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February 1, 2021

Mr. George A. Wilson  
Director, Office of Enforcement  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Re: Nuclear Energy Institute Comments on Proposed Revisions to the NRC  
Enforcement Policy (Docket ID NRC-2020-0261)**

Dear Mr. Wilson:

The Nuclear Energy Institute (NEI)<sup>1</sup> is pleased to provide comments in response to the U.S. Nuclear Regulatory Commission's (NRC) notice 85 FR 78046 (December 3, 2020), wherein the agency proposes various revisions to the NRC Enforcement Policy.

Our comments are set forth in the Attachment to this letter.

We're happy to answer any questions or provide additional information. Thank you in advance for consideration of these comments.

Sincerely,

Ellen C. Ginsberg

Attachment

NEI Comments on Proposed Revisions to the NRC Enforcement Policy

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<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

# COMMENTS OF THE NUCLEAR ENERGY INSTITUTE ON PROPOSED REVISIONS TO THE NRC ENFORCEMENT POLICY

Docket ID NRC-2020-0261

The Nuclear Energy Institute (NEI) appreciates the opportunity to submit the following comments in response to the U.S. Nuclear Regulatory Commission (NRC) notice at 85 FR 78,046 (December 3, 2020), which solicits comments on various proposed revisions to the NRC Enforcement Policy.

NEI’s comments are organized in the following table. NEI provides comments on specific areas of the proposed revisions and suggested changes where applicable.<sup>1</sup>

Section/Page	NRC Text	NEI Comment	NEI Suggested Change
2.2.1(c) and 2.2.1(d) (see page 10-11)	<p>2.2.1(c): The existence of a regulatory process violation does not automatically mean that the issue is significant to safety or security. In determining the significance of a violation, the NRC will consider appropriate factors for the particular regulatory process violation. These factors may include the <b>significance potential or actual consequences</b> of the underlying issue, whether the failure actually impeded or influenced regulatory action, the level of individuals involved in the failure and the reason why the failure occurred given their position and training, and whether the failure invalidates the licensing basis.</p> <p>2.2.1(d) In determining the significance of a violation involving willfulness, the NRC will consider such factors as the position,</p>	Originally, 1(a) considered the actual consequences and 2(b) considers potential consequences, but now (1)(c) and (d) consider “actual or potential” consequences. NEI suggests using consistent language when discussing types of concerns. The NEI suggested changes to 2.2.1 (c) and (d) are to clarify the distinction between the reporting or willfulness issues and the underlying non-compliance.	<p>Consistent and clear language is needed here to discuss the different concerns. Specifically, 2.2.1(c) suggested revisions:</p> <p>“The existence of a regulatory process <del>violation</del> <b>failure</b> <del>violation</del> <b>does not automatically mean that the either the regulatory process failure or the underlying</b> issue is significant to safety or security. In determining the significance of a <b>regulatory process</b> violation, the NRC will consider appropriate factors for the particular regulatory process <del>violation</del> <b>failure</b>. These factors may include the <b>potential or actual consequences</b> of the underlying issue, whether the</p>

<sup>1</sup> **Red text** indicates NRC revisions; **Green text** indicates NEI suggested revisions; Black strikethrough indicate NEI edits to existing Enforcement Policy language.

	<p>training, experience level, and responsibilities of the person involved in the violation (e.g., licensee official or nonsupervisory employee), the <b>significance potential or actual consequences</b> of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violations</p>		<p>failure actually impeded or influenced regulatory action, the level of individuals involved in the failure and the reason why the failure occurred given their position and training, and whether the failure invalidates the licensing basis.”</p> <p>Replace 2.2.1(d)NEI suggested revisions:  “<del>In determining the significance of</del> <b>whether to escalate</b> a violation involving willfulness, the NRC will consider such factors as the position, training, experience level, and responsibilities of the person involved in the violation (e.g., licensee official or nonsupervisory employee), the <b>potential or actual consequences</b> of any underlying <del>violation</del> <b>noncompliance</b>, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation.”</p>
<p>2.2, 2.2.4, and Footnote 2 (see page 8 &amp; 13)</p>	<p><b>2.2.4: Related violations may be dispositioned in parallel within both the traditional and ROP/cROP process. The SDP will inform but may not necessarily determine the severity level, while the severity level or civil penalty amount should not influence the SDP.</b></p>	<p>Section 2.2 preserves the position that violations are dispositioned under either the cROP/ROP or traditional enforcement, but the changes to 2.2.4 confuses this point. Section 2.2.4 includes the concept of a “related violation” which as described, appears to endorse a sort of double-counting</p>	<p>Section 2.2.4 and the associated footnote 2 require clarification. Specifically, NEI suggests the NRC revise the example in footnote 2 to more clearly state the NRC’s intent on enforcing “related violations.”</p> <p>At a minimum, NEI suggests adding to the end of the last</p>

