

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: CHAIRMAN DICUS

SUBJECT: **SECY-99-219 - PROPOSED REVISION OF THE
ENFORCEMENT POLICY TO ADDRESS THE PROCESS
FOR ASSESSING THE SIGNIFICANCE OF VIOLATION**

Approved ^{w/comments} x Disapproved Abstain

Not Participating

COMMENTS:

SEE ATTACHED COMMENTS

 Aneta Jay Dicus
SIGNATURE

 September 19, 1999
DATE

Entered on "AS" Yes x No

CHAIRMAN DICUS' COMMENTS ON SECY-99-219, "PROPOSED REVISION TO THE ENFORCEMENT POLICY TO ADDRESS THE PROCESS FOR ASSESSING THE SIGNIFICANCE OF VIOLATIONS"

I approve the publication of the revised NRC Enforcement Policy in the *Federal Register*.

The NRC Enforcement Policy will continue to evolve, and although additional changes to the enforcement policy are anticipated (after more fully considering the implementation of the revised reactor oversight process and use of risk in our material's oversight processes), this timely revision to the Enforcement Policy will provide consolidated guidance and capture those important changes that we have already made to our enforcement processes. The staff should ensure that the next revision to the Enforcement Policy is fully integrated with the revised reactor oversight process and completed on a schedule that supports the implementation of a revised reactor oversight process at all operating reactors.

The staff should review the discussion related to announcing public meetings contained in the FRN. While this information is currently accurate, some ongoing initiatives may soon cause this information to be outdated (e.g., electronic bulletin board may be eliminated). It appears appropriate for the staff to consider this in the FRN and provide the public with guidance (e.g., webpage) for where additional information on revisions to process for noticing public meetings, if approved, could be found.

In the Enforcement Policy, under Section VI. Enforcement Actions, the staff should delete the sentence that states "For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action."

Other, minor, editorial comments are noted on the attached pages.

issues such as, but not limited to, programmatic breakdowns (i.e., aggregation of violations²), repetitive violations, willful violations and reporting violations. The NRC is eliminating the use of this term in the context of assessing the significance of violations. The agency believes this is warranted given the nature of stakeholder concerns, which included the term's lack of sufficient definition, its subjective nature, and its lack of a clear nexus to safety. There is also a concern that use of regulatory significance (under the practice of aggregation) is a form of assessment that should be performed outside the enforcement process. Under the revised Policy, if the NRC has concerns about a licensee's performance as a result of a large number of less significant violations, or repetitive violations based on ineffective corrective actions, the current and future assessment processes provide the regulatory tools necessary to address these performance concerns.

Although the NRC believes it is appropriate to eliminate the term regulatory significance from this policy statement, some of its underlying concepts are appropriate to maintain. The NRC ^{will} ~~should~~ continue to consider violations that impact or have the potential to impact NRC's ability to carry out its statutory mission. Examples of cases in this category would include violations of 10 CFR 30.9, 50.9, etc. (completeness and accuracy of information), 30.34(f), 50.54(a), 50.59, 76.68, etc. (need for NRC approval of changes), and Subpart M of Part 20, 30.50, 50.72-73, etc. (reporting requirements). Even inadvertent reporting failures are important because many of the surveillance, quality control, and auditing systems on which both the NRC

²The previous policy stated that a group of Severity Level IV violations could be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations had the same underlying cause or programmatic deficiencies.

and its licensees rely in order to monitor compliance with safety standards are based primarily on complete, accurate and timely recordkeeping and reporting. The NRC ^{will} ~~should~~ continue to EDIT consider willful violations involving licensees and their employees, including the ability to maintain a safety conscious work environment. Examples of cases in this category would include violations of 10 CFR 30.10, 50.5, etc. (deliberate misconduct), and *willful* violations of requirements including 30.7, 50.7, etc. (discrimination), 30.9, 50.9, etc. (completeness and accuracy of information), and reporting requirements. Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor.

This section also elaborates on the concept of potential consequences as a consideration in the significance assessment process. It emphasizes that the NRC will consider the *realistic* likelihood of affecting safety, i.e., the existence of credible scenarios with potentially significant consequences. It also states that risk information will be used wherever possible and clarifies that use of risk information may increase *or decrease* the severity level of a violation.

This overall approach to assessing significance preserves the ability to evaluate violations based on those concepts the NRC believes important, while minimizing the controversy that surrounds the use of the term regulatory significance.

VI.B.2.d Exercise of Discretion

The guidance in this section has been rewritten to state that the NRC may exercise

required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

III. RESPONSIBILITIES

The Executive Director for Operations (EDO) and the principal enforcement officers of the NRC, the Deputy Executive Director for Reactor Programs (DEDR) and the Deputy Executive Director for Materials, Research and State Programs ~~Regulatory Effectiveness~~ (DEDMRS) have been delegated the authority to approve or issue all escalated enforcement actions.³ The DEDR is responsible to the EDO for NRC enforcement programs. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated. | EDIT

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Chief Financial Officer has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the significance of the violations and the surrounding circumstances.

³The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

which the NRC chooses to exercise discretion and refrain from issuing a formal Notice of Violation. It makes it clear that this discretion is not meant to eliminate ^{either} the NRC's emphasis on EDR compliance ~~for~~ the importance of maintaining safety. Section VII.B.1.a includes the essence of the guidance on dispositioning power reactor Severity Level IV violations that was previously included in Appendix C. Sections VII.B.1.b - g are reserved for future applications. Section VII.B.1.h includes guidance for dispositioning all other types of licensees. This subsection captures the guidance that was previously included under VII.B.1.

VII.B.3 Violations Involving Old Design Issues

Paragraph (a) of this section has been modified to include the correct schedule the NRC will use when it considers whether it should exercise mitigating enforcement discretion for violations associated with departures from the FSAR. The previous schedule stated, "within two years after October 18, 1996." The correct schedule identifies March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and March 30, 2001, for all other issues. Like the schedule in Section VII.A.1.h, this Commission-approved schedule inadvertently failed to be reflected in a revision to the policy statement.

VII.C Notice of Enforcement Discretion for Power Reactors and Gaseous Diffusion Plants

This section has been renamed to more clearly reflect that this type of discretion applies to both power reactors and gaseous diffusion plants.