



ENFORCEMENT PROGRAM ANNUAL REPORT

Fiscal Year 2003

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

THIS PAGE INTENTIONALLY LEFT BLANK

- CONTENTS -

Contents	i
Abstract	v
Introduction & Overview	vii
Office of Enforcement	xiii
1. Enforcement Policy Changes	1
A. October 31, 2002: Interim Enforcement Discretion Policy for Certain Fitness-for-Duty Issues	1
2. Initiatives, Program Office Support, Staff Guidance, & Implementation	1
A. Discrimination Task Group	1
B. Alternative Dispute Resolution	3
C. Enforcement Actions Against Individuals	4
D. Reactor Program Support & Initiatives	5
E. Materials Program Support & Initiatives	8
F. Security Program Support & Initiatives	9
G. Radioactive Waste Program Support & Initiatives	11
H. Public Involvement	11
I. Enforcement Guidance	13
J. Internal Communication and Enforcement Training	13
K. Audits	15
3. Escalated Enforcement and Administrative Items	18
A. Escalated Notices of Violation (Without Civil Penalties)	20
B. Civil Penalty Actions	20
C. Orders	20
D. Demands for Information	20
E. Escalated Enforcement Trends	20

4. Cases Involving Exercise of Discretion 21

5. Actions Against Individuals and Non-Licensees 25

 A. Actions Against Licensed Individuals 25

 B. Actions Against Unlicensed Individuals 25

 C. Actions Against Non-Licensees (Vendors, Contractors, and Certificate Holders) 25

6. Cases Involving Discrimination 26

7. Hearing Activities 27

8. 10 CFR 2.206 Petitions 27

9. Withdrawn Actions 27

- TABLES -

1. Escalated Enforcement Items by Type of Licensee, Non-Licensee, or Individual 30

2. Escalated Enforcement Trends by Type of Licensee, Non-licensee, or Individual 33

3. Civil Penalty Information 35

- FIGURES -

1. Escalated Enforcement For FY 2003 18

2. Timeliness For FY 2003 19

3. Escalated Enforcement By Office 29

4. Escalated Enforcement By Type 31

5. Escalated Enforcement Trends 37

6. Escalated Enforcement Based on Discrimination 39

- APPENDICES -

A. Summary of Escalated Notices of Violation (Without Civil Penalties) 41

B. Summary of Proposed Civil Penalties 51

C. Summary of Orders 57

D. Summary of Actions Against Individuals (Licensed & Unlicensed) 59

E. Summary of Actions Against Non-Licensees (Vendors, Contractors,
And Certificate Holders 65

F. Summary of Hearing Activity 67

G. Withdrawn Actions 69

THIS PAGE INTENTIONALLY LEFT BLANK

Abstract

This annual report of the U.S. Nuclear Regulatory Commission's enforcement program describes enforcement activities occurring during fiscal year 2003 (October 1, 2002 through September 30, 2003). The report addresses significant policy changes, new initiatives, staff guidance, and implementation issues for the agency's enforcement program. It also highlights significant enforcement actions, and includes summaries of cases involving exercise of discretion, discrimination, and actions involving individuals. Various statistical tables and figures are also included.

THIS PAGE INTENTIONALLY LEFT BLANK

Introduction & Overview

Starting with its predecessor, the Atomic Energy Commission, the NRC has always had some type of enforcement program. The Commission's first public statement of policy on enforcement (the first Enforcement Policy) was published in 1980. Since that time, the Enforcement Policy has been revised numerous times to reflect experience and stakeholder input. Throughout these changes, two goals of the enforcement program remain unchanged--to emphasize the importance of compliance with regulatory requirements, and to encourage prompt identification, and prompt, comprehensive correction of violations.

These goals and the enforcement program are in alignment with and contribute to the achievement of the agency's performance goals of:

- ▶ maintaining safety;
- ▶ reducing unnecessary regulatory burden;
- ▶ making NRC activities and decisions more effective, efficient, and realistic; and
- ▶ increasing public confidence.

Starting in 1998, the enforcement program began a process of significant change. Changes in the enforcement program have stemmed from changes in inspection initiatives (e.g., reactor oversight process (ROP)) as well as from changes within the enforcement program itself (e.g., eliminating the practice of aggregating multiple low significance violations into escalated enforcement, and establishment of management-level review group to evaluate the processes for handling discrimination issues). The enforcement program will continue to change based on new initiatives in the inspection programs and new initiatives from within the enforcement program itself. This process reflects the NRC's extensive efforts to address industry and other stakeholder concerns and demonstrates the agency's commitment to more risk-informed, performance-based regulatory and enforcement programs.

Successful communication between both external and internal stakeholders is vital to ensure that the enforcement program is both understood and acknowledged as an integral, valuable piece of the agency's regulatory programs.

Key Principles of the Enforcement Program

- ▶ Consistent with the agency's overall safety mission in protecting the public and environment, enforcement actions should be used as a deterrent to emphasize the importance of compliance with regulatory requirements, and to encourage prompt identification, and prompt, comprehensive correction of violations.
- ▶ Enforcement actions are issued 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.
- ▶ Risk insights are used to assess the significance of violations whenever possible. As individual inspection programs become more risk-informed and performance-based, so too will the respective enforcement program.

- ▶ Enforcement is one part of the overall regulatory process. Enforcement should not be viewed as a punitive tool to promote good performance. Enforcement is integrated with other regulatory tools to respond to performance issues.
- ▶ Compliance remains important to safety. Although changes in inspection oversight processes may result in fewer civil penalties being imposed and fewer Notices of Violations being issued (i.e., greater use of Non-Cited Violations), this does not mean that the agency has reduced its emphasis on the importance of compliance. Violations will continue to be identified and documented and licensees will have the responsibility for taking corrective actions to restore compliance and prevent recurrence.

Enforcement Program Performance Measures

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 performance measure goals are:

- ▶ 100% of non-investigation cases are completed within 180 calendar days and will average 120 days; and
- ▶ 100% of investigation cases are completed within 360 days processing time and will average 180 days of processing time.

During fiscal year 2003, these standards were met, with enforcement action averages for reactor cases, reactor cases with investigations, materials cases, and materials cases with investigations included in Figure 2 on page 19.

Enforcement actions are occasionally challenged by licensees for several reasons; for example, licensees dispute the requirements, the facts of the case, the application of the Enforcement Policy, or the significance of the violation. A high quality product can be characterized as one where the staff interprets and correctly applies the regulatory requirement, accurately details the facts, and consistently and precisely applies the Enforcement Policy. Therefore, the Office of Enforcement has established a metric for quality of enforcement actions as being less than 30 non-escalated enforcement actions being successfully disputed based on interpretation of the requirements, the facts of the case, or the application of the Enforcement Policy. Routinely, a licensee will provide clarifying information that was not available at the time of inspection, that changes 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 the metric. During FY 2003, more than 1100 non-escalated enforcement actions were issued to reactor and material licensees. Out of these actions, nine violations were disputed. Of the nine disputed violations, four violations were either withdrawn or revised by the NRC. However, in only one case can it be suggested that the NRC made an erroneous enforcement decision based on the information at hand or that reasonably should have been concluded. Therefore, this metric was met.

Overview of the Enforcement Program

Regulatory Framework

To help ensure the adequate protection of public health and safety, the NRC takes its enforcement responsibilities very seriously. The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act (AEA) of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended. Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. Recognizing that violations occur in a variety of activities and have varying levels of significance, the Commission set out to create an enforcement framework with graduated sanctions to reflect this diversity. The Commission's first public statement of policy on enforcement (the first Enforcement Policy) was published in 1980. Since then, the Enforcement Policy has been revised numerous times to reflect experience and stakeholder feedback. In making these changes, however, two goals of the enforcement program remain unchanged:

- ▶ Emphasizing the importance of compliance with regulatory requirements, and;
- ▶ Encouraging prompt identification, and prompt, comprehensive correction of violations.

These goals and the enforcement program are in alignment with and contribute to the achievement of the agency's performance goals of:

- ▶ Maintaining safety;
- ▶ Reducing unnecessary regulatory burden;
- ▶ Making NRC activities and decisions more effective, efficient, and realistic; and
- ▶ Increasing public confidence.

Violations are identified through inspections and investigations. All violations are subject to civil enforcement action and also may be subject to criminal prosecution. Unlike the burden of proof standard for criminal actions (beyond a reasonable doubt), the NRC uses the Administrative Procedures Act standard in enforcement proceedings (preponderance of evidence, i.e., information that is of greater weight or credibility or is more likely correct than not). After an apparent violation is identified, it is assessed in accordance with the Commission's Enforcement Policy. The policy is published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions," to foster its widespread dissemination to NRC licensees and members of the public. Revisions of the policy are noticed in the *Federal Register*. The NRC's Office of Enforcement maintains the current policy statement on the NRC's web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. Because it is a policy statement and not a regulation, the Commission may deviate from it, as appropriate, under the circumstances of a particular case.

Enforcement Actions

NRC uses three primary enforcement sanctions:

1. *Notices of Violation*: A Notice of Violation (NOV) identifies a requirement, how it was violated, and formalizes a violation pursuant to 10 CFR 2.201. It normally requires a written response.

2. *Civil Penalties:* A civil penalty is a monetary fine issued under authority of Section 234 of the AEA or Section 206 of the ERA. Section 234 of the AEA provides for penalties of up to \$100,000 per violation per day; but that amount has been adjusted by the Debt Collection Improvement Act of 1996 to be \$120,000.
3. *Orders:* An order may modify, suspend, or revoke a license or require or confirm specific actions by a licensee or a person.

The Commission's order issuing authority under Section 161 of the AEA extends to any area of licensed activity that affects the public health and safety. NOVs and civil penalties are issued based on violations. Orders may be issued for violations, or in the absence of a violation, to address a public health or safety issue.

Assessing Significance

After a violation is identified, the NRC then assesses its significance by considering:

- ▶ Actual safety consequences,
- ▶ Potential safety consequences,
- ▶ Potential for impacting the NRC's ability to perform its regulatory function, and
- ▶ Any willful aspects of the violation.

Violations are either:

- ▶ Assigned a severity level, ranging from Severity Level IV, more than minor concern, to Severity Level I, the most significant, or
- ▶ Are associated with findings assessed through the reactor oversight process Significance Determination Process (SDP) assigned a color of Green, White, Yellow, or Red based on increasing risk significance.

The Commission recognizes there are violations of minor safety or environmental concern that are below Severity Level IV violations, as well as below violations associated with Green SDP findings. These minor violations are not assigned a severity level category nor an SDP color assessment.

Dispositioning Violations

The manner in which a violation is dispositioned reflects the seriousness of the violation and the circumstances involved.

Given their limited risk significance, minor violations are not subject to enforcement action and are not normally described in inspection reports. However, minor violations, like all violations, must be corrected.

Severity Level IV violations and violations associated with Green SDP findings make up the majority of all other violations identified in the nuclear industry. Provided certain criteria in Section VI.A of the Enforcement Policy are met, the NRC will normally disposition these Severity Level IV violations and violations associated with Green SDP findings as Non-Cited Violations (NCVs). NCVs are documented in inspection reports (or inspection records for some materials licensees) to establish public records of the violations, but are not cited in NOVs

which normally require written responses from licensees. Dispositioning violations in this manner does not eliminate the NRC's emphasis on compliance with requirements nor the importance of maintaining safety. Licensees are still responsible for maintaining safety and compliance and must take steps to address corrective actions for these violations. This approach for violations that have low risk significance is consistent with the agency's performance goals.

More significant violations are candidates for escalated enforcement. Escalated enforcement action is defined as action involving Severity Level I, II, or III violations; violations associated with White, Yellow, or Red SDP findings; civil penalties; or orders. A graphical representation of the NRC's graded approach for dispositioning violations is included on the NRC's web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Process Diagram**.

Conferences

A predecisional enforcement conference, or a regulatory conference, may be conducted with a licensee before an enforcement decision if escalated enforcement action appears warranted, the NRC concludes a conference is necessary, or the licensee requests it. The purpose of the conference is to obtain information to assist the NRC in determining the appropriate enforcement action, such as:

- ▶ A common understanding of facts, root causes and missed opportunities associated with the apparent violations;
- ▶ A common understanding of corrective action taken or planned, and
- ▶ A common understanding of the significance of issues and the need for lasting comprehensive corrective action.

The decision to hold a conference does not mean the agency has determined a violation has occurred or that enforcement action will be taken. In accordance with the Enforcement Policy, conferences are normally open to public observation. If the NRC concludes that a conference is not necessary, it may provide a licensee with an opportunity to respond to the apparent violations before it makes an enforcement decision.

Civil Penalties

Civil penalties are normally assessed for Severity Level I and II violations, as well as 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. Although civil penalties will not normally be used for violations associated with the ROP, civil penalties (and the use of severity levels) will be considered for issues that are willful, that have the potential for impacting the regulatory process, or that have actual consequences.

The NRC imposes different levels of civil penalties based on several factors:

- ▶ Type of licensed activity,
- ▶ Type of licensee,
- ▶ Severity level of the violation, and
- ▶ Whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past two years or past two inspections, whichever is longer,
- ▶ Whether the violation was willful or very significant,

- ▶ Whether the licensee should be given credit for actions related to identification,
- ▶ Whether the licensee's corrective actions are prompt and comprehensive, and
- ▶ Whether, in view of all the circumstances, the matter in question requires the exercise of discretion.

Although each of these points may have several associated considerations, the outcome of the assessment process for each violation or problem (absent the exercise of discretion) results in one of the following three outcomes: no civil penalty, a base civil penalty, or twice the base civil penalty.

If a civil penalty is proposed, a written Notice of Violation and Proposed Imposition of Civil Penalty is issued and the licensee has 30 days to respond in writing. It can do so by either paying the penalty or contesting it. The NRC considers the response, and if the penalty is contested, may either mitigate it or impose it by order. The licensee may then pay the civil penalty or request a hearing.

Orders

The NRC may issue orders to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or take such other action as may be proper. Orders may be issued in lieu of, or in addition to civil penalties. Additionally, the NRC may also issue an order to impose a civil penalty where a licensee refuses to pay a civil penalty. It also may issue an order to an unlicensed person (including vendors) where the agency has identified deliberate misconduct. By statute, a licensee or individual may request a hearing upon receiving an order. Orders are normally effective after a licensee or individual has had an opportunity to request a hearing (30 days). However, orders can be made immediately effective without prior opportunity for a hearing when it is determined the public health, safety, or interest so requires. Subsequent to the hearing process, a licensee or individual may appeal the administrative hearing decision to the court of appeals.

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. The NRC issues a press release for each proposed civil penalty or order. All orders are published in the *Federal Register*. Significant enforcement actions (including actions to individuals) are included in the Enforcement Document Collection in the **Electronic Reading Room** of the NRC's web site.

Fiscal Year 2003 Highlights:

- ▶ one Enforcement Policy revision
- ▶ 70 escalated Notices of Violation without civil penalties
- ▶ 28 proposed civil penalties (\$493,000)
- ▶ 9 orders
- ▶ 2 orders imposing civil penalty

Office of Enforcement

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

Effective July 27, 2003, the agency transferred the oversight of the NRC external allegations process from the Office of Nuclear Reactor Regulations (NRR) to OE.

The Office of Enforcement reports to the Executive Director for Operations (EDO) through the Deputy Executive Director for Reactor Programs and coordinates enforcement actions involving materials licensees with the Deputy Executive Director for Materials, Research and State Programs.

The Office of Enforcement has 16 full-time employees (FTEs) assigned for headquarters activities and 10 FTEs assigned for regional activities (although these FTEs report to the Regional Administrators).

THIS PAGE INTENTIONALLY LEFT BLANK

1. Enforcement Policy Changes

This section describes the one revision to the Enforcement Policy that was made during fiscal year (FY) 2003.

A. October 31, 2002: Interim Enforcement Discretion Policy for Certain Fitness-for-Duty Issues

On October 31, 2002, the Commission published a revision to the Enforcement Policy in the *Federal Register* (67 FR 38325) that added an interim enforcement policy that the NRC will follow to exercise enforcement discretion for noncompliance with certain fitness-for-duty issues. The revision became effective on December 30, 2002.

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

This section addresses enforcement initiatives during FY 2003, program office support, increasing public confidence, new staff guidance, internal communication and enforcement training, and enforcement program audits.

