



ENFORCEMENT PROGRAM ANNUAL REPORT

Calendar Year 2008

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

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Abstract

This report provides the Commission with an overview of Enforcement Program activities for calendar year 2008. These activities include escalated enforcement actions, proposed changes to the Nuclear Regulatory Commission (NRC) Enforcement Policy, new initiatives, and revised staff guidance.

Please note that security-related escalated enforcement actions involving, for example, notices of violation, civil penalties, and orders, not available to the public are included for statistical purposes but not described in this report.

In calendar year 2008, the Office of Enforcement (OE) continued to focus on appropriate and consistent enforcement of NRC regulations.

- The agency issued 157 escalated enforcement actions, including the following:
 - 94 escalated notices of violation without civil penalties
 - 28 proposed civil penalties totaling \$1,185,900
 - 35 orders modifying, suspending, or revoking a license, including prohibiting involvement in NRC-licensed activities
- The agency issued one demand for information.
- OE continued initiatives regarding licensee safety culture in a number of areas, including operating reactors, fuel facilities, and new reactor construction.
- The agency continued the successful use of the Alternative Dispute Resolution (ADR) program in 12 enforcement cases.
- OE issued Revision 6 of the Enforcement Manual.

Introduction and Overview

Mission and Authority

The U.S. Nuclear Regulatory Commission (NRC) regulates the civilian uses of nuclear materials in the United States to protect public health and safety, the environment, and the common defense and security. The agency accomplishes this mission through: licensing of nuclear facilities and the possession, use, and disposal of nuclear materials; the development and implementation of requirements governing licensed activities; and inspection and enforcement activities to ensure compliance with these requirements.



Figure 1: How NRC Regulates

The NRC conducts various types of inspections and investigations designed to ensure that NRC-licensed activities and associated activities are conducted in strict compliance with the Commission's regulations, the terms of the licenses, and other requirements.

The sources of the NRC's enforcement authority are the Atomic Energy Act of 1954, as amended, (AEA), the Energy Reorganization Act of 1974, as amended, and the Energy Policy Act of 2005. These statutes provide the NRC with broad authority. The Energy Policy Act of 2005 expanded the definition of byproduct material, placing additional byproduct material under NRC's jurisdiction, including both naturally occurring and accelerator produced radioactive materials (NARM). The agency implements its enforcement authority through Title 10, Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," Subpart B, "Procedures for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," of the *Code of Federal Regulations* (10 CFR Part 2). The Administrative Dispute Resolution Act of 1996 provides the statutory framework for the Federal Government to use alternative dispute resolution.

The NRC Enforcement Policy sets out the general principles governing the NRC's Enforcement Program and provides a process for implementing the agency's enforcement authority in response to violations of NRC requirements. This statement of policy is predicated on the NRC's belief that compliance with NRC requirements is essential to ensuring safety, maintaining security, and protecting the environment. The Enforcement Policy applies to all NRC licensees,

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to various categories of non-licensees, and to individual employees of licensed and non-licensed firms involved in NRC-regulated activities.

The NRC enforces compliance as necessary. Enforcement actions serve as a deterrent, emphasize the importance of compliance with regulatory requirements, and encourage prompt identification and prompt, comprehensive correction of violations. In addition, because violations occur in a variety of activities and have varying levels of significance, the NRC Enforcement Policy contains graduated sanctions.

Most violations are identified through inspections and investigations. Enforcement authority includes the use of notices of violation, civil penalties, demands for information, and orders to modify, suspend, or revoke a license. The NRC staff may exercise discretion in determining the severity levels of violations and the appropriate enforcement sanctions to be taken.

The Office of Enforcement

The Office of Enforcement (OE) develops policies and programs for enforcement of NRC requirements. In addition, OE exercises oversight of NRC enforcement, providing programmatic and implementation direction to regional and headquarters offices conducting or involved in enforcement activities, and ensures that regional and program office enforcement programs are consistently implemented.

The Director of OE reports directly to the Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT), and is responsible for ensuring the DEDMRT is kept apprised of certain escalated actions. The DEDMRT is consulted on any case involving novel issues, substantial legal, programmatic, or policy issues raised during the enforcement review process, or where the Director believes it is warranted. OE works in partnership with NRC headquarters and regional offices to enforce the agency's requirements.

The NRC's enforcement Web site includes a variety of information such as the Enforcement Policy, the Enforcement Manual, and current temporary enforcement guidance contained in enforcement guidance memoranda. This Web site also contains information about significant enforcement actions issued to reactor and materials licensees, non-licensees (vendors, contractors, and certificate holders), and individuals. Consistent with NRC practices and policies, most security-related actions and activities are not included on the NRC's public Web site. However, OE does include in its enforcement documents collection security orders that impose compensatory security requirements on various licensees. The enforcement Web site is located at <http://www.nrc.gov/about-nrc/regulatory/enforcement.html>.

In addition to enforcement activities, OE has oversight responsibilities for the Allegations Program, Employee Protection/Discrimination, the Alternative Dispute Resolution (ADR) Program (both early-ADR and post-investigation ADR), external (licensee) safety culture, internal (NRC) safety culture, Differing Views (which includes the differing professional opinion program, and the non-concurrence process), and Freedom of Information Act requests to ensure that allegor identity is not released. Additional information about the responsibilities of OE is available at <http://www.nrc.gov/about-nrc/organization/oefuncdesc.html> on the NRC's public Web site.

I. Escalated Enforcement Actions

Escalated enforcement actions include the following:

- notices of violations (NOVs) including Severity Level I, II, or III violations
- NOVs associated with Red, Yellow, or White significance determination process (SDP) findings (for operating reactor facilities)
- civil penalty actions
- orders

Figure 2 shows the types of escalated enforcement actions issued in calendar year (CY) 2008. The tables at the end of this report break this information down further by identifying the region or program office that initiated the action, as well as the licensees, non-licensees, and individuals who were involved.

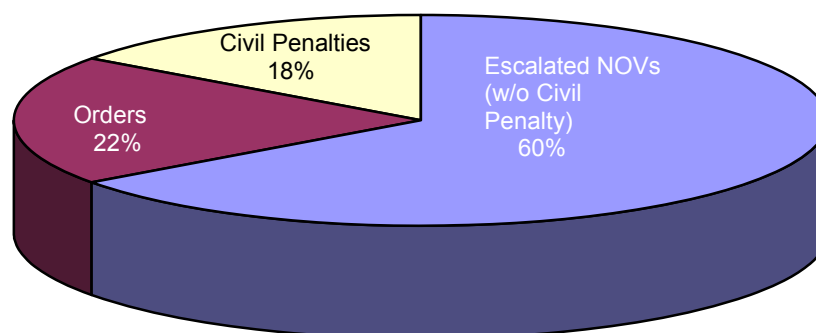


Figure 2: Escalated Enforcement by Type

A. Notices of Violation without Civil Penalties

During CY 2008, the NRC issued 94 escalated NOVs without civil penalties. Of these violations, 18 were associated with White SDP findings under the Reactor Oversight Process (ROP). No violations were associated with Yellow or Red SDP findings. Four NOVs associated with Green SDP findings were issued to licensees. NOVs associated with Green SDP findings are not considered escalated enforcement actions.

Appendix A to this report summarizes each of these NOVs without civil penalties issued to licensees, as well as the NOVs associated with SDP findings. Security related issues involving NOVs without civil penalties are not addressed in Appendix A of this report; however, the number of NOVs associated with security related issues is included in the data discussed in this report.

The increase from CY 2007 of NOVs without civil penalties is attributed, in part, to a decrease in the use of discretion for licensees who had not implemented specific security requirements in accordance with NRC orders issued in 2005. Enforcement Guidance Memorandum (EGM) 2006-003, "Guidance for Dispositioning Enforcement Issues Associated With Orders Imposing Increased Controls for Licensees Authorized to

Possess Radioactive Material in Quantities of Concern,” allows the staff, under certain circumstances, to use discretion and not issue an NOV for violations of the order identified during the first inspection following issuance of the order. In 2008, the agency identified violations of the security requirements of the order in repeat inspections of certain licensees and issued appropriate enforcement.

B. Civil Penalty Actions

During CY 2008, the agency processed 28 cases involving proposed civil penalties. Nine of these cases involved willfulness. Willfulness is defined as either deliberate misconduct or careless disregard.

Information regarding willful violations is identified because such violations are of particular concern to the Commission. The NRC’s regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor; therefore, a violation involving willfulness may be considered more egregious than the underlying violation taken alone would have been, and the severity level may be increased.

Table 1 provides information comparing civil penalty assessments for the current calendar year as well as for the previous four years. When reviewing the information in this table, it is important to note that an enforcement action may include more than one civil penalty or more than one violation. In addition, a civil penalty may be proposed in one year and paid or imposed in another year. Finally, the amount of a proposed civil penalty may be reduced, for example, as a result of exercising discretion as part of a settlement agreement developed during alternative dispute resolution (ADR).

The value of civil penalties issued to reactor licensees in CY 2008 increased sharply from those issued in CY 2007 mainly because of the \$650,000 civil penalty issued to Entergy Nuclear for a continuing violation of an NRC confirmatory order which required the licensee to install backup power for the Indian Point Alert and Notification System, and the \$208,000 civil penalty issued to Florida Power & Light for security plan violations at the Turkey Point Nuclear Generating Station.

The number of civil penalties issued in CY 2008 increased from those issued in CY 2007 because of the increase in civil penalties issued to materials user licensees (mainly radiographers and hospitals). This increase is partly because of the reduced use of discretion to not issue NOVs to licensees who failed to implement specific security requirements in accordance with NRC orders issued in 2005 per EGM 2006-003 as described in section A.

Appendix B includes a brief description of each of the civil penalty actions for 2008. Security related issues involving NOVs with civil penalties are not addressed in Appendix B of this report; however, the number of NOVs associated with security related issues is included in the data discussed in this report.

Table 1 – Civil Penalty Information

	CY 2008	CY 2007	CY 2006	CY 2005	CY 2004
Number of Proposed Civil Penalties	28	18	15	24	26
Number of Imposed Civil Penalties	0	1	0	3	3
Number of Civil Penalties Paid	29	17	16	22	22
Amount of Proposed Civil Penalties	\$1,185,900	\$383,200	\$332,350	\$6,099,950 ¹	\$498,700
Amount of Imposed Civil Penalties²	\$0	\$3,250	\$0	\$112,100	\$31,200
Amount of Civil Penalties Paid	\$1,039,850	\$446,500	\$375,500	\$5,891,900	\$526,900

¹ This amount reflects a \$5,450,000 civil penalty that was issued on April 21, 2005, to FirstEnergy Nuclear Operating Company for multiple violations, some willful, that occurred at its Davis-Besse Nuclear Power Plant.

² The NRC issues an “order imposing civil monetary penalty” when a licensee refuses to pay a proposed civil penalty, unless a basis exists for withdrawal of the proposed penalty.

C. Orders

During CY 2008, the NRC issued 35 orders to licensees and to individuals. These included 12 confirmatory orders that were issued to confirm commitments associated with ADR settlement agreements, nine orders issued to individuals restricting their involvement in NRC licensed-activities, and 14 orders which either implemented additional security measures or modified licenses conditions.

Six of the nine orders issued to individuals resulted from successful ADR mediation sessions. The results of these orders included: one individual being prohibited indefinitely from involvement in NRC-licensed activities associated with 10 CFR Part 21 Type B shipping activities; two individuals being prohibited from involvement in NRC-licensed activities for 5 years; two individuals being prohibited from involvement in NRC-licensed activities for 3 years; three individuals being prohibited from involvement in NRC-licensed activities for 1 year or less; and one individual being required to implement certain actions prior to seeking employment having involvement in NRC-licensed activities.

