



ENFORCEMENT PROGRAM ANNUAL REPORT

Fiscal Year 2004

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

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Abstract

Since 1995, the U.S. Nuclear Regulatory Commission's Office of Enforcement has published an annual report describing the agency's enforcement activities during a given fiscal year (FY). This report addresses the activities that occurred during FY 2004 (October 1, 2003 through September 30, 2004). It contains information about significant policy changes, new initiatives, staff guidance, and implementation issues that have had an impact on the agency's enforcement program. The report also highlights significant enforcement actions, and includes summaries of cases involving exercise of discretion, discrimination, and actions involving individuals. Various statistical tables and figures are also provided.

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Fiscal Year 2004 Highlights

- < The Enforcement Policy was revised three times.
- < The NRC issued 103 escalated enforcement actions including:
 - < 67 escalated Notices of Violation without civil penalties;
 - < 28 proposed civil penalties (\$660,700);
 - < 5 orders; and
 - < 3 impositions (i.e., orders imposing civil penalties).

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Introduction & Overview

The U.S. Nuclear Regulatory Commission's (Commission or NRC) first public statement of policy on enforcement was published in 1980 by its predecessor, the Atomic Energy Commission. As a living document, the Commission has revised the Enforcement Policy numerous times to reflect experience and stakeholder input. Throughout these changes, two goals of the enforcement program have remained unchanged--to emphasize the importance of compliance with regulatory requirements, and to encourage prompt identification, and prompt, comprehensive correction of violations.

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

- I. Safety:** ensuring protection of public health and safety and the environment.
- II. Security:** ensuring the secure use and management of radioactive materials.
- III. Openness:** ensuring openness in our regulatory process.
- IV. Effectiveness:** ensuring that NC actions are effective, efficient, realistic, and timely.
- V. Management:** ensuring excellence in agency management to carry out the NRC's strategic objective.

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

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

Key Principles of the Enforcement Program

- < Consistent with the agency's overall mission to provide for the common defense and security and to protect the public health and safety of the public, enforcement actions should be used as a deterrent, emphasizing the importance of compliance with regulatory requirements, and encouraging prompt identification, and prompt, comprehensive correction of violations.
- < The Severity Level of an enforcement action is commensurate with the significance of the violation. In assessing the significance of a violation the NRC considers: (1) actual consequences; (2) potential safety consequences; (3) the potential for impacting the NRC's ability to perform its regulatory function; and (4) whether there are any willful aspects of the violation.

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- < Risk insights are used to assess the significance of violations whenever possible. As the NRC's inspection programs becomes more risk-informed and performance-based, the enforcement program will also become more risk-informed and performance-based.
 - < Enforcement is only one component of the regulatory process. Enforcement is not a punitive tool to promote good performance; rather, it is a regulatory tool designed to respond to performance issues.
 - < Compliance is important to safety. Although changes in inspection oversight processes may result in fewer civil penalties being imposed and fewer Notices of Violations being issued (i.e., greater use of Non-Cited Violations), the agency has not reduced its emphasis on the importance of compliance. Violations will continue to be identified and documented and licensees will have the responsibility for taking corrective actions to restore compliance and prevent recurrence.

Enforcement Program Performance Measures

As an agency, the NRC adheres to the Principles of Good Regulation, including independence, openness, efficiency, clarity, and reliability. To support these principles, the Office of Enforcement (OE) has developed program performance measures. A high quality product can be characterized as one where the staff: (1) makes decisions without undue delay; (2) accurately details the facts; (3) correctly interprets and applies the regulatory requirement; and (4) consistently and precisely applies the Enforcement Policy.

The performance measure goals that were established to ensure that decisions are made without undue delay are:

- < 100% of non-investigation cases are completed within 180 calendar days; and
- < 100% of investigation cases are completed within 360 days of NRC processing time.

During FY 2004, these standards were met with average case times as follows: (1) 93 days for reactor, non-investigation cases; (2) 210 days for reactor, investigation cases; (3) 89 days for materials, non-investigation cases; and, (4) 159 days for materials, investigation cases. Therefore, the performance measure goals were met. While timeliness standards were met in FY 2004, there was an increase in the average "NRC processing time." OE is taking steps to address this increase. OE is actively working with other NRC offices to improve and streamline the review process without sacrificing the quality of these actions. OE has also realigned internal office resources to improve the timeliness of these actions. A graphical representation of the timeliness data is included in Figure 2 on page 20.

Enforcement actions can be challenged for several reasons, e.g., a licensee might dispute the requirements, the facts of the case, the application of the Enforcement Policy, or the significance of the violation. Therefore, OE has established a metric for quality of enforcement actions, i.e., less than 30 non-escalated enforcement actions being successfully disputed based on interpretation of the requirements, the facts of the case, or the application of the Enforcement Policy. Routinely, licensees provide clarifying information that was not available at the time of inspection that effects whether or not a noncompliance exists. Violations that are overturned based on supplemental information being provided that was not available for the inspector to make his assessment are not counted in the metric. During FY 2004, more than 1100 non-escalated enforcement actions were issued to reactor and material licensees. Out of

these actions, nine violations were disputed. Of the nine disputed violations, six violations were either withdrawn or revised by the NRC. However, a review of the cases concluded that all of the cases had been initially dispositioned appropriately based on the information that was at hand or that reasonably should have been concluded. Therefore, this metric was met.

Overview of the Enforcement Program

Regulatory Framework

The NRC's enforcement authority is set forth in the Atomic Energy Act (AEA) of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended. This statutory authority is implemented through Subpart B of 10 CFR Part 2 which contains the procedures the NRC uses in exercising its enforcement authority. Recognizing that violations occur in a variety of activities and have varying levels of significance, the Commission has developed an enforcement framework with graduated sanctions. The Commission's Enforcement Policy provides that framework. The policy is published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions."

Violations are identified through inspections and investigations. All violations are subject to civil enforcement action and also may be subject to criminal prosecution. The NRC uses the Administrative Procedures Act standard in enforcement proceedings, i.e., preponderance of the evidence. This standard is based on the weight and credibility of the evidence, unlike the burden of proof standard for criminal proceedings, i.e., beyond a reasonable doubt. After an apparent violation is identified, it is assessed in accordance with the Commission's Enforcement Policy.

To foster widespread dissemination to NRC licensees and members of the public, revisions of the Enforcement Policy are noticed in the *Federal Register* as they occur. OE also maintains the current policy statement on the NRC's web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**. It is important to note that because it is a policy statement and not a regulation, the Commission may deviate from it, as appropriate, under the circumstances of a particular case.

Enforcement Actions

NRC uses three primary enforcement actions which will be discussed in greater detail later in this report. These are:

1. *Notices of Violation*: A Notice of Violation (NOV) identifies a requirement, how it was violated, and formalizes a violation pursuant to 10 CFR 2.201. It normally requires a written response. NOVs are issued based on violations.
2. *Civil Penalties*: A civil penalty is a monetary fine issued pursuant to 10 CFR 2.205. This section implements the authority provided to the Commission in Section 234 of the AEA or Section 206 of the ERA. Section 234 of the AEA provides for penalties of up to \$100,000 per violation per day; but that amount has been adjusted by the Debt Collection Improvement Act of 1996 to be \$120,000. Civil penalties are issued based on violations.
3. *Orders*: Pursuant to 10 CFR 2.202, the Commission can issue an order to modify, suspend, or revoke a license or require or confirm specific actions by a licensee or a person. The

Commission's order issuing authority under Section 161 of the AEA extends to any area of licensed activity that affects the common defense and security or public health and safety. Orders may be issued for violations, or in the absence of a violation, to address a common defense and security or public health and safety issue.

Assessing Significance

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

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

Violations are either:

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

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

Dispositioning Violations

The manner in which a violation is dispositioned is based on the seriousness of the violation and the facts of the case.

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

The majority of violations identified in the nuclear industry are Severity Level IV violations and violations associated with Green SDP findings. Provided certain criteria in Section VI.A of the Enforcement Policy are met, the NRC will normally disposition these Severity Level IV violations and violations associated with Green SDP findings as Non-Cited Violations (NCVs). NCVs are documented in inspection reports (or inspection records for some materials licensees) to establish public records of the violations, but are not cited as NOVs which normally require written responses from licensees. Dispositioning violations in this manner does not eliminate the NRC's emphasis on compliance with requirements or the importance of maintaining safety. Licensees are still responsible for maintaining safety and compliance and must take steps to address corrective actions for these violations. This approach for violations that have low risk significance is consistent with the agency's performance goals.

More significant violations are candidates for escalated enforcement. Escalated enforcement action is defined as an action involving Severity Level I, II, or III violations; violations associated with White, Yellow, or Red SDP findings; civil penalties; or orders. A graphical representation

of the NRC's graded approach for dispositioning violations is included on the NRC's web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Process Diagram**.

Conferences

A predecisional enforcement conference, or a regulatory conference, may be conducted with a licensee before an enforcement decision if escalated enforcement action appears warranted, the NRC concludes a conference is necessary, or the licensee requests it.

The purpose of a predecisional enforcement conference is to obtain information to assist the NRC in determining the appropriate enforcement action, such as:

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

The purposes of a regulatory conference are to:

- < Obtain information from a licensee on the significance of findings evaluated through the SDP whether or not violations are involved, and
- < Address whether enforcement action may be warranted.

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

Civil Penalties

Civil penalties are normally assessed for Severity Level I and II violations, as well as knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act. Civil penalties are considered for Severity Level III violations. Although civil penalties will not normally be used for violations associated with the ROP, civil penalties (and the use of severity levels) will be considered for issues that are willful, that have the potential for impacting the regulatory process, or that have actual consequences.

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

- < Type of licensed activity;
- < Type of licensee;
- < Severity level of the violation;
- < Significance of the violation;
- < Whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past two years or past two inspections, whichever is longer;
- < Whether the violation was willful or very significant;
- < Whether the licensee should be given credit for actions related to identification;

- < Whether the licensee's corrective actions are prompt and comprehensive; and,
- < Whether, in view of all the circumstances, the matter in question requires the exercise of discretion.

Although each of these factors may take a great deal of information into consideration, the assessment process for each violation or problem (absent the exercise of discretion) results in one of the following three outcomes: no civil penalty, a base civil penalty, or twice the base civil penalty.

If a civil penalty is proposed, a written Notice of Violation and Proposed Imposition of Civil Penalty is issued. The licensee can either pay the penalty or contest it, in writing, within 20 days of the date of the enforcement action or other time specified in the notice. If the penalty is contested, the NRC considers the licensee's response and may either mitigate the civil penalty, or impose it by order. The licensee may then pay the civil penalty or request a hearing.

Orders

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

Public Notice

Conferences that are open to public observation (Category 1 Meetings) are included in the listing of public meetings on the NRC's web site. The NRC issues a press release for each proposed Civil penalty or order. All orders are published in the *Federal Register*. Significant enforcement actions (including actions involving individuals) are included in the Enforcement Document Collection in the **Electronic Reading Room** of the NRC's web site.

Office of Enforcement

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

On June 22, 2004, OE assumed responsibility for the NRC Differing Professional Opinions Program (DPO).

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

In FY 2004, OE had 13 full-time employees (FTEs) assigned for headquarters enforcement-related activities and 9 FTEs assigned for regional enforcement-related activities (although these FTEs report to the Regional Administrators).

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1. Enforcement Policy Changes

This section describes the three revisions to the Enforcement Policy that were made during FY 2004:

A. January 5, 2004: Action Against Non-Licensees for Packaging and Transportation Violations

On January 5, 2004, the Commission published a revision to the Enforcement Policy that clarified that enforcement action may be taken against non-licensees for violations involving packaging and transportation violations. This revision represents a conforming change based on a final rule published on January 26, 2004, involving the compatibility with the International Atomic Energy Agency transportation safety standards (TS-R-1) and other safety amendments.

B. June 16, 2004: Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues

On June 16, 2004, the Commission published a revision to the Enforcement Policy that added an interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR 50.48, Fire protection (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c).

C. August 13, 2004: Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution

On August 13, 2004, the Commission published a revision to the Enforcement Policy that added an interim enforcement policy regarding the use of Alternative Dispute Resolution (ADR) in the enforcement program for discrimination and other wrongdoing cases.

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

This section addresses enforcement initiatives taken during FY 2004, to provide program office support, increase public confidence, develop new staff guidance, encourage internal communication and enforcement training, and complete enforcement program reviews.

A. Discrimination Task Group

Background

In April 2002, the Discrimination Task Group (DTG), composed of management and senior level staff individuals with significant experience in discrimination matters, issued its final

report. The final report is available as Attachment 1 to SECY-02-0166. In addition to presenting recommendations for improving the NRC's current process for handling discrimination matters, the final report presents a series of basic policy questions for consideration in determining the NRC's future approach to discrimination matters.

In summary, the DTG recommended an option to provide the best balance between maintaining the agency's interest in deterring discrimination and encouraging a Safety Conscious Work Environment (SCWE), i.e., an environment where workers are at liberty to raise regulatory concerns without fear of reprisal. This option (Option 5b in the report) bases the investigative threshold on whether the whistleblower has articulated a *prima facie* case, and whether the case as presented could result in a Severity Level III violation or above. Potential Severity Level IV violations would be provided for information to the licensee, if agreed to by the whistleblower. This recommendation responds to many of the stakeholder comments, which were considered during the drafting of the final report, requesting changes to the current process for handling discrimination complaints. Many of the associated streamlining proposals are intended to improve the efficiency and effectiveness of the agency's involvement in this important area, address concerns about fairness to all parties, and maintain public confidence in the agency's ability to fulfill its mission to provide for the common defense and security, and to protect public health and safety.

On March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM), approving the DTG's recommendations with some modifications. Since the SRM was issued, OE has been developing guidance and strategies to implement the Commission's direction. Some of the more significant recommendations that have been implemented during FY 2004 include:

- < releasing a redacted copy of the Office of Investigations (OI) report prior to a predecisional enforcement conference (PEC);
- < providing support for travel expenses to an alleged when the alleged is invited to a PEC; and
- < centralizing the discrimination process at headquarters.

Other activities in this area during FY 2004 include:

- < initiating the rulemaking process to allow the imposition of civil penalties to contractors; and
- < drafting more comprehensive enforcement guidance to categorize the severity level of violations.

B. Alternative Dispute Resolution

The NRC is using alternative dispute resolution (ADR) to promote improved effectiveness of the enforcement program through efficient, timely, and amicable resolution of investigative findings.

What is ADR?

The Administrative Dispute Resolution Act of 1996 (ADRA) encourages the use of Alternative Dispute Resolution (ADR) by Federal agencies. ADR is a term that refers to a

variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. The ADRA defines ADR as “any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, mini trials, arbitration, and use of Ombudsman, or any combination thereof.” Federal agency experience with ADR has demonstrated that the use of these techniques can result in a more timely and more economical resolution of issues, more effective outcomes, and improved relationships.

Does NRC have an ADR policy?

The NRC has a general ADR Policy. The ADR Policy was issued on August 14, 1992. It supports and encourages the use of ADR in NRC activities. The NRC uses ADR in a variety of circumstances, including rulemaking and policy development, Equal Employment Opportunity (EEO) disputes, and to a more limited degree, in enforcement cases. Enforcement cases raise unique issues regarding the use of ADR that are not addressed in the NRC’s general policy.

On January 14, 2004, the NRC amended its regulations in 10 CFR Part 2 (69 FR 2182) to add § 2.333, “Settlement of issues, alternative dispute resolution,” which points out that “parties are encouraged to employ various methods of alternative dispute resolution to address the issues without the need for litigation in proceedings subject to this part.” However, in the absence of a statutory requirement to use ADR, the provisions of the regulation do not mandate its use. The Commission is currently undertaking an evaluation of the use of ADR in enforcement proceedings. This assessment may lead to further changes to 10 CFR Part 2 with respect to ADR in enforcement proceedings.

