

Potential Changes to The Enforcement Policy on Construction-related Topics

Roy Zimmerman, Director, Office of Enforcement

Nick Hilton, Chief, Enforcement Branch, OE

Carolyn Faria, Enforcement Specialist, OE

Earl Libby, Licensing Project Manager, NRO

Meeting Purpose

Participants

Category 2 meeting

Security Requirements:

- Please be sure to always wear your visitor's badge
- No one should be using the elevator unescorted
- If anyone finds themselves locked out or lost please call 301-415-2741

1:00 p.m. – Introduction / Background

1:15 p.m. – Item #1- Revise Policy Sections for Clarity

1:30 p.m. – Opportunity for Discussion on Item #1

2:00 p.m. – Item #2- Revise Current Section 2.3, *Disposition of Violations*

2:15 p.m. – Opportunity for Discussion on Item #2

2:45 p.m. –Break

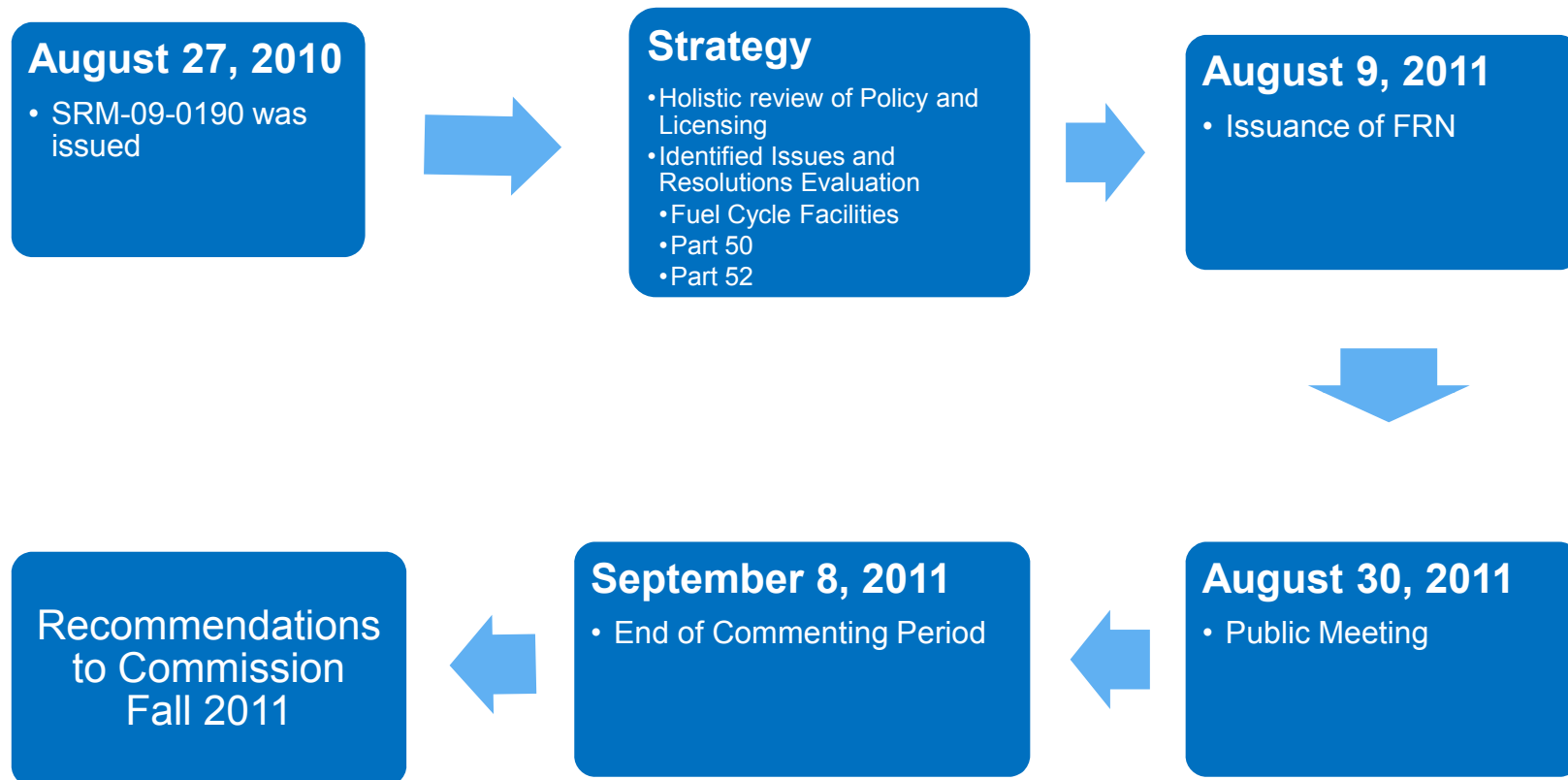
3:00 p.m. – Item #3- Revise Policy Sections on Enforcement Discretion

