


NRC Regulatory Information Conference

NRC Enforcement Policy—Where We Have Been and Where We Are Going

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Where We Have Been

- **Complete Revision of Enforcement Policy Issued – June 1995**
- **Industry Concerns:**
 - Undue emphasis on compliance rather than safety
 - Issuance of large number of violations for relatively minor non-compliances – with little or no safety/risk significance
 - Calculation of civil penalties not in accordance with safety significance of violation
 - Insufficient incentive for self-identification and corrective actions



2

Where We Have Been

- **Complete Revision of Enforcement Policy Issued – May 1998**
- **Industry Concerns:**
 - "Regulatory Concern" and "Regulatory Significance"
 - Undefined terms that introduced subjective judgments into decisions
 - No amount of regulatory concern should affect the results of an objective, risk-informed analysis
 - "Aggregation" of Violations
 - Inherently subjective
 - Unduly inflated significance of minor violations escalated into one of higher perceived significance



3

Where We Have Been

- **Complete Revision of Enforcement Policy Issued – May 2000: Implementing Reactor Oversight Process (ROP)**
 - Eliminated the use of the term “Regulatory Significance” in the context of assessing the significance of violations
 - Eliminated practice of escalating the Severity Level of a “problem” based on “aggregation” of less significant violations
 - Fully incorporated Interim Policy on the Pilot ROP as permanent guidance
- **Industry Response**
 - Excellent example of a risk-informed, performance-based approach
 - Appropriately focused on the as-found condition of a violation
 - Using more objective criteria facilitates more consistent agency response to similar violations



4

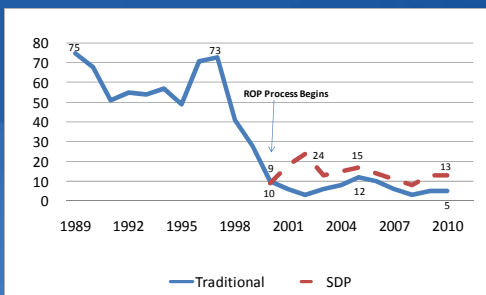
ROP Enforcement Activity 2000-2010 (excluding Security-Related Findings)

- **Escalated SDP Enforcement Activity**
 - Escalated Actions – 14 issued on avg. annual basis
 - Escalated Violations – 17 issued on avg. annual basis
 - FSD Findings – 89% of Low-to-Moderate Safety Significance (“White”)
- **Traditional Enforcement Activity**
 - Escalated Actions – 7 issued on avg. annual basis compared with 57 between 1989-1999
 - Actions with Civil Penalty – 3 issued on avg. annual basis compared with 36 between 1989-1999



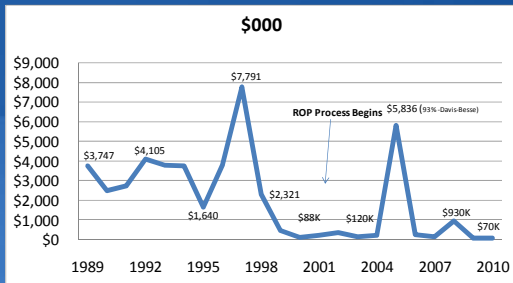
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Historical Escalated Actions



6

Historical Final Civil Penalties



2010 Enforcement Policy Revision

- Complete Revision Issued — September 2010
- Notice of Planned Revision — Jan. 2007
- Draft Policy Statement for Comment — Sept. 2008
- Revised Draft Supplements Severity Level Examples for Comment — June 2009
- Revised to:
 - Follow actual enforcement process (with relocation of implementing details to Enforcement Manual)
 - Clarify terminology, remove outdated info, and add relevant new info (e.g., Alternative Dispute Resolution process)



2010 Enforcement Policy Revision

- Industry Comments/Concerns:
 - Review focused on the extent to which draft revision was clear, cogent, and re-affirmed objective, realistic, and risk-informed decision-making
 - Disagreed with proposal to limit the number and content of violation examples in Supplement Section 6.0
 - Industry favored more, rather than fewer examples of violations
 - No opportunity to review abbreviated examples against examples that would later be included in the Manual
 - Enforcement Manual revisions not typically made available for comment



