

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
101 MARIETTA ST., N.W., SUITE 3100  
ATLANTA, GEORGIA 30303

DEC 14 1981

MEMORANDUM FOR: James P. O'Reilly, Regional Administrator

FROM: F. J. Long, Assistant to the Regional Administrator

SUBJECT: IDEAS ON REGULATORY REFORM

In looking over the policies and practices of the NRC, it is not difficult to recognize shortcomings and inefficiencies in many areas. Neither is it difficult to come up with ideas that might remedy some of the problems and at the same time, improve the efficiency of manpower utilization. The solutions to many problems faced by the NRC are not likely to be solved by bigger budgets and more people. They can be solved by practical means. Accordingly, I would like to summarize several ideas for NRC management consideration during the Regulatory Reform exercise.

✓ Inspection and Enforcement

NRC proposed policy clearly defines Severity Level V violations as minor. However, we process them with more than minor attention. The same formal notice of violation is issued. A high percentage of citations, inspector/supervisor attention and paperwork are charged to these "minor" violations. Licensees seldom challenge them and the corrective actions reported by the licensees are usually accepted. I propose that policy be changed so that "minor" violations identified by NRC inspectors may be closed out by the inspectors themselves. This would be done by informing the licensees of the violations, requesting resolutions, and documenting corrective actions, all as part of the same inspection. Regional supervision would be responsible for review of the inspector's handling of these minor violations when the inspection reports are reviewed. A Headquarters function would be responsible for auditing the Regions.

✓ Civil Penalties on Federal and Municipal Licensees

One of the questionable aspects of enforcement policy is the levying of civil fines on federal and local government licensees. It is not logical or appropriate in the first place. In the second place, the taxpayers/ratepayers could get stuck with the fines. When federal agencies violate other agencies' regulations, something more than civil penalties would appear to be justified such as reports to the congressional committees responsible for the agencies. Municipal authorities perhaps should answer to state rate commissions or legislative committees when they violate federal regulations, who in turn, should have to answer to the federal agency.

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✓ QA Program Enforcement

One of the most nonuniform inspection and enforcement areas is QA for construction and operations. Few citations against QA criteria are black and white. This entire area, although very important to plant safety, is the most deficient in NRC inspector/supervisor training and guidance. Most licensee QA personnel are relatively experienced and well trained in QA while few NRC inspectors have QA experience or training. The QA criteria, QA plans and QA programs are not very specific. On the other hand, citations are usually very specific. We should discontinue the civil penalty for QA violations, as routine escalated enforcement tools. Escalated enforcement for QA violations of a serious nature (multiple, repetitive, or breakdown) should perhaps be more in the form of work stoppages, limiting of operations, plant shut downs, or "holds" on startup. This would be accomplished through Confirmation of Action letters or Orders as appropriate and, of course, specific NRC approval would be required to lift the restrictions.

✓ Enforcement of Nonrequirements

This area would not be so bad if there were some semblance of uniformity, sound bases for enforcement, official NRC sanction, and official notice to licensees before enforcing the issues. The nonrequirement area is fun to work in because it permits inspectors and managers to impose their own ideas on the licensees. Often, one's personal opinions about what is good for the public safety will end up as legitimate findings and enforcement action gets underway. The advantage of this system to over zealous regulators is that it short circuits the burdensome license review process and other legalities, which are very cumbersome.

If all nonrequirements had to be reviewed, given official sanction, and published for comment prior to enforcement, many if not most, would fall out in the process. Manpowerwise, processing of nonrequirements can be just as demanding on resources as requirements, and there is no shortage of requirements that need to be inspected. To resolve this issue, I would suggest beginning by first identifying all the Significant Findings, Management Weaknesses, Deviations, Deficiencies, Confirmation of Action Letters and other pseudo names for nonrequirements. Then I would run these through an NRC Requirements Review Panel and publish only what is left either as Safety Enhancement Issues, or legal requirements. Following all this, applying inspection and enforcement resources would be justified. For items that do not become legal requirements, but for which licensee commitments are highly desired, we should use a cooperative approach to safety upgrading. If we have a strong case for the commitment based on safety, the licensees will be willing to cooperate. Failure of NRC to impose a genuine safety upgrade through a legal or formal process is a reflection on NRC. If a safety upgrade is not worthy of the NRC effort necessary to legally or otherwise formally impose it, then the licensee can hardly be expected to do it willingly.

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### Problem Identification and Solving

Determining what is a problem and finding the best solution for the problem are important everyday management functions. If a problem is incorrectly identified, the solution will not be realized even though the symptoms may disappear. Most problems will have two or more possible solutions which may be compared for cost effectiveness. Sometimes the real solution is not the one actually being sought. Rather, a solution that has the appearance of solving the problem may be preferred, such that to an outsider, the problem appears from all indications, to be put to bed. This latter type resolution is a forswear, evidenced by careful avoidance of naming the culprit who caused the problem, abolishing or deemphasizing the organizational unit where the problem was conceived, removal of selected lesser management personnel who by implication caused the problem, and finally, by placing the real culprit in a higher position charged with correcting the problem.

To find out what is a problem in almost any organization, you must go to both ends of the employee spectrum. You don't ask the owner of the company store what's bad about his coal mining business, and stop there. When serious problems are identified in certain areas of operations, you normally will not resolve the fundamental or root problems by merely changing titles and reorganizing while continuing to use the same faces and same methods.

