

In July 1997, the NRC conducted a further inspection of MMI and SNC. During that inspection, employees of both companies acknowledged that undocumented welds had been made on casks sold to ANO and PNP. In the course of this inspection, both Mr. Rogers, the Quality Assurance Manager and the Project Manager for MMI admitted that they were aware that repair welding had been performed on the inside of the MSBs during fabrication and that they had not informed the NRC inspectors of those welds during the March 1997 inspection interviews. The NRC continued to investigate the matter and the Office of Investigations issued its report on October 16, 1998.

The NRC has concluded that because Mr. Rogers was knowledgeable about the fabrication process and was aware that welding had been done on the insides of the MSBs, he deliberately made statements in March 1997 to SNC and to the NRC that were inaccurate concerning the the internal welding. The information involved was material to the NRC's understanding as to the quality of the MSBs and delayed the NRC's action to ensure integrity of MSBs. As a result, the NRC has further concluded that in providing the information, Mr. Rogers violated 10 CFR 72.11, "Completeness and Accuracy of Information" and 10 CFR 72.12, "Deliberate Misconduct." The NRC believes that the circumstances of this matter raise questions as to Mr. Rogers willingness to comply with Commission requirements. Mr. Rogers has not admitted that a violation occurred.

III

In a telephone call on December 7, 1998, Mr. Rogers agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC-licensed activities for a period of five years from the date that the Order is issued. The staff believes that this will adequately protect the public health and safety and, therefore, finds this acceptable. MMI and Mr. Rogers requested that if the Order is issued, they be allowed to complete work on one small existing contract to supply 10 plug assemblies for a NUHOMS cask. This provision is acceptable, as the assemblies have a limited safety function that can be verified by measurement at the time of use. On January 6, 1999, the staff forwarded to Mr. Rogers a copy of the factual basis of the proposed order and the implementation paragraph. On January 11, 1999, Mr. Rogers consented to the issuance of the order with those provisions and waived his rights to a hearing on this action.

I find that Mr. Rogers' commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mr. Rogers' commitments be confirmed by this Order. Based on the above and Mr. Rogers' consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 72 and 10 CFR 72.12, it is hereby ordered, effective immediately, as follows:

A. Except as noted in paragraph B, Mr. Rogers is prohibited for five years from the date of this Order from any involvement in NRC-licensed activities. For purposes of this Order, licensed activities include providing or supplying, whether directly to NRC licensees or Certificate of Compliance holders, or as a contractor or subcontractor to a licensee or Certificate of Compliance holder, structures, systems, or components, subject to a procurement contract specifying compliance with 10 CFR Ch. I.

B. Mr. Rogers may complete work on the contract that MMI entered into prior to the date of this order to fabricate a total of 10 plug assemblies for a NUHOMS cask.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Rogers of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mr. Rogers, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and

Safeguards, at the same address, and to Sierra Nuclear Corporation. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated this 27th day of January, 1999.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

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NUCLEAR REGULATORY COMMISSION

[NUREG-1600, Rev.1]

Policy and Procedure for NRC Enforcement Actions; Revised Treatment of Severity Level IV Violations at Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: Amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions," NUREG-1600, Rev.1, by adding Appendix C to the policy. This amendment revises the treatment of Severity Level IV violations at power reactors by: (1) Expanding the use of Non-Cited Violations (NCVs) to include Severity Level IV violations identified by the NRC; (2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not in Notices of Violation (NOVs); and (3) permitting NRC closure of most Severity Level IV violations based on their

having been entered into a licensee's corrective action program.

DATES: This action is effective March 11, 1999. Comments on this revision should be submitted within 30 days of publication in the **Federal Register** and will be considered by the NRC prior to the next Enforcement Policy revision.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555. Hand deliver comments to: 11555 Rockville, Maryland, between 7:30 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741.

SUPPLEMENTARY INFORMATION: Severity Level IV violations are defined in the NRC's Enforcement Policy as violations of more than minor concern which, if left uncorrected, could lead to a more serious concern. Violations at Severity Level IV, the least significant of the four severity levels established in the NRC Enforcement Policy, involve noncompliances with NRC requirements for which the associated risks are not significant. NOV's are issued pursuant to 10 CFR 2.201, and normally require a written response within 30 days addressing: (1) The reason for the violation or basis for disputing the violation; (2) corrective steps that have been taken and results achieved; (3) corrective steps that will be taken to avoid further violations; and (4) the date when full compliance will be achieved. The policy provides that NOV's need not require a response if all of the necessary information is already available on the docket. The policy also permits certain licensee-identified Severity Level IV violations to be treated as Non-Cited Violations (NCVs), but only if the licensee has committed to corrective actions by the end of the inspection, including corrective action to prevent recurrence.