A. Discrimination Task Group

Background

On April 14, 2000, the NRC Executive Director for Operations (EDO) approved the establishment of a Task Group composed of management and senior level staff individuals with significant experience in discrimination matters. The Discrimination Task Group (DTG) was chartered to: (1) evaluate the NRC's handling of matters covered by its employee protection standards, (2) propose recommendations for improvements to the NRC's process for handling such matters, including revisions to guidance documents and regulations as appropriate, (3) ensure that the application of the NRC enforcement process is consistent with the objective of providing an environment where workers are free to raise regulatory concerns without fear of reprisal (i.e., Safety Conscious Work Environment (SCWE)), and (4) promote active and frequent involvement of internal and external stakeholders in the development of recommendations for changes to the process.

In April 2001, the DTG issued a draft report describing the review process and presenting preliminary recommendations. In developing the draft report, the DTG considered many comments and suggestions from internal and external stakeholders, including the Department of Labor (DOL), the Office of Special Counsel, and the Department of Energy.

In June 2001, the DTG began a second round of public meetings soliciting stakeholder comments on the draft report. Based on the comments received on the draft report, the DTG expanded the scope of the final report.

In April 2002, the DTG issued its final report. The final report is available as Attachment 1 to SECY-02-0166. In addition to presenting recommendations to improve the NRC's current

process for handling discrimination matters, the final report presents a series of basic policy questions for consideration in determining the NRC's future approach to discrimination matters.

In summary, the DTG recommended an option that provides the best balance between maintaining the agency's interest in deterring discrimination and encouraging a SCWE. This option (option 5b in the report) bases the investigative threshold on whether the whistleblower has articulated a *prima facie* case, and whether the case as presented could result in a Severity Level III violation or above. Potential Severity Level IV violations would be provided for information to the licensee, if agreed to by the whistleblower. This recommendation responds to many of the stakeholder comments requesting changes to the current process for handling discrimination complaints. Many of the associated streamlining proposals are intended to improve the efficiency and effectiveness of the agency's involvement in this important area, address concerns about fairness to all parties, and maintain public confidence in the agency's ability to fulfill its mission of protecting public health and safety.

A Senior Management Review Team (SMRT) was established to review the final recommendations of the DTG and provide any additional perspectives that could enhance the potential options.

On September 12, 2002, SECY-02-0166 was issued and presented four options for Commission consideration of changing the way the NRC handles discrimination cases, based on recommendations of the DTG and the SMRT. On December 17, 2002, a Commission Meeting was held and stakeholders provided comments directly to the Commission on the recommendations of both the DTG and SMRT.

On March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM), basically approving the DTG's recommendations with some modifications.

Since the SRM was issued, OE has been actively developing guidance and strategies to implement the Commission's direction. Some of the recommendations include:

- ▶ releasing a redacted copy of the Office of Investigations (OI) report prior to a predecisional enforcement conference (PEC),
- ▶ providing support for travel expenses to an alleged when the alleged is invited to a PEC,
- ▶ developing more comprehensive enforcement guidance to categorize the severity level of violations in this area,
- ▶ centralized the discrimination process at headquarters, and
- ▶ rulemaking to allow imposing civil penalties to contractors.

B. Alternative Dispute Resolution

The enforcement staff (with support from the Office of the General Counsel (OGC)) is in the process of developing and implementing a pilot program to evaluate the use of Alternative Dispute Resolution in the NRC enforcement program.

Background

What is ADR?

Alternative Dispute Resolution, "ADR", is a term that refers to a number of processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes. The Administrative Dispute Resolution Act of 1996 (ADRA) encourages the use of ADR by Federal agencies, and defines ADR as "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, mini trials, arbitration, and use of Ombudsman, or any combination thereof." These techniques involve the use of a skilled third party neutral, and most are voluntary processes in terms of the decision to participate, the type of process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in a more timely and more economical resolution of issues, more effective outcomes, and improved relationships.

Does NRC have an ADR policy?

The NRC has a general ADR Policy issued on August 14, 1992, that supports and encourages the use of ADR in NRC activities. In addition, the NRC has used ADR effectively in a variety of circumstances, including rulemaking and policy development, Equal Employment Opportunity (EEO) disputes and limited use in enforcement cases.

When did the NRC decide to evaluate the use of ADR in the enforcement program?

The NRC was first requested to use ADR techniques in enforcement to resolve a dispute in a discrimination case between the agency and a nuclear power licensee in April 2000. Because the use of ADR was a significant policy issue, the staff provided a preliminary evaluation of the potential use of ADR in NRC enforcement activities in SECY-01-0176, dated September 20, 2001, and recommended that the NRC seek public comments from which a final evaluation and recommendation could be made. The staff published a *Federal Register* notice soliciting comments on the use of ADR in enforcement on December 14, 2001, and reported the status of the evaluation of the use of ADR to the Commission in SECY-02-0098, dated June 4, 2002. In SECY-02-0098, the staff noted that the initial comments received indicated that many stakeholders may have had misperceptions regarding the nature of ADR. Accordingly, a public workshop was held in March 2002, in order to explore the nature of ADR and its potential benefits. During the workshop, NRC stakeholders and specialists in the use of ADR by federal agencies discussed the strengths and weaknesses of using ADR in the NRC's enforcement process. In response to comments received on the *Federal Register* notice, and participant discussion at the workshop, the staff concluded that: (1) there may be a role for ADR in the NRC enforcement program; (2) if ADR does have a role, the NRC should focus on using it in areas where the largest benefits could be achieved in terms of time, resources, and more

effective results; (3) any ADR program should be implemented as a pilot process; and (4) additional stakeholder input is warranted.

On August 21, 2002, the staff published a *Federal Register* notice announcing public meetings to discuss options for use of ADR and requesting public comment on specific issues concerning the implementation of a pilot program.

Pilot Program

As a result of the comments received in writing and at the public meetings, in SECY-03-115, dated July 8, 2003, the staff recommended the implementation of a pilot program for the use of ADR at four specific points in the investigation and enforcement process.

Specifically:

1. "Early ADR" following the receipt of an allegation of discrimination and an initial Office of Investigations (OI) preliminary interview of the whistleblower for low significance cases which meet the prima facie threshold for conducting an OI investigation;
2. in low significance and higher significance cases following the completion of an OI investigation that substantiates an allegation of discrimination or other wrongdoing, but prior to a predecisional enforcement conference;
3. following the issuance of a Notice of Violation and civil penalty (if proposed); and
4. following the imposition of a civil penalty, but prior to a hearing on the case.

The Alternative Dispute Resolution Review Team (ART) report on the implementation of a pilot program using ADR in the investigation and enforcement processes is included as Attachment 1 to SECY-03-115.

In an SRM dated September 8, 2003, the Commission approved the staff's recommendation to develop and implement a pilot program, however, the Commission directed the staff to expand the "early ADR" process to allow implementation regardless of the significance of the case and in lieu of an initial OI preliminary interview.

At the end of the FY2003, the staff was in the process of refining the issues associated with using ADR in the enforcement program and planning on soliciting public comments and conducting a public workshop on the development and implementation of a pilot program on the use of ADR.

C. Enforcement Actions Against Individuals

Enforcement actions involving individuals is an area that the agency takes very seriously. This issue is currently addressed in Section VIII of the Enforcement Policy. The enforcement staff established an internal working group to evaluate and propose recommendations for improvements to this section of the Enforcement Policy, including clarification on the thresholds for issuing individual enforcement sanctions.

On March 9, 2001, a *Federal Register* notice was issued that sought stakeholder feedback on a proposed revision to the guidance in Section VIII, "Enforcement Actions Involving

Individuals," of the Enforcement Policy. The proposed policy revision 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 DTG was considering a related question, namely whether hearing rights should be granted to individuals who receive NOVs, revision to Section VIII was placed on hold pending issuance of the DTG SRM.

In its March 26, 2003, SRM involving the DTG, the Commission directed to the staff to "fully explore the policy and resource implications of providing hearing rights (either formal or informal) to individuals subject to a 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 a NOV. As the pilot program for enforcement-related ADR is developed, further insights into the possible use related to individuals will be explored. Therefore, the policy revision originally prepared will be coordinated with both DTG recommendation implementation activities and the ADR pilot program development.

D. Reactor Program Support & Initiatives

The enforcement staff have supported numerous initiatives in the reactor program.

The implementation of the reactor oversight process (ROP) and in particular, the manner in which the significance determination process (SDP) assesses the safety significance of inspection findings overall continued to be successful. While improvement issues still remain, the ROP provides a sound framework for assessing the performance of power reactor licensees and utilizes the NRC's enforcement authority appropriately through a process that is both objective and transparent.

OE was significantly involved in the initial implementation of the ROP. The enforcement staff has continued to use its years of experience implementing the traditional enforcement program to serve as process facilitators during significance determination and enforcement review panels (SERPs), regulatory conferences, and post conference caucuses/SERPs. OE utilized its presence in the regional offices to provide program guidance and to provide feedback to the program office on lessons learned during implementation. OE reviews changes to program guidance and provides valuable insights in the areas of timeliness, the disposition of old design issues, revision of the SDP, guidance on minor violations, and the treatment of programmatic issues in a risk-informed framework. In addition, OE reviewed and provided comments on the most recent draft of the Inspection Manual Chapter, "Reactor Oversight Process (ROP) Basis Document and revisions of Manual Chapters 0612, " Power Reactor Inspection Reports," and 0609, "Significance Determination Process".

The NRC staff issued final significance determination letters for 16 cases identifying a finding that was "greater than Green" during FY 2003 (i.e., White, Yellow, or Red). A Notice of Violation (NOV) was issued in association with the identified cases on 15 occasions demonstrating the level of integration between the assessment and enforcement program. Fourteen of these issues were associated with a White SDP finding from the ROP and one issue was associated with a Red SDP finding. These 15 cases represent the majority of the escalated enforcement actions taken in the power reactor area during FY 2003.

OE has been monitoring the number and causes for ROP findings that were preliminarily determined to be "greater than Green" and subsequently downgraded prior to the final significance determination. OE has been tracking downgraded findings as an opportunity to learn more about the effectiveness and efficiency of the SDP. In addition, downgraded findings have the potential to impact NRC goals in the area of improving public confidence and reducing unnecessary regulatory burden.

In addition to activities associated with the ROP, the enforcement staff has supported other initiatives in the reactor program.

OE has worked closely with NRR's technical, rulemaking, and inspection program staffs, to understand the broad regulatory issues associated with multiple issues (manual actions, NFPA 805, and associated circuits) in the fire protection program and develop strategies and guidance to address these issues.

- ▶ **Manual Actions:** In order to support and implement changes proposed by NRR, OE proposed an interim enforcement discretion policy to address the use of operator manual actions in lieu of using fire barrier separation to maintain safe shutdown capability per Appendix R, paragraph III.G.2 until the regulations could be modified to allow the practice. SECY-03-100 was issued on June 17, 2003 and the Commission approved the staff's recommendations in an SRM dated September 12, 2003. The issuance of an enforcement discretion policy represents an efficient tool that not only supports the agency's desire to transition to a more risk-informed, performance-based regulatory framework, but also establishes specific acceptance criteria that will ensure a consistent safety standard.
- ▶ **NFPA 805:** OE responded to NRR's desire to provide incentives for licensees to adopt a pending revision to 10 CFR 50.48 that uses a National consensus standard from the National Fire Protection Association, NFPA 805, Performance-Based Standard for Fire Protection for Light Water Reactor Electrical Generating Plants as its basis. OE recommended an interim enforcement discretion policy (similar to "old design discretion" included in the Enforcement Policy) that would encourage licensees to initiate efforts to identify and correct subtle violations that are not likely to be identified by routine efforts.
- ▶ **Associated Circuits:** OE has been working with NRR to support resumption of post-fire safe-shutdown associated circuit inspections, including participating in a public workshop on fire protection issues conducted on February 19, 2003, and reviewing risk-informed inspection criteria.

OE has continued to support the agency response following the discovery of severe vessel head degradation at Davis-Besse. Specifically, OE activities in FY 2003 included:

- ▶ Supported the NRC "Lessons Learned Task Force" regarding the agency's handling of Davis-Besse reactor vessel head damage, report issued October 9, 2002.
- ▶ Assisted development of Temporary Instruction 2515/150: Reactor Pressure Vessel Head and Vessel Head Penetration Nozzles (NRC Bulletin 2002-02), October 18, 2002.
- ▶ Supported several 2.206 petitions regarding various regulatory matters at Davis-Besse.

Additionally, OE has continuously monitored and supported Region III inspection and OI investigation activities regarding the Davis-Besse event in anticipation of enforcement activities that may result.

OE reviews and concurs on rulemakings related to the reactor program to ensure the proposed and final rules and the Enforcement Policy and procedures are consistent. In doing so, OE makes any necessary changes to the Enforcement Policy or procedures.

During FY 2003, the enforcement staff provided comments on the proposed amendments to Appendix E to 10 CFR Part 50 relating to NRC approval of changes to emergency action levels and exercise requirements for co-located licensees.

During FY 2003, the enforcement staff reviewed the current proposed rule package for 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components," and provided comments for consideration in drafting the final rule.

The enforcement staff reviewed the Commission Paper titled "Steam Generator Tube Integrity - Plans for Revising the Associated Regulatory Framework," and the associated draft generic letter. The enforcement staff reviewed the proposed issuance of Orders for the addition of backup AC power supply to combustible gas igniters for pressurizer water reactors with ice condenser containments and boiling water reactors with Mark III containments and provided comments for consideration.

The enforcement staff reviewed and provided comments on NRR's response to TIAs dealing with backfitting requirements for Dresden Units 2 and 3 reactor building crane and with evaluation of potential unreviewed safety questions associated with modifications made to offsite power at Cooper.

The enforcement staff also participated in the public meetings to address rulemaking for worker fatigue at nuclear power plants.

Management Directive 10.159, "Differing Professional Views or Opinions" requires that the Director, OE appoint a member of the Differing Professional View (DPV) Ad Hoc review panel when the subject of a DPV involves an enforcement issue.

During October 2002, OE participated in a DPV Ad Hoc review panel involving inspection findings related to the tornado mitigation strategy at a Region II reactor facility. The DPV encompassed issues involving the adequacy of licensee procedures and hardware and whether documented deficiencies represented violations of NRC requirements.

During December 2002, OE participated in a DPV review panel to review the NRC's proposed license amendment to reduce the Zion nuclear plant control room staffing requirements. The individual was concerned that there were not sufficient requirements in the issued Technical Specifications to ensure long-term safe storage of the fuel and that if a pager system was going to be used to alert shift personnel of alarm conditions, it should be included in the Technical Specifications.

E. Materials Program Support & Initiatives

OE reviews and concurs on rulemakings related to the materials program to ensure the proposed and final rules and the Enforcement Policy and procedures are consistent. In doing so, OE makes any necessary changes to the Enforcement Policy or procedures. During FY 2003, the enforcement staff reviewed the final rule package for revising 10 CFR Part 71, "Compatibility with IAEA Transportation Standards (TS-R-1) and Other Transportation Safety Amendments." The OE staff developed related changes to the Enforcement Policy and provided them for publication with the revised final rule.

OE supported the NMSS program office in its endeavor to negotiate a Memorandum of Understanding between the NRC and the Department of Energy regarding responsibilities and oversight of U.S. Enrichment Corporation's lead centrifuge cascade.

The OE staff reviewed an NRC Regulatory Issue Summary 2002-20, "Clarification of Requirements Under 10 CFR 35.432, "Calibration Measurements of Brachytherapy Sources,"" that clarifies the record keeping requirements for medical users that are described in 10 CFR 35.2432 and 35.2433.

The OE staff reviewed Information Notice 2003-12, "Problems Involved in Monitoring Dose to the hands Resulting from the Handling of Radiopharmaceuticals." The Notice provided radiation safety information to medical and nuclear pharmacy licensees.

Additionally, OE staff participated in various working groups including a draft rulemaking group that was tasked to revise the training and board certification requirements listed in 10 CFR Part 35, and a group to make recommendations concerning the need to revise 10 CFR 30.34 to include specific requirements for portable gauge security.

OE performs monthly audits of the number of non-escalated enforcement actions issued by the regional and headquarters inspectors. The information is provided to NMSS and the regional offices in an audit report that is issued at 6-month intervals. NMSS is in the process of developing an inspection tracking system that will capture this information automatically.

Currently, the U.S. Department of Health and Human Services, Health Resources and Services Administration, Division of Practitioner Data Banks maintains a database of adverse actions taken against medical providers. NRC is required to submit information regarding such adverse actions taken by NRC. OE has been working with NMSS to develop an NRC Management Directive to provide procedures for improving data collection and entering the data. When the Management Directive is approved, OE will assume responsibility for the data entry.

As necessary, OE serves as a member of 10 CFR 2.206 Petition Review Boards, Allegation Review Boards, and NRC Bankruptcy Review Teams to provide guidance and support on associated enforcement issues.

