

IN RESPONSE, PLEASE
REFER TO: M071024A

October 24, 2007

MEMORANDUM FOR: Luis A. Reyes
Executive Director for Operations

John F. Cordes, Director
Office of Commission Appellate Adjudication

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 9:25 A.M.,
WEDNESDAY, OCTOBER 24, 2007, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-07-0158 - 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 approved a final rule amending the Commission's employee protection regulations in Title 10 of the Code of Federal Regulations to approve the Enforcement Policy Revision to allow the Commission to exercise its authority to impose civil penalties against contractors and subcontractors who violate the employee protection regulations.

Following incorporation of the changes noted in the attachment, the Federal Register notice should be reviewed by the Rules Review and Directives Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

11/23/07)

Any significant adverse trends in licensee or applicant oversight of contractors and subcontractors should be brought to the attention of the Commission.

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.

II. SECY-07-0171 - Pa'ina Hawaii, LLC (Material License Application)

The Commission approved a Memorandum and Order calling for the parties' briefs on two questions the Atomic Safety and Licensing Board certified to the Commission in a Memorandum on August 31, 2007. The Memorandum and Order provides deadlines and format requirements for initial and reply briefs by the parties.

(Subsequently, on October 24, 2007, the Secretary signed the Memorandum and Order.)

Attachment: Changes to the Final Rule in SECY-07-0158

cc: Chairman Klein
Commissioner Jaczko
Commissioner Lyons
OGC
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

Changes to the Final Rule in SECY-07-0158

On page 7, under the section on “Comment Analysis,” the 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.