



SECRETARY

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

April 18, 2012

COMMISSION VOTING RECORD

DECISION ITEM: SECY-11-0155

TITLE: PROPOSED CHANGES TO THE ENFORCEMENT POLICY  
ASSOCIATED WITH CONSTRUCTION ACTIVITIES

The Commission acted on the subject paper as recorded in the Staff Requirements Memorandum (SRM) of April 18, 2012.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commission.

A handwritten signature in black ink, appearing to read "Annette L. Vietti-Cook", written over a horizontal line.

Annette L. Vietti-Cook  
Secretary of the Commission

Attachments:

1. Voting Summary
2. Commissioner Vote Sheets

cc: Chairman Jaczko  
Commissioner Svinicki  
Commissioner Apostolakis  
Commissioner Magwood  
Commissioner Ostendorff  
OGC  
EDO  
PDR

VOTING SUMMARY - SECY-11-0155

RECORDED VOTES

|                   | APRVD | DISAPRVD | ABSTAIN | NOT<br>PARTICIP | COMMENTS | DATE     |
|-------------------|-------|----------|---------|-----------------|----------|----------|
| CHRM. JACZKO      | X     | X        |         |                 | X        | 12/13/11 |
| COMR. SVINICKI    | X     |          |         |                 | X        | 4/3/12   |
| COMR. APOSTOLAKIS | X     |          |         |                 | X        | 4/2/12   |
| COMR. MAGWOOD     | X     |          |         |                 | X        | 4/10/12  |
| COMR. OSTENDORFF  | X     |          |         |                 | X        | 2/9/12   |

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: Chairman Gregory B. Jaczko  
SUBJECT: SECY-11-0155 –PROPOSED CHANGES TO THE  
ENFORCEMENT POLICY ASSOCIATED WITH  
CONSTRUCTION ACTIVITIES

Approved in Part X Disapproved in Part X Abstain   

Not Participating   

COMMENTS: Below    Attached X None   

  
\_\_\_\_\_  
SIGNATURE

12/15/11  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes X No

## **Chairman Jaczko's Comments on SECY-11-0155, "Proposed Changes to the Enforcement Policy Associated with Construction Activities"**

I approve, in part, and disapprove, in part, the staff's recommendation. I commend the staff for considering potential enforcement policy revisions in conjunction with the development of the Changes during Construction (CdC) process. The purpose of the CdC process is to allow LWA and COL licensees to implement changes that require a license amendment while the NRC reviews the amendment request.

The draft Interim Staff Guidance outlining this process, COL-ISG-025, "Interim Staff Guidance on Changes during Construction Under 10 CFR Part 52" (ISG), is nearing completion. As the draft ISG explains, new nuclear power plants must be constructed in accordance with the current licensing basis (CLB). If licensees wish to depart from the CLB, they first conduct a screening process to determine whether the change meets specified requirements that allow the change to be made without obtaining a license amendment. If not, prior NRC approval of the amendment is required. This screening process is set forth in our regulations in 10 C.F.R. § 50.59 and the 50.59-like provisions in the Part 52 Appendices for certified designs (collectively referred to as "50.59" below).

If an amendment is required, the draft ISG process allows the licensee to obtain a finding of "no objection" from the staff. The purpose of this finding is to allow the licensee to proceed with installation and testing while the NRC reviews the necessary amendment request. The ISG explains that the finding is not a pre-approval of the amendment on the merits. If the amendment request is denied, the licensee must return the facility to the CLB. The ISG, as a guidance document, cannot relieve licensees from our regulatory process for determining whether a modification requires prior NRC approval of a license amendment. Likewise, the ISG cannot provide an alternate means of satisfying 50.59 requirements. For this reason, I disapprove the proposed language following the initial sentence in the first paragraph under Section 2.2.6, Construction because it presumes that the ISG "permits" departures from the CLB.


Licensees that do not obtain NRC approval before implementing changes that require a license amendment are in violation of 50.59 and subject to enforcement. In the event that extenuating circumstances warrant a departure from our usual enforcement process, our enforcement policy gives the staff discretion to reduce or refrain from taking enforcement action. This enforcement discretion should be used sparingly, when extraordinary circumstances are present. It should not be used to give tacit approval of an alternative means to satisfy regulatory requirements. In my view, that is what the proposed language in Section 2.2.6 and 3.9 would do, by giving a roadmap to licensees on how to violate our regulations with impunity.

