



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

August 27, 2010

OFFICE OF THE
SECRETARY

COMMISSION VOTING RECORD

DECISION ITEM: SECY-09-0190

TITLE: MAJOR REVISION TO NRC ENFORCEMENT POLICY

The Commission (with all Commissioners agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of August 27, 2010.

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

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
EDO
PDR

VOTING SUMMARY - SECY-09-0190

RECORDED VOTES

	APRVD	DISAPRVD	ABSTAIN	PARTICIP	NOT COMMENTS	DATE
CHRM. JACZKO	X				X	5/28/10
COMR. SVINICKI	X				X	5/14/10
COMR. APOSTOLAKIS	X				X	7/22/10
COMR. MAGWOOD	X				X	7/23/10
COMR. OSTENDORFF	X				X	7/16/10

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 August 27, 2010.

NOTATION VOTE

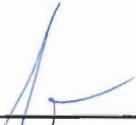
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Chairman Jaczko
SUBJECT: SECY-09-0190 – MAJOR REVISION TO NRC
ENFORCEMENT POLICY

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached X None ___



SIGNATURE

8/28/00

DATE

Entered on "STARS" Yes x No ___

**Chairman Jaczko's Comments on SECY-09-0190,
"Major Revision to NRC Enforcement Policy"**

The NRC's enforcement program is a fundamental underpinning of our agency's mission. Enforcement actions demonstrate the agency's expectation that licensees comply with regulatory requirements and act to promptly identify and correct violations. I approve the staff's initiative to reorganize and update the policy to reflect changes in our regulations. I commend the staff on undertaking this significant effort and obtaining an unprecedented level of public input.

As emphasized by stakeholders at the Commission meeting, consistent implementation is critical to public confidence. Our enforcement policy provides the framework for ensuring consistency with guidelines and examples. For one important enforcement tool, daily civil penalties, the policy provides only a very brief and general statement. In contrast, specific guidance is provided for adjusting the total civil penalty amount for certain types of violations using enforcement discretion. Additional guidance, such as criteria and examples, should be developed and included in the policy to assist the staff in determining when daily civil penalties are appropriate.

Because this policy revision followed the transition from a pilot program to full implementation of ADR in our enforcement program, the implementing procedures for the pilot program have been removed. Instead, the revised policy provides a broad overview of the program and refers to the NRC enforcement manual and the NRC web site as sources of additional information on ADR. While I approve this approach, staff should ensure that all of the agency's ADR guidance and implementing procedures are publically available in one easily identifiable location on the NRC web site. Staff should ensure that the ADR information from these sources is consistent and complete.

With the substantial reorganization and rewriting of the policy, and as changes are made to implement Commission direction, careful review is necessary to ensure that rewording has not created inconsistencies, ambiguities or inadvertently changed policy. For example:

- The description of the points when post-investigation ADR may be offered in the policy differs from the description in the enforcement manual.
- The criteria for determining whether pre-decisional enforcement conferences will be offered are not consistent
- The new wording for issuance immediately effective orders, which states at page 22 that they are made immediately effective when required to protect public health and safety and security or if the violation or conduct causing the violation is willful. This language implies that all willful violations will be immediately effective; however, it is not clear whether this was intended to be a change in policy or not.
- The definition of "apparent violation" in the glossary is limited to violations being considered for escalated enforcement action. The reason for this limitation is not explained.

Given the size and detail in this document, and its importance to the agency's mission, I believe that the staff should conduct further review for accuracy and consistency, both internally and with other agency documents. In order to fully inform the Commission of changes to policy, staff should prepare a roadmap identifying where portions of the old policy statement have been moved and explaining the reasons for all additions and deletions and significant changes to the wording in the policy. In particular, the staff should address the following:

The revised policy states that, regardless of the normal outcome of the CP assessment process, the NRC will normally impose at least a base civil penalty in cases where a licensee has lost required control of its regulated radioactive material for any period of time. While the loss of NRC-regulated material represents a security concern, our policy already allows discretion to assess a CP when the traditional enforcement process would result in zero penalty. Therefore, loss of control should be added to the list of violations for which discretion should be considered in Section 3.6. The language stating that violations will normally be assessed a CP should be removed to avoid any impression that the CP will be assessed without regard to the circumstances surrounding the violation.