How is ADR used in the enforcement program?

The NRC is using ADR to promote a safety-conscious work environment by facilitating timely and amicable resolution of discrimination concerns. During FY 2004, the staff has been in the process of refining the issues associated with the use of ADR in the enforcement program. In September 2004, OE published a brochure entitled “Early ADR Program” (NUREG/BR-0313) which describes the NRC’s use of Early ADR. A copy of the brochure is included in Appendix G and is available on the NRC’s public Web site at: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/>. Early ADR typically occurs prior to any NRC investigation of the case. It may also be used after an allegation of discrimination is received and the NRC determines a potential case exists. Mediation is the ADR process normally used in the Early ADR Program. Mediation is an informal process in which a trained “neutral,” i.e., a mediator who has no stake in the outcome and no power to make decisions, works with the parties to help reach resolution using consensus-building and other negotiation tools. In the Early ADR Program, the mediator helps the parties work together to reach an agreement that meets their needs without conforming strictly to their original position.

At the end of FY 2004, the staff was in the process of issuing an enforcement guidance memorandum and an allegation guidance memorandum to provide additional guidance to implement the ADR pilot program. The staff anticipated the first ADR cases to occur in the first quarter of FY 2005.

C. Enforcement Actions Against Individuals

Enforcement actions involving individuals are addressed in Section VIII of the Enforcement Policy. OE established an internal working group to evaluate and propose recommendations for improvements to this section of the Enforcement Policy, including clarification on the thresholds for issuing individual enforcement sanctions.

On March 9, 2001, a *Federal Register* notice was issued that sought stakeholder feedback on a proposed revision to the guidance in Section VIII, "Enforcement Actions Involving Individuals," of the Enforcement Policy. The proposed policy revision was available for review until April 22, 2001. The NRC received comments from several stakeholders, including the Union of Concerned Scientists and the Nuclear Energy Institute (NEI). The staff evaluated these comments; however, since the DTG was considering a related question, namely whether hearing rights should be granted to individuals who receive NOV's, revision to Section VIII was placed on hold pending issuance of the DTG SRM.

In its March 26, 2003, SRM involving the DTG, the Commission directed to the staff to "fully explore the policy and resource implications of providing hearing rights (either formal or informal) to individuals subject to a NOV in connection with violations of the employee protection regulations." One option the staff has identified may involve some form of ADR after an individual receives a NOV. As the pilot program for enforcement-related ADR is developed, further insights into the possible use related to individuals will be explored. Therefore, the policy revision originally prepared will be coordinated with both DTG recommendation implementation activities and the results of the ADR Pilot Program.

D. Civil Penalty Authority Against Non-Licensees for Discrimination

OE has the task lead on a proposed rulemaking to amend the Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, and 72.10. The amendments would allow the Commission to impose civil penalties upon non-licensee contractors and subcontractors of a Commission licensee, or applicant for a Commission license, or holder of or applicant for a Certificate of Compliance who violate these regulations by discriminating against employees for engaging in protected activity. In addition, the NRC is also proposing to amend its regulations in 10 CFR 76.7 to provide that the Commission may impose a civil penalty on the United States Enrichment Corporation (Corporation) as well as a contractor or subcontractor of the Corporation. This change is being proposed to bring this regulation into conformance with the NRC's other employee protection regulations.

The Commission's employee protection regulations in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7 prohibit discrimination by a Commission licensee, applicant for a Commission license, contractor or subcontractor, a holder of or applicant for a certificate of compliance (CoC) or the United States Enrichment Corporation (Corporation) against employees for engaging in certain protected activities. These sections identify certain enforcement actions for violations of the regulations. The enforcement actions are denial, revocation, or suspension of the license; imposition of a civil penalty on the licensee or applicant; or other enforcement action. While the employee protection regulations prohibit discrimination by a contractor or subcontractor, they do not explicitly provide for imposition of a civil penalty on a contractor or subcontractor. Since the activities of

contractors and subcontractors can clearly affect the safe operation of a licensee's facility, it is important that contractors and subcontractors abide by the Commission's employee protection regulations. The Commission should be able to bring the full scope of enforcement actions to bear on contractors or subcontractors who violate its employee protection regulations. The approach described in the proposed rulemaking represents a significant change in the Commission's current policy under which a licensee can receive a civil penalty when its contractor or subcontractor violates the Commission's employee protection regulations while the contractor or subcontractor is not subject to civil penalties.

The staff has developed a proposed rulemaking plan in response to the Commission's direction in its Staff Requirement Memorandum (SRM) on SECY-97-281, "Initiation of Enforcement Action Against Construction Products Research, Inc. and Five Star Products, Inc. for Discrimination Against an Employee for Raising Safety Concerns and Cooperating with an NRC Investigation" and in the SRM on SECY-02-0166, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues." A copy of the proposed Rulemaking Plan was provided to the Agreement States on July 18, 2004, for a 45-day comment period. The comment period closed on August 2, 2004. One comment was received from the State of Washington. The staff will present the proposed rulemaking plan for Commission approval early in fiscal year 2005.

E. Reactor Program Support & Initiatives

OE has supported numerous initiatives in the reactor program.

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

OE was significantly involved in the initial implementation of the ROP. OE has continued to use its years of experience implementing the traditional enforcement program to serve as process facilitators during significance determinations and enforcement review panels (SERPs), regulatory conferences, and post conference caucuses/SERPs. OE utilized its presence in the regional offices to provide program guidance and to provide feedback to the program office on lessons learned during implementation. OE continues to review changes to program guidance and provides valuable insights in the areas of timeliness, the disposition of old design issues, revision of the SDP, guidance on minor violations, and the treatment of programmatic issues in a risk-informed framework. OE also reviewed and provided comments on the Mitigating System Performance Indicator.

In addition, during FY 2004, OE actively worked with NRR on an ROP/Enforcement Process Improvement Initiative. While the staff has found that the assessment and enforcement programs have reached a degree of integration never before achieved under previous oversight programs, the staff is concerned that implementation issues still exist between the two programs and is working to address these. Additionally, the staff has implemented the traditional enforcement program and the ROP independently which does not provide for the possibility of synergistic outcomes. Additional issues include: (1) inspection report signature authority; (2) operating plan timeliness goals; (3) discretion policies,

(4) performance deficiency; (5) multiple violations; (6) documentation of NCVs; (7) potential consequences; and (8) public confidence. OE and NRR are continuing to investigate and evaluate these issues and are working to develop options for possible enhancements.

The NRC staff issued final significance determination letters for 22 cases identifying a finding that was "greater than Green" during FY 2004 (i.e., White, Yellow, or Red). An NOV was issued in association with the identified cases on 20 occasions demonstrating the level of integration between the assessment and enforcement program. Eighteen of these issues were associated with a White SDP finding from the ROP, one issue was associated with a yellow SDP finding, and one issue was associated with a Red SDP finding. These 20 cases represent the majority of the escalated enforcement actions taken in the power reactor area during FY 2004.

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

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

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

- < Manual Actions: In order to support and implement changes proposed by NRR, OE proposed an interim enforcement discretion policy to address the use of operator manual actions in lieu of using fire barrier separation to maintain safe shutdown capability per Appendix R, paragraph III.G.2 until the regulations could be modified to allow the practice. SECY-03-100 was issued on June 17, 2003 and the Commission approved the staff's recommendations in an SRM dated September 12, 2003. On November 26, 2003, the staff published a *Federal Register* notice soliciting public comments on specific acceptance criteria for operator manual actions to be considered for use in developing an interim enforcement discretion policy for post-fire operator manual actions. In addition, as part of the proposed rule development, the staff had numerous interactions with industry and public stakeholders to discuss rule requirements and the more developed operator manual actions acceptance criteria. Based on these meetings and comments in response to the November 26, 2003, *Federal Register* notice, the staff concluded that the proposed rule's acceptance criteria and detection and suppression requirements are still evolving, such that the new interim enforcement guidance developed in conjunction with the proposed rule may not be consistent with the requirements specified in the final rule. Therefore, by the end of FY 2004, the staff was considering whether to pursue developing an interim enforcement discretion policy.
- < NFPA 805: OE responded to NRR's desire to provide incentives for licensees to adopt a pending revision to 10 CFR 50.48 that uses a National consensus standard from the

National Fire Protection Association, NFPA 805, Performance-Based Standard for Fire Protection for Light Water Reactor Electrical Generating Plants as its basis. OE recommended an interim enforcement discretion policy (similar to "old design discretion" included in the Enforcement Policy) that would encourage licensees to initiate efforts to identify and correct subtle violations that are not likely to be identified by routine efforts. On June 16, 2004, the Commission published a revision to the Enforcement Policy that added an interim enforcement policy that the NRC will follow to exercise enforcement discretion for certain violations of requirements in 10 CFR 50.48, Fire protection (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c).

- < Associated Circuits: OE has been working with NRR to support resumption of post-fire safe-shutdown associated circuit inspections, including helping to develop a revision to Regulatory Information Summary (RIS) 2004-003. The intent of this revision is to inform licensees that the NRC has risk-informed its inspection procedure for post-fire safe-shutdown circuit analysis inspections to concentrate inspections on circuit failures that have a relatively high likelihood of occurrence, and to notify licensees that the NRC will resume inspection of these circuits in January 2005. The revised RIS will also describe the process the NRC will use to implement the ROP for post-fire safe-shutdown circuit inspection findings and the process the NRC will use regarding the use of enforcement discretion to address noncompliances.

OE has continued to support the agency response following the discovery of severe vessel head degradation at Davis-Besse. Specifically, OE activities in FY 2004 included:

- < Supported several 2.206 petitions regarding various regulatory matters at Davis-Besse.
- < Supported development and issuance of a Confirmatory Order prior to restart of Davis-Besse.
- < Additionally, OE has continuously monitored and supported Region III inspection and OI investigation activities regarding the Davis-Besse event in anticipation of enforcement activities that may result.

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

During FY 2004, the enforcement staff reviewed the final rule package for 10 CFR 50.69, "Risk-Informed Categorization and Treatment of Structures, Systems, and Components," and provided comments for consideration in drafting the final rule.

OE reviewed and provided extensive comments on a draft Generic Letter addressing steam generator tube inspections.

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

During 2004, an OE specialist was designated by the EDO as a member of a Differing Professional Opinions (DPO) review panel. The DPO panel was established to ascertain the appropriateness of an NRC analysis and subsequent approval to upgrade the Duane Arnold Energy Center's crane as single-failure proof.

F. Materials Program Support & Initiatives

OE reviews and concurs on rulemakings related to the materials program to ensure the proposed and final rules and the Enforcement Policy and procedures are consistent. For some larger rulemakings, OE staff participate as members of the rulemaking teams developing the draft and final rules. In doing so, OE makes any necessary changes to the Enforcement Policy or procedures. During FY 2004, the enforcement staff participated in the development of, and reviewed the final rule package for, revision of 10 CFR Part 35, "Medical Use of Byproduct Material – Recognition of Specialty Boards," and 10 CFR Part 30, "Security Requirements for Portable Gauges Containing byproduct Material." The OE staff develops related changes to the Enforcement Policy and provides them for publication with revised final rules when necessary.

The OE staff reviewed NRC Regulatory Issue Summary 2004-17, "Revised Decay-in-Storage Provisions for Storage of Radioactive Waste Containing Byproduct Material."

OE staff participated in a working group that was tasked with proposing a rule involving changes to 10 CFR Parts 20, 32, and 150, regarding national source tracking of high-risk sealed sources.

OE staff participated in a working group that was tasked with developing a proposed rule to revise exemption criteria in 10 CFR Part 30.

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

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

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

G. Security Program Support & Initiatives

The events of September 11, 2001, highlighted the need for the NRC to examine its organizational structure, staffing, and training in the security and safeguards areas. After a

thorough review, the Commission determined that greater efficiency and effectiveness would be achieved by consolidating certain NRC safeguards, security, and incident response functions. The Office of Nuclear Security and Incident Response (NSIR) was established and began operating on April 7, 2002. NSIR reports to the Deputy Executive Director for Homeland Protection and Preparedness.

During FY 2004, OE supported and assisted NSIR, NRR, and NMSS with orders modifying licenses to address security issues. In addition to reviewing the content of the orders, OE notified the Commission of the issuance of the security orders and posted the orders within the enforcement document collection in the electronic reading room on the NRC's external Web site to make the orders easier for the public to find.

- < On August 18, 2004, security orders were issued to decommissioning nuclear power plants with spent fuel in the spent fuel pool requiring additional security measure involving access authorization, fitness for duty and behavior observation compensatory measures.
- < On August 18, 2004, a security order was issued to Honeywell International, Inc. (A fuel cycle facility) requiring additional security measures to address access authorization.
- < On August 18, 2004, security orders were issued to all licensees authorized to operate Independent Spent Fuel Storage Installation (ISFSI) facilities requiring additional security measures.
- < On May 7, 2004, security orders were issued to the Indian Point and Browns Ferry facilities requiring additional security measures for their ISFSI facilities.

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

OE also worked closely with NSIR and the Office of State and Tribal Programs to develop a Memorandum of Agreement (under the authority of Section 274i of the AEA and applicable State legislation) between the NRC and States for Agreement State inspectors to perform security inspections to determine compliance with the security orders. OE developed comprehensive enforcement guidance to support this initiative and provided training to both NRC and agreement state inspectors on May 5, 2004. The Region IV enforcement staff provided this training to additional inspectors in July and August 2004. OE also developed a Materials Security Order Enforcement Handbook to ensure inspectors had appropriate guidance for the new inspections.

OE reviewed and provided comments on the ROP Physical Protection SDP and multiple security inspection procedures.

OE continues to support NSIR with the NRC's emergency response capabilities by having an OE representative maintain qualifications as an active member of the Reactor Safety Team. As such, an OE representative participated as a Reactor Safety Team member during the full-scale Catawba exercise on March 16, 2004, as well as the full-scale Indian

Point exercise on June 8, 2004. An OE representative also participated in the Forward Challenge 2004 exercise on May 12, 2004.

OE also continues to support NSIR with the NRC's Continuity of Government (COG) functions by having a representative on call at all hours as an active member of a select, specially-trained, NRC Team.

H. Radioactive Waste Program Support & Initiatives

High-Level Waste Disposal

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

The NRC anticipates that the DOE will submit a license application to construct a high-level waste storage facility at the proposed Yucca Mountain Repository in 2005. The NRC review of the Yucca Mountain application is expected to take up to three years to complete, with the possibility that the application review will be extended for a period of one year. Due to the uniqueness of the proposed facility, OE has been actively engaged in discussions with NMSS and Region IV and has been working with them to develop an enforcement program and strategy, including an appropriate base civil penalty amount and new Enforcement Policy Supplement violation examples. OE is sensitive to DOE's quality assurance issues as well safety conscious work environment issues. Early enforcement issues may involve employee protection, completeness and accuracy of information, and deliberate misconduct. Based on the discussions and a review of the Policy, OE and NMSS are confident that the current guidance is adequate to support enforcement during the license application review period. During the period of the projected license application review period, OE, NMSS and Region IV will develop and incorporate a new Enforcement Policy Supplement specific to the Yucca Mountain repository.

I. Agency Support & Initiatives

In the course of fulfilling its mission, the NRC handles numerous categories of sensitive unclassified information (SUI). Consequently, the agency has a number of policies, procedures, and practices in place to identify, control, disseminate, and manage this information. As a result of identified inconsistencies and increased emphasis on information security, on December 3, 2003, the EDO established a task force to recommend resolution of issues related to the agency's management of SUI.

An OE representative was an active member of this task force. The task force's charter was to evaluate all internally and externally generated categories of SUI with the exception of safeguards information. The issues to be addressed included marking, storage, access, transmission, reproduction, recordkeeping, and destruction requirements. The NRC's criteria for making categories of information or document types available to the public and the development of a plan to implement its recommendations were outside the scope of the task force charter.

