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EGM 99-006 REV 1

MEMORANDUM TO: JUN 6 10:09 AM '00

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Fuel Cycle and Safeguards, NMSS
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Industrial and Medical Nuclear Safety, NMSS
E. William Brach, Director
Spent Fuel Project Office, NMSS
John T. Greeves, Director, Division of Waste
Management, NMSS

FROM:

R.W. Borchardt, Director
Office of Enforcement

SUBJECT:

ENFORCEMENT GUIDANCE MEMORANDUM REVISION 1 -
EXTENSION OF THE GUIDANCE FOR IMPLEMENTATION OF
THE INTERIM ENFORCEMENT POLICY FOR USE DURING
THE REACTOR OVERSIGHT PILOT PROGRAM

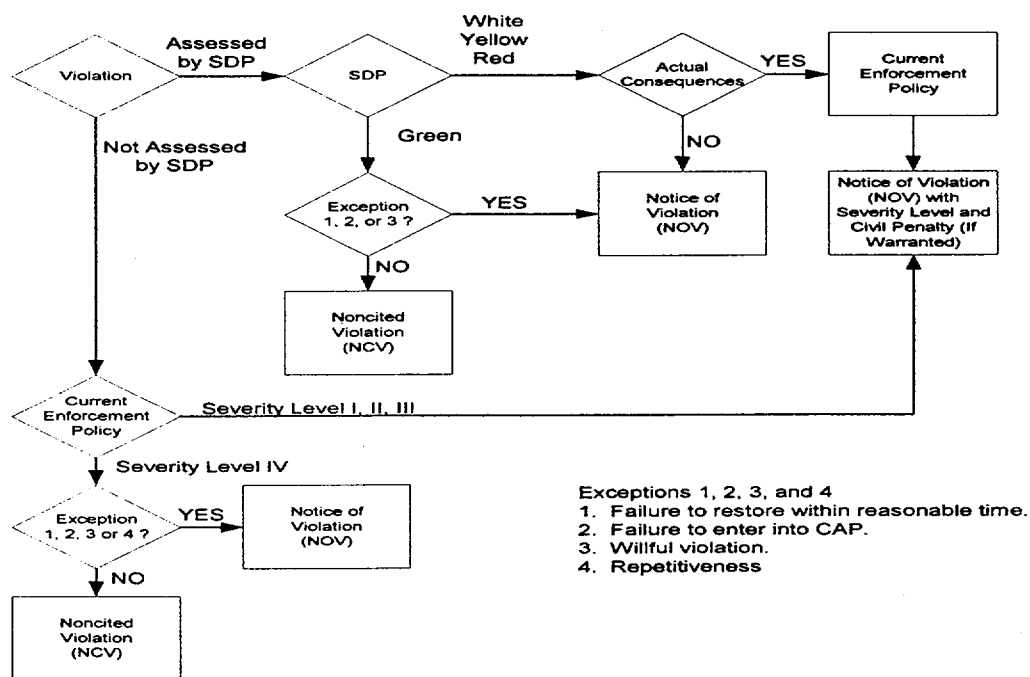
The purpose of this EGM is to provide enforcement guidance for the Interim Enforcement Policy for Use During the new NRC Reactor Oversight Process. The Interim Policy will continue to be in effect for power reactors that participated in the reactor oversight process pilot program until a revised enforcement policy is issued in conjunction with initial implementation of the new Reactor Oversight Process. Also, this EGM describes guidance that will be in effect for all power reactors submitting historical performance indicator data. The Interim Enforcement Policy revises the treatment of violations of the requirements of 10 CFR Part 50 and associated license conditions.

IMPLEMENTATION

The enforcement approach for the pilot program plants divides violations into two groups. The first group is those violations that the Significance Determination Process (SDP) can evaluate, where the Agency Action Matrix will determine appropriate action. The assessment process will use the SDP to characterize most inspection findings based on their risk significance. The SDP will assign a color of green, white, yellow, or red to each finding to reflect its significance. The results of the SDP categorization of the significance will be used to determine the enforcement action for findings that are violations of NRC requirements.

