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Submitter Information

Name: Blake Bixenman

Address:

P.O. Box 1789
Eunice, 88231

Email: andrew.bixenman@urenco.com

Submitter's Representative: Blake Bixenman

Organization: Louisiana Energy Services, LLC

General Comment

See attached file(s)

Attachments

LES-21-00021-NRC Comments on Proposed Changes to NRC Enforcement Policy

LES-21-00021-NRC

1-25-2021

Docket ID NRC-2020-0261
<https://www.regulations.gov>



Louisiana Energy Services, LLC
NRC Docket No. 70-3103

Subject: Urenco USA Comments on Proposed NRC Enforcement Policy
Statement Revision
(Docket ID NRC-2020-0261)

Reference: 85 Federal Register 78046, Dec 3, 2020

The Nuclear Regulatory Commission (“NRC”) published the subject Proposed Policy Statement titled NRC Enforcement Policy (the Policy) on December 3rd, 2020 requesting comments. In response, Louisiana Energy Services, LLC, dba URENCO USA (UUSA) is submitting comments, as allowed in the Reference, via the website <http://www.regulations.gov>.

UUSA appreciates this opportunity to comment on the subject Proposed Policy Statement. Should there be any questions related to this response, please contact Wyatt Padgett, Licensing and Performance Assessment Manager, at 575-394-5257.

Respectfully,

A handwritten signature in blue ink that reads 'Stephen R. Cowne'.

Stephen Cowne
Chief Nuclear Officer

Enclosure: Comments Submitted Via Regulations.gov

LES-21-00021-NRC



cc:

Karl Sturzebecher, Project Manager - UUSA
U.S. Nuclear Regulatory Commission
Karl.Sturzebecher@NRC.gov

Damaris Marcano, Enrichment & Conversion Branch Chief
U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Damaris.Marcano@nrc.gov

LES-21-00021-NRC



Enclosure
Comments Submitted Via Regulations.gov

01-29-2021

Comments on NRC Proposed “Evaluation Policy Statement” 85 FR 79042 (Dec. 8, 2020)

Introduction

On December 3, 2020, the Nuclear Regulatory Commission (“NRC”) published a request for comments (“Notice”) on a proposed revision to the NRC’s Enforcement Policy (85 Fed. Reg. 78046 et seq.) The proposed revisions are contained in a 102 page markup of the Enforcement Policy (“Markup”) referenced in the Notice (identified by ADAMS Accession No.) Comments are due to the NRC by February 1, 2021.

UUSA has considered the proposed revisions and has provided comments below. It should be noted that the proposed revision to the NRC’s Enforcement Policy contains a number of positive improvements which are beneficial to the industry. UUSA appreciates the time and attention the NRC has dedicated improving its internal processes.

UUSA Comments

- **Item 320:** This change relates to additional factors for consideration of assigning a Severity Level (SL) under traditional enforcement for SL III and IV violations. Specifically, the changes would now add consideration of situations where a licensee official “actually impeded or influenced” a regulatory action such that the regulatory decision would “likely” have resulted in a different decision.

The way this language is stated appears vague and is recommended to be more intentional. The common definition of impeding simply means obstructing. There could be valid reasons for obstruction, including mistake of fact. Therefore, as this language change is arguably aimed at addressing purposeful intent to cause NRC’s decision to be based on false, misleading or incomplete information, it should include these attributes to make clear what the change is intending to address. If the change is intended for something different, it still needs to be clarified so that licensees are given adequate notice and opportunity to comment on its meaning. If the purpose of the language is as suggested above, it needs to be explained as to why the regulations addressing completeness and accuracy and/or deliberate misconduct are not currently adequate to address the purported situation.

In addition, even with clarification of the language change purpose, the use of the terminology “likely” is vague and overly broad. Enforcement actions, especially those that involve escalated enforcement like a SL III violation, should be based on easily discernible, objective criteria. The use of “likely” opens the door too widely for arbitrary conclusions. There are probably a number of ways that such a terminology can be clarified and made more objective. Perhaps, when a technical matter is involved, some form of probability analysis should be employed. When non-technical matters are involved, perhaps tried and true concepts used in the legal context like “more probable than not” should be

employed. Whatever the methodology, more clarification and objectivity is warranted.