3:15 p.m. – Opportunity for Discussion on Item #3

4:00 p.m. – Summary

4:30 p.m. – Adjourn

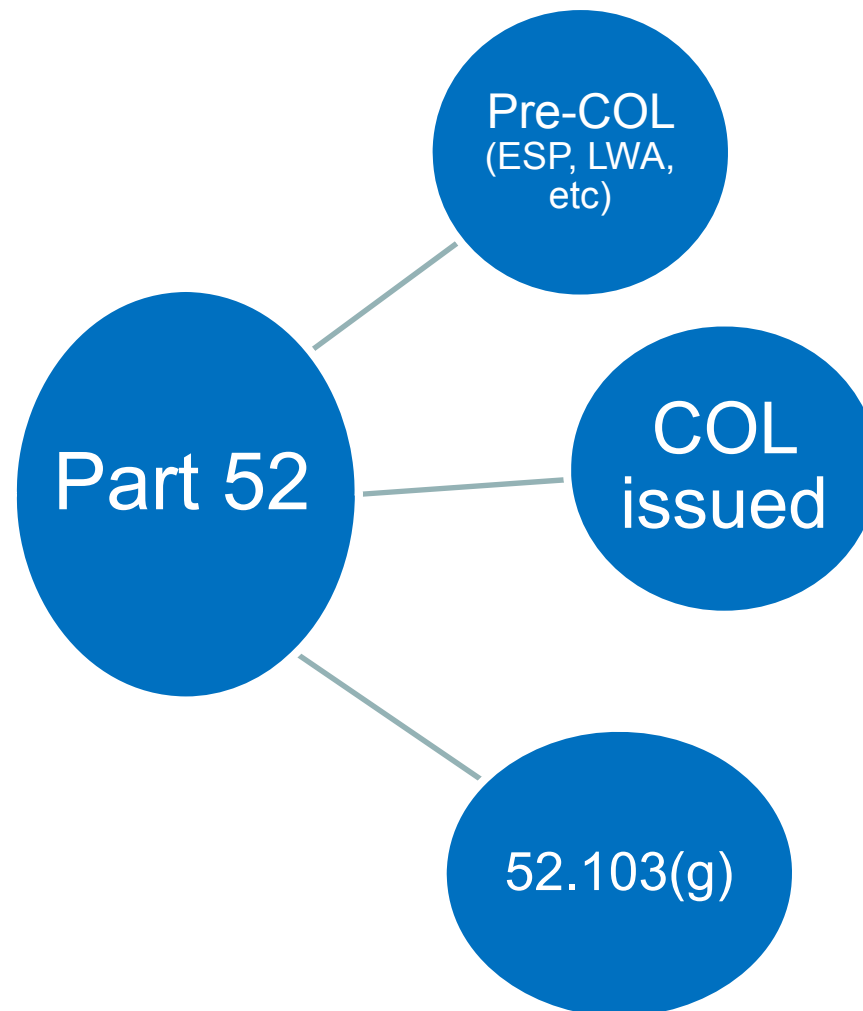
Background



SRM-SECY-09-0190, Item 5:

- In light of recent events related to the Vogtle early site permit (Units 3 and 4), the staff should reevaluate the portions of the Enforcement Policy associated with construction activities (e.g., reactor or uranium enrichment plants), including under what conditions enforcement discretion can be used in cases involving the holder of a LWA or COL. The staff should report back to the Commission on the results of that review, including proposed Policy options within 9 months of the effective date of this SRM.*

10 CFR Part 52.....



COL – Combined License
ESP – Early Site Permit
LWA – Limited Work
Authorization



***Federal Register Notice
#2011-0176
Comments due Sept. 8, 2011***



Revise Policy Sections for Clarity-Item #1

SECTION 1.2, *APPLICABILITY*:

As new last paragraphs in the section, add the following:

It is NRC policy to hold licensees, certificate holders, and applicants responsible for the acts of their employees, contractors, or vendors and their employees, and the NRC may cite the licensee, certificate holder, or applicant for violations committed by its employees, contractors, or vendors and their employees.

