



ENFORCEMENT PROGRAM ANNUAL REPORT

Calendar and Fiscal Years 2005

U.S. Nuclear Regulatory
Commission
Office of Enforcement
Washington, DC 20555

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Abstract

Since 1995, the *Enforcement Program Annual Report* has provided information addressing the agency's enforcement activities during a given fiscal year (FY), e.g., October 1, 2003, through September 30, 2004. The 2005 Annual Report will provide information regarding enforcement activities that occurred during the calendar year (CY) as well. The change to a calendar year time frame will more appropriately align this report with the annual reports of other related programs such as the Allegation Program that is provided on a calendar year basis. This year's report will provide information regarding the enforcement activities that occurred during FY 2005 for comparison purposes.

This report contains information about the agency's enforcement program including significant policy changes, new initiatives, staff guidance, and implementation issues. Various statistical tables and figures are also provided. The appendices of this report provide summaries of cases involving significant enforcement actions. In this year's report, the case summaries span from October 1, 2004 (the beginning of the first quarter of FY 2005) to December 31, 2005 (the end of CY 2005).

Because the NRC external allegations process and the NRC Differing Professional Opinions Program (DPO) provide their own annual report, and the Safety Culture initiative will provide input for the annual assessment of the Reactor Oversight Process (ROP), additional information about these programs is not included in this report.

In addition, please note that security-related issues involving Notices of Violation, civil penalties, orders, Demands For Information, etc., are not addressed in detail in this report.

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Calendar Year 2005 Highlights

The Enforcement Policy was revised twice. One proposed change was made (see page 7).

- < The NRC issued 114 escalated enforcement actions, including:
 - < 70 escalated Notices of Violation without civil penalties (see page 1);
 - < 24 proposed civil penalties totaling \$6,099,950 (see page 2);
 - < 17 orders modifying, suspending, or revoking a license (see page 3); and
 - < three orders imposing civil penalties (see page 3).
- < The performance and administrative goals for completing cases was met for 100% of all enforcement actions taken against NRC licensees (see page 4).

Fiscal Year 2005 Highlights

The Enforcement Policy was revised four times (see page 7).

- < The NRC issued 105 escalated enforcement actions, including:
 - < 61 escalated Notices of Violation without civil penalties (see page 1);
 - < 22 proposed civil penalties totaling \$5,885,700 (see page 2);
 - < 19 orders modifying, suspending or revoking a license (see page 3); and
 - < three orders imposing civil penalties (see page 3).
- < The performance and administrative goals for completing cases was met for 100% of all enforcement actions taken against NRC licensees (see page 4).

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Introduction & Overview

The NRC Enforcement Policy, a living document, has been revised, when appropriate, to reflect experience and stakeholder input. Two goals of the enforcement program have, however, remained unchanged. These are to (1) emphasize the importance of compliance with regulatory requirements, and (2) encourage prompt identification, and prompt, comprehensive correction of violations.

To meet these goals, the Enforcement Program in the Office of Enforcement (OE) began a process of significant change in 1998. These changes stemmed from changes in the agency's inspection initiatives that include, for example, the Reactor Oversight Process (ROP). Since 1998, changes within the Enforcement Program itself have occurred. During 2005, these included, for example, the development of a pilot program focused on the use of Alternative Dispute Resolution for enforcement cases and an improved enforcement action tracking system (EATS).

The agency's performance goals encompass the enforcement component of its mission:

- , **Safety:** ensuring protection of public health and safety and the environment.
- , **Security:** ensuring the secure use and management of radioactive materials.
- , **Openness:** ensuring openness in our regulatory process.
- , **Effectiveness:** ensuring that NRC actions are effective, efficient, realistic, and timely.
- , **Management:** ensuring excellence in agency management to carry out the NRC's strategic objective.

The Enforcement Program will continue to change based on new initiatives and through influences from future development of the inspection program.

Key Principles of the Enforcement Program

- < The Severity Level of an enforcement action is commensurate with the significance of the violation. In assessing the significance of a violation the NRC considers: (1) actual consequences; (2) potential safety consequences; (3) the potential for impacting the NRC's ability to perform its regulatory function; and (4) whether there are any willful aspects of the violation.
- < Risk insights are used to assess the significance of violations whenever possible. As the NRC's inspection program becomes more risk-informed and performance-based, the enforcement program will also become more risk-informed and performance-based.
- < Enforcement is only one component of the regulatory process. It should be used as a regulatory tool that responds to performance issues.
- < Compliance is important to safety. Changes in inspection oversight processes may result in fewer Notices of Violations being issued (i.e., greater use of Non-Cited Violations), and fewer civil penalties being imposed (i.e., implementation of the ROP); however, the agency has not reduced its emphasis on the importance of compliance. Violations will continue to be identified and documented and licensees will continue to be responsible for taking corrective actions to restore compliance and prevent recurrence.

Enforcement Program Performance Measures

The NRC is a regulatory agency that adheres to the *Principles of Good Regulation*, including independence, openness, efficiency, clarity, and reliability. To support these principles, the Enforcement Program has developed program performance measures. A high quality product can be characterized as one where the staff: (1) makes decisions without undue delay; (2) accurately details the facts; (3) correctly interprets and applies the regulatory requirement; and (4) consistently and precisely applies the Enforcement Policy.

To ensure that decisions are made without undue delay, the following performance measure goals have been established:

- < 100% of non-investigation cases are completed within 180 calendar days;
- < 100% of investigation cases are completed within 360 days of NRC processing time.

In addition, the Enforcement Program has established administrative goals for completing cases to ensure that the agency's performance measure goals are met:

- < 100% of non-investigation cases are completed within an average of 120 calendar days;
- < 100% of investigation cases are completed within an average of 180 days of NRC processing time.

To ensure that decisions accurately reflect the facts of the case, correctly interpret regulatory requirements, and consistently apply the Enforcement Policy, a metric for quality of enforcement actions, i.e., less than 30 non-escalated enforcement actions being successfully disputed based on an interpretation of the requirements, the facts of the case, or the application of the Enforcement Policy, has been established. Enforcement actions can be challenged for several reasons, e.g., a licensee might dispute the requirements, the facts of the case, the application of the Enforcement Policy, or the significance of the violation. Routinely, licensees provide clarifying information that was not available at the time of the inspection that effects whether or not a noncompliance exists. Violations that are overturned based on supplemental information being provided that was not available for the inspector to make his assessment are not counted in this metric. During 2005, approximately 1,400 non-escalated enforcement actions were issued to reactor and materials licensees. In CY 2005 and FY 2005, the number of disputed violations was 18 and 19, respectively. Of these actions, four were withdrawn or revised by the NRC. Therefore, this metric was met for CY and FY 2005.

Overview of the Enforcement Program

Regulatory Framework

The NRC's enforcement authority is contained in the Atomic Energy Act (AEA) of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended. These statutes provide the NRC with broad authority. The agency has implemented its enforcement authority through Subpart B of 10 CFR Part 2. In addition, the Commission recognizes that violations occur in a variety of activities and have varying levels of significance. In response, the Commission has developed an Enforcement Policy that contains graduated sanctions.

Violations are generally identified through inspections and investigations. All violations are subject to civil enforcement action; some violations may also be subject to criminal prosecution. The NRC uses the Administrative Procedures Act standard in enforcement proceedings, i.e., preponderance of the evidence. This standard is based on the weight and credibility of the evidence, unlike the burden of proof standard for criminal proceedings, i.e., beyond a reasonable doubt. After an apparent violation is identified, it is assessed in accordance with the Commission's Enforcement Policy.

To foster widespread dissemination to NRC licensees and members of the public, OE maintains the current policy statement on the NRC's public web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. Revisions of the Enforcement Policy are noticed in the *Federal Register* as they occur. It is important to note that because it is a policy statement and not a regulation, the Commission may deviate from the Enforcement Policy, as appropriate, under the circumstances of a particular case. However, such deviations must have a reasonable basis.

Traditional Enforcement

Most violations are identified through NRC inspection activities, NRC investigations, licensee identification (such as internal audits, employee reports, etc.) and allegations supported by NRC inspections or investigations. After an apparent violation is identified, the next step is to gather information about the apparent violation and, thereafter, to assess its significance. Violations are assigned a severity level that reflects their seriousness and safety significance which, in turn, determines how the violation should be dispositioned. Severity Levels range from Severity Level I, for the most significant violations, to Severity Level IV for those of more than minor concern. Minor violations are below the significance of Severity Level IV violations and are typically not the subject of enforcement action. Nevertheless, the root cause(s) of minor violations must be identified and appropriate corrective action(s) must be taken to prevent recurrence.

In assessing the significance of a noncompliance, the NRC considers four specific issues: (1) actual safety consequences; (2) potential safety consequences, including the consideration of risk information; (3) potential for impacting the NRC's ability to perform its regulatory function; and (4) any willful aspects of the violation.

For materials licensees, i.e., licensees engaged in NRC-regulated activities except for those activities related to operating power and non-power reactors, if violations of more than minor concern are identified by the NRC during an inspection, such violations will be the subject of an NOV. In addition, a written response which addresses the causes of the violations and corrective actions taken to prevent recurrence, may be required pursuant to 10 CFR 2.201. In some cases, such violations can be documented on NRC Form 591 which constitutes an NOV that requires corrective action but does not require a written response.

For certain types of violations at commercial nuclear power plants, the NRC relies on information from the Reactor Oversight Process' (ROP) Significance Determination Process (SDP). However, some of the violations that are associated with inspection findings cannot be evaluated through the SDP, e.g., violations that may impact the NRC's ability to provide oversight of licensed activities and violations that involve willfulness, including discrimination. If violations that are more than minor are associated with SDP findings, they will be documented

and may or many not be cited, depending on their safety significance. These violations are not normally assigned severity levels, nor are they normally subject to civil penalties.

When escalated enforcement action appears to be warranted (i.e., Severity Level I, II, or III violations, civil penalties or orders), a predecisional enforcement conference (PEC) may be conducted with a licensee before the NRC makes an enforcement decision. A PEC may also be held when the NRC concludes that it is necessary or the licensee requests it. The purpose of the PEC is to obtain information that will assist the NRC in determining the appropriate enforcement action. The decision to hold a PEC does not mean that the agency has determined that a violation has occurred or that enforcement action will be taken. If the NRC concludes that a conference is not necessary, it may provide a licensee with an opportunity to respond to the apparent violations in writing or by requesting a PEC before making an enforcement decision.

Civil penalties are normally assessed for Severity Level I and II violations and for NRC-identified violations involving knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act. Civil penalties are considered for Severity Level III violations.

If a civil penalty is to be proposed, a written NOV and proposed imposition of a civil penalty must first be issued. The NOV must advise the person charged with the violation that the civil penalty may be paid in the amount specified, or the proposed imposition of a civil penalty may be contested in whole or in part, by a written response, either denying the violation or showing extenuating circumstances. The NRC will evaluate the response and use that information to determine if the civil penalty should be mitigated, remitted, or imposed. Thereafter, the licensee may pay the civil penalty or request a hearing.

Orders may be used to modify, suspend, or revoke licenses. Orders may require additional corrective actions, such as removing specified individuals from licensed activities or requiring additional controls or outside audits. Persons adversely affected by orders that modify, suspend, revoke a license, or that take other action, may request a hearing.

In addition to the orders used to modify, suspend, or revoke licenses, the agency may issue a Demand for Information (DFI). A DFI is a significant enforcement action which can be used with other enforcement actions such as an imposition of a civil penalty. As its name implies, a DFI is a request for information from licensees and applicants for a license, vendors and contractors, in order to determine, e.g., whether a license should be granted, suspended, or revoked, or whether further enforcement action is warranted.

The Enforcement Component of the Reactor Oversight Program

The Reactor Oversight Process (ROP) utilizes the results of performance indicators (PIs) and baseline inspection findings to determine the appropriate regulatory action to be taken in response to a power reactor licensee's performance. Because there are many aspects of facility operation and maintenance, the NRC inspects utility programs and processes on a risk-informed sampling basis to obtain representative information. The objective is to monitor performance in three broad areas -- reactor safety (avoiding accidents and reducing the consequences of accidents if they occur); radiation safety for both plant workers and the public during routine operations; and protection of the plant against sabotage or other security threats. The ROP has been in effect since April 2000.

Under the ROP, the staff assesses certain inspections findings at nuclear power plants through the Significance Determination Process (SDP). The SDP is a risk-informed framework that was developed to evaluate the actual and potential safety significance of inspection findings. SDP findings are assigned color designations based on their safety significance, with red representing the greatest safety significance, followed by yellow and white which have less impact on safety, respectively. Green inspection findings indicate a very low risk significance and therefore have little or no impact on safety. SDP findings may contribute to potential safety concerns or programmatic weaknesses that do not violate NRC regulations; however, some findings are associated with violations of the regulations. The SDP provides a basis for discussing and communicating the significance of potential safety concerns or programmatic weaknesses with licensees.

The Enforcement Policy has been revised to state that Regulatory Conferences may be conducted in lieu of predecisional enforcement conferences if violations are associated with risk significant findings evaluated through the SDP. The Policy notes that Regulatory Conferences are conducted to discuss the significance of findings evaluated through the SDP with or without associated violations. The focus of these meetings is on the significance of the issues and not necessarily on the correction actions associated with the issue. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued, a subsequent predecisional enforcement conference is not normally necessary. In addition, the Enforcement Policy has been modified to clarify that the mitigation discretion addressed in Sections VII.B.2 - VII.B.6 (e.g., violations identified during shutdowns, involving past enforcement actions, old design issues, or special circumstances) does not normally apply to violations associated with issues evaluated by the SDP.

Enforcement Actions Involving Individuals

The NRC will normally take an enforcement action against an individual only if the staff is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew or should have known, the required actions; and knowingly or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance.

Actions can be taken directly against individuals either because they are individually licensed or because they violated the rules on deliberate misconduct. Generally, when enforcement action is taken against an individual, enforcement action is taken against a licensee.

A graphical representation of the NRC's graded approach for dispositioning violations is included on the NRC's public web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Process Diagram**.

Public Notice

Conferences that are open to public observation (Category 1 Meetings) are included in the listing of public meetings on the NRC's web site. All orders and DFIs are published in the *Federal Register*. The NRC may issue a press release for significant enforcement actions (including actions involving licensed and unlicensed individuals). Such actions are included in the Enforcement Document Collection in the **Electronic Reading Room** of the NRC's web site.

Statute of Limitations

The Statute of Limitations is an affirmative defense which can be raised by a person against whom a sanction is proposed. To ensure that the Enforcement Program is effective in achieving its objectives, guidance has been added to the Enforcement Manual which discusses the 5-year statutory period during which the NRC must initiate an action imposing a civil penalty or issue an order to modify, suspend, or revoke a license, or issue an order prohibiting involvement in NRC-licensed activities.

Office of Enforcement

The Enforcement Program in the Office of Enforcement (OE) exercises oversight of NRC enforcement, provides programmatic and implementation direction to regional and headquarters offices conducting or involved in enforcement activities, and ensures that regional enforcement programs are consistently implemented.

OE reports to the Executive Director for Operations (EDO) through the Deputy Executive Director for Materials, Research, State and Compliance Programs (DEDMRS) and coordinates enforcement actions involving reactor licensees through the Deputy Executive Director for Reactors and Preparedness Programs (DEDR). The latter two positions are jointly referred to as the Deputy Executive Directors for Operations (DEDOs).

The Director of OE is responsible for providing updates to the DEDOs regarding escalated actions and consulting with the DEDOs in any case involving novel issues, substantial legal, programmatic, or policy issues raised during the review process, or where he believes it is warranted. In addition, in the DEDO's absence or as delegated by the DEDOs, the Director's responsibilities include: preparation and issuance of enforcement actions; approval of direct enforcement action to be taken by offices in the regions or headquarters; preparation of letters requesting investigations, confirming actions, or obtaining information under sections 161(c) or 182 of the AEA; issuance of subpoenas; initiation of the necessary or appropriate action in accordance with the decision of an Administrative Law Judge, the Atomic Safety and Licensing Board, or the Commission after enforcement hearings pursuant to 10 CFR Part 2; approval, after consultation with the DEDOs as warranted, the decision to disposition a willful violation as a non-cited violation (NCV); and, providing recommendations to the EDO, through the DEDOs, regarding changes to rules and policies concerning enforcement matters for Commission consideration.

The Deputy Director of OE assists the Director in overseeing, managing, and directing the development of enforcement policies and programs, and in issuing enforcement actions. The Deputy Director acts for the Director in his absence.

The Chief of the Enforcement Policy and Program Oversight (EPPO) Section is responsible for supervising the OE enforcement staff involved with enforcement activities, in the execution of their responsibilities. The Chief, EPPO, acts for the Deputy Director in his absence.

In 2005, there were 19 full-time employees (FTE) assigned to OE headquarters. This number includes the FTE assigned to work on the NRC external allegation process, the FTE assigned to the Differing Professional Opinion Program, and the FTE that were detailed to work on the Safety Culture initiative "housed" in OE during 2005. There were 8 FTE assigned to regional enforcement-related activities, although these FTEs report to the Regional Administrators.

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I. Escalated Enforcement and Administrative Items

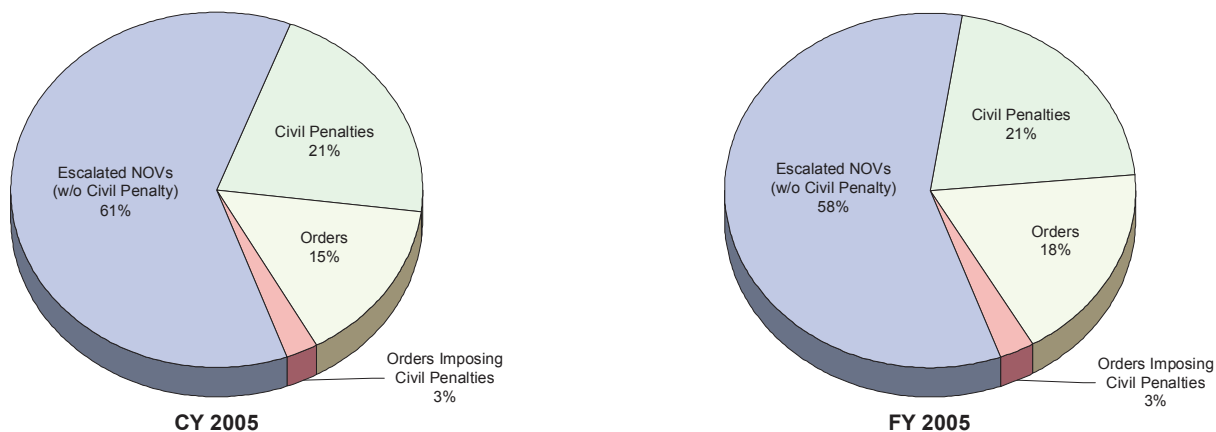
Escalated enforcement (or significant enforcement) is defined as:

- < NOVs including Severity Level I, II, or III violations;
- < NOVs associated with Red, Yellow or White SDP findings for facilities participating in the ROP;
- < Civil penalty actions; and
- < Orders.

