

1. Darrel T. Rich is prohibited for three years from the effective date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. For a period of three years after the three year period of prohibition has expired, Mr. Rich shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Mr. Rich shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Rich of good cause.

## V

In accordance with 10 CFR 2.202, Darrel T. Rich must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. 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, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Rich or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of

Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Suite 255, Lisle, IL 60532-4351, and to Mr. Rich if the answer or hearing request is by a person other than Mr. Rich. If a person other than Mr. Rich requests a hearing, that person shall set forth with particularity the manner in which his 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 Mr. Rich or 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 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 at Rockville, Maryland this 5th day of January 1998.

For the Nuclear Regulatory Commission.

**Malcolm R. Knapp,**

*Acting Deputy Executive Director for Regulatory Effectiveness.*

[FR Doc. 98-752 Filed 1-12-98; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NUREG-1600]

### Policy and Procedure for Enforcement Actions; Deliberate Misconduct Rule

**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" to conform to modifications to the Deliberate Misconduct Rule. These modifications extend that Rule to applicants for NRC licenses, applicants for, and holders of, certificates of compliance, early site permits, standard design certifications, or combined licenses issued under part 52,

applicants for or holders of certificates of registration, quality assurance approvals, and the employees, contractors, subcontractors, and consultants of those persons. By a separate action published in this issue of the **Federal Register**, the Commission has issued a final rule amending 10 CFR parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150.

**EFFECTIVE DATE:** This action is effective on February 12, 1998.

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

**SUPPLEMENTARY INFORMATION:** The Commission's "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy or Policy) was first issued on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. On June 30, 1995 (60 FR 34381), the Enforcement Policy was revised in its entirety and was also published as NUREG-1600. The Policy primarily addresses violations by licensees and certain non-licensed persons, as discussed further in footnote 3 to Section I, Introduction and Purpose, and in Section X: Enforcement Action Against Non-licensees.

The Deliberate Misconduct Rule was adopted in September 1991 and applies to any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee. The Deliberate Misconduct Rule placed licensed and unlicensed persons on notice that they may be subject to enforcement action for deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any of the Commission's requirements, or for deliberately providing to the NRC, a licensee, or contractor, information that is incomplete or inaccurate in some respect material to the NRC.

The final rulemaking expands the Deliberate Misconduct Rule, where it appears in 10 CFR parts 30, 40, 50, 60, 61, 70, 72, and 110, clarifies the scope of part 32 and adds the Rule to parts 52 and 71. This expansion arises out of a realization that the current Rule does not apply to applicants for NRC licenses, applicants for, or holders of, certificates of compliance, early site permits, standard design certifications, or combined licenses issued under part 52, applicants for or holders of certificates of registration, quality assurance program approvals and the

employees, contractors, subcontractors, and consultants of those persons. The Commission believes that it is equally important for these categories of persons to be subject to enforcement action for deliberate wrongdoing, such as the submission of inaccurate or incomplete information.

The Commission is making this change to the General Statement of Policy and Procedure for NRC Enforcement Actions to make it consistent with the regulations. The changes include: (1) Expansion of footnote 3 in Section I, which discusses the scope of the Policy; (2) deletion of the reference to vendors in Section VI.C.5, to avoid possible confusion as a result of a partial listing of those to whom the Rule and Policy apply; and (3) restating the opening sentence in Section VI.C.5 and in Section X: Enforcement Actions Against Non-licensees, to set out the full scope of the Rule and its application through the Enforcement Policy.

The Commission has held that the term "contractor" includes a vendor or supplier that manufactures and offers for sale materials intended for use by NRC licensees and certified to meet the requirements of 10 CFR part 50, Appendix B. In the Matter of: Five Star Products, Inc. and Construction Products Research, Inc., 38 NRC 169, CLI-93-23 (October 21, 1993). In light of that holding, the remaining references to vendors throughout the Enforcement Policy are also being modified to refer to contractors as the inclusive term. These changes are being made in Sections V, VI.B.1, VI.C, VI.D, VIII, X, Table 1A, and Supplements I.C. and VII.C.

#### **Paperwork Reduction Act**

This policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

#### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### **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, Sections I, V, VI B., C., and D., VIII, X, and Supplements I and VII of the NRC Enforcement Policy are amended to read as follows:

#### **General Statement of Policy and Procedure for NRC Enforcement Actions**

##### **I. Introduction and Purpose**

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

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, contractors,<sup>2</sup> and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.<sup>3</sup> Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

\* \* \* \* \*

##### **V. Predecisional Enforcement Conferences**

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a

<sup>2</sup>The term "contractor" as used in this policy includes vendors who supply products or services to be used in an NRC-licensed facility or activity.

<sup>3</sup>This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. These non-licensees include contractors and subcontractors, holders of, or applicants for, NRC approvals, e.g., certificates of compliance, early site permits, or standard design certificates and the employees of these non-licensees. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

contractor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, contractor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) A common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

\* \* \* \* \*

During the predecisional enforcement conference, the licensee, contractor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, contractors, or other persons will be told when a meeting is a predecisional enforcement conference.

