U.S. Nuclear Regulatory Commission

Office of Investigations

FY 2004 Annual Report

Issued February 2005

U.S. Nuclear Regulatory Commission

Office of Investigations
FY 2004 Annual Report

Issued February 2005

Executive Summary

This report provides the Commission with the results of cases completed by NRC's Office of Investigations (OI) (reference SRM COMJC-89-8, dated June 30, 1989). This is the 16th OI annual report, covering fiscal year (FY) 2004.

As stated in the NRC's Strategic Plan for FY 2004–FY 2009, the NRC's mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. The NRC's vision is excellence in regulating the safe and secure use and management of radioactive materials for the public good. The mission and vision provide the framework for the agency's strategies and goals, which in turn guide the allocation of resources across the agency. OI aligns with the regulatory programs and supports the agency's strategic objective to enable the use and management of radioactive materials and nuclear fuels for beneficial civilian purposes in a manner that protects public health and safety and the environment, promotes the security of our Nation, and provides for regulatory actions that are open, effective, efficient, realistic, and timely.

OI conducts investigations of alleged wrongdoing by individuals or organizations that are NRC licensees or certificate holders, applicants for NRC licenses or certificates, or vendors or contractors to these entities. Additionally, during the course of an investigation, OI may develop potentially safety-significant issues that are not related to wrongdoing. OI forwards this information to the technical staff in a timely manner for appropriate action. OI also provides assistance to the staff when requested. Generally, "Assists to Staff" are cases where the staff has requested OI's investigative expertise in a matter of regulatory concern but which do not involve a specific allegation of wrongdoing.

OI consists of four regionally based field offices reporting to OI at headquarters. OI reports to the Deputy Executive Director for Reactor Programs and supports the reactor and materials programs. In FY 2004, on the average, there were 34 special agents and 7 operational support staff nationwide. The average experience of an OI special agent in FY 2004 was approximately 16 years in Federal law enforcement.

During FY 2004, NRC received 608 allegations regarding potential violations of its rules, regulations, or requirements. The 608 allegations represent a 2% decrease from the 619 received in FY 2003.

The total number of cases in the OI inventory during FY 2004 was 328, a 5% decrease from the 345 cases in FY 2003. Of the 328 cases, 35 were assists to staff. OI closed 230 of the cases, or 70% of the total inventory. A statistical summary of cases opened and closed during FY 2004 is contained in the Appendix to this report.

In FY 2004, OI continued to focus on increasing effectiveness, efficiency, and productivity in management, organizational, and process-related activities.

OI made the following significant achievements during FY 2004:

- Of the 198 investigations closed by OI, 190 or 96% developed sufficient information to reach a conclusion regarding wrongdoing. This exceeded OI's performance goal of 90%.
- Of the 190 investigations closed with sufficient information to reach a conclusion regarding wrongdoing, 85% were closed in 10 months or less. This exceeded OI's performance goal of 80%.
- OI processed 52 actions resulting from FOIA requests during FY 2004, a 7% decrease from FY 2003.
- OI participated in various Department of Justice Anti-Terrorism Advisory Councils related to national security concerns and counterterrorism.
- During FY 2004, the NRC issued 103 escalated enforcement items[1]. OI investigative findings were considered in 34 of those items.

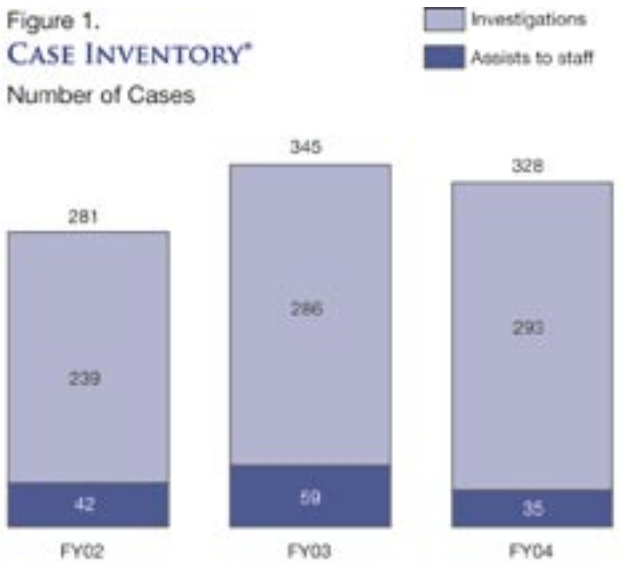
[1] An escalated enforcement item is an action involving Severity Level I, II, or III violations; violations with white, yellow, or red significant determination process findings; civil penalties; orders; and impositions.

