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POLICY ISSUE
(Information)

SECY-93-025

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: DELEGATION OF AUTHORITY TO REGIONAL ADMINISTRATORS

Purpose: To provide a report to the Commission concerning the delegation of authority to the Regional Administrators to issue routine Severity Level III Notices of Violation (NOV), with or without civil penalties.

Background: On December 4, 1991, the staff issued a report to the Commission (SECY 91-353) regarding the efficiency of the delegation of authority to Regional Administrators for the issuance of routine NOVs in the nuclear materials enforcement program. This report was requested by a Staff Requirements Memorandum (SRM), COMJC-90-07, dated December 19, 1990, which temporarily approved a one-year trial period for the delegated authority.

On December 27, 1991, the Commission approved the continued use of the delegated authority and requested a similar report after the staff had gained another year of experience in the use of the delegated authority.

Discussion: As previously described in SECY-91-393, the staff has established a process to ensure reasonable consistency among the five Regions in implementing the delegation of authority. When possible, OE participates in the Regions' pre-enforcement conference, the enforcement conference, and the

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post-enforcement conference discussions, to ensure that the proposed escalated enforcement action is consistent with the NRC Enforcement Policy and those actions previously issued for similar violations. Normally this participation is by phone. Neither OE nor NMSS reviews Regional enforcement actions prior to their issuance. After an enforcement action is issued by a Region, the OE staff reviews the action to ensure that the severity level of the violation is appropriate, that the escalation and mitigation factors were adequately supported, and that the standard escalated enforcement formats were used.

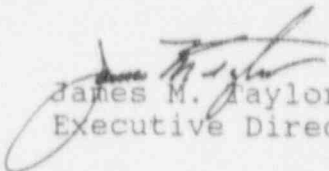
In the last year (January 1, 1992 through December 31, 1992) 37 escalated enforcement cases have been issued under the delegation involving 24 civil penalty cases and 13 Severity Level III NOVs without civil penalties (list enclosed). Twelve other Severity Level III cases were within the scope of the delegation, but were not issued under the delegation. Of those 12 cases, ten were submitted to OE because they either involved complex or unique issues or involved willful violations. Only two cases were submitted to OE due to a disagreement on the appropriateness of the action contemplated by the Region. Although there were initial disagreements on several other cases, final agreement was reached on the proposed action and these cases were issued under the delegated authority after further discussions.

Based on this experience, the staff's position is that the current use of delegation has not adversely affected the consistency, uniformity, or quality of escalated enforcement actions issued under the delegation. There has been good communication between OE and the regions. The staff has maintained the improvement in the timeliness of the delegated cases. The 1992 timeliness for escalated cases issued under the delegation is an average of 37 days for 37 cases (38 days for 25 cases in 1991) compared to 48 days for 55 cases for routine non-delegated cases (56 days for 42 cases in 1991) and 90 days for 98 cases for all non-delegated cases including those involving OI issues (142 days for 81 cases in 1991). Although there have been a few cases where the clarity of citations could have been improved or the civil penalty may have been different if the action had been formally submitted for OE

review and concurrence, overall the benefit of the delegated authority clearly outweighs these minor differences. In light of this experience, the Office of Enforcement intends to further reduce its involvement in the more routine cases prior to their issuance.

With respect to resources saved for use in inspections as a result of the delegation, while some resources may be saved, these are not appreciable. There is also some savings in headquarters resources due to the lack of NMSS and OGC involvement in most delegated cases and the limited OE involvement. However, the staff is not able to quantify the savings of these resources. While appreciable resource savings have not resulted from the delegation, there clearly is an improvement, as described above, in the timeliness for the issuance of delegated cases in comparison to non-delegated cases.

Lastly, with respect to Item 5 of the SRM, the staff does not have a recommendation concerning a request for any additional resources necessary to provide inspection coverage in the materials area at this time. This issue will be separately addressed as part of ongoing evaluations of the effectiveness of the materials program.


James M. Taylor
Executive Director for Operations

Enclosure:

1. List of Escalated Cases

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REGIONAL OFFICES

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LIST OF DELEGATED ESCALATED ENFORCEMENT CASES

91-146	Ketchikan General Hospital (RV)	CP \$ 1,000
91-192	Lone Pine Coal Company (RII)	CP \$ 2,375
92-004	Thomas Jefferson University (RI)	CP \$ 8,750
92-012	Alonso & Carus Iron Works, Inc. (RII)	CP \$ 2,500
92-022	Raritan Bay Medical Center (RI)	SL III NOV
92-026	Shared Medical Technology (RIII)	CP \$ 2,500
92-027	District of Columbia (RI)	CP \$ 6,550
92-031	Century Inspection, Inc. (RIV)	SL III NOV
92-032	Hoechst Celanese Corporation (RII)	CP \$ 250
92-038	Hospital De Damas (RII)	CP \$ 3,750
92-042	Oakland University (RIII)	CP \$ 5,000
92-051	ATEC Assoc., Inc. (RIII)	CP \$ 2,375
92-052	Yale-New Haven Hospital (RI)	SL III NOV
92-064	Taylor Hospital (RI)	CP \$ 1,250
92-068	Globe X-Ray Serv., Inc. (RIV)	CP \$ 2,500
92-069	Harper Hospital (RIII)	SL III NOV
92-070	Bothwell Regional Health Center (RIII)	SL III NOV
92-080	Sibley Memorial Hospital (RI)	CP \$ 2,500
92-082	Ashford Presbyterian Comm. Hospital (RII)	CP \$ 3,750
92-099	Cardi Corporation (RI)	CP \$ 1,250
92-121	Frances Mahon Deaconess (RIV)	CP \$ 5,625
92-125	Western Stress, Inc. (RII)	CP \$ 7,500
92-141	Grinnell Corp. (RI)	CP \$25,000
92-144	Howard Needles Tammen & Bergendoff (RIII)	CP \$ 875
92-147	W. H. Brady Co. (RIII)	SL III NOV
92-154	Consolidated Engineering (RV)	CP \$ 5,000
92-162	Army, Department of the (RIII)	CP \$15,000
92-173	Ciba-Geigy Corp. (RI)	SL III NOV
92-176	G. Heileman Brewing (RIII)	SL III NOV
92-180	Navy, Department of the (RII)	SL III NOV
92-186	Triad Engineering Consultants, Inc. (RII)	CP \$ 375
92-188	Diamond Engineering & Testing, Inc. (RII)	SL III NOV
92-189	Connecticut Health Center (RI)	SL III NOV
92-199	Geotechnology, Inc. (RIII)	SL III NOV
92-202	Kaiser Aluminum (RIII)	CP \$ 625
92-203	Capital Materials Testing (RI)	CP \$ 7,500
92-242	Department of the Army	SL III NOV