If the 50.59 process needs greater flexibility for COL holders during construction, it should be revised in an open and public manner through our rulemaking process, not through the development of enforcement discretion criteria. In the meantime, licensees may obtain relief only if our regulatory requirements for granting exemptions or waivers have been satisfied. The staff should work with stakeholders to make the exemption review process as efficient as possible by developing standard templates for exemption requests and for staff review.

Aside from my objection to using enforcement discretion as proposed, I see serious flaws in the guidance which has been proposed for permitting enforcement discretion before the "no objection" finding under the ISG. The purpose of enforcement discretion is to give the staff the

flexibility to consider special circumstances when determining the appropriate enforcement sanction to impose. But the language proposed would limit our enforcement options by saying that in *all cases* in which a *licensee* determines that it has met the discretion criteria, the NRC *will not* treat the violation as a willful or a continuing violation while reviewing the licensee's submittal. I do not support a policy that limits our enforcement options, particularly based on the licensee's assessment of compliance instead of our own.

For these reasons, I disapprove the enforcement discretion guidance proposed for COL holders beginning with the second sentence in 3.9(c). I approve the other proposed revisions to clarify the policy and improve consistency, including the remaining portions of Section 3.9.

  
\_\_\_\_\_  
Gregory B. Jaczko

12/13/11  
\_\_\_\_\_  
Date

NOTATION VOTE  
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: SECY-11-0155 –PROPOSED CHANGES TO THE  
ENFORCEMENT POLICY ASSOCIATED WITH  
CONSTRUCTION ACTIVITIES

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_ Attached XX None \_\_\_

  
\_\_\_\_\_  
SIGNATURE

04/3/12  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No \_\_\_

**Commissioner Svinicki's Comments on SECY-11-0155**  
**Proposed Changes to the Enforcement Policy Associated with Construction Activities**

I approve the proposed revisions to the Enforcement Policy (Enclosure 1 to SECY-11-0155) and publication of the revised Enforcement Policy in the *Federal Register* (Enclosure 2, draft Federal Register Notice), subject to the following modifications. In general, the staff has put forward very thoughtful and well-developed revisions to the policy. I commend them on their work in this topic, which will likely continue to evolve as NRC gains further insights on reactor construction at sites in the United States.

I agree with Commissioner Ostendorff's proposals 1) to revise Section 3.9 to address the treatment of Part 50 construction permit holders and 2) to clarify the last paragraph of this section to state that the policy regarding willfulness applies only to the failure to meet the current licensing basis during the period of the NRC's review of the licensee's submittal, and is not intended to limit the NRC's enforcement options more broadly.

The revised Enforcement Policy should be signed out by the Secretary of the Commission, in accordance with the Staff Requirements Memorandum for SECY-09-0190. The policy, as further revised by the Commission's action on SECY-11-0155, should also be provided to the Commission for its information five business days prior to being submitted to the Office of the Federal Register for publication.

Changes during construction will be an inevitable part of the construction process. I agree with my colleagues who have commented in their votes that the proposed revisions to the Enforcement Policy – in concert with license conditions addressing the preliminary amendment request process and the guidance in COL-ISG-025 for combined license holders – will provide a sound regulatory framework for maintaining the current licensing basis of plants while avoiding unnecessary construction delays related to these changes.

  
\_\_\_\_\_  
Kristine L. Svinicki                      04/ 3 /12

**NOTATION VOTE**

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** COMMISSIONER APOSTOLAKIS  
**SUBJECT:** SECY-11-0155 -PROPOSED CHANGES TO THE  
ENFORCEMENT POLICY ASSOCIATED WITH  
CONSTRUCTION ACTIVITIES

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:** Below \_\_\_ Attached  X  None \_\_\_



\_\_\_\_\_  
SIGNATURE

4/2/12

\_\_\_\_\_  
DATE

Entered on "STARS" Yes  x  No \_\_\_



**Commissioner Apostolakis' Comments on SECY-11-0155**  
**Proposed Changes to the Enforcement Policy Associated with Construction Activities**

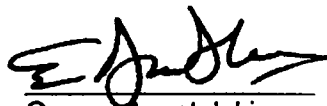
I approve the staff's proposed revisions to the Enforcement Policy and publication of the proposed *Federal Register* notice (FRN), subject to the following comments. In addition, the staff should edit the FRN and the Analysis of Comments Received on Proposed Changes to Enforcement Policy as indicated in the attached mark-up. These changes to the policy will provide greater clarity on the treatment of construction-related enforcement issues.