Cases

Analysis of Case Inventory

Figure 1 shows the OI case inventory from FY 2002 through FY 2004. The total case inventory in FY 2004 was 328 cases, a combination of the 125 cases carried over from FY 2003 and an additional 203 cases opened in FY 2004. Included in the inventory are 35 assists to staff, 30 opened in FY 2004 and 5 carried over from FY 2003. Generally, assists to staff are cases where the staff has requested OI's investigative expertise in a matter of regulatory concern but which do not involve a specific allegation of wrongdoing. In FY 2004, OI closed 230 cases, 70% of the cases in the inventory.

Figure 1.
CASE INVENTORY*
Number of Cases



* Cases carried over from previous year plus cases opened in current year.

Analysis of Cases Opened

During FY 2004, NRC received 608 allegations regarding potential violations of its rules, regulations, or requirements. The 608 allegations represent a 2% decrease from the 619 received in FY 2003 and a 9% decrease from the 670 received in FY 2002.

The 203 cases opened by OI in FY 2004 are categorized as follows:

Material False Statements	41
Violations of Other NRC Regulatory Requirements	63
Discrimination	69
Assists to Staff	30

Figure 2 shows the number of cases opened from FY 2002 through FY 2004. During this period, there was a 5% increase in cases (from 193 to 203). Discrimination investigations continued to lead other categories of violations and increased by 6% (from 65 to 69). Investigations of violations of other NRC regulatory requirements also increased; however, investigations of suspected material false statements and assists to staff decreased during this period.

Figure 2.
CASES OPENED BY CATEGORY
Number of Cases

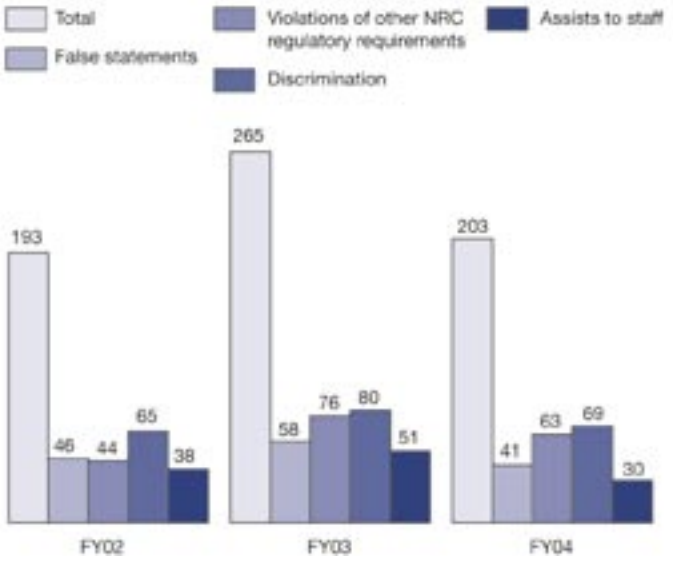
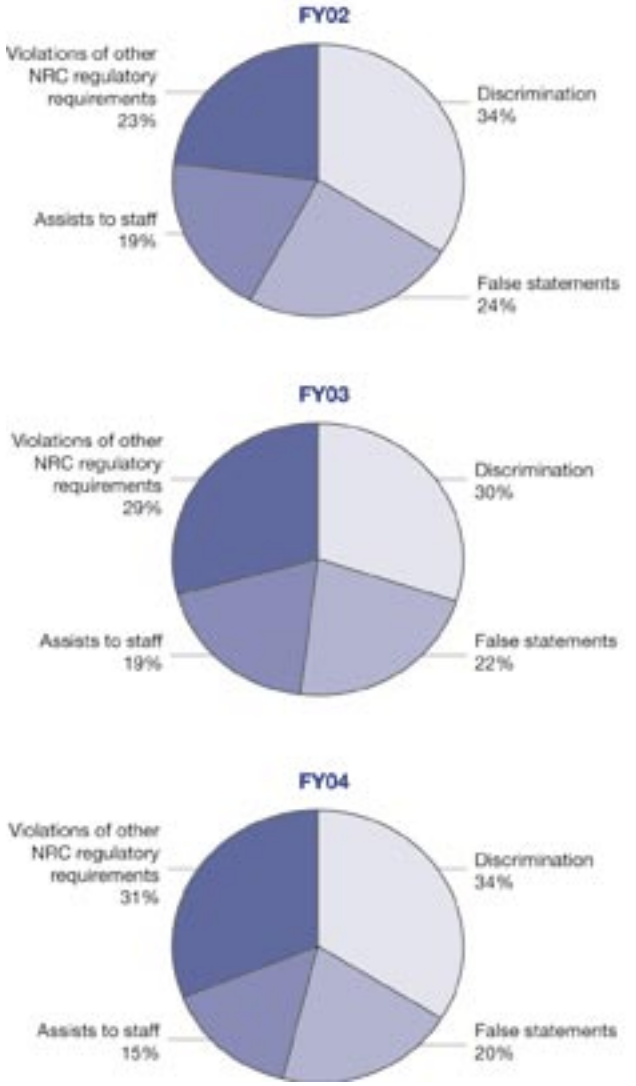