For the purposes of this report, it is important to note that an enforcement case or enforcement action issued to a licensee may include more than one individual escalated enforcement item. For example, a licensee could receive an enforcement action that included a NOV and proposed civil penalty for a violation classified as a Severity Level III; and for a second violation receive an escalated NOV for a Severity Level III violation without a civil penalty. This action would be reflected as one civil penalty and one escalated NOV.

Figure 1 provides information addressing the types of escalated enforcement actions taken in CY 2005 and FY 2005. The tables and figures on pages 27 through 37 of this report, break this information down further identifying the region/program Office which initiated the various actions, as well as the licensees, non-licensees, and individuals which were involved.

Figure 1. Escalated Enforcement By Type



A. Escalated Violations Without Civil Penalties

During CY 2005, the agency issued 70 escalated violations without civil penalties. Sixteen of these actions were associated with a White SDP finding from the ROP and two of these violations were associated with a Red SDP finding that was previously issued during 2003.

During FY 2005, the agency issued 61 escalated violations without civil penalties. Sixteen of these actions were associated with a White SDP finding from the ROP, one action was associated with a Yellow SDP finding, and two of these violations were associated with a Red SDP finding that was previously issued during 2003.

Appendix A provides brief summaries of each of the escalated enforcement actions without civil penalties that the agency issued to licensees and includes violations associated with SDP findings.

B. Civil Penalty Actions

During CY 2005, the agency issued 24 proposed civil penalty actions of which 8 involved willfulness. One action involving multiple violations included two violations associated with a Red SDP finding.

During FY 2005, the agency issued 22 proposed civil penalties of which 9 involved willfulness. One action involving multiple violations included two violations associated with a Red SDP finding.

Information regarding willful violations is provided because, by definition, willful violations are of particular concern to the Commission. The Commission’s regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor; therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness.

Table 1. Civil Penalty Information

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	CY 2005
Number of Proposed Civil Penalties	20	25	28	28	22	24
Number of Imposed Civil Penalties	5	7	2	3	3	3
Number of Civil Penalties Paid	17	23	26	22	18	22
Amount of Proposed Civil Penalties	\$342,900	\$493,000	\$341,800	\$660,700	\$5,855,700	\$6,099,950
Amount of Imposed Civil Penalties	\$139,900	\$109,800	\$48,700	\$28,200	\$112,700	\$112,700
Amount of Civil Penalties Paid	\$294,100	\$456,750	\$361,000	\$685,600	\$5,812,100*	\$5,891,900*

Note: This table includes information based on civil penalty assessments for the current FY and previous five years. It also contains information for the current CY.

When reviewing the information included in this table, it is important to note that an enforcement action may include more than one civil penalty. In addition, a civil penalty may be proposed in one year and paid or imposed in another. Finally, the amount of a proposed civil penalty may be reduced, e.g., as part of a settlement agreement developed during alternative dispute resolution.

* This amount reflects one \$5,450,000 civil penalty that was issued on April 21, 2005, to the FirstEnergy Nuclear Operating Company for multiple violations, some willful, that occurred at its Davis-Besse nuclear power plant.

Appendix B includes a brief description of each of the civil penalty actions for 2005.

C. Orders

During CY 2005, the agency issued 17 orders modifying, suspending, or revoking a license (these include confirmatory orders that were issued to confirm commitments licensees made as a result of Alternative Dispute Resolution (ADR) settlement agreements, etc.). In addition to these orders, three civil penalty imposition orders were issued.

During FY 2005, the agency issued 19 orders modifying, suspending, or revoking a license (these include confirmatory orders that were issued to confirm commitments licensees made as a result of ADR settlement agreements, etc.). In addition to these orders, three civil penalty imposition orders were issued.

Appendix C includes a brief descriptions of the orders and impositions that were issued in 2005.

In addition, the agency issued several orders to licensees or classes of licensees imposing requirements addressing security measures and for the protection of safeguards information. Although the enforcement staff provided substantial assistance in their issuance, information regarding these actions is, in several cases, determined to be safeguards information and as such, has not been included in this report. However, limited public editions of this information is accessible and is included in the ADAMS Documents in the **Electronic Reading Room** on the NRC's public web site.

D. Enforcement Actions With OI Reports

In CY 2005, 41% of the 111 escalated actions that the agency issued (excluding the three impositions) had an OI report associated with them.

- < 25 of the 70 escalated NOV's without civil penalties (38%).
- < 10 of the 24 proposed civil penalties (42%).
- < 11 of the 17 enforcement orders (excluding impositions) (65%).

In FY 2005, 44% of the 102 escalated actions that the agency issued (excluding the three impositions) had an OI report associated with them.

- < 18 of the 61 escalated NOV's without a civil penalty (30%).
- < 14 of the 22 proposed civil penalties (64%).
- < 13 of the 19 enforcement orders (excluding impositions) (68%).

E. Timeliness of Enforcement Actions

As an agency, the NRC adheres to the *Principles of Good Regulation*, including independence, openness, efficiency, clarity, and reliability. Efficiency includes recognition that regulatory decisions should be made without undue delay.

The agency's performance measure goals for issuing escalated enforcement actions (excluding impositions) are:

- < 100% of non-investigation cases are completed within 180 calendar days; and
-

- < 100% of investigation cases are completed within 360 calendar days.

In addition, the Enforcement Program has established administrative goals for completing cases:

- < 100% of non-investigation cases are completed within an average of 120 calendar days;
- < 100% of investigation cases are completed within an average of 180 calendar days.

The measuring period starts on the latest of the following dates:

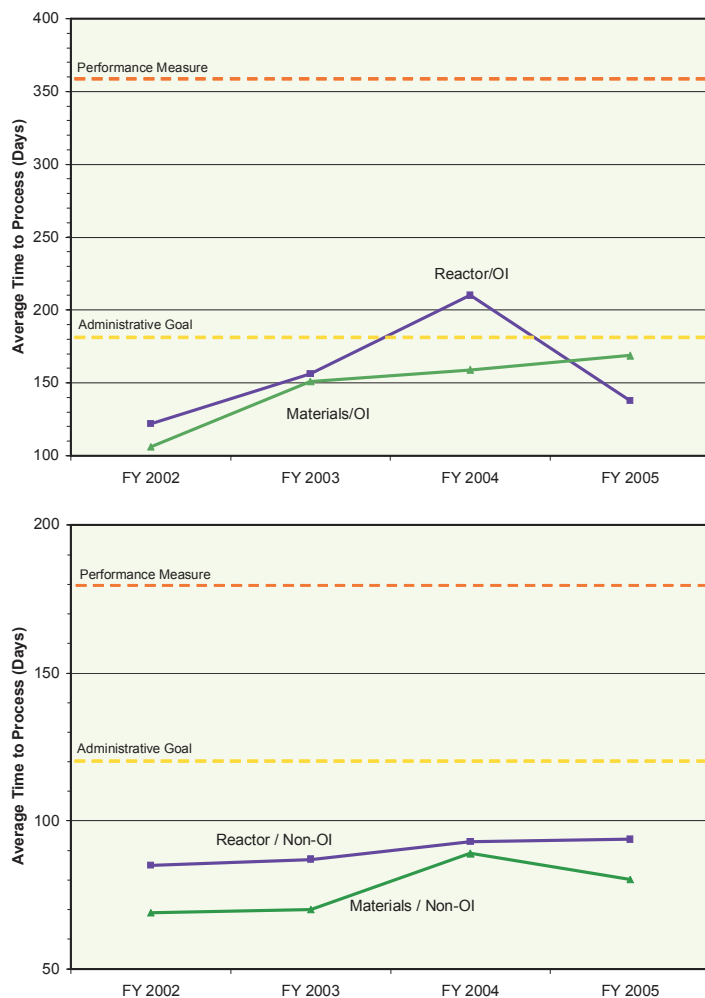
- < The date of the inspection exit (for non-OI cases);
- < The date of the OI memorandum forwarding the OI investigation to the staff (for OI cases);
- < The date that the Department of Justice says NRC may proceed (for cases referred to the DOJ); or
- < The date of the Department of Labor decision that is the basis for the action.

Figure 2 provides information regarding the enforcement action averages for FY 2002 through FY 2005 for reactor cases with investigations (Reactors/OI) and materials cases with investigations (Materials/OI), and reactor cases without investigations (Reactors/Non-OI) and materials cases without investigations (Materials/Non-OI).

During CY 2005, performance measure goals and administrative goals were met with average case times as follows: (1) with all non-OI cases completed within 180 calendar days and all OI cases completed within 360 calendar days; and (2) an average 87 days of processing time for non-OI cases and an average 169 days of processing time for OI cases.

During FY 2005, performance measure goals and administrative goals were met with average case times as follows: (1) with all non-OI cases completed within 180 calendar days and all OI cases completed within 360 calendar days; and (2) an average 87 days of processing time

Figure 2. Enforcement Action Timeliness



for non-investigation cases and (2) an average 153 days of processing time for investigation cases.

F. Escalated Enforcement Trends

During FY 2005, the agency issued 105 escalated enforcement actions. The average number of escalated enforcement items issued over the last five years is 110.6. Table 2 provides information addressing the trends in escalated enforcement actions over the last five FYs.

Table 2. Escalated Actions Trends (FY 2001 - FY 2005)

	FY 2001	FY2002	FY 2003	FY 2004	FY 2005	Average
Escalated NOVs (w/o Civil Penalty)	89	74	70	67	61	72.2
Civil Penalties	20	25	28	28	22	24.6
Orders	13	3	9	5	19	9.8
Orders Imposing Civil Penalties	5	7	2	3	3	4.0
Total Escalated Actions	127	109	109	103	105	110.6

Figure 3. Escalated Actions Trends (FY 2001 - FY 2005)

* Because Alternative Dispute Resolutions (ADR) settlements are embodied in Confirmatory Orders, the number of orders for FY 2005 increased significantly which is true for CY 2005 as well.

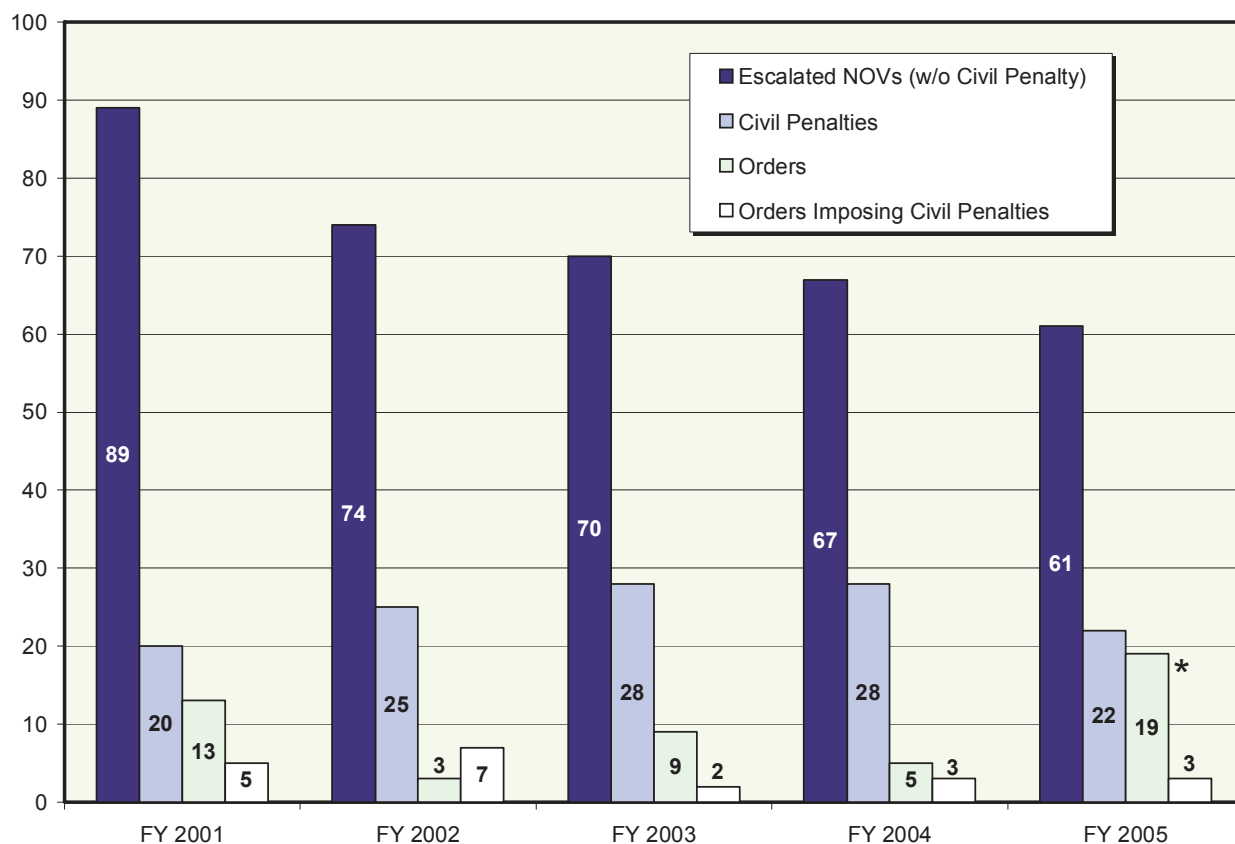
G. Demands for Information

A Demand for Information (DFI) is an administrative enforcement tool issued to a licensee or other person that enables the NRC to determine whether an order or other enforcement action should be issued. During CY 2005, one DFI was issued. During FY 2005, no DFIs were issued.

II. Actions Against Individuals and Non-Licensees

During CY 2005, the agency issued 13 actions to licensed and unlicensed individuals. During FY 2005, the agency issued 10 actions to licensed and unlicensed individuals. Appendix D provides brief summaries of the orders that were issued during 2005 to licensed and unlicensed individuals prohibiting or limiting their participation in NRC-licensed activities.

During CY 2005, the agency issued two escalated enforcement actions to non-licensees, i.e., vendors, contractors, or certificate holders. During FY 2005, the agency issued two escalated enforcement actions to non-licensees. Appendix E provides brief summaries of these actions.



III. Cases Involving Discrimination

The NRC places a high value on nuclear industry employees being at liberty to raise potential safety concerns to both licensee management and the NRC. The NRC vigorously pursues enforcement action against licensees or licensee contractors who discriminate against their employees for raising such concerns, regardless of the merits of the concern.

Unlawful adverse actions taken against employees for raising safety concerns may create a "chilling effect" on the employee or other workers who may wish to raise concerns. That is, employees may not believe they can raise concerns without fear of retaliation. Acts of discrimination include discharge and other adverse actions that relate to an employee's compensation, terms, conditions, or privileges of employment. In addition, one of the goals of the NRC's enforcement process is to ensure, through appropriate enforcement action against a licensee or licensee contractor (and when warranted, against the individual personally responsible for the act of discrimination), that adverse employment actions shall not be taken against licensee or contractor employees for raising safety concerns, nor shall employers create or support a work climate that has a chilling effect on employees or other individuals who may wish to report safety concerns.

During CY 2005, the agency issued two escalated enforcement action for violations involving discrimination. During FY 2005, the agency issued three escalated enforcement actions for violations involving discrimination. These cases are summarized in Appendices D and E. The average number of escalated cases involving discrimination over the last five FYs is 4. In addition to these actions, the staff continued to support hearing activities associated with the enforcement action against Tennessee Valley Authority (TVA) for discriminating against a former corporate employee. A summary of this case is provided in Appendix G.

IV. Notices of Enforcement Discretion (NOEDs)

A Notice of Enforcement Discretion (NOED) is a special type of discretion that the agency may exercise under specific circumstances, e.g., a power reactor licensee might foresee that compliance with an NRC requirement would involve an unnecessary plant transient or startup delay. NOEDs are addressed in Section VII.C of the NRC's Enforcement Policy. In 2005, the NRC issued two NOEDs:

- NOED 05-2-002 was issued to the Duke Power Corporation for the McGuire 1 unit. The confirmation date for this action was 10/14/2005.
- NOED 05-2-001 was issued to the Carolina Power and Light Company for the Brunswick Nuclear Power Plant. The confirmation date for this action was 5/17/2005.

V. 10 CFR 2.206 Petitions

NRC regulations provide members of the public with the means to request the Commission to take enforcement-related action to modify, suspend, or revoke a license, or to request other appropriate enforcement-related action. The policy is codified at 10 CFR 2.206. The enforcement staff reviews these, as needed. During 2005, there were eight 10 CFR 2.206 petitions pending before the agency. Appendix F provides brief summaries of these petitions.

VI. Withdrawn Actions

During 2005, the NRC did not withdraw any escalated enforcement actions.

VII. Hearing Activities

During 2005, four cases had some type of hearing activity, i.e., hearing request, settlement, dismissal, etc. Appendix G provides brief summaries of these cases.

VIII. Enforcement Policy Changes

This section describes the four changes and one proposed change that were made to the Enforcement Policy in 2005, i.e., between October 1, 2004 and December 31, 2005. Enforcement Policy changes are published in the Federal Register and that reference follows each summary.

