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General Comment

See attached file(s)

Attachments

Policy Comments

50 USC Review Complete
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 Add = C. Faria (Comment 2)

U.S. Nuclear Regulatory Commission
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Washington, DC 20555-0001
ATTN: Carolyn Faria, OE and Cindy Bladey, RADB

Subject: Comments on draft Enforcement Policy, Docket ID NRC-2011-0176:

Having co-chaired the NRC work group to develop this draft policy change prior to my retirement and before publication in the Federal Register, I feel satisfied with this final draft. In general, I applaud the effort to clarify the NRC Enforcement Policy for construction-related activities as described in the Federal Register announcement in that it takes a reasonable approach to evaluate and disposition violations during such varied activities as is involved during construction and also attempts to account for the relative risks of various issues given that nuclear materials may or may not be present during the various stages of construction. This proposed policy also clarifies the roles and responsibilities of the facility applicants with respect to activities involving their employees, contractors, subcontractors, and their employees. I do, however, recommend several specific changes/comments, as follows:

- 1) Section 2.2.6, end of 1st paragraph – add new last sentence, as follows: ***“Failure to timely restore the CLB may be subject to separate enforcement, such as an order, a civil penalty, or both.”***

While it is unlikely that a licensee/applicant would not timely restore the CLB, this comment is appropriate to enhance public confidence that the NRC will take appropriate action as necessary to ensure the integrity of the licensing process. Such formal action would also permit public involvement in such important matters.

- 2) Section 2.3.2 (all) – the NRC should consider simplifying the guidance for issuing NCVs, recognizing that licensees generally take effective corrective actions for violations.

The NRC should simplify NCV usage by replacing the current guidance in section 2.3.2 with the following: ***“The NRC will typically issue NCVs for all violations that are determined to be of SL IV severity or associated with a finding that is of no greater than green significance. The NRC may issue a Notice of Violation for a SL IV violation if the issue also involves a willful act by a licensee official, and the resultant action is not otherwise considered for escalated enforcement for the licensee, or the individual, or both. Particularly poor licensee performance, such as indicated by weak or ineffective corrective actions for very low severity/significance issues should be addressed through other means provided in the NRC inspection or assessment processes in lieu of issuing cited NOV.”***

Adopting such a policy for non-escalated enforcement actions is in keeping with the current Policy, yet will better serve the NRC mission by minimizing the staff effort to determine the acceptability of licensee corrective actions for issues of very low safety or

security significance, prior to dispositioning such violations, as well as minimizing the staff effort in dispositioning willful violations of very low significance not caused by licensee officials.

NCVs should be tracked by the NRC staff and licensees should be able to show that corrective actions have been taken and are effective upon NRC request during routine follow up inspection activity, as determined by the appropriate NRC inspection oversight process. Further, NRC oversight processes should be able to use the insights from these issues much as the current practice under the NRC's Reactor Oversight Process (ROP) for operating reactors; however, there should be little need for up front staff effort to determine whether such very low significance issues warrant an NCV. This method would be better than current practice because it would be more transparent and predictable in its use, yet would still retain the ability to issue a Notice of Violation even for issues of very low significance if caused by a willful act by a licensee official.

Some would argue that repeat violations should somehow be treated more harshly and that such a simplification would not adequately address repeat offenders. My response to this is that non-escalated enforcement matters should not divert the resources in the enforcement community, especially NRC management, but rather should be handled by the inspection and program offices through tools appropriate to such low significance issues.

This would greatly simplify NRC's policy and procedure for NCV use, which sometimes results in expending considerable staff and management effort to disposition issues of very low safety or security significance only to confirm the appropriateness of issuing a non-escalated action for a very low significance issue. This efficiency gain should lead to greater staff and management resource availability to disposition those issues involving significant safety or security concerns, as well as making the staff issue screening processes more effective by removing a number of variables as to when a NCV can be issued.

3) The draft policy does not address the current staff actions to broaden use of the ROP into other major areas such as fuel facility operations and construction activities of both power reactors and fuel/enrichment facility licensees.

As a result, I suggest adding the following text as a new last paragraph to Section 1.1 Purpose: ***"This Policy includes two primary means to ensure enforcement actions are commensurate with the safety or security significance of identified violations, namely by use of either the Reactor Oversight Process (ROP) Significance Determination Process (SDP) for evaluating most violations at operating power reactors, or use of "traditional" enforcement measures for all other licensees or applicants, etc., and for violations at operating power reactors involving actual consequences, willfulness, or that impact the regulatory process. At this time, the NRC staff has developed SDP tools appropriate for most issues at operating power reactors. All other licensees, including power reactors and fuel facilities under construction, utilize the traditional enforcement process tools contained in this Policy. However, the***

staff is currently considering pilot efforts to expand the ROP-like assessment processes to other licensed activities, including reactor construction. In order to accommodate such efforts, the NRC Enforcement Policy will be revised accordingly once the new ROP-like tools are finalized. Such revision would likely initially be handled through issuance of either an Enforcement Guidance Memorandum or an Interim Policy in order to assess the effectiveness of such tools during a pilot study prior to effecting a permanent policy change.”

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