The NRC may use the term “licensee” in this Policy when referring to enforcement; however, in most situations the term is applied broadly for any of the above entities. In some situations, the NRC intends that the information applies narrowly, only to license holders. The context of the information described in the Policy will determine the usage of the term “licensee.”



Revise Policy Sections for Clarity-Item #1

SECTION 2.2, ASSESSMENT OF VIOLATIONS:

In the first sentence of Section 2.2.1.a, revise the sentence to read: “..., onsite or offsite radiation exposures, ***onsite or offsite chemical hazard exposures resulting from licensed or certified activities....***”

Add a new section, as follows:

Section 2.2.6 Construction

In accordance with 10 CFR 50.10, no person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under 10 CFR Part 50, a combined license under 10 CFR Part 52, an early site permit authorizing the activities under 10 CFR 50.10(d), or a limited work authorization under 10 CFR 50.10(d). Further, any activities undertaken under the Changes during Construction (CdC) Preliminary Acceptance Review (PAR) Process, as developed in Interim Staff Guidance (ISG)- 025, are at the risk of the licensee, and the licensee is obligated to return to the current licensing basis (CLB) if the related license amendment request (LAR) is subsequently not approved by the NRC.

Also, in accordance with 10 CFR 70.23(a)(7) and 10 CFR 40.32(e), commencement of construction before the NRC finishes its environmental review and issues a license for processing and fuel fabrication, conversion of uranium hexafluoride, or uranium enrichment facility construction and operation is grounds for denial to possess and use special nuclear material in the plant or facility. Additionally, in accordance with 10 CFR 70.23(b), failure to obtain Commission approval for the construction of the principal structures, systems, and components of a plutonium processing and fuel fabrication plant before the commencement of construction may also be grounds for denial of a license to possess and use special nuclear material.

Revise Policy Sections for Clarity-Item #1

SECTION 6.0, VIOLATION EXAMPLES:

Add a second paragraph to the introduction of the section:

Many examples are written to reflect the risks associated with the use of radioactive or special nuclear materials. However, violations during construction generally occur before the nuclear material and its associated risk are present. Therefore, the NRC will consider the lower risk significance of violations that occur during construction in the areas of emergency preparedness, reactor operator licensing, and security and may reduce the severity level for those violations from that indicated by the examples in those areas. The staff must coordinate with the Office of Enforcement before applying this lower risk significance concept for violations that occur during construction.

Revise Section 2.3, *Disposition of Violations* Item #2

Section 2.3.2, Non-cited Violation

- If certain criteria (described below) are met, Severity Level IV (SL IV) violations and violations associated with green ROP findings **(for operating reactors)** are normally dispositioned as non-cited violations (NCVs).
- Typically all of the criteria described in either 2.3.2.a. or b. must be met for the disposition of a violation as an NCV. ***For all SL IV violations identified by the NRC at fuel cycle facilities (under construction or in operation) in accordance with 10 CFR Part 70 or 10 CFR Part 40 and reactors under construction in accordance with 10 CFR Part 50 or 10 CFR Part 52, before the NRC determines that an adequate corrective action program has been implemented, the NRC normally issues a Notice of Violation. Until the determination that an adequate corrective action program has been implemented, NCVs may be issued for licensee/applicant-identified SL IV violations if the NRC has determined that the applicable criteria in 2.3.2.b. below are met:***

Revise Section 2.3, *Disposition of Violations* Item #2

a. Power Reactor Licensees

1. The licensee must place the violation into a corrective action program to ***restore compliance and*** address recurrence.
- ***(Delete current footnote—“For reactor facilities under construction in accordance with 10 CFR Part 52, the corrective action program must have been demonstrated to be adequate.”)***
- ***Delete the rest of the criteria: “and violations associated with facility construction under 10 CFR Part 50, ‘Domestic Licensing of Production and Utilization Facilities,’ and 10 CFR Part 52, ‘Licenses, Certifications, and Approvals for Nuclear Power Plants.’”***



Revise Policy Sections on Enforcement Discretion Item #3

- Add a footnote to the section title that states:

“NOEDs will not be used at reactors during construction before the Commission’s 10 CFR 52.103(g) or 10 CFR 50.57 finding, as applicable.”

