



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

November 22, 2004

SECRETARY

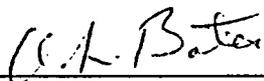
COMMISSION VOTING RECORD

DECISION ITEM: SECY-04-0195

TITLE: RULEMAKING PLAN: CLARIFICATION OF NRC  
CIVIL PENALTY AUTHORITY OVER  
CONTRACTORS AND SUBCONTRACTORS  
WHO DISCRIMINATE AGAINST EMPLOYEES  
FOR ENGAGING IN PROTECTED ACTIVITIES  
(RM #636)

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of November 22, 2004.

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

  
\_\_\_\_\_  
Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-04-0195

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	NOT PARTICIP	COMMENTS	DATE
CHRM. DIAZ	X				X	11/18/04
COMR. McGAFFIGAN	X				X	11/15/04
COMR. MERRIFIELD	X				X	11/8/04

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved 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 November 22 [NJD addition], 2004.

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: CHAIRMAN DIAZ  
SUBJECT: SECY-04-0195 - RULEMAKING PLAN: CLARIFICATION  
OF NRC CIVIL PENALTY AUTHORITY OVER  
CONTRACTORS AND SUBCONTRACTORS WHO  
DISCRIMINATE AGAINST EMPLOYEES FOR  
ENGAGING IN PROTECTED ACTIVITIES (RM #636)

Approved xx WJ Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

WJ  
SIGNATURE

Nov 18, 04  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

CHAIRMAN DIAZ'S COMMENTS ON SECY-04-0195

I approve. The proposed rulemaking plan reflects prior Commission direction and enjoys the strong support of my fellow Commissioners. I also recognize advantages to clarifying NRC's authority to impose civil penalties against contractors and subcontractors who may have discriminated against employees who engaged in protected activities. As I have indicated previously, however, I do not believe it is entirely clear that the potential benefits outweigh potential disadvantages of the proposed rulemaking and its implementation. The Commission has long held the licensee to be responsible for maintaining control and oversight of contractor and subcontractor activities. However, there is potential for some diminution in licensees' exercise of that responsibility and additional burden for the NRC if the NRC assumes broader routine civil penalty enforcement responsibility relating to compliance by contractors and subcontractors in this area. Thus, I believe that the Commission should closely examine these issues when the staff presents a proposed rule to the Commission.

A handwritten signature in black ink, appearing to be "LW", is written at the end of the text block.

NOTATION VOTE  
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MCGAFFIGAN

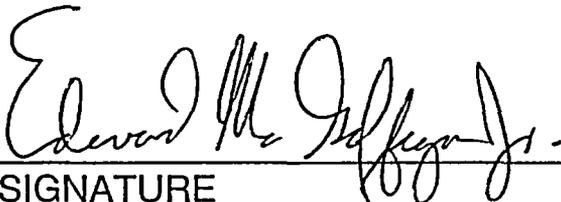
SUBJECT: **SECY-04-0195 - RULEMAKING PLAN: CLARIFICATION OF NRC CIVIL PENALTY AUTHORITY OVER CONTRACTORS AND SUBCONTRACTORS WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES (RM #636)**

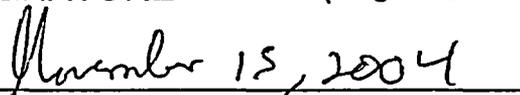
Approved  <sup>w/comments</sup> Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS:

See attached comments.

  
\_\_\_\_\_  
SIGNATURE

  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

Commissioner McGaffigan's Comments on SECY-04-0195

I approve the staff's rulemaking plan, set forth in SECY-04-0195, that would amend the employee protection regulations to allow the Commission to exercise its authority to impose civil penalties against contractors and subcontractors who discriminate against employees for engaging in protected activities. I have long supported the initiation of rulemaking to make discrimination by non-licensees, such as contractors and subcontractors, subject to civil penalties. Further, I agree with the staff in SECY-04-0195 that there may be instances in which the NRC may wish to impose civil penalties against both a licensee and a contractor, and that therefore, the supplementary information developed as part of the rulemaking process should make clear that the modifications to the employee protection regulations do not diminish the ability of the NRC to impose civil penalties against licensees.



NOTATION VOTE

RESPONSE SHEET

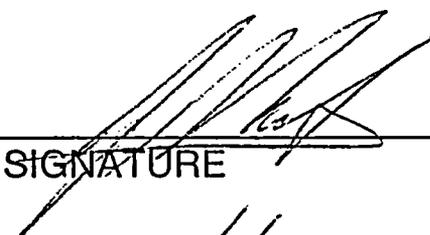
TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MERRIFIELD  
SUBJECT: **SECY-04-0195 - RULEMAKING PLAN: CLARIFICATION OF NRC CIVIL PENALTY AUTHORITY OVER CONTRACTORS AND SUBCONTRACTORS WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES (RM #636)**

Approved  Disapproved  Abstain

Not Participating

COMMENTS:

*See attached comment.*

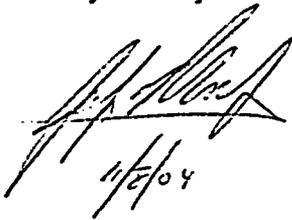
  
\_\_\_\_\_  
SIGNATURE

*11/7/04*  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No

Commissioner Merrifield's comments on SECY-04-0195

I approve the staff's Rulemaking Plan to allow for the imposition of civil penalties against contractors and subcontractors who violate the employee protection provisions of the Nuclear Regulatory Commission's regulations. Although licensees are responsible for the actions of their contractors, in some circumstances it is unfair to hold the licensee responsible for deliberate actions of its contractors, especially in situations where the licensee takes prompt and comprehensive action to remedy the situation. These amendments seek to cure that inequity by allowing the imposition of civil penalties directly on contractors or subcontractors who discriminate against employees for engaging in protected activity. Thus, these amendments serve two important objectives - both to deter contractors from violating NRC's employee protection regulations, and to allow their employees to raise regulatory and safety concerns without fear of retaliation. Both of these objectives are critical to the nuclear industry's ability to carry out licensed activities safely.



1/2/04