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**OFFICE OF ENFORCEMENT  
ANNUAL REPORT**

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*Fiscal Year 2002*

*U.S. Nuclear Regulatory Commission*

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## *Abstract*

This annual report of the U.S. Nuclear Regulatory Commission's Office of Enforcement describes enforcement activities occurring during fiscal year 2002 (October 1, 2001 through September 30, 2002). 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. A variety of statistical tables and figures are also included.

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## *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.

The enforcement program is also intended to meet 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. In response to Commission direction, the timeliness goals for issuing escalated enforcement actions was changed for fiscal year 2002. The performance measure goals are:

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

During fiscal year 2002, 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 18.

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 2002, more than 1100 non-escalated enforcement actions were issued to reactor and material licensees. Out of these actions, 12 violations were disputed. Of the 12 disputed violations, 8 violations were either withdrawn or revised by the NRC. However, in only three cases 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*

Violations are identified through inspections and investigations. All violations are subject to civil enforcement action and may also be subject to criminal prosecution. 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. As a living policy statement, revisions 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](http://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 the Enforcement Policy as appropriate under the circumstances of a particular case.

There are three primary enforcement sanctions available: Notices of Violation, civil penalties, and orders. A Notice of Violation (NOV) identifies a requirement and how it was violated, formalizes a violation pursuant to 10 CFR 2.201, and normally requires a written response. A civil penalty is a monetary fine issued under authority of Section 234 of the Atomic Energy Act (AEA) or Section 206 of the Energy Reorganization Act (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. The Commission's order issuing authority under Section 161 of the AEA is broad and extends to any area of licensed activity that affects the public health and safety. Orders modify, suspend, or revoke licenses or require specific actions by licensees or persons. NOV's and civil penalties are issued based on violations. Orders may be issued for violations, or in the absence of a violation, because of a public health or safety issue.

The NRC first assesses the significance of a violation 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 for those of more than minor concern to Severity Level I for the most significant or are associated with findings assessed through the reactor oversight process's Significance Determination Process (SDP) that are assigned a color of green, white, yellow, or red based on increasing risk significance.

The manner in which a violation is dispositioned is intended to reflect the seriousness of the violation and the circumstances involved. Most of the violations identified in the nuclear industry are of low risk significance. Provided certain criteria in Section VI.A of the Enforcement Policy are met, the NRC will normally disposition 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 NOV's 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. Even minor violations must be corrected. However, given their limited risk significance, they are not subject to enforcement action and are not normally described in inspection reports. This approach for violations that have low risk significance is consistent with the agency's performance goals.

A predecisional enforcement conference or a regulatory conference may be conducted with a licensee before making an enforcement decision if escalated enforcement action appears to be warranted, and if the NRC concludes that it is necessary or the licensee requests it. (Escalated enforcement action is defined as action involving Severity Level I, II, or III violations; violations associated with white, yellow, or red findings evaluated by the SDP; civil penalties; or orders.) 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 making an enforcement decision. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective action taken or planned, and (3) 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 that the agency has determined that a violation has occurred or that enforcement action will be taken. In accordance with the Enforcement Policy, conferences are normally open to public observation.

Civil penalties are normally assessed for Severity Level I and II violations and 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 a combination of:

- ▶ the type of licensed activity,
- ▶ the type of licensee,
- ▶ the severity level of the violation, and
- ▶ whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past two inspections, whichever is longer,
- ▶ 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 decisional points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or twice the base civil penalty.

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

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

## **OE Annual Report**

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The NRC issues a press release with a proposed civil penalty or order. All orders are published in the *Federal Register*.

### ***Fiscal Year 2002 Highlights:***

- ▶ one Enforcement Policy revision
- ▶ 74 escalated Notices of Violation without civil penalties
- ▶ 25 proposed civil penalties (\$493,000)
- ▶ 3 orders
- ▶ 7 orders imposing civil penalties

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## *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.

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 13 full-time employees (FTEs) assigned for headquarters activities and 10 FTEs assigned for regional activities (although these FTEs report to the Regional Administrators).

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## ***1. Enforcement Policy Changes***

This section describes the one revision to the Enforcement Policy that was made during fiscal year (FY) 2002.

### ***A. April 24, 2002: A Revision of Violation Examples Involving Medical Use of Byproduct Material***

On April 24, 2002, the Commission published a revision to the Enforcement Policy in the *Federal Register* (67 FR 20187) revising examples of severity levels for violations associated with the requirements to use written directives for certain medical uses of byproduct material; and to develop, implement, and maintain uses that require a written directive (10 CFR 35.40 and 35.41). These examples are used to provide guidance for determining the significance of a particular violation. The revision becomes effective on October 24, 2002.

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

This section addresses enforcement initiatives during FY 2002, program office support, increasing public confidence, new staff guidance, internal communication and enforcement training, and enforcement program audits.

### ***A. Discrimination Task Group***

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.

Consistent with the charter, the DTG conducted six public stakeholder meetings at various locations around the country, held internal meetings with NRC stakeholders, and met with the Department of Labor (DOL), the Office of Special Counsel, and the Department of Energy. Based on review of the many comments and suggestions received, a draft report was developed.

In preparing the draft report, the DTG considered and evaluated comments provided by stakeholders during the initial round of meetings. As directed by the charter, the DTG proposed recommendations for improvements to the NRC's existing process for handling such matters, including proposed revisions to guidance documents and regulations. In April 2001, the DTG issued the draft report describing the review process and presenting preliminary recommendations.

Beginning in June 2001, a second round of public meetings were conducted at the same locations as the prior year, soliciting comments on the draft report. In addition to the public stakeholder

meetings, the Enforcement Web site provided electronic access to the draft report and the opportunity to submit comments and suggestions to the DTG. Comments from internal NRC stakeholders were obtained at meetings with each regional office and with the Offices of Nuclear Reactor Regulation (NRR), Nuclear Material Safety and Safeguards (NMSS), and OE. A substantial number of comments were again received from both the internal and external stakeholders, reflecting perspectives that ranged from recommendations for the NRC to be more aggressive to significantly reducing activities in this area. Several stakeholder comments reflected personal experience with the employee protection process. There were numerous issues on which stakeholders presented directly opposing views. However, some issues, such as the timeliness of the process, were addressed by nearly all stakeholders.

Based on the comments received on the draft report, the DTG expanded the scope of the final report. 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. The final report was issued in April 2002 and is available as Attachment 1 to SECY-02-0166.

<http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2002/secy2002-0166/attachment1.pdf>

The base policy questions considered by the DTG are presented in a flow diagram included in Appendix H of this report. The answer to each policy question leads either to options which could fulfill the requirements imposed by each policy decision or to the next policy question. The DTG final report relates the broad spectrum of stakeholder comments to the corresponding implications of each policy decision. The policy decisions, proposed options, and DTG recommendations are included in Appendix H of this report.

In summary, the DTG recommended Option 5b, as well as a number of crosscutting issues and common option attributes, because it believes that this recommendation provides the best balance between maintaining the agency's interest in deterring discrimination and encouraging a SCWE. Option 5b 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.

SECY-02-0166 was issued on September 12, 2002, 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. The Commission was considering the staff's recommendation at the end of the fiscal year and will likely make a decision in the next fiscal year.

## ***B. Alternative Dispute Resolution***

The Administrative Dispute Resolution Act (Act) of November 15, 1990, requires, in part, that agencies examine alternative means of resolving disputes in connection with enforcement actions. As required by the Act, the agency developed a policy in 1992 (57 FR 36678) to address what has come to be known as Alternative Dispute Resolution (ADR). The policy states that opportunities may arise for use of ADR in enforcement.

The enforcement staff actively worked with the Office of the General Counsel (OGC) and consulted with other federal agencies to explore the use of an ADR policy in the NRC enforcement arena. While it appears that other agencies have used ADR in the area of civil enforcement, its use in the NRC enforcement process poses significant challenges. Specifically, the use of ADR presents challenges to the long established enforcement program. ADR is any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, etc.

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 sought Commission review and approval to seek public comments from which a final evaluation and recommendation could be made. Thereafter, in SECY-02-0098, dated June 4, 2002, the staff reported on the status of the evaluation of the use of ADR in the NRC enforcement program. As noted in that paper, the staff had published a *Federal Register* notice soliciting comments on the use of ADR in enforcement on December 14, 2001.

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. The staff requested comment on using ADR at various point in the investigation and enforcement process. Specifically:

1. "Early ADR" following the receipt of an allegation and an initial OI preliminary interview of the whistleblower or allegor for low significance cases which meet the *prima facie* threshold for conducting an OI investigation; "low significance" cases would include issues that, if substantiated, would not result in an individual action and likely would result in the use of discretion, a Non-Cited Violation, a Severity level IV violation, or in some cases a Severity Level III violation;
2. The use of ADR following the completion of an OI investigation that substantiates an allegation of discrimination or wrongdoing, but prior to a predecisional enforcement conference;

3. The use of ADR following the issuance of a Notice of Violation and civil penalty (if proposed);
4. The use ADR following imposition of a civil penalty, but prior to a hearing on the case.

Several approaches associated with the development of a pilot program were discussed at a series of public and internal stakeholder meetings at various locations throughout the country in September and October 2002. Following these meetings, the staff plans on issuing a report and developing a Commission paper evaluating a pilot program for 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 is currently evaluating these comments and will propose a policy revision to the Commission consistent with the Commission's direction to the staff on the final Discrimination Task Group report.

### *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 draft Inspection Manual Chapter, "Reactor Oversight Process (ROP) Basis Document," and extensively revised Appendix E, "Enforcement."

The NRC staff issued final significance determination letters for 28 cases identifying a finding that was "greater than Green" during FY 2002 (i.e., White, Yellow, or Red). A Notice of Violation

(NOV) was issued in association with the identified cases on 22 occasions demonstrating the level of integration between the assessment and enforcement program. Twenty of these issues were associated with a White SDP finding from the ROP, one issue was associated with a Yellow SDP finding, and one issue was associated with a Red SDP finding. These 22 cases represent the majority of the escalated enforcement actions taken in the power reactor area during FY 2002.

NRC Inspection Manual Chapter 0609, "SDP," Attachment 2, "Process for appealing NRC characterization of inspection findings," provides licensees with an opportunity to appeal the SDP characterization of inspection findings. During fiscal year 2002, two SDP findings were appealed. The guidance for this appeal process requires an NRC panel consisting of, at a minimum, two specialists in the cornerstone being discussed and an enforcement specialist.

During March 2002, OE supported an SDP appeal of a White finding associated with a radiological controls issue at a Region IV reactor facility. The appeal encompassed the significance of inspection findings pertaining to unauthorized release of contaminated items from radiological controlled areas within the facility.

During September and October 2001, OE supported an SDP appeal of a White finding associated with an Operational Safeguards Response Evaluation (OSRE) at a Region I reactor facility. The appeal encompassed issues involving the significance of inspection findings generated during the observations of a force-on-force drill of the facility's physical protection plan and personnel.

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. This issue is addressed in an audit included in Section 2.J of this report.

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

During fiscal year 2002, OE finalized guidance involving violations of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants" (the Maintenance Rule). The finalized guidance was included in the fourth revision of the Enforcement Manual, published on September 30, 2002 (see Section 2.H for additional information on the Enforcement Manual). This guidance had been in development since fiscal year 2000, and involved NRR, regional, and OGC contributions as well as input from external stakeholders in response to the draft guidance that was included on the Enforcement Web site. A summary of the comments, discussion, and conclusion is included in the Revision 4 Summary of Changes for the Enforcement Manual. In conjunction with publication of the guidance, the requirement for mandatory enforcement panels for proposed Maintenance Rule violations was eliminated.

During FY 2002, OE continued to conduct review panels to ensure that the enforcement approach to 10 CFR 50.59, "Changes, tests, and experiments," was consistent with the ROP framework. These panels continued to be successful in ensuring a high level of consistency for determining when and to what extent violations of 10 CFR 50.59 occurred and resulted in a determination that the Regions were consistent in implementing the revised rule. The panels will remain active until the staff and industry gain sufficient experience with the application of the revised rule.

OE continued to support the agency activities regarding the pressurized water reactor (PWR) reactor pressure vessel head nozzle cracking phenomena. OE was instrumental in the development and finalization of draft shutdown orders to Davis-Besse and D.C. Cook when those licensees declared that they wished to continue operation after December 31, 2001, the date requested that inspections be performed by in NRC Bulletin 2001-01: Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles, August 3, 2001.

After severe vessel head degradation was discovered at Davis-Besse, OE supported the agency response. Specifically, OE activities included:

- ▶ Assisted development of NRC Bulletin 2002-01: Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity, March 18, 2002,
- ▶ Assisted development of NRC Bulletin 2002-02: Reactor Pressure Vessel Head and Vessel Head Penetration Nozzle Inspection Programs, August 9, 2002,
- ▶ 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.

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 2002, the enforcement staff reviewed proposed amendments to Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities," to resolve an ambiguity in the regulations regarding NRC approval of nuclear power plant licensee-initiated changes to emergency action levels (EALs) and changes to exercise requirements for co-located licensees. OE implemented Enforcement Guidance Memorandum (EGM) 02-001 to exercise enforcement discretion for compliance with the current requirement for changes to EALs until rulemaking is complete.

During FY 2002, the enforcement staff reviewed the 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 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 August, September, and October 2002, OE supported a DPV regarding 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 May and June 2002, OE participated in a DPV review panel to review the handling of a violation of 10 CFR 50.70 involving announcing an NRC inspector's presence at Turkey Point. The individual was concerned that the Enforcement Policy wasn't followed and that the finding should have been processed as a cited violation rather than a Non-Cited Violation.

During May and June 2002, OE supported a Differing Professional Opinion (DPO) review regarding the ROP Phase II SDP. The DPO encompassed issues involving differing methods for performing risk analyses of reactor inspection findings and the accuracy, efficiency, and costs of further development of the differing methods.

### *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. Significant rulemakings efforts in FY 2002 include revisions to 10 CFR Parts 30, 31, and 32, concerning exemptions from licensing and distribution of byproduct material and licensing and reporting; and 10 CFR 30.34 regarding security for storage and transport of portable gauges. OE participated on working groups for these draft rulemakings and developed related changes to the Enforcement Policy and Enforcement Manual. In addition, on October 24, 2002, NRC's Enforcement Policy was amended consistent with the effective date of NRC's revision of 10 CFR Part 35. OE has participated in working groups to ensure the successful and consistent implementation of the rule.

On February 16, 2001, the Enforcement Policy revision to increase the civil penalties for cases involving loss or unauthorized disposal of licensed sealed sources became effective. This Policy revision also emphasized that base civil penalties should normally be proposed for these cases. This change was intended to support the NMSS initiative to improve licensees' accountability of sealed sources and devices. During FY 2002, 12 civil penalty actions were proposed to emphasize the importance of maintaining control of licensed material.