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The second group is violations that result in actual consequences, violations that the SDP does not evaluate such as willful violations, and those violations that may impact the regulatory process for oversight of reactors. For this application **Actual Consequences** are only those violations that result in, (1) occupational and public doses greater than regulatory limits, (2) releases of radioactive material greater than regulatory limits and, (3) failure to make required notifications during an actual general or site area emergency and during a transportation event. Violations in this category will be processed in accordance with the Enforcement Policy using both severity levels and civil penalties. It is worth noting that "consequences" associated with inoperable or damaged equipment are evaluated by the SDP. The NRC response will be taken as described in the Action Matrix and the enforcement action will be as described in section I below. The figure below illustrates the different enforcement paths.



*Exception 4 relates to NRC identified repetitive violations. This exception is not applicable to violations evaluated under the SDP process.

I. Violations Evaluated by the Significance Determination Process

Inspection findings that the SDP can evaluate and are violations will be dispositioned as either a cited or non cited violation. Because the Action Matrix will determine the agency response, severity levels and civil penalties will not normally be used.

A. Violations that the SDP evaluates as of low significance (i.e., green).

Violations that the SDP evaluates as of low significance from a risk perspective (i.e., green) will normally be documented in inspection reports as non cited violations (NCVs). However, a notice of violation (NOV) will be issued for three exceptions.

1. Did the licensee fail to restore compliance within a reasonable time after identification of a violation?

Note: This criterion applies only to violations that are continuing at the time of discovery (See discussion below).

This criterion emphasizes the need to take action to restore compliance in a reasonable time once a violation is identified. If the licensee cannot restore compliance, they must take compensatory measures until they restore compliance. Action must be taken to restore compliance absent an exemption, license amendment, or Notice of Enforcement Discretion (NOED).

For purposes of this criterion, restoring compliance includes those actions needed to stop an ongoing violation from continuing. It does not include actions necessary to address root causes and prevent recurrence. The NRC recognizes that some violations require prompt action to restore compliance and some do not depending on whether the underlying requirement is continuous or conditional. Thus, "within a reasonable time" refers to the time needed to stop or take compensatory measures for an ongoing violation (which should be as soon as possible). The time needed to place the plant in an operational mode where the requirement no longer applies is considered reasonable.

For example, if a valve is found in the wrong position, the NRC expects a licensee to take prompt action to either place the valve in the required position, take action to be in a mode where the requirement no longer applies, take appropriate compensatory actions or request relief from the NRC. On the other hand, the requirement may not be applicable for the mode or circumstances the licensee is in when the violation is identified. Reasonableness allows the licensee to delay corrective actions until the requirement is next applicable. For example, if the violation involved an inadequate refueling procedure, corrective action would not be needed until the next refueling outage when the procedure would be used.

2. Did the licensee fail to place the violation into a corrective action program?

The purpose of this criterion is to emphasize the need to consider actions beyond those necessary to restore compliance, including actions necessary to address root causes.

Placing a violation into a corrective action program is fundamental to the NRC's ability to close a violation in an inspection report without detailed information regarding the licensee's corrective actions. Documenting the corrective action system reference number in an inspection report will help the NRC in subsequent reviews of the effectiveness of the corrective action program.

3. Is the violation willful? (However, even if willful, an NCV may still be appropriate if it meets all of the criteria for discretion in the Enforcement Policy.)

The purpose of this criterion is to emphasize the importance of integrity and candor in carrying out licensed activities, as expressed in Section IV.A.4 of the Enforcement Policy. Willfulness may result in treating the violation in accordance with the Enforcement Policy as described in Section II below which may result in a notice of violation with a severity level and civil penalty. Nonetheless, certain licensee-identified willful violations would remain eligible for treatment as NCVs, as they are under the policy in Section VII.B.1.a.4.

B. Violations evaluated by the SDP as risk significant

Violations that the SDP evaluates as risk significant (i.e., white, yellow, or red) will be subject to action as determined by the Action Matrix. Such violations will result in the issuance of a NOV requiring a written response, unless sufficient information describing the reasons for the violation and corrective action being taken is already on the docket. The Action Matrix will be used to formulate the agency response and to emphasize the need to improve performance for safety significant violations. Regulatory conferences will be held if merited by the specific violations or overall licensee performance. No severity levels or civil penalties will normally be used.