In fiscal year (FY) 1997, power reactor licensees experienced a sharp increase in NOV's issued for Severity Level IV violations, from approximately 770 in FY 1996 to 1,400 in FY 1997. In FY 1998, approximately 1,300 Severity Level IV NOV's were issued. In a memorandum to the Commission dated July 31, 1998, the NRC staff attributed

the increase, in part, to efforts to improve the quality and consistency of the inspection and enforcement programs and to increased emphasis on the nexus between safety and compliance, and not to a decline in the performance of power reactor licensees.

In response to concerns about this increase, and its apparent contradiction with the substantial performance improvements of operating power reactors in the last two decades, the NRC initiated efforts to reconsider the treatment of Severity Level IV violations. In an August 25, 1998, memorandum to the Chairman, the Executive Director for Operations submitted a plan which included the objective of maintaining the NRC's ability to identify licensee problems in a timely manner and reducing unnecessary licensee burden associated with responding to Severity Level IV violations.

The approach to enforcement of Severity Level IV violations, including the requirement to provide a written response to cited violations (those subject to an NOV) has essentially been unchanged since before the 1979 accident at Three Mile Island. Since that time, by almost all indicators, the overall performance of reactor licensees has substantially improved. Licensees have generally developed effective corrective action programs that cover not only safety-related activities under 10 CFR part 50, appendix B, but usually other activities regulated by the NRC (e.g., fire protection and physical security). In fact, findings of the NRC are generally only a small percentage of the issues, including noncompliances, identified by licensees and addressed in corrective action programs.

From a safety perspective, NRC Severity Level IV findings generally are not the most important matters being addressed in a licensee's corrective action program. Consequently, in light of the requirement to develop a comprehensive corrective action plan to address recurrence and provide a response to the NRC within 30 days pursuant to 10 CFR 2.201, an NOV may result in licensee priorities and activities that are inconsistent with a violation's relative safety significance. Thus, NRC findings may drive licensee priorities in their corrective action programs, rather than having the fundamental safety significance of the issue establish its priority. Additionally, requiring formal responses to Severity Level IV violations, which are included in a licensee's corrective action program subject to NRC inspection, may in most cases be an unnecessary administrative burden.

As a preliminary step to addressing this concern, the Director of the NRC's Office of Enforcement issued Enforcement Guidance Memorandum 98-006, dated July 27, 1998, to emphasize the provisions in the current Enforcement Policy that permit certain licensee-identified Severity Level IV violations to be treated as Non-Cited Violations (NCVs) and certain NOV's to be issued without requiring a written response. Preliminary data indicates that this guidance has resulted in a decrease in the number of cited NOV's and in cited NOV's requiring a response. Notwithstanding the results of this initiative, licensees must still address Severity Level IV violations with a higher priority than may be justified by their safety significance. Licensee action is required to provide information to the NRC to support treatment of violations as NCV's, or to avoid having to provide a formal response to an NOV. The current policy also requires that NOV's be issued for Severity Level IV violations identified by NRC inspectors.

Severity Level IV violations represent a small fraction of issues identified by licensees and included in licensee corrective action programs. The current Enforcement Policy approach has resulted in licensees placing a higher priority on these violations than their risk significance would merit. Accordingly, corrective action program issues with relatively higher risk significance may, by default, have been assigned lower priorities. Since individual Severity Level IV violations by definition do not involve matters of significant risk, the staff believes that there may be a benefit to safety if licensees are able to prioritize the resolution of Severity Level IV violations based on their safety significance. This can be accomplished if most Severity Level IV violations are closed by the NRC based on their being entered into a licensee's corrective action program. NOV's will be reserved for those cases where the NRC considers it important to obtain a description of the licensee's corrective actions on the docket. These changes will enhance the ability of licensees to address issues in their corrective action programs in accordance with their safety and risk significance, and will reduce unnecessary administrative burden associated with Severity Level IV violations.

Therefore, the NRC is revising its Enforcement Policy for power reactor licensees. The revised policy affects the treatment of individual Severity Level IV violations by: (1) Expanding the use of NCV's to include Severity Level IV violations identified by the NRC; (2)

providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not NOV's; and (3) permitting closure of most Severity Level IV violations based on their having been entered into a licensee's corrective action program.