2010 Enforcement Policy Revision

- **Industry Comments/Concerns:**
 - Supported NRC’s decision in 2009 to re-populate Supplement Section 6.0 with additional examples
 - Supplement Section 6.0 changes would have benefitted from an explanatory basis and/or rationale to assist stakeholders in assessing what “problems” with the 2005 Policy violation examples warranted redress



ADR Process

- **Interim Policy Incorporated as Permanent Guidance in the 2010 Enforcement Policy Revision**
- **Industry Comments:**
 - Incorporation of ADR into the Enforcement Policy should bring increased visibility and acceptance of the program, thereby advancing the agency's enforcement goals of encouraging prompt identification and corrective actions
 - Agree with Commission direction that all “ADR guidance and implementing procedures [be made] publicly available in one easily identifiable location on the NRC web site” after guidance material has been deemed to be “consistent and complete”
 - ADR Program — both Early ADR and Post OI ADR — has proven to be a viable alternative to other regulatory processes (e.g., investigations, predecisional enforcement conferences)



Areas of Interest

- **Commission SRM Directs Staff to Develop Proposals re:**
 - Imposition of Daily Civil Penalties
 - Establishing credit for effective corrective actions by Fuel Cycle Licensees
 - Reevaluation of Enforcement Policy with respect to new construction activities
- **Additional Areas of Interest**
 - Imposition of Civil Penalties to licensee employees and other individuals for disclosure of SGI
 - Review of the “Standards of Knowledge” doctrine applicable to individual enforcement



Daily Civil Penalties

- Historically, Authority Has Been Implicitly Considered as Part of Large Civil Penalties
- Must Be Cautiously Considered Based on Clear Criteria
 - What Violations Are Continuing v. One-Time?
- Must Be Reconciled Within Current Enforcement Policy Paradigm
 - Avoid unintended signals of significance



13

Supplement Section 6.2 — Fuel Cycle Operation

- Commission SRM Directs Staff to Propose Credit for Corrective Actions
- Industry Comment:
 - Staff proposal should conform with current Enforcement Policy, which encourages and gives credit for prompt self-identification and corrective actions



14

Reevaluation of Supplement Section 6.5 — Facility Construction Violation Examples

- Industry had Extensive Comments on Proposed Examples
- Enforcement Impact of cROP on the Development of Revised Enforcement Policy and Manual Violation Examples Not Clear
- Criteria for Granting Enforcement Discretion
 - Criteria should be re-evaluated with respect to new construction projects
 - Vogtle/Shaw Group FFD — construction activities halted in July 2010, after discovery that a number of contract personnel failed to complete their self-disclosures in accordance with Part 26
 - Eventually, non-compliance dispositioned as Severity Level IV infraction in October 2010



15

Imposition of Civil Penalties for Disclosures of SGI


- Potentially Applicable to Both Licensee and Employees/Other Individuals
- Industry Comments:
 - Ultimately, the licensee bears the responsibility for actions of its employees
 - Individual enforcement already available for deliberate misconduct – not unintentional, negligent acts



16

Standards of Knowledge Doctrine

- Standard of Knowledge is an important legal issue: individual enforcement for deliberate misconduct is reserved for “significant actions that will be closely evaluated and judiciously applied.” (Enforcement Policy)
 - CLI-10-23, the Commission upheld the Licensing Board Decision setting aside the NRC Staff’s Enforcement Order against David Geisen (Davis-Besse)
 - The Commission found that the a Licensing Board used the correct standard for “knowledge” – agreeing that knowledge requires not just an awareness of a fact but also an understanding or recognition of the fact’s significance
 - In a partial concurrence, Chairman Jaczko expressed concern over the “lack of clarity surrounding [the Commission’s] standard of knowledge”



17

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