



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

AF43-2

PDR (i)

June 29, 1995

MEMORANDUM TO: David L. Morrison, Director  
Office of Nuclear Regulatory Research

FROM: James Lieberman, Director  
Office of Enforcement *James Lieberman*

SUBJECT: REQUEST FOR RULEMAKING

In its SRM of May 16, 1995 (Attachment A), the Commission approved significant changes in the enforcement program and directed the staff to amend certain related regulations.

The first change addresses 10 CFR 2.201(a). In the second sentence of that section, the second "will" should be changed to read "may". This will give the staff discretion to not require a response to a Notice of Violation when the staff believes the licensee has already adequately addressed the issue on the docket.

Two other changes are needed to reflect the removal of the Enforcement Policy, previously published as Appendix C to Part 2, from the CFR. In 10 CFR 2.8(b), a reference to "... appendix C" addresses information collection requirements. In addition, 10 CFR 51.10(d) refers to "appendix C to Part 2 of this chapter." Both of these references need to be changed. Attachment B is a copy of an e-mail message from Stephen Lewis, OGC, that addresses both of these sections and includes the pertinent portions of the statements of consideration.

Please develop a rulemaking plan and obtain any needed approvals to proceed with this rulemaking. OE will assist in developing this rulemaking. The OE contact for this project is Geoffrey D. Cant, 415-3283. Please call me or Mr. Cant if you need further information.

Attachments: as stated

cc w/o attachments:  
H. Thompson, DEDS  
J. Milhoan, DEDR  
C. Paperiello, NMSS  
W. Russell, NRR  
S. Treby, OGC  
J. Goldberg, OGC  
M. Lesar, ADM  
D. Williams, OIG

June 16, 1995

MEMORANDUM TO: James M. Taylor  
Executive Director for Operations

FROM: Andrew L. Bates, Acting Secretary /s/

SUBJECT: SECY-95-084 - ASSESSMENT OF THE NRC  
ENFORCEMENT PROGRAM, PROPOSED REVISION TO THE  
GENERAL STATEMENT OF POLICY AND PROCEDURE FOR  
NRC ENFORCEMENT ACTIONS, AND REMOVAL OF  
POLICY FROM 10 CFR PART 2, APPENDIX C

The Commission (with all Commissioners agreeing) has approved items B-1 and 2, C-1, 2, 7, and 8, D-1, 2, and 3, E-1, F-1 and 2, and G-2, and 3 as recommended in the subject paper.

The Commission (with all Commissioners agreeing) has disapproved the changes recommended in item G-1. The staff should retain the current provisions for requiring Commission consultation on enforcement matters.

As an administrative change, the Executive Director for Operations should, under his authority, amend 10 CFR Part 2 to remove the requirement for licensee response to a Notice of Violation in cases where the staff believes the licensee has already adequately addressed the issue on the docket. In addition, 10 CFR Chapter I should be amended to replace all references to Part 2, Appendix C.

The staff should amend the policy to include special consideration such that a lost source would almost always result in a civil penalty greater than the cost of disposal or transfer. Section VII. A.1.(b) should be changed to delete loss of a source and a new (g) added to provide:

Cases involving the loss of a source. (However, such cases should normally result in a civil penalty in an amount at least on the order of the cost of an authorized disposal or the transfer to an authorized recipient unless the licensee

SECY NOTE: THIS SRM, SECY-95-084, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

self-identifies and reports the loss to the NRC.)

The Commission expects that for the examples listed in VII.A.(1) where discretion is not warranted staff will use the normal enforcement process.

The Commission (with all Commissioners agreeing) has disapproved items C-4, C-5, and C-6. The staff should continue a trial program for open enforcement conferences pending further Commission decision. The open predecisional enforcement conferences are not for the purpose of maximizing public attendance but rather for determining whether providing the public with an opportunity to observe the conference is compatible with NRC staff's ability to exercise its regulatory and safety responsibilities. The staff should continue to provide press releases only for open enforcement conferences, but should carefully word the announcement to ensure it does not pre-judge the outcome. The press release should reflect only the nature of the circumstances leading to the conference and explicitly indicate that it is a predecisional opportunity for the licensee to present any additional material before the NRC arrives at a decision.

The Commission (with all Commissioners agreeing) has approved modification to the "Purpose Statement" in item A-1 as follows:

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public, workers, and the environment. Consistent with that purpose, enforcement actions should be used ~~to create deterrence by:~~

- as a deterrent to ~~e~~Emphasize the importance of compliance with requirements, and
- to ~~e~~Encourage prompt identification and prompt, comprehensive correction of violations.

The staff should publish the proposed Federal Register notices to remove the current Enforcement Policy from the Code of Federal Regulations and to revise the Enforcement Policy with the changes indicated above.

(EDO)

(SECY Suspense: 7/10/95)

The staff should return to the Commission with a recommendation regarding use of open predecisional enforcement conferences and elimination of certain provisions for Commission consultation (discussed at pages II.G-5 through 7 of NUREG 1525) after a year of experience under the new policy.

(EDO)

(SECY Suspense: 8/31/96)

The staff should provide a report to the Commission on the experience with the new policy including the consideration of public comments after 18 months of experience under the new policy.

(EDO)

(SECY Suspense: 7/10/97)

The staff should provide the final copy of the Federal Register notice to the Commission for information prior to publication.

cc: The Chairman  
Commissioner Rogers  
Commissioner de Planque  
Commissioner Jackson  
OGC  
OCA  
OIG  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)