F. Security Program Support & Initiatives

The events of September 11, 2001, highlighted the need to examine the way NRC is organized to carry out its safeguards, security, and incident response functions. After a thorough review of NRC's organizational structure, staffing, and training in the security and safeguards areas, the Commission determined that greater efficiency and effectiveness would be achieved by consolidating certain NRC safeguards, security, and incident response functions.

The Commission approved the establishment of a new Office of Nuclear Security and Incident Response (NSIR) which became effective on April 7, 2002. NSIR reports to the Deputy Executive Director for Homeland Protection and Preparedness. In view of the transfer of the material control and accounting (MC&A) inspection program from NMSS to NSIR, and in order to maintain this area of enforcement program consistent with the region-managed programs, the Director, OE issued a delegation of authority memorandum dated August 21, 2003, to the Director, NSIR regarding issuance of certain enforcement actions. This delegation applies to violations in all areas in which NSIR evaluates, directly manages, or conducts inspections related to MC&A activities.

During FY 2003, OE supported and assisted NSIR and NRR and NMSS with orders modifying licenses to address security issues. In addition to reviewing the content of the orders, OE notified the Commission of the issuance of the security orders and posted the orders 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. The security orders contained requirements for licensees to implement fitness-for-duty requirements, access authorization requirements, training enhancements, and changes to address revisions to the design basis threat. These requirements reflected additional security enhancements that have emerged from NRC's ongoing security review activities.

- ▶ On January 7, 2003, access authorization orders were issued to all 104 commercial nuclear power plants.
- ▶ On April 29, 2003, security orders were issued to all 104 commercial nuclear plants requiring that changes be made in fitness-for-duty, training, and to address changes made to the design basis threat.
- ▶ Security orders were issued to the following fuel cycle facilities:
 - Nuclear Fuel Services, Inc., July 8, 2003,
 - BWX Technologies, Inc., April 29, 2003,
 - Nuclear Fuel Services, Inc., April 29, 2003,
 - BWX Technologies, Inc., February 6, 2003,
 - Global Nuclear Fuel - Americas, LLC., February 6, 2003,
 - Framatome Advanced Nuclear Power, Inc. (Lynchburg), February 6, 2003,
 - Framatome Advanced Nuclear Power, Inc. (Richland), February 6, 2003, and
 - Westinghouse Electric Company, LLC., February 6, 2003.
- ▶ Security orders were issued on June 13, 2003, to all panoramic and underwater irradiators authorized to possess greater than 370 TerraBecquerels (10,000 Curies) of byproduct material in the form of sealed sources.

OE was actively engaged in resolving and dispositioning issues identified through staff inspections to assess licensee implementation of these orders. OE is a member of the Compensatory Measures Management Review Panel (CMMRP) established to review all security and safeguards findings identified during inspection of the orders.

OE also worked closely with NSIR and the Office of State and Tribal Programs to develop a draft agreement between the NRC and States for Agreement State inspectors to perform security inspections to determine compliance with the security orders.

During FY 2003, OE supported NSIR in the development of the enforcement aspects of the staff's requests to the Commission to perform expanded table-top drills and force-on-force exercises to determine the program changes to be made in response to the events of September 11, 2001. The enforcement staff developed Enforcement Guidance Memorandum (EGM) 03-001 to allow the use of enforcement discretion during the Force-on-Force pilot program exercises conducted to analyze power-reactor licensees' protective strategies. OE will continue to work with NSIR in developing an acceptable approach to assess the significance and the appropriate enforcement approach for issues identified during evaluated drills and exercises.

During FY 2003, the enforcement staff continued to work closely with the program office in developing an interim enforcement discretion policy for certain fitness-for-duty (FFD) issues. OE supported the program office during public meetings on FFD and was responsive to modification requests resulting from ongoing meetings between the staff and stakeholders. The Commission approved the staff's proposed interim enforcement policy for exercising enforcement discretion with respect to the practices regarding suitable inquiry and pre-access testing. The interim enforcement discretion policy was published in the *Federal Register* on October 31, 2002, and became effective on December 30, 2002.

The enforcement staff reviewed and provided comments on the statement of facts developed by the GAO regarding review of security at nuclear power plants. In addition, the enforcement staff provided an explanation of the enforcement and reactor oversight processes and completed an audit of both escalated and non-escalated security enforcement actions to provide data for the review.

The enforcement staff reviewed the draft final rule on national maritime security initiatives and provided comments.

OE continues to support NSIR with the NRC's emergency response capabilities by having an OE representative maintain qualifications as an active member of the Reactor Safety Team. As such, an OE representative participated as a Reactor Safety Team member the Diablo Canyon full-scale exercise on October 23, 2002, as well as the full-scale Kewaunee exercise on September 23, 2003.

OE also continues to support NSIR with the NRC's Continuity of Government (COG) functions by having a representative on call at all hours as an active member of a select, specially-trained, NRC Team. In this capacity, the OE representative briefed high-level Federal officials on NRC nuclear-related matters and NRC response capabilities; educated senior Federal officials and numerous departments and agencies about NRC's roles and responsibilities (particularly the differences in functions between the NRC and Department of Energy); and prepared status reports of NRC activities from approved agency

documents. In addition, this individual represented the NRC and Team at several interagency working group meetings and represented NSIR at a Continuity of Operations Working Group meeting at the Defense Nuclear Safety Board.

G. Radioactive Waste Program Support & Initiatives

High-Level Waste Disposal

United States policies governing the permanent disposal of high-level radioactive waste are defined by the Nuclear Waste Policy Act of 1982, as amended. This act specifies that high-level radioactive waste will be disposed of underground, in a deep geologic repository and that Yucca Mountain, Nevada, will be the single candidate site for characterization as a potential geologic repository. The licensing criteria are contained in 10 CFR Part 63, "Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada." The Secretary of Energy has recommended the Yucca Mountain site to the President for the development of a Yucca Mountain repository. The President has notified Congress that he considers the Yucca Mountain site qualified for application for a construction authorization for a repository. Nevada filed a notice of disapproval of the President's recommendation; however, Congress later approved the site recommendation. The U.S. Department of Energy (DOE) may now submit a license application to the NRC.

The NRC anticipates that the DOE will submit a license application to construct a high-level waste at the proposed Yucca Mountain Repository in December 2004. The NRC review of the Yucca Mountain application is expected to take up to three years to complete. Due to the uniqueness of the proposed facility, OE has been actively engaged in discussions with NMSS and will be working with them to develop an enforcement program and strategy, including an appropriate base civil penalty amount and new Enforcement Policy Supplement violation examples. The development of an interim enforcement policy may be appropriate during the license review interval. OE is sensitive to DOE's quality assurance issues as well safety conscious work environment issues. Early enforcement issues may involve employee protection, completeness and accuracy of information, and deliberate misconduct. As a first step, OE developed and presented training on for the course, "Licensing and Evaluation of a High-Level Waste Geologic Repository (H-415)," on May 14, 2003.

H. Public Involvement

The NRC views building and maintaining public trust and confidence that the NRC is carrying out its mission as an important performance goal for the agency. To reach this goal, the NRC must be viewed as an independent, open, efficient, clear and reliable regulator. This will be accomplished by providing our stakeholders with clear and accurate information about, and a meaningful role in, our regulatory programs.

OE wants to actively engage stakeholders to educate them on how the enforcement program is changing to support new initiatives in the agency's oversight programs in conjunction with meeting the agency's performance goals of maintaining safety; reducing unnecessary burden; making NRC activities and decisions more effective, efficient, and

realistic; and increasing public confidence. OE has and will continue to conduct more stakeholder meetings to address the enforcement program and enforcement issues. The enforcement staff have participated in enforcement stakeholder activities, including:

- ▶ Workshops on the use of Alternative Dispute Resolution (ADR) in the enforcement program:
 - ▶ October 10, 2002, in New Orleans, Louisiana, and
 - ▶ October 18, 2002, in Washington, DC.
- ▶ Frank J. Congel, Director, OE, served as a panelist in a breakout session at the 15th annual Nuclear Regulatory Information Conference (RIC) on April 16, 2002. He addressed the enforcement process for discrimination issues during the Safety Management - Promoting Safety Culture to Achieve Safe Performance session.
- ▶ James Luehman, Deputy Director, OE, provided a presentation a representative from the Japanese Nuclear Safety Commission on the NRC's enforcement program on June 18, 2003.
- ▶ An OE representative provided a presentation to a Lithuanian delegation (including representatives from the Ministry of Energy and VATESI) on the NRC's enforcement program on February 7, 2003.
- ▶ An OE representative provided a presentation to a group of training, research, and test reactor licensees addressing the NRC's enforcement program for addressing discrimination against employees for raising safety concerns, including a discussion of safety conscious work environment and DOL's process for handling discrimination cases on November 14, 2002.
- ▶ The Agency Allegations Advisor and allegation coordinators from the program offices and regions attended portions of two national meetings of industry employee concerns program (ECP) coordinators. The allegation coordinators then met with the ECP coordinators from their respective regions to help them better understand the NRC's allegation and enforcement processes and trends.
- ▶ The Region III staff provided a presentation on the NRC's allegation and enforcement processes to a class of new OSHA investigators at their national training center near Chicago on March 20, 2003.

To provide accurate and timely information to all interested stakeholders and enhance the public's understanding of the enforcement program, OE continues to electronically publish enforcement information on the NRC's public Web site. The **Enforcement** page under the **What We Do** icon on the home 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; and upcoming predecisional enforcement conferences. 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, OE established a public participation page on the enforcement web site. OE has and will continue to use this site as a way for interested stakeholders to provide input on various enforcement issues (such as the Discrimination Task Force and Alternative Dispute Resolution).

OE also provides summaries of significant enforcement actions issued to materials licensees through the NMSS Newsletter.

I. Enforcement Guidance

OE provides guidance to assist the NRC staff in implementing the Commission's enforcement program consistent with NRC's Enforcement Policy in the NRC Enforcement Manual (Manual).

Intended for internal use by the NRC, the Manual contains procedures, requirements, and background information used by the staff who develop or review enforcement actions.

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 FY 2003, OE issued three change notices to the Manual.

- ▶ Change Notice Number 1 was issued on November 14, 2002, and added EGM 02-003, "Enforcement of 10 CFR 35.2432 - Records of Calibration Measurements of Brachytherapy Sources," to Appendix A.
- ▶ Change Notice Number 2 was issued on March 6, 2003, and revised Appendix C to address new Part 35 standard citations based on the revisions to Part 35 governing the medical use of byproduct material that became effective on October 24, 2002.
- ▶ Change Notice Number 3 was issued on April 1, 2003, and added EGM 03-001, "Use of Enforcement Discretion During Force-On-Force Pilot Program Exercises Conducted to Analyze Power-Reactor Licensees' Protective Strategies," to Appendix A.

In addition to guidance issued from OE, the regions routinely review and revise enforcement-related regional instructions.

J. 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 piece of the agency's regulatory programs. Internal communication initiatives during this fiscal year include:

- ▶ Director, OE routinely briefed the Deputy EDOs on the status of enforcement actions, policy issues, and new initiatives.

- ▶ Director, OE participated in periodic meetings with the Commissioners on enforcement issues.
- ▶ OE, regional enforcement staff, and program office enforcement coordinators participated in a counterpart meeting March 11 - 13, 2003, to address enforcement issues and new initiatives and issues in the program offices.
- ▶ OE, regional enforcement staff, and program office enforcement coordinators participated in weekly conference calls to address enforcement issues and enforcement cases.
- ▶ An OE representative participated in a Region II Fuel Facility Counterpart Meeting September 17 - 18, 2003.

OE has and will continue to conduct training to address the enforcement program and emerging enforcement issues. Headquarters enforcement staff have provided internal stakeholders with the following training:

- ▶ Enforcement staff provided training on the enforcement program for the course, "The NRC: What It Is and What It Does," on:
 - ▶ April 2, 2003, and
 - ▶ September 24, 2003.
- ▶ Enforcement staff developed and presented training on for the course, "Licensing and Evaluation of a High-Level Waste Geologic Repository (H-415)," on May 14, 2003.
- ▶ The Deputy Director, OE provided enforcement training to new OI investigators on April 3, 2003.
- ▶ Enforcement staff provided lessons learned and refresher training on selected enforcement topics during the regional inspector counterpart meetings. Because of the number of reactor pressure vessel head nozzle leaks discovered, OE provided training on properly dispositioning violations of technical specifications which allow zero leakage from the reactor coolant system pressure boundary. Training was also provided on the three basic enforcement decisions (is it a violation, what is the significance, and how should it be dispositioned) and the importance of making these as separate decisions; and the legal standard (preponderance of the evidence) used in NRC civil enforcement proceedings. Training was conducted on for:
 - ▶ Region I on May 7, 2003,
 - ▶ Region II on December 11, 2003,
 - ▶ Region III on May 28, 2003, and
 - ▶ Region IV on June 26, 2003.

The regions also provided training on the enforcement program in the regional offices.

- ▶ Region I enforcement staff provided training to all technical personnel during the Region I Inspector Seminar in December 2002, concerning: (1) recent changes in handling enforcement issues such as 50.59, Maintenance Rule, emergency planning violations and security issues, (2) meeting notices for conferences, (3) charging time in HRMS for enforcement activities, and (4) lessons learned from enforcement audits.
- ▶ Region I enforcement staff developed refresher training in January 2003, covering the above topics, for technical employees, who could not attend the Seminar.
- ▶ Region I enforcement staff provided individual training to approximately 25-30 newly hired inspectors on a continuing basis, throughout the period, and also provided a group training session to newly hired inspectors in August 2003.
- ▶ Region II enforcement staff provided individualized training to newly hired employees on a continuing basis.
- ▶ Region III enforcement and allegations staff provided enforcement and allegation training to approximately 20 newly hired inspectors and allegation training to approximately 10 new administrative staff during the year.
- ▶ Region IV enforcement staff provided training to all new inspectors to enable them to complete their qualification journals and prepare them for qualification boards. This included formal training on May 27, 2003 and September 10, 2003. In addition, a member of the enforcement staff participated on all inspector qualification boards conducted in Region IV in FY 2003 to assure that questions addressed aspects of the enforcement program.

K. Audits

OE staff lead specific topic focused audits of the Regional and program office enforcement programs to identify inconsistent application of the Enforcement Policy and enforcement guidance.

Audit of Individual Action Files - 5/3/2003

OE completed an audit of Individual Action (IA) folders. The purpose of the audit was to ensure that the Enforcement Policy was applied appropriately and that administrative enforcement procedures were followed. The audit also served to support the maintenance of the Individual Action Tracking System (IATS) database regarding the status of 65 specific cases.

The audit found no errors related to application of the Enforcement Policy. However, the audit found greater than 15 percent of the folders had some form of administrative discrepancy, including, but not limited to: (1) using an EA number on correspondence instead of an IA number, (2) omitting an IA number on correspondence, (3) using the wrong person's name on correspondence, (4) including two IA numbers on correspondence instead of one, and (5) including information in IA folders that should have been included in

the EA folder or some other file instead. All identified discrepancies were promptly resolved.

The audit recommend briefing the clerical staff and enforcement specialists on the results of the audit and the importance of the accuracy of IA system.

Audit of Non-Power Reactor Inspection Reports - 5/12/2003

OE completed an audit of non-power reactor inspection reports. The purpose of the audit was to determine whether the Enforcement Policy was being appropriately and consistently applied during inspections of non-power reactor facilities.

The inspection report audit consisted of a review of 18 of the most recent non-power reactor inspection reports. The audit was weighted toward non-power reactors with power outputs of 1000 kw or greater and included inspection reports with NOVs, NCVs, as well as reports with no identified violations. The audit verified that NOVs were assigned the correct severity level, verified the agreement between the cited requirement and the violation's "contrary to" statement, verified that NCVs met the NCV criteria as stated in the Enforcement Policy and Enforcement Manual, and verified that no regulatory violations were discussed which were not properly dispositioned.

Of the inspection reports reviewed, three contained NOVs. The audit determined that each of the three NOV's were assigned the appropriate severity level and the "contrary to" statements were appropriately worked. However, one of the NOV's incorrectly cited the violation as a Supplement IV violation (Health Physics), rather than a Supplement VIII violation (Emergency Preparedness). Three inspection reports also contained NCV's. Two of the NCVs met the NCV criteria and were correctly worded in accordance with guidance in the Enforcement Manual. The third NCV would have been more appropriately characterized as a minor violation since it was a record keeping problem that had no safety consequences.

In addition to the NOVs and NCVs discussed above, the audit identified one issue which appeared to be an Emergency Plan violation, but which the inspection report referred to as an "area for improvement." The issue should have been dispositioned as an NCV or minor violation. The audit also identified a technical specification violation that was incorrectly dispositioned.