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.

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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) reporting to the Deputy Executive Director for Reactor Programs (DEDR). The new office became effective on April 7, 2002.

During FY 2002, 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 proposed a notification process for issuance of security orders similar to the process for issuance of enforcement orders. The notification process included the assignment of EA numbers for tracking; the creation of Regulatory Notifications (RNs) as a way of notifying the Commission of the issuance, modification, or relaxation of security orders; and the posting of security 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 interim compensatory security measures beyond that currently required by NRC regulations and as conditions of licenses. Some of the requirements formalized a series of security measures that licensees took in response to advisories NRC issued in the aftermath of the September 11 terrorist attacks. Other requirements reflected additional security enhancements that have emerged from NRC's ongoing security review activities.

- ▶ On February 25, 2002, the first security orders were issued to all 104 commercial nuclear power plants to immediately implement interim compensatory security measures.
- ▶ On May 23, 2002, security orders were issued to 12 decommissioning power reactors.
- ▶ Security orders were issued to the following fuel cycle facilities:
  - BWX Technologies, Inc., August 21, 2002,
  - Honeywell Uranium Conversion Facility, March 25, 2002,
  - Nuclear Fuel Services, Inc., August 21, 2002, and
  - United States Enrichment Corporation, Gaseous Diffusion Plants, June 17, 2002.
- ▶ Security orders were issued on May 23, 2002, to General Electric Morris Operation to address wet independent spent fuel storage and on October 16, 2002, to multiple specific and general licensees to address dry independent spent fuel storage.

OE will be actively engaged in resolving and dispositioning issues identified through staff inspections to assess licensee implementation of these orders.



During FY 2002, 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. 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 2002, the enforcement staff worked closely with the program office in developing an interim enforcement policy for certain Fitness-For-Duty (FFD) issues. The Commission had previously approved the development of an interim enforcement policy for exercising enforcement discretion with respect to the practices regarding suitable inquiry and pre-access testing as part of its decision to withdraw the affirmed rule on 10 CFR Part 26, "Fitness-for-Duty Programs." 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.

During August and September 2002, OE supported a DPV regarding FFD for-cause testing requirements. The DPV encompassed issues involving technical accuracy of a proposed violation, legal interpretation of the requirements, generic enforcement policy regarding issuance of the proposed violation, and backfit considerations.

### ***G. Increasing Public Confidence***

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:
  - ▶ September 5, 2002, in Richland, Washington,
  - ▶ September 19, 2002, in Chicago, Illinois,
  - ▶ September 26, 2002, in San Diego, California,
  - ▶ October 10, 2002, in New Orleans, Louisiana, and
  - ▶ October 18, 2002, in Washington, DC.
  
- ▶ Frank J. Congel, Director, OE, served as a panelists in two breakout sessions at the 14th annual Nuclear Regulatory Information Conference (RIC) on March 5 and 6, 2002. He addressed the enforcement process for discrimination issues during the Allegations Process/Safety Conscious Work Environment session and addressed enforcement issues during the second Revised Reactor Oversight Process session.

- ▶ James Luehman, Deputy Director, OE, provided a presentation to the Chairman of the Slovak Nuclear Regulatory Authority on the NRC's enforcement program on August 27, 2002.
- ▶ The Region III staff provided a presentation at a regional OSHA investigator counterpart meeting on the NRC's allegation and enforcement processes and the interactions with DOL and OSHA on discrimination cases on April 25, 2002.
- ▶ The Region III enforcement staff provided presentations on the Enforcement Policy and enforcement program to visiting regulators from several European countries on November 8, 2001
- ▶ The Region III enforcement staff and the Region III allegation coordinator met with the Employee Concerns Program (ECP) coordinators from the Nuclear Management Company (NMC) to discuss the NRC's allegation and enforcement processes on August 8, 2002. NMC is the licensee for six nuclear plants in the Midwest (Monticello, Prairie Island, Duane Arnold, Point Beach, Kewaunee, and Palisades).

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. After September 11, 2001, the NRC temporarily took down the Web site pending additional review of information. When the NRC reestablished its Web site, it took the opportunity to release its redesign initiative in a phased approach. The new redesigned Web site was deployed in December 2001 and the Enforcement page was deployed in February 2002. OE staff worked extensively in the initiative to redesign the agency's external Web site. In response to stakeholder feedback, the Enforcement site is easier to locate because it shows up as a rollover under the **What We Do** icon on the home page (see Appendix I of this report).

The **Enforcement** page (see Appendix I) 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. During FY 2002, OE completed the Web page that includes the history of the Enforcement Policy. OE also included the security orders that imposed 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 Maintenance Rule guidance) through online comment forms.

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

## *H. Enforcement Guidance*

On September 30, 2002, OE completed the fourth full revision of the NRC Enforcement Manual (Manual).

The Manual was first published in June 1990, as a tool to assist the NRC staff in implementing the Commission's enforcement program consistent with NRC's Enforcement Policy. 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. As such, failure to follow the guidance in this Manual does not invalidate an enforcement action.

This Manual supercedes the previous version issued as Revision 3 (June 1, 2000) and updated through Change Notice Number 6 (June 4, 2002).

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.

Revision 4 includes multiple changes, including:

- ▶ role and responsibilities of the Office of Nuclear Security and Incident Response,
- ▶ creation of Regulatory Notifications (RNs) as a communication tool to the Commission for significant regulatory actions, such as Final Significance Determination letters with white, yellow, or red Significance Determination Process findings (without Notices of Violation) and orders that are not based on compliance issues(e.g., 2002 security orders),
- ▶ additional guidance on minor violations,
- ▶ new agency output measures and new timeliness goals for significant Notices of Violation and civil penalty actions, and
- ▶ guidance on enforcement actions involving the Maintenance Rule.

The guidance on enforcement actions involving the Maintenance Rule considered stakeholder input in response to the draft guidance that was included on the **Enforcement** Web site. A summary of the comments, discussion, and conclusion is included in the Revision 4 Summary of Changes for the Manual.

An itemized summary of changes in the order that they appear in the Manual is included in Revision 4 Summary of Changes on the **Enforcement Guidance** Web page.

During FY 2002, OE issued three change notices to the Manual.

- ▶ Change Notice Number 4 was issued on March 5, 2002, and added EGM 02-001, "Interim Guidance for Enforcement of 10 CFR Appendix E," to Appendix A of the Manual.
- ▶ Change Notice Number 5 was issued on May 22, 2002, and added EGM 02-002, "Enforcement of 10 CFR 20.1201 - Occupational Dose Limits for Adults," to Appendix A of the Manual.

- ▶ Change Notice Number 6 was issued on June 4, 2002, and deleted Appendix D of the Manual, "Hot Particle Enforcement Policy; Enforcement Policy Regarding Occupational Doses from Hot Particles." The policy was superseded by an amendment to 10 CFR Part 20 that revised the skin dose limit by changing the definition and method of calculating shallow-dose equivalents. The final rule was issued on April 5, 2002 (67 FR 16298) and became effective on June 4, 2002.

During FY 2002, OE issued two Enforcement Guidance Memoranda (EGMs). EGMs are normally used to transmit temporary guidance, but may also be used to transmit expedited guidance for Enforcement Policy application or enforcement program implementation.

- ▶ EGM 02-001, "Interim Guidance for Enforcement of 10 CFR Appendix E," issued March 5, 2002.
- ▶ EGM 02-002, "Enforcement of 10 CFR 20.1201 - Occupational Dose Limits for Adults," issued April 24, 2002.

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

### ***1. 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 and the Deputy Director, OE visited each regional office and met with the Regional Administrators, their Deputies and a variety of senior management and staff to address the enforcement program, including the status of enforcement actions, policy issues, and new initiatives.
- ▶ 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 May 21 - 23, 2002, 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.

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:
  - ▶ November 1, 2002,
  - ▶ April 3, 2002, and
  - ▶ September 11, 2002.
- ▶ Maintenance Rule training. In conjunction with development of the Maintenance Rule enforcement guidance, OE provided training to regional inspectors. The training consisted of a presentation highlighting common areas of concern and misperceptions regarding Maintenance Rule enforcement and a question and answer period. This interaction provided for further enhancements to the draft guidance. Training was conducted for:
  - ▶ Region I on January 24, 2002,
  - ▶ Region II in November, 2001,
  - ▶ Region III on December 13, 2001, and
  - ▶ Region IV on November 8 and 15, 2002.

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

- ▶ Region I enforcement staff provided training to regional staff in February 2002 concerning: (1) handling enforcement issues in reports, (2) meeting notices, (3) notices of enforcement discretion, (4) licensee denials of violations, (5) SERPs and Enforcement panels, (6) timeliness goals for enforcement actions, and (7) charging time in HRMS for enforcement activities.
- ▶ Region I enforcement staff provided training to approximately 30 newly hired inspectors on a continuing basis.
- ▶ 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, (3) charging time in HRMS for enforcement activities, and (4) enforcement audit findings.
- ▶ Region II enforcement staff provided individualized training to newly hired employees on a continuing basis.
- ▶ Region III enforcement staff provided training to Region III inspection staff in October 2001, and February 2002. The training incorporated lessons learned from audits and previous cases in Region III.
- ▶ Region III enforcement staff provided an abbreviated “Fundamentals of Inspection,” course to new regional inspectors on August 28, 2002.
- ▶ Region IV enforcement staff conducted the enforcement portion of the “Fundamentals of Inspection,” on January 16, 2002, for all new inspectors, and on August 12, 2002, for new inspectors and summer interns.

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## *J. 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 Reactor Oversight Process (ROP) Findings Preliminarily Determined to be Greater Than Green and Subsequently Downgraded - 3/1/2002**

OE completed an audit of ROP findings that were preliminarily determined to be White, Yellow, or Red and subsequently downgraded prior to the final significance determination. For the purposes of this audit, a downgrade was defined as an inspection finding that was preliminarily characterized as greater than Green at a SERP and subsequently reduced in significance prior to the final determination. OE tracked 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. The NRC documented 44 inspection findings that were preliminarily determined to be greater than Green from initial implementation on April 2, 2000, through December 31, 2001. The NRC downgraded its position on the safety significance prior to the final determination on 12 occasions, resulting in a downgrade rate of 27 percent.

The audit concluded that the development of new information by the licensee, not available for the preliminary determination, was the dominating factor in changing the NRC staff's view on the significance of the inspection finding. In nine out of 12 cases, new information developed by the licensee was used to support a reduction in the safety significance of the inspection finding. This new information often takes the form of additional testing or engineering evaluations that are used to demonstrate that inoperable equipment can be assumed functional and, therefore, credited in the probabilistic risk analysis (PRA). This new information is not typically available to the NRC at the time that the preliminary determination is made.

The audit also found that the program goal to provide a timely resolution of the safety significance of inspection findings can, at times, conflict with the program goal to achieve a comprehensive understanding of the risk associated with these issues. Specifically, licensees expend considerable resources, in terms of time and money, testing degraded equipment and performing additional engineering analysis in an effort to reduce the safety significance of inspection findings. In many cases, this analysis is performed long after the performance issue has been identified and corrected. As such, the value of this additional testing and analysis is limited to the characterization of the inspection finding.

The audit recommended the development of effective limitations in the ROP/SDP implementation to achieve a balance between the desire to have a timely resolution of inspection findings and the need to have a satisfactory understanding of the risk perspectives of each issue.

NRR recognized this limitation and included this item as a consideration in the SDP Timeliness Improvement Strategies and Task Action Plan.

**Audit of Adams Retrieval Performance of Escalated Enforcement Documents - 3/6/2002**

OE performed an audit of the retrieval capability of escalated enforcement documents filed in ADAMS. The purpose was to determine if enforcement-related documents were being properly profiled in ADAMS such that the ADAMS "find" capabilities were effective in finding and retrieving these documents.

OE attempted to retrieve various enforcement-related documents using the document profiling parameters specified in the OE ADAMS templates. The profiling instructions in the templates were designed to mimic the paper filing system employed in OE files based on Enforcement Action (EA) numbers.

Following the initial search, a search for any missing documents (documents not retrieved based on EA number) was attempted using other search parameters, e.g. text, licensee name, document type, etc. When documents were located by these alternative means, the corresponding profiles were examined, on a sampling basis, to attempt to identify what profile error prevented normal document retrieval in the initial search based on EA number.

After reviewing the audit findings, OE concluded that the ADAMS retrieval performance of enforcement-related documents was unreliable. The primary reason for this was poor profiling of documents, not due to any incapability of the ADAMS system. The basis for this conclusion was discussed in detail in the audit report.

The audit report included four recommendations involving: (1) use of the proper EA number format in the ADAMS profile, (2) modification of standard formats for enforcement actions to include specific instructions to licensees to include the proper EA number format in their responses, (3) evaluation of practical improvements to OE ADAMS profiling templates, and (4) analysis by OCIO to determine the depth and breadth of document profiling errors and their causes throughout the agency.

**Audit of Enforcement Action Tracking System - 3/25/2002**

OE completed an audit of the Enforcement Action Tracking System (EATS). The purpose was to determine whether enforcement information for escalated actions was being accurately and completely entered into EATS.

OE conducted a review of EATS records for all EA cases included in the OE annual report for fiscal year 2001. Of the more than 135 EA cases reviewed, more than 20 cases included one or more errors. . Errors included failing to use the correct case type, failing to have a separate EA number for each escalated item, failing to use the correct action code, and failing to include appropriate keywords. A complete list of EATS errors was included in the audit.

The audit report included three recommendations involving: (1) training the appropriate members of the enforcement staff on the results of the audit, (2) use of a collateral review of EATS data, and (3) modifications to EATS.

### **Audit of Non-Substantiated OI Report Process - 5/9/2002**

OE completed an audit of three week E-mail memos related to unsubstantiated Office of Investigation (OI) reports review by the OE staff. The purpose was to determine whether the three week E-mail memos were effective in ensuring timely review of the OI reports prior to the reports being closed by the regions and to review the regional methods of tracking the three week E-mail memos related to the unsubstantiated OI reports.

OE conducted a review of the three week E-mail memos generated in 2001 which were related to a total of 173 OI reports. The audit concluded that the unsubstantiated OI reports were not being reviewed in a timely manner and therefore any additional comments or questions from OE would not have been received by the regions until long after the regions had potentially closed the OI report packages and sent a closure letter to the licensee. Despite the untimely reviews identified in the audit, no instances were identified where an enforcement issue identified in an OI report was not properly dispositioned. The audit also identified that, although there is a specific standard for how soon a three week E-mail needs to be issued after receipt of an OI report (normally one week), the audit noted a number of cases where there was a substantial time gap between OI report receipt and three week E-mail issuance.