A. October 26, 2004: Policy Statement Revision

On October 26, 2004, the Commission published a revision to the Enforcement Policy to address the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, to adjust the maximum civil monetary penalty to \$130,000 per violation, per day. This is the amount that, under the Enforcement Policy approved by the Commission, is currently assigned as the base civil penalty for power reactors and gaseous diffusion plants for a Severity Level I violation. The Commission also has approved the use of lesser amounts for other types of licensees and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy. Although the 1996 Act does not mandate changes to these lesser civil penalty amounts, the NRC modified Table 1A of the Enforcement Policy by increasing each amount to maintain the same proportional relationships between the penalties. (69 FR 62485)

B. November 15, 2004: Policy Statement Revision Regarding NOEDs

On November 15, 2004, the Commission published a revision to the Enforcement Policy to include an administrative change that provides that the appropriate Regional Administrator will issue all Notices of Enforcement Discretion (NOEDs) for power reactors. This revision eliminates the distinction, which based on practice is unnecessary, between region-issued and NRR-issued NOEDs for power reactors. (69 FR 65657)

C. January 14, 2005: Extension of Enforcement Discretion of Interim Policy

On January 14, 2005, the Commission published a revision to the Enforcement Policy that extended the interim enforcement policy regarding enforcement discretion for certain issues involving fire protection programs at operating nuclear power plants. (70 FR 2662)

D. March 16, 2005: Communication of the Policy Statement

On March 16, 2005, the Commission announced its intent to use the NRC public web site and the NRC's Agencywide Documents Access and Management System (ADAMS) to communicate its "General Statement of Policy and Procedure for NRC Enforcement Actions – Enforcement Policy," to discontinue publication of the paper document, NUREG-1600, and to simplify the official policy statement title to the widely know title of "NRC Enforcement Policy." (70 FR 12908)

E. October 12, 2005: Notification of Proposed Revision of the Policy Statement

On October 12, 2005, The Commission published a proposed revision to the Enforcement Policy, Supplement VII, to change the criteria considered when determining the severity level of violations of the NRC's employee protection regulations. The proposed revision to Supplement VII would improve the effectiveness of the Enforcement Program by allowing the staff to more appropriately assess the significance of discrimination violations. (70 FR 59374)

IX. Initiatives, Program Office Support, Staff Guidance, & Implementation

A. Alternative Dispute Resolution

The NRC has a general Alternative Dispute Resolution (ADR) Policy which was issued on August 14, 1992. It supports and encourages the use of ADR in NRC activities. The NRC uses ADR in a variety of circumstances, including rulemaking and policy development, Equal Employment Opportunity (EEO) disputes, and to a more limited degree, through a pilot program, in enforcement cases. Enforcement cases raise unique issues regarding the use of ADR that are not addressed in the NRC's general policy.

What is ADR?

The Administrative Dispute Resolution Act of 1996 (ADRA) encourages the use of Alternative Dispute Resolution (ADR) by Federal agencies. ADR is a term that refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures.

ADR is a less formal (compared to litigation) method of resolving disputes between two or more parties. Numerous forms of ADR exist, with mediation and arbitration being the most widely recognized. Mediation contains a spectrum of styles.

In mediation, the parties must develop a settlement agreement between themselves with the mediator's unbiased assistance. While ADR is frequently perceived as "binding arbitration" which concludes with the arbitrator issuing a decision that resolves the dispute, in mediation cases, the mediator cannot "bind" the parties. The NRC's enforcement ADR pilot program required the use of mediation rather than arbitration so that the parties

reached their own voluntary resolution to their dispute rather than being obligated by an arbitrator's decision.

How is ADR used in the Enforcement Program?

At the beginning of FY 2005, the agency implemented a pilot program to evaluate the use of ADR in the Allegation and Enforcement Programs. The enforcement portion of the pilot program was initiated after the Office of Investigations (OI) completed an investigation and the staff concluded that further consideration of the issues identified in the report was warranted. This portion of the program was typically referred to as "post-investigation" ADR.

Typically, once the staff decides to pursue enforcement based on the OI investigation, ADR is offered prior to a predecisional enforcement conference, and again when an NOV is issued. Finally, ADR is offered in cases resulting in the issuance of an order imposing a civil penalty. The intentions of the post-investigation ADR pilot included evaluating the belief that ADR would be less adversarial, less formal, and could promote greater communication and in turn, greater cooperation between parties at this point in the enforcement process. The potential for resource savings and a more timely resolution of disputed issues is also anticipated with this approach.

The pilot program operated during the entire FY 2005 period. The staff utilized ADR to resolve reactor, fuel facility, and materials enforcement cases at all points in the enforcement process provided by the pilot program (prior to a predecisional enforcement conference, with the issuance of a notice of violation, or with the issuance of an order imposing a civil penalty). Licensees, organizations subject to NRC jurisdiction, and individuals requested and used ADR. The staff used a confirmatory order to document the final settlement agreement in each case.

OE with regional participation chaired an NRC Public Meeting on October 11, 2005, in the NRC headquarters facility in Rockville, Maryland, to discuss and solicit external stakeholder input on the evaluation of the ADR pilot program. The meeting was classified as a Category 2 public meeting which provided an opportunity for members of the public to discuss regulatory issues with the NRC during the meeting, as well as provide future written comments.

The staff anticipated that a sufficient number of cases would be completed to reasonably evaluate the pilot program by the end of CY 2005. This evaluation will be submitted to the Commission with the staff's recommendations on the continued use of ADR.

B. Enforcement Actions Against Individuals

During CY 2005, no changes were made to Section VIII of the Enforcement Policy which addresses enforcement actions against individuals. The most recent revision was proposed by an internal NRC working group chaired by OE to evaluate and propose recommendations to this section of the Enforcement Policy. The proposed revision was published in the *Federal Register* on March 9, 2001. It sought stakeholder feedback on the proposed revision and was available for review until April 22, 2001.

The NRC received comments from several stakeholders, including the Union of Concerned Scientists and the Nuclear Energy Institute (NEI). The staff evaluated these comments; however, since the Discrimination Task Group (DTG) was considering a related question, namely whether hearing rights should be granted to individuals who receive NOV's, revision to Section VIII was placed on hold pending issuance of the DTG SRM which was issued in March 26, 2003. In the SRM, the Commission directed the staff to "fully explore the policy and resource implications of providing hearing rights (either formal or informal) to individuals subject to an NOV in connection with violations of the employee protection regulations."

One option the staff has identified may involve some form of ADR after an individual receives an NOV. As the pilot program for enforcement-related ADR is developed, further insights into the possible use related to individuals will be explored and the Section VIII policy revision originally prepared will resume and be coordinated with both DTG recommendation implementation activities and the results of the ADR Pilot Program.

C. Civil Penalty Authority Against Non-Licensees for Discrimination

During CY 2005, the NRC issued a proposed rulemaking for which OE has the task lead. The proposed rulemaking would amend the Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, and 72.10 to allow the Commission to impose civil penalties on non-licensee contractors and subcontractors of a Commission licensee or applicant for a Commission license who violate these regulations by discriminating against employees for engaging in protected activity. In addition, the NRC is also proposing to amend its regulations in 10 CFR 76.7 to provide that the Commission may impose a civil penalty on the United States Enrichment Corporation as well as a contractor or subcontractor of the Corporation. This change is being proposed to bring this regulation into conformance with the NRC's other employee protection regulations.

The Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7 prohibit discrimination by a Commission licensee, applicant for a Commission license, contractor or subcontractor or the United States Enrichment Corporation against employees for engaging in certain protected activities. These sections identify certain enforcement actions for violations of the regulations. The enforcement actions are denial, revocation, or suspension of the license; imposition of a civil penalty on the licensee or applicant; or other enforcement action. While the employee protection regulations prohibit discrimination by a contractor or subcontractor, they do not explicitly provide for imposition of a civil penalty on a contractor or subcontractor. Since the activities of contractors and subcontractors can clearly affect the safe operation of a licensee's facility, it is important that contractors and subcontractors abide by the Commission's employee protection regulations. The Commission should be able to bring the full scope of enforcement actions to bear on contractors or subcontractors who violate its employee protection regulations. The approach described in the proposed rulemaking represents a significant change in the Commission's current policy under which a licensee can receive a civil penalty when its contractor or subcontractor violates the Commission's employee protection regulations while the contractor or subcontractor is not subject to civil penalties.

In response to the Commission's direction in its Staff Requirement Memorandum (SRM) on SECY-97-281, "Initiation of Enforcement Action Against Construction Products Research, Inc. and Five Star Products, Inc. for Discrimination Against an Employee for Raising Safety

Concerns and Cooperating with an NRC Investigation" and in the SRM on SECY-02-0166, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues," the staff developed a proposed rulemaking plan. The Commission approved the rulemaking plan on November 22, 2004, in its SRM on SECY-04-0195, "Rulemaking Plan: Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities (RM #636)." On December 23, 2005, the Commission, in its SRM on SECY-05-0212, "Proposed Rulemaking - Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities (RIN 3150-AH59)," approved the staff's plan to publish the proposed rule in the *Federal Register*.

D. Reactor Program Support & Initiatives

The enforcement staff's years of experience allow it to provide program guidance and feedback to the reactor program on lessons learned during inspections at power reactors. The Enforcement Program continues to provide valuable insights in the areas of timeliness, the disposition of old design issues, the revision of the SDP, guidance on minor violations, and the treatment of programmatic issues in a risk-informed framework.

The level of integration between assessment and enforcement in the ROP is demonstrated by comparing the number of findings and violations issued during a particular time frame. During CY 2005, the NRC issued 19 SDP findings with a final risk assessment that was determined to be "greater than Green" (i.e., Red, Yellow, or White), and issued 18 violations in association with those findings. Sixteen of the violations were associated with White SDP findings, and two of the violations were associated with a Yellow SDP finding. During CY 2005, the NRC also issued two violations associated with a Red SDP finding that was previously issued in 2003. These cases represent the majority of the escalated enforcement actions taken in the power reactor area during CY 2005.

For comparison purposes, in FY 2005, the NRC issued 18 SDP findings with a final risk assessment that was determined to be "greater than Green" (i.e., Red, Yellow, or White), and issued 17 violations in association with those findings. Sixteen of the violations were associated with White SDP findings, and one of the violations was associated with a Yellow SDP finding. During FY 2005, the NRC also issued two violations associated with a Red SDP finding that were previously issued in 2003. These cases represent the majority of the escalated enforcement actions taken in the power reactor area during FY 2005.

In addition to activities associated with the ROP, Enforcement Program staff have worked closely with NRR's technical, rulemaking, and inspection program staffs, to develop strategies and guidance to address the broad regulatory issues associated with implementation of 10 CFR 50.48(c) through National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants," 2001 Edition and resolution of longstanding issues related to associated circuits and manual actions.

- NFPA 805: On January 15, 2005, the Commission extended the interim enforcement policy that was utilized to provide incentives for licensees to adopt a pending revision to 10 CFR 50.48 that uses a National consensus standard from the NFPA 805 Standard, as its basis. The interim policy was designed to encourage licensees to initiate efforts to

identify and correct subtle violations that are not likely to be identified by routine efforts. On June 16, 2004, the Commission published a revision to the Enforcement Policy that added an interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR 50.48, "Fire protection," that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48, and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). The interim enforcement policy was extended until December 31, 2005.

- Associated Circuits: OE worked with NRR to support resumption of post-fire safe-shutdown associated circuit inspections, including helping to develop Revision I of NRC Regulatory Issue Summary (RIS) 2004-003, "Risk-Informed Approach for Post-Fire Safe-Shutdown Circuit Inspections," published on December 29, 2004. The intent of this revision is to inform licensees that the NRC has risk-informed its inspection procedure for post-fire safe-shutdown circuit analysis inspections to concentrate inspections on circuit failures that have a relatively high likelihood of occurrence, and to notify licensees of the NRC's intent to resume inspection of these circuits in January 2005. The revised RIS also describes the process the NRC will use to implement the ROP for post-fire safe-shutdown circuit inspection findings and the process the NRC will use regarding the use of enforcement discretion to address noncompliances.

The Enforcement Program has continued to support the agency's response following the discovery of severe vessel head degradation at Davis-Besse. This support included:

- Review of several 2.206 petitions regarding various regulatory matters at Davis-Besse
- The issuance of a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$5,450,000 to FirstEnergy Nuclear Operating Company, the licensee for Davis-Besse for violations related to the Davis-Besse vessel head degradation
- The issuance of an Order to a former Davis-Besse employee prohibiting involvement in NRC-licensed activities for a period of five year for providing incomplete and inaccurate information regarding the condition of the Davis-Besse reactor vessel head

In addition, enforcement staff reviewed and concurred on rulemakings related to the reactor program to ensure that proposed and final rules and the Enforcement Policy and procedures are consistent. During review, any necessary changes to the Enforcement Policy or procedures were identified, e.g.,

- < In CY 2005, OE reviewed and concurred on a proposed Direct Final Rulemaking package entitled "Amending Requirements in 10 CFR Parts 50 and 72 Regarding the Requirement to Submit Annual Financial Reports."
- < As discussed above, the NRC issued a proposed rulemaking amending the Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, and 72.10, for which OE has the task lead.

The enforcement staff also reviewed and concurred on several NRC Regulatory Issue Summaries (RIS) addressed to reactor licensees, including:

- < RIS-05-001 "Changes to Notice of Enforcement Discretion (NOED) Process and Staff Guidance," published on February 7, 2005.

- < RIS-05-007 “Compensatory Measures to Satisfy the Fire Protection Program Requirements,” published on April 19, 2005.
- < RIS-05-018 “Guidance for Establishing and Maintaining a Safety Conscious Work Environment,” published on August 25, 2005.
- < RIS-05-028 “Scope of For-Cause Fitness-For-Duty Testing Required by 10 CFR 26.24(a)(3),” published on November 22, 2005.
- < RIS-05-030 “Clarification of Post-Fire Safe-Shutdown Circuit Regulatory Requirements,” published on December 20, 2005.

In 2005, A member of the enforcement staff served on the 2.206 Petition Review Board that reviewed the FirstEnergy Nuclear Operating Company (FENOC), et al. petition, filed by Mr. David Lockbaum of the Union of Concerned Scientists, regarding the operation of the Beaver Valley Power Station, Units Nos. 1 and 2 (DD-05-06).

E. Materials Program Support & Initiatives

The Enforcement Program has provided support for several agency initiatives addressing materials programs, e.g., the review of rulemakings related to the materials program, to ensure that proposed and final rules and the Enforcement Policy and procedures are consistent. During review, any necessary changes to the Enforcement Policy or procedures were identified. For several larger rulemakings, members of the enforcement staff participated on the rulemaking teams that developed draft and final rules. These included:

- < A Direct Final Rule amending 10 CFR Part 25, “Access Authorization for Licensee Personnel,” and 10 CFR Part 95, “Facility Security Clearance and Safeguarding of National Security Information and Restricted Data.”
- < A Proposed Rulemaking package amending 10 CFR Parts 20, 32, and 150, entitled “National Source Tracking of Sealed Sources,” posted on RuleForum on July 28, 2005.
- < A Proposed Rulemaking package amending 10 CFR Parts 30, 31, 32, and 150, entitled “Exemptions from Licensing; General Licenses; and Distribution of Byproduct Material: Licensing and Reporting Requirements,” posted on RuleForum on January 4, 2006.

In addition, members of the enforcement staff reviewed and concurred on the enforcement component of several NRC Regulatory Issue Summaries (RIS) addressed to materials licensees, including:

- < RIS-05-003 “10 CFR Part 40 Exemptions for Uranium Contained in Aircraft Counterweights - Storage and Repair,” published on February 28, 2005.
- < RIS-05-10 “Performance-Based Approach for Associated Equipment in 10 CFR 34.20,” published on June 10, 2005.
- < RIS-04-17, Revision 1, “Revised Decay-in-storage Provisions for the Storage of Radioactive Waste Containing Byproduct Material,” published on September 27, 2005.

A member of the enforcement staff served as a member of an NRC working group tasked with reviewing the current NRC Management Directive process to identify areas with potential for improvements and/or enhancements.

A member of the enforcement staff provided a monthly review of the number of non-escalated enforcement actions issued by the regional and headquarters inspectors to NMSS and the regional offices in a report that is issued at 6-month intervals.

A member of the enforcement staff served on the 2.206 Petition Review Board that reviewed the petition submitted by James Salsman regarding the regulation of deplete uranium munitions (DD-05-08).

The agency's materials program includes Regional Bankruptcy Review Teams (BRTs) that review the impact that bankruptcy has on licensed operations. These teams include a member of the enforcement staff who provides views on the enforcement component of a given bankruptcy. In 2005, a member of the enforcement staff served on a BRT involving the San Carlos Imaging Center, a small nuclear medicine facility.

F. Security Program Support & Initiatives

The events of September 11, 2001, highlighted the need for the NRC to examine its organizational structure, staffing, and training in the security and safeguards areas. After a thorough review, the Commission determined that greater efficiency and effectiveness would be achieved by consolidating certain NRC safeguards, security, and incident response functions. The Office of Nuclear Security and Incident Response (NSIR) was established and began operating on April 7, 2002. NSIR reports to the Deputy Executive Director for Reactors and Preparedness Programs (DEDR).

The agency has undertaken several initiatives involving reactor and materials licensees to enhance the safe operation of these facilities, which requires interface between the Enforcement Program and NSIR, e.g., resolving and dispositioning issues identified through staff inspections to assess licensee implementation of the security orders issued to several types of licensees in FY 2004.

In 2005, the Enforcement Program continued to support and assist the various program office programs tasked with developing and implementing orders modifying licenses to address security issues. In addition to reviewing the content of the orders for enforcement implications, the security orders were posted within the enforcement document collection in the electronic reading room on the NRC's external Web site to make the orders easier for the public to find.

A member of the enforcement staff served as a member of the agency's Compensatory Measures Management Review Panel (CMMRP) and continues to serve as a member of the Security Findings Review Panel (SFRP) established to review all security and safeguards findings identified during inspection of the orders, as well as baseline inspection activities. These included support for NSIR's development of:

- < The Physical Protection Significance Determination Process (PPSDP) - a member of the enforcement staff routinely interacts with NSIR on matters involving the application and interpretation of this SDP.
- < Review standards and then the review of licensee responses to mitigative measures associated with a specific mitigative measure.
- < DFIs issued to a large majority of power reactor licensees involving specific mitigative measures.

The Enforcement Program continues to support the NRC's emergency response capabilities by having a member of the enforcement staff maintain qualifications as an active member of the Reactor Safety Team.

The Enforcement Program also continues to support the NRC's Continuity of Government (COG) functions (housed in NSIR) by having a representative on call at all hours as an active member of a select, specially-trained, NRC Team.

A member of the enforcement staff also participated as a member of the Nuclear Materials Management and Safeguards System Rulemaking Working Group.

G. Radioactive Waste Program Support & Initiatives

High-Level Waste Disposal: Yucca Mountain

When the DOE submits a license application, the NRC review of the Yucca Mountain application is expected to take up to three years to complete, with the possibility that the application review will be extended for an additional year. The Division of High-Level Waste Repository Safety, NMSS, is responsible for implementation of the regulatory program for the Yucca Mountain Repository under the Nuclear Waste Policy Act of 1982, and implementation of the NRC and DOE procedural agreement governing pre-licensing consultation for High Level Waste.

Due to the uniqueness of the proposed facility, Enforcement Program staff have been actively engaged in discussions with the Division of High-Level Waste Repository Safety and Region IV and have been working with them to develop an enforcement program and strategy, including an appropriate base civil penalty amount for violations that occur once the DOE has submitted its license application. Early enforcement may involve employee protection, completeness and accuracy of information, deliberate misconduct and safety conscious work environment issues. Based on the discussions and a review of the Policy, there is confidence that the current guidance is adequate to support enforcement during the license application review period. On August 31, 2005, a member of the enforcement staff provided the Yucca Mountain team with an update on the enforcement process in terms of the regulation of the repository.