As seen in Table 2, the number of orders issued in CY 2008 increased, in part, because of confirmatory orders issued to nonlicensed security personnel and the contractor company who supplied workers at the Florida Power & Light's Turkey Point nuclear facility.

Appendix C includes a brief description of the enforcement orders issued in CY 2008. The appendix also includes a brief description of a demand for information (DFI) issued in CY 2008. (See Section F below).

D. Enforcement Actions Supported by the Office of Investigations

In CY 2008, an Office of Investigations (OI) Report supported 38 percent or 59 out of the 157 escalated actions:

- 16 of the 28 escalated NOV cases with civil penalties (57 percent)
- 24 of the 94 escalated NOVs without civil penalties (26 percent)
- 19 of the 35 enforcement orders (54 percent)

The 59 cases with an OI investigation represent a 93 percent increase from 2007. This increase is, in part, a result of the completion of enforcement activities associated with high-profile cases involving multiple individuals and licensees such as Turkey Point Nuclear Generating Station, Alaska Industrial X-Ray, and Baxter Healthcare of Puerto Rico.

E. Escalated Enforcement Trends

During CY 2008, the agency issued 157 escalated enforcement actions. This number is significantly greater than the average number of 114 escalated enforcement actions issued for the last 5 years and the number of escalated enforcement actions issued in CY 2007. Table 2 provides information regarding the total number of escalated enforcement actions from fiscal year (FY) 2004 to CY 2008. Figure 3 provides this information in graphical form.

As previously noted, this increase in escalated enforcement actions is attributed, in part, to a decrease in the use of discretion for licensees who failed to implement specific security requirements in accordance with NRC orders issued in 2005. In 2008, repeat inspections identified violations of the security requirements of the order by certain licensees. In addition, several cases involved multiple individual actions.

Table 2 – Escalated Action Trends

	CY 2008	CY 2007	CY 2006	CY 2005	FY 2004	Average
Escalated NOVs (w/o CPs)	94	77	57	70	58	71
Civil Penalties	28	18	15	24	26	22
Orders	35	22	15	17	7	19
Orders Imposing CPs	0	1	0	3	3	1
Total	157	118	87	114	94	114

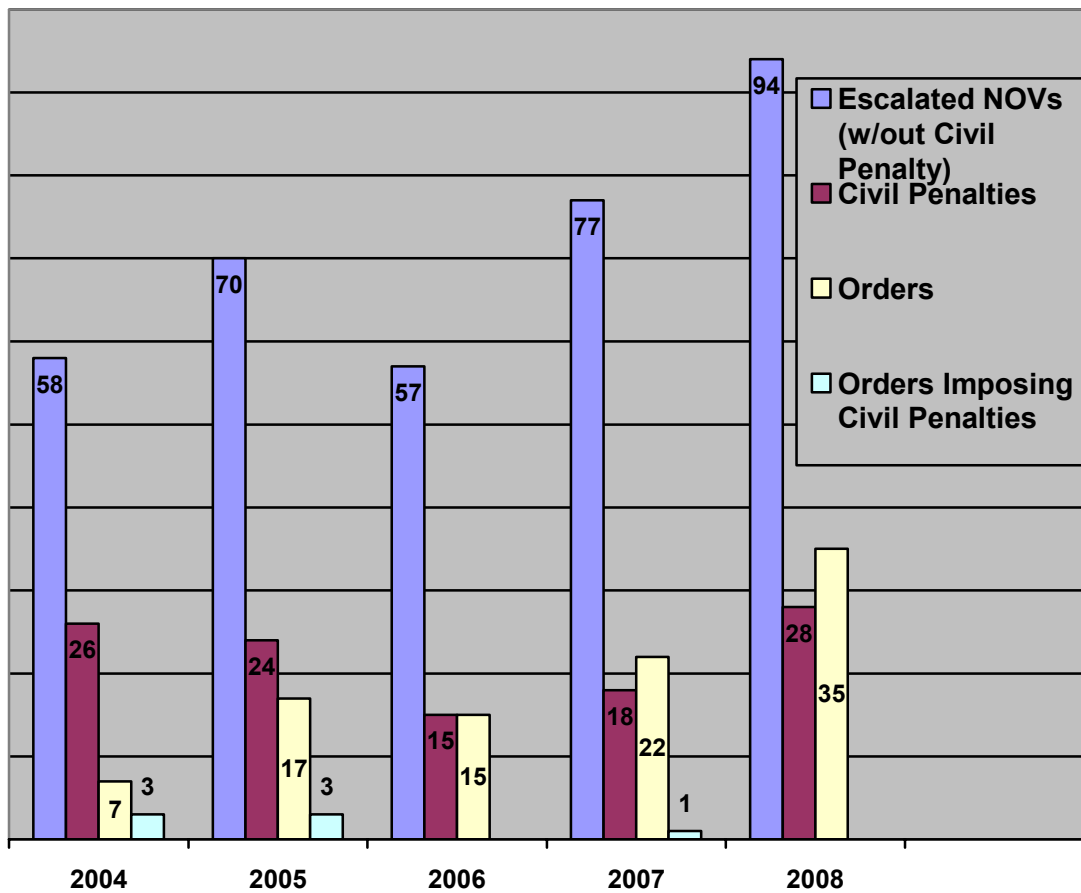


Figure 3: Escalated Action Trends (FY 2004 – CY 2008)

F. Demand for Information

When the NRC concludes that additional information is necessary, the agency may issue to a licensee or other person subject to the jurisdiction of the Commission, a DFI (see 10 CFR 2.204). A DFI requires the licensee or other person to provide more information or a context for its action(s) so that the NRC is able to determine whether an order or other action is warranted. During CY 2008, the NRC issued one DFI to Mattingly Testing Services, Inc., for information that the NRC needed to evaluate and determine the appropriateness of Mattingly's licensed material program at temporary job sites. Appendix C includes a brief description of this DFI (Enforcement Action (EA)-07-303).

II. Actions Against Individuals and Non-licensee Organizations

During CY 2008, the agency issued 17 escalated actions to licensed and unlicensed individuals. This number is included in the total number of escalated enforcement actions (NOVs and orders) that the agency issued in CY 2008. Appendix C provides summaries of the orders that were issued to individuals, including those orders prohibiting or limiting their participation in NRC-licensed activities. Appendix D summarizes the NOVs issued to individuals in CY 2008.

The increase in escalated actions issued to individuals is attributed to several cases which involved multiple individuals engaged in wrongdoing including Turkey Point (5 actions) and Alaska Industrial X-Ray (4 actions).

The agency issued two escalated enforcement actions to non-licensees in CY 2008. Appendix E provides a summary of these actions, which involved a single contractor.

III. Cases Involving Discrimination

During CY 2008, one case involving allegations of discrimination was resolved using post-investigation ADR. On July 8, 2008, a confirmatory order (effective immediately) was issued to confirm commitments made as result of an ADR session, held on June 5, 2008, between Chevron Environmental Management Company (CEMC) and the NRC (EA-08-054). See Appendix C for additional details.

IV. Notices of Enforcement Discretion

Occasionally, circumstances may arise where a power reactor licensee's compliance with a technical specification or other license condition would involve an unnecessary plant transient or performance testing, inspection, or other system realignment that is inappropriate for the specific plant conditions. In these circumstances, the NRC staff may choose not to enforce the applicable requirement(s). The staff exercises this enforcement discretion, designated as a notice of enforcement discretion (NOED), only if it is clearly satisfied that the action is consistent with protecting the public health and safety. The staff may also issue NOEDs in cases involving severe weather or other natural phenomena, when it determines that exercising this discretion will not compromise safety. NOEDs require justification from a licensee or certificate holder that

documents the safety basis for the request and provides whatever other information the staff deems necessary to issue an NOED. The NRC issued four NOEDs during CY 2008. Appendix F to this report includes a brief description of these NOEDs .

V. Use of Judgment and Discretion in Determining Appropriate Enforcement Sanctions

After considering the general tenets of the NRC's Enforcement Policy and the safety significance of a violation and its surrounding circumstances, the staff may exercise judgment and discretion in determining the severity levels of violations and the appropriate enforcement sanctions to be taken. In exercising discretion, the NRC may either escalate or mitigate the enforcement sanctions to ensure that the resulting enforcement action considers all the relevant circumstances of the particular case and is in the public interest.

OE exercises enforcement discretion for various reasons. For example, in CY 2008, the staff applied enforcement discretion to several materials cases where licensees had not implemented specific security requirements regarding increased controls (ICs) of certain radioactive material in their possession in accordance with NRC orders issued in CY 2005. A total of 30 IC cases were the subject of escalated enforcement in CY 2008. The staff exercised enforcement discretion in 12 of these cases, based on the criteria in EGM 2006-003, and issued close-out letters in lieu of NOVs. This is a decrease from the 31 cases which involved the exercise of enforcement discretion in CY 2007.

In CY 2008, the NRC exercised enforcement discretion in 20 additional cases not related to the IC order and EGM 2006-003. These cases involved use of Section VII.B.6 of the Enforcement Policy to address a violation of NRC requirements. In each case, the staff determined that the facts supported issuance of a close-out letter to the licensee in lieu of an NOV.

VI. Withdrawn Actions

Licensees can challenge enforcement actions for several reasons; for example, a licensee might dispute the requirements, the facts of the case, the agency's application of the Enforcement Policy, or the significance of the violation. Licensees may provide clarifying information that was not available at the time of the inspection, and this may affect the finding of a noncompliance. During CY 2008, the agency did not withdraw any escalated enforcement action.

In addition, OE has established a metric for quality of enforcement actions based on the number of disputed and withdrawn nonescalated enforcement actions. The goal is less than 30 withdrawn nonescalated enforcement actions in a calendar year. This metric does not include violations that are withdrawn on the basis of supplemental information that was not available to an inspector before the assessment of an enforcement sanction. During CY 2008, the agency issued approximately 1160 nonescalated enforcement actions to reactor, materials, and fuel facility licensees. Of these actions, 12 nonescalated enforcement actions were disputed. In CY 2008, the NRC withdrew all or part of only three of these disputed actions.

VII. Significant Enforcement Actions

During CY 2008, the agency was involved with several significant enforcement actions that required coordination among internal and external stakeholders beyond the typical enforcement case.

Florida Power & Light (Turkey Point Nuclear Generating Station)

Two cases came to resolution in early CY 2008, which resulted in the NRC issuing a total of nine enforcement actions involving a single licensee during a 4-month period beginning in January of 2008, and extending through April 2008. These agency actions were very complex and included: two enforcement actions (a severity level II problem and a severity level III violation) with civil penalties totaling \$338,000 against the licensee (Florida Power & Light, Turkey Point Nuclear Generating Station); two confirmatory orders issued to the licensee's security contractor (Wackenhut); two confirmatory orders to individuals who were previously employed by the licensee's security contractor; and three orders prohibiting involvement in licensed activities to individuals previously employed by the licensee's security contractor. Two of the orders prohibiting involvement in licensed activities were for 5 years, and one was for 3 years. In one case, the individual was also convicted in Federal court for providing false statements to a Federal investigator. Extensive coordination between OE, OI, the Office of the General Counsel (OGC), and the U.S. Department of Justice was needed to complete these enforcement actions.