The audit also noted that each region tracked three week E-mail memos with different processes. Some of those processes would make it more difficult to compare regional based and Office of Enforcement tracking data related to unsubstantiated OI reports.

The audit resulted in recommendations that included three options that attempted to balance the need to review unsubstantiated OI reports with resources necessary to conduct such reviews.

### **Delegations of Authority Audit - 6/28/2002**

OE completed an audit of the delegations of authority involving the enforcement program. The purpose was to compile a chronology of delegations of authority (attempting to determine the basis for delegations and subsequent revisions) and to determine:

1. if the guidance in the Enforcement Manual was consistent with the written delegations of authority,
2. whether the delegations of authority issued by OE to the regional offices and the program offices were consistent (and if not, whether the differences were appropriate),
3. whether the guidance in the Manual was complete, and
4. whether any delegations should be issued or re-issued to address enforcement.

OE conducted a review of the actual delegations of authority maintained in official OE file. OE also reviewed other guidance documents, such as EGMs and Staff Requirements Memoranda to compile a history, OE reviewed guidance in the Manual, and agency-wide guidance included in Management Directives.



The audit found that there were instances where: (1) the guidance in the Enforcement Manual was not always consistent with the latest written delegations of authority, (2) the delegations of authority issued by OE to the regional offices and the program offices were not always consistent, (3) the guidance in the Manual was not always complete, and (4) where delegations should be issued and re-issued to address desired enforcement practices. The findings are described in detail in the findings section of the audit. It should be noted that none of these findings significantly affected any office's ability to carry out its enforcement function.

The audit included seven recommendations ranging from updating the Manual to re-issuing delegations of authority to ensure consistency and document practices. The seven recommendations are described in detail in the recommendations section 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.

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 2002, the agency issued 109 escalated enforcement items.

Note that an enforcement case or enforcement action issued to a licensee may include more than one individual enforcement item (e.g., a civil penalty and an escalated NOV without a civil penalty).

Escalated NOVs are individual Severity Level I, II, or III violations issued without a civil penalty and individual violations associated with white, yellow, or red SDP ROP findings.

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.

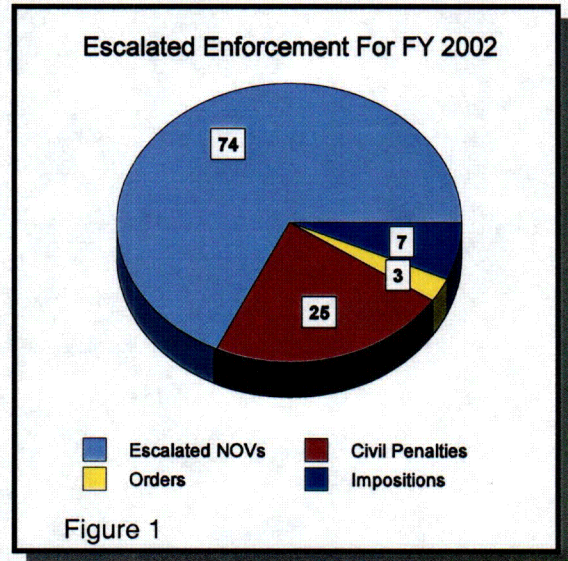


Figure 1

#### Enforcement Actions With OI Reports

Thirty eight percent of the 102 proposed escalated actions had an OI report associated with them.

- ▶ 27 out of the 74 escalated NOVs (36%).
- ▶ 10 out of the 25 proposed civil penalties (40%).
- ▶ 2 out of the 3 enforcement orders (excluding impositions) (67%).

#### Timeliness of Enforcement Actions

In response to Commission direction, the timeliness goals for issuing escalated enforcement actions was changed for fiscal year 2002. The performance measure goals are: (1) 100% of non-investigation cases (excluding orders) are completed within 180 calendar days and will average 120 days; and (2) 100% of investigation cases (excluding orders) are completed within 360 days processing time and will average 180 days or NRC processing time.

During fiscal year 2002, 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.

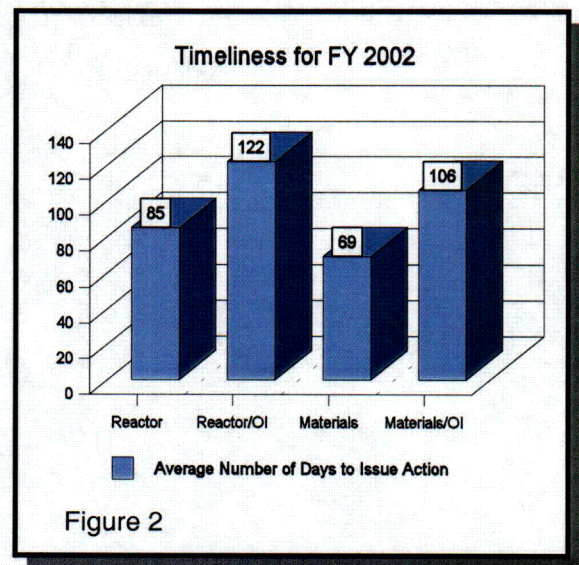


Figure 2

For actions that do not involve an investigation, the measurement period begins on the date of the inspection exit meeting. For actions that involve an investigation, but no referral to the Department of Justice (DOJ), the measurement period begins on the date of issuance of the report of investigation. For

actions that involve an investigation and referral to DOJ, the measurement period begins on the date DOJ informs the NRC that the NRC may proceed with civil action. For actions that involve discrimination and Department of Labor (DOL) proceedings, the measurement period begins when there is an appropriate decision in the DOL process or sufficient evidence from the NRC's processes to support actions.

***A. Escalated Notices of Violation (Without Civil Penalties)***

During FY 2002, the agency issued 74 escalated Notices of Violation (without civil penalties). (This number reflects the number of enforcement items versus the number of enforcement cases issued during the year.) Ten of these items were issued to individuals and two were issued to non-licensees. See Section 5 for more information on enforcement items issued to individuals and other non-licensed persons (i.e., vendors and certificate holders). Twenty of these issues were associated with a White SDP finding from the ROP, one issue was associated with a Yellow SDP finding, and one issue was associated with a Red SDP finding. Appendix A includes a short summary description of each of the enforcement issues 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 2002, the agency issued 25 civil penalty issues. 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 2002, the agency issued three enforcement orders. One of the orders was issued to an individual. (See Section 5 for more information on enforcement actions issued to individuals, vendors, and certificate holders.) In addition to these orders, seven civil penalty imposition orders were issued. Appendix C includes a short summary description of the seven impositions that were issued to licensees.

***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. OE issued one Demand for Information (DFI) to United Evaluation Services, formerly known as Accurate Technologies. A DFI was issued to provide the licensee the opportunity to describe why its license should not be modified or revoked based on the licensee deliberately violating radiography requirements and deliberately providing inaccurate and incomplete information to the NRC. The DFI was issued on May 14, 2002, in conjunction with an immediately effective Order Suspending License (see EA-02-103 in Appendix C).

### *E. Escalated Enforcement Trends*

During FY 2002, the agency issued 109 individual escalated items. Figure 5 show graphical representations of enforcement trends since fiscal year 1995. Table 2 also shows civil penalty statistical comparisons.

It should be noted that direct correlations between the fiscal years is difficult because of the major policy changes that have occurred over the years. With the exception of actions to gauge users, radiographers, and 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 2001 was 25 versus 28 in FY 2002. The number of actions issued to gauge users went from 12 in FY 2001 to 20 in FY 2002. The increase is consistent with the December 18, 2000, Enforcement Policy revision involving civil penalties for loss, abandonment, or improper transfer or disposal of sources. The number of escalated issues involving radiographers went from 21 in FY 2001 (the historical high) to 13 in FY 2002. The comparably high number of actions issued to radiographers in FY 2002 reflects the continuing inspection attention to radiographers. Finally, the number of escalated actions issued to unlicensed individuals went from 21 in FY 2001 to nine in FY 2002. 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. Therefore, this drop is noted and will be monitored, but 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 2002, twenty cases that would be considered escalated involved an exercise of discretion.

The Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material also addresses those instances when the NRC may choose to exercise discretion and refrain from taking enforcement action. During FY 2002, two cases were dispositioned in accordance with this policy.

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 2002, 13 cases involved this exercise of discretion. Of these cases, 12 cases involved the failure to maintain control of licensed material.

***Alt & Witzig Engineering, Inc.***  
***Carmel, Indiana***

***EA-02-135***

On September 26, 2002, 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 failure to properly prepare (block and brace) a moisture density gauge (that included 8 millicuries of cesium-137 and 40 millicuries of americium-241/beryllium) for transport that resulted in the gauge being lost and the failure to immediately notify the NRC. 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.

***Dominion Nuclear Connecticut, Inc.***  
***Millstone 1***

***EA-02-014***

On June 25, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$288,000 was issued for a Severity Level II violation involving the failure to: (1) keep adequate records of special nuclear material (SNM), (2) establish adequate procedures for control and accounting of SNM, and (3) conduct adequate physical inventories of SNM. Although the normal civil penalty assessment process would have resulted in a base penalty, the NRC exercised enforcement discretion in accordance with Section VII.A of the Enforcement Policy and tripled the base amount of the penalty because of the unprecedented nature of the loss of highly radioactive fuel from a nuclear power reactor and to emphasize the importance of adequate accounting of irradiated fuel at nuclear power reactors.

***Eastern Isotopes Inc.***  
***Charlotte, North Carolina***

***EA-02-097***

On July 30, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$4,800 was issued for a Severity Level II violation involving an overexposure to a pharmacist in excess of NRC requirements. Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, the NRC exercised enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy and proposed a base civil penalty because the violation was assessed at Severity Level II and because it resulted in an overexposure.

Although the civil penalties for the next 10 cases 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 in each case to reflect the significance of maintaining the control of licensed material.

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

***EA-02-102***

On June 21, 2002, 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 failure to secure from unauthorized removal or limit access to licensed material (2.6 millicuries of iridium-192) contained in a brachytherapy ribbon and the failure to control and maintain constant surveillance of this licensed material and the failure to perform a survey for radioactive material.

***I. González Martínez Oncologic Hospital  
Hato Rey, Puerto Rico***

***EA-02-001***

On March 12, 2002, 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 multiple violations associated with the failure to secure licensed material (a radioactive implant containing approximately 97 millicuries of cesium-137) for approximately 19 hours.

***Mathy Construction Company  
Onalaska, Wisconsin***

***EA-01-214***

On November 6, 2001, 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 failure to secure and limit access to a portable moisture density gauge and the failure to lock the gauge or transport case while the gauge was being transported.

***Maxim Technologies, Inc.  
Salt Lake Cities, Utah***

***EA-02-151***

On August 29, 2002, 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 secure from unauthorized removal or limit access to licensed material (8 millicuries of cesium-137 and 40 millicuries of americium-241) contained in a portable moisture density gauge and failure to maintain constant surveillance of this licensed material.

***Northern Engraving Corporation  
Sparta, Wisconsin***

***EA-02-098***

On July 22, 2002, 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) failure to transfer generally licensed devices only to authorized recipients (in this case a static eliminator device containing 11.25 millicuries of americium-241); and (2) failure to provide complete and accurate information to the NRC.

***Palmerton & Parrish, Inc.  
Springfield, Missouri***

***EA-01-218***

On November 1, 2001, 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) failure to maintain control of radioactive material that is in an unrestricted area and that is not in storage, (2) failure to transport a portable moisture density gauge in the required container, (3) failure to block and brace the gauge during transportation, and (4) failure to lock the gauge during transportation.

***SCI Engineering, Inc.***  
***St. Charles, Missouri***

***EA-01-237***

On November 15, 2001, 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 secure from unauthorized removal or limit access to byproduct material (cesium-137 and americium-241) contained in two portable moisture/density gauges and the failure to control and maintain constant surveillance of this licensed material.

***Stora Enso North America Corporation***  
***Wisconsin Rapids, Wisconsin***

***EA-02-035***

On June 11, 2002, 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) failure to control and maintain constant surveillance of radioactive material that was in an unrestricted area and not in storage; (2) failure to clearly label a container (gauge) containing radioactive material; and (3) failure to ensure that a gauge containing a radioactive sealed source was removed by persons specifically licensed to perform such services.

***Trap Rock Industries, Inc.***  
***Kingston, New Jersey***

***EA-01-314***

On February 27, 2002, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to byproduct material (cesium-137) contained in a density gauge and failure to control and maintain constant surveillance of this licensed material.

***University of Wisconsin-Madison***  
***Madison, Wisconsin***

***EA-01-282***

On December 21, 2001, a Notice of Violation and Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to byproduct material (americium-241) contained in six sealed sources and the failure to control and maintain constant surveillance of this 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 2002, no cases involved this exercise of discretion.

### ***Section VII.B.3***

Section VII.B.3 provides that civil penalties or NOVs 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 2002, no cases involved this exercise of discretion.

### ***Section VII.B.4***

Section VII.B.4 provides that civil penalties or NOVs 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 2002, no cases involved this exercise of discretion.

### ***Section VII.B.5***

Section VII.B.5 provides that civil penalties or NOVs need not be issued for violations involving discrimination issues if they are licensee-identified and corrected. During FY 2002, two cases involved this exercise of discretion.

#### ***Dominion Nuclear Connecticut, Inc. Millstone***

***EA-02-051***

On April 9, 2002, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.5 of the Enforcement Policy for a significant violation involving discrimination against an employee for raising safety concerns. Exercising discretion and not taking enforcement in this case was appropriate because: (1) the discrimination was not the result of the acts of any individual above a first line supervisor; (2) the licensee identified the discriminatory actions without any NRC or DOL intervention, promptly informed the NRC of its finding, and took prompt, comprehensive and effective corrective action to address this situation; and, (3) there had been no history of discrimination at the facility since the licensee became the operator of the facility in March 2001.

#### ***Indiana and Michigan Electric Company D.C. Cook***

***EA-01-072***

On January 17, 2002, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.5 of the Enforcement Policy for a Severity Level III violation involving employment discrimination against two pump mechanics (employed by Crane Nuclear) for engaging in protected activities. The NRC refrained from issuing enforcement action in this case because the licensee identified the issue and took prompt, comprehensive, and effective corrective actions.



***Section VII.B.6***

Section VII.B.6 provides that civil penalties or NOVs need not be issued for violations involving special circumstances. During FY 2002, five cases involved this exercise of discretion.

