



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

August 5, 2005

REQUEST REPLY

8/23

MEMORANDUM TO:

Chairman Diaz
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

Approved, subject to
Commissioner Merrifield's
comments and edit.

FROM:

Luis A. Reyes
Luis A. Reyes
Executive Director for Operations

Nils J. Diaz
Nils J. Diaz 8/15/05

SUBJECT:

STAFF PLAN TO ADDRESS SUPPLEMENTAL STAFF
REQUIREMENTS MEMORANDUM (M050419A-SUPP) -
DISCUSSION OF ENFORCEMENT ISSUE

The purpose of this memorandum is to describe the staff's planned actions to address direction provided by the Commission in its supplemental staff requirements memorandum (SRM) M050419A-SUPP, dated June 14, 2005, and to seek Commission feedback on the staff's proposed approach to the subject SRM. The proposed changes were developed after evaluating the frequency of cases accepted by the Department of Justice (DOJ). The process described in this paper is proposed to replace all steps related to tracking of future enforcement cases outlined in the supplemental SRM. The staff will continue to resolve the outstanding enforcement actions discussed in SECY-05-0060 within five months of the SRM.

The central issue raised in the subject SRM is how the staff handles enforcement actions that are referred to and accepted by the DOJ. The 5-year statute of limitations period in 28 U.S.C. §2462 applies to violations for which the U.S. Nuclear Regulatory Commission (NRC) seeks to impose a sanction such as a civil penalty, issuance of an order to modify, suspend, or revoke a license or prohibit involvement in NRC licensed activity. The statute is an affirmative defense that may be asserted by a person against whom a sanction is proposed and is intended to prevent the prosecution of stale claims. Thus, absent special circumstances, the NRC must initiate the action associated with a violation no more than five years from the date the violation occurred.

Concerns regarding the timeliness requirements of the statute arise only infrequently, and have tended to be associated with matters investigated by the Office of Investigations (OI) which are referred to DOJ for further investigation and potential criminal prosecution by DOJ (including possible presentation before a grand jury) and, as a consequence, enforcement action by the NRC is deferred.

CONTACT: Russell Arrighi, OE
(301) 415-0205

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CHAIRMAN REC



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

August 5, 2005

REQUEST FOR COMMENT 8/23

MEMORANDUM TO: Chairman Diaz
 Commissioner Merrifield
 Commissioner Jaczko
 Commissioner Lyons

FROM: *Luis A. Reyes*
 Luis A. Reyes
 Executive Director for Operations

SUBJECT: STAFF PLAN TO ADDRESS SUPPLEMENTAL STAFF
 REQUIREMENTS MEMORANDUM (M050419A-SUPP) -
 DISCUSSION OF ENFORCEMENT ISSUE

*Approved, subject to
 the attached edits:*

[Signature]
 8/12/05

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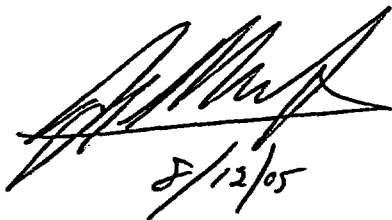
Commissioner Merrifield's Comments on COMSECY-05-0033

I approve the staff's plan to address Commission direction on the conduct of enforcement proceedings. The staff obviously took an in-depth look at the Commission's SRM in light of the current process, and I appreciate the thoughtful approach they have presented to address our concerns in this area.

I believe the new database will significantly improve communications between OE and OI and will enable issues to be brought to the attention of the Commission in a timely fashion. The staff should provide the database report to the Commission for information on a quarterly basis, preferably following OI's communication with DOJ regarding status of any cases that have been accepted for prosecution.

I agree that waivers of the statute of limitations should remain an option for the staff, albeit one that is used infrequently. The staff should come to the Commission for approval prior to any agreement with DOJ that the NRC will seek a waiver from the party under investigation. The Commission fully understands the sensitivity regarding the potential for hindering a criminal proceeding if the NRC goes forward with its enforcement action prematurely, but we also have a need to be fully informed of the staff's actions and to act with expediency if possible.

While I commend the staff's efforts to improve the enforcement process, I hope the staff continues to be mindful that all enforcement actions are not equal, and it is the cases with heightened visibility, like the Davis-Besse and Millstone actions, that tend to demonstrate the flaws in an otherwise well thought out process. For those cases with increased stakeholder interest, the staff should be particularly vigilant about initiating actions as soon as possible and communicating relevant information to the Commission.



2/12/05

Under the Memorandum of Understanding (MOU) with DOJ, if the NRC does not believe that public health and safety requires immediate enforcement action, it may (1) await the completion of DOJ's process, or (2) consult with DOJ about the proposed civil action, deferring enforcement until DOJ consents. Under either option, when the statute's period nears expiration, the NRC may proceed with enforcement after consulting with DOJ.