The policy states that it is the responsibility of the licensee to demonstrate that it should get credit for identification in the CP assessment process. The policy then states that it is not the NRC's responsibility to show that identification credit is not warranted. The language should be revised to avoid any confusion regarding the burden of proof for determining penalty assessment. In a hearing, the staff bears the burden of justifying the basis for any CP.

The language regarding PECs should be revised to provide clear and consistent guidance that allows licensees and individuals to respond to apparent violations before final escalated enforcement action is taken. Providing this opportunity is important to ensure that agency actions which can significantly impact livelihood are fully informed and taken carefully and deliberately. Appropriate changes to the policy should be made consistent with this principle, including the following:

- The policy states (at page 24) that when the NRC is considering escalated enforcement action the NRC will typically offer a PEC. Additionally, it states that the NRC may request a conference when additional information is needed.
- The policy then states (at page 25) that if the NRC concludes that it has sufficient information to make an informed enforcement decision involving a licensee, contractor or vendor, a PEC will not normally be held. This is not consistent with the statement above for escalated enforcement.
- The policy also states (at page 25) that individuals will normally be provided an opportunity to address apparent violations before escalated enforcement action. Since individuals may be licensees, contractors or vendors, this should be reconciled with the statements above.
- The policy states (at page 25) that while written responses to proposed enforcement actions are permitted, the NRC may take final enforcement action before receiving the response. In order to ensure that enforcement actions are fully informed, the policy should provide that the agency will consider responses before taking enforcement actions to the extent feasible.

Following staff's review, the revised policy and roadmap should be provided to the Commission for review within six months of the date of the Staff Requirements Memorandum. I appreciate the staff's consideration of stakeholder input in developing the revised policy and believe that additional analysis and vetting will result in an even more robust and valuable policy statement.



Gregory B. Jaczko

5/28/10
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER SVINICKI
SUBJECT: SECY-09-0190 – MAJOR REVISION TO NRC
ENFORCEMENT POLICY

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below ___ Attached XX None ___



SIGNATURE

05/14/10

DATE

Entered on "STARS" Yes No _____

Commissioner Svinicki's Comments on SECY-09-0190
Major Revision to NRC Enforcement Policy

I approve for publication in the *Federal Register* the revised Enforcement Policy and the proposed *Federal Register* notice, subject to the attached edits, which, although seemingly minor, serve to reinforce clarity and consistency. For this reason, I believe these edits are important.

The NRC Enforcement Policy is a major Commission document that provides to the public, as well as to internal and external stakeholders, a clear understanding of how the agency identifies and addresses violations of NRC requirements. For this reason, the staff conducted extensive outreach during the development of this revision. The staff conducted several public meetings, accepted rounds of public comments, and made significant changes, including increasing the level of detail and expanding the number of examples. Additionally, the comments and their disposition are available on the NRC public website. That this revision appears now to reflect substantial consensus among active stakeholders on this issue is a tribute to the thoroughness of the staff process in developing it. I compliment them on a job well done.

Finally, the staff should review enforcement discretion options available for limited work authorization and construction activities in light of recent events related to the Vogtle Units 3 and 4 Early Site Permit. The staff should report back to the Commission regarding whether these events indicate that modifications or clarifications to enforcement practices are needed or advisable.



Kristine L. Svinicki 05/14/10

2.1 Identification of Violations

2nd paragraph, 2nd sentence, page 7, edit as follows:

After ~~an apparent a potential~~ violation is identified, it is assessed in accordance with this Policy.

2.2 Assessment of Violations

1st paragraph, 2nd and 3rd sentences, page 8, edit as follows:

After a violation is identified, the NRC assesses its significance or severity. Severity levels are assigned to violations processed under traditional enforcement. The severity level assigned to the violation generally reflects the assessment of the significance of a violation ~~and is referred to as traditional enforcement.~~ For most violations committed by operating power reactor licensees, the significance of a violation is assessed dispositioned using the significance determination process (SDP) under the Reactor Oversight Process (ROP), as discussed below in Section 2.2.3, "Operating Reactor Assessment Program."