Revise Policy Sections on Enforcement Discretion Item #3

Section 3.9, Violations Involving Certain Construction Issues

- a. Fuel Cycle Facilities***
- b. LWA holders***
- c. COL Holders (Reactor Facilities)***



Revise Policy Sections on Enforcement Discretion Item #3

a. Fuel Cycle Facilities

The NRC may choose to exercise discretion for fuel cycle facilities under construction (construction is defined in 10 CFR 40.4 for source material licensees and in 10 CFR 70.4 for special nuclear material licensees) based on the general enforcement discretion guidance contained in Section 3 of this Enforcement Policy.

b. LWA holders

The NRC may exercise discretion for LWA holders during construction using the general enforcement discretion guidance in Section 3 of the Enforcement Policy.

Section 3 of the Policy reads: *The NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions or otherwise refrain from taking enforcement action within the Commission's statutory authority.*

Revise Policy Sections on Enforcement Discretion Item #3

c. COL Holders (Reactor Facilities)

The NRC may reduce or refrain from issuing an NOV/NCV for a violation associated with an unplanned change that deviates from the licensing basis that is implemented during construction without prior NRC approval (in the form of a license amendment) when all of the following criteria are met:

-The licensee identifies changes implemented during construction not previously approved by the NRC that the staff would otherwise disposition as a Severity Level IV violation of NRC requirements,

-The licensee submits the necessary information to the NRC so that it can conduct a timely evaluation of the change as part of the license amendment review process, and

-Either (1) the cause of the deviation was not within the licensee's control, such that the change was not avoidable by reasonable licensee quality assurance measures or management controls, or (2) the licensee placed the cause of the change in its corrective action program to ensure comprehensive corrective actions to address recurrence.



Revise Policy Sections on Enforcement Discretion Item #3

For similar issues not identified by the licensee, the NRC may refrain from issuing an NOV/NCV on a case-by-case basis depending upon the circumstances of the issue, such as whether the requirements were clearly understood or should have been understood at the time, the cause of the issue, and why the licensee did not identify the issue.

In all such cases when a licensee determines that an unplanned change during construction associated with a violation of requirements meets the above-outlined criteria and timely submits the necessary information for NRC evaluation, the licensee's continued failure to meet the current licensing basis will not be treated as a willful or continuing violation while NRC reviews the submittal. (Note: If NRC subsequently denies a requested license amendment change, or if the NRC requires additional measures to be taken for the change to be considered acceptable, then a separate NOV or order may be issued to ensure appropriate corrective actions, including restoring the configuration to the current licensing basis are taken).

Foot note: 1. The NRC may issue enforcement action for the cause of these unplanned changes, such as a failure to implement appropriate work controls or quality control measures, or a failure to adhere to procedures, processes, instructions, or standards that implement NRC requirements. This enforcement may be appropriate for the actions that led to the CdC issue.

2. NRC-identified violations that result in a "use as built" determination or a resultant unplanned change or both will normally be dispositioned as a cited or non-cited violation, whether or not the unplanned change issue is resolved by a subsequently approved license amendment.

Summary- Preliminary Resolutions

Discretion

Fuel Facilities

Part 50

Part 52

Few clarifications in the current Policy on discretion will suffice

Identified 3 phases that must be considered



Summary- Recommendations for the Enforcement Policy

Clarification of terms

Identified need for clarification in

- Section 3, Discretion
- Violation Examples

Addition of section 2.2.6, Construction to focus on the assessment of construction phase issues

Issuance of EGM 11-002: exercising enforcement discretion in dispositioning Severity Level IV licensee-identified violations at power reactors under construction.

Written Comments

Please include Docket ID **NRC-2011-0176**

Federal Rulemaking
Web site: Go to
<http://www.regulations.gov>
and search for documents
filed under Docket ID
NRC-2011-0176. Address
questions about NRC
dockets to Carol
Gallagher, telephone:
301-492-3668; e-mail:
Carol.Gallagher@nrc.gov.

Mail comments to:
Cindy Bladey, Chief,
Rules, Announcements,
and Directives Branch
(RADB), Office of
Administration, Mail Stop:
TWB-05-B01M, U.S.
Nuclear Regulatory
Commission, Washington,
DC 20555-0001.

Fax comments to:
RADB at 301-492-3446.