- **Item 322:** The NRC proposes to modify the language in the Enforcement Policy as to how the safety and/or security significance of a violation should be evaluated. Instead of the prior language, which is primarily aimed at “what” types of actions NRC’s discretion could be applied to (e.g., whether to issue a violation and whether to impose a civil penalty), the new language appears to address “how” the discretion should be applied. It now states that because regulation does not lend itself to “mechanistic treatment, judgement and discretion must be exercised” in assessing an enforcement sanction. While this general statement has conceptual merit, it cannot and should not be used as a default method for taking arbitrary action. Objective use of such discretion is critical. If this broad stated authority cannot be made more quantifiable and objective, then it must be paired with the responsibility and requirement to fully articulate why the discretion was applied (this includes application of discretion pro and con). This paired responsibility and requirement cannot simply be implied – it must be stated in writing, and NRC management must ensure that enforcement discretion implemented under this broad authority is always examined against this standard before being issued. Anything less risks the possibility of vague and/or arbitrary enforcement discretion decision.
- **Item 347:** The concept of “prompt and comprehensive” corrective action by licensees and how such action may be considered when determining the extent of enforcement continues to be included in this proposed markup, much as before (see generally Section 2/3/4(c) of the markup). The underpinning policy of rewarding licensees for taking such action still seems to be a key factor in enforcement decision-making. It is, therefore, quite curious that the NRC has apparently decided, as to discrimination violations, to no longer offer this benefit except for more restrictive and specific situations. While we understand that the Enforcement Policy Manual is not necessarily the vehicle for explanation of why this change in policy is being proposed, we believe that an explanation needs to be given as we do not believe that discrimination violations should be treated differently (and apparently more restrictively) than other types of violations. Thus, when the NRC issues its final Policy changes, we strongly encourage the NRC to make clear why discrimination violations warrant the disparate treatment.
- **Item 324:** The Policy Summary states that this proposed change is “to clarify the nominal expectation for the extent of licensee corrective actions agreed upon in an ADR settlement.” However, the actual language change in the markup (in Section 2.3.4) is not expressed and not an expectation, but rather as a comment or observation about what “typically” happens. If the intent is an expectation, it should be stated clearly as such. Having noted this administrative issue, it seems questionable that the NRC believes a licensee’s corrective actions must be broader and “more comprehensive corrective actions than typically achieved through the traditional enforcement process.” This viewpoint seems to place an arbitrary limitation on the ADR process – should not the goal be to simply achieve the “best” balanced set of corrective actions for the stakeholders

involved, and not just a greater quantity of and/or more severe set of actions? The NRC should reconsider the implications of its proposed language.

- **Item 321:** Setting the expectation that an alleged who commits deliberate misconduct will “typically” be subject to enforcement only if the individual is a “licensee official” could be interpreted as a policy to ignore situations where an alleged uses a discrimination claim to mask or cloud his/her conduct. NRC should clarify that this type of situation will not be ignored.
- **Item 330:** The enforcement policy states the following:
 - 6.2(b) SL II violation involve, for example:
 - Under 10 CFR Part 70, Subpart H, a high-consequence event is “not unlikely” based on a licensee’s ISA; and
 - 6.2(c) SL III violations involve, for example:
 - Under 10 CFR Part 70, Subpart H, a high-consequence event is “unlikely” based on a licensee’s ISA;
 - Under 10 CFR Part 70, Subpart H, an intermediate-consequence event is “not unlikely” based on a licensee’s ISA.

The NRC staff can and have interpreted this to indicate that when a failure of an IROFS, as defined by 10 CFR 70.4, occurs, the likelihood of an IROFS failure has changed. In some cases, the likelihood of an event does indeed need to change as a result of an identified failure and increase in the failure frequency of such IROFS. However, in some instances when the failure of an IROFS does result in the failure frequency of that IROFS increasing, adequate risk was maintained in accordance with 10 CFR 70.61 as failures for less reliable controls are expected, especially in administrative controls. The failure of an IROFS is considered in ensuring adequate risk is maintained, i.e., the initiating event has not occurred or other IROFS failures did not occur simultaneously leading to an actual event.

The current language could also be interpreted that if an initiating event occurs, that event is no longer unlikely or not unlikely albeit that no instances of this occurring could be recalled.

The current language in the enforcement policy ignores these facts. It is recommended to change these examples to the following:

- 6.2(b) SL II violation involve, for example:
 - Under 10 CFR Part 70, Subpart H, a high-consequence event is “not unlikely” based on a licensee’s ISA, i.e., the failure frequency of an IROFS or the initiating event of an accident sequence was

increased and the licensee no longer meets 10 CFR 70.61 performance requirements; and

- 6.2(c) SL III violations involve, for example:
 - Under 10 CFR Part 70, Subpart H, a high-consequence event is “unlikely” based on a licensee’s ISA, i.e., the failure frequency of an IROFS or the initiating event of an accident sequence was increased and the licensee no longer meets 10 CFR 70.61 performance requirements;
 - Under 10 CFR Part 70, Subpart H, an intermediate-consequence event is “not unlikely” based on a licensee’s ISA, i.e., the failure frequency of an IROFS or the initiating event of an accident sequence was increased and the licensee no longer meets 10 CFR 70.61 performance requirements;