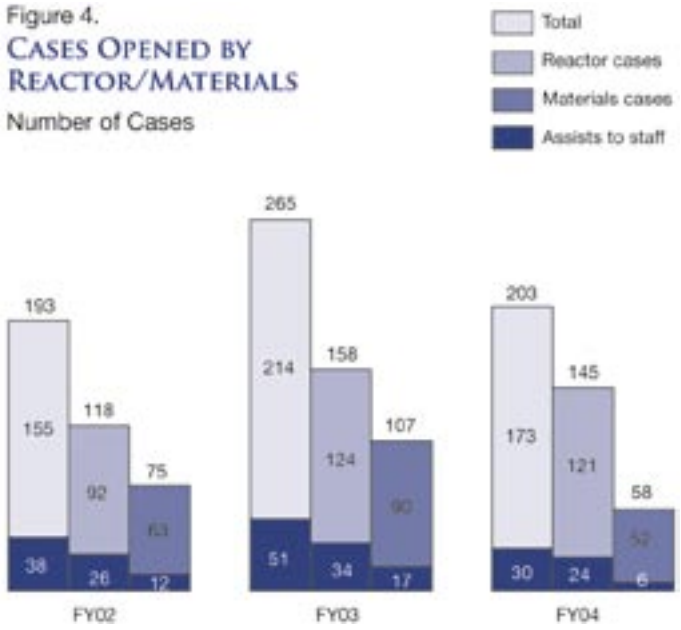
Figure 3 shows the distribution of cases opened from FY 2002 through FY 2004 in the various categories. The FY 2004 distribution shows that 34% of the cases opened were discrimination investigations, 31% were investigations of violations of other NRC regulatory requirements, 20% were material false statement investigations, and 15% were assists to staff.

Figure 3.
PERCENTAGE OF CASES OPENED BY CATEGORY



The graph in Figure 4 shows the distribution of cases opened from FY 2002 through FY 2004 between the reactor and the materials program areas. Overall reactor-related cases increased by 23% (from 118 to 145) during the 3-year period, with a 32% increase (from 92 to 121) in reactor investigations and an 8% decrease (from 26 to 24) in reactor assists to staff. Materials-related cases decreased by 23% overall (from 75 to 58), with a 17% decrease (from 63 to 52) in materials investigations and a 50% decrease (from 12 to 6) in materials assists to staff.

Figure 4.
CASES OPENED BY REACTOR/MATERIALS
Number of Cases



Analysis of Cases Closed

Figure 5 shows the number of cases closed in FY 2004, compared with FY 2002 and FY 2003. The 230 cases closed during FY 2004 represent a 5% increase over the number closed in FY 2003 (from 220 to 230) and a 14% increase from the number closed in FY 2002 (from 201 to 230). The cases are categorized as follows:

Material False Statements	51
Violations of Other NRC Regulatory Requirements	66
Discrimination	81
Assists to Staff	32