I agree with Chairman Jaczko and Commissioner Ostendorff that further revisions are needed to the proposed language in Section 3.9. The language in question applies to cases when a licensee determines that an unplanned change during construction associated with a violation meets the specified criteria, and the licensee makes timely submittal of the necessary information to the NRC. In such cases, the licensee's continued failure to meet the current licensing basis will not be treated as a willful or continuing violation while the NRC reviews the submittal. The proposed language could be interpreted as limiting our enforcement options. Therefore, the staff should clarify that this special policy regarding willfulness applies only to the failure to meet the current licensing basis during the period of the agency's review of the licensee's submittal. In addition, the proposed language should be revised to ensure that other aspects of the licensee's conduct associated with the violation may be assessed for willfulness.

Further, I agree with Commissioner Ostendorff that Section 3.9 should include language to address the use of enforcement discretion, when appropriate, for treatment of non-conformance issues for holders of construction permits under 10 CFR Part 50.

I also agree with Commissioner Ostendorff that the revised Enforcement Policy should be signed out by the Secretary of the Commission, in accordance with the Staff Requirements Memorandum for SECY-09-0190, and that the revised policy, reflecting the SRM on SECY-11-0155, should be provided to the Commission five business days prior to being submitted to the Office of the Federal Register for publication.

With regard to changes during construction (CdC) for combined license (COL) holders, the staff's proposed revisions to the Enforcement Policy, in combination with the license conditions addressing the preliminary amendment request (PAR) process and the guidance in COL-ISG-025, provide an appropriate legal framework for maintaining the current licensing basis of plants while avoiding unnecessary construction delays related to changes during construction. The PAR process does not relieve licensees from the requirement to determine whether a modification requires prior NRC approval through a license amendment or exemption. It does, however, preserve design configuration control mechanisms while avoiding unnecessary construction delays. As stated in the policy, any activities undertaken under the CdC process would be at the risk of the licensee; the licensee would be obligated to return to the current licensing basis, if the related license amendment request were subsequently disapproved by the NRC. Failure to restore the licensing basis in a timely manner may be subject to separate enforcement, such as an order, a civil penalty, or both.

  
George Apostolakis  
4/9/12

# EDITS TO FEDERAL REGISTER NOTICE

The purpose of this EGM is to clarify the guidance for exercising enforcement discretion when the staff dispositions, as noncited violations (NCVs), Severity Level (SL) IV violations identified by licensees or applicants at power reactors that are under construction. The addition of this language also reflects current practices for dispositioning NCVs at fuel facilities (under construction or in operation).

6. Revisions to Section 2.3.2.a, "Power Reactor Licensees"

Added the phrase "**restore compliance and**" to criterion 1 to more accurately reflect NRC expectations.

Deleted the current footnote, "**For reactor facilities under construction in accordance with 10 CFR Part 52, the corrective action program must have been demonstrated to be adequate,**" from criterion 1 to ~~consistently communicate to Policy users the Policy's intent.~~  
[reflect NRC's goal of promoting early identification of deficient conditions by licensees, even at the early stage when the licensees' corrective action programs have not been demonstrated to be adequate.](#)

Deleted the phrase "**and violations associated with facility construction under 10 CFR Part 50, 'Domestic Licensing of Production and Utilization Facilities,' and 10 CFR Part 52, 'Licenses, Certifications, and Approvals for Nuclear Power Plants'**" from criterion 3 to reflect the NRC's expectation of crediting corrective action programs at ~~poweroperating~~-reactors to address both immediate corrective actions and any actions to preclude recurrence.

7. Revisions to Section 3.8, "Notices of Enforcement Discretion for Operating Power Reactors and Gaseous Diffusion Plants"

Added a footnote to clarify that the notice of enforcement discretion (NOED) process is not applicable while reactor facilities are under construction:

# **EDITS TO ANALYSIS OF COMMENTS**



regulated activities. Going forward, the staff will consider providing additional guidance in the Enforcement Manual in coordination with the NRC program offices responsible for vendor inspection programs.