2.2.2 Severity Levels

4th paragraph, severity level definitions, page 10, edit as follows:

- a. Severity Level I violations are those that resulted in or could have resulted in serious safety or security consequences ~~(i.e., e.g., violations that created the substantial potential for serious safety or security consequences or violations that involved systems failing when actually called on to prevent or mitigate a serious safety or security event).~~
- b. Severity Level II violations are those that resulted in or could have resulted in significant safety or security consequences ~~(i.e., e.g., violations that created the potential for substantial safety or security consequences or violations that involved systems not being capable, for an extended period, of preventing or mitigating a serious safety or security event).~~
- c. Severity Level III violations are those that resulted in or could have resulted in moderate safety or security consequences ~~(i.e., e.g., violations that created a potential for moderate safety or security consequences or violations that involved systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event).~~
- d. Severity Level IV violations are those that are less serious, but are of more than minor concern, that resulted in no or relatively inappreciable potential safety or security consequences ~~(i.e., e.g., violations that created the potential of more than minor safety or security consequences).~~

Field Code Changed

2.2.4 Exceptions to Using Only the Operating Reactor Assessment Program

1st paragraph, 2nd sentence, page 11, edit as follows:

Some aspects of inspection findings and their associated violations at operating power reactors cannot be addressed only through the Operating Reactor Assessment Program. Operating reactor inspection findings are assigned significance and ~~any, if the~~ associated violations ~~involves~~ traditional enforcement, ~~they are also~~ are assigned severity levels and can be considered for civil penalties (see IMC 0612).

6.4 Licensed Reactor Operators

Severity level IV violation example d.1, page 43, edits as follows:

1. A nonwillful compromise (see 10 CFR 55.49, "Integrity of Examinations and Tests") of an application, test or examination required by 10 CFR Part 55, or ~~isolated or limited~~ cases of inaccurate or incomplete information inadvertently provided to the NRC that does not contribute to the NRC making an incorrect regulatory decision as a result of the originally submitted information or an unqualified individual performing the functions of an operator or senior operator, for example:

6.14 Fitness for Duty

Delete severity level IV violation example d.1, page 65, and replace with:

1. ~~A licensee fails to have implementing procedures that are clear, concise, and readily available; Failure to prepare, implement, and maintain written procedures that describe the methods to be used in implementing the FFD policy;~~

7.0 GLOSSARY

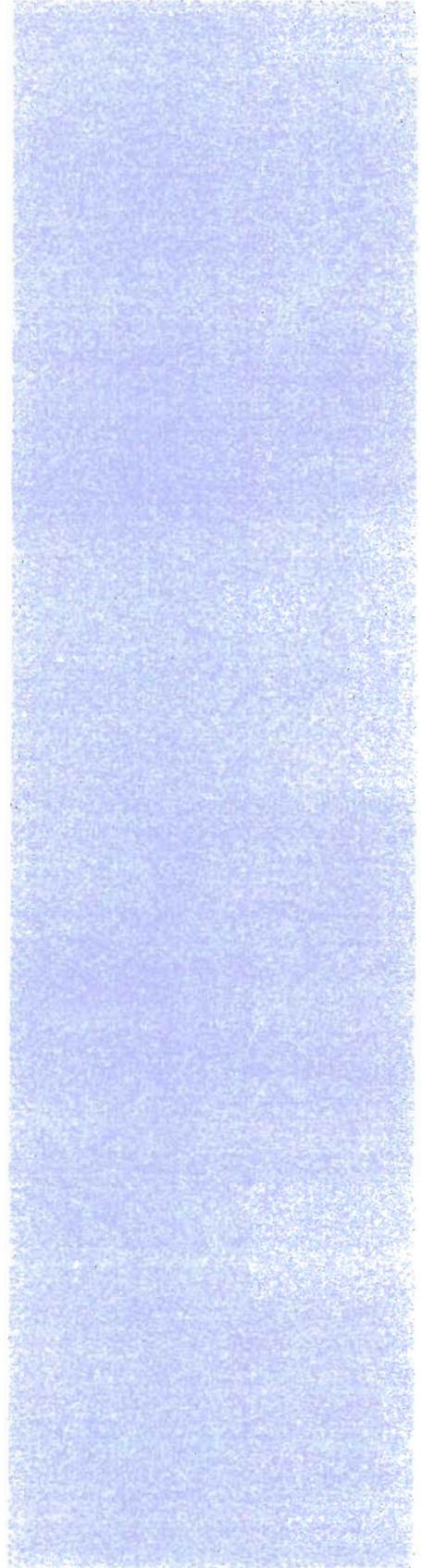
Replace the definition of "Licensee" on page 67 with the following:

