



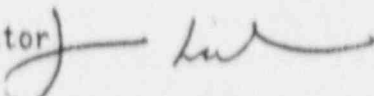
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

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July 17, 1997

EGM 97-015

MEMORANDUM TO: Hubert J. Miller, Regional Administrator
Region I
Luis A. Reyes, Regional Administrator
Region II
A. Bill Beach, Regional Administrator
Region III
Ellis W. Merschoff, Regional Administrator
Region IV
Roy Zimmerman, Associate Director for
Projects, NRR
Thomas T. Martin, Acting Associate Director for
Inspection and Technical Assessment, NRR
Elizabeth Q. Ten Eyck, Director, Division of
Fuel Cycle Safety and Safeguards, NMSS
Donald A. Cool, Director, Division of
Industrial and Medical Nuclear Safety, NMSS
John T. Greeves, Director, Division of Waste
Management, NMSS

FROM: James Lieberman, Director 
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - COMPLIANCE WITH SMALL
BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT (SBREFA)

In March 1996, the Small Business Regulatory Enforcement Fairness Act (Act) took effect. The primary requirements of the Act are: (1) the NRC must consider the Act in civil penalty actions against small entities, (2) the NRC must submit final rules to the Congress prior to their taking effect and also maintain records reflecting compliance with the Act, and (3) the NRC must establish a method for small entities to contact the NRC for assistance in interpreting or complying with regulatory requirements.¹ The definition of final rule is sweeping and covers several enforcement-related matters, including changes to the Enforcement Policy, the Enforcement Manual, and some Enforcement Guidance Memoranda (EGMs). OE has developed procedures to implement the Act. The procedures for submitting enforcement documents that qualify as final rules to the Congress applicable to OE are not being disseminated with this EGM.

As to considering the Act in civil penalty actions against small entities, the Enforcement Policy has been analyzed and is believed to be in compliance with this requirement as it provides that:

¹ See Announcement No. 56, June 9, 1997, as to establishment of the toll-free number for inquiries from small entities.

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- (1) under the current system, smaller licensees generally pay smaller civil penalties, because the agency's graduated civil penalty structure takes into account differences in the size of the licensee, the licensee's ability to pay, and the safety risk of the violation involved;
- (2) civil penalties are normally proposed only for significant violations;
- (3) civil penalties are normally waived for licensees who identify their own violations and take prompt and comprehensive corrective action; and
- (4) civil penalties are normally assessed for willful violations, particularly poor performance, overexposures, loss of radioactive material, and very significant violations.

Further, the Policy makes clear that in determining the amount of the civil penalty, financial hardship can be considered. It is not the NRC's intent that the economic impact of a civil penalty be so severe that it puts a licensee out of business or adversely affects the licensee's ability to conduct licensed activities safely. In such cases, penalties may be reduced or the licensee may be permitted to pay the penalty over time.

Nonetheless, in reaching decisions concerning enforcement actions, the staff should keep the intent of the Act in mind. There may be cases in which, after considering the normal adjustment factors and the size of a qualified small entity to whom a civil penalty may be issued, the staff believes that the penalty should be reduced or eliminated. In those cases, it is appropriate to propose such a modification based on the intent of the Act. This would be applied as an exercise of discretion.

Procedurally, prior to the enforcement panel for a materials case, the Regional enforcement staff or assigned OE Enforcement Specialist, as appropriate, is to check the Controller's list of licensees that qualify as small entities under NRC regulations. Copies of that list have been distributed to Regional Enforcement Coordinators. If the licensee in the case has qualified as a small entity, that fact may be considered in the panel discussion. The appropriate box will be noted on the EA Request and Enforcement Strategy Form. In addition, appropriate keywords are to be entered in EATS when (1) the licensee is a small entity, and (2) when discretion is exercised to apply the Act by reducing a particular enforcement action.

For delegated cases, it is important that the Region issuing the action follow these procedures. If the Region considers the use of discretion based on the Act appropriate, OE is to concur.

No other action is required of the regions or program offices to comply with this aspect of the Act.

cc: E. Jordan, DEDE
J. Goldberg, OGC
F. Gillespie, NRR