Source Production & Equipment Co., Inc. (SPEC) and Joseph S. Shepherd

On July 15, 2003, December 4, 2003, and May 20, 2004, SPEC made shipments of licensed radioactive material to Mexico using a shipping container that did not comply with the requirements of the NRC certificate of compliance. The licensee contracted Joseph S. Shepherd to perform certain required quality assurance inspections of the container and complete the shipments in a safe and compliant manner. An OI investigation revealed that Mr. Shepherd did not conduct the required inspections and made modifications to the container without prior NRC authorization. The statute of limitations (SOL) for issuing an enforcement action expired on July 15, 2008. The U.S. Department of Justice was pursuing legal action against Mr. Shepherd, which delayed issuance of the final enforcement action by the staff. Authorization to request a waiver of the SOL expiration date from SPEC and Mr. Shepherd was obtained from the Commission on April 4, 2008. On July 11, 2008, OE reached an agreement with Mr. Shepherd to extend the SOL expiration date an additional three months. The NRC issued an NOV for a Severity Level II problem and a proposed civil penalty of \$9600 to SPEC on July 14, 2008, for its involvement in the shipping violations. The agency issued an order to Mr. Shepherd on September 8, 2008, confirming commitments reached as part of conjoined negotiations with the U.S. Department of Justice. Mr. Shepherd pled guilty in the U.S. District Court for the Central District of California to a one count indictment (18 USC 371) regarding conspiracy and was sentenced on March 27, 2009.

Alaska Industrial X-Ray, Inc.

During CY 2007, an OI investigation determined that Alaska Industrial X-Ray, Inc. (AIX) radiographers, including its Radiation Safety Officer (RSO) and assistants, violated NRC licensing requirements performing industrial radiographic operations at a job site. Based upon evidence developed during the OI investigation, on October 19, 2007, NRC issued an immediately effective order to AIX suspending licensed activities. In addition, on August 20, 2008, the NRC issued AIX an NOV for a Severity Level II problem; a proposed imposition of a civil penalty in the amount of \$20,800; and an order modifying its license (effective immediately) for deliberate violations. The agency also issued immediately effective orders to the licensee's former Radiation Safety Officer prohibiting his involvement in NRC-licensed activities for 3 years; and a licensee radiographer prohibiting his involvement in NRC-licensed activities for 1 year. In addition, the NRC issued NOVs to 2 radiographers for Severity Level III violations because they deliberately violated the two-person rule. Extensive coordination was needed between OE, OI, Region IV, and OGC to complete these enforcement actions.

Entergy Nuclear Operations, Inc. (Indian Point Units 2 & 3)

On January 24, 2008, the NRC issued an NOV and a proposed imposition of a civil penalty in the amount of \$650,000 to Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit Nos. 2 and 3, for a continuing severity level III violation of NRC requirements. A prior civil penalty in the amount of \$130,000 was issued to the licensee on April 23, 2007, when it initially failed to implement requirements of NRC's January 31, 2006, confirmatory order which implemented Section 651(b) of the Energy Policy Act of 2005. The order, in part, required installation of a backup power capability for the Indian Point Alert and Notification System. The January 2008 enforcement action and civil penalty was issued because of the licensee's failure to implement timely, effective corrective actions after the initial enforcement action and civil penalty, and the resulting continuing violation of the NRC order. Extensive coordination between OE, OGC, the Office of Nuclear Security and Incident Response (NSIR), the Office of Nuclear Reactor Regulation (NRR), Region I, and the Federal Emergency Management Agency was needed to complete this action. In addition, extensive coordination and discussion was involved with external government agencies, including interested Congressional delegations, the State of New York, and the four local counties because the order required installation of equipment that would be used by those organizations if an emergency at the Indian Point plant was declared.

VIII. Hearing Activities

During CY 2008, two hearings were pending before the Atomic Safety and Licensing Board (ASLB) relating to enforcement actions against two former employees at the Davis Besse Nuclear Power Plant.

In the first case, the NRC issued an order on April 21, 2005, against Mr. Andrew Siemaszko, a former system engineer at Davis-Besse, for deliberately providing inaccurate and incomplete information to the NRC. The order prohibited him from involvement in NRC-licensed activities for 5 years from the effective date of the order. On April 22, 2005, Mr. Siemaszko requested a hearing before the ASLB. On

December 31, 2006, the ASLB placed the NRC proceeding on hold because of the concurrent proceeding brought by the U.S. Department of Justice against Mr. Siemaszko in the U.S. District Court for the Northern District of Ohio, Western Division, arising out of the same set of facts and circumstances. In August 2008, a Federal jury found Mr. Siemaszko guilty on three of five counts. Mr. Siemaszko was later sentenced, among other things, to 3 years of probation. Since then, the ASLB has scheduled a status teleconference with the parties to determine the course Mr. Siemaszko wishes to pursue in light of the outcome of his criminal trial.

In the second case, the NRC issued an order on January 4, 2006, against Mr. David Geisen, a former Manager of Design Engineering at Davis-Besse, for deliberately providing inaccurate and incomplete information to the NRC. The order prohibited him from involvement in NRC-licensed activities for 5 years. On February 23, 2006, Mr. Geisen requested a hearing before the ASLB. On February 1, 2007, the Commission placed the NRC proceeding on hold because of the concurrent proceeding brought by the U.S. Department of Justice against Mr. Geisen in the District Court for the Northern District of Ohio, Western Division, arising out of the same set of facts and circumstances. In October 2007, a jury found Mr. Geisen guilty on three of five counts. Mr. Geisen was sentenced, among other things, to 3 years of probation during which he is barred from employment in the nuclear power industry. Starting on December 8, 2008, a 5-day evidentiary hearing was held before the ASLB at the NRC Headquarters. The ASLB's findings of fact and conclusions of law are forthcoming.

IX. Enforcement Policy Changes and Enforcement Guidance Memoranda

The NRC Enforcement Policy is a living document and is revised to reflect experience and stakeholder input. On January 25, 2007, the NRC published a notice in the *Federal Register* (72 FR 3429) announcing that the agency was undertaking a major revision of its Enforcement Policy, including a revision to the supplements. Notices published in the *Federal Register* on September 15, 2008, (73 FR 53286) and October 16, 2008, (73 FR 61442) announced that a draft of the proposed major revision to the Enforcement Policy was available and that the NRC was soliciting written comments from interested parties. The public comment period ended on November 14, 2008. OE is in the process of addressing the comments received from members of the public and anticipates issuing the revised Enforcement Policy in 2009.

In September 2008, OE issued a notice in the *Federal Register* (73 FRN 52705) which changed the Interim Enforcement Policy regarding the use of enforcement discretion for certain fire protection issues. This change grants licensees who are making the transition to National Fire Protection Association Standard 805 the opportunity to apply for an additional period of enforcement discretion. This offer of an additional period of enforcement discretion applies only to licensees who have made substantial progress in their transition effort. If granted by the NRC, the additional enforcement discretion would end 6 months after the date of the safety evaluation approving the second pilot plant license amendment request review.

On December 22, 2008, OE completed the sixth significant revision of the NRC Enforcement Manual. This revision updated the manual by revising existing guidance and information where applicable and adding new guidance on various activities including, for example, the post-investigation ADR process. OE revised pertinent sections throughout the manual to reflect the creation of the Office of New Reactors (NRO) and the Office of Federal and State Materials and Environmental Management Programs (FSME). The Enforcement Manual is located on the OE Web site at: <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html>.

OE issues EGMs to provide guidance in the interpretation of specific provisions of the Enforcement Policy. A link to the full text of all publicly available EGMs can be found in Appendix A of the NRC Enforcement Manual. The office issued one EGM in CY 2008, which is summarized below:

***May 28, 2008, Enforcement Guidance Memorandum 08-002 –
Documentation of Security-Related Sensitive Unclassified
Non-Safeguards Information (SUNSI) in Enforcement Documents***

The purpose of this EGM is to provide guidance with respect to the documentation of security-related information (below the safeguards and classified levels) in enforcement documents. This EGM is not publicly available.

X. Ongoing Activities

A. Safety Culture

In CY 2008, OE continued to be the lead office for the agency safety culture policy development. In response to Commission direction in Staff Requirements Memorandum (SRM)-GBJ-08-001, OE initiated an agencywide effort to develop a Safety Culture Policy Statement(s) for licensees. OE will provide this policy statement and transmittal paper to the Commission in the second quarter of CY 2009.

OE continues to chair the agency's Safety Culture Working Group (SCWG), and provides assistance and guidance to other offices in safety culture developmental activities. OE also participates as the vice-chair of the Office of Nuclear Reactor Regulation's Safety Culture Focus Team (SCFT). The purpose of the SCFT is to promote the implementation of the ROP safety culture changes effectively and consistently across the regions. The Agency Allegation Advisor, located in OE, chairs the SCFT's subgroup, the Safety-Conscious Work Environment Findings Review Group, whose purpose is to ensure regulatory consistency by reviewing and handling all potential inspection findings in the safety-conscious work environment cross-cutting area of the ROP. Additional information on these activities appears in the "Allegation Program, 2008 Annual Trends Report."

In an effort to continue the Commission's broad review of issues related to safety culture, OE assists other NRC offices in their safety culture initiatives. This assistance includes efforts in the fuel facility, new reactor construction, and security areas.

B. Alternative Dispute Resolution

ADR can be offered at three points in the enforcement process for discrimination and other wrongdoing cases: (1) before a predecisional enforcement conference; (2) when an NOV is issued; or (3) when cases result in the issuance of an order imposing a civil penalty.

Despite limited overall resource savings in the enforcement portion of the ADR program, the staff continues to believe that the opportunity to communicate openly with other parties in mediation, with the assistance of a trained mediator, helps reach effective agreements that meet NRC's interests and best serve the public interest. Corrective actions are broader or more comprehensive than typically achieved through the traditional enforcement process. For example, as part of the settlement agreement for case EA-07-232 between Southern California Edison Company (SCE) and the NRC, SCE agreed to conduct a safety culture assessment and develop or enhance various company programs in areas such as ethics, their disciplinary process, contract programs, and oversight. Improvements in these areas would not likely have resulted from the traditional enforcement process.

During CY 2008, OE issued 12 confirmatory orders documenting settlement agreements (8 in reactor-related cases, and 4 in materials-related cases). Of the 12 cases, all but one was negotiated before a predecisional enforcement conference was held. The one exception was negotiated after issuance of the NOV and proposed civil penalty. On December 22, 2008, OE revised the Enforcement Manual to include, in part, ADR program guidance. A revision to the Enforcement Policy, which is expected to be completed in CY 2009, will fully integrate the post-investigation ADR program.

C. Knowledge Management

In CY 2008, the OE engaged in several knowledge management activities. Similar to the agency as a whole, OE hired a number of new staff and saw more experienced enforcement specialists retire from the NRC. Some of the ongoing knowledge management activities to maintain an adequate knowledge base included conducting counterpart meetings, supporting training, and completing reviews and self assessments.

Enforcement Counterpart Meetings

In July 2008, regional and headquarters enforcement staff held a counterpart meeting in the Region I office to discuss ways to improve the enforcement process and communications among staff. The meeting resulted in a number of ideas that are improving the handling of casework, especially those associated with OI investigation reports.

In October 2008, regional and OE enforcement staff held a three day counterpart meeting which included participation by staff from OGC, OI, NRR, the Office of New Reactors, the Office of Federal and State Materials and Environmental Management Programs, and the Office of Nuclear Material Safety and Safeguards. The result of the

counterpart meeting was improved communications between office staff members and efficiencies in handling case work that involves multiple offices.

Training

OE supported several Nuclear Safety Professional Development Program members on rotational assignments to the office. The knowledge gained by those staff members will provide a better understanding of the enforcement program in the field.

Headquarters and regional enforcement staff provided outreach training to internal stakeholders on the allegation, enforcement, and ADR processes during counterpart meetings. External outreach training on the allegation and enforcement processes was also provided during regional utility group meetings. Training provided as a part of the internal and external stakeholder outreach efforts has increased the staff's understanding of the key interests of important stakeholders.