The objective of the task force was to analyze the current population of SUI and develop recommendations for clarifying and simplifying the management of this information within the NRC.

The task force followed an analytical approach that encompassed elements of business process analysis and design techniques in performing its activities. In addition, a public meeting was held in February, 2004.

It is expected that the task force's analysis and recommendations (expected at the end of the calendar year) will benefit the agency by reducing the number of categories of SUI and making the related handling requirements easier for the staff to understand and implement in a consistent manner.

OE actively supported the agency's Planning, Budgeting, and Performance Management (PBPM) Process. Aspects of the PBPM process supported by OE include development of agency performance measures and major program outputs, common prioritization of planned accomplishments in each program area, and assessment of the needs and opportunities to streamline the agency's financial management processes and systems.

J. Public Involvement

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

OE wants to actively engage stakeholders by educating them on how the enforcement program is changing to support new initiatives in the agency's oversight programs in conjunction with meeting the agency's performance goals of maintaining safety; reducing unnecessary burden; making NRC activities and decisions more effective, efficient, and realistic; and increasing public confidence. OE has and will continue to conduct more stakeholder meetings to address the enforcement program and enforcement issues. OE has participated in enforcement stakeholder activities, including:

- < OE held a workshop on the use of Alternative Dispute Resolution (ADR) in the enforcement program on December 10, 2003, in the NRC Headquarters facility in Rockville, Maryland.
- < The Director, OE, co-chaired (and the Agency Allegations Advisor and an OE representative served as a panelists) in a breakout session at the 16th annual Nuclear

Regulatory Information Conference (RIC) on March 11, 2004, involving Safety Conscious Work Environment.

- < The Director and Deputy Director, OE, met with consultants from the Office of Pipeline Safety in the Department of Transportation to provide an overview of the NRC Enforcement Program on September 24, 2004. The consultants were meeting with managers in a number of federal agencies to discuss how they conduct enforcement of their requirements working toward making recommendations to the Office of Pipeline Safety on how to improve that organization's enforcement approach.
- < The Deputy Director, OE, provided a presentation to two Bulgarian assignees on the NRC Enforcement Program on September 10, 2004.
- < The Chief of the Enforcement Policy and Program Oversight Section, OE provided presentations and participated in panels on the Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48(c)) and the draft interim enforcement discretion policy on operator manual actions during the Nuclear Energy Institute sponsored Fire Protection Information forum in Key Biscayne, Florida from September 19-22, 2004. The main audience for this forum was fire protection engineers from commercial nuclear power plants.
- < In July 2004, Region III staff provided training to DOL-OSHA investigators on NRC's allegation and enforcement processes and how the NRC handles discrimination cases.
- < On August 19, 2004, the Director of the Region IV enforcement staff provided training on NRC's power reactor enforcement program for visiting dignitaries from Mexico's nuclear regulatory agency. At the same time, the region's enforcement specialist briefed the visitors on a specific enforcement case and predecisional enforcement conference that they had been invited to attend.

To provide accurate and timely information to all interested stakeholders and enhance the public's understanding of the enforcement program, OE continues to electronically publish enforcement information on the NRC's public Web site. Note that, consistent with NRC practices and policies, security-related actions and activities are not included on the NRC's public Web site. The **Enforcement** page under the **What We Do** icon on the home page includes a variety of information such as the current Enforcement Policy; copies of significant enforcement actions issued to reactor and materials licensees, non-licensees (vendors, contractors, and certificate holders), and individuals; and upcoming predecisional enforcement conferences. OE also includes security orders that impose compensatory security requirements on various licensees in the enforcement document collections.

In an effort to increase stakeholder involvement in Enforcement Policy and guidance development, OE established a public participation page on the Enforcement web site. OE has and will continue to use this site as a way for interested stakeholders to provide input on various enforcement issues (such as the Discrimination Task Force and Alternative Dispute Resolution).

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

K. Enforcement Guidance

OE provides guidance to assist the NRC staff in implementing the Commission's enforcement program consistent with NRC's Enforcement Policy in the *NRC Enforcement Manual* (Manual). Although it is available to the public, it is intended for internal use by the NRC. The Manual contains procedures, requirements, and background information used by the staff who develop or review enforcement actions.

Because the enforcement process changes from time to time, the Manual is designed as a living electronic document that is available on the **Enforcement** page of the NRC's public Web site. This strategy ensures that users will have access to the latest enforcement guidance.

During FY 2004, OE issued two change notices to the Manual:

- < **Change Notice Number 4** was issued on March 4, 2004, and added EGM 04-001, "Use of Enforcement Discretion During Transitional Force-On-Force Exercises," to Appendix A. This EGM replaces EGM 03-001, "Use of Enforcement Discretion During Force-On-Force Pilot Program Exercises Conducted to Analyze Power-Reactor Licensees' Protective Strategies." Therefore, EGM 03-001 is withdrawn.
- < **Change Notice Number 5** was issued on August 16, 2004, and added EGM 99-005 (Revision 2), "Interim Enforcement Policy for Licensees Possessing Generally Licensed Devices Subject to the Registration Requirements in 10 CFR 31.5(c)(13)," to Appendix A. This EGM replaces the previous revision that was issued on April 27, 2001.

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

L. Internal Communication and Enforcement Training

Successful communication for internal stakeholders is vital to ensure that the enforcement program is both understood and acknowledged as an integral, valuable component of the agency's regulatory programs. Internal communication initiatives during FY 2004 include:

- < The Director, OE, routinely briefed the Deputy EDOs on the status of enforcement actions, policy issues, and new initiatives.
- < The Director, OE, participated in periodic meetings with the Commissioners on enforcement issues.
- < Headquarters enforcement staff, regional enforcement staff, and program office enforcement coordinators participated in the Annual Counterpart Meeting on November 1-4, 2004, to address enforcement issues and new initiatives and issues in the program offices.
- < Headquarters enforcement staff, regional enforcement staff, and program office enforcement coordinators participated in weekly conference calls to address enforcement issues and enforcement cases.

- < A member of headquarters enforcement staff attended a Region IV Counterpart Meeting to discuss the issues associated with Yucca Mountain.

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

- < An OE representative presented, "The NRC: What It Is and What It Does," on June 23, 2004, and January 22, 2004.
- < An OE representative described the enforcement process, as it applies to NRC Master Materials Licenses (MMLs), to headquarters and regional staff who are involved with the MML program, in May 2004.
- < An OE representative presented enforcement training for the course, "Licensing and Evaluation of a High-Level Repository (H-415)," on May 19, 2004.
- < An OE representative addressed a group of regional fire protection inspectors on the status of enforcement guidance related to fire protection issues, including NFPA 805, associated circuits, and operator manual actions in July 2004.
- < OE developed comprehensive enforcement guidance and provided training for NRC and Agreement State inspectors in Albuquerque, New Mexico on May 5, 2004. The training was given to inspectors who would conduct materials security inspections following the issuance of orders to certain categories of materials licensees. The orders established new requirements for maintaining the security of licensed radioactive materials.
- < The Director and Deputy Director, OE provided enforcement training to new OI investigators on September 22, 2004.
- < Enforcement staff routinely provide lessons learned and refresher training on selected enforcement topics during the regional inspector counterpart meetings. During FY 2004, the focus of OE's presentation was on the ROP/Enforcement Process Improvement Initiative, including some of the differences between the two programs that cause confusion, and options for resolution. Presentations were made in:
 - < Region I on December 4, 2003,
 - < Region II on December 11, 2003,
 - < Region III on December 10, 2003, and
 - < Region IV on December 3, 2003.

Regional enforcement staff also provided training on the enforcement program in the regional offices.

- < Region I enforcement staff provided training to new hires and interns in October 2003, covering various aspects on the use of traditional enforcement versus SDP enforcement for inspection findings.

- < Region I enforcement and allegation staff provided refresher training to materials inspectors covering various aspects of the enforcement and allegation programs during the December 2003 counterpart meeting.
- < Region I enforcement and allegation staff developed a read and sign document for the technical staff for the refresher training for the enforcement and allegation programs in March 2004.
- < Region I enforcement staff supported DNMS in performing a lessons-learned concerning a predecisional enforcement conference letter that was issued prematurely without enforcement concurrence.
- < Region I enforcement staff provided the technical staff with highlights from EGM 99-005, "Interim Enforcement Policy for Licensees Possessing Licensed Devices Subject to the Registration Requirements in 10 CFR 31.5(c)(13)."
- < Region I enforcement staff provided individual training to newly hired inspectors on a continuing basis throughout the period .
- < During FY 2004, Region II staff continued to provide training to all regional Nuclear Safety Interns and other new hires on the Enforcement Policy and Process. This training focused on: the ROP; the "life cycle" of a violation from the time of identification during inspection until final disposition; the Enforcement Policy and its supplements; the use of preliminary enforcement conferences; the inspection process and wrongdoing; and, the role of OI in the enforcement process, the allegation process and enforcement.
- < Region III provided year-round enforcement and allegation orientation training to numerous new employees.
- < Region IV enforcement staff provided training on January 14, 2004, April 13, 2004, and July 14, 2004, to all new inspectors to enable them to complete their qualification journals and prepare them for qualification boards.
- < Region IV provided training on May 25, 2004, to several Engineering Associates, area college students who were employed by the region during the summer months.
- < Region IV enforcement staff conducted specialized enforcement and allegation training for NRC and Agreement State inspectors in Albuquerque, New Mexico in July and August 2004. The training was given to inspectors who would conduct materials security inspections following the issuance of orders to certain categories of materials licensees. The orders established new requirements for maintaining the security of licensed radioactive materials.
- < Region IV enforcement staff participated on all inspector qualification boards conducted in FY 2004 to assure that questions addressed aspects of the enforcement program.

M. Reviews

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

Review of Fuel Cycle Facility Inspection Reports

OE completed a review of non-power reactor inspection reports (IRs). The purpose of the review was to determine whether the violations dispositioned in the IRs conformed with the Enforcement Policy in terms of the Severity Level characterization, appropriateness of NOV/NCV and/or minor violation criteria, technical and regulatory accuracy, adequate violation supporting documentation and uniformity and consistency within the agency.

The review covered FY 2001-2004 and included inspections conducted by Regions II, III, IV, and NMSS. Twenty-three IRs were reviewed. Of the 23 IRs, 21 were dispositioned with Severity Level IV, NCV and/or minor violations and two IRs were dispositioned without any violations.

The results of the review indicated that, in general, the Enforcement Policy and its associated guidance documents were followed in the execution of the agency's enforcement authority. However, improvements in the documentation of violations can be made, to ensure the clarity, consistency, and completeness of such documentation.

Review of Confirmatory Action letters (CAL)

OE completed a review of all Confirmatory Action Letters (CALs) issued by NRC for calendar years 2002 and 2003. The purpose of the review was to assure that the CAL's were prepared, issued, and when appropriate, closed according to the procedures provided in the Manual.

Thirty-one CALs were issued in 2002, and 25 CALs were issued in 2003. The CALs that were reviewed met most of the criteria for the review. However, the review identified slight inconsistencies in the numbering conventions used. In addition, one number was used twice. Feedback was provided to the issuing Offices, and all identified inconsistencies were promptly resolved.

Review of Chilling Effect Letters (CEL)

OE reviewed the chilling effect letters prepared by regional and Headquarters personnel over the past three years. The purpose of the review was to assure that the CELs followed the format provided in the Manual, that they were assigned an EA number and that the information captured in EATS was accurate. In addition, each case was reviewed to determine if there was any information received from the licensee and what action the NRC took once it received the information.

The review found that all of the CELs reviewed adhered to the format provided in the Manual. All the CELs were captured by an Enforcement Action (EA) number. In some cases, minor errors in the accuracy of information were found in the Enforcement Action

Tracking System database, and all of those errors were corrected during the course of the review. In addition to CELs issued due to a DOL finding of discrimination, CELs were issued for cases where the NRC had concerns about the Safety Conscious Work Environment (SCWE) at the licensed facility, and the review identified the need for format guidance for this type of CEL. For these CELs, the existing guidance was modified to meet the intent of the letter. In response to recommendations from the review, OE will make changes to the Manual to ensure consistency across the Regions in our communications with the licensee.

Review of External Web Site for Enforcement and Allegation Programs

OE completed a review of the external web site for the Enforcement and Allegations Programs. The purpose of the review was to survey the content on the external web site maintained for OE to ensure and certify through sampling, that the OE web site for the Enforcement and Allegations Programs is current, accurate, and in compliance with government and NRC standards.

The review evaluated a sample size of approximately 14% of the approximately 1400 web pages of content. The sampling was randomly selected with a bias to ensure all subcategories were included in the survey. Approximately 98% of the web pages were error free. In the three instances where errors were identified, the inaccuracy was considered minor and would not have adversely effected user understanding of the material facts conveyed by the web page. In one of these cases, the public would not be aware of one escalated action from 1997. All identified discrepancies were promptly corrected and deployed to the external web site, in compliance with Management Directive 3.14.

Based on the review findings, OE concluded that the procedures and processes implemented by OE are adequate to ensure the quality of the content of the web pages for the Enforcement and Allegations Programs.

Review of Enforcement Action Strategy Forms

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

The review found that in most cases, Enforcement Action strategy forms were included in all three locations. However, there were instances where Enforcement Action strategy forms were not included in the Enforcement Action strategy forms notebook or the EA folder. There were also instances where a copy of the Enforcement Action strategy form could not be located in any of the three locations. All identified discrepancies were promptly resolved.

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

Regional Reviews

In addition to headquarters lead reviews, the regional enforcement staff also conducted reviews of the region's enforcement program.

Region I

During FY 2004, the Region I enforcement staff conducted two reviews of the region's enforcement and allegation programs. Region I reviewed non-escalated reactor and materials enforcement actions to determine if (1) enforcement issues were adequately described in the inspection reports, (2) they were properly dispositioned in accordance with the Enforcement Policy and applicable enforcement guidance, and (3) violations were properly documented and received the appropriate significance categorization either by SDP color or severity level. In addition, Region I reviewed allegation panel records and enforcement panel records to determine whether (1) the bases for Region I's proposed actions were adequately documented in the Allegation Review Board (ARB) decision records, enforcement panel worksheets or the enforcement action (EA) strategy forms; and (2) allegation files adequately captured and addressed all concerns raised by alleged. The reviews determined that, for the most part, non-escalated enforcement actions (1) were properly dispositioned in accordance with NRC guidance; (2) provided adequate justification to support proposed actions in ARB Disposition Records and in Enforcement Panel Worksheets and EA Strategy Forms; and (3) properly captured and adequately addressed all concerns initially raised by alleged. Some issues that were identified included failing to request an EA number from OE concerning a Notice of Enforcement Discretion (NOED), two violations were issued to materials licensees without indicating the duration of the condition/violation, adequate justification for not proposing a civil penalty in two cases was not included in the Enforcement Panel Worksheets, and some ROP findings were issued as green without being screened for more than minor significance.

Region II

Region II conducted two reviews. The first, a Review of Escalated Enforcement Documents in ADAMS, was conducted on October 31, 2003, for the purpose of assessing the retrievability of RII escalated enforcement documents from ADAMS. This review was a followup to the one conducted by OE in 2002 which first highlighted problems with retrievability of such documents from ADAMS. Region II's review found that escalated enforcement documents were being properly profiled and inputted in ADAMS. However, Region II found that a subset of enforcement documents, Individual Actions, was not being appropriately profiled and inputted in ADAMS. This situation was cured following the review.

The second assessment, performed on February 13, 2004, was a Review of Region II's Closure of LERs. This review was performed to determine if the staff's closure of LERs was consistent with the guidance contained in MC 0612, and the Manual. Region II's review found that most closure documentation was very good. The documentation correctly segregated noncompliance with respect to identification (i.e., licensee identified, inspector identified or self revealing); narratives for non-cited violations were succinct and referenced appropriate supporting information; and, violations of minor significance were appropriately documented as such. The review identified two LERs which described issues that should have most likely been cited as violations. These issues were highlighted to the respective inspectors and their branch management.