***Geodax Technology, Inc***  
***Roanoke, Virginia***

***EA-01-257***

On January 4, 2002, a Notice of Violation was issued for a Severity Level III violation involving the licensee allowing an individual to work as an authorized nuclear pharmacist (ANP) without notifying the NRC within 30 days licensee after the date that the licensee allowed the individual to work as an ANP. Although a civil penalty would normally have been proposed in this case, the NRC exercised discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a penalty. Discretion was warranted because the NRC concluded that the potential safety consequences were low, the pharmacist was forthcoming during the NRC's inspection, the Radiation Safety Officer (RSO) promptly initiated supervision of the pharmacist upon being informed of the inspection finding, and all individuals involved accepted responsibility for the violation and cooperated during the investigation.

***Glendive Medical Center***  
***Glendive, Montana***

***EA-01-180***

On November 1, 2001, a Notice of Violation was issued was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material (one-curie molybdenum-99/technetium-99m generator) in an unrestricted area and failure to control and maintain constant surveillance of licensed material. Although a civil penalty would normally be proposed by the civil penalty assessment process, the NRC exercised discretion in accordance with Section VII.B.6 and to did not propose a penalty because the NRC concluded that the incident was an isolated occurrence caused by personnel error.

***Halifax Regional Hospital***  
***South Boston, Virginia***

***EA-01-260***

On October 24, 2001, 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 Severity Level III violation involving the failure to maintain the whole body dose to a physician below 5 rem. The licensee informed the NRC that it had used a different dose evaluation methodology that concluded that it was within the regulatory limit. Although this methodology was not specifically approved for use by the licensee, the NRC concluded that discretion was warranted because the licensee's dose evaluation methodology is accepted by the State of Virginia and is similar to other accepted methodologies. On April 16, 2002, the NRC issued Regulatory Issue Summary 2002-06 that included specific conditions under which a licensee would be considered to be in compliance with Part 20 for the determination of occupational dose when occupational exposures result in part from medical x-ray radiation, while wearing protective apparel.

*University of Pennsylvania  
Philadelphia, Pennsylvania*

*EA-02-050*

On April 5, 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 Severity Level III violation involving multiple failures to maintain radiation doses to members of the public below regulatory limits. The requirement was violated when guardians of minor patients treated with iodine-131 meta-iodobenzylguanidine received doses that exceeded the limit. Enforcement discretion was warranted because: (1) the licensee believed that parents who provided care for their children were occupationally exposed and, as a result, provided thorough training and dosimetry to those parents; (2) current regulations permit a licensee to request prior approval to increase the dose limit for individual members of the public to 500 millirem; (3) once the licensee was made aware of the misinterpretation, they requested and were subsequently granted authorization to increase the dose limit for individual members of the public providing such inpatient care during treatments to 500 millirem; and (4) no exposures exceeded 500 millirem.

*Washington Hospital Center  
Washington, DC*

*EA-01-184*

On October 2, 2001, 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 Severity Level III violation involving the failure to maintain the whole body dose to a physician below 5 rem. The licensee replied in a letter dated June 13, 2001, that it had used a different dose evaluation methodology that concluded that it was within the regulatory limit. Although this methodology was not specifically approved for use by the licensee, the NRC concluded that discretion was warranted because the licensee's dose evaluation methodology is accepted by the District of Columbia and is similar to other accepted methodologies.

### ***Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material***

*Burlington Performance Wear  
Greensboro, North Carolina*

*EA-01-266*

On November 6, 2001, the NRC exercised enforcement discretion in accordance with the Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material and refrained from issuing enforcement action for a violation involving the loss of a generally licensed spectrochemical analyzer. Discretion was warranted because the licensee's actions were not willful, the licensee identified and reported the loss, and the licensee took appropriate corrective actions to prevent recurrence.

*Dominion Generation  
Glen Allen, Virginia*

*EA-01-306*

On December 10, 2001, the NRC exercised enforcement discretion in accordance with the Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material and refrained from issuing enforcement action for a violation involving the loss of a generally licensed fixed level gauge containing 100 millicuries of cesium-137. Discretion was warranted because the licensee's actions were not willful, the licensee identified and reported the loss, and the licensee took appropriate corrective actions to prevent recurrence.

## ***5. Actions Against Individuals and Non-Licensees***

During FY 2002, the agency issued 15 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 non-licensed 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 2002, the agency issued two NOV's to licensed individuals. Appendix D includes a short summary description of these actions.

### ***B. Actions Against Non-Licensed Individuals***

During FY 2002, the agency issued 1 order and 8 NOV's to non-licensed 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 2002, the agency issued one proposed civil penalty, one imposition of civil penalty, and two NOV's to non-licensees. Appendix E includes a short summary description of each of these actions.

## ***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 2002, the agency issued four escalated enforcement actions for violations involving discrimination. Three actions were issued to licensees and one was issued to a vendor. These cases are listed here and discussed further in the appropriate appendix. In addition, the NRC exercised discretion and refrained from taking enforcement action for a discrimination issue at the Millstone nuclear facility and the DC Cook facility. These issues are described in more detail in Section 4 of this report (see EA-02-051 and EA-01-072 under Section VII.B.5).

<i>Crane Nuclear, Inc.</i>	<i>NOV</i>	<i>EA-01-073</i>
<i>Tennessee Valley Authority (Watts Bar)</i>	<i>\$88,000 Civil Penalty</i>	<i>EA-98-327</i>
<i>University of Missouri-Columbia</i>	<i>\$3,000 Civil Penalty</i>	<i>EA-01-013</i>
<i>Exelon Generation Company</i>	<i>Confirmatory Order</i>	<i>EA-02-124</i>

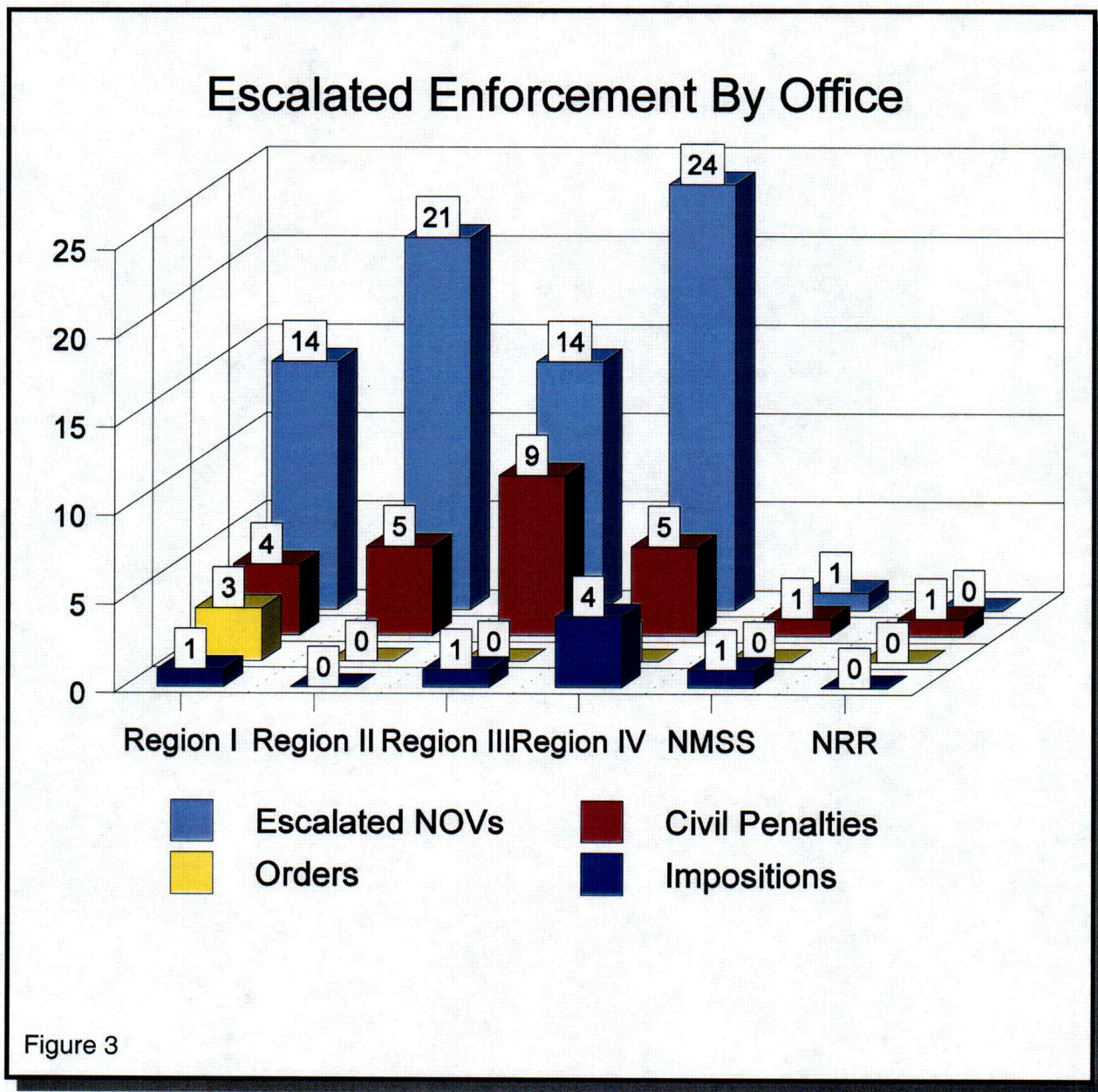
Figure 6 on page 37 includes escalated enforcement trends since fiscal year 1995 for discrimination cases.

## ***7. Hearing Activities***

During FY 2002, two 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.

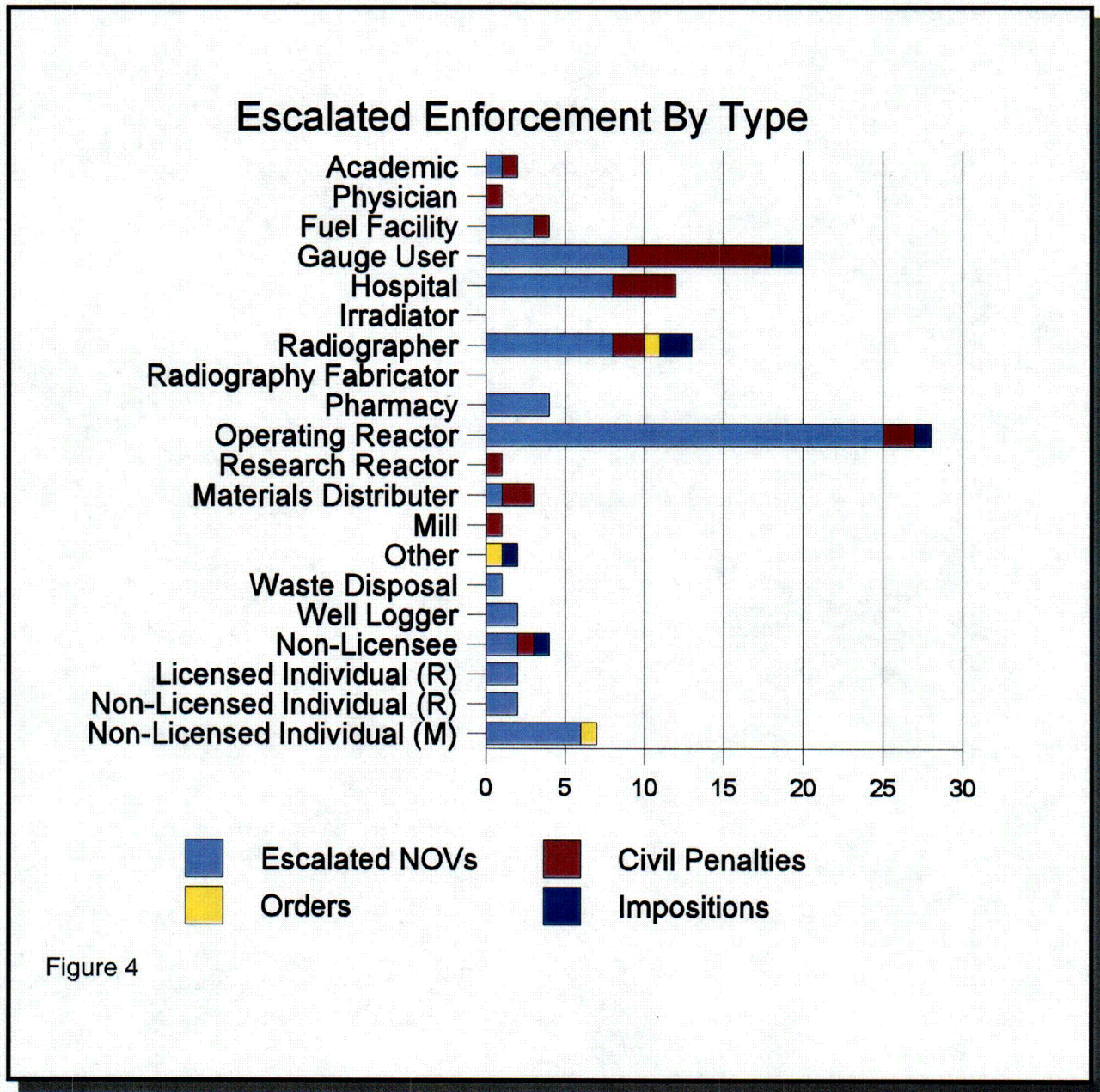
## ***8. 10 CFR 2.206 Petitions***

During FY 2002, one case had some 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. Appendix G includes a short summary of this case.



