

June 15, 1999

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette Vietti-Cook, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-99-087 - 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 has approved Recommendation 1 that the Enforcement Policy be modified to state that risk considerations can be used to raise or lower the severity of the examples provided in the Supplements to the Policy.

The Commission has approved Recommendation 2 to delete the term "regulatory significance" from the Policy.

The Commission has approved Recommendation 3, with the exception noted below, to base the significance of a particular violation on a) actual safety consequences; b) potential safety consequences, including the consideration of risk information; c) potential for impacting the ability of the NRC to perform its regulatory function; and d) any willful aspects of the violation. The Commission has disapproved the concept of aggregating less significant violations into one of higher significance and the use of repetitive violations to increase the severity of a given violation.

With respect to Recommendation 3, the staff should ensure the process for assessing "potential" safety consequences is disciplined so that only credible scenarios with potential consequences are considered. 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.

The Commission has approved Recommendation 4 that Section IV of the Policy be amended to address the subjects covered by significance as described in item 3, 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. If the staff has concerns about a licensee's performance as a result of a large number of less significant violations, or repetitive violations based on ineffective corrective actions, the current and future assessment process provides the regulatory tools necessary to address these performance concerns. 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 should approach the Commission with a recommendation for an equally extraordinary regulatory response.

With respect to Recommendation 4, 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.

The Commission has approved Recommendation 5, consistent with the above comments on Recommendation 4, to change the Commission's Statement on Safety and Compliance in Appendix A of the Policy and in the Inspection Manual to delete references to regulatory significance.

The Commission has disapproved Recommendation 6 to change example C.7 of the Policy's Supplement I, Reactor Operations, and similar examples in the other supplements, to increase their emphasis on potential safety consequences. References to aggregation in the Enforcement Policy, including its Supplements, should be deleted.

The Commission has approved Recommendation 7 to 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.

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
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