Reviews and Self Assessments

In January 2008, OE completed an audit of Enforcement Actions resulting from inspections of the NRC's IC Orders issued to materials user licensees. The purpose of the audit was to identify any inconsistencies in the enforcement of the IC Order between regions.

The review concluded that, initially, the use of enforcement discretion to not cite a licensee because of its "good faith effort" to comply with the requirements of the order was inconsistently applied by regional staff. As a result of the audit, OE provided guidance which resulted in improved consistency between regions on applying enforcement discretion for good faith. In addition, the audit identified an inconsistency in the way multiple violations of the order were being characterized. OE provided guidance to the staff that multiple violations of the IC Order should be cited as a single Severity Level III problem.

In July 2008, OE completed an audit, using ADAMS, to determine the accessibility of Enforcement Action Worksheets (EAWs) associated with cases that were closed in 2008. The purpose of the audit was to determine (1) if EAWs could be retrieved from ADAMS, and (2) if EAWs could be located by Enforcement Action (EA) number.

The review concluded that the staff needed additional training and guidance to ensure that all EAWs are properly entered into ADAMS. OE conducted training and a follow-up audit completed in December 2008 showed an improvement in the accessibility of EAWs in ADAMS and that EAWs were properly formatted in ADAMS.

D. OIG Audit of the NRC's Enforcement Program

On September 26, 2008, the Office of the Inspector General (OIG) completed an audit of the NRC's enforcement program. The purpose of the audit was to determine if the NRC's enforcement program is comprehensive and consistently implemented, and if enforcement decisions are based on complete and reliable information. The OIG reviewed relevant management controls, enforcement-related documentation and

guidance, and Federal statutes. Interviews were conducted with NRC staff, industry representatives, and intervenor groups. Two findings were identified, dealing primarily with the NRC's application of the enforcement program as it pertains to non-escalated enforcement actions (e.g., those actions associated with Green or Severity Level IV violations). First, OIG identified that the enforcement program lacked clear and comprehensive guidance to ensure consistent program implementation. Second, OIG identified that the NRC does not collect complete and reliable data associated with non-escalated enforcement actions.

To address the two findings, the OIG provided three recommendations: (1) develop comprehensive guidance to more clearly establish expectations for inspectors and managers to disposition violations and the relevant participants needed for enforcement decision-making, (2) define data collection requirements for non-escalated enforcement actions, and (3) develop and implement a quality assurance process to ensure the collected data is complete and accurate. In an October 27, 2008, response to the OIG, the staff agreed with the findings of the audit and initiated actions to implement the associated recommendations. Meetings were held in late 2008 between staff from the Offices of Enforcement, Nuclear Reactor Regulation, Nuclear Material Safety and Safeguards, and Federal and State Materials and Environmental Management Programs to discuss resolution of the OIG audit findings. The staff plans to complete all corrective actions by October 31, 2009.

XI. Regional Accomplishments

During CY 2008, the regions conducted both routine and focused self assessments of the enforcement area to ensure effective performance and to identify opportunities for continuous improvement. The self-assessments encompassed both the reactor and materials arenas; considered performance associated with development and issuance of both nonescalated and escalated enforcement actions; and included activities that required a high degree of coordination with other NRC stakeholders, such as OI.

These assessments included the following reviews:

- reactor and materials program nonescalated enforcement actions
- reactor program Criterion XVI violations
- licensed operator enforcement actions involving fitness-for-duty issues

Overall, the self-assessments showed that the regions were effectively implementing the Enforcement Program. However, the reviews did identify opportunities for improvement associated with some of the administrative tools used to facilitate the enforcement process and with draft and final enforcement products associated with wrongdoing cases. The regions developed recommended corrective actions for each of the items and shared the results of the self assessments with OE.

**Table 3: CY 2008 – Escalated Enforcement Actions by
Region and Program Office**

Program Office	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalty	TOTAL
Region I	30	11	2	0	43
Region II	12	5	10	0	27
Region III	31	6	0	0	37
Region IV	20	5	6	0	31
NRR	1	0	1*	0	2
NMSS	0	1	9*	0	10
FSME	0	0	6*	0	6
OE	0	0	1	0	1
TOTAL	94	28	35	0	157

* includes orders modifying licenses, primarily security related.

Table 4: CY 2008 – Escalated Enforcement Actions by Type of Licensee, Non-licensee, or Individual

Type of Licensee	Escalated NOVs (w/o Civil Penalty)	Civil Penalty	Orders	Orders Imposing Civil Penalty	TOTAL
Operating Reactor	23	3	3	0	29
Gauge User	21	7	0	0	28
Hospital	18	6	0	0	24
Radiographer	10	2	3	0	15
Unlicensed Individual (Materials)	7	0	3	0	10
Fuel Facility	5	3	1	0	9
Irradiator	4	2	1	0	7
Unlicensed Individual (Reactor)	0	0	6	0	6
Materials Distributor	0	2	4	0	6
Non-licensee	0	0	2	0	2
Academic	2	0	0	0	2
Research Reactor	1	0	1	0	2
Licensed Individual (Reactor)	1	0	0	0	1
UF Conversion Facility	0	0	1	0	1
Mill	0	0	0	0	0
Pharmacy	0	0	0	0	0
Physician	0	0	0	0	0
Radiographer Fabricator	0	0	0	0	0
Waste Disposal	0	0	0	0	0
Well Logger	0	0	0	0	0
Other	2	3	10	0	15
TOTAL	94	28	35	0	157

Appendix A: Summary of Escalated Notices of Violation Without Civil Penalties*

Notices Issued To Reactor Licensees

Constellation Energy
Ginna Nuclear Plant

EA-08-075

On April 7, 2008, a Notice of Violation (NOV) was issued for a Severity Level (SL) III violation, due to changes the licensee made to its NRC approved emergency plan; specifically they made changes to the emergency action levels (EALs), between 1996 and 2001, without first obtaining Commission approval. This decreased the effectiveness of the emergency plan. The violation cited the licensee for not following 10 CFR 50.54(q), which requires, in part, that a licensee authorized to possess and operate a nuclear power reactor shall follow and maintain in effect emergency plans which meet the standards in 10 CFR 50.47(b) and the requirements in Appendix E of this part.

Dominion Energy Kewaunee Inc.
Kewaunee Power Station

EA-08-223

On October 29, 2008, a Notice of Violation was issued for a violation associated with a White Significance Determination Finding. Specifically, the licensee failed to identify that Kewaunee's emergency plan emergency action levels specifying instrument threshold values were beyond the limits of the effluent radiation monitors' capabilities to accurately measure and indicate. As a result, action directed by the State and local emergency response plans, which rely on information provided by the licensee, could have potentially delayed minimum initial offsite response measures.

Duke Power Company, LLC
McGuire Nuclear Station

EA-08-220

On October 27, 2008, a Notice of Violation was issued for a violation associated with a White Significance Determination Finding involving a violation of 10 CFR 50, Appendix B, Criterion XVI. The violation involved the failure to take adequate corrective action related to the service water strainer backwash system. Specifically, a plant modification implemented to address a macro-fouling concern associated with the service water strainers (1) utilized non-safety-related instrument air to support backwash operations, and (2) did not account for the impact on timely operator response following a safety injection signal or loss of instrument air. As a result, there was a lack of reasonable assurance that the service water system would have been capable of performing its safety-related function during a time of high fouling potential.

* Please note that cases involving security-related issues are not included

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Exelon Generation Company, LLC
Byron Station

EA-08-046

On April 1, 2008, a Notice of Violation was issued for violations associated with a White Significance Determination Finding. The NOV involved violations of 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Actions," and 10 CFR Part 50, Appendix B, Criterion III, "Design Control." Specifically, the licensee failed to take timely corrective actions after the identification of extensive corrosion on essential service water riser pipes and failed to verify the adequacy of the methodology and design inputs in calculations that supported the decision to accept three degraded essential service water riser pipes for continued service.

Luminant Generation Company, LLC
Comanche Peak Steam Electric Station

EA-08-028

On February 29, 2008, a Notice of Violation was issued for a violation associated with a White Significance Determination Finding involving a violation of the Unit 1 Technical Specification (TS) 3.8.1, "AC Sources - Operating," which requires that while the plant is in Modes 1, 2, 3, or 4, two diesel generators (DGs) capable of supplying the onsite Class 1E power distribution subsystem(s) shall be operable. From November 1, 2007, through November 21, 2007, while the plant was in Mode 1, one of the two DGs capable of supplying the onsite Class 1E power distribution subsystem(s) was inoperable, and action was not taken to either restore the DG to an operable status within 72 hours or be in Mode 3 within 6 hours and Mode 5 within 36 hours. Specifically, DG 1-02 was made inoperable as a result of painting activities due to paint having been deposited and remaining on at least one fuel rack in a location that prevented motion required to support the operation of the DG. This condition caused DG 1-02 to fail to start during a surveillance test on November 21, 2007.

Nebraska Public Power District
Cooper Nuclear Station

EA-07-204

On June 13, 2008, a Notice of Violation was issued for a violation associated with a White Significance Determination Finding involving a violation of 10 CFR Part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings." Specifically, between 1997 and June 2007, the licensee failed to ensure that two emergency operating procedures which were used to bring the plant to a safe shutdown condition in the event of certain postulated fire scenarios would work as written. Additionally, the licensee failed to properly verify and validate procedure steps to ensure that they would work to accomplish the necessary actions.

Nebraska Public Power District
Cooper Nuclear Station

EA-08-124

On August 1, 2008, a Notice of Violation was issued for a violation associated with a White Significance Determination Finding to Nebraska Public Power District involving a violation of Technical Specifications which requires that written procedures be established, implemented, and maintained. Specifically, an inadequate work order instruction and maintenance procedure resulted in a loose electrical connection on an emergency diesel generator and the subsequent failure of the diesel generator.

Reed College
Portland , OR

EA-08-339

On December 19, 2008, a Notice of Violation was issued for a Severity Level III violation. Specifically, the facility was operated at a power level in excess of the licensed full power limit of 250 kW for approximately 70 minutes, which is in violation of their Technical Specifications. This event was caused by a disagreement between the indicated and calculated power due to the installation of a new fuel element into the core.

Southern California Edison Company
San Onofre Nuclear Generating Station

EA-08-296

On December 19, 2008, a Notice of Violation was issued for a violation associated with a White Significance Determination Finding involving a violation of 10 CFR Part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings." Specifically, maintenance and work control personnel failed to develop appropriate instructions or procedures, and failed to include quantitative or qualitative steps to ensure the maintenance activities on safety-related battery. This failure resulted in a safety-related battery being inoperable between March 2004 and March 25, 2008.

Southern Nuclear Operating Company, Inc.
Joseph M. Farley Nuclear Station

EA-08-192

On September 4, 2008, a Notice of Violation was issued for a violation associated with a White Significance Determination Finding to Southern Nuclear Operating Company, as a result of a failure to implement the TS procedural requirements during an overhaul of the 1B emergency diesel generator at the Joseph M. Farley Nuclear Plant. The violation cited the licensee for failure to install a new exhaust header system correctly, as required by vendor documents, causing the 1B emergency diesel generators to be declared inoperable when the exhaust header failed during a surveillance test.

Notices Issued To Material Licensees

Alaska Rim Engineering, Inc.
Palmer, AK

EA-08-139, EA-08-140

On September 17, 2008, a Notice of Violation and Exercise of Enforcement Discretion were issued for a Severity Level III problem. The violations involved possession and use of a portable gauge containing radioactive material without an NRC license, and failure to provide complete and accurate information in its license application dated March 6, 2007. Specifically, from May 17, 2003, until March 6, 2007, Alaska Rim Engineering, Inc., possessed and used a portable gauging device without an NRC license and on March 6, 2007, Alaska Rim Engineering, Inc., submitted an application for an NRC license stating that it was planning to purchase and will be licensing one portable moisture density gauge. This is inaccurate because it had purchased and used the gauge in May 2003, without an NRC license.