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

Region III

The Region III enforcement staff provides a monthly count of all reactor nonescalated enforcement to OE to include in the NRC's routine report to Congress. In FY 2004, Region III reviewed selected examples of this information.

The Region III enforcement staff also reviews all materials nonescalated enforcement on a monthly basis and provides statistics on these cases to OE.

In the second quarter of FY 2004, Region III enforcement staff reviewed 10 percent of the allegation files that had been closed during that quarter, looking at these actions specifically in terms of the effectiveness metric.

Region IV

The Region IV enforcement staff typically participated in inspection debriefings for reactor and materials inspections to ensure that violations of requirements were being properly dispositioned.

3. Escalated Enforcement and Administrative Items

Escalated enforcement (or significant enforcement) is defined as:

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

Note that an enforcement case or enforcement action issued to a licensee may include more than one individual escalated enforcement item. For example, a licensee could receive an enforcement action that included a proposed civil penalty for a Severity Level III violation and an escalated NOV for a Severity Level III violation without a civil penalty. For the purposes of this report, this action would be reflected as one civil penalty and one escalated NOV.

Note that six out of the 67 escalated NOVs and three out of the 28 civil penalty actions involved security-related issues and therefore will not be addressed in any detail in this report.

Figure 1.
Escalated Enforcement for FY 2004

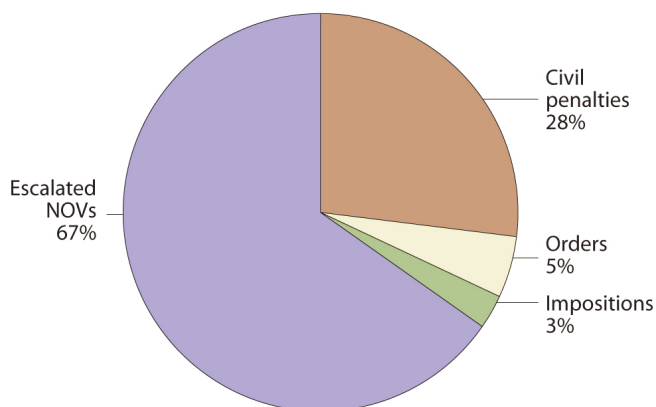


Figure 3 on page 33 includes a numerical breakdown of escalated enforcement items issued by each regional and program office. Figure 4 on page 35 provides a breakdown of escalated enforcement items based on the type of licensee, non-licensee, or individual.

Enforcement Actions With OI Reports

Thirty-four percent of the 100 proposed escalated actions (excluding the three impositions) had an OI report associated with them.

- < 17 out of the 67 escalated NOVs (25%).
- < 15 out of the 28 proposed civil penalties (54%).
- < 2 out of the 5 enforcement orders (excluding 3 impositions) (40%).

Timeliness of Enforcement Actions

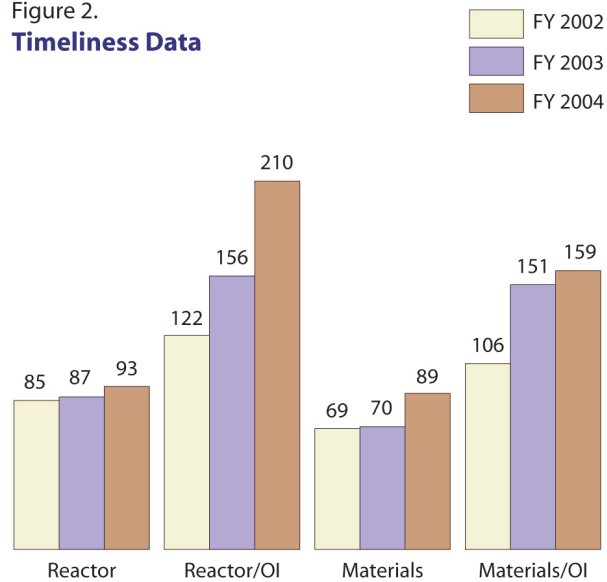
As an agency, the NRC adheres to the Principles of Good Regulation, including independence, openness, efficiency, clarity, and reliability. Efficiency includes recognition that regulatory decisions should be made without undue delay.

The performance measure goals for issuing escalated enforcement actions (excluding impositions) are:

- < 100% of non-investigation cases are completed within 180 calendar days; and
- < 100% of investigation cases are completed within 360 days of NRC processing time.

During FY 2004, these standards were met, with enforcement action averages for reactor cases, reactor cases with investigations (Reactor/OI), materials cases, and materials cases with investigations (Materials/OI) included in Figure 2.

Figure 2.
Timeliness Data



The measuring period starts on the latest of the following dates:

- < the date of the inspection exit (for non-OI cases);
- < the date of the OI memorandum forwarding the OI investigation to the staff (for OI cases);
- < the date that the Department of Justice says NRC may proceed (for cases referred to the DOJ); or
- < the date of the Department of Labor decision that is the basis for the action.

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

It should be noted that the methodology to calculate "NRC processing time," was refined and implemented in FY 2003. As used in FY 2003 and FY 2004, NRC processing time is defined as the number of calendar days between issuance of an escalated enforcement action and the date of the OI report *minus* any time period not within the enforcement staff's control, such as pending DOL decisions. Using the FY 2003 methodology to calculate the FY 2002 data yields an average of 169 days (versus 122 days) for reactor/OI cases and 133 days (versus 106 days) for materials/OI cases.

While timeliness standards were met in FY 2004, there was an increase in the average "NRC processing time." OE is taking steps to address this increase. OE is actively working with other NRC offices to improve and streamline the review process without sacrificing the quality of these actions. OE has also realigned internal office resources to improve the timeliness of these actions.

A. Escalated Notices of Violation (Without Civil Penalties)

During FY 2004, the agency issued 67 escalated NOVs (without civil penalties). (This number reflects the number of enforcement items versus the number of enforcement cases issued during the year.) Eleven of these items were issued to individuals. See Section 5 for more information on enforcement items issued to individuals and other non-licensed persons (i.e., vendors and certificate holders). Eighteen of these issues were associated with a White SDP finding from the ROP, one issue was associated with a Yellow SDP finding, and one issue was associated with a Red SDP finding. Appendix A includes a short summary description of each of the enforcement items issued to licensees, Appendix D, and Appendix E include summaries of actions issued to individuals and non-licensees, respectively. Note that six of the 67 escalated NOVs involved security-related issues and therefore will not be addressed in any of the appendices.

B. Civil Penalty Actions

During FY 2004, the agency issued 28 civil penalty issues. Fourteen of these 28 civil penalty issues involved willfulness. Appendix B includes a short summary description of each of the civil penalty actions. Table 2 includes statistical information on civil penalties. As stated before, an enforcement action may include more than one individual civil penalty issue. Note that three civil penalty actions involved security-related issues and therefore will not be addressed in any of the appendices.

C. Orders

During FY 2004, the agency issued five enforcement orders. One of the orders was issued to a licensed individual based on deliberate misconduct. (See Section 5 for more information on enforcement actions issued to individuals, vendors, and certificate holders.) In addition to these orders, three civil penalty imposition orders were issued. Appendix C includes short summary descriptions of the orders and impositions that were issued.

D. Demands for Information

A Demand for Information is an administrative enforcement tool issued to a licensee or other person that enables the NRC to determine whether an order or other enforcement action should be issued. During FY 2004, one Demand for Information was issued. The summary for this action follows.

***Safety Light Corporation
Bloomsburg, Pennsylvania***

EA-03-219

On December 19, 2003, a Demand for Information was issued requesting information regarding the licensee's failure to provide monthly financial deposits to an NRC trust fund to be used for decommissioning and decontamination of the licensee's facility.

E. Escalated Enforcement Trends

During FY 2004, the agency issued 103 escalated enforcement items. The average number of escalated enforcement items issued over the last five years is 108. Figure 5 shows graphical representations of overall enforcement trends since FY 1995. Table 2 includes enforcement trends by type of licensee, non-licensee, or individual since 1995.

It should be noted that direct correlations between the last 10 fiscal years is difficult because of the major policy changes that have occurred over the years. With limited exceptions, the number of escalated enforcement issues by each category is similar to last year. The number of escalated issues to fuel facilities rose from two in FY 2003 to nine in FY 2004. Although the number of escalated issues for operating reactors in FY 2004 is greater than FY 2003 (30 versus 23), the number of escalated issues for operating reactors in FY 2002 was 28. The average number of escalated issues to operating reactors over the last 5 years is 26. Similarly, although the number of escalated actions issued to unlicensed individuals dropped from 25 in FY 2003 to nine FY 2004, a similar cyclic pattern is recognized when reviewing the number of issues from FY 2001, FY 2002, and FY 2003 (21, 9, and 25, respectively.) The average number of actions issued to unlicensed individuals since FY 1995 is 21. Actions against unlicensed individuals are only taken when actions are deliberate. Whether or not individuals have engaged in deliberate misconduct and how many may be involved in a particular case is highly variable. In addition, given the complexity of these cases, it is not unusual for cases involving individuals to be initiated in one fiscal year and dispositioned in another fiscal year. Therefore, such variations in the number of actions against unlicensed individuals from year to year is not unusual.

4. Cases Involving Exercise of Discretion

Section VII of the Enforcement Policy addresses those cases where, notwithstanding the normal guidance contained in the Policy, the NRC may choose to exercise discretion. In these cases, the Commission may either escalate or mitigate enforcement sanctions to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case. During FY 2004, 21 cases that included significant issues involved an exercise of discretion. Nine cases involved an escalation of sanctions and 12 cases involved a mitigation of sanctions. These cases are addressed below.

Section VII.A

Section VII.A of the Enforcement Policy provides that the NRC may increase a sanction up to its full enforcement authority where the action is warranted without applying the normal civil penalty assessment process (Section VI.C.2). It also provides for either increasing the amounts of civil penalties or proposing civil penalties where the normal process would result in no civil penalty. During FY 2004, nine cases involved this exercise of discretion. Of these cases, five cases involved the failure to maintain control of licensed material.

ABB Inc.
Columbus, Ohio

EA-03-196

On November 26, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem involving the failure to secure from unauthorized removal or limit access to licensed material in an unrestricted area, and failure to control and maintain constant surveillance of this licensed material, resulting in the loss of the source into the public domain (most likely the county landfill). Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, a base civil penalty was assessed in accordance with Section VII.A.1.g of the Enforcement Policy to reflect the significance of maintaining the control of licensed material.

CTI Consultants, Inc.
Chantilly, Virginia

EA-03-226

On March 3, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material in a controlled or restricted area, resulting in the loss of the gauge during transport. Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, a base civil penalty was assessed in accordance with Section VII.A.1.g of the Enforcement Policy to reflect the significance of maintaining control of licensed material.

Pepperidge Farm, Inc.
Norwalk, Connecticut

EA-04-074

On June 21, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III violation involving the inappropriate transfer of a generally-licensed device to a person (a salvage yard and then to a metal recycling center) not authorized to receive the device. Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, a base civil penalty was assessed in accordance with Section VII.A.1.g of the Enforcement Policy to reflect the significance of maintaining control of licensed material.

PMK Group, Inc.
Cranford, New Jersey**EA-04-117**

On August 23, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III problem involving the willful failure to secure from unauthorized removal or access a portable moisture density gauge in a unrestricted area, and failure to control and maintain constant surveillance of this licensed material. Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, a base civil penalty was assessed in accordance with Section VII.A.1.g of the Enforcement Policy to reflect the significance of maintaining control of licensed material.

Saint-Gobain Performance Plastics Corporation
Wayne, New Jersey**EA-04-035**

On May 5, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III violation involving the failure to secure from unauthorized removal and failure to control and maintain constant surveillance of licensed material in a controlled area, resulting in the loss of the gauge. Although the civil penalty would have been fully mitigated based on the normal civil penalty assessment process, a base civil penalty was assessed in accordance with Section VII.A.1.g of the Enforcement Policy to reflect the significance of maintaining control of licensed material.

Schlumberger Technology Corporation
Sugar Land, Texas**EA-03-010**

On October 14, 2003, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$90,000 was issued for three Severity Level III problems involving: (1) the failure to keep 13 public radiation doses within NRC limits (\$78,000); (2) the willful failure to perform radiation surveys, and failure to maintain control of a radioactive well-logging source (\$6,000); and (3) the failure to follow emergency procedures and secure the source after it was found (\$6,000). Although the civil penalty for the first issue would have been fully mitigated based on the normal civil penalty assessment process, given the importance that NRC attaches to protecting members of the public from radiation exposures, the NRC exercised discretion in accordance with Section VII.A.1 of the Enforcement Policy and assessed a separate \$6,000 base civil penalty for each of the 13 radiation overexposures.

**State of Alaska Department of Transportation & Public Facilities
Anchorage, Alaska**

EA-03-190

On March 15, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$15,000 was issued for a willful Severity Level II problem involving radiation exposures in excess of NRC's annual public exposure limit and failure to perform surveys appropriate to demonstrate compliance with NRC dose limits for individual members of the public. Although application of the normal civil penalty assessment process would have resulted in a civil penalty of twice the base for the Severity Level II problem, the NRC exercised enforcement discretion to increase the amount of the penalty based, in part, on (1) multiple instances of individuals receiving doses in excess of NRC's annual limits; (2) the willfulness that resulted in these doses; and (3) particularly poor performance in implementing the radiation safety program, including the missed opportunities to have identified this problem earlier and taken action to prevent some of the exposures

**U.S. Inspection Services
Dayton, Ohio**

EA-03-204

On June 15, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$19,200 was issued for a Severity Level II problem involving multiple violations related to an overexposure of radiographer, including issues such as failure to survey, failure to calibrate and inspect equipment, and failure to follow procedures. Although normal application of the civil penalty assessment process would have resulted in a base penalty, the NRC exercised discretion and proposed twice the base penalty because of the licensee's particularly poor performance.

**Westinghouse Electric Company
Columbia Nuclear Fuel Plant**

EA-04-096

On July 28, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$24,000 was issued for a Severity Level II problem involving multiple violations related to the discovery of ash deposits in the incinerator off-gas system at concentrations that exceeded the bounding assumptions of the approved safety basis. Although the normal civil penalty assessment process would have fully mitigated the civil penalty, the NRC exercised enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy and proposed a base civil penalty to reflect the safety significance of the issue that resulted in a significant increase in the likelihood of a nuclear criticality event.

Section VII.B.1

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

Section VII.B.2

Section VII.B.2 provides that civil penalties or NOVs need not be issued for violations identified during extended shutdowns or work stoppages if they are licensee-identified, based upon activities prior to the events leading to the shutdown, non-willful, and not categorized at Severity Level I. This exercise of discretion provides that the licensee's decision to restart the plant requires NRC concurrence. During FY 2004, no cases involved this exercise of discretion.

Section VII.B.3

Section VII.B.3 provides that civil penalties or NOVs need not be issued for old design issues that are licensee-identified and corrected and were not likely to have been identified earlier through routine surveillance. During FY 2004, no cases involved this exercise of discretion.

Section VII.B.4

Section VII.B.4 provides that civil penalties or NOVs need not be issued for violations identified due to previous escalated enforcement action if the violation was licensee-identified, it has a similar root cause as a previous escalated action, it does not substantially change the regulatory concern out of the initial action, and it was corrected. During FY 2004, one case involved this exercise of discretion.

**Duke Energy Corporation
Oconee****EA-03-189**

On October 24, 2003, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.4 of the Enforcement Policy for an additional violation involving tornado mitigation strategy.