4. **Comment Summary:** A commenter recommended that the staff withdraw proposed changes to Section 2.2.1.a, "Factors Affecting Assessment of Violations"; specifically, the staff should delete the proposed wording "onsite and offsite chemical hazard exposures resulting from licensed or certified activities as a factor." The commenter believes that including this wording would broaden the scope of Section 2.2.1.a without any clear rationale or supporting basis, and that the wording is unrelated to construction. The commenter suggested that the NRC consider resubmitting the wording at a later date when the technical and legal bases could be better understood. (See ADAMS Accession No. ML11256A012.)

**Response:** Although the NRC agrees that this language may be considered unrelated to construction, this proposed revision to the [Policy](#) will include it. The incorporation of "onsite and offsite chemical hazard exposures" is consistent with current Policy, including the examples provided in Section 6.2, "Fuel Cycle Operations." In fact, the first example involves a high-consequence event, as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, "Domestic Licensing of Special Nuclear Material." The regulation at 10 CFR 70.61, "Performance Requirements," defines "high consequence" to include, among other things, acute chemical exposure. Therefore, the proposed change is not [an attempt](#)ing to impose a new requirement or a new interpretation of an existing requirement; rather, it is [intended](#)ing to clarify current Policy, as written.

5. **Comment Summary:** One commenter recommended adding the following language at the end of the first paragraph of Section 2.2.6, "Construction":

Failure to timely restore the CLB [current licensing basis] may be subject to separate enforcement, such as an order, a civil penalty, or both.

The commenter stated that the additional language would enhance public confidence that the NRC will take appropriate action as necessary to ensure the integrity of the licensing process. (See ADAMS Accession No. ML11242A113.)

**Response:** The NRC agrees with the recommendation to add language relating to the timely restoration of the CLB.

6. **Comment Summary:** A commenter recommended that the NRC simplify the use of noncited violations (NCVs) by minimizing the staff effort to determine, before dispositioning violations, the acceptability of licensee corrective actions for issues of very low safety or security significance, as well as by minimizing the staff effort in dispositioning willful violations of very low significance not caused by licensee officials. The commenter recommended replacing the entire guidance provided in Section 2.3.2, "Non-Cited Violation," with the following (see ADAMS Accession No. ML11242A113):

The NRC will typically issue NCVs for all violations that are determined to be of SL [Severity Level] IV severity or associated with a finding that is of no greater than green significance. The NRC may issue a Notice of Violation for a SL IV violation if the issue also involves a willful act by a licensee official, and the resultant action is not otherwise considered for escalated enforcement for the licensee, or the individual, or both. Particularly poor licensee performance, such



as indicated by weak or ineffective corrective actions for very low severity/significance issues should be addressed through other means provided in the NRC inspection or assessment processes in lieu of issuing cited NOVs [notices of violation].

**Response:** Although the NRC staff ~~agrees with~~ shares the commenter's ~~intent to~~ interest in simplifying the guidance in the Enforcement Policy, it disagrees with the recommended changes. The NRC believes that other staff efforts initiated to address Item 1.f of SRM-SECY-09-0190, "Staff Requirements—SECY-09-0190—Major Revision to NRC Enforcement Policy," dated August 27, 2010, will generate further changes to this section of the Policy and will likely result in the intended simplification of this section of the Policy. In addition, the staff believes that this proposal would remove an incentive for licensees to identify violations early (a specific goal of the NRC's Enforcement Policy). Also, it would substantially reduce the staff's ability to provide a graded enforcement response involving issues associated with a failure to correct the violation and repetitiveness would be reduced substantially. This is a particular challenge in the case of nonreactor licensees.

**7. Comment Summary:** Based on discussions held during the public meeting on August 30, 2011, a regulated industry stakeholder recommended alternative language on how the NRC will normally issue an NCV in lieu of an SL IV violation identified by either the licensee or the NRC. The commenter suggested that the latter part of the proposed second paragraph of Section 2.3.2 read as follows (see ADAMS Accession No. ML11256A012):

Until the determination that an adequate corrective action program has been implemented, NCVs may be issued for licensee/applicant-identified SL IV violations if the NRC has determined that the applicable criteria in 2.3.2.b. below are met. For reactor licensees, after the NRC determines that an adequate corrective action program has been implemented, the NRC will normally issue an NCV in lieu of a SL IV violation whether that violation is identified by the licensee or NRC.

