

Mendiola, Doris

Subject: FW: Comments on Daily Civil Penalties (76 FR 54986 (September 6, 2011) - NRC-2011-0209)
Attachments: January 2012 comments.pdf

-----Original Message-----

From: Jim Lieberman [mailto:jl@lieblet.com]
Sent: Tuesday, January 24, 2012 5:19 PM
To: Rulemaking Comments; Starkey, Doug
Subject: Comments on Daily Civil Penalties (76 FR 54986 (September 6, 2011) -NRC-2011-0209)

Enclosed please find comments on the above Notice as a result of the recent Staff's analysis of prior comments.

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Best Regards

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Call = D. Starkey
(dks)

January 24, 2012

Cindy Bladey
Chief, Rules, Announcements, and Directives Branch
Office of Administration
US Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Proposed Enforcement Policy Changes (76 FR 54986 (September 6, 2011) -NRC-2011-0209)

I appreciate that the comment period has closed on the above notice. However, the NRC has now released its analysis of comments received on that notice. In the analysis (ML11299A156) the Office of Enforcement has addressed among other things how it plans to address comments concerning daily civil penalties. As a result I am submitting the following comment to supplement my comments submitted on October 1, 2011, concerning daily civil penalties.

Daily Civil Penalties

The staff's recent analysis states the following as to comment 2:

Comment Summary: A commenter recommended that daily civil penalties be available for use in cases involving significant violations for which a strong regulatory message for deterrence is warranted, not just for cases involving deliberate wrongdoing. At a minimum, daily civil penalties should be applied to significant violations that also involve careless disregard and to cases in which the licensee could have prevented the impact of the violation since, with the exercise of reasonable diligence, the licensee should have been aware of the violation.

Response: The staff agrees that careless disregard, not just deliberateness, should be considered when evaluating the appropriateness of issuing daily civil penalties. The staff will propose replacing the word "deliberate" with the word "willful," which encompasses both "deliberate" and "careless disregard."

As the staff proposed in the revision to Section 2.3.4, "Civil Penalty," of the Enforcement Policy, a prerequisite to exercising discretion to assess a daily civil penalty is that the licensee must be aware of the violation and have had a clear opportunity to prevent, identify, and correct the violation but failed to do so. In addition, one of the evaluation factors proposed by the staff is whether the violation resulted in actual consequences to public health and safety (i.e., the impact of the violation).

While I agree that the policy should be changed to include careless disregard, the Response did not address the issue of when a significant violation occurs where the licensee "should have been

aware of the violation with the exercise of reasonable diligence.” The NRC should not unduly limit its discretion to utilize daily civil penalties only in cases where the licensee is aware of a violation. Given that the use of daily civil is discretionary and will involve Commission consultation, the Policy should be broader than proposed. It should provide that daily civil penalties may also be warranted for significant violations where the licensee could have prevented or mitigated the impact of the violation if with the exercise of reasonable diligence, the licensee should have been aware of the violation.

The change I proposed here would be consistent with an NRC action taken in 1979 when the NRC civil penalty was limited to \$5,000. per violation. In that case, the NRC issued a proposed penalty of \$450,000. based on daily civil penalties to Palisades (EA-79-14) where the licensee left a hole in containment while operating for a considerable time period because of a failure to do sufficient testing after a filter replacement. If an accident occurred similar to TMI, a significant release would of occurred. This was not a case where the licensee was aware of the violation but should have been aware because of the failure to follow its post modification inspection procedures. Given the significance of what could have happened a strong regulatory message was warranted.

I appreciate the opportunity to provide comments. Please contact me if you have any questions on them or if I can provide further information.

Respectively submitted,

Tim Lieberman

cc: Doug Starkey, OE