With the exception of the findings discussed above, the audit concluded that the NRC Enforcement Policy appears to be appropriately and consistently applied at non-power reactor facilities.

Audit of Enforcement Action Strategy Forms - 6/27/2003

OE completed an audit of Enforcement Action strategy forms. The purpose of the audit was to ensure that Enforcement Action strategy forms were included in the Enforcement Action (EA) case folders, the Enforcement Action strategy forms notebook, and OE's shared group directory (G drive).

The audit found that in most cases, Enforcement Action strategy forms were included in all three locations. However, there were instances where Enforcement Action strategy forms

were not included in the Enforcement Action strategy forms notebook or the EA folder. There were also instances where a copy of the Enforcement Action strategy form could not be located any of the three locations. All identified discrepancies were promptly resolved.

The staff was briefed on the results of the audit and the importance of the maintaining appropriate records through the use of the Enforcement Action strategy forms.

Audit of Enforcement and Allegation Training - 9/30/2003

OE completed an audit of the enforcement and allegation material currently included in several NRC training courses. The purpose was to ensure that the information included in these courses was not only complete and accurate, but focused on the issues the office believes are important to emphasize.

Courses that were reviewed included, "Expectations for Inspectors," "Conducting Inspections," "The NRC: What it is and What it Does," and "The Regulatory Process." The audit also included a review of the training requirements included for NRC interns and for new reactor inspectors (Inspection Manual Chapter 1245).

The audit found that there were instances where: (1) information was not accurate, (2) information was not complete or not included at all, and (3) information was not focused on areas the office believes is important to emphasize. Specific comments are described in detail in the appendices of the audit report.

The audit included several recommendations to correct, complete, and refocus enforcement and allegation-related information. Specific comments and recommendations are included in the appendices of the audit report.

Regional Audits

In addition to the headquarters lead audits, the regional enforcement staff also conducted audits of the region's enforcement program. During this fiscal year, the regions routinely reviewed non-escalated reactor and materials enforcement actions to determine: (1) if enforcement issues were adequately described in the inspection reports and if they were properly dispositioned in accordance with the Enforcement Policy and applicable enforcement guidance; and (2) if violations were properly documented and received the appropriate significance categorization either by SDP color or severity level. The audits determined that, for the most part, non-escalated actions were properly dispositioned in accordance with NRC guidance. Some issues that were identified included insufficient documentation, failure to follow process procedures in soliciting OE review, and failure to use standard language in enforcement correspondence.

Region III also conducted an audit (similar to the audit OE performed in FY 02) of ADAMS entries for a selection of its enforcement documents. The results were similar to those of the OE audit. Most of the documents had been entered into ADAMS, but profiling was inconsistent making retrieval difficult for a number of records. The security of all the documents had been appropriately entered.

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

3. Escalated Enforcement and Administrative Items

During fiscal year 2003, the agency issued 109 escalated enforcement items.

Escalated enforcement includes:

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

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 proposed civil penalty for a Severity Level III violation and an escalated NOV for a Severity Level III violation without a civil penalty. For the purposes of this report, this action would be reflected as one civil penalty and one escalated NOV.

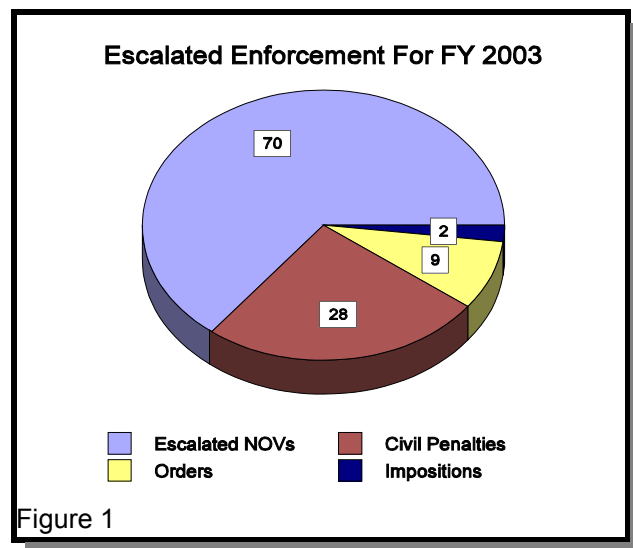


Figure 3 on page 29 includes a numerical breakdown of escalated enforcement items issued by each regional and program office. Figure 4 on page 31 provides a breakdown of escalated enforcement items based on the type of licensee, non-licensee, or individual.

Enforcement Actions With OI Reports

Forty-eight percent of the 107 proposed escalated actions (excluding the two impositions) had an OI report associated with them.

- ▶ 24 out of the 70 escalated NOVs (34%).
- ▶ 19 out of the 28 proposed civil penalties (68%).
- ▶ 8 out of the 9 enforcement orders (excluding impositions) (89%).

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.

OE Annual Report

The 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 days of NRC processing time.

The administrative goals include completing:

- ▶ non-investigation cases in an average of 120 days; and
- ▶ investigation cases in an average of 360 days of NRC processing time.

During fiscal year 2003, these standards were met, with enforcement action averages for reactor cases, reactor cases with investigations (Reactor/OI), materials cases, and materials cases with investigations (Materials/OI) included in Figure 2.

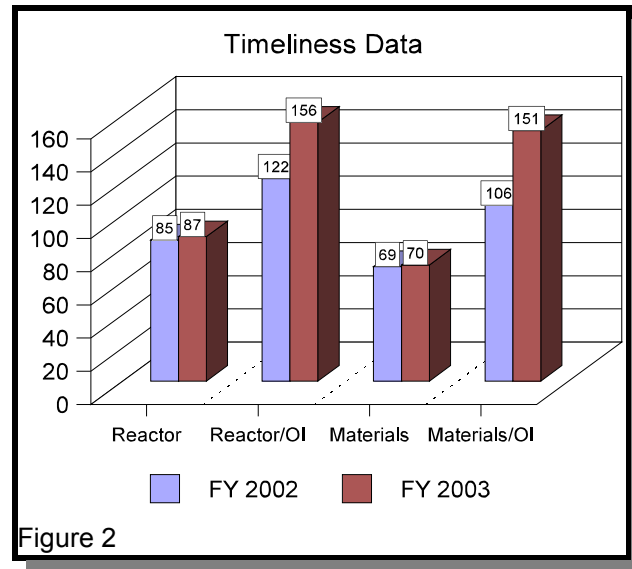


Figure 2

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.

Cases are grouped and treated as a single case whenever two or more escalated issues are associated in one action (i.e., more than one EA number).

Although the FY 2003 timeliness data appears to have increased from FY 2002 for OI cases, it should be noted that the methodology to calculate "NRC processing time," was refined and implemented in FY 2003. As used in FY 2003, NRC processing time is defined as the number of calendar days between issuance of an escalated enforcement action and the date of the OI report *minus* any time period not within the enforcement staff's control, such as pending DOL decisions. Using the FY 2003 methodology to calculate the FY 2002 data yields an average of 169 days (versus 122 days) for reactor/OI cases and 133 days (versus 106 days) for materials/OI cases. Therefore, there was no significant change in timeliness for OI cases.

A. Escalated Notices of Violation (Without Civil Penalties)

During FY 2003, the agency issued 70 escalated NOVs (without civil penalties). (This number reflects the number of enforcement items versus the number of enforcement cases issued during the year.) Nineteen of these items were issued to individuals. See Section 5 for more information on enforcement items issued to individuals and other non-licensed persons (i.e., vendors and certificate holders). Fourteen of these issues were associated with a White SDP finding from the ROP, and one issue was associated with a Red SDP finding. Appendix A includes a short summary description of each of the enforcement items issued to licensees, Appendix D, and Appendix E include summaries of actions issued to individuals and non-licensees, respectively.

B. Civil Penalty Actions

During FY 2003, the agency issued 28 civil penalty issues. Sixteen of these 28 civil penalty issues involved willfulness. Appendix B includes a short summary description of each of these items. Table 2 includes statistical information on civil penalties. As stated before, an enforcement action may include more than one individual civil penalty issue.

C. Orders

During FY 2003, the agency issued nine enforcement orders. Seven of the orders were issued to individuals based on deliberate misconduct. (See Section 5 for more information on enforcement actions issued to individuals, vendors, and certificate holders.) In addition to these orders, two civil penalty imposition orders were issued. Appendix C includes short summary descriptions of the two impositions that were issued.

D. Demands for Information

A Demand for Information 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. No Demands for Information were issued in FY 03.

E. Escalated Enforcement Trends

During FY 2003, the agency issued 109 escalated enforcement items. This is the same number of escalated items that were issued in FY 2002. The average number of escalated enforcement items issued over the last five years is 110. Figure 5 show graphical representations of overall enforcement trends since fiscal year 1995. Table 2 includes enforcement trends by type of licensee, non-licensee, or individual since 1995.

It should be noted that direct correlations between the last nine fiscal years is difficult because of the major policy changes that have occurred over the years. With the exception of actions to unlicensed individuals, the number of escalated enforcement issues by each category is similar to last year. For example, the number of escalated issues for operating reactors in FY 2002 was 28 versus 23 in FY 2003. The number of escalated actions issued to unlicensed individuals was noted in the FY 2002 annual report as dropping from 21 in FY 2001 to nine in FY 2002. The number of escalated actions issued to unlicensed

individuals in FY 2003 was 25. The average number of actions issued to unlicensed individuals since FY 1995 is 23. Actions against unlicensed individuals are only taken when actions are deliberate. Whether or not individuals have engaged in deliberate misconduct and how many may be involved in a particular case is highly variable. In addition, given the complexity of these cases, it is not unusual for cases involving individuals to be initiated in one fiscal year and dispositioned in another fiscal year. Therefore, such variations in the number of actions against unlicensed individuals from year to year is not unusual.

4. Cases Involving Exercise of Discretion

Section VII of the Enforcement Policy addresses those cases where, notwithstanding the normal guidance contained in the Policy, the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case. During FY 2003, 11 cases that included significant issues involved an exercise of discretion. Six cases involved an escalation of sanctions and five cases involved a mitigation of sanctions. These cases are addressed below.

Section VII.A

Section VII.A of the Enforcement Policy provides that the NRC may increase a sanction up to its full enforcement authority where the action is warranted without applying the normal civil penalty assessment process (Section VI.C.2). It also provides for either increasing the amounts of civil penalties or proposing civil penalties where the normal process would result in no civil penalty. During FY 2003, six cases involved this exercise of discretion. Of these cases, two cases involved the failure to maintain control of licensed material.

Advanced Medical Imaging and Nuclear Services Easton, Pennsylvania

EA-02-072

On October 22, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$43,200 was issued for a Severity Level II problem involving willfully using byproduct material without an Authorized User, failing to appoint a Radiation Safety Officer, and creating incomplete and inaccurate records. Although the normal civil penalty assessment process would have resulted in a base civil penalty, the NRC exercised discretion in accordance with Section VII.A.3 of the Enforcement Policy and assessed a base civil penalty for each day the violation continued after the licensee's consultant raised the issue. Discretion was warranted based on the egregiousness of the violations, the level of management involved, the economic benefit of being in noncompliance, and the failure to take corrective action after the consultant's findings.

American Radiolabeled Chemicals St. Louis, Missouri

EA-02-255

On April 17, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$12,000 was issued for a willful Severity Level III problem involving the deliberate failure to: (1) make required surveys to limit the dose to members of the public; (2) perform required weekly removable contamination surveys in the restricted and unrestricted areas; and (3) accurately record the results of required weekly fume hood face velocity measurements.

Although the normal civil penalty assessment process would have resulted in a base civil penalty, the NRC exercised discretion in accordance with Section VII.A.1(c) of the Enforcement Policy and doubled the penalty due to the licensee's particularly poor performance surrounding the violations.

***IBS of America of America
Chesapeake, Virginia***

EA-03-079

On September 15, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III problem involving: (1) the failure to verify, prior to transfer, that an individual was authorized to receive licensed material, and (2) the failure to control and maintain constant surveillance of licensed material (approximately 10 and 25 millicuries of americium-241 contained in two sealed sources) from unauthorized removal or access. Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, a base civil penalty was assessed in accordance with Section VII.A.1.g of the Enforcement Policy to reflect the significance of maintaining control of licensed material.

***Mid American Inspection Services, Inc.
Gaylord, Michigan***

EA-03-100

On August 12, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III problem involving the failure to secure from unauthorized removal or maintain constant surveillance of licensed material (a radiography camera), and the failure to ensure that shipping papers are in a vehicle while transporting radioactive material. Although application of the normal civil penalty assessment process would fully mitigate the civil penalty, the NRC exercised discretion in accordance with Section VII.A.1.(c) of the Enforcement Policy and proposed a base civil penalty based on the licensee's particularly poor performance surrounding the violations. This poor performance involved the loss of control over a significant quantity of licensed material (nominally 35 curies of iridium-192) for seven days while the vehicle was at an automobile dealership for service and the failure to maintain shipping papers in the vehicle while hazardous material was present.

***Nuclear Management Company, LLC
Prairie Island***

EA-02-068

On December 13, 2002, Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for a Severity Level III violation involving the failure to provide complete and accurate information to the NRC from April 13 to 16, 2001, regarding Prairie Island's request for a Notice of Enforcement Discretion (NOED) involving an emergency diesel generator (EDG). Although the normal civil penalty assessment process would have fully mitigated the civil penalty in this case, the NRC exercised discretion in accordance with Section VII.A.1.(c) of the Enforcement Policy and assessed a base civil penalty. Discretion was warranted based on Prairie Island's particularly poor performance leading up to and during the EDG degradation, during the request for an NOED, and during the time period the NOED was in effect.

York Hospital
York, Pennsylvania

EA-03-033

On April 18, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem involving: (1) the transfer of licensed byproduct radioactive material to an entity who was not authorized to receive it, and (2) the submission of inaccurate information to the NRC regarding the transfer of the licensed material. Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, a base civil penalty was assessed in accordance with Section VII.A.1.g of the Enforcement Policy to reflect the significance of maintaining the control of licensed material.

Section VII.B.1

This section is currently marked as “reserved” in the Enforcement Policy.

Section VII.B.2

Section VII.B.2 provides that civil penalties or NOV's need not be issued for violations identified during extended shutdowns or work stoppages if they are licensee-identified, based upon activities prior to the events leading to the shutdown, non-willful, and not categorized at Severity Level I. This exercise of discretion provides that the licensee's decision to restart the plant requires NRC concurrence. During FY 2003, no cases involved this exercise of discretion.

Section VII.B.3

Section VII.B.3 provides that civil penalties or NOV's need not be issued for old design issues that are licensee-identified and corrected and were not likely to have been identified earlier through routine surveillance. During FY 2003, no cases involved this exercise of discretion.

Section VII.B.4

Section VII.B.4 provides that civil penalties or NOV's need not be issued for violations identified due to previous escalated enforcement action if the violation was licensee-identified, it has a similar root cause as a previous escalated action, it does not substantially change the regulatory concern out of the initial action, and it was corrected. During FY 2003, no cases involved this exercise of discretion.

Section VII.B.5

Section VII.B.5 provides that civil penalties or NOV's need not be issued for violations involving discrimination issues if they are licensee-identified and corrected. During FY 2003, no cases involved this exercise of discretion.

Section VII.B.6

Section VII.B.6 provides that civil penalties or NOV's need not be issued for violations involving special circumstances. During FY 2003, five cases involved this exercise of discretion.

**BMW Technologies, Inc.
Lynchburg, Virginia****EA-03-119**

On August 11, 2003, a Notice of Violation and Exercise of Enforcement Discretion was issued for a Severity Level III problem involving two interrelated violations. The violations involved the failure to maintain a criticality monitoring system (CMS) capable of energizing a clearly audible signal if an accidental criticality were to occur as required by Safety Condition S-1 of the license and the failure to conduct a functional test of the CMS as required by procedures. Given the circumstances of a previous enforcement action, the NRC considered it appropriate to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and forego consideration of the factor of "Identification" in its civil penalty assessment process. On the basis of this determination, the safety significance of the violations that are the subject of this Notice, and the prompt and comprehensive corrective actions taken by the licensee; a civil penalty in this case was not warranted.

**Exelon Generation Company, LLC and AmerGen Energy Company, LLC
Multiple Reactor Facilities****EA-02-124**

On October 3, 2002, an Immediately Effective Confirmatory Order was issued to Exelon and AmerGen in order to confirm certain commitments to assure the Licensees' compliance with the Commission's employee protection regulations, 10 CFR 50.7. In view of the Confirmatory Order and consent by the Licensees thereto, dated September 27, 2002, the NRC exercised its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy, and refrained from issuing a Notice of Violation or proposing a civil penalty.