	<p>FN 2: In this context, the term “related” refers to violations that have a cause and effect relationship or directly related to the same event. For example, a willful failure to adequately perform a quality-related work order (dispositioned using traditional enforcement) that results in an inoperable structure, system or component (dispositioned using ROP or cROP).</p>	<p>when dispositioning a violation by permitting both traditional and SDP enforcement for the same event.</p> <p>Further, the example provided to define the term “related” in footnote 2 does not flow from 2.2’s logic.</p> <p>Specifically, a willful failure to adequately perform a quality related work order should be dispositioned entirely through traditional enforcement. Equipment that became inoperable due to that willful failure is part of the same violation and should not be considered separately.</p>	<p>parenthetical of footnote 2 “as an impact to a performance indicator.”</p>
<p>2.2.2.c &amp; d (see page 12)</p>	<p>(c) <u>SL III</u> violations are those that resulted in or could have resulted in moderate safety or security consequences (e.g., violations that created a potential for moderate safety or security consequences or violations that involved systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event). Additionally, violations involving licensee officials that either actually impeded or influenced a specific regulatory action such as a licensing decision or inspection activity that would have likely resulted in a different regulatory decision or that were committed</p>	<p>The explanation of these revisions in the Summary Document (item 320) does not relate to the suggested revisions.</p> <p>The proposed addition is vague, and it is unclear exactly what type of influence or impediment a licensee official would need to undertake to result in a SLIII or SLIV violation.</p>	<p>NEI recommends the NRC keep the original language.</p>

	<p>willfully are typically assigned at least a SL III significance. <b>[320]</b></p> <p>d. SL IV violations are those that are less serious, but are of more than minor concern, that resulted in no or relatively inappreciable potential safety or security consequences (e.g., violations that created the potential of more than minor safety or security consequences). <b>Additionally, violations that impeded or influenced a specific regulatory action such as a licensing decision or inspection activity but would likely not have resulted in a different regulatory decision are typically assigned a SL IV significance. [320]</b></p>		
2.3.4 (b)(2)(c) <i>(see page 23)</i>	<p>If the NRC identified the violation but concludes that, under the circumstances, the licensee could not have reasonably identified the problem earlier, the <del>matter would be treated as</del> NRC may still give identification credit <del>licensee identified</del> for purposes of assessing the civil penalty. <b>[334]</b></p>	<p>NEI is concerned that this supposed ‘clarity’ may actually be walking back the application of the ‘not reasonably identifiable’ credit to licensees. There is a difference in application between “may be given consideration” and “would be treated as licensee identified.”</p>	<p>NEI recommends the NRC keep the original language.</p>
2.3.4 (c) <i>(see page 26)</i>	<p><del>If the corrective action is judged to be prompt and comprehensive, an NOV normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the NOV normally should be issued with a base civil penalty. When a licensee voluntarily informs the NRC that a violation of NRC employee</del></p>	<p>The original language included “normally should be issued” which allowed for some discretion in the application of civil penalties for discrimination cases where deemed necessary.</p> <p>The revised language removes that discretion and instead, favors</p>	<p>NEI recommends the NRC keep the original language.</p>

	<p>protection regulations has occurred for a discrimination issue in which the NRC did not perform an investigation; a civil penalty is not proposed if corrective action is judged to be prompt and comprehensive. If the corrective action is judged to be less than prompt and comprehensive, the NOV normally should be issued with a base civil penalty.</p>	<p>the issuance of civil penalties, with exception only in cases where:</p> <ol style="list-style-type: none"> <li>1. Licensee voluntarily informs the NRC of violation (could eliminate cases of request for information prompted internal assessment findings);</li> <li>2. NRC does not investigate; and</li> <li>3. NRC determines the corrective action taken is prompt and comprehensive.</li> </ol>	
<p>6.4 (c)(5) (see page 57)</p>	<p>A non-willful compromise (see 10 CFR 55.49, “Integrity of Examinations and Tests”) of an application, test, or examination required by 10 CFR Part 55, “Operators’ Licenses,” or inaccurate or incomplete information inadvertently provided to the NRC, <del>subsequently contributes to the NRC making an incorrect regulatory decision, such as the following</del> and has any of the following effects:</p> <ol style="list-style-type: none"> <li>(a) in the case of initial operator licensing, contributes to an individual being granted an operator or senior operator license, or</li> <li>(b) in the case of operator requalification, contributes to an individual being permitted to</li> </ol>	<p>The wording of this revision will result in violations that have little to no consequence being classified as Severity Level III violations. The action of “contributing to an individual being granted an operator license” is left vague and open to interpretation.</p> <p>NEI suggests adding clarity to the revision by adding the requirement that the violation has or could have had moderate safety or security consequences, consistent with the definition of a severity level III violation.</p>	<p>Revise (a) to say” (a) in the case of initial operator licensing, <del>contributes to an individual being granted an operator or senior</del> had the information been provided completely and accurately, the individual would not have been granted an operator license or</p> <p>Similarly, revise (b) to say: (b) in the case of operator requalification, <del>contributes to an individual being</del> had the information been provided completely and accurately, the individual would not have been permitted to continue to</p>