H. Agency Support & Initiatives

Sensitive Unclassified Information (SUI)

As a result of identified inconsistencies and increased emphasis on information security, on December 3, 2003, the EDO established a task force to recommend resolution of issues related to the agency's management of Sensitive Unclassified Information (SUI). A member of the enforcement staff was on this task force. The task force's charter was to evaluate all internally and externally generated categories of Sensitive Unclassified non-Safeguards Information (SUNSI). The issues to be addressed included marking, storage, access, transmission, reproduction, recordkeeping, and destruction requirements. The objective of the task force was to analyze the current population of SUNSI and develop recommendations for clarifying and simplifying NRC's management of this information.

In January 2005, the EDO issued a memorandum endorsing the task force's recommendations and requested that a working group be formed to develop an implementation plan for the task force's recommendations. The group provided its recommended implementation plan and policy to the EDO on September 14, 2005, and the EDO issued that policy for immediate implementation in a memorandum to Office Directors and Regional Administrators dated October 26, 2005. A yellow announcement (077) dated October 26, 2005 communicated the new policy and procedures and provided the web address for the new policy (<http://www.internal.nrc.gov/sunsi>). The new policy establishes handling requirements in 14 different areas for each of seven SUNSI groups.

Planning, Budgeting, and Performance Management Process

The agency's Planning, Budgeting, and Performance Management (PBPM) Process reflects the necessary information for the conduct of the agency's Enforcement Program activities. This includes the development of agency performance measures and major program outputs, common prioritization of planned accomplishments in each program area, and assessment of the needs and opportunities to streamline the agency's financial management processes and systems.

The NRC Management Directive Process Review

A member of the enforcement staff has participated on the agency's working group established to review the current NRC Management Directive process and identify areas with potential for improvements and/or enhancements (ongoing activity). The working group has been evaluating additional opportunities for enhancing online capabilities to facilitate timely MD issuance and updating, and has also been examining ways to develop long-term interactive Web-based solutions for improving the MD process.

The NRC Lessons Learned Task Force

The NRC established a Lessons Learned Task Force in January 2005 in response to recommendations stemming from the Davis-Besse Lessons Learned Task Force, i.e., to: (1) develop a process, program, or system that will provide reasonable assurance that for the lessons learned from major organizational failures, the problems noted by the Davis-Besse Lessons Learned Task Force will not recur; and (2) ensure by whatever means necessary that the knowledge gained from future lessons learned is retained and disseminated in a manner that will maximize its benefit and usefulness to the agency over time. A member of the enforcement staff was on the task force which conducted a number of benchmarking studies during the year, and began the development of a Lessons Learned Program that will be implemented in CY 2006.

I. Public Involvement

The NRC views building and maintaining public trust and confidence as an important performance goal for the agency as it carries out its mission. To reach this goal, the NRC must be an independent, open, efficient, clear and reliable regulator and must find appropriate ways to convey this message to the public, including providing our stakeholders with clear and accurate information about, and a meaningful role in, our regulatory programs.

To further these goals, the Enforcement Program has been structured to actively engage stakeholders by educating them on how the enforcement program is conducted and how it is changing to support new initiatives in the agency's oversight programs.

To provide accurate and timely information to all interested stakeholders and enhance the public's understanding of the enforcement program, information about the Enforcement Program is provided electronically and can be found on the NRC's public Web site. Note that, consistent with NRC practices and policies, most security-related actions and activities are not included on the NRC's public Web site. The NRC home web page includes a variety of information such as the current Enforcement Policy; copies of significant enforcement actions issued to reactor and materials licensees, non-licensees (vendors, contractors, and certificate holders), and individuals; upcoming predecisional enforcement conferences Web; and current enforcement guidance. OE also includes security orders that impose compensatory security requirements on various licensees in the enforcement document collections.

In an effort to increase stakeholder involvement in Enforcement Policy and guidance development, a public participation page has also been established on the Enforcement web site. This site provides a way for interested stakeholders to provide input on various enforcement issues (such as the Discrimination Task Force and Alternative Dispute Resolution). Summaries of significant enforcement actions issued to materials licensees are also available through the NMSS Newsletter.

The agency will continue to conduct more stakeholder meetings to address enforcement issues. The Enforcement Program's participation in these stakeholder activities, included:

- < The Chief of the Enforcement Policy and Program Oversight Section (EPPO), OE, met with the Director, Division of Radiation Protection and Nuclear Security, Brazilian Nuclear Energy Commission in March 2005 to discuss the NRC Enforcement Program, i.e., the similarities and challenges shared by both the NRC and the Brazilian Nuclear Energy Commission in implementing the respective missions of each agency.
- < The Chief, EPPO, OE, provided presentations and participated in panels on the Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48(c)) and the draft interim enforcement discretion policy on operator manual actions during the Nuclear Energy Institute sponsored Fire Protection Information forum in San Francisco, CA, from August 29-31, 2005. The main audience for this forum was fire protection engineers from commercial nuclear power plants.
- < The Chief, EPPO, OE, represented OE at a public meeting held on September 30, 2005, on the Operator Manual Action (Fire Protection Issue) rulemaking, presenting the

enforcement discretion guidance for associated circuits that also applied to manual action since, in fact, most manual actions are compensatory measures for associated circuit issues.

- < OE, with regional participation, chaired an NRC Public Meeting on October 11, 2005, in the NRC headquarters facility in Rockville, Maryland, to discuss and solicit external stakeholder input on the evaluation of the Alternative Dispute Resolution (ADR) program being piloted by OE. The meeting was classified as a Category 2 public meeting which provided an opportunity for members of the public to discuss regulatory issues with the NRC during the meeting, as well as provide future written comments.
- < The Agency Allegations Advisor (OE) co-chaired a panel at the 17th Annual Nuclear Regulatory Conference (RIC) on Wednesday, March 9, 2005, entitled "Objective Measures of Safety Culture."
- < The Deputy Director, Office of Enforcement, participated as a panel member at a technical conference on electric reliability standards being held by the Federal Energy Regulatory Commission (FERC) in Washington DC, on December 10, 2005. This was the second of two conferences FERC held to discuss various aspects of establishing, approving and enforcing reliability standards.

J. Enforcement Guidance

The NRC's Enforcement Manual (Manual) is being revised to add new information and update current guidance on enforcement issues, as well as to provide a more user-friendly format for conveying this information. The Manual provides guidance to assist the NRC staff in implementing the Commission's enforcement program consistent with NRC's Enforcement Policy. This guidance is intended for internal use by the NRC and contains procedures, requirements, and background information used by the staff who develop or review enforcement actions. The Manual is, in addition, available to the public. The finished document will be published and placed on the web and into ADAMs by May 31, 2006.

Because the enforcement process changes from time to time, the Manual is designed as a living electronic document that is available on the **Enforcement** page of the NRC's public Web site. This strategy ensures that users will have access to the latest enforcement guidance.

During 2005, one change notice was issued to the Manual:

- < **Change Notice Number 6** was issued on October 26, 2004, and added EGM-04-004, "Alternative Dispute Resolution Pilot Program Subsequent to Completion of an Investigation," to Appendix A.

In addition to guidance issued by headquarters, the regional offices routinely review and revise enforcement-related regional instructions.

K. Reviews

Specific topic focused reviews of the regional and program office enforcement programs are reviewed to identify inconsistent application of the Enforcement Policy and enforcement guidance.

Review of Enforcement Action Item Tracking System (AITS)

A review of the Enforcement Action Item Tracking System (AITS) Database which is used to track OI reports and non-casework tasks including requests from other Offices, “green tickets” from the EDO, and internally generated tasks, was completed. The purpose of the review was to identify: (1) tasks that were depicted as over-due in the tracking system, but were, in fact, closed; (2) task dates that had not been extended, i.e., task dates that were over-due, but the task was not complete; and (3) tasks that were not re-assigned in the tracking system when the task had been transferred to another individual.

The results of the review indicated that approximately 50% of the open tasks within the system should be either closed, re-assigned, or have the date extended.

Several actions were identified and implemented to improve the tracking of tasks within the Enforcement Program. These included: (1) correcting the errors that were found; (2) providing enforcement management and staff with a weekly printout of tasks that are due within the next 90 days or are over-due, and discussing items that are due within two weeks at weekly staff meetings; and (3) assigned an action item to develop an internal written office instruction for assigning, opening, extending, and closing the tasks within the system.

Review of the Use of NRC Form 591, “Safety Inspection Report and Compliance Inspection”

A member of the enforcement staff completed a review addressing the use of NRC Form 591. The review examined the use of Form 591 for five sample periods covering July 1-2002 through March 31, 2005, to determine the extent to which Form 591 is used and whether the form is being used appropriately to document non-escalated enforcement actions issued by the regions.

The review concluded that the regions are using Form 591 appropriately for non-escalated enforcement actions with a few minor exceptions. In addition, the audit did not identify any significant or generic issues regarding the use of Form 591 and found that the NOVs issued by the regions via Form 591 are adequately documented. For those cases that did not meet the guidance, sufficient information was provided on the form or in a choice letter to provide the licensee the factual basis for the inspector’s conclusions that a NRC regulatory violation had occurred. The Review also found that the use of Form 591 varies from region to region. Specifically, for the five sample periods, Region I used Form 591 for approximately 38% of its non-escalated actions, Region III used Form 591 for approximately 47% of its non-escalated actions, and Region IV used Form 591 for approximately 14% of its non-escalated actions. (Region II was not included because in October 1, 2003, the agency consolidated the nuclear materials program and although Region II retained responsibility for the fuel cycle facilities, most of the responsibilities for Region II’s materials program were transferred to Region I.) No additional actions are planned to address the findings of this review at this time.

Review of Individual Actions

In December 2004, a review of enforcement actions issued to individuals was completed. The purpose of the review was to examine the consistency of the enforcement sanctions taken. Information for each case was gathered from documentation available in the Individual Action (IA) files, enforcement files, and the Enforcement Action Tracking System (EATS) database.

Due to the varying circumstances for each case considered in the review as well as the small sample size, the review concluded that it was difficult to make simple comparisons between cases regarding consistency of the enforcement action taken. In addition, the decision making process was not always well documented, and not all offices issued all types of enforcement actions. Actions to address the review's recommendations which focused on consistency and documentation of the decision making process, were identified and implemented including, for example, (1) improving the documentation of the decision making processes and factors considered when determining length of restriction for an Order, (2) providing improved guidance to issuing offices on factors to consider when making decisions on enforcement sanctions, and (3) periodically monitoring the consistency of actions taken as well as the documentation for cases, making improvements as needed.

Review of Factual Summaries of Office of Investigations Reports

On September 26, 2005, a review addressing the factual summaries of Office of Investigations (OI) reports attached to regional inspection reports and choice letters was issued. The purpose of the review was to determine whether the factual summary: (1) provided the factual basis for the staff's preliminary conclusion that a violation of an NRC regulatory requirement occurred; (2) contained sufficient factual detail to fully apprise conference participants of the operative facts involved in the apparent violation; (3) utilized titles or other generic description rather than name the individuals involved in the potential enforcement matter; and (4) included other personnel or propriety information.

The factual summaries indicated that these documents met the guidance detailed in Sections 5.2.2 and 7.5.4.4 of the Enforcement Manual with a few minor exceptions. For those cases that did not meet the guidance, sufficient information was provided in the inspection report or choice letter to provide the licensee the factual basis for the staff's preliminary conclusion that a NRC regulatory violation occurred. In addition, all of the letters/summaries provided the conclusion of the OI investigation, as specified in the Enforcement Manual. This practice differs from the current practice used for discrimination cases. Although discrimination cases provide copies of the OI report to the applicable parties, the agent's analysis along with the OI conclusion (synopsis) is redacted.

Based on these observations, three recommendations were provided: (1) clarify that if a factual summary is included with the choice letter or inspection report, that is it should be a stand alone document that contains all the operative facts or the factual basis for the staff's preliminary conclusion that a NRC regulatory violation occurred; (2) provide training to enforcement staff in OE regarding the information that should be made available to the public about the wrongdoer. Although a generic descriptor is necessary, it should not be overly descriptive or should only be made available to licensee management and not the general public (factual summary exempt from public disclosure); and (3) evaluate whether the OI synopsis should be made available to the licensee and/or public, and ensure consistency between discrimination and wrongdoing cases. In addition, as needed, the Enforcement Manual will be revised to reflect the results of this evaluation.

To implement these recommendations, training was provided to headquarters and regional enforcement staff members during the November 2005 counterpart meeting. In addition, the Enforcement Manual is in the process of being revised to provide guidance that captures the results of this evaluation.

Regional Reviews

In addition to headquarters reviews, regional enforcement staff also conducted reviews of regional implementation of the agency's enforcement program.

Region I

Region I issued reports on two self-assessments that it conducted during 2005. In the first review, issued on April 25, 2005, Region I examined the timeliness of its escalated enforcement actions. In the second review, issued on September 28, 2005, the Region sampled the non-escalated enforcement actions it issued between January 2005 and August 2005.

With respect to the first review, Region I concluded that it had met the timeliness metric for escalated enforcement actions, noting that the overall timeliness average for non-OE cases was 83 days, significantly lower than the 120 day goal. However, the review also noted that the overall timeliness average for OI cases was 165 days, much closer to the 180 day goal. The Region concluded that the latter metric was challenged due to the difficulties and complexities of the Safety Light Order that took 275 days to complete. The review further identified two cases where the staff could have acted more expeditiously.

With respect to the second review, Region I found that: (1) non-escalated enforcement actions were properly dispositioned in accordance with applicable enforcement guidance, including the Enforcement Policy, as well as guidance contained in Manual Chapter (MC) 0612; (2) violations were assigned an appropriate severity level in accordance with the Enforcement Policy, and reactor findings were assigned an appropriate significance level in accordance with the reactor oversight program's significance determination process (SDP); and (3) violations and SDP findings were properly documented.

The review did not identify any significant deficiencies, nor did it identify any violations that should have been assigned a different severity level, nor any green findings that should have been assigned a "greater than green" color or were of minor significance. The findings of the review were conveyed to regional staff and the findings were also entered into the Region I corrective action program.

The Region I enforcement staff also compiled a monthly count of all reactor nonescalated enforcement actions to OE for inclusion in the NRC's monthly report to Congress. In addition, the enforcement staff also compiled materials nonescalated enforcement actions and provided the statistics to OE. The results of these monthly compilations were summarized and reviewed by senior regional management.

Region II

The Enforcement and Investigations Coordination Staff completed a review of reactor non-cited violation (NCV) data for the past several years. The purpose of the review, issued on

February 4, 2005, was to understand any trends in reactor NCV data, and to communicate this information to appropriate Region II management and OE. Some of the observations the review provided include: (1) the NCV totals for Region II have remained relatively constant from FY 2003 to FY 2004; (2) it appears that specialized inspection activity (e.g., fire protection) was a contributing factor in the increase in NCVs for FY 2003 and FY 2004, versus FY 2002; and (3) regarding the subjective comments received by the RII staff, a consensus view was provided that the inspection staff has become more efficient and effective at identifying and dispositioning NCVs.

In addition to reviews, the regional enforcement staff typically participated in inspection debriefings for reactor and materials inspections to assure that violations of requirements were being properly dispositioned.

The Region II enforcement staff also compiled a monthly count of all reactor nonescalated enforcement actions which were sent to headquarters for inclusion in the NRC's monthly report to Congress. In addition, the enforcement staff also compiled materials nonescalated enforcement actions and provided the statistics to headquarters. The results of these monthly compilations were summarized and reviewed by senior regional management.

Region III

The Region III enforcement staff also compiled and sent a monthly count of all reactor nonescalated enforcement actions to headquarters inclusion in the NRC's monthly report to Congress. In addition, the enforcement staff also compiled materials nonescalated enforcement actions and provided the statistics to headquarters. The results of these monthly compilations were summarized and reviewed by senior regional management.

Region IV

The Region IV enforcement staff typically participated in inspection debriefings for reactor and materials inspections to ensure that violations were being properly dispositioned. In addition, the Region IV enforcement staff reviewed a sample of reactor and materials inspection reports issued by Region IV, which were summarized and reviewed by senior regional management.

The Region IV enforcement staff also compiled and sent a monthly count of all reactor nonescalated enforcement actions to headquarters for inclusion in the NRC's monthly report to Congress. In addition, the enforcement staff also compiled materials nonescalated enforcement actions and provided the statistics to headquarters. The results of these monthly compilations were summarized and reviewed by senior regional management.

The Region IV enforcement staff supported DNMS in reviewing the Safety Conscious Work Environment at the State of Alaska's Department of Transportation and Public Facilities, an NRC licensee subject to a Confirmatory Order that was issued as a result of a discrimination enforcement case. This support included in-office reviews of the licensee's corrective actions to a discrimination violation and culture survey results, as well as onsite interviews of licensee employees.

L. Internal Communication and Enforcement Training

Successful communication for internal stakeholders is vital to ensure that the Enforcement Program is both understood and acknowledged as an integral, valuable component of the agency's regulatory programs. Internal communication initiatives during 2005 included:

- < The Director, OE, routinely briefed the DEDOs on the status of enforcement actions, policy issues, and new initiatives.
- < The Director, OE, participated in periodic meetings with the Commissioners on enforcement issues.
- < Headquarters enforcement staff, regional enforcement staff, and program office enforcement coordinators participated in the Annual Counterpart Meeting on November 1-3, 2005, to address enforcement issues and new initiatives and issues in the program office. The counterpart meeting was highlighted by opening day remarks from Commissioner Gregory Jaczko who offered his perspectives on the Office of Enforcement, noting that it is involved in a number of programs that extend beyond enforcement (e.g., allegations, safety culture, and differing professional opinions).
- < Headquarters enforcement staff, regional enforcement staff, and program office enforcement coordinators participated in weekly conference calls to address enforcement issues and enforcement cases.

Enforcement staff has and will continue to conduct training to address the enforcement program and emerging enforcement issues, e.g., providing internal stakeholders with the following training:

- < A member of the enforcement staff provided training at the Region II Fuel Cycle Counterpart meeting in October 2004, that addressed Severity Level IV violation, Non-cited Violation, and minor violation criteria as well as proper inspection documentation.
- < The Chief, EPPO, OE, presented an overview of the NRC enforcement program at "The NRC: What It Is and What It Does," on September 14, 2005.
- < Two representatives of the OE staff provided enforcement training for the course, "Licensing and Evaluation of a High-Level Repository (H-415)," on September 1, 2005.
- < An OE representative provided training related to security issues to NSIR, as requested.
- < Enforcement staff routinely provided lessons learned and refresher training on selected enforcement topics during the regional inspector counterpart meetings.
- < Two members of the enforcement staff were appointed to Differing Professional Opinion (DPO) panels formed to evaluate potential enforcement issues associated with the DPOs.
- < Regional enforcement staff also provided training on the enforcement program in the regional offices.