~~Licensee is any person or entity licensed by the NRC~~ Licensee means a person or entity authorized to conduct activities under a license issued by the Commission.

7.0 GLOSSARY

Definition of noncited violation, page 67, edit as follows:

Noncited Violation (NCV) is a nonrecurring, typically nonwillful, Severity Level IV violation or a violation associated with a Green ROP finding that is not subject to formal enforcement action.



NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: Commissioner Apostolakis
SUBJECT: SECY-09-0190 – MAJOR REVISION TO NRC
ENFORCEMENT POLICY

Approved XX Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below XX Attached ___ None ___

I approve for publication in the Federal Register the revised Enforcement Policy and the proposed Federal Register notice. The Policy's more explicit use of risk information to assess the risk significance of violations is a major improvement. I commend the staff for its extensive public outreach during the development of this revision. As a result, there appears to be broad support for it.

The revised Enforcement Policy should be signed out by SECY to make clear that this is the Commission's policy and not a staff policy.

Future revisions to the Enforcement Policy should include a roadmap explaining the reasons for all significant changes.


George Apostolakis

SIGNATURE

7/22/2010

DATE

Entered on "STARS" Yes x No _____

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary

FROM: COMMISSIONER MAGWOOD

SUBJECT: SECY-09-0190 – MAJOR REVISION TO NRC
ENFORCEMENT POLICY

Approved X Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below X Attached X None _____

I approve the policy subject to the attached comments and edits.



SIGNATURE

July 27, 2010

DATE

Entered on "STARS" Yes X No _____

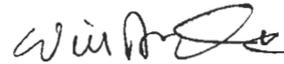
**Commissioner Magwood's Comments on SECY-09-0190—Major Revision to NRC
Enforcement Policy**

I approve the staff's proposal to publish the revised Enforcement Policy in the Federal Register, subject to the attached edits, which correct a number of errors and clarify portions of the policy. Further, I support the edits suggested by Commissioner Svinicki and would also direct the staff to begin to address the issues raised by the Chairman in his vote, including the development of a roadmap explaining the basis for each substantive change to the Policy, which was also supported by Commissioners Ostendorff and Apostolakis. I also support the Chairman's proposal to have the staff provide a revised policy and roadmap to the Commission for review within 6 months of the date of the Staff Requirements Memorandum.

I remain concerned that the new base civil penalty for uranium conversion facilities (\$70,000), although likely appropriate for the one operating facility, is not necessarily appropriate for any uranium conversion facility. As part of its 6-month review, the staff should evaluate whether the civil penalties for conversion facilities could be tied to the inventory of process chemicals and other materials maintained by the facility. The Commission paper transmitting the revised enforcement policy should contain an analysis of the civil penalties for conversion facilities and should present options for the Commission's consideration.

In accordance with my vote on SECY-10-0031, Revising the Fuel Cycle Oversight Process, staff should also revise the policy to provide licensees with credit for an effective corrective action program. These revisions should be incorporated into the Policy and submitted to the Commission with the rest of the policy in 6 months.

I commend the staff for the level of effort that has gone into the development of this document, especially the extra steps that were taken to solicit and respond to stakeholder concerns. The staff should continue to solicit stakeholder feedback on future revisions of the enforcement policy.