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AREVA NP, Inc.
Lynchburg, VA

EA-08-122

On June 13, 2008, a Notice of Violation was issued for a Severity Level III violation. The violation involved the failure to properly prepare a package containing fuel service equipment such that dose rates on the surface of the package would not exceed 10 CFR 71.5(a) and 49 CFR 173.441(a) limits. Specifically, on February 3, 2008, AREVA shipped surface contaminated equipment as an open conveyance on a flatbed trailer. On February 4, 2008, the shipment arrived at a nuclear power facility with measured contact radiation levels between 800-2000 millirem/hour in a localized area on the bottom of the container. The localized area was not easily accessible and no measurable radiation exposures to workers or members of the public occurred as a result of this event.

Ball Memorial Hospital
Muncie, IN

EA-08-026

On May 12, 2008, a Notice of Violation was issued for a Severity Level III violation. Specifically, on April 30, 2007, two nuclear medicine technologists administered greater than 30-microcuries of I-131 sodium iodide to two patients, without a dated and signed written directive.

Bon Secours Virginia Health Source
Midlothian, VA

EA-08-234

On October 10, 2008, a Notice of Violation was issued for three Severity Level III violations. The first violation involved a failure to meet 10 CFR 35.41(b)(2) requirements. Specifically, the licensee did not develop and implement written procedures to provide high confidence that each medical administration is in accordance with the written directive, in that the procedures did not address response to high dose rate device error messages. The second violation involved a failure to ensure an authorized user (AU) was physically present during initiation of a patient treatment. Also, during continuation of the patient treatment, neither the AU, nor a physician under the supervision of an AU, was physically present.

Bridgeport Hospital
Bridgeport, CT

EA-08-269

On November 6, 2008, a Notice of Violation was issued for a Severity Level III violation that involved the failure to develop, implement, and maintain written procedures to provide high confidence that each medical administration will be done in accordance with the written directive, for administrations requiring a written directive. Specifically, changes in procedures for inputting geometric information into the treatment planning system were not performed in accordance with the current version of the vendor's operator manual. An incorrect magnification factor was used in treatment dose calculations and the licensee's calculation double-checks did not include validation of geometric accuracy. As a result, the patients were administered doses that ranged from 45 percent to 62 percent less than the prescribed dose set forth in the written directive.

BWX Technologies, Inc.
Lynchburg, VA

EA-08-171

On August 8, 2008, a Notice of Violation was issued for a Severity Level III problem involving three violations of their license. Specifically, the licensee did not (1) inspect Raschig ring-filled vacuum (RRVCs) cleaners on multiple occasions between January 28, 2008, and March 5, 2008 to ensure adequate levels of Raschig rings were present to prevent inadvertent criticality, (2) establish, prior to March 5, 2008, double contingency for operation of RRVCs to ensure that a criticality accident could not occur with only one change in process conditions, and (3) fill, prior to March 5, 2008, multiple RRVCs with well-settled Raschig rings in accordance with ANSI/ANS-8.5-1996 such that further settling was not likely during use. In this case, no actual consequences resulted because an inadvertent criticality accident did not occur.

Crane Army Ammunition Activity – Department of the Army
Crane, IN

EA-08-222

On October 30, 2008, a Notice of Violation was issued for a Severity Level III problem involving (1) the failure to control radioactive material not in storage as required by 10 CFR 20.1802, and (2) the failure to properly describe the material on shipping papers and properly mark and label the packages in accordance with the requirements of 10 CFR 71.5 and 49 CFR 171.2. Specifically, on May 22 and 29, the licensee shipped depleted uranium in three cardboard boxes to a facility in Virginia as part of their site operation to demilitarize munitions. The boxes were not controlled when not in storage and were not properly marked nor labeled. In addition, the material was not properly described as hazardous on the shipping papers that accompanied the shipment.

CTI and Associates, Inc.
Brighton, MI

EA-07-300

On January 15, 2008, a Notice of Violation was issued for a Severity Level III violation involving the failure by the authorized gauge operator to control and maintain constant surveillance of a portable nuclear gauge. Specifically, the gauge, which contained NRC-licensed radioactive material, was damaged when it was run over by a bulldozer after the authorized gauge operator had left it unattended while he was preparing for another test at a temporary job site.

Hudson Energy Services (System One Holdings, LLC)
Pittsburgh, PA

EA-08-032

On June 13, 2008, a Notice of Violation was issued to Hudson Energy Services. This action is based on a Severity Level III violation of 10 CFR 20.1802 involving the licensee's failure to maintain constant surveillance of licensed material that was in an unrestricted area and was not in storage. Specifically, for a period of about five minutes, licensee personnel failed to maintain constant surveillance and monitoring of licensed material at a temporary use location.

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Karmanos Cancer Center
Detroit, MI

EA-07-316

On April 10, 2008, a Notice of Violation was issued for a Severity Level III violation. The violation involved the failure to develop, implement and maintain written directive procedures to provide high confidence that each administration was in accordance with the written directive. Specifically, the licensee's written procedures for the implementation of treatment plans with its stereotactic radiosurgery unit did not require a check of the treatment plan parameters and magnetic resonance image orientation prior to administration of the treatment. As a result, the licensee administered a single gamma knife treatment to an unintended portion of the patient's brain.

Northrop Grumman Corporation
Rolling Meadows, IL

EA-08-159

On August 15, 2008, a Notice of Violation was issued for a Severity Level III violation. This action was based on a Severity Level III violation of 10 CFR 150.20(b)(1) which requires, in part, that any person engaging in activities in areas of exclusive Federal jurisdiction within Agreement States shall, at least three days before engaging in each such activity, file four copies of NRC Form-241, "Report of Proposed Activities in Non Agreement States," with the Regional Administrator of the appropriate NRC regional office. However, on May 1, 2008, Northrop Grumman Systems Corporation, a licensee of the State of Illinois, used radioactive material that would otherwise require an NRC license, at the Eglin Air Force Base in Florida, an area of exclusive federal jurisdiction within an Agreement State, without filing a Form-241 with the NRC.

Oncology Institute of Greater Lafayette
Lafayette, IN

EA-07-313

On March 31, 2008, a Notice of Violation was issued for a Severity Level III problem. The violations involved (1) the failure to instruct an Authorized Medical Physicist, a supervised individual, in the licensee's written directive procedures with respect to the use of byproduct material and (2) the failure to develop, implement and maintain written directive procedures to provide high confidence that each administration was in accordance with the written directive. Specifically, the licensee did not verify before treatment that the treatment plan was properly input into the high dose rate remote afterloader unit and did not verify, after treatment, that the step size, a treatment parameter used for the treatments, was in agreement with the treatment plan. A medical event occurred during the licensee's administration of three treatment fractions to a patient. As a result, portions of the treatment site received a total dose that differed from the prescribed dose by more than 20 percent.

Reid Hospital and Healthcare Services
Richmond, IN

EA-08-136, EA-08-137

On July 11, 2008, a Notice of Violation was issued for two Severity Level III violations. The first violation is of 10 CFR 35.41, requiring procedures to provide high confidence that the treatment is delivered as planned and directed, and second violation is of 35.3045(c), requiring notification to NRC of a medical event no later than the next business day. Specifically, the licensee's procedures for prostate radioactive seed implants did not require verifying the position of the patient's prostate before placing the seeds into the prostate and

resulted in incorrect placement of the seeds to deliver a radiation dose to the prostate more than 20 percent below the prescribed dose and a dose to the perineum that was more than 50 percent above the minimal dose expected. Further, the licensee did not notify the NRC until two days after this event.

Saint Louis University
Saint Louis, MO

EA-07-317

On March 31, 2008, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material that is in controlled or unrestricted area. Specifically, the licensee did not secure from unauthorized removal or limit access to materials containing regulated amount of iodine-125 located in the Medical School building and regulated amount of hydrogen-3 located in the Pediatric Research Institute, both of which were controlled areas.

Wang Engineering, Inc.
Lombard, IL

EA-08-066

On April 18, 2008, a Notice of Violation was issued for a Severity Level III violation which involved the failure to file NRC Form 241- Report of Proposed Activities in Non-Agreement States, at least three days prior to engaging in licensed activities within NRC jurisdiction. Specifically, on numerous occasions during 2003, 2004, 2005 and 2007, Wang Engineering, Inc., a licensee of the State of Illinois, used portable moisture/density gauges containing licensed material at Department of Veteran Affairs construction sites; areas of exclusive federal jurisdiction in an Agreement State, without filing a Form-241 with the NRC.

Western X-Ray Corporation
Oxnard, CA

EA-07-277, EA-07-278

On February 15, 2008, a Notice of Violation was issued for two Severity Level III violations. The first violation involved a failure to certify an individual who acted as the radiographer of record while performing industrial radiography. The second violation involved a failure to wear an operating alarm ratemeter by an individual who acted as the radiographer's assistant during radiographic operations. Specifically, on April 23, 2007, the individual acting as the radiographer of record was not certified as a radiographer and the individual acting as the assistant radiographer of record was not wearing an operating ratemeter at all times during radiographic operations, while performing industrial radiography on an offshore platform in federal waters.

Westinghouse Electric Company
Columbia, SC

EA-08-057

On May 1, 2008, a Notice of Violation was issued for a Severity Level III violation. The violation involved the failure to assure safe and compliant activities involving nuclear material. Specifically, on November 17, 2006, a safety significant control interlock was willfully bypassed by an operator who disabled an alarm acknowledgement pushbutton associated with Conversion Line 5 while hydrogen gas was flowing to the calciner in the licensee's wet conversion process. This activity is prohibited by licensee procedures and NRC license conditions.

Westinghouse Electric Company
Columbia, SC

EA-08-165

On August 6, 2008, a Notice of Violation was issued for a Severity Level III problem involving three violations associated with the loss, on February 4, 2008, of sixteen sample vials of uranium hexafluoride. Specifically, the violations involved (1) the failure to properly document and control the transfer of sixteen sample vials of uranium hexafluoride from shipping and receiving to the chemistry laboratory as required by procedures, (2) the failure to secure from unauthorized removal the sixteen vials when they were stored in a controlled area and the failure to control and maintain constant surveillance of the sample vials when they were not in storage, and (3) the failure of an individual to annotate that he had read and acknowledged the procedure governing the disposal of empty shipping containers prior to performing that work assignment. In this case, there are no indications of any radiation or chemical exposures as a result of the licensee's loss of control of the sixteen uranium hexafluoride sample vials.

Appendix B: Summary of Cases Involving Civil Penalties*

Civil Penalties Issued To Reactor Licensees

Entergy Nuclear Operations, Inc.
Indian Point Nuclear Generating Station

EA-08-006

On January 24, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$650,000 for a continuing Severity Level III violation of the NRC's January 31, 2006, Confirmatory Order to implement Section 651(b) of the Energy Policy Act of 2005. The Order required Entergy to install backup power for the Indian Point Alert and Notification System (ANS) by January 31, 2007. The NRC subsequently extended, at the licensee's request, the implementation date to April 15, 2007. On April 23, 2007, the staff issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$130,000 when Entergy failed to meet the April 15, 2007, implementation date. On July 30, 2007, the NRC issued an Order to supplement the requirements of the January 31, 2006, Confirmatory Order, based on Entergy's proposed corrective actions for noncompliance with the Confirmatory Order. On August 30, 2007, the staff issued a subsequent Notice of Violation for Entergy's failure to place the new ANS in service by August 24, 2007, as required by the July 30, 2007 Order.

