



# **ENFORCEMENT PROGRAM ANNUAL REPORT**

**Calendar Year 2009**

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



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## Abstract

This report provides the Commission with an overview of Enforcement Program activities for calendar year 2009. These activities include escalated enforcement actions, proposed changes to the Nuclear Regulatory Commission (NRC) Enforcement Policy, new initiatives, and revised staff guidance.

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

In calendar year 2009, the Office of Enforcement (OE) continued to focus on appropriate and consistent enforcement of NRC regulations.

- The agency issued 126 escalated enforcement actions, including the following:
  - 17 proposed civil penalties totaling \$174,000
  - 78 escalated notices of violation without civil penalties
  - 28 enforcement orders including orders associated with Alternative Dispute Resolution (ADR) settlements and orders prohibiting involvement in NRC-licensed activities
  - 3 orders imposing civil penalties totaling \$29,250
- The agency issued two demands for information.
- The agency continued the successful use of ADR program in 24 enforcement cases.
- OE continued initiatives regarding licensee safety culture in a number of areas, including operating reactors, fuel facilities, and new reactor construction.



## Introduction and Overview

### Mission and Authority

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



**Figure 1: How NRC Regulates**

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

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

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

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

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

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

## The Office of Enforcement

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

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

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

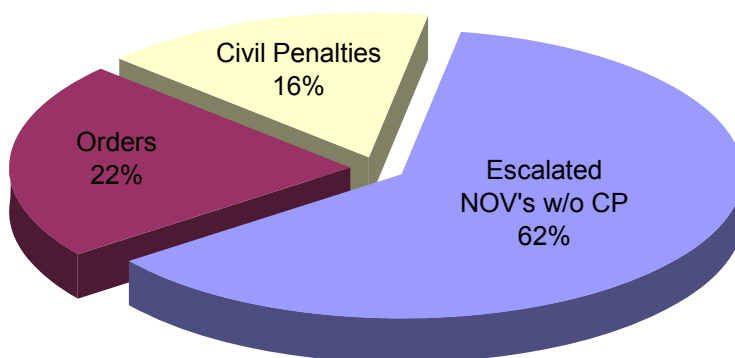
In addition to enforcement activities, OE has oversight responsibilities for the Allegations Program, Employee Protection/Discrimination, the Alternative Dispute Resolution (ADR) Program (both early-ADR and post-investigation ADR), external (licensee) safety culture, internal (NRC) safety culture, Differing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



## I. Escalated Enforcement Actions

Escalated enforcement actions include the following:

- notices of violations (NOVs) including Severity Level I, II, or III violations
- NOVs associated with Red, Yellow, or White significance determination process (SDP) findings (for operating reactor facilities)
- civil penalty actions
- orders issued to modify, suspend, or revoke a license; prohibit involvement in NRC licensed activities; confirm commitments reached at ADR mediation sessions; or impose a civil penalty