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#### **VI. Enforcement Actions**

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##### **VI. B. 1. Base Civil Penalty**

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability

to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

\* \* \* \* \*

TABLE 1A.—BASE CIVIL PENALTIES

* * * *	*
c. Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, and industrial radiographers .....	\$11,000
* * * *	*

\* \* \* \* \*

#### C. Orders

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5. Orders to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, or applicants for any of them, and to employees of any of the foregoing, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

\* \* \* \* \*

#### D. Related Administrative Actions

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and contractors to adhere to any obligations and commitments resulting from these

actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing contractors' failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR part 50, Appendix B. Notices of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

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#### VIII. Enforcement Actions Involving Individuals

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Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.

- Unauthorized abandoning of reactor controls.

- Dereliction of duty.

- Falsifying records required by NRC regulations or by the facility license.

- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.

- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.

- Submitting false information and as a result gaining unescorted access to a nuclear power plant.

- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR Part 50, Appendix B, or other regulatory requirement.

- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.

- Willfully supplying, by contractors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.

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#### X. Enforcement Action Against Non-Licensees

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or knowing submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Contractors who supply products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with licensees, suppliers may be required to have quality assurance programs that meet applicable requirements, e.g., 10 CFR part 50, Appendix B, and 10 CFR part 71, subpart H. Contractors

supplying certain products or services to licensees are subject to the requirements of 10 CFR part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that contractors have failed to fulfill contractual commitments (e.g., 10 CFR part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements. Notices of Violation will be issued for contractors who violate 10 CFR part 21. Civil penalties will be imposed against individual directors or responsible officers of a contractor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for contractors who fail to meet commitments related to NRC activities.

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#### Supplement I—Reactor Operations

C.6. A licensee failure to conduct adequate oversight of contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

\* \* \* \* \*

#### Supplement VII—Miscellaneous Matters

C.8. A failure to assure, as required, that contractors have an effective fitness-for-duty program;

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Dated at Rockville, Maryland, this 6th day of January, 1998.

For The Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 98-754 Filed 1-12-98; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of January 12, 19, 26, and February 2, 1998.

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

### MATTERS TO BE CONSIDERED:

*Week of January 12*

Thursday, January 15

9:00 a.m. Affirmation Session (Public meeting) (if needed)

*Week of January 19—Tentative*

Wednesday, January 21

10:00 a.m. Briefing on Operating Reactors and Fuel Facilities (Public meeting) (Contact: William Dean, 301-415-1726)

2:00 p.m. Briefing on Material Control of Generally Licensed Devices (Public Meeting) (Contact: Larry Camper, 301-415-7231)

4:00 p.m. Affirmation Session (Public meeting)

Friday, January 23

9:30 a.m. Discussion of Interagency Issues (Closed—Ex. 9)

*Week of January 26—Tentative*

Wednesday, January 28

11:30 a.m. Affirmation Session (Public meeting) (if needed)

*Week of February 2—Tentative*

Wednesday, February 4

11:30 a.m. Affirmation Session (Public meeting) (if needed)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Bill Hill (301) 415-1661.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301-415-1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [wmh@nrc.gov](mailto:wmh@nrc.gov) or [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: January 9, 1998.

**William M. Hill, Jr.,**

*Secy Tracking Officer, Office of the Secretary.*

[FR Doc. 98-957 Filed 1-9-98; 2:56 pm]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39519; File No. SR-CHX-97-28]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Amending the Exchange's Clearing the Post Policy for Cabinet Securities

January 6, 1998.

On October 23, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> amending the Exchange's clearing the post policy for cabinet securities. The Commission published notice of the proposed rule change in the **Federal Register** on November 28, 1997. No comment letters were received. This order approves the proposed rule change.

#### I. Description of the Proposal

The Exchange proposes to amend its existing clearing the post policy for cabinet securities for a six-month pilot period. The clearing the post policy is contained in interpretation and policy .02 of CHX Article XX, Rule 10.<sup>3</sup> The Exchange's clearing the post policies were previously contained in several Notices to Members which had been approved by the Commission.<sup>4</sup> These Notices to Members, and their corresponding Approval Orders, explain the Exchange's clearing the post requirements.

In general, the clearing the post policy requires a floor broker or market maker to clear the post by his or her physical presence at the post. The purpose of this proposed rule change is to permit a floor broker or market maker to clear the post in cabinet securities by phone. The bids and offers made to clear the post by phone will be audibly announced at the cabinet post through a speaker system maintained by the Exchange. This new

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 39337 (November 19, 1997) granting immediate effectiveness to SR-CHX-97-30.

<sup>4</sup> Securities Exchange Act Release No. 33806 (March 23, 1994) 59 FR 15248 (Notice of Filing and Immediate Effectiveness of File No. SR-CHX-94-03); Securities Exchange Act Release No. 17766 (May 8, 1981) 46 FR 25745 (Order approving SR-MSE-81-3 and SR-MSE-81-5); and Securities Exchange Act Release No. 28638 (November 39, 1990) 55 FR 49731 (Order approving SR-MSE-90-7).