Florida Power and Light Company
Turkey Point Nuclear Plant, Unit 3 & 4

EA-07-110, EA-07-113, EA-07-116, EA-07-119

On January 22, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$208,000 was issued for a Severity Level II problem consisting of (1) the licensee's failure to ensure, on or about April of 2004, that each of its armed responders was equipped with a contingency weapon in accordance with an NRC Order issued on February 25, 2002, Section B.4(f); (2) the licensee's failure to ensure, on or about August 2005, that each of its armed responders was equipped with a contingency weapon in accordance with the licensee Physical Security Plan; (3) a violation of 10 CFR 50.9, incomplete and inaccurate information; and (4) the failure of the licensee to make a one hour report to the NRC as required in 10 CFR 73, Appendix G, I(a)(3).

* Please note that cases involving security-related issues are not included

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Florida Power and Light Company
Turkey Point Nuclear Plant, Unit 3 & 4

EA-07-138

On April 9, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$130,000 was issued for a Severity Level III violation involving inattentive security officers. An investigation conducted by the NRC Office of Investigations determined that there were multiple willful examples of security officer inattentiveness and complicity or facilitation by other security personnel to support inattentive behavior between 2004 and 2006. A base civil penalty of \$65,000 is normally considered for a SL III violation. However, in this case the staff concluded that discretion to increase the amount of the civil penalty to two times the base was warranted because (1) the licensee did not self identify these issues, (2) the licensee's corrective actions were neither prompt nor comprehensive, and (3) the licensee had been subject to escalated enforcement action within the past two years.

Civil Penalties Issued To Material Licensees

Alaska Industrial X-Ray, Inc.
Anchorage, AK

EA-07-325, EA-08-196

On August 20, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$20,800 was issued for a willful Severity Level II problem involving (1) performing radiography at a location other than a permanent radiographic installation without the presence of two qualified individuals, in violation of 10 CFR 34.41(a), and (2) failing to provide the NRC with information that was complete and accurate in all material respects, in violation of 10 CFR 30.9(a). The NRC also issued an immediately effective Order Modifying License to require additional actions by the licensee to provide reasonable assurance that the health and safety of the public will be protected.

American Radiolabeled Chemicals, Inc.
St. Louis, MO

EA-08-126

On July 22, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6500 was issued for a Severity Level III problem. The violation involved multiple examples of failure to adhere to license commitments and regulations. Specifically, between January 22 and March 14, 2008, the licensee failed to: (1) secure from unauthorized removal or limit access to licensed material in an aggregate quantity greater than 1000 times Appendix C to 10 CFR Part 20 limits; (2) comply with license commitments related to management oversight of the radiation protection program, including a failure to conduct monthly meetings of the Radiation Safety Committee and a failure to implement timely and adequate corrective actions for issues identified during annual program reviews; (3) comply with license commitments related to radiological surveys; and (4) perform and document required investigations of contamination found in controlled and unrestricted areas.

BWX Technologies, Inc.
Lynchburg, VA

EA-07-240

On January 24, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$32,500 was issued for a Severity Level III violation of Safety Condition S-1 of NRC License SNM-42 and Section 5.1.1 (f), "Protection Against Criticality," of the License Application involving the failure of the licensee to analyze a specific transfer process to ensure the configuration of special nuclear material (SNM) during transfer could not result in a criticality accident. Specifically, on July 26, 2007, a Raschig ring vacuum cleaner spilled its contents containing a solution of SNM during transfer on a fork lift into a plastic bag being used for contamination control, which created an unanalyzed condition. In this case, no criticality event occurred because of the low amount and concentration of SNM present.

BWX Technologies, Inc.
Lynchburg, VA

EA-08-204

On October 20, 2008, a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty in the amount of \$32,500 was issued to BWX Technologies, Inc. This action is based on a Severity Level III violation of 10 CFR 70.61 involving the failure of the licensee to provide adequate engineered and administrative controls to limit or prevent an acute chemical exposure from a hazardous chemical produced from licensed material. Specifically, the licensee failed to properly label a storage tank containing liquid hydrogen fluoride (HF), and failed to ensure that a Process Operator was adequately trained. As a result, on April 28, 2008, a Process Operator received an ocular exposure to liquid HF while trying to neutralize a spill that could have led to irreversible or other serious, long-lasting health effects. In this case, no permanent vision loss was sustained by the operator. However, under different circumstances, such as a delayed response from the emergency team, the exposure could have resulted in a more severe consequence to the operator.

Dickinson County Memorial Hospital
Iron Mountain, MI

EA-08-048

On May 7, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III violation. The violation involved the failure to control and maintain constant surveillance of licensed material that was stored in a controlled area. Specifically, on January 25, 2008, the doors to a room which contained licensed material being packaged for shipment were left unsecured and unattended, resulting in licensed radioactive material being accessible to unauthorized individuals via an adjacent, unrestricted hallway.

Digirad Imaging Solutions, Inc.
Bemus Point, NY

EA-07-223, EA-07-225

On April 3, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty was issued for two Severity Level III violations resulting in two \$3,250 civil penalties (a total of \$6,500). In violation of 10 CFR 30.9, the licensee provide the NRC information that was not complete and accurate in a material respects when it submitted statements from a

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physician (preceptor) for the purposes of attesting that an applicant physician met the training and experience criteria to be named as an authorized user on an NRC license.

However, the applicant physician had not worked with or under the supervision of the preceptor and the preceptor did not meet the NRC requirements for a preceptor to be an authorized user physician on a license. Further, in violation of 10 CFR 201801, the licensee did not secure from unauthorized removal, limit access to, or maintain control and surveillance of licensed material at several facilities and over a period of several years (2001- 2006).

Global Nuclear Fuel – Americas, L.L.C.
Wilmington, NC

EA-08-187, EA-08-123

On August 13, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$16,250 was issued for a Severity Level III violation for circumstances surrounding an incorrect emergency action level declaration. The incorrect emergency action level declaration stemmed from an event that occurred on January 29-30, 2008, also categorized as SL III (EA-08-123), involving introduction of moisture into the Dry Conversion Process Line-2 cooling hopper containing uranium dioxide powder.

Hevly Technical Services, Inc. (HTS)
Wanatchee, WA

EA-08-129, EA-08-130

On May 16, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a deliberate Severity Level III violation of 10 CFR 150.20(b)(3) involving the transfer of a portable moisture density gauge containing radioactive material to a company in the State of Alaska that was not licensed to possess or use the gauge. Specifically, on May 17, 2003, HTS, a General Licensee under 10 CFR 150.20, transferred a portable gauging device containing radioactive material to Alaska Rim Engineering, a company that HTS knew was not specifically licensed by the NRC to receive the material. In addition, a second Severity Level III violation was issued for failure to file NRC Form 241- Report of Proposed Activities in Non-Agreement States, at least three days prior to engaging in licensed activities within NRC jurisdiction. Specifically on May 17, 2003, HTS, who held specific licenses from the Agreement States of Washington and Oregon, used a portable device containing radioactive material in Palmer, Alaska, during training without filing a Form -241 with the NRC.

IBS of America Corporation
Chesapeake, VA

EA-08-031

On June 6, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III violation of 10 CFR 30.34(c). Specifically, the licensee possessed byproduct material at a location not authorized by their license.

McCallum Testing Laboratories, Inc.
Chesapeake, VA

EA-08-004, EA-08-086

On May 28, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem. The violations involved (1) the failure to control and maintain constant surveillance of material that is in an unrestricted area and not in storage and (2) the failure to block and brace packages containing radioactive material to prevent change in position during transport. Specifically, a portable gauge fell from the back of a pickup truck, after it was placed in the back of the truck without using a transport case or attaching the gauge in any way to the truck. After falling, the gauge was subsequently damaged, and was lost for approximately an hour.

Quality Inspection Services, Inc.
Buffalo, NY

EA-08-158

On September 15, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,500 was issued for a Severity Level III violation. This action is based on a willful violation of 10 CFR 34.71, involving the failure to maintain utilization logs of radiographic activities. Specifically, between November 15, 2006 and March 2, 2007, the licensee's site radiation safety officer performed radiographic operations at the Connecticut site, without maintaining utilization logs. In addition, three related Severity Level III violations were also issued for failures to: (1) provide complete and accurate information by licensee's site radiation safety office and assistance radiographer, regarding the use of the proposed permanent fixed installation in the Manchester facility; (2) obtain NRC approval prior to conduct of radiographic operations at the Manchester permanent radiographic installation; and (3) be accompanied by at least one other qualified radiographer when the licensee's corporate radiation safety officer performed radiographic operations in the proposed permanent radiographic installation.

Source Production and Equipment Co., Inc. (SPEC)
St. Rose, LA

EA-08-039

On July 14, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$9600 was issued to Source Production and Equipment Co., Inc. (SPEC) for a deliberate Severity Level II problem of 10 CFR 71.3. Two violations were identified involving the transport of NRC licensed material without a license because SPEC did not comply with NRC Certificate of Compliance (CoC) No. 5979 requirements. Specifically, on July 15, 2003, December 4, 2003, and May 20, 2004, SPEC shipped licensed material to Mexico and 1) the end caps of the package were physically and dimensionally different from those approved in the CoC, and 2) the package was not inspected prior to the shipments as required by the CoC. There are no known actual health and safety consequences associated with the shipments.

Washington University of St. Louis
St. Louis, MO

EA-08-180

On September 4, 2008, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem. This action was based on violations of 10 CFR 20.1802 and 10 CFR 35.404(a) which were combined into a

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SL III problem. Specifically, the licensee transferred an applicator, containing two iodine-125 seeds from the operating room to the decontamination room. The loaded cartridge was opened during the cleaning process and the seeds were washed down the drain into the sanitary sewer. The licensee had failed to make a survey to locate and account for the two iodine-125 sources that were not implanted.

Appendix C: Summary of Orders*

Orders Issued To Licensees

Accurate NDE and Inspection, LLC
Broussard, LA

EA-06-281; EA-07-289

On February 20, 2008, a Confirmatory Order (Effective Immediately) was issued to confirm commitments made as a result of an Alternative Dispute Resolution (ADR) settlement agreement. The licensee requested ADR following the NRC's March 20, 2007, Notice of Violation and Proposed Civil Penalty of \$13,000 for a willful violation involving the failure to secure from unauthorized removal or access licensed material that was stored in an unrestricted area; failure to wear required personnel dosimetry during radiographic operations; and failure to provide complete and accurate information on documents provided to an NRC inspector. As part of the agreement, Accurate NDE agreed to additional management review and oversight programs that will include implementation of amended procedures for offshore radiographic operations, implementation of a training program, and increased audits of the program. Accurate NDE will also submit an article in the company newsletter regarding this case and the consequences of wrongdoing. In exchange for Accurate NDE's extensive corrective actions, the NRC agreed to reduce the civil penalty originally proposed to \$500.

Baxter Healthcare of Puerto Rico
Albonito, PR

EA-07-132

On February 26, 2008, a Confirmatory Order modifying the license and confirming commitments reached as part of an ADR mediation settlement agreement was issued along with a Severity Level III Notice of Violation and Civil Penalty in the amount of \$15,000. This enforcement action was based on violations resulting from deliberate acts of certain Baxter employees. Specifically, violations included failure to perform preventative maintenance checks of safety systems, failure to conduct safety performance reviews and written tests for two irradiator operators; and failure to maintain complete and accurate records of inspection and maintenance checks and operator performance. The NRC and the licensee agreed to disagree regarding the failure to conduct safety performance reviews and written tests for the two irradiator operators and the associated record requirements. Further, Baxter has taken multiple corrective actions agreed to in the ADR session, including development of specific procedures, training, and processes for which the Order will modify the license to require implementation.

