

FORM 5: Cover Letter for Civil Penalty Cases

EA-YY-XXX

(Name of Licensee)

(Address)

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY(IES)
- \$XXX,XXX
(NRC [include type of inspection, e.g., "Integrated, Special"] Inspection Report No(s). XX-
XXX/YY-NN)
[if applicable, add "AND (Investigation Report No(s). X-XXXX-XXX)"]
[include name of facility for reactor cases]

Dear _____:

This refers to the inspection (investigation) conducted on (date(s)) at the (plant name) facility. [Use (City, State) for material licensees]. [This section should address (1) the purpose of the inspection, (2) the date when the licensee was put on notice of the need to take corrective action¹, (3) if and how it was reported, e.g., 50.72, LER etc., and (4) when the inspection report(s) related to this action were issued.]

[Add one of the following three paragraphs, as applicable:]

On (date), a predecisional enforcement conference was conducted (location, e.g., in the Region III office) with members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions.

In the letter transmitting the inspection report, we provided you the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated (date), you provided a response to the apparent violations.

In a telephone conversation on (date), (name of NRC person) of my staff informed (name of licensee representative), (title of licensee representative), that the NRC was considering escalated enforcement for apparent violations involving _____. (Name of NRC person) also informed (name of licensee representative) that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. (Name of licensee representative) indicated that (facility name) did not believe that a predecisional enforcement conference or written response was needed.

Based on the information developed during the inspection (investigation) (and the information that you provided during the conference)(and the information that you provided in your response to the inspection report dated, ____), the NRC has determined that a violation of NRC requirements occurred. The(se) violation(s) is (are) cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it

¹This date is necessary to establish a starting point for purposes of determining whether the licensee has had a previous escalated action during the past 2 years or previous 2 inspections. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

(them) are described in detail in the subject inspection report. [This section should include a summary of the event or circumstances that resulted in the violation including such issues as the length of time the violation lasted, the apparent root cause of the violation, the operational mode of the plant at the time of the violation (for operating reactors), and any other major attributes of the violation necessary for supporting the safety significance of the violation. The summary does not need to be as detailed as the discussion in the inspection report. However, it should be sufficiently detailed to permit licensee management (and others who may review the action) to understand the safety significance.]

[This section should include a discussion of the safety significance of the violation(s). It should discuss how this safety significance relates to severity level categorization, and MUST indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, a potential for impacting the NRC's ability to perform its regulatory function, or it was willful. "Therefore, this (these) violation(s) has (have) been categorized in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 at Severity Level __." [Alternatively, "Therefore, these violations are categorized collectively in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 as a Severity Level __ problem."]

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$XXX,XXX is considered for a Severity Level __ violation (problem). [Use either of the two following discussions. Discussion 1: "Because your facility has been the subject of escalated enforcement actions within the last 2 years [alternatively, use, "last two inspections"],² the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy." This section should include a discussion of whether credit was given for the *Identification* factor and whether credit was given for the *Corrective Action* factor (include a brief description of corrective actions). Discussion 2: "Because your facility has not been the subject of escalated enforcement actions within the last 2 years, [alternatively, use, "last two inspections"] the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy." This section should include a discussion of whether credit was given for the *Corrective Action* factor (include a brief description of corrective actions).] [Include an additional explanation if discretion was exercised, including a reference to the particular section of the Enforcement Policy.]

Therefore, to emphasize the importance of [state the regulatory emphasis of the case, e.g., "system operability," "procedural compliance," "attention to detail," "accurate and complete information," "control of licensed material," compliance with technical specifications," "compliance with dose limits," etc.] and of prompt [depending on the licensee's shortcoming(s), include "identification" and/or "comprehensive correction"] of violations, [if applicable, include "and in recognition of your previous escalated enforcement action(s),"] I have been authorized, after consultation with the Director, Office of Enforcement, [if applicable, add, "and the Deputy Executive Director for _____,"] [for all cases involving a Commission paper, add: "and the Commission,"] to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty(ies) (Notice) in the base amount of \$XXX,XXX [alternatively, delete the reference to "base" and add, "(twice the base)"] for the Severity Level __ violation(s) (problem(s)). [Add the following sentence

² [Use a footnote to indicate the previous escalated enforcement action(s), e.g., "A Severity Level III violation was issued on January 22, 199X (EA 9X-NNN) and a \$100,000 civil penalty was issued on March 16, 199X (EA 9X-NNN)." Although it is not necessary to describe the circumstances of the previous action, it may be appropriate to note the circumstances if they are related or repetitive e.g., "A Severity Level III violation was issued on January 22, 199X (EA 9X-NNN) and a \$100,000 civil penalty was issued on March 16, 199X for a similar violation of procedural requirements."]

for materials licensees: "In addition, issuance of this Notice constitutes escalated enforcement action, that may subject you to increased inspection effort."]

[This section should include a discussion of any violation(s) included in the enforcement action that were not assessed a civil penalty.]

³You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. [Other specific responses required should be addressed as appropriate.] The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

⁴In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response will be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

Sincerely,

Regional Administrator
(or designee)

Docket No. _____

License No. _____

Enclosure: Notice of Violation and Proposed
Imposition of Civil Penalty(ies)

³ For violations where the region has determined that no 10 CFR 2.201 response is required, the following paragraph may be substituted:

The NRC has concluded that information regarding the reason for the violation, the corrective actions taken and planned to correct the violation and prevent recurrence is already adequately addressed on the docket in [indicate correspondence, e.g., Inspection Report No. XX-XXX/YY-NN, LER YY-NNN, or letter from Licensee] dated _____. Therefore, you are not required to respond to the provisions of 10 CFR 2.201 unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

If this option is used, insert “, if any,” following “response” in the last line of this letter.

⁴ For those packages containing Safeguards Information, remove this paragraph and replace with:

The material enclosed herewith contains Safeguards Information as defined by 10 CFR Part 73.21 and its disclosure to unauthorized individuals is prohibited by Section 147 of the Atomic Energy Act of 1954, as amended. Therefore, the material will not be made available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room).

NUREG/BR-0254 Payment Methods (Licensee only)