William D. Magwood, IV

July 27, 2010

Date

1. Preface

pg 3, last sentence, first paragraph:

Update the instructions for accessing the Enforcement Manual (provide ADAMS ML and instructions for accessing public ADAMS); the current instructions are incorrect.

2. Example 6.12(c)(10)

Pg 61, should be revised as follows:

A licensee fails to contact the local law enforcement agency and does not attempt to establish a prearranged response plan ~~with the local law enforcement agency~~, or a programmatic failure occurs in the implementation of the plan.

3. Glossary

Pg 66, *Demand for Information*, should be revised as follows:

Demand for Information (DFI), as defined in 10 CFR 2.204, ~~requires is an Order requiring~~ a licensee or other person subject to the jurisdiction of the Commission to respond with specific information for the purpose of enabling the NRC to determine whether an Order should be issued or whether other action should be taken.

4. Table of Base Civil Penalties

Pg. 70, Table A, a and c:

a. Power reactors, gaseous diffusion uranium enrichment plants, and high-level waste repository.

c. Fuel fabricators authorized to possess Category III quantities of SNM, industrial processors, independent spent fuel and monitored retrievable storage installations, mills, and gas centrifuge and laser uranium enrichment facilities.

5. Federal Register Notice

Pg. 8, d. Revision to previous *Federal Register* Notice.

Staff should revise this discussion to clarify that it is revising the Policy Statement that was published in the *Federal Register* on December 18, 2000 (65 FR 79139).

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary
FROM: COMMISSIONER OSTENDORFF
SUBJECT: SECY-09-0190 – MAJOR REVISION TO NRC
ENFORCEMENT POLICY

Approved Disapproved _____ Abstain _____

Not Participating _____

COMMENTS: Below _____ Attached None _____



SIGNATURE

7/16/10

DATE

Entered on "STARS" Yes No _____

**Commissioner Ostendorff's Comments on SECY 09-0190,
"Major Revisions to the NRC Enforcement Policy"**

I approve the revised NRC Enforcement Policy and the proposed notice for publication in the *Federal Register*. Based on review of Commission paper SECY 09-0190 and feedback from internal and external stakeholders, the major revisions represent a substantial improvement over the current policy. As noted in the proposed *Federal Register* notice, the NRC intends to solicit comments on this revised policy approximately 18 months after the effective date. This approach will provide the appropriate time to gain sufficient experience with the revised policy and affords the Commission the opportunity for further refinements to the policy as necessary.

A roadmap explaining the basis for each substantive change should be provided to the Commission with all future Commission papers proposing revisions to the Enforcement or Allegation policy. As a matter of practice, the concept of a roadmap is fundamentally important for purposes of agency knowledge management and would be beneficial for the Commission's review of future NRC Enforcement or Allegation policy changes. Commission paper SECY 09-0190 did not fully explain all of the significant changes to the policy. For example, Section 6.2, Fuel Cycle Operations, adopts a new severity level scheme graded on the results of Integrated Safety Analyses (ISAs). The ISA based severity levels scheme is logical; however, the basis for the thresholds warrants a more transparent explanation. Given the magnitude and overall scope of changes, I support the Chairman's recommendation that the staff should prepare a roadmap of the basis for the revisions to the current policy. This roadmap should be provided to the Commission with the next update of the NRC's Enforcement policy.

In addition, the staff should evaluate enforcement discretion options available for new nuclear facilities (e.g., reactors, uranium enrichment plants) construction or limited work authorization activities. Staff evaluation of enforcement discretion options would better prepare the Commission and agency for unexpected circumstances that may impede efficient and effective agency operations in regulating pre-operations of these new nuclear facilities. I agree with Commissioner Svinicki's comment calling for an evaluation of enforcement discretion options given the recent events regarding the Vogtle Units 3 and 4 Early Site Permit. These recent events serve as a reminder that the Commission should have regulatory flexibilities available in anticipation of unforeseen issues that may arise from numerous new reactors but also other new nuclear facilities in the fuel cycle.