Region I

- < Region I enforcement staff provided training to new hires and interns covering various aspects of the use of traditional enforcement versus SDP enforcement for inspection findings, on a continuing basis throughout the period.
- < Region I enforcement and allegation staff developed a read and sign document for all Regional staff in April 2005.
- < Region I provided a training presentation on enforcement and allegation issues at the Regional seminar in May 2005.

Region II

- < During 2005, Region II staff continued to provide training to all regional Nuclear Safety Interns and other new hires on the Enforcement Policy and Process. This training focused on: the ROP; the "life cycle" of a violation from the time of identification during inspection until final disposition; the Enforcement Policy and its supplements; the use of preliminary enforcement conferences; the inspection process and wrongdoing; and, the role of OI in the enforcement process, the allegation process and enforcement.

Region III

- < Region III enforcement and allegation staff provided program overview and implementation training to numerous nuclear safety professional development program participants as a part of their two year training program and in preparation for their oral boards.
- < Region III enforcement and allegation staff facilitated 3-month rotations as a member of the regional enforcement and investigations coordination staff by several nuclear safety professional development program participants including active participation in the routine allegation program activities and escalated enforcement processing.
- < Region III enforcement and allegations staff provided training during the Region III Materials Inspection Seminar on the proper processing of materials-related escalated enforcement cases.
- < Region III enforcement and allegations staff provided one-on-one training for all newly hired inspectors on a continuing basis throughout the period.
- < Region III enforcement and allegation staff provided training to several licensee managers associated with licensee safety conscious work environment programs regarding the NRC's Alternate Dispute Resolution process.

Region IV

- < Region IV enforcement staff conducted three training sessions during FY 2005 to all new inspectors and to several Engineering Associates. These training sessions enabled new inspectors to complete their qualification journals and prepare them for the qualification boards.

OE Annual Report

- < Region IV enforcement staff provided training on the NRC's Alternate Dispute Resolution (ADR) pilot program to the Office of Investigations (OI) during their counterpart meeting in November 2004.
- < Region IV enforcement staff participated on all inspector qualification boards conducted in FY 2005 to assure that questions addressed aspects of the NRC's enforcement program.

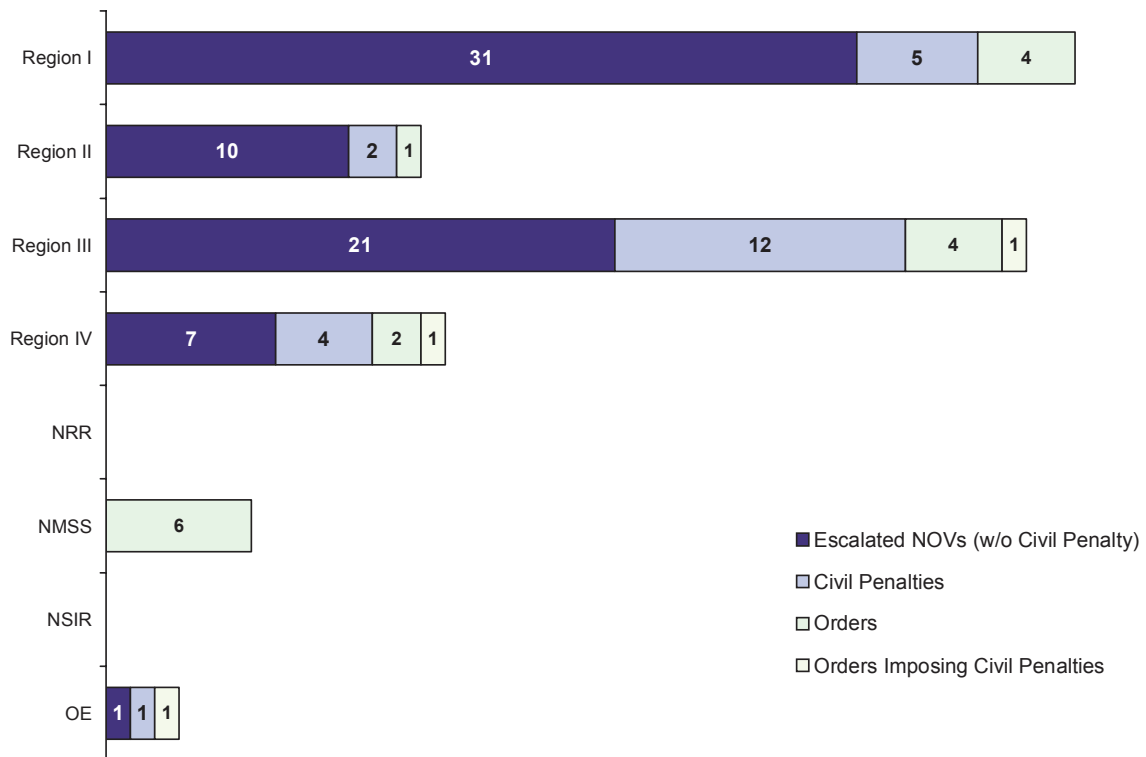
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**Table 3. CY 2005 Escalated Enforcement Actions
By Region and Program Office**

Program Office	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalties	Total CY 2005
Region I	31	5	4	0	40
Region II	10	2	1	0	13
Region III	21	12	4	1	38
Region IV	7	4	2	1	14
NRR	0	0	0	0	0
NMSS	0	0	6	0	6
NSIR	0	0	0	0	0
OE	1	1	0	1	3
Total:	70	24	17	3	114

**Figure 4. CY 2005 Escalated Enforcement Actions
By Region and Program Office**

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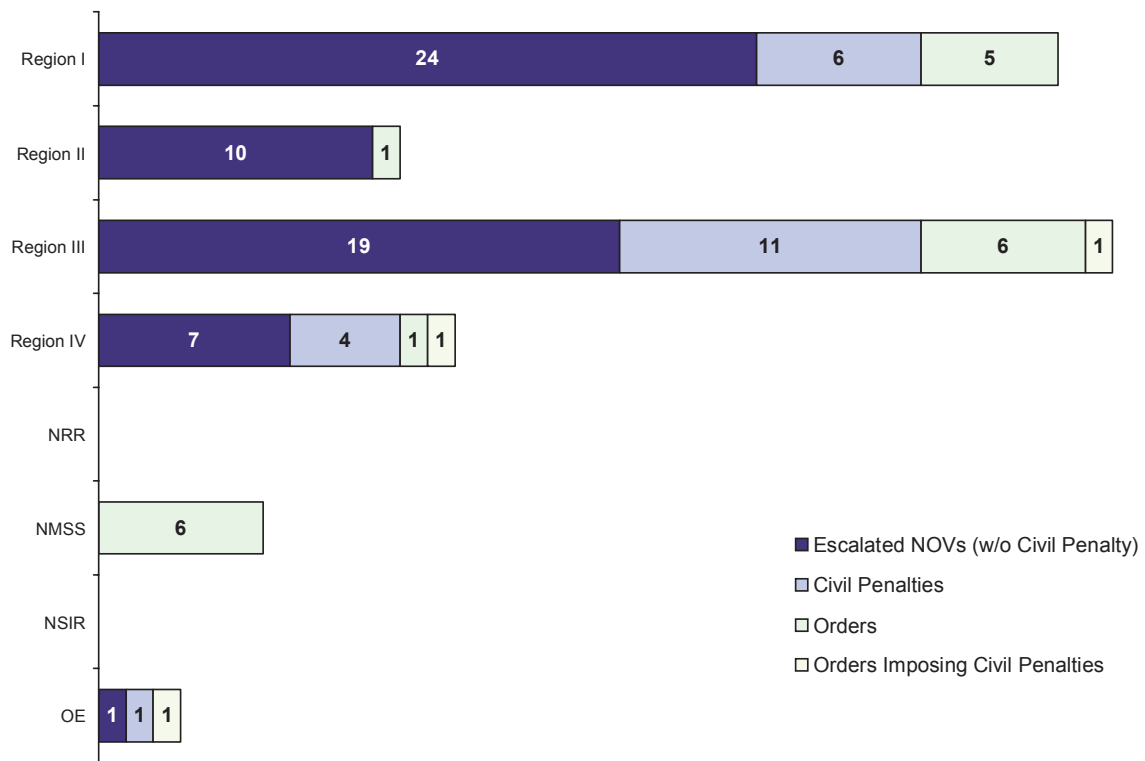


**Table 4. FY 2005 Escalated Enforcement Actions
By Region and Program Office**

Program Office	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalties	Total FY 2005
Region I	24	6	5	0	35
Region II	10	0	1	0	11
Region III	19	11	6	1	37
Region IV	7	4	1	1	13
NRR	0	0	0	0	0
NMSS	0	0	6	0	6
NSIR	0	0	0	0	0
OE	1	1	0	1	3
Total:	61	22	19	3	105

**Figure 5. FY 2005 Escalated Enforcement Actions
By Region and Program Office**

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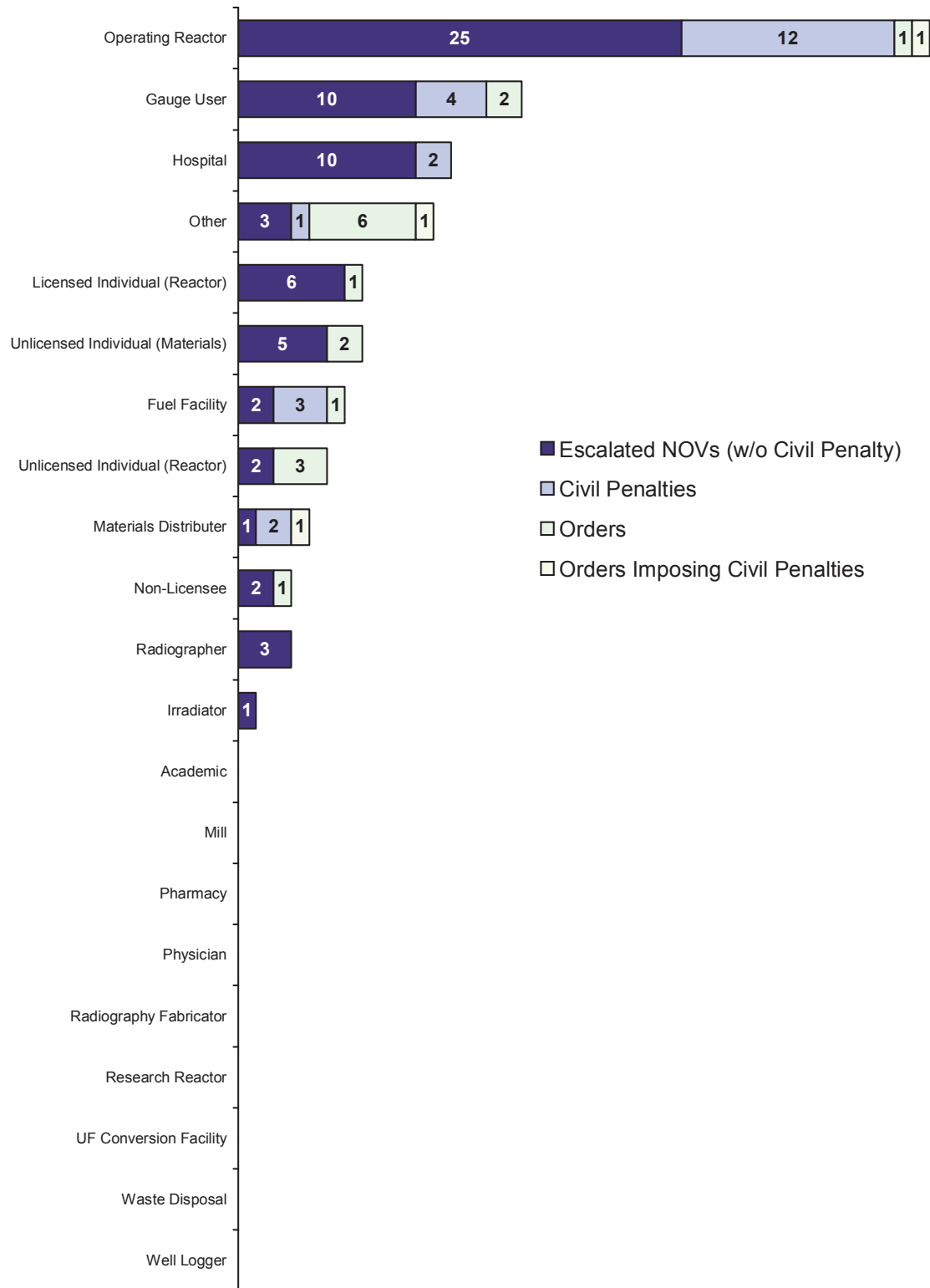


**Table 5. CY 2005 Escalated Enforcement Actions
By Type of Licensee, Non-Licensee, or Individual**

Type of Licensee	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalties	Total CY 2005
Operating Reactor	25	12	1	1	39
Gauge User	10	4	2	0	16
Hospital	10	2	0	0	12
Other	3	1	6	1	11
Licensed Individual (Reactor)	6	0	1	0	7
Unlicensed Individual (Materials)	5	0	2	0	7
Fuel Facility	2	3	1	0	6
Unlicensed Individual (Reactor)	2	0	3	0	5
Materials Distributer	1	2	0	1	4
Non-Licensee	2	0	1	0	3
Radiographer	3	0	0	0	3
Irradiator	1	0	0	0	1
Academic	0	0	0	0	0
Mill	0	0	0	0	0
Pharmacy	0	0	0	0	0
Physician	0	0	0	0	0
Radiography Fabricator	0	0	0	0	0
Research Reactor	0	0	0	0	0
UF Conversion Facility	0	0	0	0	0
Waste Disposal	0	0	0	0	0
Well Logger	0	0	0	0	0
Total	70	24	17	3	114

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**Figure 6. CY 2005 Escalated Enforcement Actions
By Type of Licensee, Non-Licensee, or Individual**



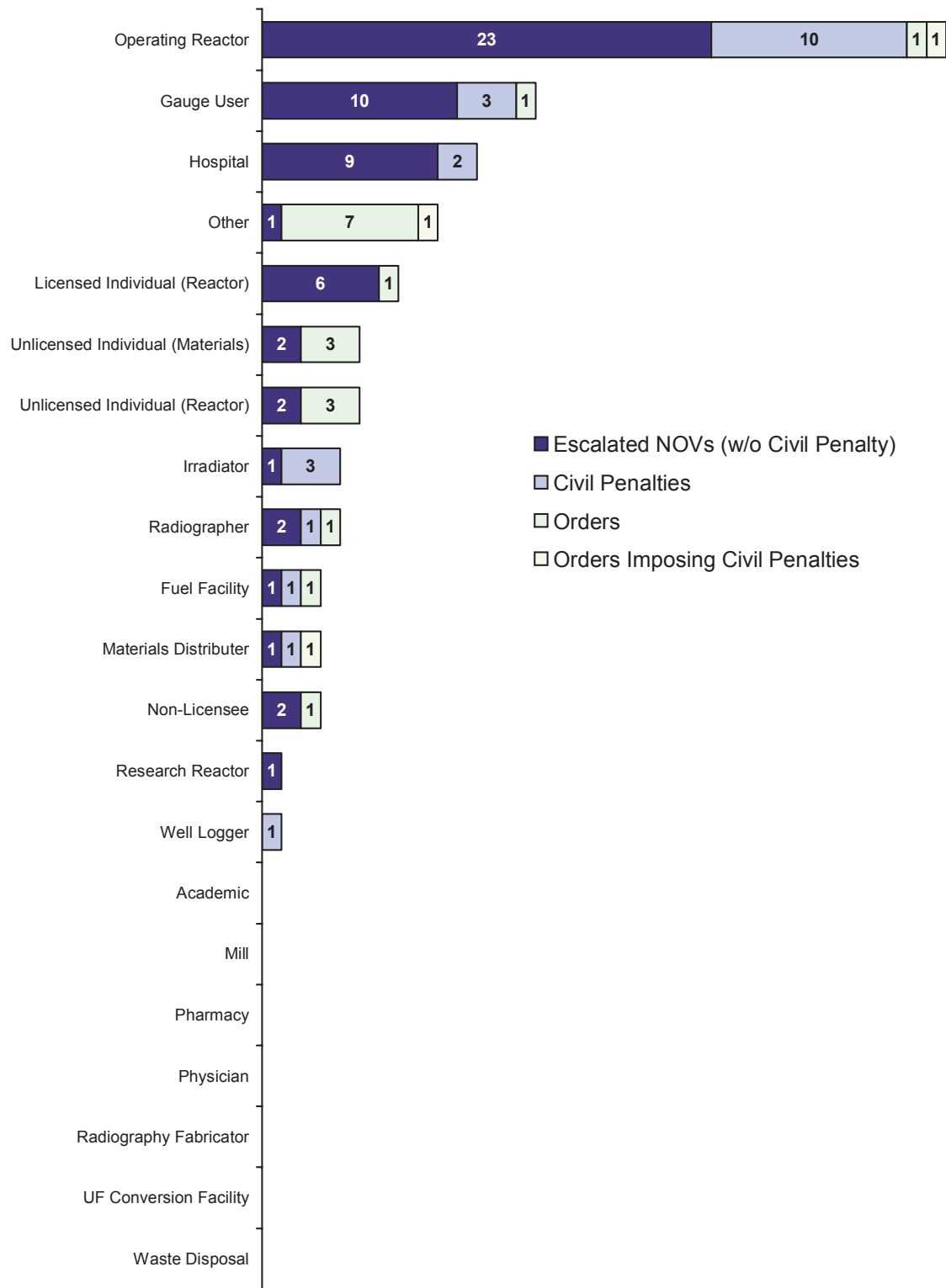
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**Table 6. FY 2005 Escalated Enforcement Actions
By Type of Licensee, Non-Licensee, or Individual**

Type of Licensee	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalties	Total FY 2005
Operating Reactor	23	10	1	1	35
Gauge User	10	3	1	0	14
Hospital	9	2	0	0	11
Other	1	0	7	1	9
Licensed Individual (Reactor)	6	0	1	0	7
Unlicensed Individual (Materials)	2	0	3	0	5
Unlicensed Individual (Reactor)	2	0	3	0	5
Irradiator	1	3	0	0	4
Radiographer	2	1	1	0	4
Fuel Facility	1	1	1	0	3
Materials Distributer	1	1	0	1	3
Non-Licensee	2	0	1	0	3
Research Reactor	1	0	0	0	1
Well Logger	0	1	0	0	1
Academic	0	0	0	0	0
Mill	0	0	0	0	0
Pharmacy	0	0	0	0	0
Physician	0	0	0	0	0
Radiography Fabricator	0	0	0	0	0
UF Conversion Facility	0	0	0	0	0
Waste Disposal	0	0	0	0	0
Total	61	22	19	3	105

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**Figure 7. FY 2005 Escalated Enforcement Actions
By Type of Licensee, Non-Licensee, or Individual**



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APPENDIX A: SUMMARY OF ESCALATED NOTICES OF VIOLATION WITHOUT CIVIL PENALTIES

***Allied Inspection Services, Inc.
St. Clair, Michigan***

EA-05-117

On August 11, 2005, a Notice of Violation was issued for a SLIII problem involving (1) the failure to conduct a radiation survey of all accessible surfaces of a radiographic exposure device and the full length of the guide tube after an exposure to determine that the sealed source had returned to its shielded position; and (2) the failure to fully retract the source into the exposure device after completion of the exposure.