** Please note that cases involving security-related issues are not included.*

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Chevron Environmental Management Company (Molycorp)
Washington, PA

EA-08-054

On July 8, 2008, a Confirmatory Order (Effective Immediately) was issued to confirm commitments made as result of an ADR session, held on June 5, 2008, between Chevron Environmental Management Company (CEMC) and the NRC. The parties agreed to engage in ADR following NRC's February 29, 2008, letter to CEMC wherein an apparent violation of 10 CFR 40.7, "Employee Protection" was identified. As set forth in the order, CEMC agreed to complete a number of actions at its Washington, PA decommissioning site, including, but not limited to: training supervisory employees regarding employees' rights to raise concerns; communicating CEMC's policy and management expectations regarding employees' right to raise concerns; and distributing a questionnaire to assess employees' willingness to raise nuclear safety concerns. The NRC agreed to not pursue further enforcement action relating to this matter.

Florida Power and Light Company
St. Lucie Nuclear Plant

EA-07-321

On June 13, 2008, a Confirmatory Order (Effective Immediately) was issued to Florida Power and Light Company (FPL) to formalize commitments made as a result of a successful ADR mediation session. The commitments were made by FPL as part of a settlement agreement between FPL and the NRC regarding a licensee supervisor who deliberately submitted a materially incomplete condition report to the licensee and deliberately violated a licensee procedure when he failed to contact the site security manager to evaluate the trustworthiness and reliability of two valve technicians who falsified a work order. The agreement resolves an apparent violation involving FPL's failure to adhere to FPL Nuclear Division Policy, which was identified during an NRC Office of Investigations (OI) investigation. In consideration of these commitments, the NRC agreed to exercise enforcement discretion and forego issuance of a Notice of Violation or take other enforcement action against FPL in this matter.

Florida Power and Light Company
St. Lucie Nuclear Plant

EA-08-172

On October 20, 2008, a Confirmatory Order (Effective Immediately) was issued to Florida Power and Light Company to formalize commitments made as a result of a successful ADR mediation session. The commitments were made by FPL as part of a settlement agreement between FPL and the NRC regarding a security operations supervisor who failed to follow site security procedures at the St. Lucie Nuclear Plant. Specifically, the security operations supervisor willfully permitted the entry of a container into the St. Lucie Nuclear Plant without conducting the required search of its contents.

Global X-Ray & Testing EA-08-008, EA-08-009, EA-080010, EA-08-011, EA-08-013
Houma, LA

On May 23, 2008, a Confirmatory Order (Effective Immediately) was issued to Global X-ray & Testing (Global) to confirm commitments made as a result of an ADR settlement agreement. NRC identified four violations during inspection and investigation involving: (1) a willful failure to provide the NRC with complete and accurate information; (2) the failure to prevent workers from resuming work after their pocket dosimeters were found to be off-scale; (3) the failure to ensure that a radiographer was providing personal supervision of the radiographer's assistant through direct observation of the assistant's performance of radiographic operations; and (4) allowing an individual who was not wearing a personal dosimeter to conduct radiographic operations. In response to these violations, the licensee requested ADR. As part of the agreement, the licensee agreed to additional management review that will include developing procedures for additional oversight of offshore radiographic operations, obtaining an agreement with lay-barge operators that will address radiographic operations, incidents, and oversight; field audits of lay-barge radiographic operations by licensee management, making arrangements for NRC inspection of radiographic activities on U.S. owned lay-barges, implementation of training on potential consequences for violation of NRC regulations, and delivering a personal letter to each employee regarding the consequences of wrongdoing. Global also agreed to obtain an NRC license with special license conditions for radiographic operations in offshore waters. In exchange for Global's extensive corrective actions and most notably in consideration of costs associated with obtaining an NRC license, the NRC agreed to eliminate the civil monetary penalty.

Southern California Edison Company
San Onofre Nuclear Generating Station

EA-07-232

On January 11, 2008, a Confirmatory Order (Effective Immediately) was issued to Southern California Edison Company (SCE) to formalize commitments made as a result of a successful ADR mediation session. The commitments were made by SCE as part of a settlement agreement between SCE and the NRC concerning the falsification, by a contract fire protection specialist at SONGS, of firewatch certification sheets on numerous occasions from April 2001 to December 2006. As part of the settlement agreement, SCE agreed to, in general terms, performing a common cause evaluation of known recent events, conducting a safety culture assessment, conducting training and communications, and developing or enhancing various programs in areas such as ethics, disciplinary process, contract programs, and oversight. In recognition of these actions, and those corrective actions already completed, NRC refrained from further enforcement action related to this particular case, and may exercise enforcement discretion for the next six months on willful cases that meet the conditions of Section VII.B.4 of the Enforcement Policy, "Violations Identified Due to Previous Enforcement Action." NRC will evaluate the implementation of SCE's commitments during future inspections.

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Orders Issued To Individuals

Oscar Aguilar

IA-07-029

On January 22, 2008, an Immediately Effective Order prohibiting an individual, a contract security officer with the Wackenhut Corporation, from involvement in all NRC-licensed activities for a period of 5 years from the date the Order was issued. The Order was issued based on activities that occurred on or about April of 2004. Specifically, Mr. Aguilar deliberately removed firing pins from two contingency response weapons, rendering the weapons non-functional. As a result, Mr. Aguilar caused Florida power and Light (FPL) to be in violation of NRC Order for Interim Compensatory Measures, dated February 25, 2002, Section B.4(f). Mr. Aguilar's actions in this regard constituted a violation of 10 CFR 50.5.

Juan Blanco

IA-07-025

On February 11, 2008, an Immediately Effective Order prohibiting an individual from involvement in NRC-licensed activities for a period of 3 years was issued. The Order was issued based upon the individual providing the NRC information that he knew was inaccurate or incomplete. Specifically, Mr. Blanco stated during an NRC Office of Investigations (OI) interview in April 2005 that he had no knowledge of an incident involving the removal of two firing pins from contingency response weapons at the Florida Power and Light, Turkey Point facility. However, in a February 2006 interview with OI, Mr. Blanco admitted that he was shown the firing pins after the pins were removed from the weapon by the security officer who removed the pins. Mr. Blanco also failed to report the broken firing pins as required.

Jon Brumer

IA-07-027

On January 22, 2008, an Immediately Effective Order prohibiting an individual, a contract security Lieutenant with the Wackenhut Corporation, from involvement in all NRC-licensed activities for a period of 5 years from the date the Order was issued. The Order was issued based on activities that occurred on or about August of 2005. Specifically, Mr. Brumer deliberately removed and broke a firing pin from a contingency response weapon, rendering the weapon non-functional. As a result, Mr. Brumer caused FPL to be in violation of 10 CFR Part 73. Mr. Brumer's actions in this regard were in violation of 10 CFR 50.5 "Deliberate Misconduct." Additionally, on or about February 19, 2006, Mr. Brumer provided a transcribed statement to an OI agent regarding his involvement in the breaking of a firing pin that was later determined to be incomplete and inaccurate. Mr. Brumer's actions in this regard were also in violation of 10 CFR 50.5.

Luis Fernandez

IA-07-026

On January 22, 2008, a Confirmatory Order (Effective Immediately) was issued to Mr. Luis Fernandez, a former security Project Manager for the Wackenhut Corporation, as a result of a settlement agreement entered into following the conclusion of Alternative Dispute Resolution, requested by the individual. This Confirmatory Order relates to a series of actions taken by Mr. Fernandez that resulted in the deliberate documentation of damage to a contingency response weapon in a licensee Condition Report, which was incomplete and inaccurate. The Condition Report, which is required to be maintained by

the licensee, was provided to the NRC staff during an ongoing inspection and investigation. As a result, the actions of Mr. Fernandez placed the licensee in violation of 10 CFR 50.9. During the mediation session, Mr. Fernandez agreed, among other things, to: (1) he has no intention of working or seeking employment in any activities or at any facility subject to NRC regulations, and that he will not seek employment requiring his participation in NRC-regulated activities before June 30, 2008, (2) should he seek employment with an entity involved in NRC-regulated activities and requiring unescorted access authorization prior to June 30, 2010, he will provide the NRC with a letter discussing the steps he has taken to assure his understanding of the importance of completeness and accuracy of information at facilities subject to NRC regulation, (3) make himself available to participate in training to discuss lessons learned from this matter and the importance of completeness and accuracy of condition reports and other internal documents, (4) should he seek employment with any NRC-regulated entity prior to June 30, 2010, to provide to the NRC a letter discussing the steps he has taken to assure his understanding of NRC requirements in effect at the time, is sufficient to address all Agency concerns regarding his involvement in the matter discussed in the NRC's letter of May 30, 2007. In consideration of the above, the NRC agreed to forego issuance of a Notice of Violation or take other enforcement action against Mr. Fernandez in this matter.

Mr. Anthony R. Fortuna

IA-07-069

On July 3, 2008, a Confirmatory Order (Effective Immediately) was issued as part of a settlement agreement confirming commitments reached during an ADR mediation session. The ADR session involved discussions of Mr. Fortuna's failure to provide required information on an application for unescorted access to the Hatch Nuclear Plant. Specifically, on February 6, 2006, Mr. Fortuna failed to disclose on a Personal History Questionnaire (PHQ) that he previously tested positive on an employer's drug test. As a result, Mr. Fortuna gained unescorted access to the protected area of the Hatch Nuclear Plant. The failure to disclose the prior positive drug test was material because it precluded the licensee from taking the information from this disclosure into consideration when determining his trustworthiness and reliability prior to granting unescorted access to the plant as required by 10 CFR 73.56(b). Mr. Fortuna engaged in deliberate misconduct in violation of 10 CFR 50.5 when he did not disclose his prior positive drug test result on the PHQ.

William Johns

IA-07-028

On January 22, 2008, a Confirmatory Order (Effective Immediately) was issued to Mr. William Johns, a former security manager for Florida Power and Light, as a result of a settlement agreement entered into following the conclusion of an ADR mediation session, requested by the individual. This Confirmatory Order relates to Mr. Johns' deliberate failure to make a one-hour report to the Commission of an event involving the interruption of normal operation of a licensed nuclear power reactor through the unauthorized use of or tampering with its machinery, components, or controls, including the security system. In this case, the tampering event involved the breaking of a firing pin for a contingency response weapon, a component of the security system. The NRC reached a preliminary conclusion that Mr. Johns' failure to make a report was in violation of 10 CFR 50.5, in that Mr. Johns' actions caused Florida Power & Light to not report this event to the NRC as required by 10 CFR Part 73, Appendix G.I.(a)(3). During the

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mediation session, Mr. Johns agreed, among other things, to: (1) not seek employment requiring his participation in NRC-regulated activities before July 15, 2008, (2) that prior to seeking future employment in NRC-regulated activities, Mr. Johns will submit to the NRC a letter explaining the steps he has taken to assure he understands the NRC's security reporting requirements in effect at the time, (3) that prior to seeking future employment in NRC-regulated activities, Mr. Johns will submit to the NRC a letter explaining the steps he has taken to assure he understands the NRC's security reporting requirements in effect at the time. In consideration of the above, the NRC agreed to forego issuance of a Notice of Violation or other enforcement action to Mr. Johns in this matter.