Figure 5.
Cases Closed by Category

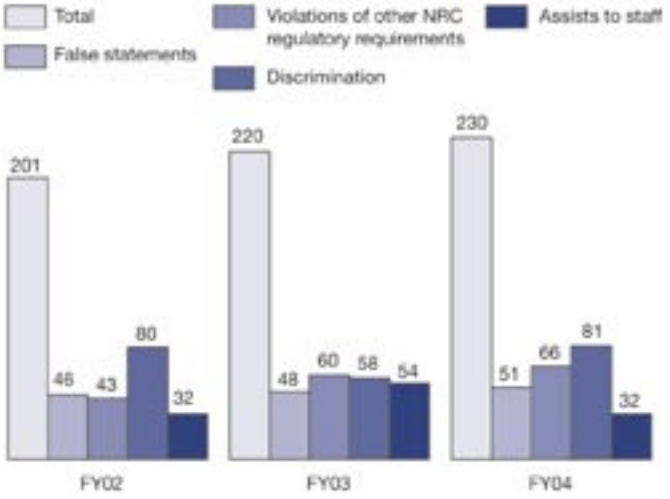
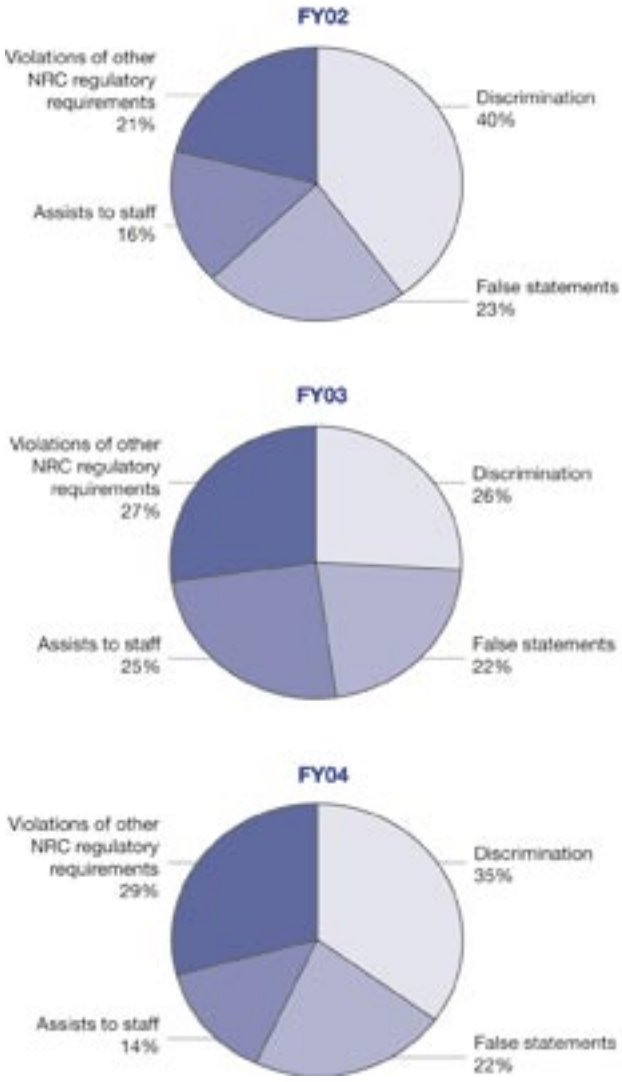


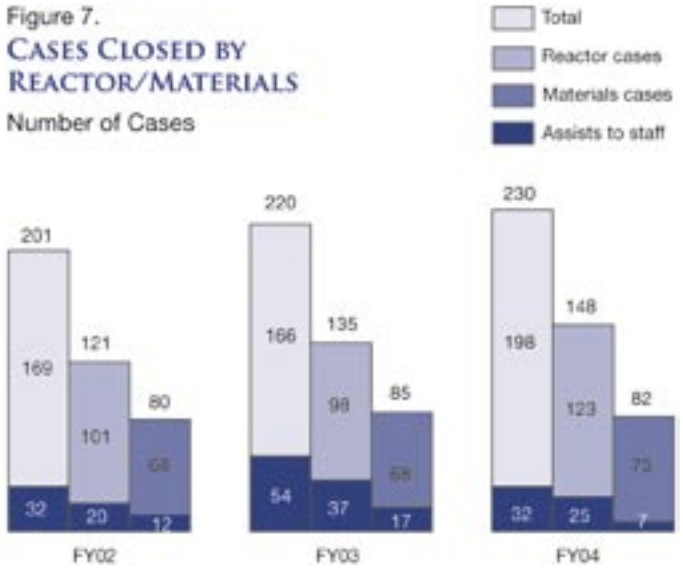
Figure 6 is a comparison, by category, of the percentages of cases closed from FY 2002 through FY 2004. Material false statement investigations accounted for 22% of the closed cases in FY 2004, discrimination investigations 35%, investigations involving other violations of NRC regulatory requirements 29%, and assists to staff 14%.

Figure 6.
Percentage of Cases Closed by Category



The graph in Figure 7 shows the distribution of cases closed from FY 2002 through FY 2004 between the reactor and the materials program areas. Reactor-related cases have increased 22% (from 121 to 148), with a 25% increase (from 20 to 25) in reactor assists to staff. Materials-related cases have increased 3% (from 80 to 82), with a 42% decrease (from 12 to 7) in materials assists to staff.

