alleged to be in the
14 "understandable mistake" area or something that was not
15 certainly completely careless and negligent, that would be,
16 perhaps, mitigating circumstances. So I am saying that
17 ~~each case~~ we look at ^{it} on a case ^{by case} basis.

18 There are times when it seems that common sense and
19 the good judgment would dictate mitigation.

20 Senator BreauX. In that same revised policy
21 statement, you set out a statement that indicates that the
22 Commission will reopen previously-closed investigations
23 when new information is made available regarding that
24 investigation to the Commission, indicating that some
25 remedial action is needed to protect the human health and

1 the safety. That is fine.

2 But it goes on to say, "or it can be reopened when
3 there is an indication that a severity level of the
4 violation should be downgraded." But the Commission has
5 also stated that in the situation where new evidence
6 indicates that an increase in the severity level of the
7 violation or the imposition of an increase of an
8 already-assessed civil penalty is warranted, that
9 "enforcement action would normally not be reopened."

10 What I need is some explanation of the rationale that
11 says you have the authority and will, in fact, reopen
12 investigations when it is determined that a less severe
13 penalty may be required which you will not do so when the
14 evidence indicates that a greater penalty should be
15 assessed. It makes no sense to me at all. Am I reading it
16 wrong, or do you have a rationale for that?

17 Admiral Zech. You are reading it right, Mr. Chairman.
18 It is a judgment call, I think. Most of us ^{find that the} ~~have the~~
19 experience we have had with enforcement is not all that
20 satisfactory. We try to make enforcement prompt and fair,
21 but we don't make it as prompt as we would like to.

22 Often, enforcement cases come up several years after
23 the incident. At that time, it has been two years or
24 perhaps less or perhaps more from the incident. We ^{issue a}
25 release ^{that} ~~we~~ we have signed a civil penalty. It ^{was} ~~almost~~ reopens

1 the publicity and the case again. Everyone is involved and
 2 concerned about a plant that may have been, for two years,
 3 operating very well; we are talking about something that
 4 was two-years old.

5 It causes a lot of, perhaps, unnecessary concern. But
 6 we feel that even though it is not as timely as we like, it
 7 is responsible action on our part to call attention to
 8 these ~~accidents~~ ^{incidents}. If ~~that statement plays in that regard~~
 9 ~~and it does come up that perhaps it was more severe than~~ ^{we thought} it
 10 might have been, in my judgment, perhaps the attention that
 11 has been brought to it ^{is warranted} ~~if the utility has not~~. If there is
 12 no new information that would cause us to be concerned
 13 ~~about more severe accidents or~~ ^{that incidents will result unless there is} more severe action, in my
 14 judgment, the action ^{that previously} has been taken, ~~and it~~ is sufficient.

15 Senator Breaux. Admiral, I understand that, but with
 16 all respect to the Commission, I think it is almost
 17 ludicrous for you to have a policy statement that says that
 18 if new evidence is submitted that justifies opening an
 19 investigation, that that evidence indicates we ought to
 20 reduce the penalty; we will reopen that investigation. We
 21 probably will have no problems with that.

22 But to follow it up by saying, "However, if the
 23 evidence indicates that an increase in the penalty should
 24 be considered, we are not going to open it up."

25 Admiral Zech. If I recall, the wording, I think it

1 says, if new evidence is introduced, then it is a new ball
2 game. If there is new evidence introduced, then, of
3 course, we could make a more severe penalty.

4 But if there is not new evidence --

5 Senator BreauX. But the policy statement, I don't
6 read it like that. The policy statement said: If new
7 evidence is not great enough, then we are going to reopen
8 the investigation. I read it as saying that if new
9 evidence indicates that the penalties were too severe, that
10 we will look at it. But if the evidence indicates an
11 increase in the penalties should have been justified, then
12 we are not going to look into it.

13 Admiral Zech. No, sir. It is my understanding that
14 if new evidence is introduced or new circumstances present
15 themselves, we can start a whole new proceeding.

16 Senator BreauX. Let me read what it says, and you can
17 interpret this, because I don't read it like that.
18 "Reopening closed enforcement actions." That first
19 paragraph states the general statement of what we are
20 doing, and I am reading from the Federal Register of
21 Monday, September 28, 1987, Rules and Regulations.

22 "The Commission believes that reopening a previously
23 closed enforcement action may be appropriate under certain
24 circumstances. If significant new information is received
25 by the NRC which indicates that an enforcement sanction was

1 incorrectly applied, that action could be reopened to
2 correct the record." No problem.