Patrick A. Kelly

IA-08-008

On August 20, 2008, an Immediately Effective Order was issued to an individual prohibiting him from involvement in NRC-licensed activities for a period of 1 year from the date the Order was issued. The Order was issued based on his engagement in deliberate misconduct which caused his employer, Alaska Industrial X-Ray, Inc. to be in violation of 10 CFR 34.41(a) and for providing the NRC with information that he knew was inaccurate or incomplete. Specifically, the individual deliberately violated 10 CFR 34.41(a) by performing radiography with only one radiographer present at a temporary jobsite, on multiple occasions over about a 3-year period. In addition, when first interviewed by the NRC's Office of Investigations, he deliberately provided information that he knew was incomplete or inaccurate.

Joseph S. Shepherd

IA-08-014

On September 8, 2008, a Confirmatory Order (Effective Immediately) was issued to Mr. Joseph S. Shepherd, a contractor for Source Production and Equipment Company (SPEC), confirming commitments reached as part of conjoined negotiations with the Department of Justice (DOJ). As a result of the plea negotiations with DOJ, Mr. Shepherd agreed to not contest the Order. The Order was issued based on Mr. Shepherd's failure to comply with certain NRC Certificate of Compliance (CoC) requirements regarding a shipping package and his engagement in deliberate misconduct which caused SPEC to be in violation of 10 CFR 71.3. Specifically, SPEC, an NRC licensee pursuant to 10 CFR Part 110, shipped licensed radioactive material to Mexico on July 15, 2003, December 4, 2003, and May 20, 2004 while (1) the end caps were physically and dimensionally different from those approved in the CoC, and (2) the package was not inspected prior to shipment as required by the CoC. Mr. Shepherd agreed that he authorized modifications to the transportation package without prior NRC approval and that he concealed these package non-conformances from SPEC at the time of the shipments. Mr. Shepherd also agreed that he did not perform inspections of the shipping package as required by the CoC prior to the shipments to Mexico, but provided SPEC documentation which indicated that he performed the required inspections. As a result, SPEC, which relied on Mr. Shepherd's representations that the shipping package complied with all regulatory requirements, shipped NRC licensed material without a license in violation of 10 CFR 71.3. The Order and DOJ agreement will prohibit Mr. Shepherd from participating in 10 CFR Part 71 licensed activities indefinitely. He also will (1) be subject to additional unannounced inspections for 5 years from the date of the Order, (2) notify and make available copies of the Order to

customers, (3) attend additional regulatory safety training, and (4) prepare a presentation for an industry conference describing the circumstances of his violations.

Kenneth J. Vandiver

IA-08-006

On August 20, 2008, an Immediately Effective Order was issued to the former radiation safety officer for Alaska Industrial X-Ray, Inc, prohibiting him from involvement in NRC-licensed activities for a period of 3 years from the date the Order was issued. The Order was issued based on his engagement in deliberate misconduct on numerous occasions over several years, and providing the NRC with information that he knew was inaccurate or incomplete. Specifically, as RSO he was responsible for ensuring that radiation safety activities were being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program. In this case, not only did the individual deliberately violate 10 CFR 34.41(a), he was also aware that other AIX radiographers were deliberately violating this requirement and took no actions to stop it. When questioned by the NRC, he knowingly provided incomplete and inaccurate information about the violations.

Demand For Information

Mattingly Testing Services, Inc.
Molt, MT

EA-07-303

On January 23, 2008, a Demand for Information (DFI) was issued to Mattingly Testing Services, Inc. (Mattingly Testing) in response to the information obtained during November 7, 2007, inspection and investigation of Mattingly Testing's licensed activities. While the inspection and investigation activities continue, the DFI required Mattingly Testing to provide information in order for the NRC to evaluate and determine the appropriateness of Mattingly Testing's licensed material program at temporary job sites. The DFI also required Mattingly Testing to provide information in order for the NRC to evaluate the depth and completeness of Mattingly Testing's work environment and its determination that it maintains an environment where employees can raise safety concerns without fear of retaliation. Specifically, the DFI required Mattingly Testing to provide additional details relative to the establishment, implementation and maintenance of a program designed to provide and support such a work environment.

Appendix D: Summary of Escalated Enforcement Actions Against Individuals*

Orders

Nine Orders were issued to individuals during 2008 and are discussed in Appendix C.

Notices of Violation

William M Johnson

IA-08-022

On May 23, 2008, a Notice of Violation was issued for a Severity Level III violation involving a deliberate failure to provide the NRC with complete and accurate information, as required by 10 CFR 30.10(a)(2). Specifically, in a report submitted to the NRC on May 18, 2006, the individual, as the radiation safety officer (RSO) for Global X-Ray and Testing Corporation, described an event that took place during radiographic operations on board a lay-barge on April 20, 2006, but failed to include complete information regarding the radiation exposure to the radiographer involved in the event. He also failed to disclose the fact that the radiographer reported that his pocket dosimeter had gone off-scale and he did not reconcile or explain the discrepancy between the reported dose and the off-scale dosimeter reading.

Sean J. Kelly

IA-08-009

On August 20, 2008, a Notice of Violation was issued for a Severity Level III violation involving deliberate misconduct on the part of the individual which caused his employer, Alaska Industrial X-Ray, Inc. to be in violation of 10 CFR 34.41(a). Specifically, the individual deliberately performed radiography, on multiple occasions, without being accompanied by at least one other qualified radiographer or an individual who had at a minimum met the requirements of § 34.43(c).

Charles A. Leet

IA-08-025

On September 17, 2008, a Notice of Violation was issued for a Severity Level III violation involving a deliberate submission of materially inaccurate information to the NRC and deliberately caused his employer, Alaska Rim Engineering, Inc., to be in violation of NRC regulations. Specifically, Mr. Leet, on behalf of Alaska Rim, purchased, received, possessed, and used a portable gauge device without an NRC license. In addition, on May 6, 2007, Mr. Leet submitted a license application to the NRC stating that Alaska Rim was planning to purchase the portable gauge when, in fact, Alaska Rim had already purchased the gauge in May 2003 and used it without an NRC license.

** Please note that cases involving security-related issues are not included*

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Scot A. Menzies

IA-08-010

On September 10, 2008, a Notice of Violation was issued for a Severity Level III violation involving a deliberate failure to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal, when the portable gauges were not under the control and constant surveillance of the licensee. Specifically, Mr. Menzies did not use tangible barriers to secure portable gauges from unauthorized removal while in storage.

Donald M. Miller

IA-08-007

On August 20, 2008, a Notice of Violation was issued for a Severity Level III violation involving deliberate misconduct on the part of the individual which caused his employer, Alaska Industrial X-Ray, Inc. to be in violation of 10 CFR 34.41(a). Specifically, the individual deliberately performed radiography, on multiple occasions, without being accompanied by at least one other qualified radiographer or an individual who had at a minimum met the requirements of § 34.43(c).

Alex Ortiz

IA-07-041

On February 26, 2008, a Notice of Violation was issued for a Severity Level III violation involving deliberate misconduct on the part of an individual which caused his employer, Baxter Healthcare of Puerto Rico to be in violation of NRC regulations. Specifically, the individual deliberately failed to perform required weekly, monthly, and quarterly maintenance checks of safety systems, and deliberately created inaccurate records of the aforementioned maintenance checks to reflect that these activities had been completed when, in fact, they were not completed as required by the associated regulation.

Efrain Santiago

IA-07-040

On February 26, 2008, a Notice of Violation was issued for a Severity Level III violation involving deliberate misconduct on the part of an individual which caused his employer, Baxter Healthcare of Puerto Rico to be in violation of NRC regulations. Specifically, the individual deliberately failed to perform required preventative maintenance checks of safety systems, failed to conduct the annual performance (safety) tests for two irradiator operators, and created inaccurate records of the aforementioned maintenance checks and irradiator operator performance tests to reflect that these activities had been completed when, in fact, they were not completed as required by the associated regulation.

Stanley Swans

IA-07-070

On June 6, 2008, a Notice of Violation was issued for a Severity Level III violation involving deliberate misconduct on the part of an individual which caused his employer, Southern Nuclear Operating Company, to be in violation of NRC regulations. Specifically, Mr. Swans deliberately failed to disclose information that obscured his trustworthiness and subsequently contributed to the failure of the licensee to evaluate his trustworthiness and reliability prior to granting him access to the facility.

Appendix E: Summary of Escalated Enforcement Actions Against Non-Licensees (Vendors, Contractors and Certificate Holders)*

Confirmatory Order

Wackenhut Nuclear Services

EA-07-111, EA-07-114, EA-07-117

On January 22, 2008, a Confirmatory Order (Effective Immediately) was issued to Wackenhut Nuclear Services, Inc., (WNS) to confirm commitments made as a result of an Alternative Dispute Resolution (ADR) settlement agreement concerning three violations involving WNS employees who were providing security-related services at Florida Power and Light Company's Turkey Point Nuclear Plant in 2004 and 2005. Specifically, the violations involved deliberately removing or breaking firing pins on multiple contingency response weapons rendering them non-functional, and providing incomplete or inaccurate information. The Order requires WNS to (1) revise its hiring and recruitment policy; (2) develop a site enhancement plan for the Turkey Point facility; (3) develop an enhanced leadership program; (4) benchmark, audits and self-assessments, (5) develop performance indicators for the Turkey Point facility; (6) provide focused one-on-one training between supervisors and subordinates and (7) continue communications with the NRC detailing progress on the above six items. In consideration of the commitments in the Order, the NRC agreed to forgo issuance of a Notice of Violation, or take any other enforcement action in this matter.

Wackenhut Nuclear Services

EA-07-256

On April 9, 2008, a Confirmatory Order (Effective Immediately) was issued to Wackenhut Nuclear Services (WNS) resulting from a successful Alternative Dispute Resolution (ADR) session involving security officer inattentiveness at Florida Power and Light Company's Turkey Point Nuclear Plant in 2004 and 2005. As part of the ADR settlement agreement, WNS agreed to the development and continuation of several initiatives to ensure security officer attentiveness at all facilities supported by WNS. WNS also agreed to a continuation of periodic communications with the NRC to discuss the status and effectiveness of these initiatives. In consideration of the commitments in the Order, the NRC agreed to forgo issuance of a Notice of Violation, or take any other enforcement action in this matter.

** Please note that cases involving security-related issues are not included*

Appendix F: Summary of Notices of Enforcement Discretion

NOED 08-4-01, issued February 20, 2008, to Wolf Creek Nuclear Operating Corporation (Wolf Creek Generating Station), provided enforcement discretion that allowed the licensee to extend the 4-hour completion time for Technical Specification 3.8.1, Action B.2, by 15 hours to restore the Train A centrifugal pump and room cooler to an operable status.

NOED 08-3-01, issued April 10, 2008, to Entergy Nuclear Operations, Inc. (Palisades Nuclear Plant), provided enforcement discretion that allowed the licensee to extend the length of allowed outage time in Technical Specification 3.8.1, "AC Sources - Operating," an additional 24 hours to support completion of corrective maintenance activities on the safeguards transformer without having to shut down.

NOED 08-3-002, issued August 21, 2008, to Exelon Generation Company LLC (Dresden Nuclear Power Station, Unit 3), provided enforcement discretion that allowed the licensee to extend the length of allowed outage time in Technical Specification 3.4.4, "RCS Operational Leakage," and Technical Specification 3.4.5, "RCS Leakage Detection Instrumentation," an additional 7 days to reconfigure the drywell floor drain sump monitoring system, such that the drywell equipment drain sump monitoring system could be used to quantify unidentified drywell leakage without having to shut down.

NOED 08-2-001, issued October 2, 2008, to Tennessee Valley Authority (Sequoyah Nuclear Plant, Units 1 and 2), provided enforcement discretion that allowed the licensee to extend the time required by Technical Specification 3.0.5.1 to be in at least hot standby in 6 hours by an additional 36 hours to restore Train B of the control room air conditioning system to an operable status.