Despite the process described above, for violations addressed by the Agency Action Matrix, the Commission reserves the discretion for particularly significant violations to assess civil penalties in accordance with Section 234 of the Atomic Energy Act of 1954, as amended. Based on current performance of licensees, this discretion is expected to be rarely exercised. An example where such discretion may be considered would be for Severity Level I violations under the existing Enforcement Policy, e.g., an accidental criticality categorized in Appendix B, Supplement I, Reactor Operations.

II. Violations Not Evaluated by the SDP and those Having Actual Consequences

In the second group of violations, severity levels will characterize the significance of violations and civil penalties may also be used. The three categories of violations are within this group are:

- A. Violations that involve willfulness, including discrimination;
- B. Violations that may impact the NRC's ability to oversee licensee activities [Examples include violations associated with reporting requirements; failure to obtain NRC approvals, such as for changes to the facility as required by 10 CFR 50.59, 10 CFR

50.54(a), 10 CFR 50.54 (p); and failure to provide the NRC with complete and accurate information or to maintain complete and accurate records.];

(1) Provisions for Performance Indicator (PI) Data

10 CFR 50.9 requires that information provided to the Commission by a licensee shall be complete and accurate in all material respects. This includes the voluntary submittal of PI information by licensee's that participated in the pilot program and other licensee's submitting historical data in preparation for initial implementation of the new reactor oversight process. This information is considered material because the NRC uses it to assess licensee performance and to make decisions on regulatory action. As a result, submitting inaccurate PI information that is material is a violation of 10 CFR 50.9.

Because the SDP does not evaluate this area, the enforcement approach using severity levels and civil penalties applies to these cases. If the inaccuracy was not willful, the assessment of significance of the inaccurate information is determined by the effect it had on the NRC's processes.

Some inaccuracies are of so low significance that do not warrant documentation as a 10 CFR 50.9 violation. Specifically, if the error in PI information provided by a licensee would not have caused a PI to change color, and therefore would not change the NRC actions in response to the information, the error is not considered significant. The violation would be characterized as a minor violation and no violation of NRC requirements should be cited. Errors that would cause a color change, such as from green to white, would be considered significant since they may result in a change in the NRC response, such as increased inspection or other regulatory activity.

However, because of the time constraints to gather and submit historical data, a best effort by licensees on the collection of this data is considered adequate. As a result, some errors in this data are expected. Also, because both the NRC and licensees are in a learning process for the submission and review of this data, errors in current data submitted are expected. OE has determined that for the plants that participated in the pilot program and for licensees' submitting historical data in preparation for initial implementation of the reactor oversight program, if significant non willful errors in Performance Indicator data are identified, Enforcement Discretion in accordance with section VII.B.6 of the enforcement policy is appropriate. Refer to Attachment I for an example of cover letter language. Use of this discretion following initial implementation of the new oversight process will be addressed in future Enforcement Policy changes.

Each case where this discretion is used will require assignment of an EA number in order for OE to track the extent of its use. The following language should be included in the text of the report discussing the inspection finding:

"During the inspection, errors were identified in the performance indicator (PI) data submitted to the NRC. (Include a brief description of the errors identified and any effect (i.e., change in color) these errors had on the assessment process.) However, because

these errors were not willful, we are exercising Discretion pursuant to Section VII.B.6 of the Enforcement Policy not to issue a Notice of Violation."

- C. violations that involve actual consequences (such as an overexposure to the public or plant personnel, failure to make the required notifications that affect the ability of federal, state and local agencies to respond to an actual emergency preparedness or transportation event, or a substantial release of radioactive material).

III. Documentation and Tracking of Violations

This section provides guidance for documenting and tracking violations that the SDP evaluates and are dispositioned as (1) NCVs and (2) NOV. Violations not assessed by the SDP should be documented in accordance with the Enforcement Policy.