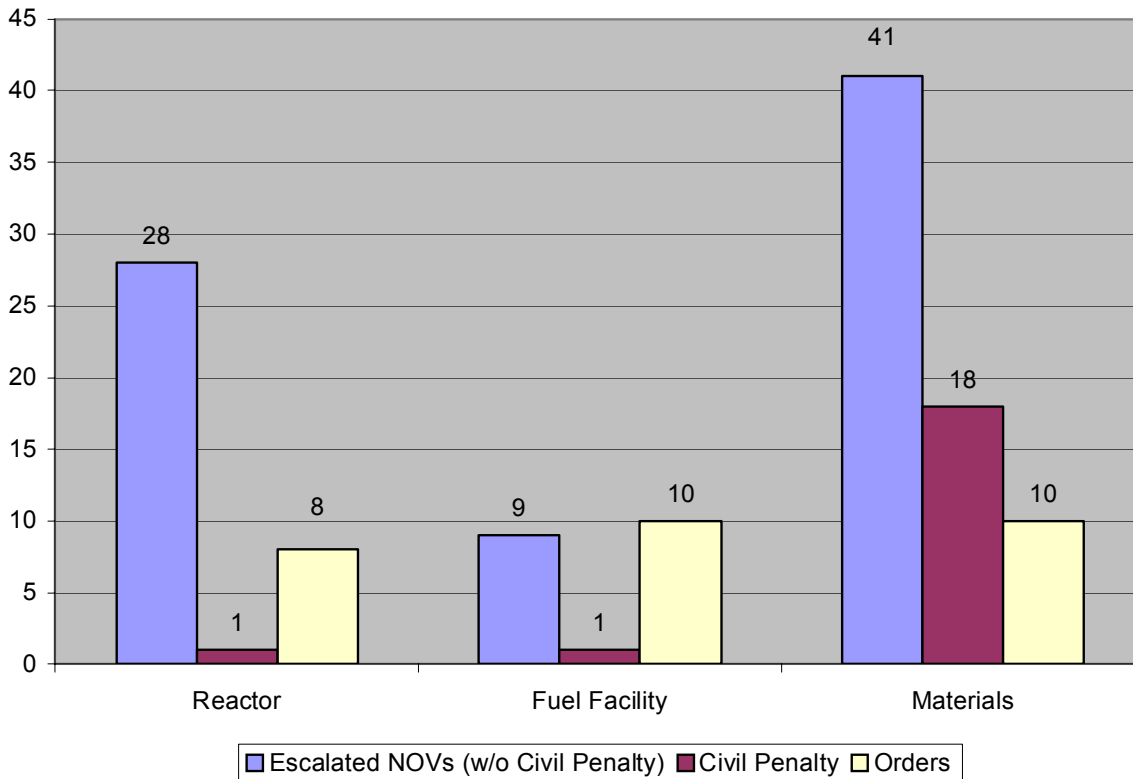


**Figure 2: Escalated Enforcement by Type**

Figure 2 above shows the distribution of escalated enforcement actions issued in calendar year CY2009 by type of action issued. This represents all 126 escalated actions issued throughout the year. The majority of escalated enforcement actions issued in CY2009 involved 78 NOVs without a civil penalty. In addition, 20 actions involved proposing or imposing a civil penalty and 28 actions involved issuing an enforcement order unrelated to civil penalties.

There are many reasons why escalated NOVs may not be accompanied by a civil penalty. These reasons include, in part, the fact that the ROP does not generally account for the issuance of civil penalties and the Civil Penalty Assessment process described in the Enforcement Policy considers whether credit is warranted for (1) good escalated enforcement history; (2) self identification of the violation; and (3) if the corrective actions were prompt and comprehensive. The process also takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration.

Figure 3 below shows the distribution of enforcement actions based on the type of licensees to whom escalated enforcement actions were issued in calendar year CY2009. For this chart individual actions are included in the appropriate category and not listed separately. In addition, the 3 orders imposing civil penalties are included in the materials category for Figure 3.



**Figure 3: Escalated Enforcement by Licensee**

The charts and the tables at the end of this report break this information down further by identifying the region or program office that initiated the action, as well as the licensees, non-licensees, and individuals who were involved.

**A. Civil Penalty Actions**

During CY 2009, the agency processed 17 cases involving proposed civil penalties. Nine of these cases involved willfulness. Willfulness is defined as conduct involving either deliberate misconduct or careless disregard.

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

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

The total number of civil penalties proposed in CY 2009 is a decrease from the number proposed in CY 2008 and is more in line with the total numbers from earlier years. There were fewer civil penalties issued to reactor licensees in CY 2009 and, because the statutory civil penalty amount is less for non-reactor licensees, the total amount of proposed civil penalties in CY 2009 was less.

Appendix A includes a brief description of each of the civil penalty actions for 2009. Security related issues involving NOVs with civil penalties are not addressed in Appendix A of this report; however, the number of NOVs associated with security related issues is included in the data discussed in this report.

**Table 1 – Civil Penalty Information**

	CY 2009	CY 2008	CY 2007	CY 2006	CY 2005
<b>Number of Proposed Civil Penalties</b>	17	28	18	15	24
<b>Number of Orders that Imposed Civil Penalties</b>	3	0	1	0	3
<b>Number of Civil Penalties Paid</b>	15	29	17	16	22
<b>Amount of Proposed Civil Penalties</b>	\$174,000	\$1,185,900	\$383,200	\$332,350	\$6,099,950 <sup>1</sup>
<b>Amount of Imposed Civil Penalties<sup>2</sup></b>	\$29,250	\$0	\$3,250	\$0	\$112,100
<b>Amount of Civil Penalties Paid</b>	\$279,750	\$1,039,850	\$446,500	\$375,500	\$5,891,900

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

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

## **B. Notices of Violation without Civil Penalties**

During CY 2009, the NRC issued 78 escalated NOVs without civil penalties. Of these violations, 18 were associated with White SDP findings under the Reactor Oversight Process (ROP). No violations were associated with Yellow or Red SDP findings. Six NOVs associated with Green SDP findings were issued to licensees. NOVs associated with Green SDP findings are not considered escalated enforcement actions. Additional information about the ROP is available at <http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html> on the NRC's public Web site.