Figure 7.
CASES CLOSED BY REACTOR/MATERIALS
Number of Cases

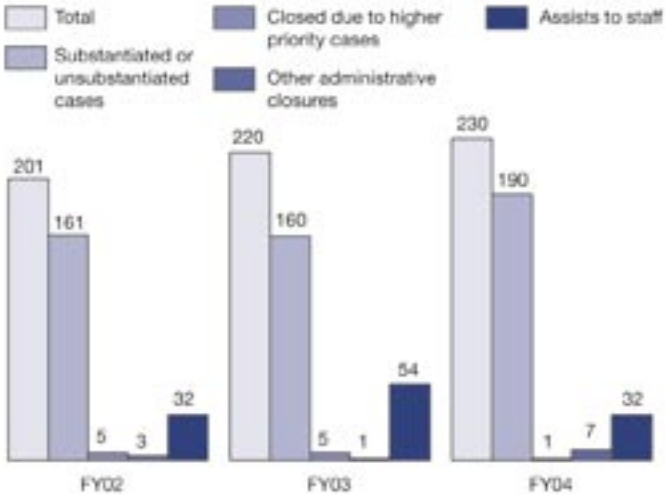


Of the 230 cases closed in FY 2004—

- 45 cases were closed after the investigation substantiated one or more of the allegations of wrongdoing.
- 145 cases were closed after the investigation did not substantiate wrongdoing.
- 1 case was closed due to working higher priority cases.
- 7 cases were closed for administrative reasons.
- 32 cases were assists to staff.

Figure 8 shows the closures by category. Substantiated and unsubstantiated investigations are combined.

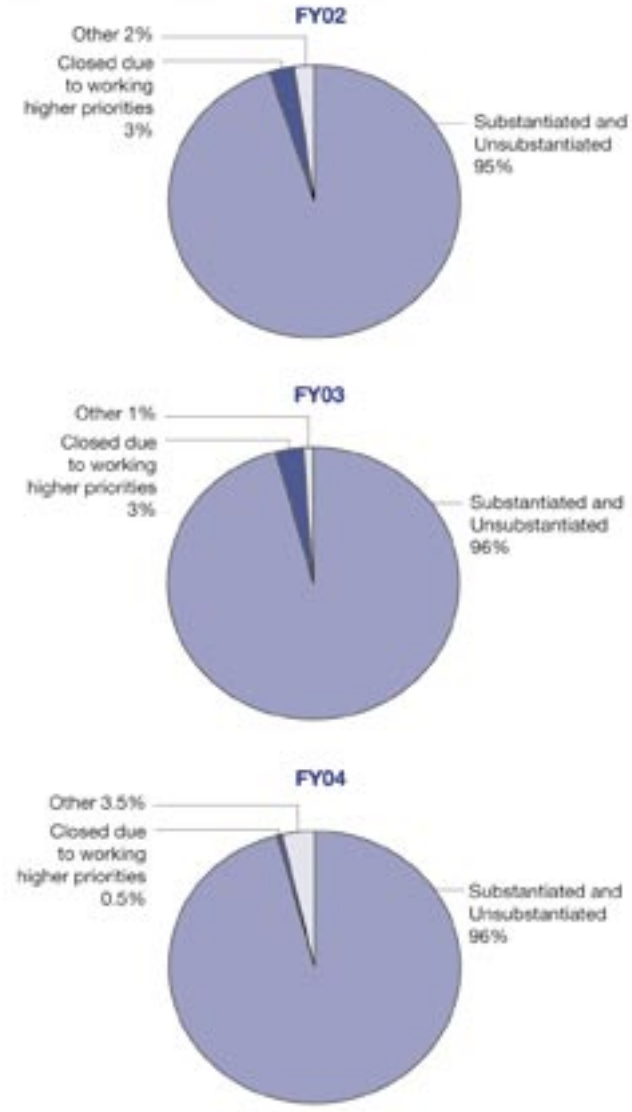
Figure 8.
CASES CLOSED BY CATEGORY
Number of Cases



OI's effectiveness in supporting the NRC's regulatory mission is measured by the number of those investigations that develop sufficient information to reach a conclusion regarding wrongdoing. The technical, legal, and enforcement staffs use the substantive information developed during these investigations as the basis for enforcement and other regulatory decisions. Additionally, if an investigation substantiates wrongdoing, it is referred to the Department of Justice for prosecutorial review. OI's performance goals are (1) that 90% of investigations closed will develop sufficient information to reach a conclusion regarding wrongdoing and (2) that 80% of investigations closed with sufficient information to reach a conclusion regarding wrongdoing will be completed in 10 months or less.