	<p>continue to perform the functions of an operator or senior operator,</p> <p>(c) contributes to a medically unqualified individual performing the functions of a licensed operator or senior operator.</p>		<p>perform the functions or an operator or senior operator.</p>
<p>6.4 (d)(1)(d) (see page 58)</p>	<p>(d) an individual operator who met <del>ANSI/ANS 3.4, Section 5</del>, the applicable industry standard as certified on NRC Form 396, required by 10 CFR 55.23, but <del>who did not perform the functions of a licensed operator</del> failed to report a condition that would have required a license restriction to establish or maintain medical qualification based on having the undisclosed medical condition.</p>	<p>The addition of the phrase “<del>who did not perform the functions of a licensed operator</del>” is overly restrictive and not consistent with the definition of a Severity Level IV violation as defined in the Enforcement Policy section 2.2.2.</p> <p>Section 2.2.2(d) states that SL IV violations are those that resulted in “inappreciable potential safety or security consequences.”</p> <p>Section 2.2.2(c) also states that “SL III violations are those that resulted in or could have resulted in moderate safety or security consequences.”</p> <p>However, the condition described in (d)(1)(d) of Section 6.4 is one where a licensed operator failed to report a license restriction, but was found to be in compliance with that condition. Since the operator was found to be in compliance with the industry standard, it is not necessary to require an additional restriction to say that the operator “did not perform the functions of a</p>	<p>NEI recommends for consistency with section 2.2.2 and for clarity, the NRC should delete, “<del>who did not perform the functions of a licensed operator.</del>”</p>

		licensed operator” during the time in question.	
6.16(a) (see page 85)	<p><b>6.16 Independent Spent Fuel Storage Installations [337]</b></p> <p><i>a. SL I violations involve, for example:</i></p> <ol style="list-style-type: none"> <li>1. A violation that resulted in loss of fission product barriers (e.g., fuel cladding and confinement) resulting in a member of the public receiving a radiation dose in excess of regulatory limits;</li> <li>2. A violation that resulted in significant contamination to the environment; or</li> <li>3. A violation that resulted in an inadvertent criticality event.</li> </ol>	NEI requests the examples in (a)(1-3) be deleted. These examples cannot occur at an ISFSI and new examples should be written to reflect actual scenarios at an ISFSI.	Delete 6.16(a)(1-3)
6.16(b) (see page 85)	<p><i>b. SL II violations involve, for example:</i></p> <ol style="list-style-type: none"> <li>1. A violation that resulted in or could have resulted in loss of fission product barriers (e.g., fuel cladding or confinement);</li> <li>2. A violation that resulted in loss of a system designed to prevent or mitigate a serious safety event; or</li> <li>4. A violation that resulted in a significant loss of criticality margin.</li> </ol>	NEI has modified example (b)(1) to more accurately reflect what occurs at an ISFSI. Specifically, the “loss of fission product barriers” is not a meaningful term with respect to cladding in dry storage. What the design is intended to do is limit “gross rupture,” which is not the same as a defect in the individual rod. We have added language to example 1 to reflect that fact.	<p>Revise example (b)(1) to read:</p> <p><i>b. SL II violations involve, for example:</i></p> <ol style="list-style-type: none"> <li>1. A violation that resulted in or could have resulted in <del>loss of</del> fission product barriers (e.g., fuel cladding or confinement) <del>unable to perform their design function</del>;</li> <li>2. A violation that resulted in loss of a system designed to prevent or mitigate a serious safety event; or</li> <li>4. A violation that resulted in a significant loss of criticality margin.</li> </ol>

<p>6.16(c) (see page 85)</p>	<p><i>c. SL III violations involve, for example:</i></p> <ol style="list-style-type: none"> <li>1. A licensee fails to obtain prior Commission approval as required by 10 CFR 72.48 for a change that caused the NRC to undertake a further inquiry such that a significant revision to either the licensee's change or evaluation was required;</li> <li>2. A licensee fails to adequately oversee contractors as required by 10 CFR 72.154, which results in the use of services or products important to safety that are significantly defective or of indeterminate quality;</li> </ol>	<p>NEI modified example 1 as indicated in green. Revising an evaluation should not have the same consequences as having to significantly revise the actual change being evaluated. The former should be evaluated under 6.16(d).</p>	<p>Revise example (c)(1) to read:</p> <ol style="list-style-type: none"> <li>1. A licensee fails to obtain prior Commission approval as required by 10 CFR 72.48 for a change that caused the NRC to undertake a further inquiry such that a significant revision to <del>either the licensee's change or evaluation</del> was required;</li> </ol>
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