

June 15, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-087

TITLE: PROPOSED STRATEGY TO REVISE THE ENFORCEMENT POLICY TO ADDRESS THE PROCESS FOR ASSESSING SIGNIFICANCE AND ASSIGNING SEVERITY LEVELS OF NONCOMPLIANCES (INCLUDING REGULATORY SIGNIFICANCE AND RISK)

The Commission approved in part and disapproved in part the subject paper as recorded in the Staff Requirements Memorandum (SRM) of June 15, 1999.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission, and the SRM of June 15, 1999.

Annette Vietti-Cook
Secretary of the Commission

Attachments: 1. Voting Summary
2. Commissioner Vote Sheets
3. Final SRM

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
EDO
PDR
DCS

VOTING SUMMARY - SECY-99-087

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. JACKSON	X	X			X	5/11/99
COMR. DICUS	X	X			X	5/19/99
COMR. DIAZ	X	X			X	4/12/99
COMR. McGAFFIGAN	X	X			X	5/25/99
COMR. MERRIFIELD	X	X			X	4/16/99

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved in part and disapproved in part the staff's recommendation and provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on June 15, 1999.

Chairman Jackson

I approve in part, disapprove in part the staff recommendations transmitted in the subject paper. In the order in which the staff provides the recommendations:

1. I approve the staff recommendation that the Enforcement Policy be modified to state explicitly that risk considerations can be used to raise or lower the severity of the examples provided in the Supplements to the Policy.
2. I approve the deletion of the term "Regulatory Significance" from the Policy.
3. I approve of the staff proposal to base the significance of a particular violation on
 - actual safety consequences
 - potential safety consequences, including the consideration of risk information (in fact, I consider risk insights to offer an excellent way to establish potential consequences)
 - potential for impacting the ability of the NRC to perform its regulatory function
 - any willful aspects of the violation
4. I approve the amending of Section IV of the Policy to address the subjects covered immediately above, with the following exceptions:
 - The aggregation of violations should be eliminated. I concur with the staff position, expressed in the context of the new oversight program, that the consideration of multiple examples of violations in a given area of emphasis is best done through the assessment process. In the intervening period leading to the implementation of the new oversight process, I see no reason why the existing assessment process cannot carry out this role. It would appear to me that, at its heart, the process of assessment, any assessment, is (or should be) aimed at placing what is known about a particular subject in the appropriate context.
 - Using repetitiveness to increase the severity of a given violation should not be continued. Again, I find that the concern that this provision is meant to address to be best dealt with through the assessment process. If a licensee shows an inability to adequately address repetitive problems, the assessment of that licensee, and any subsequent agency action, should reflect this fact.
5. I approve of minor changes to the Commission's Statement on Safety and Compliance to remove references to regulatory significance.
6. I disapprove of modifications to item C.7 of Policy Supplement I, "Reactor Operations," to increase the emphasis on potential safety consequences. My position on this matter is described in my comments on item 4, above.
7. I approve of the staff proposal to forego risk informing the reactor supplements to the Policy as provided in the CTM and the PRA Implementation Plan in deference to the actions to be carried out as part of the integrated reactor oversight process. The staff should, however, remain mindful of the need to augment the Supplements to the Enforcement Policy as necessary to properly treat violations which are not amenable to the significance determination process described in [SECY-99-007a](#) .

Commissioner Dicus

I approve in part, and disapprove in part, the staff's recommendations of SECY-99-087.

I support Recommendation 1. It is appropriate to use risk considerations to increase or decrease the severity of a violation, and therefore, the Enforcement Policy should be amended to explicitly state its use in this fashion.

I support deletion of the term "regulatory significance" from the Enforcement Policy, as proposed in Recommendation 2.

With respect to Recommendation 3, I support the retention and use of the concepts (a) actual safety consequences, (b) potential safety consequences, including consideration of risk information, (c) potential for impacting NRC's ability to perform its regulatory function, and (d) any willful aspects of the violation.

I support Recommendation 4 with the exception of aggregation of less significant violations into one of higher significance, and the use of repetitive violations to increase the severity of a given violation. I agree with Cmr. Merrifield's comment that current regulatory tools are available to address performance concerns if staff is concerned about the frequency and number of less significant violations. In addition, if staff is concerned with material licensees receiving less frequent inspections than reactor facilities, then it may be appropriate for staff to increase inspection activities of those specific licensees of concern in order to determine the adequacy of their actions, rather than maintaining an infrequent inspection schedule and using aggregation or repetition to artificially raise the level of concern.

I support Recommendation 5, consistent with my comments on Recommendation 4.

I disapprove Recommendation 6. Consistent with my comments on Recommendation 4, I disapprove revision to Example C.7 of the Policy's Supplement 1 that would increase emphasis on potential safety consequences.

I approve Recommendation 7.

Commissioner Diaz

I approve in part, and disapprove in part, the proposal presented in this paper.

I approve the overall direction proposed by the staff; it is an interim step that must be taken as part of the evolution of the agency's means of regulating nuclear power plants. In particular, I applaud the staff's recommendation to discontinue the use of the term "regulatory significance" (item 2) and to

modify the Commission's statement on Safety and Compliance to delete references to this term (item 5). I also believe it is a step forward to make an explicit policy statement that risk can be used to either increase or decrease the severity level of violations (item 1).

Concerning the determination of the significance of violations, I approve item 3, with the exception of aggregating violations, as discussed below. In addition, to ensure that only credible scenarios are considered in assessing the potential safety consequences of as-found conditions (item 3(b)), the staff should develop criteria for assessing the credibility of postulated scenarios for management's use in monitoring the implementation of the revised enforcement policy for agency-wide consistency.