**Response:** The staff agrees with this comment and has made the recommended changes to the proposed revision of the Policy.

**8. Comment Summary:** One commenter noted that the NRC is developing a Changes during Construction (CdC) process for combined license (COL) holders and agreed that the CdC process is expected to address the vast majority of situations during construction that might have otherwise necessitated a process similar to that of notices of enforcement discretion (NOEDs). Because the effectiveness and flexibility of the CdC process have not been demonstrated, and because neither the industry nor the NRC staff can foresee all the complexities associated with building a plant while maintaining compliance with a license under 10 CFR Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," the commenter urged the NRC staff to remain open to reconsidering the need for an NOED-like process during construction based on experience from the lead 10 CFR Part 52 projects. (See ADAMS Accession No. ML11256A012.)

The commenter further suggested changes to the proposed footnote in Section 3.8, Notices of Enforcement Discretion for Operating Power Reactors and Gaseous Diffusion Plants, for greater clarity when reading this section in isolation:



NOEDs will not be used at reactors during construction before the Commission's 10 CFR 52.103(g) or 10 CFR 50.57 finding, as applicable. However, the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions or otherwise refrain from taking enforcement action within the Commission's statutory authority, as identified in Section 3.0 of this Enforcement Policy.

**Response:** The NRC acknowledges ~~the commenter's statement that the CdC process is not yet in place, and~~ that the effectiveness and flexibility of the CdC process have not yet been demonstrated. The staff will remain open to consider the establishment of an NOED-like policy, if warranted; however, neither the staff nor the industry has identified a scenario where an NOED-like process is necessary.

The NRC staff also agrees with the suggested changes to the footnote and has incorporated them.

9. **Comment Summary:** One commenter expressed concerns that the proposed changes to the Policy do not appear to extend the CdC concept to the fuel cycle industry. The commenter also expressed disappointment in the progress of discussions between the NRC and the fuel cycle licensees and applicants on this subject. The commenter reiterated that the NRC's approach to CdC could raise significant policy issues and that the approach should be fully vetted with the fuel cycle industry.

Moreover, the commenter is concerned with the proposed language in new Section 2.2.6 on the failure of an applicant to obtain Commission approval for construction activities at plutonium processing and fuel fabrication plants and the possible denial of a license to possess and use special nuclear material. Specifically, the commenter is concerned that the NRC's "ultimate intent is to include other fuel cycle applicants (and licensees who are constructing while operating), such as uranium enrichment facilities, in this language." (See ADAMS Accession No. ML11256A011.)

**Response:** After the NRC finalizes interim staff guidance on the CdC process (ISG-25), it will consider whether similar guidance is appropriate for facilities under construction under 10 CFR Part 40, "Domestic Licensing of Source Material," and 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material." As a result, the NRC may revise existing guidance or develop specific CdC guidance for fuel cycle facilities. In considering the applicability of the CdC, or a similar process, to fuel cycle facilities and in developing associated guidance, the NRC would appropriately engage representatives of the fuel cycle industry and other interested stakeholders.

10. **Comment Summary:** One commenter stated that the proposed new Section 3.9, "Violations Involving Certain Construction Issues," specifies that the NRC's general enforcement discretion guidance is applicable to fuel cycle facilities and holders of limited work authorizations (LWA) and noted that the general enforcement discretion guidance is also applicable to COL holders. The commenter recommended that the revised Policy clearly reflect the COL holder's option to restore the current licensing basis in addition to the option to request a change to the licensing basis. The commenter provided suggested changes (underlined here) to the language to clarify the proposed new Section 3.9 (see ADAMS Accession No. ML11256A012.):

c. COL Holders (Reactor Facilities)

NOTATION VOTE  
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER MAGWOOD  
SUBJECT: SECY-11-0155 –PROPOSED CHANGES TO THE  
ENFORCEMENT POLICY ASSOCIATED WITH  
CONSTRUCTION ACTIVITIES

Approved  Disapproved  Abstain

Not Participating

COMMENTS: Below  Attached  None

  
\_\_\_\_\_  
SIGNATURE

10 April 2012  
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  No



**Commissioner Magwood's Comments on SECY-11-0155,  
"Proposed Changes to the Enforcement Policy Associated with Construction Activities"**

I approve staff's proposed revision to the NRC's Enforcement Policy and publication of the *Federal Register* Notice, subject to the modifications noted below. I appreciate the staff's considerable effort to work with stakeholders as it has developed this revision to the Enforcement Policy. I encourage staff to continue to solicit stakeholder feedback on future revisions of the enforcement policy. This will be particularly important as staff continues its work toward developing the Changes during Construction (CdC) process, an effort I fully support.