### Determination of Amount of Civil Penalty

This process reached the absurd during early implementation of the interim enforcement policy when all lower level violations were elevated arbitrarily to the severity level of the principal violation, Level I, II or III, and the civil penalty distributed among them. This practice was discontinued; however, the current practice is still less than logical. For example, a licensee can have a Level III and several lesser violations. A \$40,000 civil penalty is imposed for the single Level III, but distributed among the others. If we should withdraw one or more lesser violations as we have done on occasion, the fine is reduced by that share. Another licensee meanwhile may get a \$40,000 CP for a single Level III, perhaps the same offense. If he had no lesser violations included, he will end up paying a higher fine for a lesser overall offense. The solution to this problem is to assess the civil penalty as the policy dictates for the principal violation. If no civil penalty is justified in the policy for the individual lesser violations, then we should not assess penalties and not distribute the base penalty among the lesser violations. A more logical approach would be to increase the base CP for the principal violation when there are multiple violations in the same functional areas even though of lesser severity.

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### Admit Shortcomings

No one likes to admit errors in judgment, mistakes or other shortcomings. However, there is no justification for a federal agency to avoid being forthright and honest in facing up to the facts. The NRC has no monopoly on good managers. The nuclear industry is loaded with them. Yet, the NRC continually criticizes licensee management, implying that they are incompetent, dishonest or generally not motivated. The problem is, nobody knows what management textbook or system the NRC uses for evaluating licensees. Any Tom, Dick, or Harry in the NRC is by statute, an expert management analyst and is free to point out as many "management weaknesses" as he can dream up. In fact, there are times when one may be embarrassed by the comments of certain NRC inspectors and managers with regard to the faults of industry management. It would be a disaster for NRC in the courts, if we ever had to defend some of the statements we make. There have been notorious examples over the years where licensee management was criticized in areas where much if not most of the blame should have been placed on the NRC. The NRC should admit its faults and set about to correct them.

### Who is Responsible for Protecting the Public

The Commission has always been vehement in its policy of placing full responsibility for protection of the public on nuclear licensees. The fact is, however, that there is no way the NRC can avoid sharing this responsibility. NRC managers should be equally accountable for their actions (or lack of actions) with regard to protection of the public. The Commission over the years has created the impression that this policy is designed to obscure its failure to recognize and take action on vital safety issues as they come to light. I think that if the NRC policy were changed to describe the "sharing" of safety responsibilities, this would go a long way toward improved relations between the regulator and regulatee. The quality of NRC management would also be improved if they expected to be, and were held accountable for their actions.

### Enforcement for Failure to Follow Procedures

This issue has been around for a long time and will continue to be a "thorn in the side of the licensee" until NRC policy clearly defines the term--failure to follow procedures. There is still a misunderstanding on the part of many who believe that all cases of failure to follow procedures constitute noncompliance. The fact is, and I understand ELD supports this position, that noncompliance exists only if an NRC requirement is violated. We must recognize and accept the normal practices of many licensees which are to assure compliance with NRC requirements by adding conservatism in their procedures. Licensees may also include nonessential elements within NRC required procedures to avoid having more than one procedure on the same subject.

For example, suppose the NRC security requirement for the number of guards on each shift is eight. Because the licensee wants to be conservative and also has other security needs to be filled, his procedures prescribe ten on each shift. The inspector comes by and finds only nine guards on duty and cites the licensee for failure to follow procedures. This was a real example, and in fact, resulted in civil penalty action. The licensee at that time stated that he was considering discontinuing the practice of adding conservatism to his procedures in general, and was preparing a



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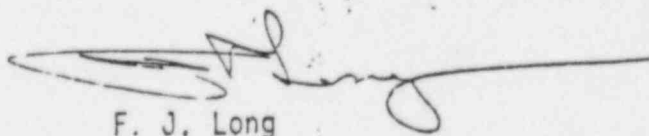
separate security plan for his industrial security needs.

I and others have raised this issue previously. We need a clear statement of policy and broad training to ensure that everyone understand that the failure to follow procedures does not in itself, constitute a violation. Only when the failure to follow procedures results in violation of NRC requirements, is a citation valid.

#### Improving Safety By Working With Licensees

A review of comments from industries affected by the NRC interim enforcement policies revealed an interesting fact. Many industry representatives in the post TMI era look upon the NRC as an antagonist or adversary. If this feeling by the industry were to any extent justified, it would not be conducive to safety. Several years ago, NRC (AEC) had a reputation for working closely with licensees to resolve safety issues. Today, although NRC has the lion's share of available nuclear safety expertise on its staff, missionary work by NRC inspectors and technical staff is essentially nonexistent. Escalated enforcement appears to many licensees to be the sole mechanism by which NRC seeks to achieve safety of nuclear operations. Often the licensees learn what NRC policy is by reading civil penalty correspondence. There surely must be other effective mechanisms worthy of pursuit in obtaining safety goals, which would be far more safety productive.

It is unfortunate that the industry and the Commission are not working closely together to achieve the level of safety that the Commission feels is necessary. We are not and must not be the adversary. The best interests of the public cannot be served if the condition continues. Ways should, therefore, be found to bring about a reversal of the condition as soon as possible. National policy is to assure ample energy supplies. NRC must assure a safe nuclear alternative to other energy sources when the public's best interests are served.



F. J. Long