



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

October 24, 2007

SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-07-0158

TITLE: FINAL RULE - CLARIFICATION OF NRC CIVIL PENALTY
AUTHORITY OVER CONTRACTORS AND
SUBCONTRACTORS WHO DISCRIMINATE AGAINST
EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES
(RIN 3150-AH59)

The Commission (with all Commissioners agreeing) approved the final rule as noted in an Affirmation Session and recorded in the Staff Requirements Memorandum (SRM) of October 24, 2007.

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 Klein
Commissioner Jaczko
Commissioner Lyons
OGC
EDO
PDR

VOTING SUMMARY - SECY-07-0158

RECORDED VOTES

| | APRVD | DISAPRVD | ABSTAIN | NOT PARTICIP | COMMENTS | DATE |
|--------------|-------|----------|---------|-----------------|----------|---------|
| CHRM. KLEIN | X | | | | X | 10/3/07 |
| COMR. JACZKO | X | | | | X | 9/19/07 |
| COMR. LYONS | X | | | | X | 9/28/07 |

COMMENT RESOLUTION

In their vote sheets, all Commissioners approved the final rule as noted in an Affirmation Session and reflected in the SRM issued on October 24, 2007.

AFFIRMATION ITEM

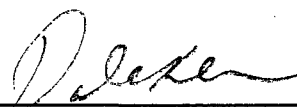
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: CHAIRMAN KLEIN
SUBJECT: SECY-07-0158 – CLARIFICATION OF NRC CIVIL PENALTY AUTHORITY OVER CONTRACTORS AND SUBCONTRACTORS WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES

Approved xx Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached xx None _____



SIGNATURE

10/3/07

DATE

Entered on "STARS" Yes No _____

Chairman Klein's Comments on SECY-07-0158

I approve the staff's recommendation to publish the final rule on clarification of NRC civil penalty authority over contractors and subcontractors who discriminate against employees for engaging in protected activities. I understand and agree that clear authorization of this enforcement tool in the regulations may be of value in certain cases of alleged discrimination by contractors or subcontractors.

I do have some concern that this change in policy may increase the complexity and burden of NRC enforcement action in such cases and may diminish the vigilance of licensee or applicant oversight of contractors and subcontractors in regard to employee protection requirements. I am somewhat reassured, however, by the statements that the NRC is not changing its policy that licensees are responsible for maintaining control and oversight of contractor and subcontractor activities and that, generally, enforcement action will continue to be taken against a licensee for the discriminatory actions of its contractors or subcontractors. Moreover, I believe any significant adverse trends in licensee or applicant oversight of contractors and subcontractors should be, and will be, brought to the attention of the Commission. As I have repeatedly emphasized, this oversight will have added significance should the industry enter into the anticipated era of new construction.

AFFIRMATION ITEM

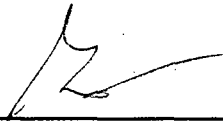
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER JACZKO
SUBJECT: SECY-07-0158 – CLARIFICATION OF NRC CIVIL PENALTY AUTHORITY OVER CONTRACTORS AND SUBCONTRACTORS WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS/EDITS: Below _____ Attached X None _____



SIGNATURE

9/18/02

DATE

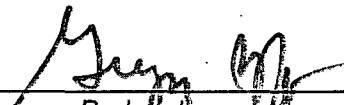
Entered on "STARS" Yes X No _____

Commissioner Jaczko's Comments on SECY-07-0158
Final Rule – Clarification of NRC Civil Penalty Authority Over Contractors
And Subcontractors Who Discriminate Against Employees For Engaging in
Protected Activities

I approve of publishing the final rule for publication in the *Federal Register* subject to the modifications below. As I stated in my vote on the proposed rulemaking package, I believe this rule will further efforts to foster an environment in which safety issues can be openly identified without fear of retribution.

I believe it is also important for the Commission to have this enforcement tool available for a holder or applicant for a Certificate of Compliance (CoC) or a contractor or subcontractor of a holder or applicant for a CoC. I have included the need for a legislative proposal that would address this issue in my vote on the legislative proposals for the 110th Congress (SECY-07-0153).

I also believe that the staff's response to the comment seeking Commission consultation if the staff proceeds with an enforcement action against a contractor or subcontractor but not the licensee or applicant should be redrafted as attached. The response should clearly state that this rule does not change existing policy - which seeks to hold the licensee or applicant accountable. The response should also explain that the reason the NRC does not believe Commission consultation in such situations is required is because the current enforcement policy already requires the staff to notify the Commission of all enforcement actions involving civil penalties and requires the staff to consult with the Commission prior to any proposed enforcement action on which the Commission asks to be consulted.



Gregory B. Jaczko

9/19/07

Date

Page 7, "Comment Analysis, Response to the first comment should be rewritten as follows:

The NRC agrees that enforcement action will generally continue to be taken against a licensee for the discriminatory actions of its contractors or subcontractors. The modifications to the employee protection regulations added in this rulemaking do not indicate a change in Commission policy in this regard or diminish the ability of the NRC to impose civil penalties against licensees or applicants for discrimination, nor do they diminish the focus on licensee responsibility in the investigative and enforcement process.

The NRC does not believe it is necessary to require Commission consultation should the staff proceed with an enforcement action against a contractor or subcontractor but not the licensee. Instead, the NRC believes that the decision about whether to take enforcement action against a contractor without taking some enforcement action against the licensee should be determined after reviewing the circumstances surrounding the discrimination on a case-by-case basis using the guidance in the Enforcement Policy and NRC Enforcement Manual. Although the staff will not automatically seek Commission consultation in these circumstances, the Enforcement Policy currently provides that the Commission will be provided written notification of all enforcement actions involving civil penalties, and that the Commission will be consulted on any proposed enforcement action on which the Commission requests consultation.

AFFIRMATION ITEM

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary


FROM: COMMISSIONER LYONS

SUBJECT: SECY-07-0158 – CLARIFICATION OF NRC CIVIL PENALTY AUTHORITY OVER CONTRACTORS AND SUBCONTRACTORS WHO DISCRIMINATE AGAINST EMPLOYEES FOR ENGAGING IN PROTECTED ACTIVITIES

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached X None _____



SIGNATURE

9/28/07

DATE

Entered on "STARS" Yes ✓ No _____

Commissioner Lyons' Comments on SECY-07-0158

I approve the staff's recommendation to publish in the Federal Register the final rule that amends the Commission's employee protection regulations to exercise the NRC's authority to impose civil penalties against contractor and subcontractors who discriminate against employees for engaging in protected activities. I realize that the NRC is designating the amendments to the regulations as falling within Agreement State Compatibility Category D and that the staff is presently engaging in an initiative to reevaluate the effects of the Category D designation on Agreement State employees. In its reevaluation of the Category D designation, the staff should coordinate with Agreement States so that the reevaluation is fully informed by Agreement States' views.


Peter B. Lyons

9/25/07
Date