Currently, OI communicates with DOJ regarding each substantiated case prior to issuing its Report of Investigation and referring the case to the staff for review and action. Generally that process has worked well, with DOJ typically providing an oral declination within the 60-day goal expressed in the subject SRM. During the past five fiscal years, out of 244 cases referred to DOJ for prosecutorial review, DOJ has accepted only seven for criminal prosecution. When DOJ accepts a case, OI will typically issue its report to the staff informing them of DOJ's acceptance of the case for prosecution.

In order that all cases are pursued in an expeditious manner and the option of proceeding with a civil action is maintained, the staff will implement changes to the current process as highlighted below.

In conjunction with the Office of Information Services, Office of Enforcement (OE) and OI are developing a new, integrated database to support the existing investigation and enforcement program systems. Currently, a limited amount of information is shared between these systems. The new database, which is expected to be operational by the end of December 2005, will allow much greater sharing of information, including a direct link in the enforcement system to the statute of limitations data currently tracked by OI. When an enforcement action is opened, OE will monitor the statute through use of database reports. The use of routine database reports will allow OE to be more proactive in communicating with OI, and in turn DOJ. In the interim, OE will continue to obtain the information directly from OI and manually track the statute deadlines. OI will contact DOJ at least every 120 days for status once DOJ accepts a case for prosecution.

Once a case is within one year of the statute expiring, the staff will communicate the agency's intent to pursue civil enforcement action to DOJ and request consent to proceed. If DOJ requests the staff to continue deferral of civil action, the staff will develop a plan on a case-by-case basis and inform the Commission, no less than six months in advance of reaching the statute of limitations, of the plan of action. This may include proceeding with the civil action or seeking a waiver of the statute from the licensee (or other person against whom an action is to be proposed).

The staff recommends that waivers of the statute of limitations continue to be an option available to the staff when, after consultation with DOJ, and with the Commission's knowledge, it is necessary and in our interest to defer initiating an action. By delaying NRC action until completion of the DOJ formal judicial process, waivers potentially could save all affected parties substantial resources by avoiding further NRC investigation and implementation of the NRC's normal enforcement and adjudicatory process. Waivers have been utilized rarely by the staff and typically have been used to extend the review for a period of less than one year. The staff finds waivers to be beneficial, particularly in discrimination cases before the Department of Labor (DOL) where the NRC has not substantiated the case. Occasionally new information comes to light during the discovery and/or testimony phase of the DOL adjudicatory process that the staff uses when making its final enforcement decision. Issuing a waiver in these approval ✓

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August 5, 2005

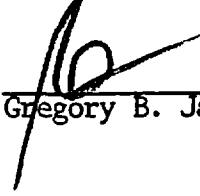
REQUEST REPLY BY: 8/23



MEMORANDUM TO:

Chairman Diaz
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

Approved subject to attached comments.


Gregory B. Jaczko
Date 8/11/05

FROM:


Luis A. Reyes
Executive Director for Operations

SUBJECT:

STAFF PLAN TO ADDRESS SUPPLEMENTAL STAFF REQUIREMENTS MEMORANDUM (M050419A-SUPP) - DISCUSSION OF ENFORCEMENT ISSUE

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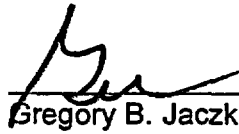
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**Commissioner Jaczko's Comments on COMSECY-05-0033
Staff Plan to Address Supplemental Staff Requirements Memorandum
- Discussion of Enforcement Issue**

I approve the staff's plan to address the recent Commission direction provided in the Staff Requirements Memorandum regarding enforcement issues. I agree with Commissioner Merrifield's comments and appreciate his efforts and assistance in addressing this critical issue. The staff's proposed plan offers specific and detailed improvements to the current process that will increase communication and awareness of statute of limitations issues both with the NRC's interactions with the Department of Justice and within the agency. I applaud the staff's efforts in this regard and encourage the staff to continue to find ways to minimize any impact on NRC's enforcement actions resulting from statute of limitations issues.


Gregory B. Jaczko

8/18/05
Date



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

August 5, 2005

REQUEST REPLY BY: 8/23

MEMORANDUM TO:

Chairman Diaz
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

Approved w/ comments noted
[Signature]
8/11/05

FROM:

[Signature]
Luis A. Reyes
Executive Director for Operations

SUBJECT:

STAFF PLAN TO ADDRESS SUPPLEMENTAL STAFF
REQUIREMENTS MEMORANDUM (M050419A-SUPP) -
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Commissioner Lyons' Comments on COMSECY-05-0033

The staff, in COMSECY-05-0033, has proposed an acceptable approach to tracking future enforcement cases that are referred to and accepted by the Department of Justice. The process described by the staff should replace all steps related to tracking of future enforcement cases outlined in the supplemental SRM, M050419A-SUPP, dated June 14, 2005.

Stella Lyons
8/18/05