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

As noted in Table 2 below, the total number of escalated enforcement actions decreased in CY2009 compared to the total number of actions issued in CY2008, and is more in line with the five year average. This decrease is due, in part, because of the improved performance observed by material licensees in complying with the increased control orders issued in CY2005. In addition, the total number of material licensees decreased due to the States of Pennsylvania, Virginia, and New Jersey becoming Agreement States by the end of CY2009.

## **C. Orders**

During CY 2009, the NRC issued 31 orders to licensees and to individuals. These included 24 confirmatory orders that were issued to confirm commitments associated with ADR settlement agreements, 11 orders issued to individuals (6 of which restricted their involvement in NRC licensed-activities), and 3 orders imposing a civil penalty.

Seven of the eleven orders issued to individuals resulted from an ADR mediation session. Orders issued to individuals restricting involvement in NRC licensed activities included: two individuals being prohibited from involvement in NRC-licensed activities for 5 years; three individuals being prohibited from involvement in NRC-licensed activities for 3 years; and one individual being prohibited from involvement in NRC-licensed activities for 2 years.

As seen in Table 2, the number of orders issued in CY 2009 decreased from CY 2008, in part, due to a few cases in CY 2008 that resulted in a large number of orders issued to individuals related to nonlicensed security personnel.

Appendix C includes a brief description of the enforcement orders issued in CY 2009. The appendix also includes a brief description of a demand for information (DFI) issued in CY 2009. (See Section F below).

**D. Enforcement Actions Supported by the Office of Investigations**

In CY 2009, an Office of Investigations (OI) Report supported 37 percent or 47 out of the 126 escalated actions:

- 9 of the 17 escalated NOV cases with civil penalties (53 percent)
- 14 of the 78 escalated NOV without civil penalties (18 percent)
- 25 of the 31 enforcement orders (81 percent)

The 47 cases supported by an OI investigation represent a decrease from the 59 cases supported in CY 2008. Although the total number for CY 2009 is a decrease from CY 2008, it is more in line with previous annual totals and represents the same percentage of cases supported in CY 2008.

**E. Escalated Enforcement Trends**

During CY 2009, the agency issued 126 escalated enforcement actions. This number is relatively equivalent to the average number of 120 escalated enforcement actions issued for the last 5 years and the number of escalated enforcement actions issued in CY 2007 and CY 2005. The number of escalated enforcement actions issued in CY 2006 was equally less than the 5 year average as the number of escalated enforcement actions issued in CY 2008 was greater than the 5 year average. This indicates that CY 2009 returned to an expected level of escalated enforcement activity. Table 2 provides information regarding the total number of escalated enforcement actions from fiscal year (FY) 2005 to CY 2009. Figure 3 provides this information in graphical form.

**Table 2 – Escalated Action Trends**

	CY 2009	CY 2008	CY 2007	CY 2006	FY 2005	Average
Escalated NOVs with Civil Penalties	17	28	18	15	24	20
Orders Imposing Civil Penalties	3	0	1	0	3	1
Orders	28	35	22	15	17	23
Escalated NOVs without Civil Penalties	78	94	77	57	70	75
<b>Total</b>	<b>126</b>	<b>157</b>	<b>118</b>	<b>87</b>	<b>114</b>	<b>120</b>