The staff should follow the general guidance for inspection report cover letters in draft Inspection Manual Chapter 0610* and use the appropriate paragraphs from Attachment 1 of this EGM for discussing violations in the cover letter. Usually, cited violations should be discussed before non cited violations.

A. NCVs

Violations determined to be "green" and are dispositioned as an NCV should be documented in inspection reports in accordance with the guidance below. An exception to this is minor violations, which are those violations of requirements of minor safety significance and should not normally be documented in inspection reports.

NCVs should be discussed in the report details and summary of findings sections of the report. The documentation of NCVs should briefly describe the applicable requirement and how the requirement was violated. The discussion should be detailed enough to provide the basis for the determination that a requirement was violated. Documentation should also include the licensee's corrective action program file reference. Often, the licensee will not have yet developed the corrective actions at the time the inspection report is issued. If the inspector is aware of the licensee's corrective actions, then he or she may choose to document them in the inspection report. However, documentation of the licensee's corrective actions is not required. A conclusion that the violation will not be cited should be documented in the details section of the report as follows:

"We are treating this violation as a non cited violation, consistent with the Interim Enforcement Policy for pilot plants. This violation is in the licensee's corrective action program as (include file reference)."

NCVs should be addressed in the inspection report transmittal letter (cover letter) after any cited violations. The discussion should simply note how many NCVs were identified. The details of specific NCVs should not normally be discussed in inspection report cover letters. Cover letters should not be used as a substitute for a NOV. In particular, cover letters should not normally

seek additional information about an NCV. The inspection report should include NCV appeal process language (see Section VI for guidance on the NCV appeal process).

In accordance with the existing guidance in the Enforcement Manual, the region should continue the practice of requesting an EA number for a willful violation that will be dispositioned as an NCV.

The Reactor Program System (RPS) and the PIM will list NCVs.

B. NOVs

Violations assessed as "green" that meet an exception in Section I for consideration as a NOV should be documented in inspection reports in accordance with Inspection Manual Chapter 0610*. The NOV cover letter must clearly state why a citation is being issued in terms of which exception in Section I the violation met and how/why it was met. The staff should use the cover letter examples in Attachment 1.

NOVs will be issued for all risk significant (white, yellow, or red) violations and violations outside the SDP process as described in Section II. The NOV cover letter should briefly describe why the violation is risk significant and the color resulting from the SDP evaluation. A response will be requested unless adequate information is already on the docket. The format of Attachment 1 should be used.

If by the end of the inspection or the close of the inspection period, the risk significance of a violation was not determined, the violation should be classified as an apparent violation in the cover letter until a final determination of the significance can be made.

As described above, violations determined to be potentially significant violations (white, yellow, or red) by the SDP process will be discussed at an assessment panel. If the phase 2 SDP analysis suggests that a significant (white, yellow, or red) violation exists, a regulatory conference with the licensee may be held to discuss the licensee's views on safety significance. In these cases a Phase 3 analysis may have been performed and the licensee's and NRC's analysis may be discussed. Attachment I provides language for reports with apparent violations, and when a regulatory conference is being requested (choice letter) or confirmed (conference letter).

Consistent with existing practice, the staff may waive a licensee's written response to an NOV, if sufficient information is already on the docket in an inspection report, licensee event report (LER), or other correspondence. NOVs should be discussed in the report details, observation and findings, and summary of findings sections of the report.

To track the use of NOVs, an enforcement action (EA) number will be assigned to each NOV. The Enforcement Action Tracking System (EATS) will be used to record the disposition of these NOVs and which exception was met if applicable.

NOVs will be tracked in the Reactor Program System (RPS) and the PIM.

IV. Violation Coordination and Review

This section provides guidance for coordination and review of violations for which the SDP can determine a risk significance and that result in NCVs or NOVs. Coordination and review of violations not assessed by the SDP will be in accordance with the Enforcement Manual.

All violations that are screened into the Phase 2 evaluation of the SDP process will be subject to a review by an assessment/enforcement oversight panel to ensure consistency between the regions. The purpose of the panel is to come to agreement on the risk significance of the issue. Any enforcement action taken will be based on the risk significance determined for the issue.

