

December 22, 1997

For: The Commissioners

From: L. Joseph Callan /s/
Executive Director for Operations

Subject: TWO-YEAR REVIEW OF THE ENFORCEMENT POLICY, PROPOSED REVISION TO THE ENFORCEMENT POLICY, NUREG-1600, REV.1

Purpose:

To provide the Commission with the staff's 2-year review of the NRC Enforcement Policy and to obtain Commission approval to revise the NRC Enforcement Policy consistent with the recommendations included in the report.

Background:

In SECY-95-084, dated April 6, 1995, the staff forwarded to the Commission the report of the review team that addressed the NRC enforcement program, NUREG-1525, "Assessment of the NRC Enforcement Program." This paper proposed numerous revisions to the enforcement program and the NRC's Enforcement Policy. By Staff Requirements Memorandum (SRM) dated June 16, 1995, the Commission approved the majority of the revisions to the Enforcement Policy.

The Commission published a complete revision of the NRC's Enforcement Policy in the *Federal Register* on June 30, 1995 (60 FR 34381). The revisions to the Enforcement Policy were intended to, among other things:

- Emphasize the importance of identifying problems before events occur, and of taking prompt, comprehensive corrective action when problems are identified;
- Direct agency attention at licensees with multiple enforcement actions in a relatively short period; and
- Focus on current performance of licensees.

The revisions to the Enforcement Policy were also intended to better focus the inspection and enforcement process on safety, provide greater incentives for strong self-monitoring and corrective action programs in the civil penalty assessment process, provide more predictability and consistency in the civil penalty assessment process, and to better convey clear regulatory messages.

The staff subsequently published the revised Enforcement Policy as NUREG-1600.

The Commission's June 16, 1995, SRM also required that the staff provide a report to the Commission on the experience under the new policy, including the consideration of public comments after 18 months of experience under the new policy. (The Commission's intent was for a 2-year report of the Enforcement Policy.) On February 5, 1997 (62 FR 5495), the NRC published an opportunity for the public to comment on the revised Enforcement Policy. The agency received three responses, including: (1) a response from the Nuclear Energy Institute (NEI), (2) a response from members of the Region IV Utility Group (RUG IV), and (3) a response on behalf of the Council on Radionuclides and Radiopharmaceuticals (CORAR). Subsequent to the comment period, the agency received a letter from the Union of Concerned Scientists (UCS) on September 9, 1997, recommending that the agency perform a review of the Enforcement Policy aimed at (1) curtailing its subjectivity (i.e., improving consistency), and (2) improving the timeliness for enforcement actions. Although the UCS request was made beyond the comment period, the staff considered UCS's comments within its review of the Enforcement Policy. In addition, a public meeting was conducted at the NRC's offices at Two White Flint North in Rockville, Maryland on December 5, 1997, to discuss the NRC's Enforcement Policy and enforcement program. The meeting was arranged at the request of UCS in response to a letter from the Director of OE, dated October 14, 1997, that responded to the September 9, 1997 UCS letter. NEI was also a scheduled participant at this meeting. Although the public meeting was conducted beyond the comment period, the staff has considered UCS's and NEI's comments made during the meeting in this review. These comments, as well as the others, are addressed in the related sections of the report and staff conclusions on the comments are also given.

Discussion:

The staff has completed its review of approximately 2 years of experience under the revised Enforcement Policy and has considered public comments. The report, "NRC Enforcement Policy Review, July 1995 - July 1997," is included as Enclosure 1. Several recommendations are included, some of which require Commission approval and some of which the staff can implement on its own. In general, the report concluded that the changes made to the Enforcement Policy in 1995 (especially in the civil penalty assessment process) have helped to improve the predictability and consistency of enforcement actions, while maintaining the agency's desire to use enforcement sanctions for providing appropriate emphasis and deterrence in a way that helps to support the agency's overall safety mission.

I. RELEASE OF THE REPORT

Pending the Commission's decisions on the recommendations, I recommend that this report be publicly released to the NRC's Public Document Room. As noted in the recommendations section below, the staff proposes to release this report 10 working days from the date of this paper and issue it as NUREG-1622. It is the staff's intent to include this report on the Office of Enforcement's home page on the Internet.

II. RECOMMENDATIONS OF THE REPORT

The recommendations (included on pages 42-44 of the report) should be implemented, as they will improve the Commission's enforcement program.

A. RECOMMENDATIONS FOR COMMISSION APPROVAL

As summarized in Section III of the report, 9 of the 20 recommendations (recommendations 3, 9, 11, 12, 13, 14, 15, 16, 20) concern revisions to the Enforcement Policy. The staff notes that recommendation 3 is consistent with the Commission's August 25, 1997, SRM, in that *applicable* portions of the Commission's statement on safety and compliance are proposed for inclusion in the Enforcement Policy. (In particular, item four of the statement, that addressed duplicative or unnecessary requirements, was not considered appropriate for inclusion in the Enforcement Policy.) A *Federal Register* notice with Statements of Consideration addressing the revisions to the Enforcement Policy that would publish a complete revision of the Enforcement Policy is provided in Enclosure 2. The complete revision of the Enforcement Policy not only includes the revisions that implement the staff's recommendations noted above, but also reflects a consolidation of the 10 revisions to the Enforcement Policy since June 30, 1995. Enclosure 3 is a comparative text comparing the revised policy with the current policy.

It is proposed that this revision be effective upon publication as has been the practice with respect to previous revisions to the Enforcement Policy. A 60 day comment period is provided. However, unless substantive comments are received that differ from those considered by the staff in response to the February 1997 *Federal Register* notice considered by the staff, the staff would not expect to recommend any additional changes to the revised Policy.

B. RECOMMENDATIONS FOR STAFF ACTION

As summarized in Section III of the report, 10 of the 20 recommendations (recommendations 1, 2, 4, 5, 6, 7, 8, 10, 17, 18, 19) involve recommendations that the staff intends to implement. Recommendations 1, 5, and 10 pertain to areas that the staff has not been able to focus resources on in the past. As a result of the budget process, the staff intends to address all recommendations with the 28 FTE budgeted for the enforcement program in FY 1999, a growth of 9 FTE over the FY 1997 level. However, the ability to completely address recommendations 1, 5, and 10 is dependent on the volume of enforcement actions received.

Coordination:

The Office of General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed this paper and has no information technology or information management concerns. The Office of Public Affairs agrees with recommendations 17 and 18.

Recommendations:

- 1) Absent Commission objection, I plan to issue the 2-year report as NUREG-1622 and disseminate it 10 working days from the date of this paper.
- 2) The Commission should approve the enclosed *Federal Register* notice publishing the revised Enforcement Policy and associated recommendations 3, 9, 11, 12, 13, 14, 15, 16, and 20.
- 3) Note:
 - a. That the policy statement will be published in the *Federal Register*, effective immediately, allowing 60 days for public comments.
 - b. The revised Enforcement Policy will be published as NUREG-1600, Rev.1 and copies will be sent to all licensees.
 - c. The change does not contain information collection requirements that are subject to the paperwork Reduction Act.
 - d. The staff has determined that this is not a "major" rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C.804(2) and has confirmed this determination with OMB.

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Enclosures: 1. Two-Year Review of the Enforcement Policy
2. *Federal Register* notice with Revised Enforcement Policy
3. Comparative text between current and revised Enforcement Policy