This revised enforcement approach is not intended to modify the NRC's emphasis on compliance with requirements. Severity Level IV violations will continue to be described in inspection reports as they are now, although the NRC will close these violations based on their being entered into the licensee's corrective action program rather than a complete understanding of the licensee's corrective actions. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. If such inspections identify significant violations or programmatic deficiencies in a licensee's corrective action program, broader and more in depth inspections may be carried out to understand the extent of the problem. The NRC will monitor the licensee's restoration of its corrective action program. In addition to documentation in inspection reports, violations will continue to be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness. The revised approach will allow licensees to dispute violations described as NCVs.

The circumstances under which an NOV will be considered and a brief discussion of each follows. Any one of these will result in consideration of an NOV requiring a formal written response from a licensee. The decision to issue an NOV will be based on the merits of the case.

1. The licensee failed to restore compliance within a reasonable time after a violation was identified.

The purpose of this exception is to emphasize the need to take appropriate action to restore compliance, or take compensatory measures if compliance cannot be immediately restored, once a licensee becomes aware of a violation.

2. The licensee did not place the violation into a corrective action program to address recurrence.

The purpose of this exception is to emphasize the need to consider actions beyond those necessary to restore compliance and which may be necessary to prevent recurrence. Placing a violation into a corrective action program to prevent recurrence is fundamental to the NRC's ability to close out a violation in an inspection report without detailed information regarding the licensee's corrective actions. The licensee is expected to provide the NRC with a file reference evidencing that the violation has been placed in the corrective action program. This will assist the NRC should it review the particular violation as part of an NRC inspection of the effectiveness of the licensee's corrective action program. The NRC recognizes that there are violations that do not require substantial efforts to prevent recurrence. In such cases, a corrective action process that includes: (1) Restoring compliance, (2) evaluating the need for additional corrective actions to prevent recurrence, and (3) maintaining records that may be inspected at a later time, would be adequate to avoid an NOV.

3. The violation is repetitive as a result of inadequate corrective action, and was identified by the NRC.

The purpose of this exception is to emphasize the importance of effective corrective action to prevent recurrence and the importance of licensees identifying recurring issues. For the purposes of this exception, the term "repetitive violation" is consistent with its definition in the Enforcement Policy, provided that the previous violation is one that was described in an NRC inspection report or otherwise described in docketed information. This exception will be used in those cases where: (1) Corrective action for the previous violation had time to take effect and was deemed inadequate; or (2) corrective action for the previous violation wasn't taken in a time frame commensurate with its safety significance. An NOV will not result if, despite the violation's recurrence, the NRC found the licensee's corrective actions for the previous violation reasonable. In addition, this exception will be applied only to repetitive violations identified by the NRC so as to encourage licensee identification and correction of repetitive issues.¹

¹ Licensee-identified, non-willful repetitive violations will be cited only if the ineffectiveness of the licensee's corrective action program is significant enough to rise to Severity Level III. Before making a decision to issue such a Severity Level III violation, consideration will be given to additional inspection effort, issuance of Demands for Information, management meetings, predecisional enforcement conferences, and outcomes of performance assessments.

4. The violation was willful and is not subject to discretion pursuant to Section VII.B.1 of the Enforcement Policy.

The purpose of this exception is to emphasize the importance of integrity and candor in carrying out licensed activities, as expressed in Section IV.C. of the Enforcement Policy. Nonetheless, certain licensee-identified willful violations (e.g., those involving the isolated acts of relatively low-level individuals, etc.) will remain eligible for treatment as NCVs, as they are under the current policy in Section VII.B.1. In addition, the NRC notes that willfulness may result in increasing the severity level of a violation; the use of this exception refers only to those situations where the significance of the willfulness does not justify an increase to Severity Level III, in which case escalated enforcement action will be considered.

In recommending a revised enforcement approach, the NRC has not lost sight of the lessons of plants that have had ineffective corrective action programs resulting in deficient performance and, in some cases, extended shutdowns. Given the lower risk significance of Severity Level IV violations, the staff's inspection efforts should be focused on the overall effectiveness of the corrective action program and not on the licensee's actions taken for each such violation. The staff intends to utilize a "smart" sample of NRC and licensee-identified findings in reviewing the effectiveness of corrective action programs. If such inspections identify significant violations or programmatic deficiencies in a licensee's corrective action program, broader and more in depth inspections may be carried out to understand the extent of the problem. The NRC will monitor the licensee's restoration of its corrective action program. The immediate changes necessary in the inspection program and associated training necessary to implement this approach are expected to be completed by early 1999.

The NRC recognizes that additional Enforcement Policy changes may be considered as a result of ongoing efforts to make improvements to the inspection and performance assessment processes for power reactors. In addition, the NRC is considering additional changes to the Enforcement Policy and guidance documents to address issues such as the use of the term "regulatory significance" in determining severity levels, and further clarifying the threshold between Severity Level IV and "minor" violations, which are not normally described in inspection reports.