A. NCVs

NCVs for power reactors screened out of the SDP as green during the phase I analysis will continue to be issued by the region normally without prior OE approval. Enforcement Coordinators are available and should be consulted on NCVs, as warranted. The regional Division Director should concur on an NCV before issuance if: (1) the Branch Chief and Enforcement Coordinator disagree on the disposition of the issue, (2) the violation meets the criteria for disposition as an NCV but the licensee informs the staff that it disagrees that the issue is a violation or that the violation is more than a minor violation.

Violations determined to be of green significance are to be issued as an NCV by the region without OE review. Consistent with existing guidance in Section 6.3.1.c of the Enforcement Manual, the approval of the Director, OE, with consultation with the Deputy Executive Director for Reactor Programs (DEDR) as warranted, is required for issuing an NCV where a willful violation is involved.

B. NOVs

Division Directors, the regional Enforcement Coordinators and OE will concur on all NOVs before being issued.

V. Violation Signature Authority

This section provides guidance for the signature authority of NCVs and NOVs for issues that the SDP has assessed. Violations not assessed by the SDP will be handled in accordance with the Enforcement Manual.

A. NCVs

The Regional Administrator may delegate to Branch Chiefs and above the authority to sign and issue inspection reports that include NCVs.

B. Green Significance NOVs

The Regional Administrator may delegate to Branch Chiefs and above the authority to sign and issue green significance NOVs.

C. Risk Significant NOVs

The Regional Administrator may delegate to Division Directors the authority to sign and issue white, yellow and red significance NOVs.

VI. NCV Appeal Process

Licensees will be provided an opportunity to dispute an NCV if they disagree that the issue is a violation or that the issue warrants a green or Severity Level IV categorization. The inspection report should include the following appeal process language:

"If you contest the violation or the severity level of the NCV, you should provide a response within 30 days of the date of this inspection report, with the basis for your denial, to the Nuclear Regulatory Commission, ATTN.: Document Control Desk, Washington DC 20555-0001, with a copy to the Regional Administrator, Region ____, Resident Inspector and the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001."

The region should normally respond to the licensee within 60 days. The response, which should be sent to the same person and address as the inspection report, should address the licensee's points of contention. If the licensee denies the violation based on additional information not previously disclosed, the region should prepare a more detailed response as necessary to explain the decision. Licensee denials include disputes involving NRC requirements, facts of the case, application of the Enforcement Policy, and severity levels. The region's response must address any errors identified in the inspection report.

As described in the NRC Enforcement Manual, within 21 days of the date of the licensee's denial, the region should submit its prepared response to the licensee. OE will decide whether there is any interest in the dispute, or whether to conduct a review of the regional response. The region's submittal to OE should include all documents necessary to support the region's position and sufficient information to initiate an EA number.

Within three days of the date of the region's submittal, OE will inform the region of its involvement and provide the region an EA number for the case. For all disputed violations in which second, revised NOV will be issued, the region should ensure that the response to the licensee clearly reflects, in both the subject line of the cover letter and the revised NOV, that a violation is being revised (i.e., REVISED NOTICE OF VIOLATION).

cc: SECY
 The Chairman
 The Commissioners
 F. Miraglia, DEDR
 CPaperiello, DEDMRS
 D. Dambly, OGC
 G. Caputo, OI

Attachment I

Cover Letter Transmitting Inspection Report (includes optional paragraphs for NOV, NCVs, and "apparent" violations)

EA _____ (If applicable)

(Name of Licensee)

(Address)

SUBJECT: NRC [include type of inspection, e.g., "INTEGRATED, SPECIAL"] INSPECTION REPORT NO(S). XX-XXX/YY-NN [if applicable, add "AND (INVESTIGATION REPORT NO(S). X-XX-XXX)"] [if applicable, add, " AND NOTICE OF VIOLATION", or "EXERCISE OF ENFORCEMENT DISCRETION"]

Dear _____ :

[Refer to IMC O610* for guidance related to the overall structure of the cover letter and content of introductory paragraphs].