Section VII.B.5

Section VII.B.5 provides that civil penalties or NOVs need not be issued for violations involving discrimination issues if they are licensee-identified and corrected. During FY 2004, two cases involved this exercise of discretion.

**Day and Zimmerman Nuclear Power Systems
Point Beach Nuclear Plant****EA-04-105**

On September 29, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.5 of the Enforcement Policy for a violation involving discrimination against a contractor worker for raising safety concerns at the Point Beach Plant. Discretion was warranted to encourage prompt correction of violations, a safety conscious work environment, and resolution of employment discrimination issues without the intervention of the NRC. The NRC also issued enforcement discretion to the Nuclear Management Company (see EA-04-038 below).

**Nuclear Management Company, LLC
Point Beach Nuclear Plant****EA-04-038**

On September 29, 2004, discretion was exercised in accordance with Section VII.B.5 of the Enforcement Policy and a Notice of Violation or civil penalty was not issued to Nuclear Management Company for a Severity Level III violation for discrimination against an employee at their Point Beach Nuclear Plant given the prompt identification and corrective actions taken by the licensee without the need for NRC intervention to resolve the matter. The NRC also issued enforcement discretion to the contractor, Day and Zimmerman Nuclear power Systems (see EA-04-105).

Section VII.B.6

Section VII.B.6 provides that civil penalties or NOVs need not be issued for violations involving special circumstances. During FY 2004, nine cases involved this exercise of discretion.

***Department of the Army
Natick, Massachusetts***

EA-03-003

On October 31, 2003, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a Severity Level III violation involving the failure to secure, or maintain surveillance over licensed material in detectors used to monitor and detect chemical warfare agents. After considering the circumstances associated with this case, the NRC decided to exercise enforcement discretion and not issue any enforcement action for this violation because (1) there were no known actual consequences resulting from the loss of the detectors; (2) the potential consequences of the losses were minimal; (3) inventory relocation of the detectors increased significantly with the increased use of the detectors within the Army and Army National Guard (ARNG), given the activation and/or deployment of many Reserve and ARNG units; (4) the detectors are camouflaged, making them difficult to find if dropped or detached from other equipment; and (5) the total number of detectors lost is small compared to the more than 60,000 detectors that the licensee possesses, demonstrating that the licensee's accountability system has been generally effective. In addition, for the reasons stated above, the NRC plans to amend the license to exempt the Army from the requirements in 10 CFR 20.1801, 20.1802, and 20.2201 when they are storing or using devices intended to monitor for and detect chemical warfare agents during military exercises or maneuvers on U.S. Government property.

***Dominion Nuclear Connecticut, Inc.
Millstone 2***

EA-04-001

On May 13, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a violation involving reactor coolant system pressure boundary leakage. Discretion was warranted because the leakage was not avoidable by reasonable licensee quality assurance measures or management controls.

***Duke Energy Corporation
Catawba***

EA-03-191

On October 20, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a violation involving the inoperability of the component cooling water pump. Discretion was warranted because the violation was not attributable to equipment failure that was avoidable by reasonable licensee quality assurance measures or management controls.

**Entergy Nuclear Operations, Inc.
Pilgrim****EA-04-021**

On January 29, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a violation involving reactor coolant system pressure boundary leakage. Discretion was warranted because the leakage was not avoidable by reasonable licensee quality assurance measures or management controls.

**Guthrie Healthcare System
Sayre, Pennsylvania****EA-04-025**

On March 19, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrain from taking enforcement action for the failure to perform a Quality Management Plan review in 2002 for prostate seed implants performed during 2001 as required by 10 CFR 35.32 (revised in October 2002, the regulation was in effect at that time). Discretion was warranted in this case because the revised 10 CFR Part 35 no longer requires this review.

**SGL Carbon, LLC
Charlotte, North Carolina****EA-03-004**

On June 24, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrain from taking enforcement action for a Severity Level III violation involving SGL's numerous large exports of bulk, non-fabricated, nuclear-grade graphite made without a specific license. Discretion is warranted in this case because the violations were self disclosed and corrected and because the NRC is in the process of pursuing rule changes that would permit the exports that were previously in violation (i.e., exports intended for non-nuclear end use).

**Showa Denko Carbon, Inc.
Ridgeville, South Carolina****EA-03-150**

On June 24, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrain from taking enforcement action for a Severity Level III violation involving Showa Denko's numerous large exports of bulk, non-fabricated, nuclear-grade graphite made without a specific license. Discretion is warranted in this case because the violations were self disclosed and corrected and because the NRC is in the process of pursuing rule changes that would permit the exports that were previously in violation (i.e., exports intended for non-nuclear end use).

**Southern Nuclear Operating Company
Vogtle****EA-04-085**

On August 23, 2004, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a violation involving the inoperability of a residual heat removal pump. Discretion was warranted because the violation was not attributable to equipment failure that was avoidable by reasonable licensee quality assurance measures or management controls.

On March 15, 2004, a Notice of Violation was issued for a Severity Level II violation based on the licensee discriminating against one of its employees for raising safety concerns regarding radiation exposures to other employees. The NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty based on the licensee's commitments included in the Confirmatory Order issued in conjunction with the Notice of Violation. (See EA-03-126 in Appendix C.)

5. Actions Against Individuals and Non-Licensees

During FY 2004, the agency issued 12 actions against individuals and non-licensees. The following sections provide a breakdown of the actions based on whether the actions were issued to licensed or unlicensed individuals, or non-licensees (vendors, contractors, or certificate holders). The section on orders includes orders that were issued to individuals that prohibited or limited their activities in NRC-licensed activities during the fiscal year.

A. Actions Against Licensed Individuals

During FY 2004, the agency issued one immediately effective Order prohibiting involvement in NRC-licensed activities to a licensed individual. Appendix D includes a short summary description of this action.

B. Actions Against Unlicensed Individuals

During FY 2004, the agency issued 11 NOVs to unlicensed individuals. Note that one of the actions involved security-related information and therefore, will not be described in this report. Appendix D includes a short summary description of each of the 10 actions.

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

During FY 2004, the agency issued one order to a non-licensee (certificate holder). Appendix E includes a short summary description of this action.

6. Cases Involving Discrimination

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

The NRC places a high value on nuclear industry employees being at liberty to raise potential safety concerns, regardless of the merits of the concern, to both licensee management and the NRC. Unlawful adverse actions taken against employees for raising safety concerns may

create a "chilling effect" on the employee or other workers who may wish to raise concerns. That is, employees may not believe they can raise concerns without fear of retaliation.

Therefore, one of the goals of the NRC's enforcement program is to ensure, through appropriate enforcement action against a licensee or licensee contractor (and when warranted, against the individual personally responsible for the act of discrimination), that adverse employment actions are not taken against licensee or contractor employees for raising safety concerns, creating a work climate that has a chilling effect on the individual or others who may wish to report safety concerns.

During FY 2004, the agency issued four escalated enforcement actions (including five issues) for violations involving discrimination.

***Carolina Power & Light Company
Brunswick, Robinson, Harris***

EA-04-028

On April 7, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$88,000 was issued for a Severity Level II violation for discriminating against the former Corporate Superintendent of Site Access Authorization for Carolina Power & Light for raising safety concerns.

***Hayward Tyler, Inc.
Colchester, Vermont***

EA-04-119

On September 16, 2004, a Notice of Violation was issued for a Severity Level II violation involving discrimination against a quality control inspector who worked for the contractor for engaging in a protected activity.

***State of Alaska Department of Transportation & Public Facilities
Anchorage, Alaska***

EA-03-126, EA-04-060

On March 15, 2004, a Notice of Violation was issued for a Severity Level II violation based on the licensee discriminating against one of its employees for raising safety concerns regarding radiation exposures to other employees. An immediately effective Confirmatory Order was also issued confirming the licensee's commitment to take extensive actions to ensure compliance with employee protection requirements and to ensure it has established and will maintain a Safety Conscious Work Environment.

On December 19, 2003, an immediately effective Confirmatory Order was issued to confirm certain commitments, as set forth in the Order, and to ensure that processes used at the University of Missouri Research Reactor for addressing employee protection and safety concerns will be adequately enhanced.

In addition to these actions, the staff continued to support hearing activities associated with the enforcement action against Tennessee Valley Authority for discriminating against a former corporate employee. On August 18, 2004, the Commission issued Memorandum and Order, CLI-04-24 (Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2 and 3)) affirming in part and reversing in part the Atomic Safety and Licensing Board (ASLB) decision regarding a discrimination case involving Tennessee Valley Authority and a former corporate employee. The case was remanded to ASLB. See the discussion in Appendix F for additional information on this case (EA-99-234).

Figure 6 on page 43 includes escalated enforcement trends since fiscal year 1995 for discrimination cases. The average number of cases involving discrimination over the last five years is six.

7. Hearing Activities

During FY 2004, two cases had some type of hearing activity, i.e., hearing request, settlement, dismissal, discovery, hearing proceeding, appeal, etc. Appendix F includes a short summary of these cases.

8. 10 CFR 2.206 Petitions

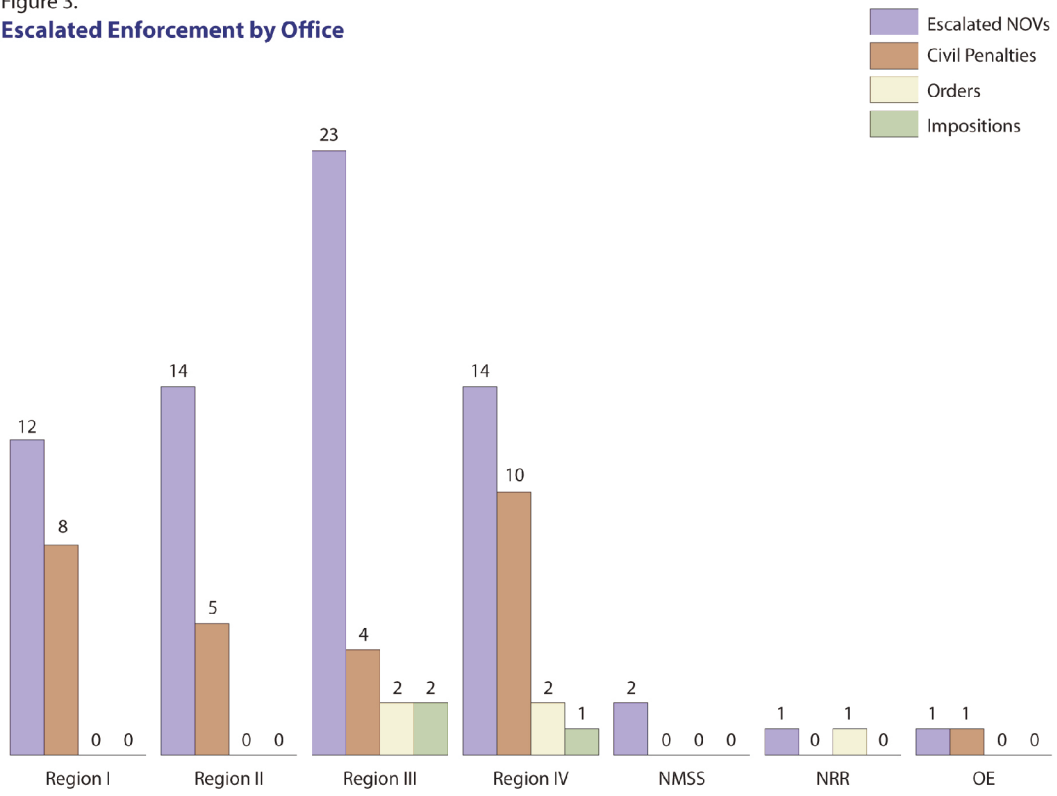
During FY 2004, there were no cases that had any type of petition activity pending before the Office of Enforcement, i.e., petition request, NRC staff review, Director's Decision, etc.

9. Withdrawn Actions

During FY 2004, there were no escalated enforcement actions that the NRC withdrew.

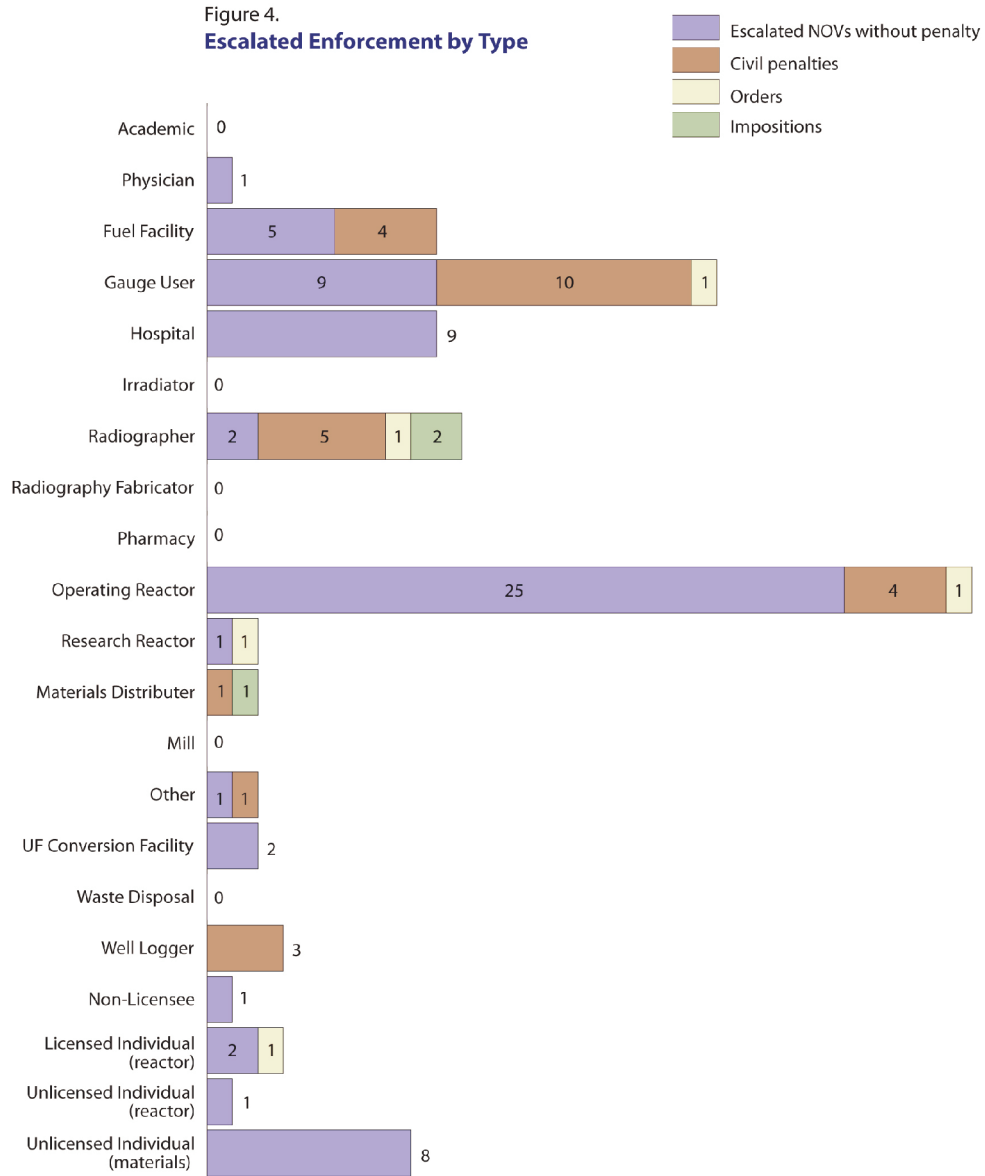
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Figure 3.
Escalated Enforcement by Office