This Enforcement Policy revision addresses only power reactor licensees

because of the scope, formality and general effectiveness of their corrective action programs, and the extent of the NRC inspection effort associated with these facilities. However, the NRC notes that it is considering the feasibility of expanding this revised enforcement approach to other categories of licensees in the future.

Since additional changes to the Policy may be necessary to address future changes to the reactor oversight process, a more risk-informed and performance-based regulatory process, and application to other categories of licensees, this approach for Severity Level IV violations involving power reactors is being implemented by adding Appendix C to the Enforcement Policy as an interim step. The staff intends to hold a public meeting to obtain views of stakeholders six months after implementation of this interim policy.

Paperwork Reduction Act

This final policy statement does not amend information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150-0136.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not "a major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended by adding Appendix C as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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Appendix B: Supplements—Violation Examples

Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactors

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Appendix C: Interim Enforcement Policy for Severity Level IV Violations Involving Activities of Power Reactor Licensees

The Commission is issuing this Appendix to revise its policy with respect to Severity Level IV violations at power reactors. This is being issued as an appendix to the policy and characterized as interim because the Commission expects to make additional changes to its Enforcement Policy as a result of the efforts to improve its inspection and performance assessment programs.

This Appendix revises the NRC's treatment of individual Severity Level IV violations at power reactors by: (1) Expanding the use of Non-Cited Violations (NCVs) to include Severity Level IV violations identified by the NRC; (2) providing that except under limited, defined circumstances, individual Severity Level IV violations normally will result in NCVs and not Notices of Violation (NOVs); and (3) permitting NRC closure of most Severity Level IV violations based on their having been entered into a licensee's corrective action program.

This revised enforcement approach is not intended to modify the NRC's emphasis on compliance with requirements. Severity Level IV violations will continue to be described in inspection reports as they are now, although the NRC will close these violations based on their being entered into the licensee's corrective action program rather than a complete understanding of the licensee's corrective actions. At the time a violation is closed in an inspection report, the licensee may not have completed its corrective actions or begun the process to identify the root cause and develop action to prevent recurrence. Licensee actions will be taken commensurate with the established priorities and processes of the licensee's corrective action program. The NRC inspection program will provide an assessment of the effectiveness of the corrective action program. In addition to documentation in inspection reports, violations will continue to be entered into the Plant Issues Matrix (PIM) that the NRC maintains for each facility to assist in identifying declining performance and determining repetitiveness. The revised approach will allow licensees to dispute violations described as NCVs.

Because the NRC will not normally obtain a written response from licensees describing actions taken to restore compliance and prevent recurrence of Severity Level IV violations, this revised enforcement approach places greater NRC reliance on licensee corrective action programs. Therefore, notwithstanding the normal approach of treating most Severity Level IV violations as NCVs, the NRC has identified four circumstances in which a written response to a Severity Level IV violation may be important. Any one of the following circumstances will result in consideration of an NOV requiring a formal written response from a licensee.

1. The licensee failed to restore compliance within a reasonable time after a violation was identified.
2. The licensee did not place the violation into a corrective action program to address recurrence.

3. The violation is repetitive as a result of inadequate corrective action, and was identified by the NRC.

4. The violation was willful and is not subject to discretion pursuant to Section VII.B.1 of the Enforcement Policy.

To the extent the NRC Enforcement Policy is not modified by the above, the Policy remains applicable to power reactor licensees.

Dated at Rockville, Maryland, this 3rd day of February, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.

[FR Doc. 99-3093 Filed 2-8-99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of February 8, 15, 22, and March 1, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 8

Monday, February 8

2:00 p.m.—Briefing on HLW Program Viability Assessment (Public Meeting).

3:30 p.m.—Briefing by Executive Branch (Closed—Ex. 4 & 9b).

Tuesday, February 9

9:00 a.m.—Briefing on Fire Protection Issues (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting) a: Final Rule—Requirements for Initial Operator Licensing Examinations.

Thursday, February 11

9:00 a.m.—Briefing on Y2K Issues (Public Meeting).

Week of February 15—Tentative

There are no meetings scheduled for the Week of February 15.

Week of February 22—Tentative

There are no meetings scheduled for the Week of February 22.

Week of March 1—Tentative

Tuesday, March 2

9:30 a.m.—Meeting with Commonwealth Edison (Public Meeting).

11:30 a.m.—Affirmation Session (Public Meeting (If needed)).