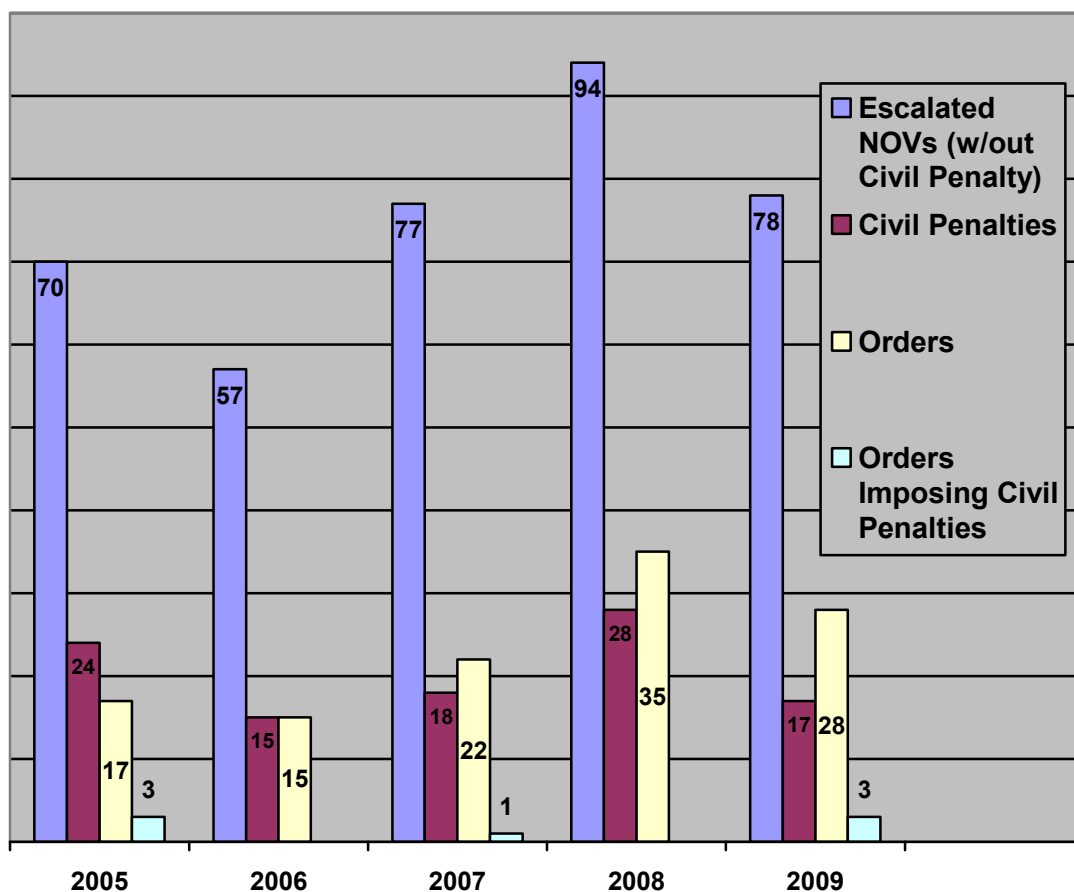


Figure 4: Escalated Action Trends (FY 2005 – CY 2009)

### F. Demand for Information

When the NRC concludes that additional information is necessary, the agency may issue to a licensee or other person subject to the jurisdiction of the Commission, a DFI (see 10 CFR 2.204). A DFI requires the licensee or other person to provide more information or a context for its action(s) so that the NRC is able to determine whether an order or other action is warranted. During CY 2009, the NRC issued DFIs in two cases. One set of DFIs was issued to various general material licensees to obtain information needed to determine whether licensees were aware of their responsibility to account for tritium exit signs in their possession, and properly dispose of them at the end of their useful life. Another DFI was issued to a physician and authorized user of licensed radioactive material at the Department of Veterans Affairs, Philadelphia, to obtain specific information regarding his usage of by-product material for any purpose including, but not limited to, brachytherapy. Appendix C includes a brief description of these DFIs.

## **II. Actions Against Individuals and Non-licensee Organizations**

During CY 2009, the agency issued 19 escalated actions to licensed and unlicensed individuals. This number is included in the total number of escalated enforcement actions (NOVs and orders) that the agency issued in CY 2009. Appendix C provides summaries of the orders that were issued to individuals, including those orders prohibiting or limiting their participation in NRC-licensed activities. Appendix D summarizes the NOVs issued to individuals in CY 2009.

The number of escalated actions issued to individuals in CY 2009 remained relatively consistent with those issued in CY 2008.

The agency issued two escalated enforcement actions to non-licensees in CY 2009. Appendix E provides a summary of these actions.

## **III. Cases Involving Discrimination**

During CY 2009, three cases involving allegations of discrimination were resolved using post-investigation ADR. This reflects an increase from the number of discrimination cases processed in CY2008. On December 22, 2009, a confirmatory order (effective immediately) was issued to confirm commitments made as result of an ADR session, held on December 4, 2009, between the Tennessee Valley Authority (TVA) and the NRC. On August 13, 2009, a confirmatory order (effective immediately) was issued as part of a settlement agreement between the United States Enrichment Corporation and the NRC based on a Department of Labor Administrative Review Board's Final Decision and Order. See Appendix C for additional details.