**Roof Consultant Services
Harlingen, Texas****EA-03-005**

On April 17, 2003, a Notice of Violation was issued for a willful Severity Level III problem involving the failure to: (1) complete decommissioning of its site by the approved alternative decommissioning schedule, and (2) confine its storage of byproduct material to a location that was authorized by the license. Although the normal civil penalty assessment process would have resulted in a civil penalty, the NRC exercised discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty since the licensee no longer possessed licensed material.

**Structural Testing and Inspection
Pocatello, Idaho****EA-03-006**

On July 1, 2003, a Notice of Violation was issued for a Severity Level II violation involving the willful failure to obtain a specific license from the NRC or an Agreement State prior to acquiring and using byproduct material. Although a civil penalty would normally be considered for this type of case, the NRC exercised discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from assessing a civil penalty based on the fact that the

gauges were returned to an authorized NRC licensee and the company withdrew its application for an NRC license.

**University of Pennsylvania
Philadelphia, Pennsylvania**

EA-02-214

On December 11, 2002, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a violation involving an exposure in excess of regulatory limits to a member of the public. The violation involved a parent of a child treated with iodine-131 receiving a total effective dose equivalent of 0.7 rem while providing care for the child during a treatment in September 2002. Discretion was warranted because the licensee took reasonable actions to keep the dose as low as reasonably achievable by giving training and direction to the parent and by monitoring the parent's dose with a personal dosimeter. Also, the NRC recently approved the licensee's request to authorize a 2.0 rem annual dose limit for the parent involved with the treatment so that the parent could provide care to the child during a second treatment that was subsequently completed in November 2002.

5. Actions Against Individuals and Non-Licensees

During FY 2003, the agency issued 27 actions against individuals and non-licensees. The following sections provide a breakdown of the actions based on whether the actions were issued to licensed or unlicensed individuals, or non-licensees (vendors, contractors, or certificate holders). The section on orders includes orders that were issued to individuals that prohibited or limited their activities in NRC-licensed activities during the fiscal year.

A. Actions Against Licensed Individuals

During FY 2003, the agency issued one NOV to a licensed individual. Appendix D includes a short summary description of this action.

B. Actions Against Unlicensed Individuals

During FY 2003, the agency issued seven orders and 18 NOVs to unlicensed individuals. Appendix D includes a short summary description of each of these actions.

C. Actions Against Non-Licensees (Vendors, Contractors, and Certificate Holders)

During FY 2003, the agency issued one order to a non-licensee (certificate holder). Appendix E includes a short summary description of this action.

6. Cases Involving Discrimination

The NRC vigorously pursues enforcement action against licensees or licensee contractors who discriminate against their employees for raising nuclear safety concerns. Acts of discrimination include discharge and other adverse actions that relate to an employee's compensation, terms, conditions, or privileges of employment.

The NRC places a high value on nuclear industry employees being free to raise potential safety concerns, regardless of the merits of the concern, to both licensee management and the NRC. 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, the employees may not feel that they are free to raise concerns without fear of retaliation.

Therefore, one of the goals of the NRC's enforcement program 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 taken against licensee or contractor employees for raising safety concerns do not have a chilling effect on the individual or others who may wish to report safety concerns.

During FY 2003, the agency issued two escalated enforcement actions for violations involving discrimination. Both actions were issued to licensees.

An NOV was issued to Florida Power & Light Company for a Severity Level III violation for discriminating against an employee at the Turkey Point Nuclear Plant (EA-00-230).

An Immediately Effective Confirmatory Order was issued to Exelon and AmerGen (Licensees) in order to confirm certain commitments to assure the Licensees' compliance with employee protection regulations (10 CFR 50.7) at multiple facilities. The corrective actions include, but are not limited to, counseling management personnel involved in the violation of 10 CFR 50.7, and training all vice-presidents and plant managers throughout the Licensees' organization (at every nuclear station and at corporate headquarters) on the provisions of the employee protection regulation. These individuals, in turn, will train their subordinate managers. The Licensees will also modify management training programs as appropriate regarding the provisions of 10 CFR 50.7. In view of the Licensees' consent to the Confirmatory Order, the NRC exercised its enforcement discretion pursuant to Section VII.B.6 of the Enforcement Policy, and refrained from issuing a Notice of Violation or proposing a civil penalty for the Licensee-admitted discrimination issue at the Byron Station. (EA-02-124)

In addition to these two actions, the staff continued to support hearing activities associated with the enforcement action against Tennessee Valley Authority for discriminating against a former corporate employee. See the discussion in Appendix F for additional information on this case. (EA-99-234)

Figure 6 on page 39 includes escalated enforcement trends since fiscal year 1995 for discrimination cases. The average number of cases involving discrimination over the last five years is seven.

7. *Hearing Activities*

During FY 2003, four cases had some type of hearing activity, i.e., hearing request, settlement, dismissal, discovery, hearing proceeding, appeal, etc. Appendix F includes a short summary of these cases.

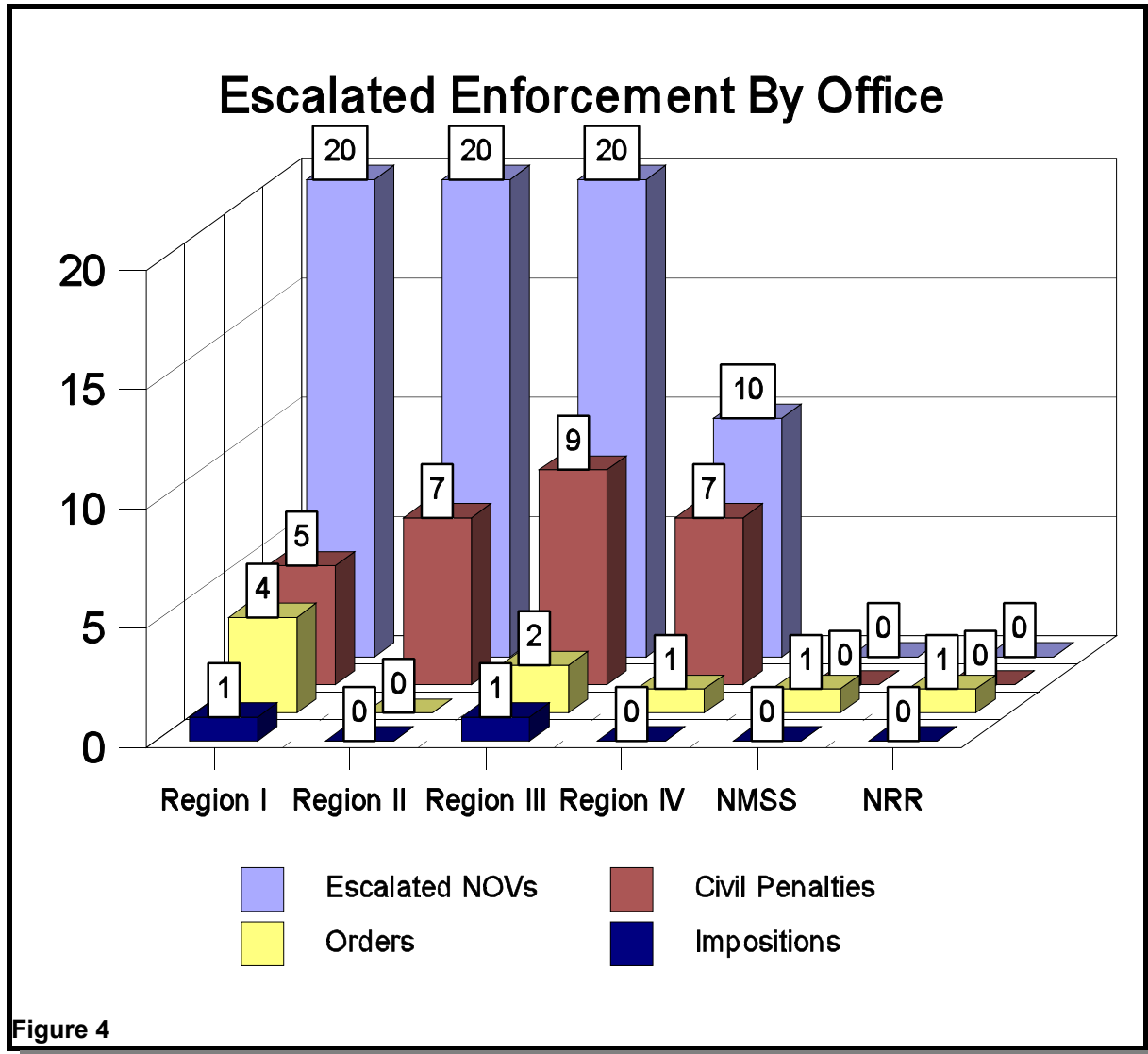
8. *10 CFR 2.206 Petitions*

During FY 2003, there were no cases that had any type of petition activity pending before the Office of Enforcement during the fiscal year, i.e., petition request, NRC staff review, Director's Decision, etc.

9. *Withdrawn Actions*

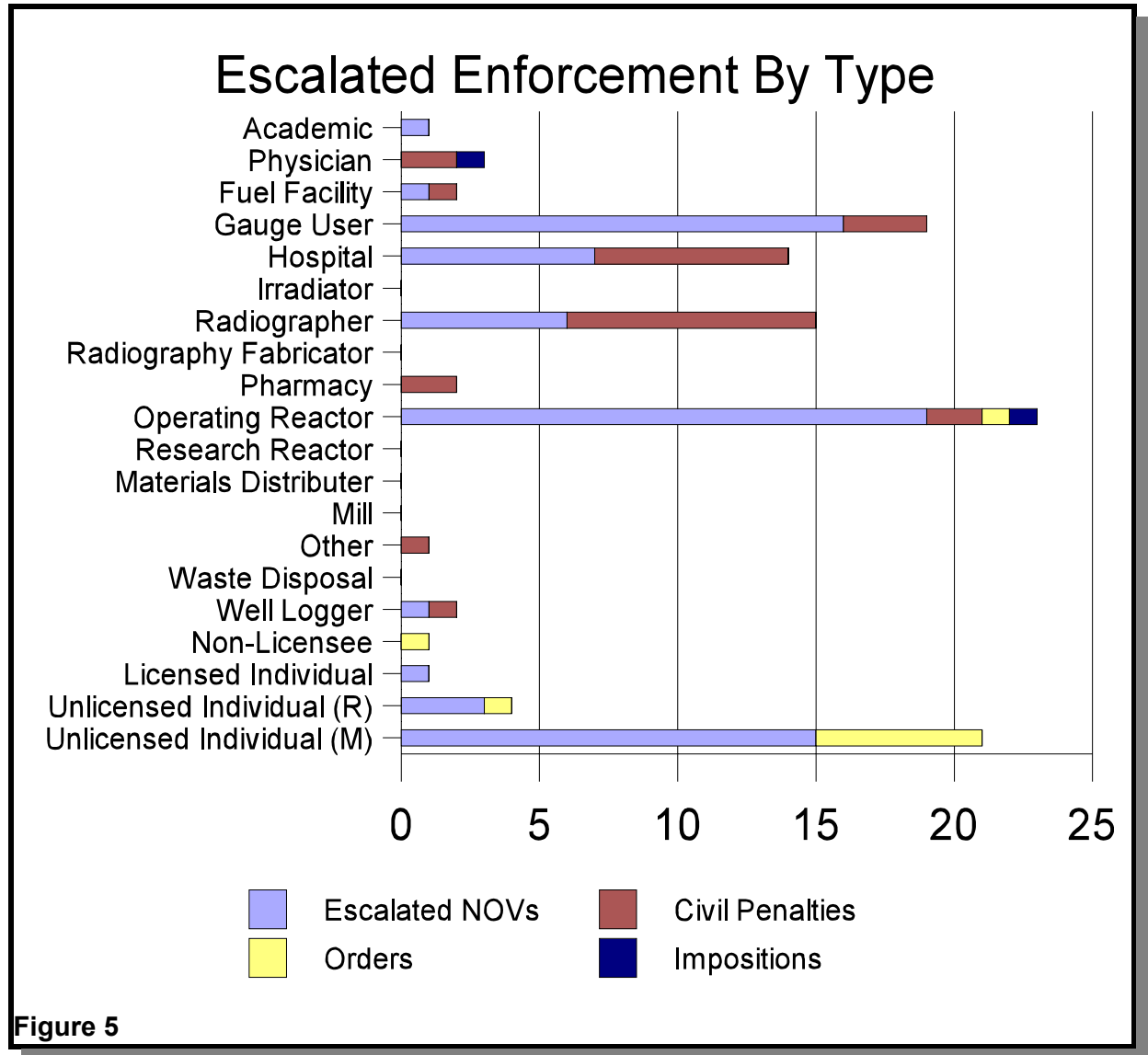
During FY 2003, there were two cases that the NRC withdrew. These cases are described in Appendix G.

THIS PAGE INTENTIONALLY LEFT BLANK



**TABLE 1: ESCALATED ENFORCEMENT ITEMS
BY TYPE OF LICENSEE, NON-LICENSEE, OR INDIVIDUAL**

Type of Licensee	Escalated NOVs (w/o penalty)	Civil Penalties	Orders	Impositions	Total FY 03
Academic	1	0	0	0	1
Physician	0	2	0	1	3
Fuel Facility	1	1	0	0	2
Gauge User	16	3	0	0	19
Hospital	7	7	0	0	14
Irradiator	0	0	0	0	0
Radiographer	6	9	0	0	15
Radiography Fabricator	0	0	0	0	0
Pharmacy	0	2	0	0	2
Operating Reactor	19	2	1	1	23
Research Reactor	0	0	0	0	0
Materials Distributer	0	0	0	0	0
Mill	0	0	0	0	0
Other	0	1	0	0	1
Waste Disposal	0	0	0	0	0
Well Logger	1	1	0	0	2
Non-Licensee	0	0	1	0	1
Licensed Individual (reactor)	1	0	0	0	1
Unlicensed Individual (reactor)	3	0	1	0	4
Unlicensed Individual (materials)	15	0	6	0	21
Total	70	28	9	2	109



THIS PAGE INTENTIONALLY LEFT BLANK

**TABLE 2: ESCALATED ENFORCEMENT TRENDS
BY TYPE OF LICENSEE, NON-LICENSEE, OR INDIVIDUAL**

Type of Licensee	Total FY 03	Total FY 02	Total FY 01	Total FY 00	Total FY 99	Total FY 98	Total FY 97	Total FY 96	Total FY 95
Academic	1	2	4	1	2	4	3	5	3
Physician	3	1	4	2	0	7	9	3	2
Fuel Facility	2	4	6	2	2	6	5	3	1
Gauge User	19	20	12	13	12	26	31	23	29
Hospital	14	12	15	14	8	13	33	13	12
Irradiator	0	0	0	0	2	0	1	0	0
Radiographer	15	13	21	6	6	8	9	12	11
Radiography Fabricator	0	0	1	0	0	0	0	0	0
Pharmacy	2	4	1	4	1	1	0	1	3
Operating Reactor	23	28	25	24	33	81	112	87	50
Research Reactor	0	1	1	0	0	2	0	0	0
Materials Distributer	0	3	3	0	7	2	1	2	0
Mill	0	1	0	0	0	0	1	1	0
Other	1	2	4	0	3	19	17	10	11
Waste Disposal	0	1	0	0	1	0	0	0	0
Well Logger	2	2	3	2	2	4	1	0	0
Non-Licensee	1	4	4	1	3	1	1	8	5
Licensed Individual	1	2	2	3	4	7	2	6	7
Unlicensed Individual	25	9	21	22	28	19	38	19	23
Total	109	109	127	94	114	200	264	191	159