***AmerGen Energy Company, LLC
Oyster Creek***

EA-04-213

On March 1, 2005, a Notice of Violation was issued for violations associated with a White SDP finding involving untimely actions to change an Emergency Action Level threshold value used to declare a General Emergency or a Site Area Emergency and revise supporting emergency procedures. The violations cited the licensee's failure to maintain an emergency classification and action level scheme and the failure to properly implement the configuration change process in accordance with the Technical Specifications.

***AmerGen Energy Company, LLC
Three Mile Island, Unit 1***

EA-05-100

On July 29, 2005, a Notice of Violation was issued for violations associated with a White SDP finding involving the licensee's Emergency Response Organization (ERO). During the time frame specified in the licensee's Emergency Plan, approximately 50 percent of the ERO, including key responders, did not receive the required annual radiological response classroom retraining necessary to maintain familiarity with their specific emergency response duties. This resulted in some key ERO positions not being filled by qualified ERO members in accordance with the licensee's Emergency Plan requirements. The violations cited the licensee's failure to provide the required radiological emergency response training to those who may be called on to assist in an emergency.

***American Engineering Testing, Inc.
St. Paul, Minnesota***

EA-05-161

On October 20, 2005, a Notice of Violation was issued for a Severity Level III problem involving (1) the failure to maintain continuous direct visual surveillance to protect against unauthorized entry into a high radiation area during a radiographic exposure at a field location; and (2) the failure to conduct a survey of the radiographic exposure device and guide tube after an exposure and before approaching the device and guide tube to ensure that the sealed source had returned to its shielded position.

**Arizona Public Service Company
Palo Verde****EA-04-221**

On April 8, 2005, a Notice of Violation was issued for a violation associated with a Yellow SDP finding involving a failure to maintain portions of the emergency core cooling system (ECCS) filled with water in accordance with design control requirements. The violation cited the licensee's failure to establish adequate design control measures to assure that the design basis for the ECCS was appropriately translated into specifications, procedures, and instructions.

**Arizona Public Service Company
Palo Verde****EA-05-037**

On June 27, 2005, a Notice of Violation was issued for a violation of 10 CFR 50.54(q). Specifically, the licensee made an emergency plan change that decreased the plan's effectiveness, and did so without prior NRC approval. This violation was assessed in accordance with the NRC Enforcement Policy because making this plan change without NRC approval impacted the regulatory process.

**Crozer-Chester Medical Center
Upland, Pennsylvania****EA-05-164**

On October 28, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or access and or maintain constant surveillance of licensed material that was stored in a controlled or unrestricted area. Specifically, an HDR unit was left unsecured and unattended in the HDR treatment room.

**Danville Regional Medical Center
Danville, Virginia****EA-05-201**

On December 13, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or access and/or maintain constant surveillance of licensed material that was stored in a controlled or unrestricted area. Specifically, a High Dose Rate Remote Afterloader (HDR) unit was left unsecured and unattended in the HDR treatment room.

**David Blackmore & Associates
Pottstown, Pennsylvania****EA-05-092**

On June 27, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material in a portable gauge containing approximately 10 millicuries of cesium-137 and 50 millicuries of americium-241, that was damaged when it was run over by a bulldozer after an authorized gauge operator left it unattended for approximately 10 minutes at a job site.

**Dominion Geotechnical Services, Inc.
Fredericksburg, Virginia****EA-04-165**

On October 14, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material (9 millicuries of

cesium-137 and 44 millicuries of americium-241 contained in a moisture density gauge) that was in an unrestricted area that was not in storage.

***Duke Energy Corporation
Catawba Units 1 and 2***

EA-04-189

On January 24, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to provide complete and accurate information involving a proposed amendment to allow the radiation of four mixed oxide lead test assemblies.

***Engineering Consulting Services
Chantilly, Virginia***

EA-05-005

On February 1, 2005, a Notice of Violation was issued for a Severity level III violation involving three instances where the licensee failed to secure, control or maintain constant surveillance of portable nuclear gauges containing NRC licensed material, in unrestricted areas at temporary job sites where the gauges were damaged by construction vehicles.

***Engineering Consulting Services
Chantilly, Virginia***

EA-05-078

On September 8, 2005, a Notice of Violation for a Severity Level III violation was issued for a violation involving the improper sale and transfer of a portable gauging device containing licensed material.

***Entergy Nuclear Operations, Inc.
Indian Point Nuclear, Unit 2***

EA-05-102

On August 1, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving leakage of water from a safety injection accumulator which contained absorbed nitrogen gas. The licensee's evaluation and correction of this condition adverse to quality was inadequate. The violation cited the licensee's failure to (1) recognize the potential for nitrogen gas intrusion into the safety injection system and the resultant potential challenge to safety injection pump operation; and (2) adequately assess industry operating experience related to safety injection accumulator back leakage.

***Entergy Nuclear Operations, Inc.
Vermont Yankee***

EA-04-173

On February 2, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to issue tone alert radios to the entire populace within the emergency planning zone (EPZ). The violation cited the licensee's failure to follow its emergency plan to establish the means to provide early notification and clear instruction to the populace within the plume exposure pathway EPZ.

***Entergy Nuclear Operations, Inc.
Vermont Yankee***

EA-04-174

On June 22, 2005, a Notice of Violation was issued for a Severity Level III violation of 10 CFR 74.19 (a)(1), (b), and (c) [formerly 10 CFR 70.51 (b), (c) and (d)], citing the licensee's failure,

between January 1980 and July 13, 2004, to ensure that two irradiated fuel rods were in the spent fuel pool as detailed in the licensee's inventory. The licensee also failed to conduct adequate inventories of the location of the two fuel pieces.

***Exelon Generation Company
Byron 1 and 2***

EA-05-159

On October 27, 2005, a Notice of Violation was issued for a Severity Level III problem involving violations of the Byron Station Technical Specifications. Specifically, an engineer engaged in deliberate misconduct when he failed to perform assigned surveillance of ventilation systems and falsified the records to show the surveillance as completed, a violation of 10 CFR 50.9, "Completeness and Accuracy of Information."

***Exelon Nuclear
LaSalle County Station Units 1 & 2***

EA-05-103

On September 7, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving a single point vulnerability that could result in a loss of all onsite and offsite power sources to both 4160 Vac Division 1 and Division 2 safety-related buses at either of the LaSalle County Station units. The violation cited the licensee's failure to assure that applicable regulatory requirements and the design basis for safety-related systems were correctly maintained and controlled in accordance with the applicable standards, when the licensee made modifications to the emergency diesel generator (EDG) output circuit breakers.

***FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station***

EA-03-025

On April 21, 2005, a Notice of Violation was issued for a violation associated with a Red SDP finding (See, Appendix B, FirstEnergy Nuclear Operating, EA-05-068; EA-05-066; EA-05-067; EA-05-072)

***FirstEnergy Nuclear Operating Company
Perry Nuclear Power Plant***

EA-04-214

On March 29, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to follow the requirements of the Perry Emergency Plan during an event that was classified at the Alert level. The violation cited the licensee's failure to properly implement the required standard emergency classification and action level scheme.

***Florida Power Corporation
Crystal River Nuclear Plant***

EA-05-114

On September 21, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving unprotected post-fire safe shutdown cables and related non-feasible local manual operations actions. The violation cited the licensee's failure to ensure that one of the redundant trains of systems necessary to achieve and maintain hot shutdown conditions would be free of fire damage via one of the three means specified in 10 CFR Part 50, Appendix R, Section III.G.2.

Froehling and Robertson, Inc.

EA-05-132

Richmond, Virginia

On July 12, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure, control or maintain constant surveillance of a portable nuclear gauge containing NRC licensed material in an unrestricted area while it was not in storage.

Geo-Engineering & Testing, Inc.
Tamuning, Guam

EA-05-108

On September 12, 2005, a Notice of Violation was issued for a Severity Level III violation involving a failure to maintain security of NRC-licensed material. Specifically, the licensee failed to control and maintain constant surveillance of two portable nuclear gauges containing licensed material that were stored in a shed that was unsecured on property controlled by the licensee.

Good Samaritan Regional Medical Center
Pottsville, Pennsylvania

EA-04-234

On March 31, 2005, a Notice of Violation was issued for a Severity Level III problem involving twelve violations indicating a lack of appropriate oversight and control of the brachytherapy program, including a programmatic weakness in the implementation of written directives.

Harsco Corporation
Butler, Pennsylvania

EA-05-121

On August 15, 2005, a Notice of Violation (NOV) was issued for a Severity Level III violation involving the licensee's failure to appoint a new Radiation Safety Officer (RSO) when the previous RSO left the company. Three additional violations which were not considered for escalated enforcement, were discussed in the NOV.

Hershey Medical Center
Hershey, Pennsylvania

EA-04-215

On October 14, 2005, as part of a settlement agreement reached as a result of an Alternative Dispute Resolution session, held at the request of the licensee, a Notice of Violation for a Severity Level III violation was issued.

Holland Community Hospital
Holland, Michigan

EA-5-082

On June 9, 2005, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to secure from unauthorized removal, limit access to, or maintain constant surveillance of radioactive materials.

Lake Region Hospital and Nursing Home
Fergus Falls, Minnesota

EA-04-220

On January 13, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to, or maintain constant surveillance of licensed material located in the nuclear medicine hot lab, a controlled area.

**Lancaster General Hospital
Lancaster, Pennsylvania****EA-05-124**

On October 28, 2005, a Notice of Violation was issued for a Severity Level III problem composed of three violations. The violations involved (1) a programmatic weakness in the licensee's gamma knife stereotactic radiosurgery program which resulted in an overexposure to a patient; (2) the licensee's failure to notify the NRC that the frame of the gamma knife unit, a basic component designed to prevent movement of the head during treatment, did not prevent the change of the treatment site coordinates; and (3) the licensee's failure to report the medical event within the required period.

**Mallinckrodt, Inc.
St. Louis, Missouri****EA-05-105**

On August 25, 2005, a Notice of Violation was issued for a Severity Level III violation involving the licensee's deliberate failure to perform radiation contamination and ambient exposure surveys of a molybdenum-99/ technetium-99m generator prior to servicing the generator, contrary to the requirements in 10 CFR 20.1501 (which require, in part, that the licensee control the annual occupational dose to individual adults), resulting in the contamination of two individuals.

**Materials Testing Incorporated
Milford, Connecticut****EA-05-003**

On January 24, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure, control or maintain constant surveillance of licensed material in a nuclear gauge.

**MISTRAS Holding Group
Carol Stream, Illinois****EA-05-120**

On August 17, 2005, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to secure from unauthorized removal or limit access to NRC-licensed material in a radiographic exposure device at a temporary job site, an unrestricted area, or to control and maintain constant surveillance of this licensed material.

**Mountainside Hospital
Montclair, New Jersey****EA-05-158**

On September 21, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to maintain constant surveillance and control of a nuclear imaging camera containing NRC licensed material while in transit. Specifically, the licensee shipped a Siemens Model ECAM without removing the sealed sources from their protective housings inside the camera prior to shipment. The licensee identified the violation while the camera was in transit and had the camera returned.

**Nuclear Fuel Services
Erwin, Tennessee****EA-04-197**

On May 23, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure of an operator to lock a process waste collection discharge valve in the closed position after a process waste collection tank transfer operation and the failure of another operator to verify that the same valve was shut prior to recirculating the tank.

Nuclear Management Company, LLC
Kewaunee

EA-05-021

On May 5, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving the licensee's inability to rapidly close the containment equipment hatch during cold shutdown conditions due to an interference. The violation cited the inadequate design of the rail system that was installed in the containment to facilitate the reactor vessel head replacement activities and the licensee's failure to have adequate procedures with specific instructions for rapid removal of the interior rail to allow expeditious hatch closure.

Nuclear Management Corporation, LLC
Kewaunee

EA-05-157

On September 16, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving the licensee's failure to implement design control measures to verify and check the adequacy of the auxiliary feedwater (AFW) system design to mitigate all postulated accidents. Specifically, the AFW pump discharge pressure trip switches would not have protected the AFW pumps from air ingestion during natural events such as a tornado and seismic events. In addition, the AFW system design would not have protected the pumps from "runout" conditions that may be encountered during other design and license basis scenarios.

Nuclear Management Company, LLC
Kewaunee

EA-05-176

On December 21, 2005, a Notice of Violation was issued for a violation associated with a Yellow SDP finding involving the licensee's failure to ensure that the safety-related function of the auxiliary feedwater pumps, the 480 volt safeguards buses, the safe shutdown panel, the emergency diesel generators, and the 4160 volt safeguards buses, each Class 1 systems or components, would be protected from serious flooding or excessive steam releases as a result of random or seismically induced failures of non-Class 1 systems in the turbine building. The violation cited the licensee's failure to implement design control measures as specified in 10 CFR Part 50, Appendix, B, Criterion III, "Design Control".

Nuclear Management Company, LLC
Point Beach Nuclear Plants, Units 1 and 2

EA-05-192

On December 16, 2005, a Notice of Violation was issued for a violation associated with a White Significance Determination Process (SDP) finding. The violation of 10 CFR 50.47 associated with a White finding involved the licensee's failure to self-identify the untimely declaration of an Alert classification during an August 2002 emergency preparedness (EP) drill.

**Omaha Public Power Service
Fort Calhoun****EA-05-038**

On April 15, 20205, a Notice of Violation was issued for a violation associated with a White SDP finding a violation of 10 CFR Part 50, Appendix B, Criterion XVI and Fort Calhoun Technical Specification 2.7(1). Specifically, the licensee failed to investigate a drop in diesel generator output voltage at the conclusion of a surveillance test. In addition, the licensee failed to properly respond to an Emergency Facility Computer System alarm that annunciated for low diesel generator output voltage when the diesel generator output breaker was opened.

**Rozell Testing Laboratories, LLC
Branson, Missouri****EA-04-237**

On March 4, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal, limit access to, or maintain constant surveillance of licensed material in a moisture density gauge.

**Safety Light Corporation
Bloomsburg, Pennsylvania****EA-03-219**

On November 18, 2005, a Notice of Violation was issued as part of the terms of a settlement agreement reached between the Safety Light Corporation (SLC), the Pennsylvania Department of Environmental Protection, and the Nuclear Regulatory Commission. The NOV was issued for a Severity Level III problem involving: (1) the willful failure to make payments to the decommissioning trust fund in accordance with the schedules defined in SLC's license conditions; and (2) the failure to dispose of pre-2000 tritium wastes in accordance with SLC's license conditions.

**Southern Nuclear Operating Company, Inc.
Hatch Nuclear Plant****EA-05-134**

On September 19, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving the removal of the Technical Support Center from service for more than 7 days which represented a loss of a planning standard function. The violation cited the licensee's failure to provide and maintain facilities and equipment to support emergency response, pursuant to 10 CFR 50.54(q) and 10 CFR 50.47(b)(8).

**St. John's Mercy Medical Center
St. Louis, Missouri****EA-05-107**

On August 25, 2005, a Notice of Violation was issued for a Severity Level III problem involving a violation of NRC regulations and the licensee's license conditions. Specifically, the NOV cited: (1) the licensee's administration of a dosage in excess of 30 microcuries and more than 20 percent different from the prescribed dose, to an infant; and (2) the licensee's failure to check the patient's name and identification number and the prescribed radionuclide, chemical form, and dosage before administering the dosage to the patient.

**St. Joseph Mercy Health Systems
Ann Arbor, Michigan****EA-04-166**

On December 6, 2004, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to secure from unauthorized removal or limit access to licensed material located in the radiation oncology hot lab, a controlled area.

Tennessee Valley Authority
Sequoyah

EA-04-223

On January 26, 2005, a Notice of Violation was issued for a violation associated with a White finding involving binding problems with the breaker mechanism operated cell slide assembly for the 1A Residual Heat Removal pump. The violation cited the licensee's failure to correct conditions adverse to quality based on the identification of binding problems during previous surveillance testing.

Tennessee Valley Authority
Watts Bar

EA-05-036

On April 11, 2005, a Notice of Violation was issued for a violation associated with a White SDP finding involving the licensee's failure to promptly identify and correct silt blockage of the essential raw cooling water line to the 1A-A centrifugal charging pump. The violation cited the licensee's failure to establish measures to assure that conditions adverse to quality, such as failures and malfunctions, are promptly identified and corrected, as required in 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Actions."

Triad Engineering, Inc.
Morgantown, West Virginia

EA-04-235

On February 24, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to verify that the receiver of a transferred portable gauge was authorized to receive it before shipping it to them.

University of Hawaii at Manoa
Honolulu, Hawaii

EA-04-194

On March 24, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to maintain security of licensed material.

University of Sciences
Philadelphia, Pennsylvania

EA-04-219

On December 21, 2004, Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material in three laboratories (384 microcuries of hydrogen, 41 microcuries of carbon-14, and 190 microcuries of iodine-125; 0.1 microcuries of hydrogen-3, 1.9 microcuries of carbon-14, and 0.3 microcuries of iodine-125; and 979 microcuries of hydrogen-3 and 176 microcuries of carbon-14) that was in an unrestricted area that was not in storage.

**University of Virginia
Charlottesville, Virginia****EA-04-149**

On October 5, 2004, a Notice of Violation was issued for a Severity Level III problem involving the failure to secure licensed material (iridium-192 seeds contained in a nylon ribbon) and the failure to perform an adequate survey of the patient and the patient's room.

