

July 8, 1999

COMMISSION VOTING RECORD

DECISION ITEM: SECY-99-146

TITLE: INTERIM ENFORCEMENT POLICY FOR USE DURING THE NRC POWER REACTOR OVERSIGHT  
PROCESS PILOT PLANT STUDY

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of July 8, 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 July 8, 1999.

/s/

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Annette Vietti-Cook  
Secretary of the Commission

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

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

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VOTING SUMMARY - SECY-99-146

RECORDED VOTES

	<b>APRVD</b>	<b>DISAPRVD</b>	<b>ABSTAIN</b>	<b>NOT PARTICIP</b>	<b>COMMENTS</b>	<b>DATE</b>
COMR. DICUS	X	X			X	6/28/99
COMR. DIAZ	X				X	6/9/99
COMR. MCGAFFIGAN	X	X			X	6/17/99
COMR. MERRIFIELD	X	X			X	6/21/99

COMMENT RESOLUTION

In their vote sheets, Chairman Dicus, and Commissioners McGaffigan and Merrifield approved in part and disapproved in part the staff's recommendation. Commissioner Diaz approved the staff's recommendation. The Chairman and Commissioners provided some additional comments. Subsequently, the comments of the Commission were incorporated into the guidance to staff as reflected in the SRM issued on July 8, 1999.

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Commissioner Comments on SECY-99-146

Chairman Dicus

I approved the proposed enforcement policy with the exception of the category "particularly significant violations." There doesn't appear to be a need to create such a category since other regulatory means are available to recognize and assign such violations. Section I.C of the Federal Register Notice should be deleted.

**Commissioner Diaz**

I approve, but recommend the attached edits to the Federal Register Notice.

**Commissioner McGaffigan**

**Commissioner Merrifield**

I approve in part, and disapprove in part, publication of the Federal Register Notice announcing the interim changes to the Enforcement Policy which will be in effect during the pilot study of the new NRC reactor oversight process.

When I approved [SECY-99-007A](#), it was my understanding that violations evaluated by the Significance Determination Process (where the Agency Action Matrix will determine appropriate action) would be categorized as either "Violations of Low Significance" or "Significant Violations". While the staff discussed "particularly significant violations" in that SECY, it did not characterize such violations in the context of a separate category. Instead, I understood the staff to be saying that some violations within the "Significant Violations" category may be significant enough to warrant civil penalties. I believe that having a separate category of "Particularly Significant Violations" is unnecessary and confusing, and adds complexity to a process to which we are trying to bring greater clarity. Therefore, I believe Section I.C (Particularly Significant Violations) should be deleted from the Federal Register Notice. The language that reserves the use of discretion to assess civil penalties for particularly significant violations can be retained in Section I.B.

As I expressed in my vote on SECY-99-007A, for those particularly significant violations where it is appropriate to have a civil penalty, the staff should ensure that clear guidance is developed which provides discipline to the process associated with determining the amount of the civil penalty.

The Federal Register Notice and the revised Enforcement Policy identify the group of violations to which the current Enforcement Policy, including use of severity levels and civil penalties, will continue to be applied. This group includes violations which involve actual consequences. The revised Enforcement Policy lists several examples, including (1) an overexposure to the public or plant personnel, (2) failure to make required notifications that impact the ability of federal, state and local agencies to respond to an actual emergency preparedness or transportation event, or (3) a substantial release of radioactive material. These examples represent a high threshold for violations considered to involve actual consequences. As the staff assesses future violations to determine whether they meet the "actual consequences" standard, they should ensure that a similarly high threshold is implemented, consistent with the examples provided. The staff should also reassess the suitability of the language in example #3. The term "substantial" brings with it a degree of subjectivity not present in the other examples and could be misinterpreted by agency stakeholders.

Overall, while I believe that SECY-99-146 is substantially consistent with what the staff already presented in Attachment 4 of SECY-99-007A, it struck me when I reviewed SECY-99-146 that the revised enforcement policy is likely going to be confusing to many of our stakeholders and has a degree of complexity that may not be necessary. Specifically, the revised policy characterizes violations as "violations of low significance", "significant violations", "particularly significant violations", "non-cited violations", and "severity level I, II, III, and IV violations". Even if the Commission votes to eliminate the "particularly significant violations" category as part of the process on SECY-99-146, I believe additional improvements, which bring greater clarity and simplicity to the policy for the benefit of both our staff and our stakeholders, are warranted. Given that the pilot plant study of our new reactor oversight process is already underway, I believe these additional improvements should be addressed as part of a longer-term initiative. Specifically, the staff should integrate clarifying and simplifying changes to the Enforcement Policy with any changes resulting from lessons learned during the pilot plant study process.

Finally, I support the editorial changes proposed by Commissioner Diaz and attach one additional editorial change.