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

Type of Licensee	Escalated NOVs (w/o penalty)	Civil Penalties	Orders	Impositions	Total FY 04
Academic	0	0	0	0	0
Physician	1	0	0	0	1
Fuel Facility	5	4	0	0	9
Gauge User	9	10	1	0	20
Hospital	9	0	0	0	9
Irradiator	0	0	0	0	0
Radiographer	2	5	1	2	10
Radiography Fabricator	0	0	0	0	0
Pharmacy	0	0	0	0	0
Operating Reactor	25	4	1	0	30
Research Reactor	1	0	1	0	2
Materials Distributer	0	1	0	1	2
Mill	0	0	0	0	0
Other	1	1	0	0	2
UF Conversion Facility	2	0	0	0	2
Waste Disposal	0	0	0	0	0
Well Logger	0	3	0	0	3
Non-Licensee	1	0	0	0	1
Licensed Individual (reactor)	2	0	1	0	3
Unlicensed Individual (reactor)	1	0	0	0	1
Unlicensed Individual (materials)	8	0	0	0	8
Total	67	28	5	3	103



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

Type of Licensee	Total FY 04	Total FY 03	Total FY 02	Total FY 01	Total FY 00	Total FY 99	Total FY 98	Total FY 97	Total FY 96	Total FY 95
Academic	0	1	2	4	1	2	4	3	5	3
Physician	1	3	1	4	2	0	7	9	3	2
Fuel Facility	9	2	4	6	2	2	6	5	3	1
Gauge User	20	19	20	12	13	12	26	31	23	29
Hospital	9	14	12	15	14	8	13	33	13	12
Irradiator	0	0	0	0	0	2	0	1	0	0
Radiographer	10	15	13	21	6	6	8	9	12	11
Radiography Fabricator	0	0	0	1	0	0	0	0	0	0
Pharmacy	0	2	4	1	4	1	1	0	1	3
Operating Reactor	30	23	28	25	24	33	81	112	87	50
Research Reactor	2	0	1	1	0	0	2	0	0	0
Materials Distributer	2	0	3	3	0	7	2	1	2	0
Mill	0	0	1	0	0	0	0	1	1	0
Other	2	1	2	4	0	3	19	17	10	11
UF Conversion Facility	2	0	0	0	0	0	0	0	0	0
Waste Disposal	0	0	1	0	0	1	0	0	0	0
Well Logger	3	2	2	3	2	2	4	1	0	0
Non-Licensee	1	1	4	4	1	3	1	1	8	5
Licensed Individual	3	1	2	2	3	4	7	2	6	7
Unlicensed Individual	9	25	9	21	22	28	19	38	19	23
Total	103	109	109	127	94	114	200	264	191	159

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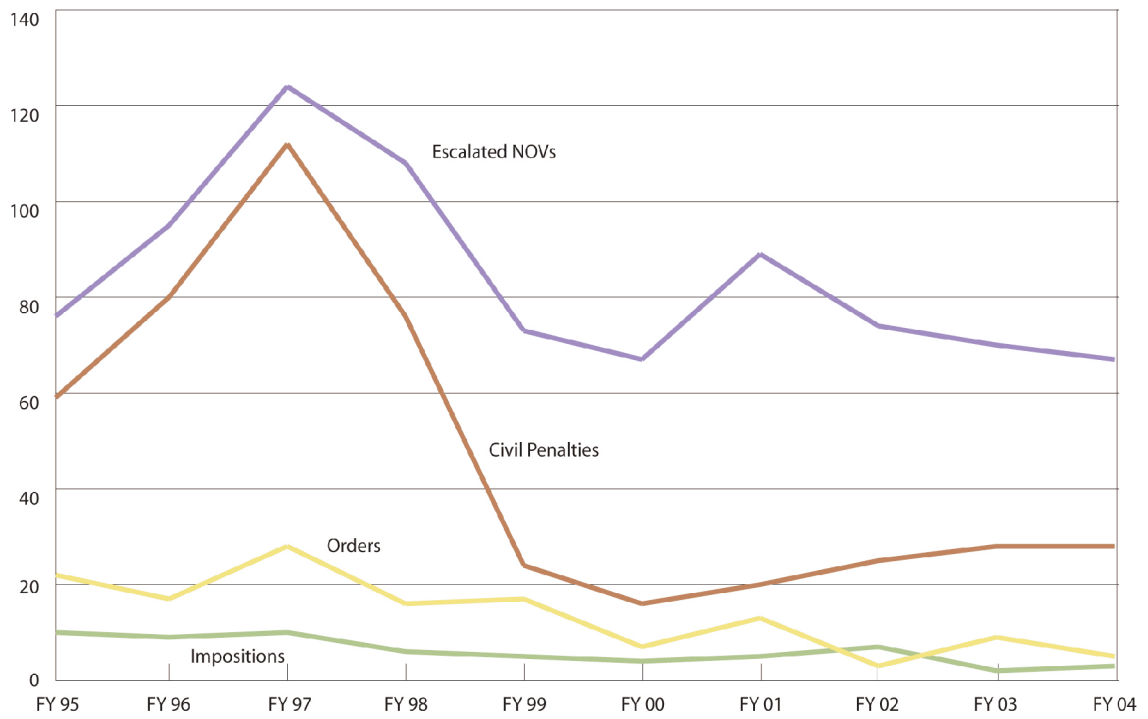
TABLE 3: CIVIL PENALTY INFORMATION

	FY 04	FY 03	FY 02	FY 01	FY 00	FY 99	FY 98
Number of Proposed Civil Penalties	28	28	25	20	16	24	76
Number of Imposed Civil Penalties	3	2	7	5	4	5	6
Number of Civil Penalties Paid	27	26	23	17	16	21	68
Amount of Proposed Civil Penalties	\$660,700	\$341,800	\$493,000	\$342,900	\$446,600	\$1,062,600	\$5,206,600
Amount of Imposed Civil Penalties	\$28,200	\$48,700	\$109,800	\$139,900	\$231,550	\$913,750	\$115,650
Amount of Civil Penalties Paid	\$658,600	\$361,000	\$456,750	\$294,100	\$430,500	\$1,070,850	\$6,493,573

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

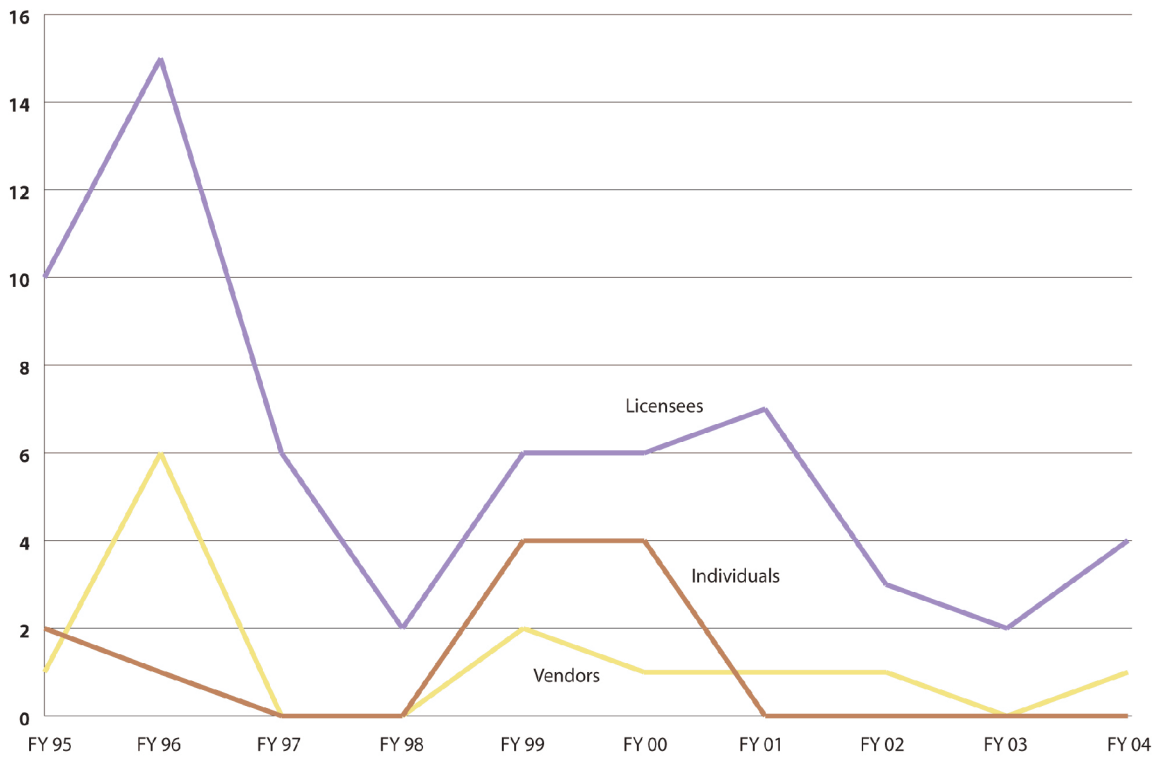
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Figure 5.
Escalated Enforcement Trends



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Figure 6.
Escalated Discrimination Cases



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

***American Electric Power Company
D.C. Cook Nuclear Power Plant***

EA-04-006

On March 12, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to properly prepare a package of radioactive material for shipment. The violation cited the licensee's failure to prepare the radioactive material package for shipment so that the radiation level did not exceed 200 millirem per hour at any point on the external surface of the package.

***American Electric Power Company
D.C. Cook***

EA-04-109

On September 29, 2004, a Notice of Violation was issued for a Severity Level III violation involving an application for renewal of a Senior Reactor Operator license that was not complete and accurate in all material respects.

***AmerGen Energy Company, LLC
Oyster Creek Generating Station***

EA-04-033

On March 15, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving a power cable insulation breakdown that resulted in a loss of the 4kV emergency bus and forced a plant shutdown. The violation cited the licensee's failure to identify and take prompt and appropriate corrective actions for a significant condition adverse to quality involving power cables.

***Anglin Civil Constructors, Ltd.
Novi, Michigan***

EA-04-031

On April 7, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in a nuclear gauge in a controlled area, and the failure to control and maintain constant surveillance of this licensed material.

***Caribe Medical Plaza
Vega Alta, Puerto Rico***

EA-03-134

On October 9, 2003, a Notice of Violation was issued for a willful Severity Level III problem involving: the failure (through its Radiation Safety Officer) to ensure that radiation safety activities were being performed in accordance with the radiation safety program, the failure to provide radiation safety training, the failure to issue film or TLD finger monitors to appropriate individuals, and the failure of a Caribe representative to provide information to the Commission that was complete and accurate in all material respects.

**Carolina Power and Light Company
Brunswick Steam Electric Plant, Unit 2**

EA-04-076

On June 2, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to take adequate corrective action for conditions adverse to quality associated with the No. 3 emergency diesel generator (EDG 3) jacket water cooling (JWC) system. The corrective maintenance performed to stop a pipe coupling leak on the JWC supply line to the turbo charger for EDG 3 failed to correct the leak. The violation also cited the failure to comply with Technical Specification 3.8.1, AC Sources Operating, because due to the ongoing leak the EDG 3 was inoperable while the plant was in Mode 1 for a period in excess of seven days.

**Department of the Navy
National Naval Medical Center Facility - Bethesda, Maryland**

EA-04-075

On April 23, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material included in iridium-192 seeds in a controlled area, and the failure to control and maintain constant surveillance of this licensed material.

**Department of Veterans Affairs
Edward Hines, Jr., Veterans Affairs Hospital - Hines, Illinois**

EA-04-019

On April 7, 2004, a Notice of Violation was issued for a Severity level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in two strontium-90 sealed sources in a controlled area, and the failure to control and maintain constant surveillance of this licensed material.

**Department of Veterans Affairs
McGuire Medical Center, Richmond, Virginia**

EA-03-162

On October 31, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in two sources in a controlled area, and the failure to control and maintain constant surveillance of this licensed material.

**Dressler Consulting Engineers, Inc.
Overland Park, Kansas**

EA-04-088

On July 16, 2004, a Notice of Violation was issued for a Severity III violation involving the use of licensed material in the state of Missouri, a Non-Agreement State, without filing NRC Form 241, "Report of proposed Activities in Non-Agreement States," with the NRC.

**Duke Energy Corporation
Oconee Nuclear Station****EA-04-115**

On September 24, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving inconsistent fire response procedures that could result in the failure to maintain pressurizer level within the required indicating range. The violation cited the licensee's inadequate fire response procedures.

**Duke Energy Corporation
Oconee Nuclear Station****EA-03-145**

On December 30, 2003, a Notice of Violation was issued for a violation associated with a White SDP finding involving the inability of the pressurizer to perform its intended safety function under certain scenarios. The violation cited the licensee's failure to identify and correct this condition adverse to quality.

**Entergy Operations, Inc.
Arkansas Nuclear One****EA-03-016**

On April 7, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the use of unapproved operator manual actions for achieving and maintaining hot shutdown conditions in the event of a fire in particular fire zones. The violation cited the licensee's failure to comply with fire protection regulations in 10 CFR Part 50, Appendix R, Section III.G.2 requiring that cables and equipment of redundant trains of systems necessary to achieve and maintain hot shutdown conditions remain free of fire damage.

**Entergy Operations, Inc.
River Bend****EA-03-077**

On December 29, 2003, a Notice of Violation was issued for a violation associated with a White SDP finding involving a loss of feedwater flow to the reactor. The violation cited the licensee's failure to lock open the Condensate Prefilter Vessel Bypass Flow Control Valve as required by their Technical Specifications.

**Entergy Operations, Inc.
Waterford 3****EA-03-230**

On April 12, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to establish appropriate instruction and accomplish those instructions for installation of a fuel line for the Train A emergency diesel generator.

**Enviro-Test Laboratories LLC
Cheyenne, Wyoming****EA-04-007**

On February 13, 2004, a Notice of Violation was issued for a Severity level III problem involving the failure to: (1) receive prior NRC approval of the decommissioning plan before beginning with decommissioning, (2) maintain security and control of licensable quantities of radioactive material, and (3) provide complete and accurate information to the NRC.

**Exelon Nuclear
Peach Bottom Units 2 & 3**

EA-03-224

On February 3, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving a performance problem associated with one of the emergency diesel generators. The violation cited the licensee's failure to maintain adequate maintenance procedures and failure to take adequate corrective actions for a condition adverse to quality.

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

EA-03-131

On October 7, 2003, a Notice of Violation was issued for a violation associated with a Yellow SDP finding involving the inability of the emergency core cooling system sump to perform its safety function under certain accident scenarios due to potential clogging of the sump screen. The violation cited the licensee's failure to promptly identify and correct significant conditions adverse to quality involving the potential to clog the emergency core cooling and containment spray system sump with debris following a loss of coolant accident.

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

EA-03-172

On March 5, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the potential inability of the high pressure injection (HPI) pumps to perform their safety function under certain accident scenarios due to potential pump degradation. The violation cited the licensee's failure to adequately implement design control measures for verifying the adequacy of the design of the HPI pumps to mitigate all postulated accidents.

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

EA-03-209

On May 7, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to provide the NRC with complete and accurate information in the licensee's response to NRC Generic Letter 98-04 regarding protective coating deficiencies and foreign material in containment.

**FirstEnergy Nuclear Operating Company
Perry**

EA-03-197

On January 28, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure of the Essential Service Water Pump A shaft due to improper reassembly. The violation cited the licensee's failure to have adequate procedures for assembly of the pump.

**FirstEnergy Nuclear Operating Company
Perry****EA-03-194**

On January 23, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to follow the requirements of the Emergency Plan during an Alert level event. The violation cited the failure to properly implement the standard emergency classification and action level scheme resulting in an undue delay in declaring an actual emergency.

**FirstEnergy Nuclear Operating Company
Perry****EA-04-020**

On March 12, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the air binding of the common low pressure core spray and residual heat removal (RHR) 'A' water leg pump following a loss of offsite power event. The violation cited the failure to establish adequate written procedures to periodically vent the highest point on the discharge of the common low pressure core spray and RHR 'A' water leg pump.