3 Reopening should occur only: One, if the remedial
4 action in the form of an order is necessary to abate the
5 continued harm of the violation to the public health and
6 safety, the common defense and security or the environment;
7 or, two, if new information shows that a violation was less
8 serious than originally believed or that it did not occur.
9 Enforcement action would normally not be reopened where the
10 only change to the prior action would be to increase the
11 severity level of a violation or to impose or increase its
12 civil penalty."

13 That sounds pretty clear to me that you are proposing
14 a regulation that says: If we think that we did too much,
15 we are going to reopen it, but if we think and evidence
16 indicates that the change would be to increase the severity
17 level of the violation or to impose or increase a civil
18 penalty, we are not going to do it.

19 That is what that tells me.

20 Commissioner Bernthal. Mr. Chairman, let me make a
21 comment here. The insertion of the word "normally" there
22 was a modification that I believe I proposed. I did not
23 endorse the original form of this document, which, I think
24 you are quite right, would have categorically excluded ever
25 reopening a civil penalty or a case where such reopening

1 would be in the interest of making the original finding
2 more severe.

3 The insertion of the word "normally" there certainly
4 met some of my objections to the original wording, and at
5 least, I think, that does allow some room for judgment,
6 now, on the part of reopening, even in a case where a
7 matter might be reopened to impose more severe penalties.

8 But the original version I found unacceptable. It
9 would have categorically excluded reopening under any
10 circumstances.

11 Senator Breaux. I think back. Every time I read it,
12 it is ludicrous, it really is, because we are saying, "A
13 closed enforcement action is going to be reopened if we are
14 going to reduce the penalty, but it is not going to be
15 reopened if there is any prospect for increased penalty."

16 If we are going to reopen them, we ought to open them
17 to increase penalties or to downgrade them. This is a
18 total lack of balance in which we are we opening hearings.

19 This, in my civilian look at it, from my position, is
20 that you can't justify that. Please tell me how you do.

21 Admiral Zech. There is no intention for there to be a
22 lack of balance, Mr. Chairman. The intention that I read
23 into it, and we all agree with the word "normally" is to
24 put judgment into it, and we intend, if there is new
25 evidence that shows that it is more severe than we thought,

1 we could open a whole new hearing and go to a much higher
2 sever^{ity} ~~ence~~ level.

3 Senator Breaux. But that doesn't say that, though.
4 It doesn't say that you have the judgment.

5 Admiral Zech. It should, Mr. Chairman. That is what
6 is meant by it. Perhaps we should look at the wording
7 again. It was my feeling that we had a very sensible
8 policy statement in that regard, very sensible wording.

9 But if it reads that way to you, and perhaps it is
10 something, of course, that we should look at. The
11 intention is if new evidence is there, we can start over
12 again. That is the intention. If it doesn't say that --

13 Senator Breaux. New evidence, because this doesn't
14 say that. I think we can all take a vote here and agree
15 that this sets a different standard for reopening an
16 investigation if the evidence indicates that the penalties
17 should be increased or that the requirement should be
18 increased. That is what it says.

19 Admiral Zech. We will certainly take a look at the
20 wording, Mr. Chairman. If that is the way you read it,
21 that is important. That is not what we intend. If there
22 is new evidence, it is clear to me we can reopen it. If it
23 is not clear to you, I can tell you we will take a look at
24 it.

25 Commissioner Bernthal. Mr. Chairman, I have got to

1 stress, the original form of that was more egregious than
2 the present form. I think the best compromise we were able
3 to get was the insertion of the word "normally".

4 Senator Breaux. Are you saying this same thing was
5 discussed at some point within the Commission?

6 Commissioner Bernthal. There is no question it was
7 discussed, at least by paper; it was discussed on ^Vote
8 sheets.

9 But I would like to point out the other side of this
10 story, and that is that I think the outcome here is
11 indicative of a problem that seems to be growing where we
12 try and define every conceivable circumstance for a
13 procedure or a rule or a policy in this Commission instead
14 of taking rather rare cases on a case-by-case basis and
15 making the best judgment that we can.

16 There were a number of complaints on the part of
17 various Commissioners, and myself included from
18 time-to-time, that in a very late and untimely manner, the
19 Commission would come in with a decision on a violation
20 that might have been sitting before the staff or perhaps
21 before the Commission for a year or a year and a half,
22 sometimes even longer.

23 This, we felt, wasn't fair. And I think that is the
24 sense that lies behind the language which was originally
25 proposed, which I felt went too far, and the compromise

1 before you does at least allow us a loophole now, I think.

2 Senator Breaux. Is it improper just to say that the
3 Commission has the authority to reopen an investigation if
4 new evidence indicates that the incident was less serious
5 or more serious or that the penalties should be more or
6 less on equal footing?

7 Admiral Zech. No, not at all. And as I say,
8 Mr. Chairman, it is my understanding that if new evidence
9 is there, we do have that authority, but we will certainly
10 look at that wording again.