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

Type of Licensee	Escalated NOV's (w/o penalty)	Civil Penalties	Orders	Impositions	Total FY 02
Academic	1	1	0	0	2
Physician	0	1	0	0	1
Fuel Facility	3	1	0	0	4
Gauge User	9	9	0	2	20
Hospital	8	4	0	0	12
Irradiator	0	0	0	0	0
Radiographer	8	2	1	2	13
Radiography Fabricator	0	0	0	0	0
Pharmacy	4	0	0	0	4
Operating Reactor	25	2	0	1	28
Research Reactor	0	1	0	0	1
Materials Distributer	1	2	0	0	3
Mill	0	1	0	0	1
Other	0	0	1	1	2
Waste Disposal	1	0	0	0	1
Well Logger	2	0	0	0	2
Non-Licensee	2	1	0	1	4
Licensed Individual (reactor)	2	0	0	0	2
Non-Licensed Individual (reactor)	2	0	0	0	2
Non-Licensed Individual (materials)	6	0	1	0	7
<b>Total</b>	<b>74</b>	<b>25</b>	<b>3</b>	<b>7</b>	<b>109</b>



NOTE: Licensed and Non-Licensed Individual (R) = individuals working for reactor licensee  
 Non-Licensed Individual (M) = individuals working for materials licensee

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**TABLE 2: CIVIL PENALTY INFORMATION**

	FY 02	FY 01	FY 00	FY 99	FY 98	FY 97	FY 96
Number of Proposed Civil Penalties	25	20	16	24	76	112	78
Number of Imposed Civil Penalties	7	5	4	5	6	10	9
Number of Civil Penalties Paid	23	17	16	21	68	108	56
Amount of Proposed Civil Penalties	\$493,000	\$342,900	\$446,600	\$1,062,600	\$5,206,600	\$7,422,300	\$3,832,500
Amount of Imposed Civil Penalties	\$109,800	\$139,900	\$231,550	\$913,750	\$115,650	\$285,250	\$44,500
Amount of Civil Penalties Paid	\$456,750	\$294,100	\$430,500	\$1,070,850	\$6,493,573	\$6,657,300	\$3,014,000

**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.

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### Escalated Enforcement Trends

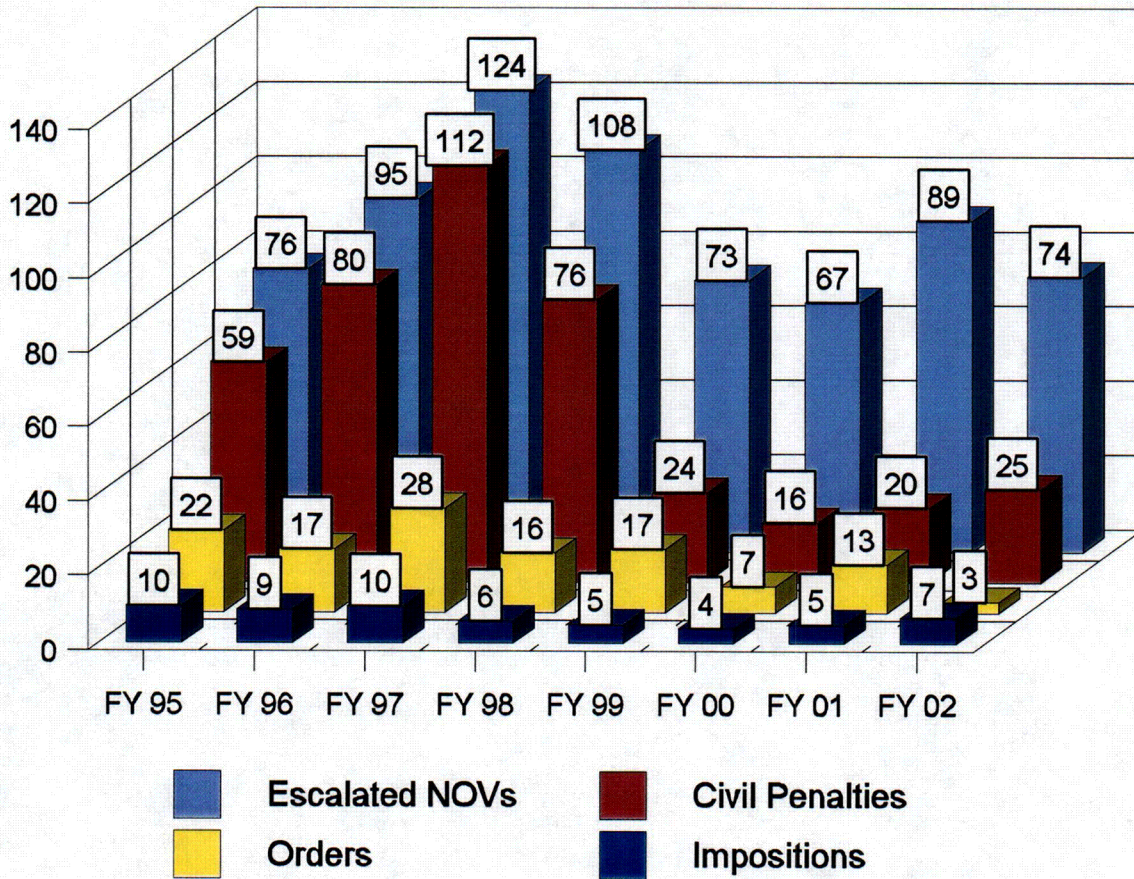
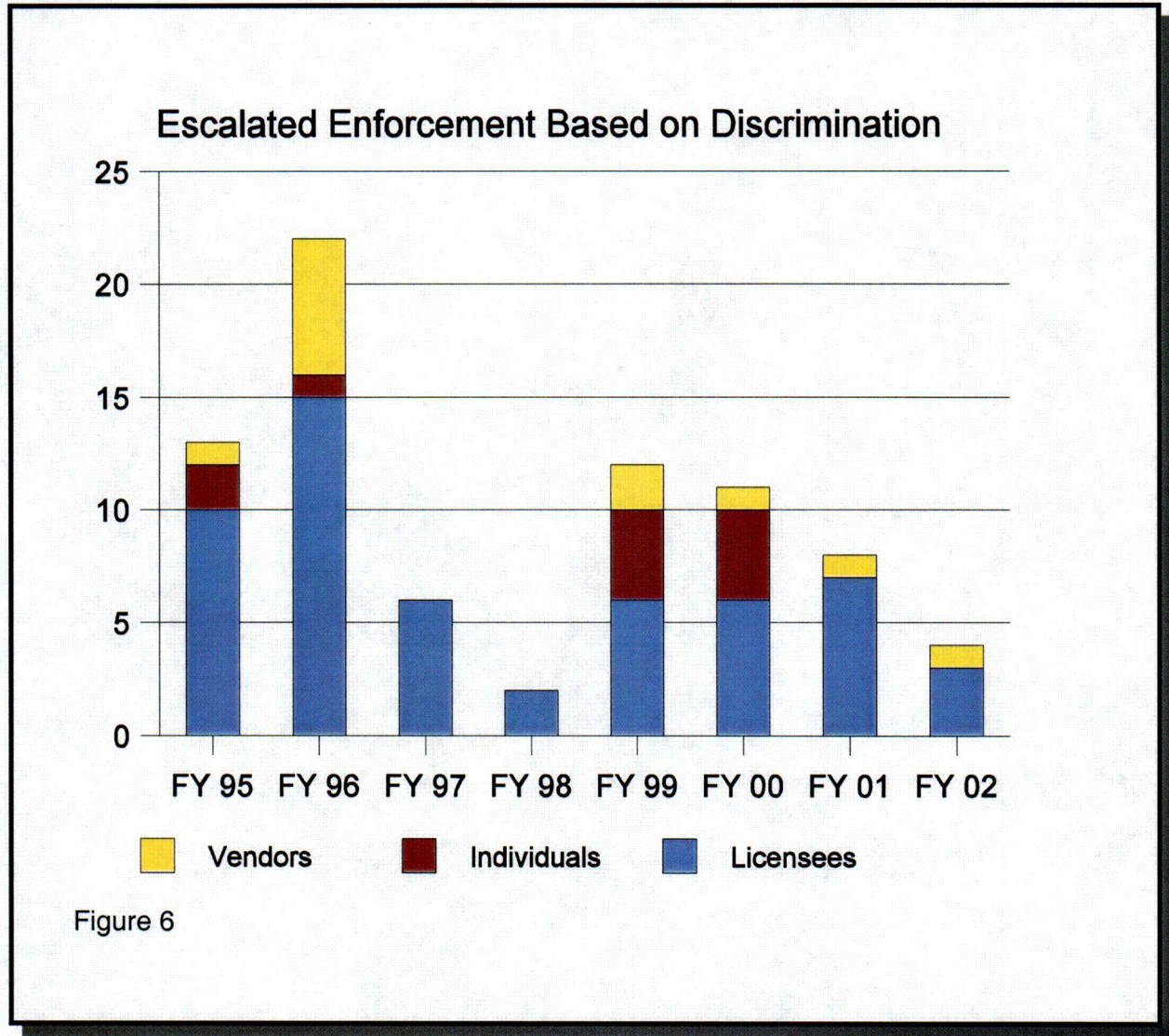


Figure 5

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

***Adams Construction Company***  
***Roanoke, Virginia***

***EA-02-161***

On August 14, 2002, a Notice of Violation was issued for a Severity level III violation involving the failure to maintain control and constant surveillance of licensed material (a portable gauge, containing 8 millicuries of cesium-137) in use at a temporary job site, an unrestricted area.

***Bristol-Myers Squibb Radiopharmaceuticals, Inc.***  
***Rio Piedras, Puerto Rico***

***EA-02-160***

On August 22, 2002, a Notice of Violation was issued for a Severity Level II problem involving the failure to control occupational dose (two operators received extremity overexposures) and the failure to perform adequate surveys to evaluate radiation exposure to the extremities.

***Carolina Power & Light***  
***Shearon Harris***

***EA-01-310***

On April 16, 2002, a Notice of Violation was issued for a Severity Level III violation associated with a White Significance Determination Process (SDP) finding involving the failure to implement and maintain NRC approved fire protection program safe shutdown system separation requirements and the failure to receive NRC approval prior to making changes to the approved fire protection program.

***Carolina Power & Light***  
***Shearon Harris***

***EA-02-067***

On June 13, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving foreign material in the containment sump suction piping to the A Residual Heat Removal (RHR) pump. The violation cited the licensee's failure to implement adequate foreign material exclusion controls that resulted in the A RHR pump being inoperable.

***Catenary Coal Company***  
***Eskdale, West Virginia***

***EA-02-165***

On August 21, 2002, a Notice of Violation was issued for a Severity Level III problem involving the removal from service of a fixed gauge containing 357 millicuries of cesium-137 by licensee personnel who were not licensed to perform such service and the failure to assure that the shutter mechanism of the gauge was in a closed locked closed position.

**Appendix A**

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***Central Pharmacy, Inc.***  
***Indianapolis, Indiana***

***EA-01-283***

On December 18, 2001, a Notice of Violation was issued for a Severity Level III problem involving the willful failure of an employee to (1) wear a thermoluminescent finger badge when preparing, assaying, or dispensing millicurie quantities of radioactive material and (2) use vial shields for preparing and dispensing radiopharmaceuticals.

***Conam Inspection***  
***Glendale Heights, Illinois***

***EA-01-225***

On November 9, 2001, a Notice of Violation was issued for a Severity Level III violation involving the performance of radiography at a location other than a permanent radiographic installation with only one qualified individual present.

***Constellation Generation Group***  
***Calvert Cliffs***

***EA-02-138***

On August 19, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to adequately prepare a radioactive material shipment to a waste processing facility. The violation cited the licensee's failure to meet transportation requirements for preparing radioactive material for shipment such that external radiation levels on the surface of the package do not exceed allowable levels under conditions normally incident to transportation.

***Constellation Generation Group***  
***Calvert Cliffs***

***EA-02-159***

On September 9, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the inability of 49 sirens that were part of the licensee's alert and notification system to activate in a timely manner. The violation cited the licensee's inability to complete the initial notification of the public with the plume exposure pathway emergency planning zone within about 15 minutes after declaring an emergency.

***Craig Testing Laboratories, Inc.***  
***Mays Landing, New Jersey***

***EA-02-177***

On September 30, 2002, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to limit access to a density gauge (containing a 9-millicurie cesium-137 and a 44 millicurie americium-241 source) located at a temporary job site (an unrestricted area), and failure to control and maintain constant surveillance of this licensed material.

***CTI Core Drilling Services, Inc.***  
***Chantilly, Virginia***

***EA-02-081***

On July 23, 2002, a Notice of Violation was issued for a Severity Level III violation involving the deliberate unauthorized possession of 40 millicuries of americium-241 and 8 millicuries of cesium-137 contained in a damaged portable nuclear gauge.



***Danbury Hospital  
Danbury, Connecticut***

***EA-02-150***

On August 5, 2002, a Notice of Violation was issued for a Severity Level III violation involving a misadministration stemming from the failure of the licensee's quality management program to include a written procedure to ensure that the appropriate sources are implanted as specified in the written directive.

***Department of the Army  
Fort McClellan, Alabama***

***EA-02-017***

On March 28, 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 (approximately 34 millicuries of cobalt 60) and the failure to control and maintain constant surveillance of this licensed material.

***Department of the Interior, Bureau of Indian Affairs  
Aberdeen, South Dakota***

***EA-02-057***

On June 26, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to appoint a radiation safety officer (RSO) and a willful failure to amend the NRC license to reflect the appointment of a new RSO.

***Design Fuels Corporation  
North Huntingdon, Pennsylvania***

***EA-01-245***

On October 9, 2001, a Notice of Violation was issued for a Severity Level III violation involving the improper transfer of a gauge regulated by the NRC under a general license. Although a base civil penalty was warranted under the Enforcement Policy's assessment process, a penalty was not proposed because the case exceeded the five year statute of limitations.

***Drilling Measurements, Inc.  
Broussard, Louisiana***

***EA-01-268***

On January 31, 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 (approximately 5 curies of americium-241) and the failure to control and maintain constant surveillance of this licensed material.

***Duke Energy Corporation  
Oconee Nuclear Station***

***EA-02-034***

On July 26, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the vulnerability to flooding in the Oconee Unit 1 auxiliary building from a potential rupture of the high pressure service water (HPSW) system piping. The violation cited the licensee's failure to take prompt corrective action for the lack of mitigation capabilities for an auxiliary building flood, a condition adverse to quality.

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**Appendix A**

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***Duke Energy Corporation  
Oconee Nuclear Station******EA-02-048***

On August 2, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving containment integrity upon a possible loss of reactor decay heat removal. The violation cited the licensee's failure to establish adequate procedures to assure that containment closure would be achieved prior to the time at which a core uncover and fission product release could result from a loss of shutdown cooling.

***Energy Northwest  
Columbia Generating Station******EA-01-236***

On December 28, 2001, a Notice of Violation was issued for a violation associated with a Yellow SDP finding involving the failure to follow and maintain emergency plans and procedures to meet required emergency planning requirements.

***Energy Northwest  
Columbia Generating Station******EA-02-107***

On June 24, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the degradation of multiple safety-related and important-to-safety breakers that were replaced during a refueling outage in June 2001. The violation cited the licensee's failure to establish adequate design control measures and the failure to assure that conditions adverse to quality be promptly identified and corrected.

***Entergy Operations, Inc.  
River Bend Station******EA-02-036***

On July 31, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving emergency planning standards. The violation cited that the licensee's emergency plan was not adequate to assure that information was made available to members of the public using River Bend Station's owner controlled area regarding how members of the public would be notified of an evacuation order and what their initial actions should be in an emergency.

***Exelon Nuclear Generating Company  
Braidwood******EA-02-118***

On June 23, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving pressurizer power operated relief valve (PORV) air accumulator check valve failures. The violation cited the licensee's failure to correct and prevent recurrence of the Unit 1 PORV air accumulator check valves leak-through, a significant condition adverse to quality.