## **IV. Notices of Enforcement Discretion**

Occasionally, circumstances may arise where a power reactor licensee's compliance with a technical specification or other license condition would involve an unnecessary plant transient or performance testing, inspection, or other system realignment that is inappropriate for the specific plant conditions. In these circumstances, the NRC staff may choose not to enforce the applicable requirement(s). The staff exercises this enforcement discretion, designated as a notice of enforcement discretion (NOED), only if it is clearly satisfied that the action is consistent with protecting the public health and safety. The staff may also issue NOEDs in cases involving severe weather or other natural phenomena, when it determines that exercising this discretion will not compromise safety. NOEDs require justification from a licensee or certificate holder that documents the safety basis for the request and provides whatever other information the staff deems necessary to issue an NOED. The NRC issued one NOED during CY 2009 to Dominion Energy Kewaunee. Appendix F to this report includes a brief description of the NOED.

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

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

In CY 2009, the NRC exercised enforcement discretion in eight cases to address violations of NRC requirements. These cases involved use of discretion in accordance with interim enforcement policy guidance or in accordance with Section VII.B.6 of the Enforcement Policy. In each case, the staff determined that the facts supported issuance of a close-out letter to the licensee in lieu of an NOV.

The staff applied enforcement discretion for seven cases in accordance with the "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues." The interim Enforcement Policy grants enforcement discretion for noncompliant fire protection issues which are identified as a result of a licensee transitioning to the Nation Fire Protection Association Standard 805 (NFPA 805) included in paragraph (c) of 10 CFR 50.48. In order for a licensee to receive this discretion, they must meet the criteria as stated in the interim Enforcement Policy. If the noncompliance does not meet the criteria, the staff will disposition the noncompliance in accordance with the Enforcement Policy.

The staff exercised enforcement discretion in one additional case of interest. A letter was issued on August 6, 2009, to Holtec International (Holtec) which indicated that the NRC used enforcement discretion pursuant to Section VII.B.6 of the Enforcement Policy to not issue a Notice of Violation for a severity level IV violation identified during an in-office review concerning a change to the Holtec Final Safety Analysis Report for Certificate of Compliance No. 72-1014. Specifically, the licensee improperly used 10 CFR 72.48 and eliminated a post-manufacture helium leak rate test of a Holtec Multi-Purpose Canister (MPC) which is part of the HI-STORM 100 cask storage system. The staff evaluated the potential consequence of this failure and characterized the action as having low safety significance to public health and safety. The staff decided to use discretion in accordance with Section VII.B.6 of the Enforcement Policy in this case because: (1) the requirement lacked clarity; (2) the violation had low safety significance; and (3) Holtec's overall good enforcement history.

## VI. Withdrawn Actions

Licensees can challenge enforcement actions for several reasons; for example, a licensee might dispute the requirements, the facts of the case, the agency's application of the Enforcement Policy, or the significance of the violation. Licensees may provide clarifying information that was not available at the time of the inspection, and this may affect the finding of a noncompliance. During CY 2009, the agency did not withdraw any escalated enforcement action.



In addition, OE has established a metric as an indication of enforcement action quality based on the number of disputed and withdrawn nonescalated enforcement actions. The goal is less than 30 withdrawn nonescalated enforcement actions in a calendar year. This metric does not include violations that are withdrawn on the basis of supplemental information that was not available to an inspector before the assessment of an enforcement sanction. During CY 2009, the agency issued approximately 1000 nonescalated enforcement actions to reactor, materials, and fuel facility licensees. Of these actions, 17 nonescalated enforcement actions were disputed. In CY 2009, the NRC withdrew only 2 of these disputed actions.

## **VII. Significant Enforcement Actions**

During CY 2009, the agency was involved with several significant enforcement actions that required coordination among internal and external stakeholders beyond the typical enforcement case.