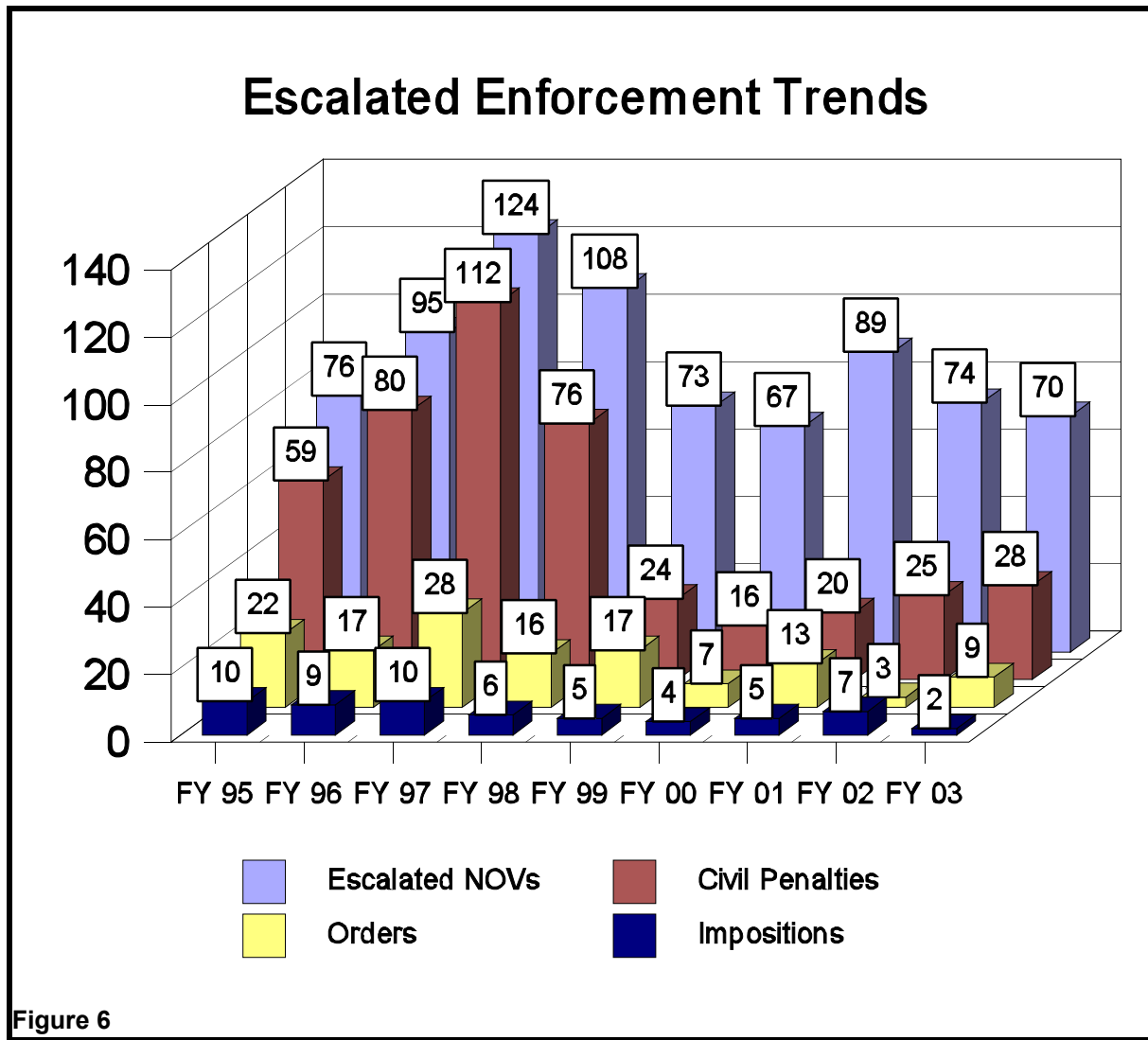
THIS PAGE INTENTIONALLY LEFT BLANK

TABLE 3: CIVIL PENALTY INFORMATION

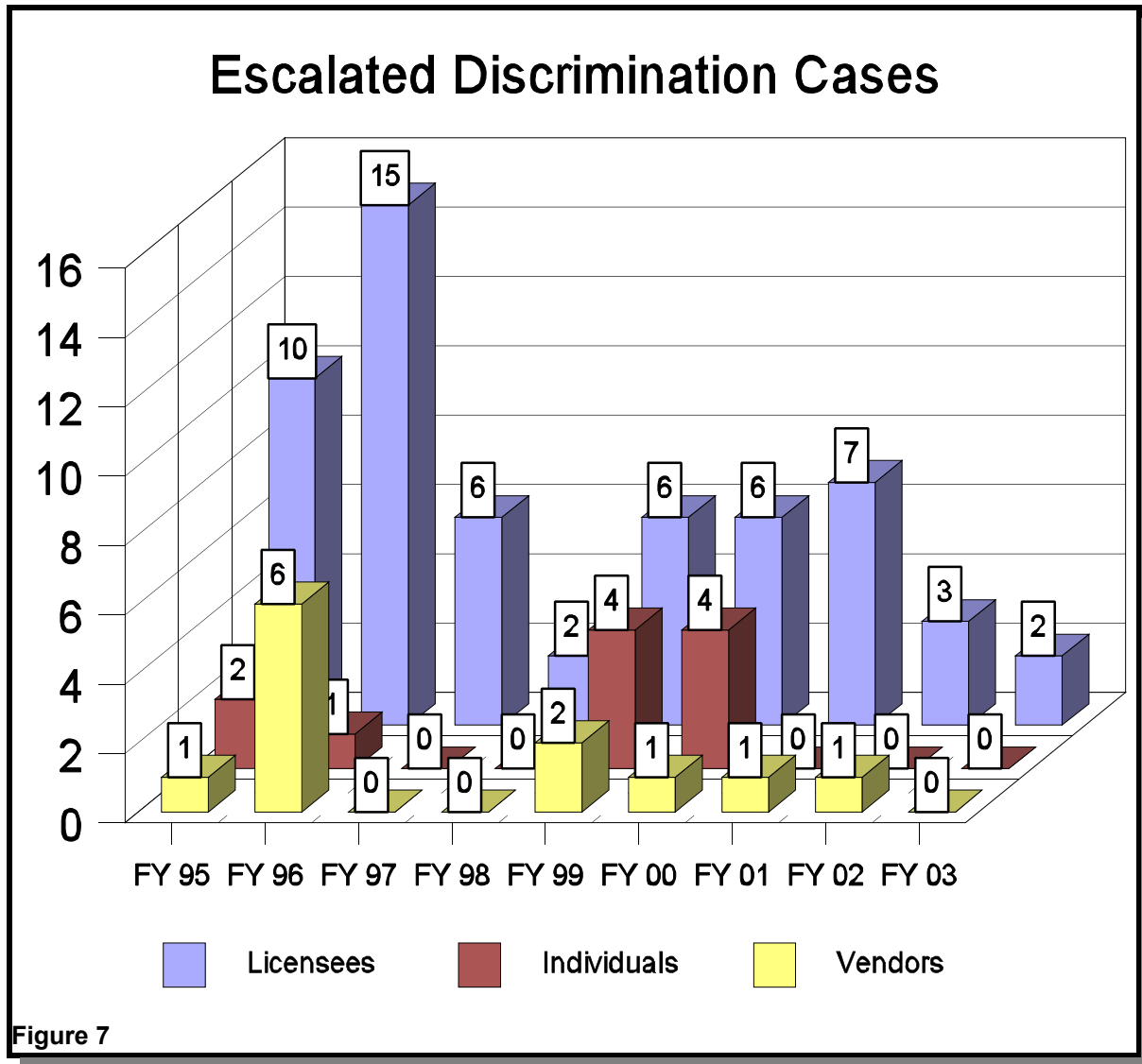
	FY 03	FY 02	FY 01	FY 00	FY 99	FY 98	FY 97
Number of Proposed Civil Penalties	28	25	20	16	24	76	112
Number of Imposed Civil Penalties	2	7	5	4	5	6	10
Number of Civil Penalties Paid	26	23	17	16	21	68	108
Amount of Proposed Civil Penalties	\$341,800	\$493,000	\$342,900	\$446,600	\$1,062,600	\$5,206,600	\$7,422,300
Amount of Imposed Civil Penalties	\$48,700	\$109,800	\$139,900	\$231,550	\$913,750	\$115,650	\$285,250
Amount of Civil Penalties Paid	\$361,000	\$456,750	\$294,100	\$430,500	\$1,070,850	\$6,493,573	\$6,657,300

NOTE: This table includes information based on individual civil penalty assessments. An enforcement action may include more than one individual civil penalty. In addition, a civil penalty may be proposed in one fiscal year and paid or imposed in another fiscal year.

THIS PAGE INTENTIONALLY LEFT BLANK



THIS PAGE INTENTIONALLY LEFT BLANK



THIS PAGE INTENTIONALLY LEFT BLANK

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

***Advance Testing Company, Inc.
Campbell Hall, New York***

EA-03-001

On January 28, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material (8 millicuries of cesium-137 and 40 millicuries of americium-241 in a moisture density gauge) located at a temporary job site, which was an unrestricted area.

***Avera McKennan Hospital
Sioux Falls, South Dakota***

EA-02-106

On October 4, 2002, a Notice of Violation was issued for a Severity Level III violation involving the licensee's careless disregard in using licensed material (250 millicuries of technetium-99m) in an unauthorized location.

***BMW Technologies, Inc.
Lynchburg, Virginia***

EA-03-119

On August 11, 2003, a Notice of Violation and Exercise of Enforcement Discretion was issued for a Severity Level III problem involving two interrelated violations. The violations involved the failure to maintain a criticality monitoring system (CMS) capable of energizing a clearly audible signal if an accidental criticality were to occur as required by Safety Condition S-1 of the license and the failure to conduct a functional test of the CMS as required by procedures.

***C&J Nondestructive Testing, Inc.
Bismarck, North Dakota***

EA-03-076

On May 19, 2003, a Notice of Violation was issued for a Severity Level III violation involving a failure to file NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," with the NRC prior to conducting licensed activities in NRC jurisdiction.

***Columbia Curb & Gutter Company
Columbia, Missouri***

EA-02-263

On January 21, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material (7.8 millicuries of cesium-137 and 40 millicuries of americium-241 contained in a moisture density gauge) in an unrestricted area and the failure to control and maintain constant surveillance of this licensed material.

**Community Health Center of Branch County
Coldwater, Michigan**

EA-02-236

On December 11, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material (343 millicuries of molybdenum-99, 465 millicuries of technetium-99m, and 59 microcuries of cesium-137) and the failure to control and maintain constant surveillance of licensed material.

**Dayton X-Ray Company
Dayton, Ohio**

EA-02-201

On November 29, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to have two qualified individuals observe radiographic operations at a temporary job site.

**Deaconess Hospital
Evansville, Indiana**

EA-03-092

On August 29, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to have a written directive and follow the direction of an authorized user and the failure to administer I-131 sodium iodide within the prescribed dosage range.

**Delta Consulting Engineers, Inc.
Guaynabo, Puerto Rico**

EA-03-002

On January 13, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material (approximately 9 millicuries of cesium-137 and 44 millicuries americium-241 in a portable moisture density gauge) that is in a controlled or unrestricted area and that is not in storage.

**Doylestown Hospital
Doylestown, Pennsylvania**

EA-03-125

On June 26, 2003, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to complete required manufacturer's training prior to using an intra-vascular brachytherapy system.

**Duke Energy Corporation
Oconee**

EA-02-243

On February 7, 2003, a Notice of Violation was issued for a violation associated with a White SDP finding involving the possible loss of high pressure injection (HPI) pump function during a postulated high energy line break/tornado event recovery. The violation cited the licensee's failure to properly implement the vendor's written instructions for attaching the electrical connectors on the pre-staged Unit 3 HPI pump emergency power supply cable from the auxiliary service water switchgear.

***ECS, Ltd.
Richmond, Virginia******EA-02-200***

On October 3, 2002, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to limit access to licensed material (8 millicuries of cesium-137 and 40 millicuries of americium-241 in a portable moisture density gauge) located at a temporary job site (an unrestricted area), and failure to control and maintain constant surveillance of this licensed material.

***Entergy Nuclear Operations, Inc.
Indian Point Nuclear Generating Units 1 & 2******EA-02-162***

On November 8, 2002, a Notice of Violation was issued for a violation involving a White SDP finding involving a moderate degradation of the control room west wall fire barrier. The violation cited the licensee's failure from the time of initial construction in 1978 to August 2002, to implement and maintain in effect all provisions of the NRC-approved fire protection program.

***Exelon Generation Company, LLC
Clinton******EA-03-030***

On May 6, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to provide complete and accurate information to the NRC regarding pre-existing medical conditions of two initial reactor operator license candidates.

***Exelon Generation Company, LLC
Dresden******EA-02-264***

On a June 23, 2003, Notice of Violation was issued for a violation associated with a White SDP finding involving the operability of the high pressure coolant injection (HPCI) system. The violation cited the licensee's failure to promptly correct a damaged HPCI system support resulting in the equipment being inoperable for greater than the allowed outage time. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was also issued in conjunction with this case. (See EA-02-265 in Appendix B for details.)

***Exelon Generation Company, LLC
Dresden******EA-03-102***

On a August 29, 2003, Notice of Violation was issued for a Severity Level III violation involving the failure by Exelon to provide complete and accurate information to the NRC regarding a request to renew a reactor operator license.

***Exelon Generation Company, LLC
Peach Bottom******EA-02-142***

On November 26, 2002, a Notice of Violation was issued for a violation involving a White SDP finding involving the untimely declaration of an Alert during an actual event. The violation cited the failure of the operations crew to properly use the standard emergency classification and action level scheme.

**FirstEnergy Nuclear Operating Company
Beaver Valley Power Station**

EA-03-054

On July 10, 2003, a Notice of Violation was issued for a violation involving a White SDP finding involving the inability of the licensee's emergency response organization to meet Emergency Preparedness Plan staffing requirements during emergencies. The violation cited the failure (identified during an unannounced drill) of the on-site Emergency Response Organization to augment radiation protection technicians within the required times to cover four radiation protection functions.

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

EA-02-117 and EA-257

On February 19, 2003, a Notice of Violation was issued for two violations associated with two White SDP findings involving the radiological controls related to a steam generator nozzle dam installation. The violations cited the failure of the licensee to conduct an adequate evaluation of the radiological hazards in order to characterize the radiological work conditions and to take timely and suitable measurements to adequately monitor the occupational intake of the material by workers during and following steam generator nozzle dam installation.

**FirstEnergy Nuclear Operating Company
Perry**

EA-03-007

On March 4, 2003, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure of the high pressure core spray system to start during routine surveillance testing. The violation cited the licensee's failure to implement procedures during the installation and inspection of the high pressure core spray pump breaker from 1994 through October 23, 2002.

**Florida Power & Light Company
Turkey Point**

EA-00-230

On June 5, 2003, a Notice of Violation was issued for a Severity Level III violation for discriminating against an employee at the Turkey Point Nuclear Plant for engaging in protected activity.

**G. A. Covey Engineering
Sutton, West Virginia**

EA-03-046

On March 31, 2003, a Notice of Violation was issued for a Severity Level III problem involving (1) the failure to control and maintain constant surveillance of licensed byproduct material (three portable moisture density gauges, each containing approximately 10 millicuries of cesium-137 and 50 millicuries of americium-241, and three portable density gauges each containing approximately 8 millicuries of cesium-137 and 40 millicuries of americium-241) in use at a temporary job site; and (2) the failure to lock the operating handle or the storage container of a portable gauge in storage so as to prevent unauthorized or accidental removal of the sealed source from its shielded position.

Great Lakes Testing, Inc.
Green Bay, Wisconsin

EA-02-171

On October 4, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to have two qualified individuals present during radiographic operations at a temporary job site.

H&H X-Ray Services, Inc.
West Monroe, Louisiana

EA-02-195

On February 3, 2003, a Notice of Violation was issued for a Severity Level III problem involving: (1) the failure reduce the allowable dose limit for an individual by 1.25 rems for each quarter for which complete records were unavailable, and (2) as a result, the failure to limit the annual occupational dose to an adult radiographer to 5 rems total effective dose equivalent.

Indiana and Michigan Electric Company
D. C. Cook Nuclear Power Plant

EA-01-286

On October 3, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving a failed essential service water (ESW) strainer basket that resulted in a debris intrusion event. The violation cited that the installation instructions for the ESW strainer baskets, an activity affecting quality, were not appropriate.

JANX
Parma, Michigan

EA-03-042

On June 2, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to maintain the annual occupational exposure to an individual adult (a radiographer employed by JANX), below 5 rem total effective dose equivalent.

Daniel Kaidel
Chesapeake, Virginia

EA-03-120

On July 10, 2003, a Notice of Violation was issued for a Severity Level III violation involving the licensee's inappropriate transfer of licensed material (approximately 150 millicuries of americium-241 in a portable gauge) to a person who was not authorized to receive such byproduct material, and the licensee's failure to verify, prior to transfer, that the person had a license to receive byproduct material.

Lankenau Hospital
Wynnewood, Pennsylvania

EA-03-147

On August 21, 2003, 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 (763 millicuries of iridium-192) located in an unrestricted area, and failure to control and maintain constant surveillance of this licensed material.

**Nine Mile Point Nuclear Station, LLC
Nine Mile Point Nuclear Station, Unit 1**

EA-03-053

On May 23, 2003, a Notice of Violation was issued for a violation associated with a White SDP finding involving degraded piping in the Unit 1 reactor building closed loop cooling (RBCLC) system. The violation cited the licensee's failure to identify the cause, and to take appropriate corrective actions, to preclude repetitive leaks in the Unit 1 RBCLC system.