**FirstEnergy Nuclear Operating Company
Perry****EA-03-208**

On April 1, 2004, a Notice of Violation was issued for a Severity Level III violation involving the willful failure of two key maintenance personnel responsible for testing motor operated valves, a safety-related function, to follow Technical Specification overtime guidelines.

**G.E. Inspection Services, Inc. (formerly Liberty Technologies, Inc.)
N. Charleston, South Carolina****EA-03-158**

On October 24, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in a radioactive device located in an unrestricted area, and failure to control and maintain constant surveillance of this licensed material.

**Guthrie Healthcare System
Sayre, Pennsylvania****EA-04-025**

On March 19, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to follow the requirement of the licensee's written Quality Management Plan to develop a second radiation dosimetry plan for 26 out of 30 patients treated with prostate implants. The NRC also exercised enforcement discretion and refrained from taking enforcement action involving the failure to perform a QMP review. (See EA-04-025 on page 28 for details.)

***Hannibal Testing Laboratories
Hannibal, Missouri***

EA-03-206

On November 28, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in two moisture density gauges in unrestricted areas at the licensee's facility, and failure to control and maintain constant surveillance of this licensed material.

***Hastings Testing Engineers and Environmental
Bloomfield Hills, Michigan***

EA-03-175

On March 4, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in each of three moisture density gauges in a controlled area, and failure to control and maintain constant surveillance of this licensed material. Additionally the licensee failed to lock the gauges, to prevent unauthorized or accidental removal of the sealed source from its shielded position, when not under the direct surveillance of an authorized user.

***Hayward Tyler, Inc.
Colchester, Vermont***

EA-04-119

On September 16, 2004, a Notice of Violation was issued for a Severity Level II violation involving discrimination against a quality control inspector who worked for the contractor for engaging in a protected activity.

***Honeywell International, Inc.
Metropolis, Illinois***

EA-04-064, EA-04-065

On May 10, 2004, a Notice of Violation was issued for two Severity Level III violations involving: (1) the reconfiguration of the fluorination system without detailed instructions (which allowed a uranium hexafluoride leak to occur), and (2) the failure to maintain and execute various response measures in the emergency response plan.

***Imaging Subsurface, Inc.
Novi, Michigan***

EA-03-223

On February 6, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in two moisture density gauges in unrestricted areas at the licensee's facility, and failure to control and maintain constant surveillance of this licensed material.

***Massachusetts Institute of Technology
Cambridge, Massachusetts***

EA-03-155

On October 31, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure of a reactor control operator to be present at the controls at all times during the operation of the facility, in that the operator was sleeping for approximately 30 minutes while at the controls.

***Menominee County Road Commission
Stephenson, Michigan******EA-03-176***

On October 31, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in a moisture density gauge in an unrestricted area at a temporary job-site, and failure to control and maintain constant surveillance of this licensed material. Additionally, the licensee failed to lock the gauge when not under the direct surveillance of an authorized user.

***Missouri Baptist Medical Center
St. Louis, Missouri******EA-04-093***

On August 20, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to develop written procedures to ensure that each administration of NRC-licensed material was in accordance with the written directive from an authorized physician user.

***Nebraska Public Power District
Cooper******EA-04-120***

On June 25, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving a high failure rate on the licensed operator biennial requalification written examinations. The violation cited the failure to consistently implement all elements of a systems approach to training in the licensed operator requalification program.

***Nuclear Management Company, LLC
Point Beach Nuclear Plant******EA-03-057***

On December 11, 2003, a Notice of Violation was issued for a violation associated with a Red SDP finding involving the potential common mode failure of all trains of the auxiliary feedwater (AFW) system. The violation cited the licensee's failure to establish adequate measures to assure that the AFW system design bases were correctly translated into specifications, drawings, procedures, and instructions (modification packages).

***Precision Testing and Inspection
Chantilly, Virginia******EA-04-073***

On February 25, 2004, a Notice of Violation was issued for a Severity Level III willful violation for failure to provide complete and accurate information to the NRC. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was also issued for a Severity Level III willful violation. (See EA-03-220 in Appendix B for details.)

***PSEG Nuclear LLC
Hope Creek Nuclear Generating Station***

EA-04-086

On May 10, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure of the service water system traveling screen that increased the likelihood of the loss of service water initiating event and affected the ability of a service water pump train to mitigate the effects of initiating events. The violation cited the failure of maintenance procedures to contain adequate instructions and the failure to follow procedures.

***Rice Memorial Hospital
Willmar, Minnesota***

EA-03-205

On December 15, 2003, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material contained in sealed sources in controlled areas, and the failure to control and maintain constant surveillance of the licensed material.

***Rochester Gas and Electric Corporation
Ginna Nuclear Power Plant***

EA-04-003

On March 30, 2004, a Notice of Violation was issued for a Severity Level III violation involving the willful failure to follow procedures by a manager when he manipulated two valves during a plant cooldown without authorization as required by procedure.

***State of Alaska Department of Transportation & Public Facilities
Anchorage, Alaska***

EA-03-126

On March 15, 2004, a Notice of Violation was issued for a Severity Level II violation based on the licensee discriminating against one of its employees for raising safety concerns regarding radiation exposures to other employees. A Confirmatory Order was also issued in conjunction with this action. (See EA-03-126 in Appendix C for details.)

***St. Vincent Hospital & Health Care Center
Indianapolis, Indiana***

EA-04-087

On August 2, 2004, a Notice of Violation was issued for a Severity Level III violation involving the failure to develop written procedures to ensure that each administration of NRC-licensed material was in accordance with the written directive from an authorized physician user.

**Tennessee Valley Authority
Browns Ferry**

EA-04-063

On May 12, 2004, a Notice of Violation was issued for a Severity Level III violation involving four examples of a failure to adhere to the requirements of 10 CFR 50, Appendix B, Criterion V. All four examples were associated with the Long-Term Torus Integrity Program, and involved: failure to evaluate or incorporate numerous deficient welds into Deficiency Fix Requests sketches; failure to perform numerous repairs on the correct welds; omission of numerous welds requiring repair from Work Orders; and failure of Quality Control to independently verify the correct location of numerous weld repairs.

**TES Consultants, P.C.
Farmington Hills, Michigan**

EA-04-099

On September 1, 2004, a Notice of Violation was issued for a Severity level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in a moisture density gauge in an unrestricted area at a temporary job-site, and failure to control and maintain constant surveillance of this licensed material.

**TXU Energy
Comanche Peak Steam Electric Station**

EA-04-009

On February 13, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving a steam generator tube flaw that could have resulted in failure of the tube during postulated initiating events. The violation cited the licensee's failure to promptly identify and correct a condition adverse to quality (a steam generator tube flaw).

**Union City Diagnostic Center
Union City, New Jersey**

EA-03-170

On January 13, 2004, a Notice of Violation was issued for a Severity Level III problem involving: (1) the receipt, possession and use of byproduct material without the supervision of an Authorized User (AU) or a Radiation Safety Officer, and (2) the creation of false records indicating that the AU had ordered licensed material during that period, when in fact, the AU was no longer employed at the facility.

**Virginia Electric and Power Company
Surry**

EA-04-005

On September 15, 2004, a Notice of Violation was issued for a violation associated with a White SDP finding involving ineffective safe shutdown procedures during a postulated fire that could have resulted in a reactor coolant pump seal loss of coolant accident. The violation cited the licensee's ineffective alternative shutdown capability and response procedures for a postulated fire in the Emergency Switchgear Room Number 1 and 2.

Appendix A

***Westinghouse Electric Company, LLC
Hematite Facility - Festus, Missouri***

EA-03-182

On December 22, 2003, a Notice of Violation was issued for a Severity Level III violation involving two examples of the failure to follow enhanced work plans for decommissioning activities specific to the preparation of contaminated materials for shipping to a metal recycling facility.

***William Beaumont Hospital
Royal Oak, Michigan***

EA-04-129

On September 14, 2004, a Notice of Violation was issued for a Severity Level III violation involving the administration of a dosage of liquid iodine-131 to a patient for a thyroid uptake study that was approximately 90 times larger than the 10-microcurie dosage prescribed by the authorized user physician.

***Worthington Steel
Malvern, Pennsylvania***

EA-04-140

On August 23, 2004, a Notice of Violation was issued for a Severity Level III violation involving the sale and transfer of ownership of two generally licensed gauges without providing the new owner with the required safety documents identified in the label on the device.

APPENDIX B: SUMMARY OF PROPOSED CIVIL PENALTIES

21st Century Technologies, Inc.
Fort Worth, Texas

EA-03-187

On April 13, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III problem involving the licensee's failure to obtain the required NRC authorization prior to distributing tritium-bearing gun sights and other devices that were not authorized by their license.

ABB Inc.
Columbus, Ohio

EA-03-196

On November 26, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem involving the failure to secure from unauthorized removal or limit access to licensed material in a sealed source capsule in an unrestricted area, and failure to control and maintain constant surveillance of this licensed material, resulting in the loss of the source into the public domain (most likely the county landfill).

All Tech Corporation
Pocatello, Idaho

EA-03-128

On April 27, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III problem involving the deliberate failure to provide complete and accurate information to the NRC concerning the location of certain gauges containing NRC-licensed material.

Carolina Power & Light Company
Brunswick, Robinson, Harris

EA-04-028

On April 7, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$88,000 was issued for a Severity Level II violation for discriminating against the former Corporate Superintendent of Site Access Authorization for Carolina Power & Light for raising safety concerns.

Cooperheat-MQS, Inc.
Houston, Texas

EA-03-151

On December 30, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III willful problem involving the failure to conduct required radiographer refresher training and the failure to provide complete and accurate information to the NRC involving radiographer training records.

Appendix B***CTI Consultants, Inc.
Chantilly, Virginia******EA-03-226***

On March 3, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material in a portable gauge in a controlled or restricted area, resulting in the loss of the gauge during transport

***Duke Energy Corporation
Oconee 1, 2, & 3******EA-04-018***

On April 8, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for a Severity Level III violation involving changes the licensee made to the facility as described in the Updated Final Safety Analysis Report (an analysis for high energy line break accidents) that involved unreviewed safety questions without obtaining prior NRC approval.

***G. A. Covey Engineering
Sutton, West Virginia******EA-04-002***

On March 11, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in two portable moisture density gauges in a controlled area, and failure to control and maintain constant surveillance of this licensed material.

***High Mountain Inspection Service, Inc.
Mills, Wyoming******EA-03-229, EA-04-062***

On April 27, 2004, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$12,000 was issued for two Severity Level III problems involving the failure to maintain adequate security of a radiographic exposure device (assessed \$6,000) and the failure to give a written exam before using a newly hired individual as a radiographers' assistant (assessed \$6,000).

***Imaging Subsurface, Inc.
Novi, Michigan******EA-04-092***

On August 17, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in a gauge in a controlled area, and failure to control and maintain constant surveillance of this licensed material.

***Nuclear Management Company, LLC
Kewaunee Nuclear Plant******EA-03-105***

On December 30, 2003, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for a Severity Level III violation involving the licensee's failure to implement effective monitoring procedures to provide reasonable assurance that personnel with access are fit for duty, and the failure to conduct an investigation of the circumstances or evaluate the risk involved in continued unescorted access of an employee after detecting evidence of behavior which may have impaired the job performance of an employee who had unescorted access to the Kewaunee Nuclear Plant.

***Nuclear Management Company, LLC
Point Beach Nuclear Plant******EA-03-181***

On March 17, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$60,000 was issued for a Severity Level III violation involving changes made to the Emergency Action Level scheme that reduced the effectiveness of the Emergency Plan without requesting and receiving prior NRC approval.

***Pepperidge Farm, Inc.
Norwalk, Connecticut******EA-04-074***

On June 21, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III violation involving the inappropriate transfer of a generally-licensed device to a person (a salvage yard and then to a metal recycling center) not authorized to receive the device.

***PMK Group, Inc.
Cranford, New Jersey******EA-04-117***

On August 23, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III problem involving the willful failure to secure from unauthorized removal or access a portable moisture density gauge in a unrestricted area, and failure to control and maintain constant surveillance of this licensed material

***Precision Testing and Inspection
Chantilly, Virginia******EA-03-220***

On February 25, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III willful violation involving the failure to post radiation areas during radiography operations. A Notice of Violation without a civil penalty was also issued for another Severity Level III violation (see EA-04-073 in Appendix A for details.)

***Saint-Gobain Performance Plastics Corporation
Wayne, New Jersey***

EA-04-035

On May 5, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$7,500 was issued for a Severity Level III violation involving the failure to secure from unauthorized removal and failure to control and maintain constant surveillance of licensed material in a thickness gauge, a generally-licensed device, in a controlled area, resulting in the loss of the gauge.

***Schlumberger Technology Corporation
Sugar Land, Texas***

EA-03-010, EA-03-217, EA-03-218

On October 14, 2003, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$90,000 was issued for three Severity Level III problems involving: (1) the failure to keep 13 public radiation doses within NRC limits (\$78,000); (2) the willful failure to perform radiation surveys, and failure to maintain control of a radioactive well-logging source (\$6,000); and (3) the failure to follow emergency procedures and secure the source after it was found (\$6,000).

***State of Alaska Department of Transportation & Public Facilities
Anchorage, Alaska***

EA-03-190, EA-04-061

On March 15, 2004, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$21,000 was issued for (1) a willful Severity Level II problem (\$15,000) involving radiation exposures in excess of NRC's annual public exposure limit and failure to perform surveys appropriate to demonstrate compliance with NRC dose limits for individual members of the public and (2) a willful Severity Level III violation (\$6,000) involving the failure to provide copies of two exposure reports to six affected individuals.

***Triad Engineering, Inc.
Morgantown, West Virginia***

EA-04-014

On April 20, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem involving the willful failure to: (1) control and maintain constant surveillance of licensed material in a portable moisture density gauge located in an unrestricted area, and (2) lock the portable gauge or its container when not under the direct surveillance of an authorized user.

***U.S. Inspection Services
Dayton, Ohio***

EA-03-204

On June 15, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$19,200 was issued for a Severity Level II problem involving multiple violations related to an overexposure of radiographer, including issues such as failure to survey, failure to calibrate and inspect equipment, and failure to follow procedures.

Westinghouse Electric Company
Columbia Nuclear Fuel Plant

EA-04-096

On July 28, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$24,000 was issued for a Severity Level II problem involving multiple violations related to the discovery of ash deposits in the incinerator off-gas system at concentrations that exceeded the bounding assumptions of the approved safety basis.

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APPENDIX C: SUMMARY OF ORDERS

IMPOSITION OF CIVIL PENALTY ORDERS

21st Century Technologies, Inc.
Fort Worth, Texas

EA-03-187

On August 30, 2004, an Order Imposing Civil Monetary Penalty in the amount of \$6,000 was issued. The action was based on a April 13, 2004, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 that was issued for a Severity Level III problem involving the licensee's failure to obtain the required NRC authorization prior to distributing tritium-bearing gun sights and other devices that were not authorized by their license. The licensee's May 11, 2004, response contested the classification of the violations as a Severity Level III problem, contested the NRC's application of its civil penalty assessment process, and requested remission or mitigation of the proposed civil penalty. After considering the licensee's response, the NRC concluded that the violations occurred as stated and that there was not an adequate basis for withdrawing the violations, reducing the severity level, or mitigating or rescinding the civil penalty.

Mid American Inspection Services, Inc.
Gaylord, Michigan

EA-03-100

On November 18, 2003, an Order Imposing Civil Monetary Penalty in the amount of \$3,000 was issued. The action was based on an August 12, 2003, Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 that was issued for a Severity Level III problem involving the failure to secure from unauthorized removal or maintain constant surveillance of licensed material (a radiography camera), and the failure to ensure that shipping papers are in a vehicle while transporting radioactive material. The licensee's September 8, 2003, response admitted the violations and requested mitigation of the civil penalty. After considering the licensee's response and statements of fact, explanation, and argument for reduction, the NRC decided to reduce the amount of the penalty.