11 Senator Breaux. Look at it, and please let the
12 Committee know what is going to be done as a result of
13 that.

14 Admiral Zech. Yes, sir; we will do that.

15 Senator Breaux. I think that it should be approached
16 in a balanced manner. This wording, to me, is clearly not
17 balanced, and apparently, discussions were held with regard
18 to that very point.

19 My final question on this enforcement policy statement
20 relates to the type of violations that fall within the
21 various severity categories. I think we have five
22 categories, that the Commission is saying that for Category
23 I through V, Category I will be the most serious violations
24 down to Category V, and certain proposed types of penalties
25 with regard to violations at fault within those categories

NUCLEAR REGULATORY COMMISSION

10 CFR PART 2

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR ENFORCEMENT ACTIONS

AGENCY: Nuclear Regulatory Commission

ACTION: Modification to policy statement

SUMMARY: The NRC is publishing a minor modification to its Enforcement Policy to revise its policy on reopening closed enforcement actions. The policy statement describes the policy which the Commission intends to apply in taking enforcement actions. This policy is codified as Appendix C to 10 CFR Part 2.

DATES: This modification to the Enforcement Policy is effective upon publication. Comments may be submitted on or before _____.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. ATTN: Docketing and Service Branch. Hand deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC between 7:30 a.m. to 4:15 p.m.

Copies of comments may be examined at the NRC Public Document, 1717 H Street, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301-492-0741).

SUPPLEMENTARY INFORMATION:

The Commission on September 23, 1987 issued a revised Enforcement Policy (52 FR 36215, September 28, 1987) in which Section V.F. addressed reopening closed enforcement actions. Section V.F. provided that if significant new information is received which indicates that a previous enforcement sanction was incorrectly applied, the action could be reopened. However, the policy provided that (1) reopening should occur only if remedial action is necessary to abate a continued harm or if the new information shows that the violation was less serious than originally believed or that the violation did not occur, and (2) normally actions would not be reopened where the only change to the prior action would be to increase the severity level of a violation or to impose or increase a civil penalty.

While comments submitted in response to the September 28, 1987 Federal Register Notice were generally favorable to the wording of section V.F, the Commission has reconsidered this policy because it implies that an enforcement action would not normally be reopened to increase a sanction even if such action was warranted. For example, reopening may be warranted to increase a sanction such as a civil penalty on the basis of new information if the reason NRC did not have the information initially was because the licensee misled the NRC by providing false information or withholding the information from the NRC. In such a case, any prejudice to the licensee is the result of its own action. Reopening would be justified to provide the appropriate sanction. Not to do so would reward a licensee's failure to cooperate with the NRC, which of course cannot be accepted or tolerated.

It should be noted that the issue here is reconsidering the existence of the original violation or the circumstances and severity of the original violation. If the new information supports a different violation, then reopening is not the issue because a new and different enforcement action can be taken.

Whether or not to reopen a completed enforcement action requires the exercise of sound discretion and judgment. It is difficult in the absence of a specific case to establish what action if any should be taken as a result of new information. Considerations in making a determination to reopen a closed case might include: whether the licensee knew or should have known of the information at the time the original action was closed, whether the doctrine of res judicata applies, the opportunities available to learn of the information earlier and the reason for NRC not obtaining it earlier, the significance of the new information, the extent of the change to the enforcement action warranted by the new information, the resources necessary to reopen the case, the need for an increased sanction to provide additional deterrence for the impacted licensee and other similar licensees, whether the licensee acquiesced to the original enforcement action, whether remedial action is needed to abate the effect of the original violation, whether the original violation in fact occurred, and whether the licensee would be severely or unjustly prejudiced by a reopening decision (apart from receiving a more severe sanction).

Recognizing that this is an issue which occurs very infrequently and that there are many considerations relevant to a reopening decision on the basis of new information, the Commission has determined it is inappropriate to set out in

advance the circumstances when the Commission believes it is appropriate to reopen a case. Therefore, Section V.F. of the Enforcement Policy is being modified to make it clear that the decision to reopen a case is to be made on a case-by-case basis.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following modification to its statement of Enforcement Policy in Appendix C to 10 CFR Part 2.

Part 2 - Rules of Practice for Domestic Licensing Proceedings

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332; sec. 301, 88 Stat. 1248 (42 U.S.C. 5871)). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b et seq.).

2. Section V.F. of Appendix C - General Statement of Policy and Procedure for NRC Enforcement Actions is revised as follows:

V. Enforcement Actions

* * * * *

F. Reopening Closed Enforcement Actions

If significant new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director for Regional Operations.

Dated at Washington, DC, this day of 1988.

For the Nuclear Regulatory Commission

Samuel J. Chilk
Secretary of the Commission