**Northern Michigan Hospital
Petoskey, Michigan**

EA-03-122

On August 11, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or access licensed material (1210 millicuries of molybdenum-99 in a Tc-99m/Mo-99 generator, 351 millicuries of technetium-99m in unit dose form, 400 microcuries of iodine-131, 22 millicuries of xenon-133 and several check sources of microcurie activity) that were stored in a controlled area, and the failure to maintain constant surveillance of this licensed material.

**Nuclear Management Company, LLC.
Kewaunee Nuclear Power Plant**

EA-02-204

On December 2, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the lack of a fixed fire suppression system for a particular fire area. The violation cited the licensee's failure to comply with the requirements of 10 CFR Part 50, Appendix R, Section III.G.2, by not providing a fixed fire suppression system for the particular fire area.

**Nuclear Management Company, LLC
Point Beach Nuclear Power Plant**

EA-03-059

On April 2, 2003, a Notice of Violation was issued for a violation associated with a previously identified Red SDP finding involving the potential common mode failure of the auxiliary feedwater (AFW) pumps due to inadequate operator response to a loss of instrument air. The violation cited the licensee's failure to implement corrective actions to preclude repetition of a significant condition adverse to quality associated with an AFW system potential common mode failure.

**PSEG Nuclear LLC
Salem Generating Station, Units 1 and 2**

EA-03-070

On May 1, 2003, a Notice of Violation was issued for a violation associated with a White SDP finding involving emergency diesel generator (EDG) turbocharger failures. The violation cited the licensee's failure to implement effective corrective actions to preclude repetition of a significant condition adverse to quality associated with the EDG turbocharger failures.

PPL Susquehanna, LLC
Susquehanna Steam Electric Station

EA-02-216

On January 13, 2003, a Notice of Violation was issued for a Severity Level III violation involving the backfilling of a dry shielded canister with argon, rather than helium, as required by the Certificate of Compliance for the dry spent fuel storage system used at Susquehanna.

Reliant Energy
Johnstown, Pennsylvania

EA-02-225, EA-02-239, and EA-02-240

On October 31, 2002, a Notice of Violation was issued for three Severity Level III violations involving the failure to: (1) properly supervise individuals working with licensed radioactive materials, (2) employ an individual to perform the duties of the Radiation Safety Officer, and (3) notify the NRC regarding a change in the company's ownership.

Rochester Gas and Electric Corporation
Ginna

EA-02-141

On October 4, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the alert and notification system (ANS). The violation cited failures involving the ANS that could have affected the ability to provide early notification to the public.

Roetech, LLC
Sheridan, Wyoming

EA-02-258

On April 21, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material (a portable moisture/density gauge containing a maximum activity of cesium-137 of 11 millicuries and a maximum activity of americium-241:beryllium of 44 millicuries) in an unrestricted area, and failure to control and maintain constant surveillance of this licensed material.

Roof Consultant Services
Harlingen, Texas

EA-03-005

On April 17, 2003, a Notice of Violation was issued for a willful Severity Level III problem involving the failure to: (1) complete decommissioning of its site by the approved alternative decommissioning schedule, and (2) confine its storage of byproduct material to a location that was authorized by the license.

Roofing Consultants, Ltd.
Waukesha, Wisconsin

EA-03-094

On July 8, 2003, a Notice of Violation was issued for a Severity Level III problem involving the failure to secure from unauthorized removal or limit access to licensed material (50 millicuries of americium-241:beryllium in a moisture density gauge) in an unrestricted area, failure to control and maintain constant surveillance of this licensed material, and failure to provide the manufacturer's training to an individual who used licensed material.

Salem International University
Salem, West Virginia

EA-03-114

On July 24, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to retain and identify a Radiation Safety Officer on the license.

Steel of West Virginia, Inc.
Huntington, West Virginia

EA-03-047

On April 24, 2003, a Notice of Violation was issued for a Severity Level III problem involving: (1) the removal of a damaged gauge and installation of a device containing sealed sources to replace the damaged gauge by an individual who was not under the supervision of the Radiation Safety Officer and who was not licensed to perform such services, and (2) the conduct of a radiation survey with a meter that could not evaluate the extent of the radiation levels present and that had not been calibrated at the proper frequency.

Structural Testing and Inspection
Pocatello, Idaho

EA-03-006

On July 1, 2003, a Notice of Violation was issued for a Severity level II violation involving the willful failure to obtain a specific license from the NRC or an Agreement State prior to acquiring and using byproduct material.

Superior Well Services, Ltd.
Mays Landing, New Jersey

EA-02-178

On October 16, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure licensed material (well logging sources including one americium-241 source, approximately 3 curies; and one cesium-137 source, approximately 2 curies) that were stored in a controlled area.

Tamfelt, Inc.
Longview, Washington

EA-03-121

On August 28, 2003, a Notice of Violation was issued for a Severity level III problem involving the possession and/or use of licensed material in areas of NRC jurisdiction without a specific or general NRC license and the failure to file NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," with the NRC prior to conducting licensed activities in NRC jurisdiction.

Testwell Laboratories, Inc.
Ossining, New York

EA-03-108

On May 14, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to file for reciprocity with the NRC for storage and use of licensed sources in a location outside an Agreement State. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was also issued in conjunction with this case. (See EA-03-036 in Appendix B for details.)

**Union Electric Company
Callaway**

EA-03-060

On June 20, 2003, a Notice of Violation was issued for a violation associated with a White SDP finding involving the licensee's emergency planning. The violation cited the failure to establish the means to notify certain members of the public in the emergency planning zone in the event of an emergency at the Callaway plant.

**Washington Hospital
Washington, Pennsylvania**

EA-02-244

On November 26, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to properly prepare written directives on multiple occasions for brachytherapy treatments.

**Zannino Engineering, Inc.
Richmond, Virginia**

EA-02-241

On November 20, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed byproduct material (a portable moisture density gauge, containing 8 millicuries of cesium-137 and 40 millicuries of americium-241) in use at a temporary job site.

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX B: SUMMARY OF PROPOSED CIVIL PENALTIES

***Advanced Medical Imaging and Nuclear Services
Easton, Pennsylvania***

EA-02-072

On October 22, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$43,200 was issued for a Severity Level II problem involving willfully using byproduct material without an Authorized User, failing to appoint a Radiation Safety Officer, and creating incomplete and inaccurate records.

***American Geotech, Inc.
Charlston, West Virginia***

EA-03-019

On April 7, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a willful Severity Level III problem involving: (1) the failure to issue approved dosimetry to an individual who used licensed materials; and (2) the failure to ensure that individuals using licensed materials are either designated by the Radiation Safety Officer and properly trained, or are under required supervision of someone named on the license.

***American Radiolabeled Chemicals
St. Louis, Missouri***

EA-02-255

On April 17, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$12,000 was issued for a willful Severity Level III problem involving the deliberate failure to: (1) make required surveys to limit the dose to members of the public; (2) perform required weekly removable contamination surveys in the restricted and unrestricted areas; and (3) accurately record the results of required weekly fume hood face velocity measurements.

***Columbia Hospital
Milwaukee, Wisconsin***

EA-03-112

On July 30, 2003, 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 failure to secure from unauthorized removal or access licensed materials (4 millicuries of iodine-131, 219 millicuries of technetium-99m, 20 millicuries of xenon-133, and 189 microcuries of cesium-137) that were stored in a controlled area, and the failure to control and maintain constant surveillance of this licensed material.

***Cooperheat-MQS, Inc.
Houston, Texas***

EA-02-189

On February 19, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a willful Severity Level III problem involving: (1) the failure to amend the license to reflect a change in the Radiation Safety Officer, and (2) the failure to confine the possession and use of licensed material to locations authorized in the license.

***Exelon Generation Company, LLC
Dresden***

EA-02-265

On a June 23, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for the willful failure to provide complete and accurate information to the NRC concerning the high pressure coolant injection system during a telephone conference call on September 27, 2001. A Notice of Violation was also issued in conjunction with is case. (See EA-02-264 in Appendix A for details.)

***Global X-Ray and Testing Corporation
Morgan City, Louisiana***

EA-03-011

On May 22, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III violation involving a radiographer's willful failure to control and maintain constant surveillance over an industrial radiographic exposure device (that included about 17.6 curies of Iridium-192) in an unrestricted area.

***Howard University Hospital
Washington, DC***

EA-03-088

On June 27, 2003, 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 failure to perform adequate area surveys within the licensee's facility that resulted in a substantial potential for exposures in excess of the regulatory limits.

***IBS of America of America
Chesapeake, Virginia***

EA-03-079

On September 15, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III problem involving: (1) the failure to verify, prior to transfer, that an individual was authorized to receive licensed material, and (2) the failure to control and maintain constant surveillance of licensed material (approximately 10 and 25 millicuries of americium-241 contained in two sealed sources) from unauthorized removal or access.

***Longview Inspection, Inc.
Houston, Texas***

EA-03-101

On August 18, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III problem involving the failure to control and maintain constant surveillance of licensed material (121 curies of iridium-192 contained in a radiographic exposure device) that was in an unrestricted area and the failure to lock the radiographic exposure device while it was not under the direct surveillance of a radiographer or a radiographer's assistant.

***Magna Chek, Inc.
Madison Heights, Michigan******EA-02-221***

On January 29, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III violation involving the deliberate conduct of radiographic operations by an individual who was not certified as a radiographer through a certifying entity and the performance of radiography at temporary job sites by this individual without the presence of a qualified (certified) radiographer.

***Medical Providers Capital Network
Allentown, Pennsylvania******EA-02-205***

On February 11, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a willful Severity Level III problem involving: (1) the failure of the authorized user/radiation safety officer (AU/RSO) to perform monthly visits to the licensee's facilities to review the use of byproduct material; (2) the creation of false records; and (3) the receipt, possession and use of a byproduct material without the supervision of an AU/RSO.

***Mid American Inspection Services, Inc.
Gaylord, Michigan******EA-03-100***

On August 12, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III problem involving the failure to secure from unauthorized removal or maintain constant surveillance of licensed material (a radiography camera), and the failure to ensure that shipping papers are in a vehicle while transporting radioactive material.

***Nondestructive and Visual Inspection, Inc.
Harvey, Louisiana******EA-03-031***

On June 16, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material (about 52 curies of Iridium-192 in an industrial radiographic exposure device) located on a platform in federal waters in the Gulf of Mexico, which is an unrestricted area, and the failure to control and maintain constant surveillance of this licensed material.

***Nuclear Management Company, LLC
Prairie Island******EA-02-068***

On December 13, 2002, Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for a Severity Level III violation involving the failure to provide complete and accurate information to the NRC from April 13 to 16, 2001, regarding Prairie Island's request for a Notice of Enforcement Discretion involving an emergency diesel generator.

***Pacific Radiopharmacy, Ltd.
Honolulu, Hawaii***

EA-02-172 and EA-02-246

On March 27, 2003, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$9,000 was issued for a Severity Level I problem and a Severity Level III violation. The Severity Level I problem (assessed a \$6,000 civil penalty) involved the failure to limit the occupational dose to an individual adult to the shallow-dose equivalent of 50 rem to any extremity, and the failure to make surveys that are necessary to comply with regulations. The Severity Level III violation (assessed a \$3,000 civil penalty) involved multiple examples (some that were willful) of failures to comply with the terms and conditions of the license.

***Patterson Wireline
Trinidad, Colorado***

EA-03-084

On September 9, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem involving the willful failures to: (1) wear personnel monitoring devices while handling licensed material and (2) placard the transport vehicle used to transport licensed material.

***Rio Construction Corporation
Caparra Heights, Puerto Rico***

EA-02-215

On January 15, 2003, 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 use of a moisture density gauge (NRC licensed materials) by an individual who had not been provided required radiation safety training and who did not work under the supervision and in the physical presence of individuals who had required radiation safety training.

***St. Joseph Mercy Hospital
Ann Arbor, Michigan***

EA-02-248

On May 7, 2003, Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level I problem involving: (1) the failure to conduct operations so that the total effective dose equivalent to individual members of the public from licensed operations does not exceed 0.1 rem in a year; and (2) the failure of the Radiation Safety Officer to investigate overexposures and other deviations from approved radiation safety practice and implement corrective actions as necessary.

***Testing Technologies, Inc.
Woodbridge, Virginia***

EA-02-166

On January 22, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$9,600 was issued for a Severity Level II problem involving the willful: (1) performance of radiographic operations at temporary job sites by radiographer's assistants and helpers who were not accompanied by at least one qualified radiographer; (2) performance of radiographic operations by individuals who had not met training requirements; (3) failure to wear a combination of a direct reading pocket dosimeter, an alarming ratemeter, and either a film badge or TLD and (4) failure of the corporate and site Radiation Safety Officer to oversee the radiation safety program.

***Testmaster Inspection Company, Inc.
Perrysburg, Ohio***

EA-03-081

On July 2, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 was issued for a Severity Level III violation involving the deliberate failure to use a radiation survey instrument during radiographic operations.

***Testwell Laboratories, Inc.
Ossining, New York***

EA-03-036

On May 14, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III violation involving the willful actions of its Radiation Safety Officer (RSO) who knowingly performed and allowed radiography work by other employees without accompaniment by a certified radiographer, and that work required the supervision of a certified radiographer. A Notice of Violation was also issued in conjunction with this case. (See EA-03-108 in Appendix A for details.)

***United States Enrichment Corporation
Paducah Gaseous Diffusion Plant***

EA-02-085

On November 5, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for a Severity Level III problem involving the failure to ensure that classified information was properly stored when not in use or that the material was under the direct control of an authorized individual, and that classified information was generated and telecommunicated on approved systems.

***University of Puerto Rico
San Juan, Puerto Rico***

EA-02-227, EA-03-028 and EA-03-029

On February 7, 2003, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$9,000 was issued for three willful Severity Level III violations involving: (1) the failure to perform daily radiation surveys of areas where radiopharmaceuticals are routinely administered to patients (assessed a \$3,000 civil penalty); (2) the failure of the radiation Safety Officer (RSO) to calibrate contamination survey instruments annually in accordance with requirements (assessed a \$3,000 civil penalty); and (3) the failure to notify the RSO immediately after unexpectedly high radiation levels were found in accordance with requirements (assessed a \$3,000 civil penalty).

***York Hospital
York, Pennsylvania***

EA-03-033

On April 18, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem involving: (1) the transfer of licensed byproduct radioactive material to an entity who was not authorized to receive it, and (2) the submission of inaccurate information to the NRC regarding the transfer of the licensed material.

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX C: SUMMARY OF ORDERS

IMPOSITION OF CIVIL PENALTY ORDERS

***Advanced Medical Imaging and Nuclear Services
Easton, Pennsylvania***

EA-02-072

On February 19, 2003, an Order Imposing Civil Monetary Penalty in the amount of \$43,200 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$43,200 that was issued on October 22, 2002, for a Severity Level II problem involving willfully using byproduct material without an Authorized User, failing to appoint a Radiation Safety Officer, and creating incomplete and inaccurate records. The licensee's November 21, 2002, response admitted that a Nuclear Medical Technician used material without being under the supervision of an Authorized User, but denied the failure to appoint a Radiation Safety Officer, the creation of incomplete and inaccurate records, and the classification of the violations at Severity Level II. The licensee also contested the amount of the civil penalty. After considering the licensee's response, the NRC concluded that the violations occurred as stated and that there was not an adequate basis for withdrawing the violations, reducing the severity level, or mitigating or rescinding the civil penalty.

***Testmaster Inspection Company, Inc.
Perrysburg, Ohio***

EA-03-081

On September 5, 2003, an Order Imposing Civil Monetary Penalty in the amount of \$5,500 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 that was issued on July 2, 2003, for a Severity Level III violation involving the deliberate failure to use a radiation survey instrument during radiographic operations. The licensee's July 22, 2003, response questioned the violation and requested full mitigation of the civil penalty. After considering the licensee's response, the NRC concluded that the violation occurred as stated and that there was not an adequate basis for withdrawing the violation, reducing the severity level, or mitigating or rescinding the civil penalty.

CONFIRMATORY, MODIFICATION, SUSPENSION, AND CEASE & DESIST ORDERS

***Exelon Generation Company, LLC and AmerGen Energy Company, LLC
Multiple Reactor Facilities***

EA-02-124

On October 3, 2002, an Immediately Effective Confirmatory Order was issued to Exelon and AmerGen in order to confirm certain commitments to assure the Licensees' compliance with the Commission's employee protection regulations, 10 CFR 50.7. In view of the Confirmatory Order and consent by the Licensees thereto, dated September 27, 2002, the NRC exercised its enforcement discretion pursuant to Section VII.B.6 of the NRC Enforcement Policy, and refrained from issuing a Notice of Violation or proposing a civil penalty.