[For inspection reports with NOV include the next paragraph and include either the "response required" or the "no response required" paragraph.]

Based on the results of this inspection, the NRC has determined that a low risk significant (risk significant) violation(s) of NRC requirements occurred. The(se) violation(s) is (are) cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it (them) are described in detail in the subject inspection report. The violation(s) is (are) of concern because [an explanation MUST be included that clearly articulates why a NOV is being issued in terms of the Interim Policy NCV criteria they failed. This explanation may be expanded, where warranted, to convey the appropriate message to the licensee in terms of those actions that require additional attention.] This violation does not meet the criteria for being dispositioned as a non cited violation, (e.g., the violation is being cited because compliance with regulatory requirements has not been restored, and, based on our understanding of your disposition of this issue in your corrective action system, there are no efforts underway to restore compliance. Accordingly, a response to this violation is necessary.)

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. [Other specific responses required should be addressed as appropriate.] The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

[For NOVs where the region has determined that no response is required, the following paragraph may be substituted. In addition, the last paragraph of the letter referencing the responses directed by the letter and Notice should also be deleted.]

The cause of the violation and the corrective actions taken and planned to correct the violation and prevent recurrence are already adequately addressed on the docket in [indicate correspondence, e.g., Inspection Report No. XX-XXX/YY-NN, LER YY-NNN, or letter from Licensee] dated . Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you

choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

[For inspection reports where Discretion for inaccurate performance indicator data is being exercised include the following paragraph]

We have determined during this inspection that performance indicator (PI) data with significant errors were submitted to the NRC. However, discretion is being exercised pursuant to Section VII.B.6 not to cite the violation because the errors were not willful and all aspects of the process for the submission PI data have not been finalized.

[Include the next three paragraphs if "apparent" violations are being addressed and a pre decisional regulatory conference is being confirmed ("conference letter").]

In addition, during this inspection (number) potential risk significant issues that appear to be violation(s) of NRC requirements was (were) identified. [The narrative that follows should briefly discuss the nature and significance of the apparent violation(s).]

An open (A closed) pre decisional regulatory conference to discuss this (these) issue(s) has been scheduled for (date) . The decision to hold a pre decisional regulatory conference does not mean that the NRC has determined that a violation has occurred, the risk significance of the violations or that enforcement action will be taken. This conference is being held to obtain information to enable the NRC to make a risk significance decision, such as a common understanding of the facts, the plant design, equipment affected, and available mitigating equipment. [If appropriate add: "In particular, we expect you to address ."] In addition, this is an opportunity for you to point out any errors in our inspection report and for you to provide any information concerning your perspectives on the significance of the apparent violation(s). Accordingly, no Notice of Violation is presently being issued for these inspection findings.

Please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter. No response regarding the(se) apparent violation(s) is required at this time.

[Include the next five paragraphs if "apparent" violations are being addressed and a response is being requested ("choice letter").]

In addition, (number) risk significant apparent violation(s) was (were) identified [The narrative that follows should briefly discuss the nature of the apparent violation(s) with references to the applicable section(s) of the inspection report, the risk significance of the issues and applicable assumptions used.]

Although we believe that we have sufficient information to make our final significance determination, we are giving you the opportunity to send us the following information within 14 days of this letter. (Include requested information) Accordingly, no Notice of Violation is presently being issued for these inspection findings.

Your response should be clearly marked as a "Response to An Apparent Violation(s) in Inspection Report No(s). XX-XXX\YY-NN". If a response is not received within the time specified or we have not granted an extension of time, we will continue with our significance determination and enforcement decision.

Also please inform us if you would like to schedule a regulatory conference to discuss your evaluation and any differences with the NRC evaluation. The NRC will also issue a press release to announce the meeting. Please contact (name) at (phone number) within 7 days of the date of this letter to notify the NRC of your intended response.

In addition, please be advised that the number and characterization of apparent violations described in the enclosed inspection report may change as a result of further NRC review. You will be advised by separate correspondence of the results of our deliberations on this matter.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response will be placed in the NRC Public Document Room .

Sincerely,

Regional Administrator
or Designee

Docket No. _____
License No. _____