

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

April 12, 1990

MEMORANDUM FOR: James M. Taylor, Executive Director
for operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-90-094 - PUBLIC COMMENTS RECEIVED
CONCERNING THE ENFORCEMENT POLICY
REVISION INVOLVING MAINTENANCE-RELATED
ROOT CAUSE

This is to advise you that the Commission (with Chairman Carr and Commissioners Rogers and Curtiss agreeing) has disapproved the staff's recommendation to delete the Enforcement Policy civil penalty escalation factor for maintenance-related root cause violations. chairman Carr and Commissioner Rogers concur in the attached comments of Commissioner Curtiss.

Commissioners Roberts and Remick approved the proposed modifications; Commissioner Remick's comments are also attached.

The staff should proceed to implement the escalated maintenance enforcement policy. In accordance with previous Commission guidance any enforcement actions taken pursuant to the policy should first be submitted to the Commission for review.

Licensees should be advised, if necessary, of the Commission decision to proceed with the existing enforcement policy.

Attachments:
As Stated

cc: Chairman Carr
Commissioner Roberts
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
OGC
GPA

NOTE: THIS SRM AND THE SUBJECT SECY PAPER WILL BE MADE PUBLICLY AVAILABLE IN 10 WORKING DAYS FROM THE DATE OF THE MEMORANDUM.

Commissioner Curtiss' comments on SECY-90-94:

Having effectively rebutted the four principal arguments advanced by those who commented on the revised maintenance enforcement policy, the staff proceeds to recommend that the Commission not proceed with the proposed revision. I am at a loss to understand the basis for the staff's recommendation.

I am particularly troubled with abandoning this approach at this time for three reasons:

First, we are, at this very moment, encouraging the industry to devote greater attention and resources to maintenance, through a variety of different means. In my view, we need to keep that pressure on if we are to expect results -- and an enforcement policy that places special emphasis on maintenance problems can be a most effective tool to achieve the desired results. Indeed, I fail to understand the concern that our actions in this area would cause licensees to divert their resources and attention to maintenance. I thought that was exactly what we wanted licensees to do, given the interest that we have in seeing improvements in the maintenance area. To step back from this initiative at this point, shortly after the Commission deferred action on a maintenance rule, will send exactly the wrong signal to industry.

Second, the problems identified by the commenters, when examined carefully, simply are not persuasive. The staff's responses in the subject SECY paper need not be repeated here. But suffice it to say that each of the four objections has been fully addressed by the staff.

Finally, to the extent that there exists some residual concern over matters such as the ability to demonstrate a programmatic failure or the prospect that licensees will mount vigorous defenses on the ground that there is no underlying regulation upon which to base the enforcement action, I would simply note that these concerns do not arise out of the particular approach that was originally proposed in SECY-89-325, but instead raise a more general question about our ability to take enforcement action where we discover maintenance problems. I personally think that Appendix B is sufficiently clear on the subject of maintenance to provide an adequate basis to take enforcement action. Indeed, we have successfully done so, for violations both on the primary side of the plant as well as on the balance-of-plant side. Accordingly, I find the staff's arguments to rescind the maintenance enforcement policy unpersuasive. But if

the Commission were to reject the concept of escalating enforcement actions for maintenance violations on these particular grounds -- where there is no particular nexus between the specific policy proposed here and the argument for rejecting it -- it leads to the inevitable conclusion that there is some question about our more general authority to take enforcement action in the maintenance area.

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In summary, for the reasons advanced by the staff in the original SECY paper (SECY-89-325), as well as in the subject SECY paper, I continue to believe that we should proceed with the revised maintenance enforcement policy originally recommended by the staff. With the understanding that enforcement actions taken pursuant to this policy would first be submitted to the Commission for review, such an approach provides the necessary safeguards to ensure that it is implemented in an effective and reasonable manner. Accordingly, I disapprove the staff's recommendation in SECY-90-94 to rescind the policy and would, instead, direct the staff to proceed with implementation of the revised maintenance enforcement policy.

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Commissioner Remick's
Comments on SECY-90-094

I approve the Staff's recommendation that the Enforcement Policy civil penalty escalation factor for maintenance-related root cause be deleted. As I stated in my comments related to SECY-89-325, REVISED POLICY STATEMENT AND ENFORCEMENT CRITERIA RELATED TO THE MAINTENANCE OF NUCLEAR POWER PLANTS, I continue to have serious reservations regarding the ability of the staff to conclusively determine that maintenance, and not training or human error for example, is a root cause of a regulatory violation in actual enforcement application. Even if a licensee has implemented a maintenance program consistent with the scope and activities defined by the revised Policy Statement on the Maintenance of Nuclear Power Plants, components and equipment may fail. The extent to which the cause is maintenance programs related or training or human error related may not be clear.

In addition, special treatment of maintenance violations in this way could draw licensee's attention and resources away from other operational areas which might have equal or even greater safety importance relative to maintenance.