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX D: SUMMARY OF ACTIONS AGAINST INDIVIDUALS (LICENSED & UNLICENSED)

ORDERS

NRC-Licensed Individuals

None.

Unlicensed Individuals

Kenneth M. Baab

IA-02-018

On October 22, 2002, an Immediately Effective Order Prohibiting Involvement in NRC-Licensed Activities (for one year) was issued to the individual based on his deliberate activities while employed at Advanced Medical Imaging and Nuclear Services. As Vice President, the individual deliberately caused the licensee to violate requirements by using byproduct material without an Authorized User, failing to appoint a Radiation Safety Officer, and creating incomplete and inaccurate records.

John Todd Bilinsky

IA-02-031

On December 12, 2002, an Immediately Effective Order Prohibiting Involvement in NRC-Licensed Activities (for five years) was issued to the individual based on his deliberate actions in acquiring and possessing byproduct material (8 millicuries of cesium-137 and 40 millicuries of americium-241 in a moisture density gauge) without a license from the NRC or an Agreement State. As a technician formerly employed by NTH Consultants (an NRC licensee), the individual acquired and possessed the moisture density gauge without the licensee's knowledge.

Donald Hinman

IA-02-049

On February 28, 2003, an Immediately Effective Order Prohibiting Involvement in NRC-Licensed Activities (for one year) was issued to the individual based on his deliberate actions while employed at United Evaluation Services, previously known as Accurate Technologies Incorporated. As the Operations Manager, the individual deliberately participated in the creation of a false radiographer annual refresher training examination, conducted radiography at a non-licensed location, and knowingly transported a radiography camera without a required end cap.

Patricia A. McGinn

IA-02-022

On October 31, 2002, an Immediately Effective Order Prohibiting Involvement in NRC-Licensed Activities (for three years) was issued to the individual based on her deliberate activities while employed at Cataract/RCM Technologies. As Human Resources Coordinator at Cataract/RCM Technologies, she deliberately submitted employee background information to her employer in the 1997 time-frame that she knew to be incomplete or inaccurate in support of granting unescorted access authorizations to numerous employees at Tennessee Valley Authority and other NRC licensee facilities.

Linda Monro

IA-02-048

On February 28, 2003, an Immediately Effective Order Prohibiting Involvement in NRC-Licensed Activities (for one year) was issued to the individual based on her deliberate actions while employed at United Evaluation Services, previously known as Accurate Technologies Incorporated. As the Assistant Radiation Safety Officer, the individual deliberately created numerous false records, including an inaccurate field audit, an inaccurate equipment inspection, and inaccurate radiography records indicating that she was the radiographer of record when the radiography was actually performed by other individuals (one of whom was not certified to perform radiography).

Chitranjan Patel

IA-02-019

On October 22, 2002, an Immediately Effective Order Prohibiting Involvement in NRC-Licensed Activities (for one year from December 14, 2001 to December 14, 2002) was issued to the individual based on his deliberate activities while employed at Advanced Medical Imaging and Nuclear Services. As Chief Operating Officer, the individual caused the licensee to violate requirements by deliberately using byproduct material without an Authorized User, failing to appoint a Radiation Safety Officer, and creating incomplete and inaccurate records.

Lowell S. Trujillo

IA-03-002

On June 26, 2003, an Immediately Effective Order Prohibiting Involvement in NRC-Licensed Activities (for three years) was issued to the individual because he deliberately purchased, possessed and used nuclear material (about 10 millicuries of cesium-137 and about 50 millicuries of americium-241 in two gauging devices), in violation of NRC requirements.

NOTICES OF VIOLATION (NOVs)

NRC-Licensed Individuals

David M. Robine

IA-03-021

On May 5, 2003, 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 Brunswick Steam Electric Plant.

Unlicensed Individuals

Bruce Ballard

IA-03-037

On May 14, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Testwell Laboratories, Inc. As a Radiation Safety Officer, the individual knowingly performed and allowed radiography work by other employees without accompaniment by a certified radiographer, and that work required the supervision of a certified radiographer.

Ramón Baquero**IA-03-001**

On January 15, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at the Rio Construction Corporation. As a Project Manager, the individual deliberately permitted the use of a moisture density gauge (NRC licensed materials) by an individual who had not been provided required radiation safety training.

Dallas E. Bodin, Jr.**IA-03-003**

On May 22, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Global X-Ray and Testing Corporation. As a radiographer, the individual deliberately failed to control and maintain constant surveillance over an industrial radiographic exposure device (that included about 17.6 curies of Iridium-192) in an unrestricted area.

David J. DiProspero**IA-02-041**

On October 22, 2002, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed by Wackenhut Corporation at the R. E. Ginna Nuclear Power Plant. As a security lieutenant, the individual deliberately submitted information (an adulterated urine sample and a fitness-for-duty form) to the licensee that the individual knew to be inaccurate.

James Fowler**IA-02-057**

On January 29, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Magna Chek, Inc. The individual performed radiography at Magna Chek's permanent radiographic installation and at temporary job sites on numerous occasions, where the individual acted as the radiographer without being certified as a radiographer.

Joe Francis**IA-03-010**

On April 7, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at American Geotech, Inc. As the Radiation Safety Officer, the individual: (1) failed to issue approved dosimetry to an individual who used licensed materials; and (2) failed to ensure that individuals using licensed materials were either designated by the Radiation Safety Officer and properly trained, or were under required supervision of someone named on the license.

Stuart Jones, M.D.**IA-02-046**

On February 11, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Medical Providers Capital Network. As the Authorized User/Radiation Safety Officer (AU/RSO), the individual deliberately failed to provide required AU/RSO oversight of the licensee's facilities and deliberately falsified records with respect to the performance of these duties.

Scott Kinsella

IA-02-043

On January 22, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Engineering and Inspections, Unlimited, Inc., a company authorized to conduct radiographic activities under the materials license of Testing Technologies Inc., an NRC licensee. The individual participated in radiographic operations at multiple temporary job sites with the knowledge that these operations did not conform to NRC requirements and dispatched individuals to conduct radiographic operations at multiple temporary job sites with the knowledge that the dispatched individuals were not in compliance with NRC training requirements.

Donald M. Kirby

IA-02-042

On January 3, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at the Catawba Nuclear Station. The individual failed to perform required, routine radiation surveys on numerous occasions and deliberately fabricated data on the required radiological survey records submitted to the licensee.

Scott Hiedeman

IA-02-012

On December 13, 2002, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at the Prairie Island Nuclear Generating Plant. As a licensee official, the individual deliberately removed a two-page document from a group of documents compiled at the request of the NRC as part of a review of the circumstances surrounding Prairie Island's request for a Notice of Enforcement Discretion involving an emergency diesel generator.

Anthony Maimone

IA-02-050

On February 28, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at United Evaluation Services, previously known as Accurate Technologies Incorporated. As an assistant radiographer, the individual deliberately conducted radiography at an unauthorized location and deliberately provided false testimony to the NRC regarding this violation. In addition, the individual knowingly participated in the creation and/or certification of a false radiographer refresher training exam and deliberately backdated or created other documents before an NRC inspection.

Brian McKenna

IA-02-030

On January 22, 2003, Notice of Violation was issued for a Severity Level II violation based on the individual's deliberate activities while employed at Engineering and Inspections, Unlimited, Inc., a company authorized to conduct radiographic activities under the materials license of Testing Technologies Inc., an NRC licensee. The individual participated in radiographic operations at multiple temporary job sites with the knowledge that these operations did not conform to NRC requirements and dispatched individuals to conduct radiographic operations at multiple temporary job sites with the knowledge that the dispatched individuals were not in compliance with NRC training requirements.

Richard H. Naito***IA-02-033***

On March 27, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Pacific Radiopharmacy, Ltd. As the Radiation Safety Officer at the time for the pharmacy, the individual caused the licensee to violate requirements by deliberately failing to monitor his hands and clothing for contamination when leaving the restricted area on multiple occasions.

Elba Orduña, M.D.***IA-02-024***

On September 11, 2002, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Plaza Nuclear Imaging Center, Inc. As the Radiation Safety Officer, the individual deliberately conducted licensed activities without the required capability for monitoring radioactive contamination and failed to take adequate action to remedy the situation.

Kanti Patel***IA-03-011***

On April 7, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at American Geotech, Inc. As the president of the company, the individual: (1) failed to issue approved dosimetry to an individual who used licensed materials; and (2) failed to ensure that individuals using licensed materials are either designated by the Radiation Safety Officer and properly trained, or are under required supervision of someone named on the license.

Patrick L. Patterson***IA-03-023***

On September 9, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Patterson Wireline. As a logging supervisor doing work in the state of Alaska, he deliberately failed to wear a personnel dosimeter at all times during the handling of licensed material and deliberately failed to placard a transport vehicle used to transport licensed material.

Trent Phan, Ph.D.***IA-02-032***

On March 27, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Pacific Radiopharmacy, Ltd. As the Executive Director for the pharmacy, Dr. Phan caused the licensee to violate requirements by deliberately failing to monitor his hands and clothing for contamination when leaving the restricted area on multiple occasions.

Dr. Frieda Silva***IA-02-053***

On February 7, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed by the University of Puerto Rico. As the Chairman of the Radiation Safety Committee and Chief of Nuclear Medicine, the individual was aware that direct radiation level surveys were not being performed daily in areas where radiopharmaceuticals were routinely prepared for use or administered to patients and took no effective action to correct the situation.

Dr. Heriberto Torres

IA-02-054

On February 7, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed by the University of Puerto Rico. As the Radiation Safety Officer, the individual was aware that direct radiation level surveys were not being performed daily in areas where radiopharmaceuticals were routinely prepared for use or administered to patients and took no effective action to correct the situation.

DEMANDS FOR INFORMATION (DFIs)

NRC-Licensed Individuals

None.

Unlicensed Individuals

None.

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

IMPOSITION OF CIVIL PENALTY ORDERS

None.

ORDERS

***JL Shepherd & Associates
San Fernando, California***

EA 01-164

On May 30, 2003, a Confirmatory Order was issued that relaxed certain provisions of the July 3, 2001, Order Withdrawing Quality Assurance Approval. The Confirmatory Order allows the licensee to implement Revision No. 7 of their Quality Assurance Program under the observation of an independent auditor. Previous Confirmatory Orders which relaxed certain provisions of the July 3, 2001, Order were issued on September 19, 2001, December 13, 2001, March 29, 2002, April 26, 2002, and June 6, 2002. This Confirmatory Order will remain in effect until June 1, 2005, with the intent of the NRC verifying the licensee's performance through the NRC Inspection Program. The Quality Assurance Approval continues to be withdrawn.

CIVIL PENALTIES

None.

NOTICES OF VIOLATION (NOVs)

None.

DEMANDS FOR INFORMATION (DFIs)

None.

THIS PAGE INTENTIONALLY LEFT BLANK

APPENDIX F: SUMMARY OF HEARING ACTIVITY

***Advanced Medical Imaging and Nuclear Services
Easton, Pennsylvania***

EA-02-072

On March 24, 2003, the licensee requested a hearing in response to a February 19, 2003, Order Imposing Civil Monetary Penalty in the amount of \$43,200. The action was based on a Severity Level II problem involving willfully using byproduct material without an Authorized User, failing to appoint a Radiation Safety Officer, and creating incomplete and inaccurate records.

On September 22, 2003, the Atomic Safety and Licensing Board approved a joint settlement agreement and terminated the proceeding. Under the settlement agreement, the Licensee agreed to pay a civil penalty in the amount of \$27,500. The Licensee also admitted the facts underlying the order. The parties agreed to disagree on the question of whether the Licensee's violations were deliberate and warranted a Severity Level II classification.

***Decisive Testing, Inc.
San Diego, California***

EA-01-271

On June 27, 2002, the licensee requested a hearing in response to a June 11, 2002, Order Imposing Civil Monetary Penalty in the amount of \$6,000. The action was based on a February 27, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 that was issued for a Severity Level III violation involving a willful failure to notify NRC and pay reciprocity fees prior to conducting radiography on U.S. Navy vessels.

On October 4, 2002, the parties submitted a joint settlement motion to the Atomic Safety and Licensing Board. On October 16, 2002, the Atomic Safety and Licensing Board approved settlement of the case that included a provision that the licensee pay a penalty in the amount of \$3,000.

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

EA-01-302

On October 29, 2002, the licensee requested a hearing in response to a September 30, 2002, Order Imposing Civil Monetary Penalty in the amount of \$6,000. The action was based on a Severity Level III problem involving multiple failures to ensure that radiography activities were conducted in a manner that kept radiation exposures within NRC's limits.

On May 15, 2003, the licensee withdrew its request for hearing and moved that the proceeding be terminated. On May 29, 2003, the Atomic Safety and Licensing Board ordered the proceeding terminated.

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

EA-99-234

On June 1, 2001, the licensee requested a hearing in response to a May 4, 2001, Order Imposing Civil Monetary Penalty in the amount of \$110,000 for a Severity Level II violation involving employment discrimination against a former corporate employee for engaging in protected activities. At the close of the fiscal year, the case was still in the adjudication process having been appealed to the Commission by the licensee.

This hearing on a violation of 10 CFR § 50.7 is a case of first impression; that is, it is the first time a discrimination case has gone through the NRC hearing process. Although parties in other cases have requested a hearing, a settlement has previously been reached prior to an administrative hearing occurring. Several points of NRC employee protection law will be established through the Commission's review of Atomic Safety and Licensing Board Panel's (Board) decision, including standards of proof, whether discrimination as a contributing factor in a legitimate business decision can be a violation of NRC regulations, and applicability of dual motive case law.

The parties conducted discovery through the end of 2001, including depositions, interrogatories, document requests, and requests for admissions. An evidentiary hearing was conducted beginning April 23, 2002, in Chattanooga, Tennessee, continuing periodically for a total of 6 weeks, with the last week conducted in Rockville, Maryland. The hearing testimony was completed September 13, 2002.

During this fiscal year, the parties prepared and submitted briefs and responses to the Board. The Board issued an initial decision on June 26, 2003. The majority of the Board found that the staff had demonstrated, by a preponderance of the evidence, that the corporate employee's non-selection to a position was motivated to some degree as retaliation for engaging in protected activities. However, the Board also mitigated the amount of the civil penalty, reducing the amount from \$110,000 to \$44,000. TVA appealed the ASLB's decision on June 26, 2003. At the end of the fiscal year, the parties were preparing briefs and responses for the Commission's review.

APPENDIX G: WITHDRAWN ACTIONS

***Earthline Technologies (previously RMI Environmental Services)
Ashtabula, Ohio***

EA 99-290

On April 10, 2003, the NRC withdrew a Notice of Violation and civil penalty in the amount of \$17,600 for an enforcement action that was issued on a September 24, 2001. The action was based on the licensee discriminating against a radiation protection technician for engaging in protected activities. On January 15, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$17,600 was issued. By letter dated February 6, 2002, the licensee requested a hearing.

By joint motion dated June 19, 2002, Earthline Technologies and the NRC (the parties) requested that the hearing be placed in abeyance pending settlement discussions. Pursuant to those discussions, the parties agreed to specified corrective actions to be taken by Earthline Technologies. The parties further agreed that when the NRC obtained confirmation that the corrective actions had been taken and was satisfied that the corrective actions had been completed, the NRC would withdraw Violation A in the Notice of Violation and Proposed Imposition of Civil Penalty dated September 24, 2001, which relates to the violation of 10 CFR 40.7, and the Order Imposing Civil Monetary Penalty dated January 15, 2002, and instead treat the violation as non-cited.

Therefore, after reviewing the licensee's confirmation that the corrective actions were completed, the NRC decided to treat the violation as a non-cited violation and closed the enforcement action.

***Medical Provider's Capital Network
Allentown, Pennsylvania***

EA-02-205

On April 7, 2003, the NRC withdrew a civil penalty in the amount of \$3,000 that was part of an enforcement action that was issued on February 11, 2003. The action was issued for a willful Severity Level III problem involving: (1) the failure of the Authorized User/Radiation Safety Officer (AU/RSO) to perform monthly visits to the licensee's facilities to review the use of byproduct material; (2) the creation of false records; and (3) the receipt, possession and use of a byproduct material without the supervision of an AU/RSO. The licensee responded in a letter dated March 26, 2003, and admitted the first two violations and denied the third violation. The licensee also stated that it would terminate its license and requested mitigation of the civil penalty. After considering the licensee's response, the NRC concluded that the violation occurred as stated in the Notice of Violation. However, because the material had all been transferred and the license had been terminated, the NRC decided to withdraw the civil penalty.