Figure 9 shows the disposition of investigations closed for FY 2002 through FY 2004. In FY 2004, 96% of the investigations developed sufficient information to reach a conclusion regarding wrongdoing, exceeding the OI performance goal of 90%.

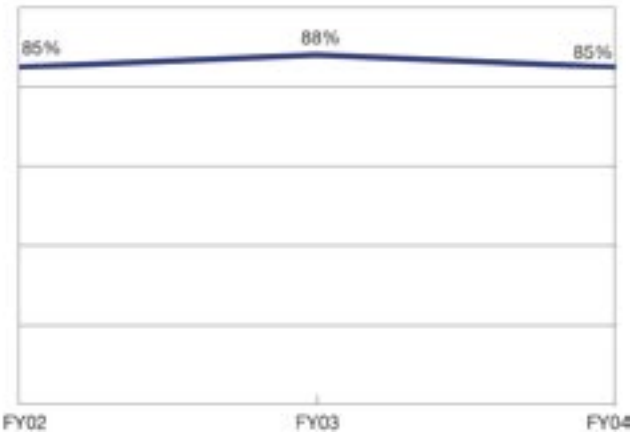
Figure 9.
Percentage of Investigations Closed As Substantiated and Unsubstantiated*



* Based on number of cases closed, less number of assists.

Figure 10 shows the percentage of investigations closed in 10 months or less with sufficient information to reach a conclusion regarding wrongdoing. In FY 2004, 85% were completed in 10 months or less, exceeding the OI performance goal of 80%.

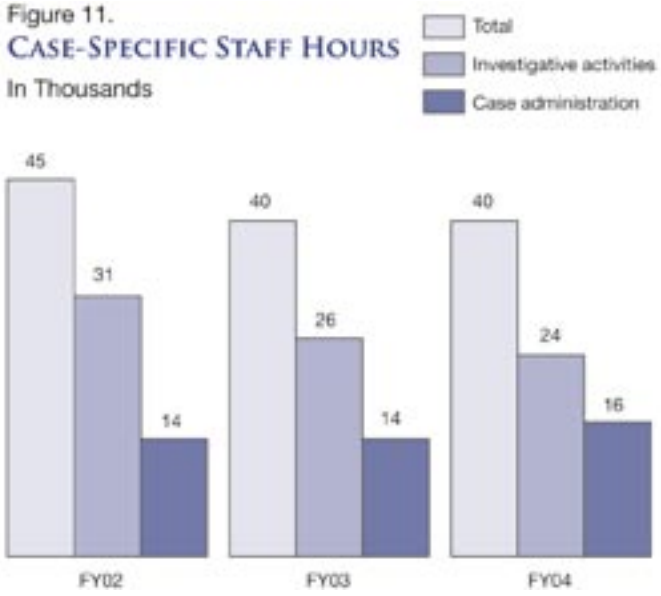
Figure 10.
Percentage of Substantiated or Unsubstantiated Investigations Closed Within 10 Months



Management of Cases

Case-specific staff hours are shown in Figure 11, indicating an 11% decrease from FY 2002 to FY 2004 (from 45,000 to 40,000 investigative hours). The FY 2004 ratio of investigative activities (field work and case-related travel) to administrative activities (allegation review process, preparation of the final report, management review of the case, etc.) is approximately 60:40 and meets OI's general standard.

Figure 11.
Case-Specific Staff Hours
In Thousands



In addition to closing 230 cases, OI completed 52 FOIA actions, a 7% decrease from FY 2003 (from 56 to 52).

Criminal Referrals

In FY 2004, OI referred 46 cases to the Department of Justice for prosecutorial review.

Significant Investigations

PMK Group, Inc.

This investigation began after an NRC inspection in February 2004. The investigation substantiated that an employee of PMK Group, Inc., a materials licensee, willfully disregarded NRC regulations by leaving a moisture density gauge, containing 11 millicuries of cesium-137 and 44 millicuries of americium-241, unattended at a heavy demolition site. As a result, the gauge was severely damaged, and the gauge's radioactive material could not be accounted for. The investigation determined that the demolition company's front-end loader accidentally crushed the gauge with a 250-ton excavation machine, and the employee admitted that he was responsible for leaving the gauge unattended despite his training and experience and that his action had contributed to the destruction of the gauge. As a result of the investigation, a Notice of Violation (Severity Level III) and Proposed Imposition of Civil Penalty ($7,500) was issued against the licensee on August 23, 2004. Three Severity Level IV violations were also identified during the inspection.

Nuclear Fuel Services, Inc.