**U.S. Department of Agriculture
Beltsville, Maryland****EA-05-004**

On January 28, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure, on three separate occasions, to secure, control or maintain constant surveillance of portable nuclear gauges containing NRC licensed material in unrestricted areas.

**U.S. Engineering Laboratories, Inc.
Rahway, New Jersey****EA-05-152**

On December 2, 2005, a Notice of Violation was issued for a Severity Level III violation involving the failure to maintain direct and constant surveillance of a portable gauge containing licensed material at a temporary job site, and to properly store a portable nuclear gauge at a different temporary job site.

**Washington Hospital Center
Washington, DC****EA-04-157**

On February 15, 2005, a Notice of Violation was issued for a willful Severity Level III violation involving the use of licensed radioactive material in humans by an individual who was not an authorized user and who was not under the supervision of an authorized user.

APPENDIX B: CIVIL PENALTY ACTIONS

**Arizona Public Service Company
Palo Verde**

EA-05-051

On April 8, 2005, a Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$50,000 was issued for a Severity Level III violation involving the licensee's failure to perform a written safety evaluation and obtain Commission approval prior to making a procedural change which resulted in a change to the facility as described in the Updated Final Safety Analysis Report that increased the probability of a malfunction of equipment important to safety previously evaluated in the safety analysis report.

**Boone Hospital Center
Columbia, MO**

EA-05-127

On September 2, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of iodine-125 in a controlled area. Specifically, a cartridge containing iodine-125 seeds was transferred to an unauthorized and untrained licensee employee who subsequently transferred the cartridge to a second unauthorized and untrained licensee employee who opened the cartridge and inadvertently lost control of some of the seeds.

**Craig Testing
Mays Landing, New Jersey**

EA-05-109

On August 5, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem involving the (1) failure to control and maintain constant surveillance of a portable gauge, (2) failure to lock the portable gauge and its transportation case during transport, and (3) failure to comply with the applicable requirements of the Department of Transportation regulations.

**Engineering Consulting Services
Chantilly, Virginia**

EA-05-079

On September 8, 2005, a Notice of Violation (NOV) and Proposed Imposition of a Civil Penalty in the amount of \$3,250 was issued. The NOV cited two Severity Level III violations, both of which involved the transfer of licensed material in portable gauging devices to an individual not authorized to receive or possess byproduct material. The first violation (See, EA-05-078 in Appendix A) involved the improper sale and transfer of a portable gauging device containing licensed material from the licensees Richmond facility. The second violation, which resulted in the imposition of a civil penalty, involved the willful transfer of several portable gauges containing licensed material from the licensee's Chantilly facility to the same individual.

**Entergy Nuclear Operations, Inc.
Pilgrim**

EA-05-039

On July 14, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the base amount of \$60,000 for a Severity Level III problem consisting of three violations was issued.

The violations involved the failure of the Control Room Supervisor (CRS), the Reactor Operator (RO), and the Shift Manager (SM) to follow the requirements in 10 CFR 26.20 and procedures in Technical Specification 5.4.1. The violations cited: (1) the CRS being asleep, and therefore, not in a condition to respond to plant conditions or emergencies (Violation A); (2) the RO observing the CRS asleep, but failing to take immediate actions to awaken the CRS, inform appropriate site personnel, and initiate a CR (Violation B.1) and the SM failing to inform appropriate site personnel and initiate a CR (Violation B.2); and (3) the CRS not being relieved of duty and for-cause FFD tested (Violation C).

**FirstEnergy Nuclear Operating Co.
Davis Besse**

**EA-05-068; EA-05-066;
EA-05-067; EA-05-071;
EA-05-072**

On April 21, 2005, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$5,450,000 was issued for multiple violations (some willful) related to the significant degradation of the reactor pressure vessel head identified in February and March 2002. The significant violations included, (1) operation with reactor coolant system pressure boundary leakage (associated with a Red SDP finding, \$5,000,000), (2) failure to provide complete and accurate information (Severity Level I, \$110,000), (3) failure to promptly identify and correct a significant condition adverse to quality (Severity Level II, \$110,000), (4) failure to implement procedures (Severity Level II, \$110,000), (5) failure to provide complete and accurate information (Severity Level I, \$120,000), (6) failure to promptly identify and correct a significant condition adverse to quality (associated with a Red SDP finding), (7) failure to implement procedures (associated with a Red SDP finding), and (8) failure to provide complete and accurate information (Severity Level III).

**FirstEnergy Nuclear Operating Company
Perry**

EA-01-083

On February 24, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$55,000 was issued for a Severity Level III violation involving discrimination by a licensee contractor, Williams Power Corporation, against contract workers at the Perry Nuclear Power Plant for engaging in protected activities. (See EA-01-082, EA-04-172 in Appendix E) [insert appendix.]

**Foundation Engineering Science, Inc.
Newport News, VA**

EA 05-146

On November 22, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem involving the failure to secure from unauthorized removal, or limit access to, a nuclear gauge located in a company vehicle parked in a public parking lot. As a result, a nuclear gauge was stolen, and remained uncontrolled in the public domain. In addition, the licensee did not immediately report the theft of the licensed material as required.

**High Mountain Inspection Service, Inc.
Mills, Wyoming**

EA-05-064

On July 22, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III problem consisting of two violations which occurred

when the licensee performed radiography at a temporary job site. Specifically, the radiographer was not accompanied by at least one other qualified radiographer or individual who had at a minimum met the requirements of 10 CFR 34.43(c) in order to be a radiographer's assistant; and, in addition, the licensee did not provide the second individual with the radiation monitoring equipment required by 10 CFR 34.47(a).

***Indiana Michigan Power Company
D.C. Cook Units 1 and 2***

EA-05-171

On November 23, 2005, a Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$60,000, was issued for a Severity Level III problem involving the licensee's failure to provide complete and accurate information, and meet reporting requirements regarding NRC-licensed operators at the D. C. Cook Nuclear Plant. Specifically, the licensee failed to: (1) provide complete and accurate information to the NRC concerning corrective actions associated with a previous Severity Level III violation (EA-04-109); (2) notify the NRC within 30 days of NRC-licensed operators experiencing a permanent disability or illness; and (3) provide complete and accurate information concerning the medical condition of individuals on new or renewal NRC reactor operator license applications.

***Integrated Production Services, Inc.
Broussard, Louisiana***

EA-04-124

On October 12, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the willful use of byproduct material in offshore waters without either (1) following the reciprocity provisions of 10 CFR 150.20, which would have granted the licensee an NRC general license to conduct activities permitted by its State of Louisiana license; or (2) obtaining a specific NRC license authorizing it to conduct licensed activities in offshore waters.

***Ledoux & Company, NJ
Teaneck, New Jersey***

EA-05-135

On November 1, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem involving the failures to adequately survey, secure and dispose of licensed material in accordance with NRC requirements. Specifically, the licensee received a package containing seven analytical samples of uranium-235, identified six of the seven samples shipped, and performed an unsuccessful cursory search for the seventh sample. After initiating a more thorough search, the licensee concluded that the seventh sample had been disposed of with the packaging as normal trash.

***Nuclear Management Company, LLC
Point Beach 1 and 2***

EA-05-191

On December 16, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for a Severity Level III violation of 10 CFR 50.9 involving the licensee's failure to provide accurate information to the NRC associated with a critique of an Emergency Preparedness drill.

***Pacific Gas and Electric Company
Humboldt Bay Power Plant, Unit 3******EA-05-166***

On December 20, 2005, a Severity Level II Notice of Violation, with a proposed \$96,000 Civil Penalty, was issued to the Pacific Gas and Electric Company as a result of the licensee's failure to: (1) keep adequate records of special nuclear material (SNM) inventory, transfer or disposal, (2) establish adequate procedures for control and accounting of SNM, and (3) conduct adequate physical inventories of SNM at the Humboldt Bay Power Plant (HBPP). PG&E's records failed to account for the whereabouts of three 18-inch fuel rod segments after they were cut from a single fuel rod in 1968. Likewise, PG&E's records failed to account for incore detectors after some were cut in 1973.

***St. Joseph Regional Medical Center - South Bend Campus
South Bend, Indiana******EA-05-128***

On September 23, 2005, a Notice of Violation and Proposed Imposition of Civil Penalties in the cumulative amount of \$19,200, was issued for three Severity Level II problems, one Severity Level II violation, and two Severity Level IV violations, associated with brachytherapy treatments that resulted in unintended radiation doses to five patients. Because these violations directly contributed to significant health consequences for Patients Nos. 3, 4, and 5, each of those three events is categorized as a separate Severity Level II problem in accordance with the NRC Enforcement Policy. In addition, the licensee became aware that three medical events had occurred and did not notify the NRC of the events until more than one day after the medical events were discovered, contrary to 10 CFR 35.3045(c) that requires licensees to notify the NRC Operations Center, by telephone, no later than the next calendar day after discovery of such events. The events associated with Patients Nos. 1 and 2 are categorized as separate examples of a Severity Level IV problem in accordance with the NRC Enforcement Policy due to the more limited health consequences associated with these medical events.

***Westinghouse Electric Company
Hematite Fuel Manufacturing Facility
Festus, Missouri******EA-05-104***

On August 25, 2005, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$16,250 was issued for a Severity Level III Problem consisting of two violations. The first violation involved the failure to incorporate a significant number of nuclear criticality safety evaluation controls into plant procedures prior to conducting operations involving fissile materials. The second violation involved the failure to determine the mass of fissile material in objects prior to placing the objects into nuclear criticality safety fissile material storage arrays. A Severity Level IV violation was also issued involving the failure to follow posted instructions established in accordance with the requirements of a nuclear criticality safety evaluation.

APPENDIX C: SUMMARY OF ACTIONS AGAINST LICENSED & UNLICENSED INDIVIDUALS

ORDERS

NRC-licensed Individuals

None.

Unlicensed Individuals

Joseph Guariglia

IA-05-007

On August 18, 2005, a Notice of Violation and an immediately effective Confirmatory Order were issued based on deliberate actions that compromised an unannounced fire drill. The Order established certain requirements that assure that this violation will not recur. The Order was discussed during Alternative Dispute Resolution during which it was agreed that the NRC would also issue a Notice of Violation without a specified severity level. Subject to satisfactory completion of the Order requirements, the NRC will not pursue further enforcement action on this issue.

Eddie Hoyle

IA-05-026

On September 9, 2005, an immediately effective Order Prohibiting Involvement in NRC-Licensed Activities was issued to the individual. As owner, President, and sole employee of Universal Calibrations, the individual deliberately took possession of several portable gauging devices containing licensed radioactive material without an NRC or Agreement State license to possess byproduct material. The Order is effective for 5 years from the date of issuance of the Order.

Stanley Pitts

IA-05-031

On August 2, 2005, an immediately effective Order Prohibiting Involvement in NRC-Licensed Activities (for five years) was issued to the individual based on his deliberate activities involving his possession of byproduct material without an NRC or an Agreement State license. The Order is effective for 5 years from the date of issuance of the Order. As a technician formerly employed by Professional Inspection and Testing Services, Inc., the individual maintained possession of a moisture density gauge without the licensee's knowledge.

Richard M. Probasco

IA-05-015

On July 14, 2005, a Letter of Reprimand and Confirmatory Order Modifying License (Effective Immediately) was issued to an individual addressing the individual's violation as Shift Manager at Entergy Nuclear Operation's Pilgrim Nuclear Power Station (Pilgrim), of NRC regulations, i.e., not properly documenting and informing management of his observation that a Control Room Supervisor (CRS) was inattentive to duty in the control room. The Order also confirmed commitments made by the individual as part of an ADR settlement agreement.

Christopher V. Roudebush**IA-04-019**

On December 30, 2004, an immediately effective Order Prohibiting Involvement in NRC-Licensed Activities (for five years) was issued based on the individual's deliberate misconduct while working at KTL Roudebush Testing. As the president, owner, and Radiation Safety Officer, the individual deliberately failed to: have sufficient number of qualified personnel present at temporary job sites; provide safety and dosimetry training to employees; conduct inspections and maintenance of industrial radiography equipment at specified intervals; maintain records of NRC required inspection and maintenance records; and provide complete and accurate information to the NRC.

Andrew Siemaszko**IA-05-021**

On April 21, 2005, an Order prohibiting involvement in NRC-licensed activities (for five years) from the effective date of the Order was issued to the individual based on his deliberate activities while employed at the Davis-Besse nuclear power plant. As a former system engineer, the individual deliberately provided inaccurate and incomplete information concerning the description of the efforts and results associated with removal of boric acid deposits from the reactor pressure vessel head.

Jack J. Spurling**IA-01-030**

On February 25, 2005, the NRC issued an Order Prohibiting Involvement in NRC-Licensed Activities (for three years) to Jack J. Spurling, former Site Superintendent for the Williams Power Corporation, a contractor at the Perry Nuclear Power Plant. Mr. Spurling deliberately provided materially inaccurate information to the NRC Office of Investigations during an interview and to the NRC staff during a predecisional enforcement conference in violation of 10 CFR 50.5(a)(2).

NOTICES OF VIOLATION (NOVS)**NRC-licensed Individuals****Thomas Czymek****IA-05-009**

On February 23, 2005, a Notice of Violation was issued for a Severity Level III violation based on violation of NRC requirements governing fitness-for-duty as a licensed operator and shift manager at the Oyster Creek nuclear facility.

William J. Joyce**IA-05-014**

On July 14, 2005, a Notice of Violation was issued for a Severity Level III violation involving an individual's deliberate activities while employed at Entergy Nuclear Operation's Pilgrim Nuclear Power Station (Pilgrim). As a Reactor Operator (RO), the individual failed to take immediate action to awaken a sleeping Control Room Supervisor, notify the Shift Manager, and write a Condition Report, as required by Pilgrim procedure ENN-LI-102, "Corrective Action Process." The violation was deliberate because the RO had knowledge of the procedural requirements, and despite such knowledge, did not take the required actions. In addition, the individual's actions caused Entergy to be in violation of Technical Specification 5.4.1, which requires certain written procedures including ENN-LI-102. For that reason, the individual also violated

10 CFR 50.5 "Deliberate Misconduct.

Jeffrey E. Miller

IA-05-016

On March 16, 2005, a Notice of Violation was issued for a Severity Level III violation based on violation of NRC requirements governing fitness-for-duty as a licensed operator at the Salem nuclear facility.

Franklin D. Peterson

IA-04-022

On October 1, 2004, a Notice of Violation was issued for a Severity Level III problem based on violation of NRC requirements governing fitness-for-duty as a licensed operator at the Fermi nuclear facility.

Raymond C. Restani, II

IA-05-062

On November 16, 2005, a Notice of Violation was issued for a Severity Level III violation based on violation of NRC requirements governing fitness-for-duty as a licensed operator at the Nine Mile Point Unit-1 nuclear facility.

Unlicensed Individuals

Ralph Black

IA-05-030

On November 22, 2005, a Notice of Violation was issued for a Severity Level III violation based on a violation of NRC requirements in 10 CFR 30.10, "Deliberate Misconduct," that caused the employer, Foundation Engineering Science, Inc., to be in violation of NRC requirements. Specifically, the individual deliberately failed to secure from unauthorized removal or limit access to a nuclear gauge that was subsequently stolen, and failed to promptly report the theft to his employer.

Timothy R. Devik

IA-05-013

On July 14, 2005, a Notice of Violation was issued for a Severity Level III violation involving an individual's inattentiveness to duty as the Control Room Supervisor while employed at Entergy's Nuclear Operation's Pilgrim Nuclear Power Station (Pilgrim), in that the individual was asleep in a chair in the control room, and therefore, not in a condition to appropriately respond to plant conditions or emergencies. This condition was prohibited by Pilgrim Procedure 1.3.34, "Conduct of Operations," and also constituted a violation of the individual's NRC license.

Lawrence Dioh

IA-04-023

On February 15, 2005, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at the Washington Hospital Center. As a Nuclear Medicine Technologist, the individual knowingly used licensed radioactive material without the knowledge and approval of a physician or authorized user.

Shirley A. Knisely

IA-05-035

A Notice of Violation was issued on October 14, 2005, for a Severity Level III violation of

10 CFR 30.10 and 10 CFR 35.27(a) involving deliberate misconduct that caused an NRC licensee to be in violation of a Commission regulation. Specifically, on April 29, 2004, a Nuclear Medicine Technologist at Milton S. Hershey Hospital Center was deliberately injected with a diagnostic dosage of technetium-99m, for the purpose of performing a brain scan, without the knowledge and approval of a physician or authorized user, knowing that this action was a violation of NRC requirements.

Matthew A. Loeffert

IA-05-036

A Notice of Violation was issued on October 14, 2005, for a Severity Level III violation of 10 CFR 30.10 and 10 CFR 35.27(a) involving deliberate misconduct that caused an NRC licensee to be in violation of a Commission regulation. Specifically, in October 2002, a Nuclear Medicine Technologist at Milton S. Hershey Hospital Center, was deliberately injected with a diagnostic dosage of technetium-99m, for the purpose of performing a bone scan, without the knowledge and approval of a physician or authorized user, knowing that this action was a violation of NRC requirements.

James H. Moy, Ph.D.

IA-04-030

On March 24, 2005, a Notice of Violation was issued for a Severity Level III violation involving the willful violation of the facility's Standard Operating Procedures. The individual failed to maintain security of licensed material by leaving the building after disabling the combination to the lock on the irradiator room door of the Food Technology Building, University of Hawaii at Manoa.

John Myers

IA-05-042

On September 9, 2005, an immediately effective Order Prohibiting Involvement in NRC-Licensed Activities was issued based on the individual's deliberate activities involving his possession of byproduct material without an NRC or an Agreement State license. As owner, President, and sole employee of Universal Calibrations, the individual deliberately took possession of several portable gauging devices containing licensed radioactive material without a NRC or Agreement State license to possess byproduct material. The Order is effective for 5 years from the date of issuance of the Order.

Robert M. Nelson

IA-05-044

On September 30, 2005, a Notice of Violation was issued for a Severity Level III violation involving 10 CFR 50.5, "Deliberate Misconduct." Specifically, the individual attempted to gain authorization for a vehicle and equipment access to a protected area by impersonating his supervisor at the Callaway nuclear facility.

DEMANDS FOR INFORMATION (DFIS)

NRC-licensed Individuals

None.

Unlicensed Individuals

None.

OTHER ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

NRC-licensed Individuals

None

Unlicensed Individuals

Jennifer M. Brauss

IA-05-004

On March 9, 2005, a letter was issued indicating that the NRC would not take enforcement action against an auxiliary operator, notwithstanding the NRC's determination that a violation of 10 CFR 50.5, "Deliberate misconduct," occurred when a required surveillance of safety-related equipment was not completed and inaccurate information about the surveillance was provided to the licensee at the Palisades nuclear facility.