The Commission directed in SRM SECY-09-0190 that staff reevaluate portions of the Enforcement Policy associated with construction activities to determine under what conditions enforcement discretion can be used. In response, staff proposes to add a new Section 3.9, "Violations Involving Certain Construction Issues" to the Enforcement Policy to establish appropriate criteria. However, Section 3.9 does not appear to address Part 50 reactor construction. The new section should be modified as appropriate to address clearly the application of this process to Part 50 Construction Permit holders.

In addition, I agree with Commissioner Ostendorff that staff should clarify the language of Section 3.9 to remove any ambiguity that might limit NRC's enforcement options.

The Commission directed in SRM SECY-09-0190 that all future revisions to the Enforcement Policy should be issued by the Secretary of the Commission to make clear that the Enforcement Policy this is the Commission's policy, not a staff policy. In accordance with this direction, the subject *Federal Register* Notice should be issued by the Secretary of the Commission.

I also support Commissioner Apostolakis' proposed edits to the *Federal Register* Notice and the analysis of public comments as appended to his vote. Moreover, given the changes reflected above and in my colleagues' votes, I agree that the revised policy language reflecting the Commission's SRM on SECY-11-0155 be provided to the Commission 5 business days prior to submission of the *Federal Register* Notice.

  
\_\_\_\_\_  
William D. Magwood, IV      4/16/12  
Date

NOTATION VOTE

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER OSTENDORFF  
SUBJECT: SECY-11-0155 -PROPOSED CHANGES TO THE  
ENFORCEMENT POLICY ASSOCIATED WITH  
CONSTRUCTION ACTIVITIES

Approved  Disapproved  Abstain

Not Participating

COMMENTS: Below  Attached  None

*M. Ostendorff*  
SIGNATURE

2/9/12  
DATE

Entered on "STARS" Yes  No

**Commissioner Ostendorff's Comments on SECY-11-0155**  
**"Proposed Changes to the Enforcement Policy Associated With Construction Activities"**

I approve the proposed revision to the NRC's Enforcement Policy and the associated *Federal Register* Notice (FRN), subject to the changes noted below. I compliment the staff for providing a cogent assessment of emergent enforcement issues and the basis for its recommendations. I believe the proposed changes to the NRC's Enforcement Policy will improve clarity and regulatory expectations regarding use of enforcement discretion for new nuclear facility construction activities.

In my view, these enforcement policy revisions provide, where appropriate, regulatory flexibilities for unforeseen circumstances. Since the issuance of the Commission's Staff Requirements Memorandum (SRM) on SECY-09-0190, the staff and stakeholders have advanced the Changes during Construction (CdC) process for new reactors. Under the CdC process, combined license (COL) holders may continue with construction activities with known non-conformances. These construction activities may proceed, under certain conditions, at the risk to the COL holder pending NRC review of the license amendment request (LAR). In this context, the associated revisions to the enforcement policy are complementary to the CdC process.

With respect to proposed Section 3.9, "Violations Involving Certain Construction Issues," I believe further clarification may be needed on two matters. First, I agree with Chairman Jaczko that there may be unintended interpretations regarding the treatment of issues involving willfulness. The staff should clarify the language to emphasize that this section is not intended to limit our enforcement options. In particular, the staff should note that other aspects associated with the violation may be assessed for willfulness as is normally done under the current policy. Second, Section 3.9 should include treatment of non-conformance issues for Part 50 Construction Permit holders and the use of enforcement discretion prior to § 50.57 operations. As proposed, Section 3.9 is simply silent on the matter.

Lastly, the FRN should be corrected to have the revised policy signed out by the Secretary of the Commission. Staff Requirements Memorandum on SECY-09-0190 states ". . . all future revisions to the enforcement policy, should be signed out by the Secretary of the Commission to make it clear that this is the Commission's policy and not a staff policy."

Given the above, the revised policy language that reflects the Commission's SRM on SECY-11-0155 should be provided to the Commission 5 business days prior to submitting the FRN to the *Federal Register*.