An investigation was initiated to determine whether a Nuclear Fuel Services (NFS) supervisor falsified transfer records of special nuclear materials. During the investigation, the supervisor admitted willfully authorizing the transfer of the subject materials without conducting the required verifications prior to, and during, the transfer. On March 29, 2004, the NRC issued a Notice of Violation (Severity Level III) to NFS, the licensee, and issued a Notice of Violation (Severity Level III) to the supervisor.

Kewaunee

An investigation was initiated to determine whether Nuclear Management Company (NMC) contract workers, employed by Day and Zimmerman Nuclear Power Systems (DZNPS) at the Kewaunee Nuclear Plant, violated fitness-for-duty (FFD) regulations by failing to report FFD concerns about a DZNPS foreman.

The investigation revealed that although FFD concerns about the DZNPS foreman were brought to the attention of a DZNPS superintendent by several contract employees, the superintendent failed to take any action to ensure that the concerns were investigated. At the time the FFD concerns were raised, the superintendent observed the foreman but took no action to verify the foreman's condition, nor were the concerns reported to Security. The superintendent subsequently admitted that he might have smelled alcohol on the foreman's breath.

The investigation concluded that the DZNPS superintendent deliberately provided false information to both OI and a licensee investigator about being told of the FFD concerns. On December 30, 2003, NRC issued a Notice of Violation (Severity Level III) and Proposed Imposition of Civil Penalty ($60,000) to NMC, citing the superintendent's failure to take corrective measures, including investigating the circumstances or sending the employee to for-cause FFD testing.

City Hospital

This investigation resulted from a March 2001 NRC inspection, during which the inspectors identified potential falsification of xenon gas clearance rate calculations and dose calibrator accuracy evaluations. The investigation determined that a former health physicist (HP) consultant/radiation safety officer (RSO) deliberately violated NRC requirements by falsifying xenon clearance rate calculations records at NRC-licensed facilities, including City Hospital, Martinsburg, West Virginia, Culpeper Hospital, Culpeper, Virginia, and Warren Memorial Hospital, Front Royal, Virginia. OI also substantiated that the former HP consultant/RSO deliberately falsified academic credentials and a radiological certification issued by the American Board of Radiology. The NRC staff issued an order prohibiting the HP consultant/RSO from engaging in NRC-licensed activities for 3 years.

Thereafter, OI provided information to a Federal grand jury in concert with the Office of Criminal Investigations, Food and Drug Administration (FDA), regarding his activities at NRC-licensed facilities. The investigations by the NRC and the FDA resulted in the filing of a criminal information on July 22, 2004, in the Western District of Virginia, charging the former HP consultant/RSO with 38 counts of mail fraud, in violation of 18 U.S.C. § 1341, for falsely and fraudulently portraying himself as a health physicist and RSO qualified to inspect and service mammography equipment and other medical facilities using radioactive materials. Pursuant to the criminal information, the former HP consultant/RSO pleaded guilty to all counts on July 22, 2004, and is awaiting sentencing.

Williams Power Corporation

As cited in OI's FY 2002 annual report, an investigation substantiated harassment and intimidation of a union craft painter who raised safety concerns at Perry against his employer, Williams Power Corporation (a contractor). The painters were instructed by their supervisor at Williams Power to skip the cleansing and decontamination surface preparation procedures prior to painting the fuel pool building. The painter raised these concerns to the utility and then the ombudsman, and the painter and a co-worker were laid off by the contractor. The painter alleged that layoff checks were written in advance of the layoff and that he was preselected for a layoff as a result of going to the ombudsman.

An enforcement conference was held by NRC Region III (RIII), and the Williams Power supervisor denied that he had written the layoff checks in advance and also denied that the layoff was discriminatory. During a subsequent search for additional documentation regarding the final paychecks, the Williams Power supervisor admitted that he lied to OI and lied again later to the RIII staff during the enforcement conference concerning the layoff checks.

The Williams Power supervisor pleaded guilty on May 10, 2004, in U.S. District Court, Northern District of Illinois, Eastern Division, to a violation of 18 U.S.C. § 1001(a)(2), Fraud or False Statements (Statements or Entries Generally). The supervisor was sentenced on July 22, 2004, to 1 year's probation, a $100 fine, and 100 hours of community service. NRC enforcement action is pending at this time.

Hunt Valve Company, Inc.