***Exelon Nuclear Generating Company  
Peach Bottom******EA-01-188***

On October 23, 2001, a Notice of Violation was issued for a Severity Level III problem involving the willful creation of inaccurate and incomplete siren testing maintenance records by two former maintenance technicians and deficiencies with the ability to provide early notification to the populace surrounding the facility in the event of an emergency.

***Exelon Nuclear Generating Company  
Limerick******EA-01-189***

On October 23, 2001, a Notice of Violation was issued for a Severity Level III problem involving the willful creation of inaccurate and incomplete siren testing maintenance records by two former maintenance technicians and deficiencies with the ability to provide early notification to the populace surrounding the facility in the event of an emergency.

***Exelon Nuclear Generating Company  
Limerick******EA-01-293***

On January 11, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the 2N Safety/Relief Valve (SRV). The violation cited the failure to establish adequate measures to identify that the SRV was in a degraded condition and was vulnerable to a failure to re-close after lifting.

***FirstEnergy Nuclear Operating Company  
Beaver Valley******EA-02-041***

On June 24, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the public alert and notification system. The violation cited the failure to establish a means to provide early notification to the public because a majority of personal home alerting devices were degraded or removed.

***Geodax Technology, Inc  
Roanoke, Virginia******EA-01-257***

On January 4, 2002, a Notice of Violation was issued for a Severity Level III violation involving the licensee allowing an individual to work as an authorized nuclear pharmacist (ANP) without notifying the NRC within 30 days licensee after the date that the licensee allowed the individual to work as an ANP.

***Glendive Medical Center  
Glendive, Montana******EA-01-180***

On November 1, 2001, a Notice of Violation was issued was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material (one-curie molybdenum-99/technetium-99m generator) in an unrestricted area and failure to control and maintain constant surveillance of licensed material.

***GME Consultants, Inc.  
Plymouth, Minnesota******EA-02-134***

On August 8, 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 (10 millicuries of cesium-137 and 50 millicuries of americium-241-beryllium) contained in a portable moisture density gauge and two sealed sources respectively, and the failure to control and maintain constant surveillance of this licensed material.

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**Appendix A**

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***H.C. Nutting Company  
Cincinnati, Ohio******EA-02-020***

On April 2, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit the access to licensed material (13 moisture density gauges each containing a nominal 10 millicuries of cesium-137 and a nominal 50 millicuries of americium-241) in an unrestricted area and failure to control or maintain constant surveillance of this licensed material.

***I. González Martínez Oncologic Hospital  
Hato Rey, Puerto Rico******EA-02-002***

On March 12, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to notify the NRC of missing licensed material (a radioactive implant containing approximately 97 millicuries of cesium-137) within the required time limit. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was also issued for a Severity Level III problem involving multiple violations associated with the failure to secure the licensed material for approximately 19 hours (see EA-02-001 in Appendix B).

***Indiana and Michigan Electric Company  
D. C. Cook Nuclear Power Plant, Unit 2******EA-02-010***

On May 6, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to take corrective action to preclude a repetitive failure of the Unit 2 Turbine Driven Auxiliary Feedwater Pump, a significant condition adverse to quality.

***Inspec Testing, LLC.  
National City, California******EA-02-029***

On April 16, 2002, a Notice of Violation was issued for a Severity Level III violation involving the performance of radiographic operations at a temporary jobsite by a radiographer without being accompanied by at least one other qualified radiographer or radiographer's assistant.

***Jacobs Pan American Corporation  
Houston, Texas******EA-02-054 and EA-02-055***

On June 12, 2002, a Notice of Violation was issued for a Severity Level III problem and a Severity Level III violation. The Severity Level III problem involved multiple violations associated with the conduct of radiographic activities that resulted in an extremity overexposure to a radiographer. The Severity Level III violation involved the failure to secure from unauthorized removal or limit the access to licensed material (a radiographic camera containing 59 curies of iridium-192) in an unrestricted area and failure to control or maintain constant surveillance of this licensed material.

***Longview Inspection, Inc.  
Houston, Texas******EA-01-267 and EA-01-281***

On January 18, 2002, a Notice of Violation was issued for a Severity Level III problem and a Severity Level III violation. The Severity Level III problem involved the failure to secure from unauthorized removal or limit access to licensed material (133 curies of iridium-192 in a radiography camera) in an unrestricted area, failure to control and maintain constant surveillance of licensed material, and failure to

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lock the camera or its container when at a temporary jobsite. The Severity Level III violation involved the failure to have an additional qualified individual observe radiography operations.

*LTV Steel Company, Inc.*  
*Cleveland, Ohio*

*EA-01-244*

On October 9, 2001, a Notice of Violation was issued for a Severity Level III violation involving the transfer of a gauge without reporting the transfer to the NRC and without providing the transferee a copy of 10 CFR Part 31, per the regulations.

*Montana State University*  
*Bozeman, Montana*

*EA-02-156*

On September 26, 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 (50 millicuries of americium-241 in a portable moisture density gauge) and the failure to control and maintain constant surveillance of this licensed material.

*Nebraska Public Power District*  
*Cooper*

*EA-01-231 and EA-02-039*

On March 1, 2002, a Notice of Violation was issued for two violations associated with two White SDP findings involving Cooper's emergency plans. The first violation cited the licensee's failure to notify state and local government agencies within the required time following the declaration of an alert. The second violation cited the failure of the licensee's onsite emergency plan to provide timely augmentation of response capabilities, including recurring problems in activating the automated notification system and staffing the emergency response facilities in a timely manner.

*Nebraska Public Power District*  
*Cooper*

*EA-01-298*

On March 26, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving operator requalification examinations. The violation was based on the licensee's practice that compromised the integrity of the requalification biennial written examinations. Specifically, the facility licensee developed weekly requalification examinations that were similar to each other, then allowed some operators to validate at least 50 percent of the next weekly examination the day before taking their own examination. This affected the equitable and consistent administration of the examination.

*Nuclear Management Company, LLC*  
*Palisades Nuclear Plant*

*EA-01-223*

On October 26, 2001, a Notice of Violation was issued for a violation associated with a White SDP finding involving smoke detectors in the cable spreading room. The violation cited the licensee's failure to properly locate and install the smoke detectors in accordance with requirements including the applicable National Fire Protection Association code.

**Appendix A**

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***Nuclear Management Company, LLC  
Point Beach Nuclear Plants***

***EA-02-090***

On June 13, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the self-revealing failure of safety injection system pump 2P-15B due to nitrogen gas binding. The violation cited the licensee's failure to promptly identify and correct a significant condition adverse to quality regarding leakage from the 2T-34A safety injection accumulator.

***Nuclear Management Company, LLC  
Point Beach Nuclear Plants***

***EA-02-031***

On July 12, 2002, a Notice of Violation was issued for a violation associated with a Red SDP finding involving the potential common mode failure of the auxiliary feedwater (AFW) pumps during specific accident scenarios. The violation cited the licensee's failure to ensure that activities affecting quality were prescribed by documented instructions, procedures, or drawings, of a type appropriate to the circumstances and failure from at least 1997 to 2001, to promptly identify and correct a condition adverse to quality.

***Omaha Public Power District  
Fort Calhoun***

***EA-02-123***

On July 30, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to prevent radiation levels from exceeding the Department of Transportation and NRC limits on the external surface of a radioactive waste shipment package.

***Portland General Electric Company  
Trojan***

***EA-01-278***

On August 6, 2002, a Notice of Violation was issued for a Severity Level III problem involving the submittal of inaccurate information to the NRC in support of an application for a specific license under 10 CFR 72 and the failure to establish measures to control a multi-assembly sealed basket that did not conform to the licensee's design basis.

***Providence Hospital  
Washington, DC***

***EA-01-157***

On March 22, 2002, a Notice of Violation was issued for a Severity Level III problem based on multiple failures involving the licensee's quality management program for the strontium-90 eye applicator program that resulted in 14 misadministrations.

***Quality Testing & Inspection  
Lindon, Utah***

***EA-01-300***

On April 9, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to comply with NRC radiography requirements while conducting radiography when radiography was willfully performed in a non-Agreement State and only one qualified individual was present.

***Redondo Construction Corporation  
San Juan, Puerto Rico***

***EA-01-240***

On November 6, 2001, a Notice of Violation was issued for a Severity Level III violation involving the unauthorized transfer of byproduct material (cesium -137 and americium-241) contained in three portable gauges.

***Rusty's Well Service, LLC  
Crossville, Tennessee***

***EA-02-192***

On September 20, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to file a submittal containing an NRC Form 241, "Report of Proposed Activities in Non-Agreement State, Areas of Exclusive Federal Jurisdiction, or Offshore Waters;" file copies of its Agreement State specific license; or file the appropriate fee prior to performing well logging services in a non-Agreement State.

***Spectrum Pharmacy, Inc.  
Mishawaka, Indiana***

***EA-02-018***

On February 23, 2002, a Notice of Violation was issued for a Severity Level III violation involving the failure to adequately measure the radioactivity of samarium-153 before commercial distribution that resulted 61 misadministrations.

***Temple University  
Philadelphia, Pennsylvania***

***EA-02-148***

On July 25, 2002, a Notice of Violation was issued for a Severity Level III problem involving the deliberate failure of a senior nuclear medicine technologist to follow procedures involving the use of radiopharmaceuticals for a patient dose and the subsequent falsification of the assayed and delivered dose record.

***TXU Electric  
Comanche Peak***

***EA-01-304***

On February 21, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving 11 examples in which radiological surveys to detect radioactivity required by Technical Specification procedures were not adequate. The violation cited the licensee's failure in allowing items containing detectable activity to be released from a radiologically controlled area.

***Union Electric Company  
Callaway***

***EA-02-046***

On April 9, 2002, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure of an auxiliary feedwater pump. The violation cited the licensee's failure to promptly identify and correct a significant condition adverse to quality involving the potential for foreign material to be in the auxiliary feedwater system and condensate storage tank.

**Appendix A**

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***United Hospital  
St. Paul, Minnesota***

***EA-02-060***

On July 11, 2002, a Notice of Violation was issued for a Severity Level III violation involving the willful failure of a nuclear medicine technologist to obtain authorization from a physician prior to administering technetium-99m to a patient.

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

***EA-01-285***

On January 17, 2002, a Notice of Violation was issued for a Severity Level III problem involving the failure to meet the Technical Safety Requirement (TSR) for maintaining criticality control and the failure to prescribe activities affecting quality in a documented procedure appropriate to the circumstances.

***V.A. Medical Center  
St. Louis, Missouri***

***EA-01-312***

On December 28, 2001, 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 (iodine-131) and the failure to control and maintain constant surveillance of this licensed material.

***Virginia Electric and Power Company  
Surry Power Station***

***EA-01-235***

On December 21, 2001, a Notice of Violation was issued for a violation associated with a White SDP finding involving failed piston wrist pins and bearings in the Number 3 Emergency Diesel Generator (EDG). The violation cited the licensee's failure to establish measures to assure that conditions adverse to quality were promptly identified and corrected that resulted in the inoperability of the Number 3 EDG.

***Westinghouse Electric Company  
Columbia, South Carolina***

***EA-02-045***

On May, 29, 2002, a Notice of Violation was issued for a Severity Level III problem including multiple violations (one willful) involving material control and transportation of special nuclear material.

***Wilcox Memorial Hospital  
Linhue, Hawaii***

***EA-02-056***

On April 25, 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 (curie quantities of molybdenum-99) and the failure to control and maintain constant surveillance of this licensed material.



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## APPENDIX B: SUMMARY OF PROPOSED CIVIL PENALTIES

***Alt & Witzig Engineering, Inc.***  
***Carmel, Indiana***

***EA-02-135***

On September 26, 2002, 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 failure to properly prepare (block and brace) a moisture density gauge (that included 8 millicuries of cesium-137 and 40 millicuries of americium-241/beryllium) for transport that resulted in the gauge being lost and the failure to immediately notify the NRC.

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

***EA-02-008***

On June 14, 2002, 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 administration of technetium-99m to a nuclear medicine technology student when such use had not been approved by an authorized user at the licensee's facility.

***Centennial Engineering & Research, Inc.***  
***Sheridan, Wyoming***

***EA-01-219***

On December 3, 2001, 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 failure to: (1) submit an amendment request to reflect the designation of a new radiation safety officer, and (2) confine its possession of byproduct material to the location authorized by the license.

***CTI Consultants***  
***Chantilly, Virginia***

***EA-02-080***

On July 23, 2002, 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 failure to secure and control licensed material contained in a gauge.

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

***EA-01-271***

On February 27, 2002, 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 failure of Decisive Testing, Inc., a holder of an Agreement State license issued by the state of California, to file NRC Form 241, "Report of Proposed Activities in Non-Agreement State, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," prior to conducting radiography activities in an area of exclusive federal jurisdiction (i.e., U.S. Naval vessels).

***Dominion Nuclear Connecticut, Inc.  
Millstone 1***

***EA-02-014***

On June 25, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$288,000 was issued for a Severity Level II violation involving the failure to: (1) keep adequate records of special nuclear material (SNM), (2) establish adequate procedures for control and accounting of SNM, and (3) conduct adequate physical inventories of SNM.

***Eastern Isotopes Inc.  
Charlotte, North Carolina***

***EA-02-097***

On July 30, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$4,800 was issued for a Severity Level II violation involving a radiation overexposure to a pharmacist.

***Framatome ANP, Inc.  
Richland, Washington***

***EA-02-099***

On August 28, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$15,000 was issued for a Severity Level III problem involving multiple failures related to a loss of criticality safety controls event.

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

***EA-01-302***

On May 7, 2002, 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 multiple failures to ensure that radiography activities were conducted in a manner that kept radiation exposures within NRC's limits.

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

***EA-02-102***

On June 21, 2002, 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 failure to secure from unauthorized removal or limit access to licensed material (2.6 millicuries of iridium-192) contained in a brachytherapy ribbon and the failure to control and maintain constant surveillance of this licensed material and the failure to perform a survey for radioactive material.

***I. González Martínez Oncologic Hospital  
Hato Rey, Puerto Rico***

***EA-02-001***

On March 12, 2002, 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 multiple violations associated with the failure to secure licensed material (a radioactive implant containing approximately 97 millicuries of Cesium-137) for approximately 19 hours. A Notice of Violation was also issued for a Severity Level III violation for failure to notify the NRC of the missing material within the required time limit (see EA-02-002 in Appendix A).

***Mathy Construction Company  
Onalaska, Wisconsin******EA-01-214***

On November 6, 2001, 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 failure to secure and limit access to a portable moisture density gauge and the failure to lock the gauge or transport case while the gauge was being transported.