U.S. Inspection Services
Dayton, Ohio

EA-03-204

On September 1, 2004, an Order Imposing Civil Monetary Penalty in the amount of \$19,200 was issued. The action was based on a June 15, 2004, Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$19,200 that was issued for a Severity Level II problem involving multiple violations related to an overexposure of a radiographer, including issues such as failure to survey, failure to calibrate and inspect equipment, and failure to follow procedures. The licensee's July 12, 2004, response did not deny the violations, in whole or in part, did not dispute the severity level assigned to the violations, nor contest the use of enforcement discretion to increase the amount of the civil penalty. The amount of the civil penalty was increased due to a lack of management oversight of the radiation safety program that significantly contributed to the conditions leading to the overexposure event described in the June 12, 2004, letter and Notice. However, the licensee protested the proposed imposition of a civil monetary penalty in the amount of \$19,200, indicating that the civil penalty adjustment factor for Identification was incorrectly applied and no credit was given for the corrective actions that were implemented. After considering the licensee's response, the NRC concluded that the

Appendix C

violations occurred as stated and that there was not an adequate basis for withdrawing the violations, reducing the severity level, or mitigating or rescinding the civil penalty.

CONFIRMATORY, MODIFICATION, SUSPENSION, AND CEASE AND DESIST ORDERS

***FirstEnergy Nuclear Operating Company
Davis-Besse Nuclear Power Station, Unit 1***

EA-03-214

On March 8, 2004, an immediately effective Confirmatory Order was issued to confirm certain commitments, as set forth in the Order, that requires annual independent assessments for five years, in the areas of operations, engineering, corrective actions and safety culture and requires inspection of key reactor coolant system pressure boundary components during a mid-cycle outage to ensure effective assessment and sustained safe performance. The Order was issued in conjunction with the NRC's decision to approve the restart of the facility.

***KTL Roudebush Testing
Kansas City, Missouri***

EA-03-177

On March 11, 2004, an immediately effective Order Suspending License and Demand for Information was issued based on the conclusion that the licensee deliberately violated NRC safety requirements and deliberately provided inaccurate and incomplete information to the NRC. The Order requires that, on an immediately effective basis, : (1) all activities under the license involving the use of licensed material shall be suspended; (2) all activities authorized by 10 CFR 150.20 including the use of licensed material in Non-Agreement States and areas of exclusive federal jurisdiction shall be suspended; (3) all NRC-licensed material in the licensee's possession shall immediately be placed in secured storage; (4) no material authorized by the license shall be ordered, purchased, received, or transferred by the licensee while this Order is in effect; and (5) all records related to licensed activities and materials shall be maintained in their original form and must not be removed, destroyed, or altered in any way.

***State of Alaska Department of Transportation & Public Facilities
Anchorage, Alaska***

EA-03-126

On March 15, 2004, an immediately effective Confirmatory Order was issued to confirm certain commitments, as set forth in the Order, involving the licensee's internal policies and procedures pertaining to assuring compliance with NRC employee protection requirements. A separate Notice of Violation was also issued in conjunction with this case. (See EA-03-126 in Appendix A for details.)

***University of Missouri Research Reactor
Columbia, Missouri***

EA-02-256

On December 19, 2003, an immediately effective Confirmatory Order was issued to confirm certain commitments, as set forth in the Order, and to ensure that processes used at the University of Missouri Research Reactor for addressing employee protection and safety concerns will be adequately enhanced.

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

ORDERS

NRC-Licensed Individuals

Scott P. Wolfe

IA-03-042

On December 10, 2003, an immediately effective Order prohibiting involvement in NRC-licensed activities for three years from the date of the Order was issued to the individual based on his deliberate activities while employed at the Waterford-3 nuclear power plant. As a licensed operator, the individual tested positive twice for an illegal substance during random fitness-for-duty tests while he held an NRC operator's license.

Unlicensed Individuals

None.

NOTICES OF VIOLATION (NOVs)

NRC-Licensed Individuals

None.

Unlicensed Individuals

Billy H. Berry

IA-03-026

On April 27, 2004, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate activities while employed at All Tech Corporation. As the General Manager and Radiation Safety Officer, the individual deliberately failed to provide complete and accurate information to the NRC concerning the location of certain gauges containing NRC-licensed material.

Brian Flynn

IA-04-005

On March 30, 2004, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate activities while employed at the Ginna Nuclear Power Plant. As an outage manager, the individual deliberately manipulated two valves during a plant cooldown without authorization as required by procedure.

Shannon Kokkeler

IA-03-005

On October 14, 2003, a Notice of Violation was issued for a Severity Level II violation based on the individual's deliberate activities while employed at Schlumberger Technology Corporation. As a field engineer in training on a well logging crew, the individual knowingly failed to perform any required radiation surveys of the source storage container to ensure the source was present in the container prior to loading the container back onto the vehicle and departure from

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the wellsite and falsified a log certifying that she had "personally checked each logging source shield with a survey meter to ensure that the source is contained within," despite her knowledge that this information was not accurate.

Hector E. Luque

IA-04-020

On September 10, 2004 a Notice of Violation was issued for a Severity Level III violation based on the individual's failure to comply with NRC requirements governing fitness-for-duty as a licensed operator working for Southern California Edison.

Larry M. Overby

IA-04-014

On May 21, 2004, a Notice of Violation was issued for a Severity Level III violation based on the individual's failure to comply with NRC requirements governing fitness-for-duty as a licensed operator working for the Southern Nuclear Operating Company.

Shane Moran

IA-03-006

On October 14, 2003, a Notice of Violation was issued for a Severity Level II violation based on the individual's deliberate activities while employed at Schlumberger Technology Corporation. As a senior operator on a well logging crew, the individual knowingly failed to perform any required radiation surveys of the source storage container to ensure the source was present in the container prior to loading the container back onto the vehicle and departure from the wellsite and falsified a log certifying that he had "personally checked each logging source shield with a survey meter to ensure that the source is contained within," despite his knowledge that this information was not accurate.

John Peart

IA-03-047

On February 25, 2004, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate misconduct that caused Precision Testing and Inspection to be in violation of 10 CFR 34.53. As Senior Radiation Safety Officer (RSO), the individual deliberately failed to post the industrial radiography work area with danger signs in the work area.

Julio Venegas

IA-03-046

On February 25, 2004, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Precision Testing and Inspection. As a Radiation Safety Officer (RSO), the individual deliberately provided inaccurate information to the NRC denying that individual was the RSO for Precision Testing and Inspection.

Daniel Clark Woods

IA-03-038

On October 24, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at G.E. Inspection Services, Inc. (GE-IS)(Formerly Liberty Technologies, Inc.). As senior radiographer for the licensee, the individual deliberately failed to secure from unauthorized removal or limit access to licensed material (approximately 550 millicuries of gadolinium-153 contained in a radioactive device)

located in an unrestricted area, and failed to control and maintain constant surveillance of this licensed material.

Gary L. Youler

IA-03-036

On December 30, 2003, a Notice of Violation was issued for a Severity Level III violation based on the individual's deliberate activities while employed at Cooperheat-MQS, Inc. As the facility Radiation Safety Officer, the individual deliberately provided false information to the NRC involving radiographer training records.

DEMANDS FOR INFORMATION (DFIs)

NRC-Licensed Individuals

None.

Unlicensed Individuals

None.

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

IMPOSITION OF CIVIL PENALTY ORDERS

None.

ORDERS

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

EA-01-164

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

CIVIL PENALTIES

None.

NOTICES OF VIOLATION (NOVs)

None.

DEMANDS FOR INFORMATION (DFIs)

None.

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APPENDIX F: SUMMARY OF HEARING ACTIVITY

Alaska Department of Transportation and Public Facilities Anchorage, Alaska

EA-03-126

On March 15, 2004, the NRC Staff issued a Confirmatory Order Modifying License (Effective Immediately) (Order) to the State of Alaska Department of Transportation and Public Facilities (ADOT&PF). The Order was issued to confirm commitments to assure ADOT&PF's compliance with the NRC's Employee Protection requirements. The Order sets forth numerous actions that ADOT&PF is required to take to ensure a safety conscious work environment. The Order clarified the scope of any hearing request stating that "the issue to be considered at such a hearing shall be whether this Confirmatory Order should be sustained." By the terms of the Order, "any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance."

On April 9, 2004, the former Statewide Radiation Safety Officer (RSO), through his attorney, requested a hearing [before the Atomic Safety and Licensing Board (ASLB)] in response to the Order. The former Statewide RSO argued in the hearing request that the Order should not be sustained because it will not provide reasonable assurance that the public health and safety will be protected from further harm and that the acts of retaliation perpetrated against him in violation of 10 CFR 30.7 have denied him the right to perform his licensed duties and responsibilities without fear of reprisal, and therefore to protect the public health and safety.

On July 29, 2004, the ASLB, in a two to one decision, found that the former Statewide RSO established standing to intervene and granted the request for a hearing on the Order.

On August 18, 2004, the NRC staff, as well as the ADOT&PF, appealed the ASLB decision to the Commission. At the end of the fiscal year, the Commission had not yet rendered its decision on the appeal.

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

EA-99-234

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

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

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The parties conducted discovery through the end of 2001, and an evidentiary hearing was conducted beginning April 23, 2002, in Chattanooga, Tennessee, continuing periodically for a total of 6 weeks, with the last week conducted in Rockville, Maryland. The hearing testimony was completed September 13, 2002, and the Board issued an initial decision on June 26, 2003. The majority of the Board found that the staff had demonstrated, by a preponderance of the evidence, that the corporate employee's non-selection to a position was motivated to some degree as retaliation for engaging in protected activities. However, the Board also mitigated the amount of the civil penalty, reducing the amount from \$110,000 to \$44,000. TVA appealed the ASLB's decision on June 26, 2003.

On August 18, 2004, the Commission issued Memorandum and Order, CLI-04-24 (Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1; Sequoyah Nuclear Plant, Units 1 and 2; Browns Ferry Nuclear Plant, Units 1, 2 and 3)) affirming in part, reversing in part, and remanding the case back to the Board.

In its decision, the Commission enunciated the legal standards in an employee protection (10 CFR 50.7) case. The Commission stated that the staff must show, by a preponderance of the evidence, that a protected activity was a contributing factor in an unfavorable personnel action. If the burden is met, the licensee must establish by clear and convincing evidence, that it would have taken the same action regardless of the employee's protected activity in order to prevail. If the licensee meets this burden, the licensee escapes liability and the NRC will not issue a violation. Prior to the Commission's decision, the NRC staff took the position that it considered it a violation if a licensee took an adverse action that was based, in part, on an employee engaging in a protected activity regardless since it could create a chilled environment to other employees. The Commission remanded the case back to the Board to consider the facts of the case and apply the standard articulated by the Commission.

At the end of the fiscal year, the parties were preparing to provide briefs to the Board regarding the Commission's decision.

APPENDIX G: NUREG/BR-0313, "EARLY ADR PROGRAM"

How long do sessions take?

- ❑ Many Early ADR cases will be completed in one meeting that lasts several hours. Some could require a few additional sessions.

Is Early ADR confidential?

- ❑ Yes. With limited exception, the proceedings are private and the ADR neutral is generally prohibited from discussing the mediation with outsiders.
- ❑ To obtain additional details on confidentiality in Early ADR, see the NRC's Web site at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>.

Who administers the Early ADR Program?

- ❑ Cornell University's Institute on Conflict Resolution (ICR) is the neutral program administrator for the Early ADR Program's day-to-day operation, including working with parties to identify appropriate mediators.
- ❑ ICR embraces a network of independent dispute resolution practitioners who work on a regional, national, and international basis.
- ❑ ICR works in partnership with companies, unions, and government to help resolve conflicts and evaluate the efficacy of conflict resolution methods.



How do I obtain additional information?

Further information on participating in the Early ADR program (besides this brochure's overview of the Early ADR program) is available from:

- ❑ The Early ADR Program Administrator (ICR: Catherwood Library Tower, Ives Hall, Cornell University, Ithaca, NY 14853; Phone: (877) 733-9415).
- ❑ The NRC's Enforcement ADR Pilot Program on its web site: <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>.

NUREG/BR-0313
September 2004

**The Nuclear
Regulatory
Commission's**

EARLY ADR PROGRAM

Alternative Dispute Resolution

Administered by
Cornell University's

Institute on Conflict Resolution

What is ADR?

- ❑ The U.S. Nuclear Regulatory Commission is using alternative dispute resolution (ADR) to promote a safety-conscious work environment by facilitating timely and amicable resolution of discrimination concerns.
- ❑ ADR includes a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures.
- ❑ Parties in ADR remain in control of the decision on whether to participate in the process and whether to agree to any resolution. In other words, *the process is completely voluntary, and any party may withdraw from the negotiation at any time.*



The Early ADR Program

- ❑ Early ADR typically occurs prior to any NRC investigation of the case.
- ❑ Early ADR may be used for a conflict between an employer or its contractor and an employee involving an allegation of discrimination in violation of the NRC's regulations after the NRC determines a potential case exists.

Who can use Early ADR, and how?

- ❑ After an allegation of discrimination is received and the NRC determines a potential case exists, the employee will typically be offered a chance to participate in ADR.
- ❑ The NRC's program administrator can advise and assist the parties in determining ADR potential for their case.
- ❑ If the employee agrees to participate, the NRC's program administrator will contact the licensee or licensee's contractor.
- ❑ If both parties agree to participate, the program administrator will help the parties appoint a neutral mediator and get started.

Why use Early ADR?

- ❑ Early ADR lets people speak for themselves and work together to find their own lasting solutions to their conflicts.
- ❑ Early ADR can help parties resolve conflicts by providing them a structured, positive environment to discuss differences and understand each other's concerns, interests, and expectations.
- ❑ It allows people to develop solutions quickly while maintaining relationships.
- ❑ Early ADR will benefit the safety conscious work environment by bringing about timely resolution of discrimination concerns.

What is mediation?

- ❑ Mediation is the ADR process normally used in the Early ADR Program.
- ❑ It is an informal process in which a trained neutral (the "mediator") works with parties to help reach resolution.
- ❑ The mediator, who has no stake in the outcome and no power to make decisions, uses consensus-building skills and knowledge of negotiation to help parties find creative solutions.



How does mediation work in the Early ADR Program?

- ❑ The mediator guides parties through an informal process to resolve their issues.
- ❑ The mediator helps parties work together to reach an agreement that meets their needs without conforming strictly to their original positions.

- ❑ The mediator will usually give each party an opportunity to explain the issues. Often, the mediator will meet privately with each party (where they are more likely to speak more freely) to understand the parties' situations better and explore and assess options.
- ❑ The mediator may ask questions that will aid parties in assessing the merits of their positions, help them converse in an atmosphere free of name calling and posturing, identify potential settlement options, and probe participants' realistic alternatives.
- ❑ A settlement agreement in Early ADR will not become binding until three days after the parties sign it to allow each party a final opportunity to review it.



Who serves as neutrals in Early ADR?

- ❑ To ensure a source of skilled, unbiased neutrals, the NRC uses Cornell University's Institute on Conflict Resolution (ICR) to select and oversee a roster of experienced mediators and administer the Early ADR program's operations.
- ❑ Parties may jointly select the mediator for their case from among a panel of three furnished by ICR.
- ❑ Parties preferring to locate their own mediator may do so.

What does Early ADR cost me?

- ❑ Nothing. The NRC will pay for the services of any ADR neutral selected from the ICR roster.
- ❑ If a neutral is selected from other than the ICR roster, the NRC will typically pay for the service; however, a review will be required.

Where do Early ADR sessions take place?

- ❑ The session will typically occur near the employee's work place, depending on site availability and party desires.