

June 29, 1999

EGM 99-004

MEMORANDUM TO: Hubert J. Miller, Regional Administrator
Region I
Luis A. Reyes, Regional Administrator
Region II
James Dyer, Regional Administrator
Region III
Ellis W. Merschoff, Regional Administrator
Region IV
William Kane, Associate Director for
Inspection and Programs, NRR
Brian W. Sheron, Associate Director for
Project Licensing and Technical Analysis, NRR
Elizabeth Q. Ten Eyck, Director, Division of
Fuel Cycle Safety and Safeguards, NMSS
Donald A. Cool, Director, Division of
Industrial and Medical Nuclear Safety, NMSS
John T. Greeves, Director, Division of Waste
Management, NMSS
E. William Brach, Director
Spent Fuel Project Office, NMSS

FROM: James Lieberman, Director Original signed by J. Lieberman
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - ENFORCEMENT OF
10 CFR 34.43, "TRAINING"

The purpose of this memorandum is to provide interim guidance for enforcement of 10 CFR 34.43, "Training," which requires, in part, that the licensee may not permit any individual to act as a radiographer until the individual is certified through a radiographer certification program by a certifying entity. The rule, which had an effective date of June 27, 1997, required that 2 years after the effective date (i.e., June 27, 1999) all individuals serving as radiographers or radiation safety officers had to be certified. The phase-in period was to allow licensees adequate time to complete the certification requirements. In accordance with Supplement VI.C.4 of the Enforcement Policy, a failure to comply with 10 CFR 34.43 is considered a Severity Level III violation.

In a letter dated March 2, 1999, the American Society for Nondestructive Testing (ASNT), the only independent certifying organization, requested that the NRC consider a deadline extension for radiography certification because it believes the current deadline presents hardships to both ASNT and certification applicants. Another industry organization, the Non-Destructive Testing Management Association (NDTMA), also indicated in a letter dated

March 18, 1999, its support for an extension of the deadline because of problems with examination availability. Further, NRC staff has received several calls from licensees concerned that there will not be adequate time for radiography personnel to take the examination and complete the certification process before the deadline.

To provide licensees with additional time to make a good-faith effort to comply with the requirements, the Commission has approved¹ the use of enforcement discretion under Section VII.B.6 of the Enforcement Policy, as follows:

1. Exercise enforcement discretion for licensees that have made good-faith effort to comply with the certification provision of 10 CFR 34.43(a)(1) on or prior to July 27, 1999. Specifically, licensees that allow individuals to act as radiographers after July 27, 1999, will not be subject to enforcement action provided that the radiographers have met all other training and experience criteria set forth in 10 CFR 34.43 and have applied for certification on or before July 27, 1999.
2. Enforcement discretion also applies to licensees whose radiographers have applied for certification and failed the examination, but had not otherwise been denied certification, prior to July 27, 1999, provided that the licensees have: (a) retrained their radiographers; and (b) applied for certification on or before July 27, 1999.
3. Enforcement discretion does not apply to licensees whose radiographers have taken and failed certification examination or have otherwise been denied certification after July 27, 1999. These individuals should not be allowed to continue to act as radiographers because of certification's safety significance, the Commission's decision to impose certification in view of this safety significance, and because individuals' failure to obtain certification may indicate a potential public health and safety concern.
4. Agreement State licensees conducting radiography under reciprocity in NRC jurisdiction will be subject to this regulatory requirement and enforcement policy, including the exercise of enforcement discretion.

The period of time for the enforcement discretion is expected to be approximately six months or until the ASNT or Certifying States process all applications received by July 27, 1999, administer the certification examinations, and issue the certifications.

In accordance with Section 5.2.1 of the Enforcement Manual, enforcement action numbers (EA no.) are assigned to all cases involving use of enforcement discretion under Section VII.B.6 of the Enforcement Policy. Therefore, OE is to be contacted for all violations involving certification of radiographers to obtain an EA no. The decision of whether or not a panel will be held will depend on the circumstances of the case. The regional enforcement coordinators may discuss the case with Nader Mamish or Joseph DelMedico to determine whether a panel is warranted. In accordance with Section VII.B.6 of the Enforcement Policy, OE is to concur on each of these discretion cases.

¹ SECY 99-139 dated May 19, 1999; SRM dated June 21, 1999.

On June 25, 1999, the NRC issued Information Notice No. 99-22, "10 CFR 34.43(a)(1) -- Effective Date For Radiographer Certification And Plans For Enforcement Discretion," which provided notice to radiography licensees of the above approach.

If you have any questions, please contact Nader Mamish of my staff at (301) 415-2740.

cc: Chairman Jackson
Commissioner Dicus
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Commissioner McGaffigan
Commissioner Merrifield
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