Jeffrey E. Casey

IA05-005

On March 9, 2005, a letter was issued indicating that the NRC would not take enforcement action against an auxiliary operator, notwithstanding the NRC's determination that a violation of 10 CFR 50.5, "Deliberate misconduct," occurred when a required surveillance of safety-related equipment was not completed and inaccurate information about the surveillance was provided to the licensee at the Palisades nuclear facility.

William Yarosz

IA-05-060

On December 16, 2005, a letter was issued to the individual documenting the NRC's conclusion that he deliberately violated NRC requirements by providing inaccurate information regarding an Emergency Preparedness drill at the Point Beach Nuclear Plant. The letter also documented that the individual appeared in U.S. District Court and entered a plea of guilty to knowingly making and delivering a writing to the NRC that contained false statements, a misdemeanor. Because the individual was convicted in Federal court and the terms of his probation prohibit him from engaging in NRC-licensed activities, the NRC did not issue an enforcement action to the individual.

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APPENDIX D: SUMMARY OF ORDERS AND IMPOSITIONS

IMPOSITION OF CIVIL PENALTY ORDERS

Soil Consultants, Inc.
Manassas, Virginia

EA-04-103

On January, 27, 2005, the NRC issued an Order Imposing Civil Monetary Penalty in the amount of \$9,600. The action was based on an October 6, 2004, Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$9,600 action issued for a Severity Level II violation for discrimination against an employee for engaging in certain protected activities (reporting safety concerns to his employer or to the NRC).

In its response, Soil Consultants, Inc. (SCI) denied that a violation had occurred. After considering SCI's response, the NRC concluded that a violation occurred and that SCI had not provided an adequate basis for withdrawing the violation, reducing the severity level, or mitigating or reducing the civil penalty.

An Alternative Dispute Resolution session was held on March 16, 2005, resulting in a settlement and a Confirmatory Order that contained certain conditions and reduced the civil penalty to \$1,200.

CONFIRMATORY, MODIFICATION, SUSPENSION, AND CEASE AND DESIST ORDERS

Baxter Healthcare Corporation
Aibonito, Puerto Rico

EA-04-118; EA-004-208; EA-04-209

On January 26, 2005, the NRC issued an immediately effective Confirmatory Order to confirm commitments made as part of a settlement agreement concerning a Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$44,400 (Notice) issued on October 25, 2004. The action was issued for two willful Severity Level II violations (assessed \$28,800 for three occurrences of failure to adhere to emergency procedures and \$9,600 for failure to perform an adequate survey) and a willful Severity Level III violation (\$6,000 for failure to provide an individual radiation monitoring device) related to an event involving personnel entering an irradiator when the source was stuck in an unshielded position. In response to that Notice, Baxter requested the use of Alternative Dispute Resolution to resolve differences it had with the NRC concerning the Notice. As part of the settlement agreement, Baxter agreed to characterize the three violations as a one Severity Level II problem, pay a civil penalty in the amount of \$31,200, and take additional corrective action. Baxter and the NRC also agreed to disagree on the willful characterization of the third violation.

Exelon Generating Company, LLC
LaSalle

EA-04-170

On May 20, 2005, the NRC issued a Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$60,000 for a willful violation involving four contract employees who violated radiation protection procedures associated with entry into high radiation areas. On May 12, 2005, Exelon informed the NRC of its intent to appeal this enforcement action using the alternative dispute resolution (ADR) process as a means to obtain resolution. As part of the

ADR settlement agreement, Exelon agreed that a willful violation occurred as documented in the May 20, 2005, Notice of Violation and committed to implement numerous comprehensive short-term and long-term corrective actions. Based on the expectation that Exelon will satisfactorily implement these corrective actions, the NRC agreed to reclassify the violation at Severity Level IV, to reduce the CP to \$10,000, and to not consider the violation as part of the civil penalty assessment process (NRC Enforcement Policy, Section VI.C.2) should the NRC consider future enforcement actions against LaSalle. A Confirmatory Order confirming commitments reached as part of an ADR mediation settlement agreement was issued to Exelon on November 22, 2005.

***Hershey Medical Center
Hershey, Pa***

EA-04-215

On October 14, 2005, an immediately effective Confirmatory Order was issued to confirm commitments made as part of a settlement agreement concerning three separate occasions where the licensee's staff were injected with radiopharmaceuticals without the authorization of an Authorized User. The settlement agreement was reached as a result of an Alternative Dispute Resolution session, held at the request of the licensee. As part of the agreement reached, a Notice of Violation at a Severity Level III with no civil penalty was issued on October 14, 2005. In addition, the licensee has expanded its training program addressing NRC regulatory requirements, and the Chief of Nuclear Medicine, the Radiation Safety Officer, and the Chief Technologist will prepare articles for various medical and health physics journals that address, among other topics, the need to establish an environment and culture that promote regulatory compliance through the implementation of controls and procedures.

***KTL Rodebush Testing
Kansas, Missouri***

EA-04-178

On December 30, 2004, an Order Revoking License was issued based on the licensee's deliberate acts and omissions involving radiography activities (previously identified and addressed in an immediately effective Order Suspending License and Demand for Information issued by the NRC on March 11, 2004) and the Commission's lack of requisite reasonable assurance that the public health and safety is adequately protected by continuing activities under the existing license.

***R&M Engineering Consultants
Fairbanks, Alaska***

EA-05-023

On May 9, 2005, a Confirmatory Order Modifying License was issued to confirm recent commitments that Mr. Wellman, President of R&M Engineering Consultants, agreed to take in lieu of NRC pursuing escalated enforcement action. The commitments include leak testing and transferring two NRC-licensed gauges to an authorized recipient.

***Sabia, Inc,
San Diego, California***

EA-05-204

On November 22, 2005, as part of an Alternative Dispute Resolution settlement agreement, as documented in a Confirmatory Order, Sabia, Inc., acknowledged two violations of NRC requirements involving its failure to comply with 10 CFR 150.20 compliance and transfer of licensed material to individuals who were not authorized to receive it. As part of the settlement

agreement, Sabia also agreed to provide additional training to its employees and to conduct additional audits. The NRC has agreed not to draw any conclusions on whether willfulness was involved or to pursue further enforcement actions related to these specific issues.

***U.S. Enrichment Corporation
Paducah Gaseous Diffusion Plant***

EA-04-123

On January 27, 2005, an immediately effective Confirmatory Order was issued to confirm certain commitments involving training related to employee protection. The Order was discussed during an Alternative Dispute Resolution session and, subject to satisfactory completion of the commitments, the NRC will not pursue further enforcement action on this issue.

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APPENDIX E: SUMMARY OF ACTIONS AGAINST NON-LICENSEES (VENDORS, CONTRACTORS, AND CERTIFICATE HOLDERS)

NOTICES OF VIOLATION (NOVs)

None.

CIVIL PENALTIES

None.

ORDERS

***AVI Food Systems, Inc.
Warren, OH***

EA-04-225

On July 15, 2005, an immediately effective Confirmatory Order was issued to establish certain requirements as set forth in the Order including training for AVI employees involved with NRC licensees regarding employee protection, safety conscious work environment, and safety culture. The Order was discussed during Alternative Dispute Resolution, and, subject to satisfactory implementation of said requirements, the NRC will not pursue further enforcement action on this issue.

***Williams Industrial Services Group, LLC
Stone Mountain, Georgia***

EA-01-082 & EA-04-172

On November 14, 2005, an immediately effective Confirmatory Order was issued to confirm certain commitments made as part of a settlement agreement for violations issued on February 24, 2005. In response to the violations, Williams Industrial Services Group, LLC, (Williams) requested the use of the NRC's alternative dispute resolution process. The Confirmatory Order establishes requirements that Williams will take to ensure the effectiveness of its safety conscious work environment program and strengthen complete and candid communications with the NRC. Based on the corrective actions Williams has taken and the requirements specified in the Confirmatory Order, the NRC withdrew the deliberate misconduct violation cited on February 24, 2005. In addition, the employee protection violation, originally issued as Severity Level III, was re-characterized as a violation without a specified severity level.

IMPOSITION OF CIVIL PENALTY ORDERS

None.

DEMANDS FOR INFORMATION (DFIs)

None.

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APPENDIX F: 10 CFR 2.206 PETITIONS

A. *Director's Decision related to the Regulation of Depleted Uranium Munitions (DD-05-08)*

On December 30, 2005, NMSS issued a Director's Decision denying a petition dated April 3, 2005, filed by Mr. James Salsman. The petition requested that the NRC fine depleted uranium (DU) munitions licensees, specifically the Departments of the Air Force, Army, Navy, and ATK Tactical Systems Company, CCL, and require these licensees to report incidents and overexposures to NRC, and remediate facilities in accordance with current regulations.

NRC staff determined that several of the issues raised by the Petitioner did not fall under the enforcement-related corrective action provisions of the 10 CFR 2.206 process. For those issues that did fall under the enforcement-related corrective action provisions of 10 CFR 2.206, the staff found that the Petitioner had not shown that DU munition licensees willfully or negligently ignored relevant studies addressing the use of DU munitions, or that these licensees created a condition hazardous to public health and safety. Additionally, the NRC staff found that the Petitioner did not identify any violation of NRC requirements by DU munition licensees.

The issue of the adequacy of NRC regulations addressing the hazards of hexavalent uranium is being addressed in the petition for rulemaking process. (ML053460450)

B. *Director's Decision related to Fire Barrier Material at Vermont Yankee Nuclear Power Station (DD-05-07)*

On December 23, 2005, NRR issued a Director's Decision denying a petition dated June 1, 2005, filed by Mr. Ramond Shadis, Staff Technical Advisor for the New England Coalition. The Petitioner's primary concern was the quality of the Vermont Yankee fire barriers and the effect on compliance with the requirements of 10 CFR Part 50, Appendix R. The petition was denied because the staff concluded that the Petitioner's concerns were adequately addressed by the licensee's corrective action. (ML053500012)

C. *Director's Decision related to the Licence Renewal Application for Beaver Valley (DD-05-06)*

On December 3, 2005, NRR issued a Director's Decision denying a petition dated April 12, 2005, filed by Mr. David Lockbaum of the Union of Concerned Scientists, regarding the operation of the Beaver Valley Power Station, Units Nos. 1 and 2.

The NRC staff determined that the licensee did submit an inaccurate statement in its February 9, 2005, license renewal application in violation of 10 CFR 54.13, and that the violation had been processed in the licensee's corrective action program. In accordance with the NRC Enforcement Policy and the NRC Enforcement Manual, no citation was issued and no civil penalty was assessed for the violation. (ML053130055)

D. Director's Decision related to a Reactor Coolant System Isolation Valve at Byron Station (DD-05-05)

On November 8, 2005, NRR issued a Director's Decision denying a petition dated March 2, 2005, filed by Mr. Barry Quigley. The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) take enforcement action against Exelon Nuclear's Byron Station for failure to comply with 10 CFR Part 50, Appendix B, Criterion XVI. Development of long-term corrective actions, included in the Action Tracking Module of the Passport database as Regulatory Commitments at the Byron Station site, was completed on October 14, 2005. The licensee intends to monitor valve 1RC8002C performance and has a plan to respond to potential malfunctions. Thus, the performance deficiencies of the 1RC8002C valve and any failure to timely identify and correct those deficiencies do not constitute a violation of Appendix B, Criterion XVI. (ML052940091)

E. Director's Decision related to Security of Spent Fuel at all BWRs with Mark I and II Containment (DD-05-04)

On November 7, 2005, NRR issued a Director's Decision (DD) addressing a petition filed on August 10, 2005, by the Petitioner, the Nuclear Information and Resource Service. The Petitioner requested that the NRC take several actions to review concerns involving structural vulnerabilities at Mark I and II boiling water reactors (BWRs), including conducting a 6-month study of options for addressing such vulnerabilities. The final DD granted, in effect, the Petitioner's proposed demand that all Mark I and II BWRs conduct a 6-month study of options for addressing structural vulnerabilities and the proposed development of a comprehensive plan to account for stakeholder concerns and address structural vulnerabilities of all Mark I and II BWRs; but denied the Petitioner's other requests including a proposed conference to present findings and a proposed issuance of orders to the licensees of all Mark I and II BWRs compelling incorporation of certain protective measures. (ML052970437)

F. Director's Decision related to the Emergency Warning System at Vermont Yankee (DD-05-03)

On November 7, 2005, NRR issued a Director's Decision addressing a petition filed on December 7, 2004, by Mr. Raymond Shadis, Staff Technical Advisor for the New England Coalition. The petition requested that the NRC take immediate action to address the degraded alert and notification system at the Vermont Yankee Nuclear Power Station, including going into cold shutdown until the petitioner's concerns were resolved and verified.

The NRC staff reviewed the basis for the Petitioner's requested actions. Based on its evaluations, the staff concluded that: (1) route alerting completed within 45 minutes of detection of a failure of the primary ANS meets the requirements for prompt public notification in 10 CFR 50.47(b)(5) and 10 CFR Part 50, Appendix E, Section IV.D.3; (2) there is reasonable assurance that backup route alerting for an event at Vermont Yankee will provide the necessary notifications; (3) there is reasonable assurance that fixed sirens combined with the tone-alert radio program at Vermont Yankee will provide the necessary notifications; and (4) no other action is needed at this time to address the licensee's performance related to the Emergency Preparedness cornerstone. Based on these conclusions, the NRC denied the Petitioner's requests. (ML052860107)

G. Director's Decision related to Updated Final Safety Analysis Report for the Vermont Yankee Nuclear Power Station (DD-05-02)

On August 16, 2005, NRR issued a Director's Decision denying a petition filed on July 29, 2004, by Mr. Paul Blanch and Mr. Arnold Gundersen. The petition requested that the NRC issue a Demand For Information requiring Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., to provide information addressing how Vermont Yankee Nuclear Power Station (Vermont Yankee) complies with the General Design Criteria specified in 10 CFR Part 50, Appendix A, or the draft GDC published by the Atomic Energy Commission in 1967, asserting that until the design bases are clearly identified, any inspection or assessment is meaningless. The staff concluded that the information requested by the Petitioners is not necessary for the staff to perform a thorough and meaningful assessment or to conduct an effective inspection. (ML052170206)

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APPENDIX G: SUMMARY OF HEARING ACTIVITY

***Safety Light Corporation
Bloomsburg, Pennsylvania***

EA-03-219

On December 30, 2004, the Safety Light Corporation (SLC) requested a hearing pursuant to 10 CFR 2.103(b), challenging the NRC staff's denial of SLC's license renewal request. The Atomic Safety and Licensing Board (ASLB) granted SLC's request on January 27, 2005. The ASLB agreed to allow the parties, i.e., the NRC, SLC, and the Commonwealth of Pennsylvania Department of Environmental Protection, to try to reach an agreement through negotiated settlement discussions. On June 29, 2005, the ASLB issued a Memorandum and Order approving the settlement agreement that was reached and terminating the proceeding.

On November 18, 2005, an NOV was issued as part of the terms of the settlement agreement. The NOV was issued for a Severity Level III problem involving: (1) the willful failure to make payments to the decommissioning trust fund in accordance with the schedules defined in SLC's license conditions; and (2) the failure to dispose of pre-2000 tritium wastes in accordance with SLC's license conditions.

Andrew Siemaszko

IA-05-021

On April 21, 2005, an Order prohibiting involvement in NRC-licensed activities (for five years) from the effective date of the Order was issued to Mr. Siemaszko based on his deliberate activities while employed at the Davis-Besse nuclear power plant. As a former system engineer, Mr. Siemaszko deliberately provided inaccurate and incomplete information concerning the description of the efforts and results associated with removal of boric acid deposits from the reactor pressure vessel head.

On April 22, 2005, Mr. Siemaszko requested a hearing on the Order. The NRC staff requested a stay of the hearing. During CY 2005, OE supported numerous pre-hearing conferences held to discuss the stay request and the immediate effectiveness of the Order. As of December 31, 2005, the hearing was pending due to stays granted by the ASLB.

***State of Alaska Department of Transportation & Public Facilities
Anchorage, Alaska***

EA-03-126; EA-04-060

On March 15, 2004, the NRC staff issued both an NOV and a Confirmatory Order Modifying License (Effective Immediately) to the Alaska Department of Transportation and Public Facilities (ADOT). ADOT did not contest the enforcement action and agreed to the Confirmatory Order requiring ADOT to take certain actions to ensure compliance with 10 CFR 30.7, the Commission's Employee Protection Rule, and to establish and maintain a Safety Conscious Work Environment (SCWE). However, pursuant to the terms of the Order which allow "any person adversely affected by this Confirmatory Order, other than the Licensee" to request a hearing, on April 9, 2004, the former Statewide Radiation Safety Officer (RSO), through his attorney requested a hearing before the ASLB. The Statewide RSO argued that the Order would not provide reasonable assurance that the public health and safety will be protected from further harm and that the acts of retaliation perpetrated on him deny him the ability to perform his licensed duties and responsibilities without fear or reprisal.

On July 29, 2004, the ASLB found that the Statewide RSO established standing to intervene and granted the request for a hearing on the Order.

On August 18, 2004, the NRC staff, as well as ADOT, appealed the ASLB decision to the Commission. On October 7, 2004, the Commission held that the Statewide RSO lacked standing and had no admissible contention (CLI-04-026). On October 7, 2004, the Statewide RSO responded by petitioning the Commission for reconsideration, claiming that he should have been granted a hearing. On December 12, 2004, the Commission denied the motion for reconsideration.

***Tennessee Valley Authority
Watts Bar, Sequoyah, and Browns Ferry Nuclear Power Plants***

EA-99-234

The staff continued to support hearing activities associated with the enforcement action against the Tennessee Valley Authority for discriminating against a former corporate employee. On August 18, 2004, the Commission issued Memorandum and Order, CLI-04-24, Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2, and 3), affirming in part and reversing in part the ASLB decision regarding discrimination. The case was remanded to the ASLB. The NRC held discussions with TVA on November 2, 2004, and submitted a proposed settlement agreement to the ASLB to resolve the Fiser discrimination case without further litigation. The ASLB approved the final settlement agreement on November 10, 2004. Pursuant to the settlement agreement, the staff withdrew the civil penalty and the two NOVs against the managers named in the individual NOVs. Also, in light of the corrective action taken by TVA and the current environment at its facilities, the staff agreed not to pursue a related potential discrimination case involving a former TVA Corporate Nuclear Engineering Manager (EA-01-266 and EA-01-315). TVA agreed not to continue contesting the NOV issued to the company and represented that it would complete training to TVA nuclear managers in the area of safety conscious work environment (SCWE).