I approve amending the Enforcement Policy (item 4), except as modified below:

- The staff states in this paper that the issue of aggregating several less significant violations will become moot for power reactors with the implementation of the new reactor oversight process. I agree with the staff. Furthermore, although the program for oversight of materials licensees is less well developed, the principles behind not aggregating violations for reactors also apply to material licensees, especially in light of the staff's discussion regarding the evaluation of the potential safety consequences of as-found conditions. Therefore, I disapprove amending Section IV.A (Aggregation of Violations) of the Enforcement Policy (item 4), and revising Example C.7 of Supplement 1, and similar examples in the other Supplements (item 6). Rather, the references to aggregation in the Enforcement Policy, including its Supplements, should be deleted.

Nevertheless, the staff should keep in mind that, should it find an extraordinary situation in which a pattern of violations constitutes, in aggregate, a significant risk to public health and safety, it can, and should, approach the Commission with a recommendation for an equally extraordinary regulatory response.

- It is not clear what the staff recommends regarding repetitive violations in item 4. However, given that the use of "regulatory significance" will be discontinued, repetitiveness seems redundant to the "potential" and "willful" categories, and therefore should be dropped.

Finally, I agree with the staff that it is prudent to focus its efforts on developing the new enforcement process to replace the need for reliance on the Supplements for violations covered by the new reactor oversight process. Therefore, I approve the staff's recommendation (item 7) to forgo risk informing the Supplements to the Enforcement Policy for power reactors, as previously planned in the PRA Implementation Plan. However, once the new oversight process has been implemented, the staff should return to the Commission in the Summer of 2000 with an evaluation of experiences gained and any recommendations for possibly revising the supplements on the basis of these experiences.

To assist SECY in recording the votes, please note the table below:

Item 1	approved
item 2	approved
item 3	approved with comment
item 4	approved with comment
item 5	approved
item 6	disapproved
item 7	approved with comment

Commissioner McGaffigan

I approve in part, and disapprove in part, the staff's recommendations in SECY-99-087.

1. I approve Recommendation 1.
2. I approve Recommendation 2. I have long had concerns with the term "regulatory significance."
3. I approve Recommendation 3, except the use of aggregation under the potential safety consequences criterion.
4. I approve Recommendation 4, except for the aggregation of less significant violations into one of higher significance and the use of repetitive violations to increase the severity of a given violation. I concur with my fellow Commissioners that these matters can be handled by the current assessment process and, in the future, in the new assessment process for reactor licensees. I concur in Commissioner Dicus' comment with regard to materials licensees. Finally, I concur in Commissioner Diaz's comment that the staff should approach the Commission in any instance where there appears to be an extraordinary situation. Such an approach is consistent with the discretion language within the Enforcement Policy, as well as the fact that the document is a statement of NRC policy and not an NRC regulation.
5. I approve Recommendation 5, consistent with my position on Recommendation 4.
6. I disapprove Recommendation 6, consistent with my position on Recommendation 4.
7. I approve Recommendation 7.

Commissioner Merrifield

I approve in part, and disapprove in part, the recommendations presented in SECY-99-087.

I support Recommendation 1. The Policy should be amended to specifically state that risk considerations can be used to increase or decrease the

severity level of a violation described in an example in the Supplements to the Policy.

I support Recommendation 2. The term "regulatory significance" should be deleted from the Policy. I agree with many of our stakeholders that believe "regulatory significance" is subjective in nature and lacks a clear nexus to safety. Consistent with my previous votes on other matters, I am also opposed to terms that lack sufficient definition. Therefore, I applaud the staff for their recommendation on this matter.

I support Recommendation 3 with the following exception. In its discussion of Potential Safety Consequences, the staff proposes continuing to consider those cases where the cumulative effect of a number of less significant related or recurring violations appear to present a greater risk than the individual violations treated separately. As I will discuss in my comments on Recommendation 4, I am opposed to the concept of aggregating less significant violations. Furthermore, the staff should ensure the process for assessing "potential" safety consequences is disciplined so that only credible scenarios with potential consequences are considered.

I support Recommendation 4 with the following exceptions:

- In my opinion, aggregation of less significant violations in the enforcement arena leads to subjective and inconsistent regulation. If the staff has concerns about a licensee's performance as a result of a large number of less significant violations, the current assessment process provides the regulatory tools necessary to address these performance concerns. Therefore, I disapprove amending Section IV.A. (Aggregation of Violations) of the Policy. Rather, the references to aggregation in the Enforcement Policy should be deleted.

I note that violations can still be escalated in cases of careless disregard. My vote today in no way should be read to eliminate this aspect of the Enforcement Policy.

- I agree with Commissioner Diaz that it is unclear what the staff is recommending regarding repetitive violations. However, I do not agree with concept of escalating the severity level of repetitive violations as a means to "acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action from the previous violation." Again, my concern is that such a practice leads to subjective and inconsistent regulation. As I stated with regard to aggregation, if the staff has concerns about a licensee's performance as a result of repetitive violations, the current assessment process provides the regulatory tools necessary to address these performance concerns.

Consistent with my above comments, I support Recommendation 5. Changes should be made to the Commission's Statement on Safety and Compliance to delete references to "regulatory significance".

I disapprove Recommendation 6. Consistent with my comments on Recommendation 4, I disapprove revising Example C.7 of the Policy's Supplement I and similar examples in the other Supplements to focus on the potential consequences associated with related or recurring violations. Again, references to aggregation should be deleted.

Finally, I approve Recommendation 7. The staff should forgo risk-informing the reactor Supplements to the Policy in view of the proposals to risk-inform the enforcement process as part of the integrated reactor oversight effort.