***Maxim Technologies, Inc.  
Salt Lake Cities, Utah******EA-02-151***

On August 29, 2002, 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 secure from unauthorized removal or limit access to licensed material (8 millicuries of cesium-137 and 40 millicuries of americium-241) contained in a portable moisture density gauge and failure to maintain constant surveillance of this licensed material.

***Meprolight, Inc.  
Washington, DC******EA-02-120***

On September 9, 2002, 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 willfully distributing devices containing byproduct material (tritium) without being authorized by a specific license to do so.

***Northern Engraving Corporation  
Sparta, Wisconsin******EA-02-098***

On July 22, 2002, 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) failure to transfer generally licensed devices only to authorized recipients; and (2) failure to provide complete and accurate information to the NRC.

***Palmerton & Parrish, Inc.  
Springfield, Missouri******EA-01-218***

On November 1, 2001, 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) failure to maintain control of radioactive material that is in an unrestricted area and that is not in storage, (2) failure to transport a portable moisture density gauge in the required container, (3) failure to block and brace the gauge during transportation, and (4) failure to lock the gauge during transportation.

***Plaza Nuclear Imaging  
Guaynabo, Puerto Rico******EA-02-031***

On September 11, 2002, 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 failure to detect radioactive contamination, the failure to survey for removable contamination, the failure to test sealed sources for leakage, and the failure to monitor the external surfaces of incoming labeled packages for radioactive contamination.

***SCI Engineering, Inc.  
St. Charles, Missouri***

***EA-01-237***

On November 15, 2001, 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 secure from unauthorized removal or limit access to byproduct material (cesium-137 and americium-241) contained in two portable moisture/density gauges and the failure to control and maintain constant surveillance of this licensed material.

***Stora Enso North America Corporation  
Wisconsin Rapids, Wisconsin***

***EA-02-035***

On June 11, 2002, 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) failure to control and maintain constant surveillance of radioactive material that was in an unrestricted area and not in storage; (2) failure to clearly label a container (gauge) containing radioactive material; and (3) failure to ensure that a gauge containing a radioactive sealed source was removed by persons specifically licensed to perform such services.

***Tennessee Valley Authority  
Watts Bar***

***EA-98-327***

On October 15, 2001, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$88,000 for a Severity Level II violation involving employment discrimination against a power maintenance specialist for engaging in protected activities.

***Trap Rock Industries, Inc.  
Kingston, New Jersey***

***EA-01-314***

On February 27, 2002, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to byproduct material (cesium-137) contained in a density gauge and failure to control and maintain constant surveillance of this licensed material.

***University of Missouri-Columbia  
Columbia, Missouri***

***EA-01-013***

On October 22, 2001, 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 employment discrimination against a former research scientist for engaging in protected activities.

***University of Wisconsin-Madison  
Madison, Wisconsin***

***EA-01-282***

On December 21, 2001, 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 secure from unauthorized removal or limit access to byproduct material (americium-241) contained in six sealed sources and the failure to control and maintain constant surveillance of this licensed material.

*V.A. Medical Center  
St. Louis, Missouri*

*EA-02-105*

On July 31, 2002, 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 unauthorized disposal of licensed material and the failure to immediately report to the NRC the loss of licensed material when the inappropriate disposal was identified.

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**APPENDIX C: SUMMARY OF ORDERS****IMPOSITION OF CIVIL PENALTY ORDERS**

***Centennial Engineering & Research, Inc.***  
***Sheridan, Wyoming***

***EA-01-219***

On April 9, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$3,000 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 that was issued on December 3, 2001, for a Severity Level III problem involving the willful failure to: (1) submit an amendment request to reflect the designation of a new radiation safety officer and, (2) confine its possession of byproduct material to the location authorized by the license. The licensee's December 26, 2001, responses admitted the violations, but disagreed that there was any willfulness associated with the violations and requested mitigation of the civil penalty. After considering the licensee's response, the NRC concluded that the violations occurred willfully and that there was not an adequate basis for mitigating the civil penalty.

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

***EA-01-271***

On June 11, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$6,000 was issued. 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. The licensee's March 21, 2002, response admitted the violation, but requested that discretion be exercised and that no civil penalty be assessed. The licensee's request was based in part, on its belief that there was no threat to public health, that the situation was corrected before the NRC became involved, and that the violation was not addressed within the NRC Enforcement Policy. After considering the licensee's response, the NRC concluded that the violation occurred willfully and that there was not an adequate basis for mitigating the civil penalty.

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

***EA 99-290***

On January 4, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$17,600 was issued. The action was based on a September 24, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$17,600 that was issued for a Severity Level II violation based on the licensee discriminating against a radiation protection technician for engaging in protected activities. The licensee's October 17, 2001, response denied the violation and protested 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 civil penalty.

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

***EA-01-302***

On September 30, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$6,000 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 that was issued on May 7, 2002, for 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. The licensee's June 18, 2002, response admitted the violations associated with the civil penalty and requested remission or at least significant mitigation of the proposed 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 mitigating the civil penalty.

***Trap Rock Industries, Inc.  
Kingston, New Jersey***

***EA-01-314***

On April 30, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$3,000 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 that was issued on February 27, 2002, for a Severity Level III violation involving failure to control a nuclear gauge that was subsequently stolen from a temporary job site. The licensee's March 26, 2002, response did not deny that the violation occurred as stated in the Notice, but requested withdrawal of the penalty. The licensee argued that the penalty should be withdrawn because the gauge contained minuscule quantities of material, was clearly and properly labeled, and was lost due to a criminal act of an unknown third party. Upon discovery that the gauge was missing, the licensee immediately notified the NRC of the theft and attempted to find the stolen gauge. The licensee disciplined the employee who left the gauge unattended, and also took corrective actions that included re-instructing and re-training its employees; and the licensee has had no prior violations of NRC regulations. After considering the licensee's response, the NRC concluded that an adequate basis was not provided for withdrawal of the civil penalty.

***Union Electric Company  
Callaway***

***EA-01-005***

On May 16, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$55,000 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$55,000 that was issued on May 14, 2001, for a Severity Level III violation involving discrimination against a security officer and security training instructor for having engaged in protected activity. The licensee's January 22, 2002, response denied the violation and requested withdrawal of the Notice of Violation and remission of the proposed 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 mitigating the civil penalty.



CONFIRMATORY, MODIFICATION, SUSPENSION, AND CEASE & DESIST ORDERS

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

*EA-01-313*

On December 14, 2001, an immediately effective Order Suspending License was issued. The order was based on the licensee's possession and use of radioactive materials (including the diagnostic administration to patients) without a required authorized user or Radiation Safety Officer.

*United Evaluation Services*  
*Beachwood, New Jersey*

*EA-02-103*

On May 14, 2002, the NRC issued an immediately effective Order Suspending License and Demand for Information to the licensee, formerly known as Accurate Technologies. The action was based on the licensee's deliberate violations of NRC safety requirements involving radiography, as well as its deliberate provision of inaccurate information to the NRC.

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## APPENDIX D: SUMMARY OF ACTIONS AGAINST INDIVIDUALS (LICENSED & NON-LICENSED)

### ORDERS

*Perry M. Beale*

*IA-02-017*

On September 23, 2002, an immediately effective Order prohibiting involvement in NRC-licensed activities was issued to the individual based on his deliberate actions in providing false information, including xenon gas clearance rate calculations and dose calibrator accuracy evaluations, while employed as a consultant in the field of health physics to multiple hospitals in Virginia and West Virginia.

### NOTICES OF VIOLATION (NOVs)

*Stephen T. Altier*

*IA-02-010*

On July 11, 2002, a Notice of Violation was issued for a Severity Level III violation involving the individual's activities while employed at United Hospital. The individual, a nuclear medicine technologist, deliberately failed to obtain authorization from a physician prior to administering technetium-99m to a patient.

*Terry A. Borgan*

*IA-01-057*

On May 6, 2002, a Notice of Violation was issued for a Severity Level II violation involving the individual's activities while employed at the Cooper Nuclear Station. The individual, a licensed operator, violated the licensee's fitness-for-duty program by performing licensed activities under the influence of alcohol.

*Wayne Curtis Kelley*

*IA-02-003*

On June 14, 2002, a Notice of Violation was issued for a Severity Level III violation involving the individual's activities while employed at Avera McKennan Hospital. The individual, a nuclear medicine technologist, deliberately administered 20 millicuries of technetium-99m to a nuclear medicine technology student when such use had not been approved by an authorized user at the licensee's facility.

*Jeanne Kittler*

*IA-01-058*

On January 9, 2002, a Notice of Violation was issued for a Severity Level II violation involving the individual's activities while employed at the Columbia Generating Station. The individual, a licensed operator, violated the licensee's fitness-for-duty program by performing licensed activities under the influence of alcohol.

*David William Lurty*

*IA-01-043*

On October 23, 2001, a Notice of Violation was issued for a Severity Level III problem involving the individual's activities while employed at the Peach Bottom and Limerick nuclear facilities. The individual deliberately created inaccurate and incomplete siren testing maintenance records and deliberately performed activities on sirens that impacted the ability to provide early notification to the populace surrounding the facility in the event of an emergency.

*Michael Moore*

*IA-01-061*

On February 27, 2002, a Notice of Violation was issued for a Severity Level III violation involving the individual's activities while employed as an assistant radiation safety officer at Decisive Testing, Inc (DTI). The individual deliberately causing DTI to be in noncompliance with NRC requirements involving reciprocity (see EA-01-271 in Appendix B) and by deliberately providing false information to the NRC during its investigation.

*Elba Orduña, M.D.*

*IA-02-024*

On September 11, 2002, a Notice of Violation was issued for a Severity Level III violation involving the individual's activities while employed at Plaza Nuclear Imaging Center. The individual, a radiation safety officer, deliberately caused the licensee to be in violation by failing to take adequate action involving a defective well counter that was unable to analyze samples for radioactive contamination.

*Steven W. Redmond*

*IA-02-009*

On April 9, 2002, a Notice of Violation was issued for a Severity Level III violation involving the individual's activities while employed at Quality Testing & Inspection (QTI). The individual deliberately caused QTI to be in noncompliance (see EA-01-300 in Appendix B) when he conducted radiography operations in a non-Agreement State with only one qualified individual present.

*Jay Trombley*

*IA-02-021*

On July 17, 2002, a Notice of Violation was issued for a Severity Level III violation involving the individual's activities while employed as a first line supervisor at Hope Creek Nuclear Generating Station. The individual deliberately submitted an adulterated urine sample during a random 10 CFR Part 26 required fitness-for-duty drug screening examination.

*Gerald Williams*

*IA-01-049*

On December 3, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual's activities while employed at Centennial Engineering & Research, Inc.. The individual deliberately caused his employer to be in violation of NRC requirements when he failed to: (1) submit an amendment request to reflect the designation of a new radiation safety officer and (2) confine its possession of byproduct material to the location authorized by the license.

DEMANDS FOR INFORMATION (DFIs)

None.

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

IMPOSITION OF CIVIL PENALTY ORDERS

*J. L. Shepard and Associates  
San Fernando, California*

*EA-02-043*

On August 13, 2002, an Order Imposing Civil Monetary Penalty in the amount of \$19,200 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$19,200 that was issued on June 11, 2002 for a Severity Level II problem involving the willful failure to comply with a Certificate of Compliance with regard to fabrication and shipment of packages. The licensee's July 10, 2002, response did not deny that the violations occurred as stated in the Notice, but requested mitigation of the 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 mitigating the civil penalty.

ORDERS

None.

CIVIL PENALTIES

*J. L. Shepherd and Associates  
San Fernando, California*

*EA-02-043*

On June 11, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$19,200 was issued for a Severity Level II problem involving the willful failure to comply with a Certificate of Compliance with regard to fabrication and shipment of packages.

NOTICES OF VIOLATION (NOVs)

*Crane Nuclear, Inc.  
Kennesaw, Georgia*

*EA-01-073*

On January 17, 2002, a Notice of Violation was issued for a Severity Level III violation involving discrimination against two pump mechanics at the D.C. Cook Nuclear Power Station for engaging in protected activities.

*Glock, Inc.*  
*Smyrna, Georgia*

*EA-02-193*

On September 26, 2002, a Notice of Violation was issued for a Severity Level III problem involving the importation of byproduct material without a general or specific license to possess byproduct materials from either NRC or an Agreement State and the initial distribution of self-luminous gun sights to persons exempt from licensing without a specific license authorizing this distribution.

DEMANDS FOR INFORMATION (DFIs)

None.

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## APPENDIX F: SUMMARY OF HEARING ACTIVITY

*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 adjudication with both parties in the discovery process.

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 Atomic Safety and Licensing Board Panel's 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 evidentiary hearing was completed September 13, 2002. Throughout the year, the enforcement staff has worked closely with and supported OGC providing technical assistance and serving as the staff's representative.

At the close of the fiscal year, the case was still in adjudication with both parties preparing proposed Findings of Fact and Conclusions of Law.

*United Evaluation Services, Inc.*

*EA-02-103*

On May 17, 2002, the licensee (formerly known as Accurate Technologies) requested a hearing in response to an immediately effective Order Suspending License and Demand for Information to the licensee that the NRC issued on May 14, 2002. The action was based on the licensee's deliberate violations of NRC safety requirements involving radiography, as well as its deliberate provision of inaccurate information to the NRC. The licensee contested the staff's order and challenged the staff's determination to make the license suspension immediately effective.

On June 6, 2002, the Atomic Safety and Licensing Board conducted an oral argument to provide an opportunity for the parties to explain further their positions on the licensee's rescission request and for the Atomic Safety and Licensing Board to obtain clarification regarding the information provided by the parties. In a June 14, 2002 ruling, the Atomic Safety and Licensing Board denied the licensee's motion, concluding that the requisite "adequate evidence" existed for the staff's charges and its immediate effectiveness determination.

On August 5, 2002, the parties submitted a joint settlement motion to the Atomic Safety and Licensing Board. On August 14, 2002, the Atomic Safety and Licensing Board approved settlement of the case that included that: (1) the licensee properly transfer all licensed material and request termination of its NRC license within thirty business days of the settlement agreement, (2) the licensee's Radiation Safety

**Appendix F**

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Officer (RSO) not act in the capacity of a radiographer until May 14, 2003, and, (3) the RSO not manage or oversee NRC-licensed activities until August 14, 2007.