An investigation was initiated to investigate allegations of deliberate misconduct by Hunt Valve Company (Hunt) management regarding falsification of quality assurance (QA) certification records on uranium hexafluoride (UF_6) cylinder valves manufactured to specification for NRC-licensed gaseous diffusion plants. This ongoing investigation is a joint investigation involving OI, the Defense Criminal Investigative Service, the U.S. Department of Energy's Office of the Inspector General for Investigations, and the Naval Criminal Investigative Service under the direction of the U.S. Attorney's Office, Northern District of Ohio, Cleveland, Ohio.

On June 21, 2004, an information was filed charging the former quality manager with one count of conspiracy, pursuant to 18 U.S.C. § 371. On July 15, 2004, the former quality manager pleaded guilty to the charge.

KTL Inspection aka KTL Roudebush Testing (formerly PSI Inspection, Inc.)

This investigation began after an NRC inspection in April 2003 found that PSI had failed to maintain required radiological records. During the course of the investigation, the radiation safety officer (RSO) claimed that the records were on a computer but had been deleted from the computer by a disgruntled employee whose employment had been terminated. The former employee testified that the required records were never put into the PSI computer and maintenance inspections were never conducted. The RSO then said that the computer had crashed. A forthwith subpoena was obtained to examine the PSI computer, but the RSO said that he had already thrown the computer in the trash because it had crashed and was no longer working. Another former employee informed the NRC that the RSO lied to the NRC about having thrown out the computer. The witness stated that the RSO hid and then destroyed the computer to conceal it from the NRC after the issuance of the subpoena. The witness revealed that the computer had no radiological records on it and that it had been taken out to a farm field, destroyed, and scattered into various ponds and fields. The witness also stated that the PSI RSO hired unqualified day laborers from a temporary service and had them perform radiographic work without safety monitors and safety equipment.

The investigation subsequently found that PSI's owner, who is also the RSO, was responsible for (1) deliberate falsification of exposure device records, (2) deliberate failure to provide complete and accurate information to the NRC regarding quarterly inspections, (3) deliberate failure to perform quarterly inspections, (4) deliberate failure to give the NRC reasonable opportunity for an inspection, (5) deliberate failure to properly secure an exposure device during transport, (6) deliberate failure to comply with the two-man rule during radiographic operations, (7) deliberate destruction of evidence requested by an NRC subpoena, (8) deliberate failure to properly train radiographic personnel, (9) deliberate failure to perform personnel monitoring, and (10) deliberate failure to post radiography areas.

The case was accepted for prosecution by the U.S. Attorney's Office, Western District of Missouri, where the owner/RSO of PSI entered into an Agreement for Pretrial Diversion on May 6, 2004, for a violation of 18 U.S.C. § 1510 and/or § 1519, by deliberately falsifying, failing to maintain, and destroying nuclear exposure device records in conjunction with inspection activities regularly conducted by NRC. The NRC issued an Immediately Effective Order banning the owner/RSO, individually, from all

NRC-licensed activities for 5 years and revoked the company's NRC license. Based on OI's finding, the State of Kansas issued a similar order which prohibited the owner/RSO from engaging in licensed activities in the State of Kansas.

Public Service Enterprise Group (PSEG Nuclear) Salem/Hope Creek

In light of information received through various inspections and allegations, including allegations received in September 2003, OI initiated an assist to staff to evaluate the safety conscious work environment (SCWE) at PSEG Nuclear's (PSEGN's) Salem and Hope Creek nuclear generating stations. NRC had concerns about the SCWE, particularly the handling of emergent equipment issues and associated operational decisionmaking. The assist to staff was carefully planned to focus on the operations at both sites and to include representative interviews with operators, operations management, and senior managers. OI and the NRC technical staff conducted more than 50 interviews. This effort resulted in a January 28, 2004, letter in which the regional administrator required PSEGN to conduct its own independent assessment. As a result of the findings of the NRC review and the licensee's assessment, the NRC issued another letter on July 30, 2004, which, in part, documented PSEGN's planned actions to improve the SCWE. Salem and Hope Creek nuclear generating stations have also been subjected to heightened oversight by the NRC.

Appendix

OFFICE OF INVESTIGATIONS CASELOAD SUMMARY

For the Period 10/01/2003 to 09/30/2004

Cases Open at Start of this Period	125
Cases Opened this Period	203
Cases Closed this Period*	230
Substantiated	45
Unsubstantiated	145
Higher Priority	1
Other	7
Assists to Staff	32
Cases Open at End of this Period	98
Criminal Referrals	46

* Source:
Alleger/whistleblower/intervenor - 135
NRC (Inspector/Technical Staff) - 45
Licensee/licensee employee concern program - 34
OI (self-initiated and developed by OI) - 10
Other Government agencies - 6