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**APPENDIX G: SUMMARY OF 10 CFR 2.206 ACTIVITY***Petition Regarding Entergy/FitzPatrick*

A petition was received on February 21, 2002, regarding Entergy/FitzPatrick, requesting: (1) that NRC order Entergy to suspend the dry cask storage program at the FitzPatrick reactor; (2) that the NRC require Entergy to demonstrate that the proposed fuel storage program presents no increased risks, submit its proposed design changes for technical review, provide more substantial physical protection, and demonstrate how the HI-STORM 100 design satisfies these requirements; (3) that all documents and information filed in relation to selection of storage casks and the implementation of relevant programs for FitzPatrick be made available on the docket; and (4) that the Petition Review Board submit the petition to the Office of the Inspector General for review of the NRC's compliance with regulations. The staff concluded in a letter to the petitioner on August 13, 2002, that there was no safety basis for issuance of an order; based on our inspection program, that Entergy had demonstrated that the proposed fuel storage program presents no increased risks, leaving no need for additional safety demonstration; there was no need for Entergy to submit additional license amendments, ALARA reviews, or other safety evaluations for review based on the regulations and information already on the docket; and existing security measures were determined to be adequate. The staff granted the Petitioner's requests that all documents filed in relation to the selection of storage casks at FitzPatrick be put on the docket and that the petition be submitted to the Office of the Inspector General for review.

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## APPENDIX H: POLICY DECISIONS AND PROPOSED OPTIONS, POLICY DECISION FLOW CHART, AND DISCRIMINATION TASK GROUP RECOMMENDATIONS

### Policy Decisions and Proposed Options

The Task Group developed five basic policy questions, which lead to various options for Agency consideration in addressing discrimination issues

**Policy Decision 1:** Should the NRC continue to be involved in whistleblower discrimination concerns and related work environment issues?

This policy decision determines the NRC's future role in individual discrimination concerns and other SCWE issues. If the decision is made to eliminate NRC activities in this area, the current employee protection regulations would be deleted and inspection and evaluation of the work environment would be discontinued. Implementation of this decision is discussed in Option 1. A positive response to the policy decision leads to Policy Decision 2.

**Policy Decision 2:** Should the Agency continue to base enforcement actions on individual complaints of discrimination to encourage a SCWE?

This policy decision determines whether the NRC would continue its involvement with individual discrimination cases. A decision that the NRC should no longer be involved in individual discrimination cases leads to Options 2a and 2b, which present two methods by which the NRC could continue to assess the willingness of individuals to raise issues under NRC jurisdiction. Option 2a involves developing additional tools to assess the SCWE, but without developing a SCWE rule. Option 2b involves initiating a SCWE rulemaking. A positive response to the policy decision leads to Policy Decision 3.

**Policy Decision 3:** Should the NRC continue to investigate individual discrimination cases?

This policy decision focuses on whether the NRC should perform its own investigations of discrimination or rely on DOL final adjudications as the basis for NRC enforcement actions. Option 3 discusses use of the DOL process for NRC actions. A positive response to the policy decision leads to Policy Decision 4.

**Policy Decision 4:** Should the NRC streamline the current process for handling discrimination complaints?

A negative response to this policy decision leads to Option 4, which continues the current process unchanged. A positive response to this policy decision leads to choices for streamlining the current process and to Policy Decision 5.

**Policy Decision 5:** Should the NRC use the risk significance of any technical issue associated with the discrimination complaint as a basis for initiating an investigation and/or for other NRC actions?

All of the sub-parts of Option 5 incorporate streamlined variations of the current process and are discussed in detail in Part II of the DTG report. A negative response to this policy decision leads to

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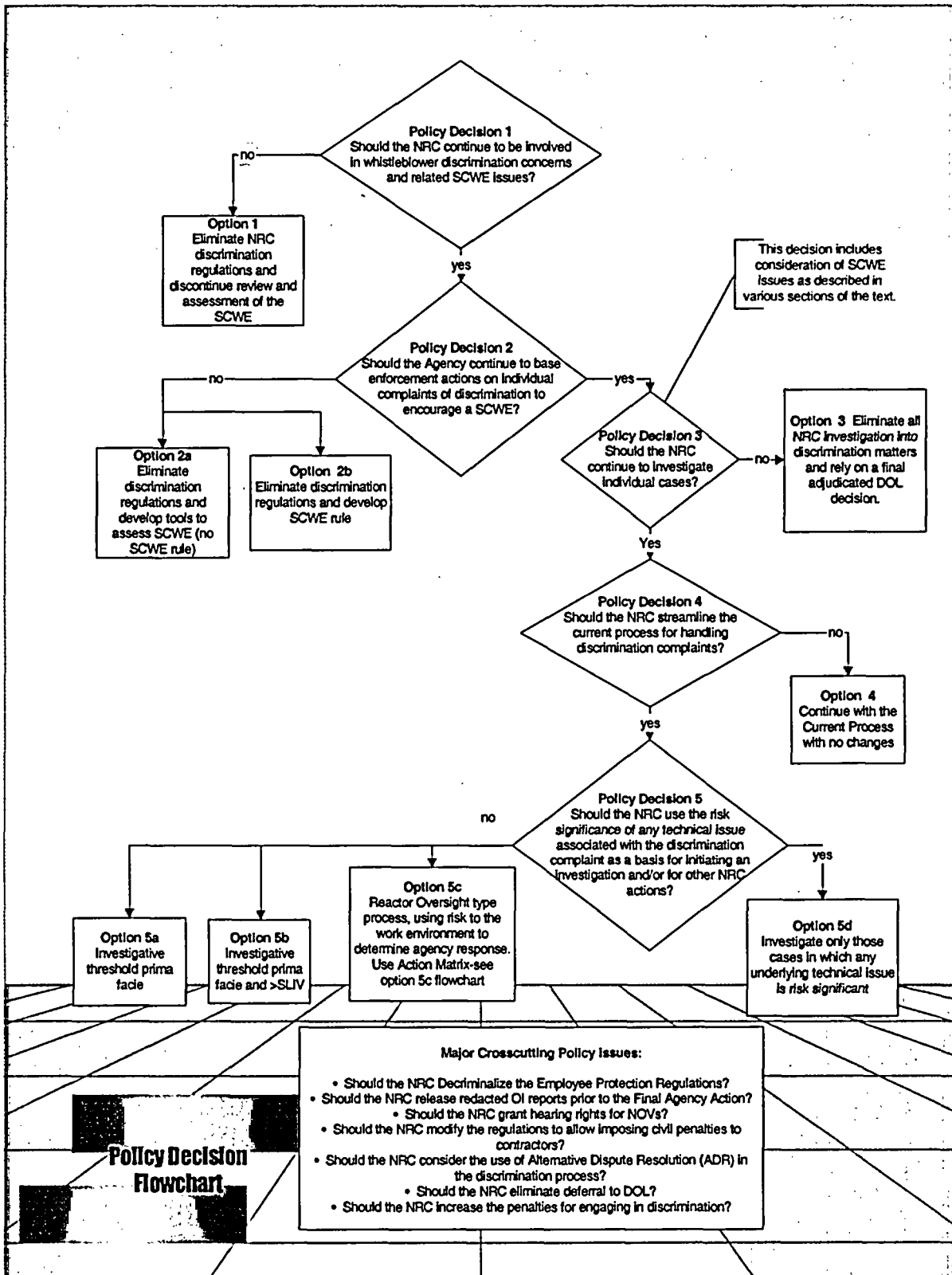
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Options 5a, 5b, & 5c, which have various thresholds for initiating formal investigations into allegations of discrimination, but do not use the risk significance of any underlying technical issue as a basis for initiating an investigation. A positive response to the policy decision leads to Option 5d which does utilize the risk significance of any underlying technical issue.

In addition, the crosscutting policy issues listed in Figure 1 of the DTG report are discussed in Part II of the DTG report. These issues could be applied to many of the options associated with the Policy Decisions. Further streamlining changes, which primarily apply to Option 5, are discussed under "Common Option Components" in Part II of the DTG report.

Option 5a maintains the current investigative threshold which requires only that the whistleblower articulate a prima facie case of discrimination. Option 5b 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. Option 5c uses the same investigative threshold as Option 5b but enforcement and subsequent actions would be based on a process similar to the Reactor Oversight Process (ROP). Severity levels would be replaced by colors (green, white, yellow and red). Civil Penalties would normally not be issued. An action matrix (an example is provided in the report) would be developed that would delineate subsequent NRC action based on licensee performance and the potential impact of the discrimination on the work environment.

Option 5d bases the investigative threshold on the risk significance of any underlying technical issue in addition to the thresholds used in Option 5b.



## Task Group Recommendation

The Task Group carefully considered the wide-ranging comments received from stakeholders, both prior to and subsequent to the publication of the draft report. Many of the concerns voiced by the stakeholders were concerns of the Task Group as well. Principal agency documents that addressed some of these issues in the past were reviewed. These documents describe the evolution of the program in place today. Two points are notable; many of the issues under consideration today have been evaluated in the past and there is no single proposal that would address all of the concerns and issues presented to the Task Group.

There is strong Task Group consensus that the agency should continue with a program of receiving allegations, performing investigations when appropriate, and administering enforcement sanctions to provide an incentive for licensees to maintain a safety conscious work environment. The NRC has had an active program to deter discrimination in place for many years and has described its commitment to the program in many forums, including testimony before Congress. The Task Group believes that the program has been successful in encouraging a SCWE at licensed facilities. However, the Task Group also believes that the current process can be substantially improved. Option 5b encompasses the basic features of the recommended reform.

In Option 5b the threshold for referral of an allegation to the Office of Investigations would be raised. Currently, the threshold for referral is that the whistleblower must articulate a *prima facie* case that an act of discrimination may have occurred. Option 5b proposes that in addition to an articulation of a *prima facie* case, the alleged discrimination must be sufficiently serious, such that a resulting violation, if substantiated, would be at a Severity Level III or greater. With the whistleblower's permission, cases that do not meet the threshold would be provided to the licensee for their information and action as they deem appropriate.

The Task Group recommends implementation of several of cross-cutting issues and common option components. The recommendations are principally focused on improving timeliness, transparency, efficiency, and effectiveness. These issues were raised by both the industry and whistleblower communities. As with all of the recommendations, there are both positive and negative implications associated with their implementation. All of these recommendations are discussed in detail in the body of the report.

The Task Group recommends revising the Enforcement Policy supplements to include more factors for consideration than the level of the individual in the organization. These additional factors include the notoriety of the case, the severity of the adverse action, the type of protected activity, and the benefit to the discriminator. This change would reduce the number of investigations conducted if the Commission selects Option 5b or Option 5c and would reduce the number of issued Severity Level III, or greater than green, violations and above.

The Task Group recommends a number of changes to improve the timeliness and consistency of the discrimination process. These recommendations include centralizing the enforcement process to the Office of Enforcement, re-sequencing any enforcement conference to after a proposed violation has been issued and investigatory information is released to the participants. These changes may help improve the process by ensuring a more consistent agency approach, consolidating opportunities for responses to the issues by the licensee and reducing delays in providing investigatory information. Other timeliness savings may be realized by having OGC perform a legal review of the OI investigative report prior to issuance, limiting the time allowed to schedule an enforcement conference and discontinuing the practice

of allowing post enforcement conference submittals. Some of these recommendations were not supported by all Task Group members.

The Task Group recommends elimination of the deferral of discrimination cases to DOL. Although this may impact a relatively few number of cases, waiting months or years to complete the DOL process is inconsistent with the goal of taking timely enforcement action for substantiated findings of discrimination. Also, the DOL process frequently results in a negotiated settlements without a decision on the merits of the complaint that the NRC can use in the enforcement process. Without a final adjudicated DOL decision, the NRC must start the investigative process months or years after the alleged instance of discrimination occurred, resulting in substantial delays and problems investigating the allegations.

The Task Group recommends further evaluation of the use and usefulness of Alternative Dispute Resolution (ADR) with regard to resolving complaints of discrimination. Although the Task Group was only able to briefly consider comments received and potential application of ADR techniques, it considered one of the most important principles necessary to the success of any ADR effort is the involvement of the stakeholders in developing the process. The Task Group did not have the time or objective of developing that consensus. However, examples of places that the use of ADR could be explored include early in the process, after an OI investigation that substantiates discrimination, and following any enforcement action taken. There are issues in the use of ADR that require careful evaluation, in particular, balancing privacy and openness, consistency of agency actions, third party and public participation, and timeliness. This issue is the subject of a separate review being conducted by the NRC staff.

The Task Group recommends that rulemaking be initiated to authorize the NRC to issue civil penalties to contractors working for NRC licensees. Currently, violations by contractors can only result in a civil penalty to the licensee for whom they work. The Task Group recommends that direct interaction with the contractors is appropriate. In addition, there have been several instances where contractors have been guilty of similar violations while performing work for multiple licensees. The staff is unable, under current policy, to address these recurring violations.

As discussed in the body of this report, the majority of NRC regulations are such that willful violations can result in criminal prosecution. The Task Group did not believe that it was appropriate to change only the discrimination regulations and leave criminal liability intact for willful violations of most other NRC regulations. Also, based on the structure of the regulations, there does not appear to be a straightforward way to change this situation for discrimination regulations alone.

There were many comments from the industry and the whistleblower communities stating that the investigations and interviews can be very intimidating to both whistleblowers and witnesses. The Task Group believes that if the NRC continues to investigate individual discrimination cases, investigators should continue to use accepted investigative techniques for the review of matters that may have a significant effect on an individual. However, the Task Group recommends that the Office of Investigations perform an assessment of its investigative techniques to determine if there are ways to reduce the perception that the process is overly intimidating.

Other changes recommended include providing financial assistance to whistleblowers and one representative to attend an enforcement conference, and allowing the whistleblower to have up to two personal representatives attend an enforcement conference. These changes address the importance the Task Group placed on whistleblower participation in the enforcement process.

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The Task Group recommends that the Petition for Rulemaking seeking to require NRC licensees to provide specific training to management on federal employee protection regulations be denied. However, the Task Group recommends that the enforcement policy be revised to encourage licensees provide such training to managers.

In summary, the Task Group has recommended Option 5b, as well as a number of crosscutting issues and common option attributes, because it believes that this option provides the best balance between maintaining the agency's interest in deterring discrimination and encouraging a SCWE. This option responds to many of the stakeholder comments requesting changes to the current process for handling discrimination complaints. Many of the associated streamlining recommendations 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.

The Task Group believes that the issues examined in this report are very difficult to address to the satisfaction of all interested stakeholders. Regardless of the decisions made with regard to the NRC role in discrimination cases, substantial further stakeholder discussion will be needed in the development and implementation of any recommended changes. The Task Group hopes that the analyses presented in this report will provide useful input.



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## Enforcement

The NRC's Enforcement Program supports the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action is used as a deterrent to emphasize the importance of compliance with regulatory requirements and to encourage prompt identification and prompt, comprehensive correction of violations.

See the following for more information on enforcement:

- [Current Issues and Actions](#)
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- [Enforcement Policy](#)
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- [Significant Enforcement Actions](#)
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