### **Exelon Generation Company, LLC (Peach Bottom Atomic Power Station)**

On January 6, 2009, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$65,000 was issued for a Severity Level III problem involving inattentive security officers at Exelon's Peach Bottom Atomic Power Station. An investigation conducted by the NRC Office of Investigations determined that multiple security officers at Peach Bottom were deliberately inattentive on multiple occasions. In addition, multiple security officers deliberately failed to report observations of inattentiveness to their supervision, as required. These security officers put Exelon in violation of 10 CFR 73.55, which requires armed responders to maintain continuous communication with each alarm station and be available to immediately respond to threats, and Peach Bottom License Condition 2.C(3), which requires, in part, reporting of aberrant behaviour. Exelon paid the civil penalty on January 14, 2009. Because the actions of the security officers were deliberate, the NRC issued a Severity Level III Notice of Violation to Wackenhut Nuclear Services, the company formerly providing contract security services to Exelon at Peach Bottom, for a violation of 10 CFR 50.5, which prohibits any contractor of a licensee from engaging in deliberate misconduct that causes a licensee to be in violation of any NRC regulation or condition of a license issued by the Commission. In accordance with the NRC Enforcement Policy, because of their low level in the organization and actions taken by Exelon, the individuals involved in this case were not subject to an NRC enforcement action.

### **Eastern Testing and Inspection, Inc.**

Based on an investigation completed by the NRC Office of Investigations, the NRC Staff determined that Eastern Testing and Inspection, Inc. (ETI) failed to have a pre-arranged plan with a local law enforcement agency for assistance in response to an actual or attempted theft or sabotage of radioactive material or devices containing radioactive material, contrary to NRC Order Imposing Increased Controls, EA-05-090, Attachment B, dated November 14, 2005. On February 10, 2009, the NRC Staff issued a Notice of Violation and Proposed Imposition of Civil Penalty of \$13,000 to ETI. On the same day, the NRC Staff issued Orders (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities for a period of one year to the

President and then Vice President of ETI. The NRC Staff contended that ETI submitted information to the NRC that was not complete and accurate in all material respects and that the President and then Vice President of ETI violated 10 CFR 30.10. The licensee did not agree with the NRC Staff's characterization of the issues and the President and then Vice President denied that they violated 10 CFR 30.10 and denied that statements made to NRC officials were incomplete, false, misleading, or material. At the request of ETI and its officers, the staff engaged in the Alternate Dispute Resolution Process for the licensee and both individuals. However, an agreement was not reached. On May 8, 2009, the Atomic Safety and Licensing Board (ASLB) granted the licensee's request for a hearing to resolve the issue. On July 16, 2009, the ASLB approved a Settlement Agreement negotiated by the NRC Staff and the licensee and issued a Board Order stipulating a number of agreed-to actions. The complete Board Order can be viewed from the NRC's Agency-Wide Document Access and Management System (ADAMS) at ML091970597. The Order stipulates, in part, that the licensee pay a \$4,500 civil penalty, the parties agree to disagree on the NRC Staff's conclusions, the President would not work with NRC licensed material before August 10, 2009, and the then Vice President would not work with NRC licensed material until February 10, 2010. The NRC incorporated the Board Order into ETI's license so that jurisdiction of the Board Order transferred to the State of New Jersey (Department of Environmental Protection) which acquired regulatory authority over the licensee as an Agreement State pursuant to paragraph 274b of the Atomic Energy Act

### **S & M Testing Laboratory**

On March 23, 2009, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of \$16,250 was issued to S&M Testing Laboratory (S&M Testing). The action was based on three separate violations involving inadequate and improper storage of gauges containing licensed radioactive material and the licensee's failure to respond to repeated attempts by the NRC to discuss the status of licensed activities. In addition, the NRC Staff issued an Order prohibiting the S&M Testing President/Radiation Safety Officer from participating in NRC licensed activities for 5 years. This action was based on the individual's deliberate failure to confine possession of NRC-licensed material to locations authorized on the NRC license and to provide the NRC an opportunity to inspect the materials, activities, and facilities to verify security of licensed material in S&M Testing's possession. The President/RSO was uncooperative and refused to provide the NRC information regarding the licensed gauges including their location and conditions of storage. The individual also failed to respond to repeated contact attempts by the NRC. The NRC OI, with assistance from the Federal Bureau of Investigation, successfully located and met with the President/RSO, at which time the individual acknowledged receiving and not responding to NRC letters and telephone calls. The NRC Staff eventually located the licensed material and had it moved to a storage facility with proper controls and then appropriately disposed. After the President/RSO failed to respond to either the Notice or Order, the NRC staff determined that the proposed penalties for the violations designated in the Notice should be imposed. Accordingly, an Order Imposing the Civil Monetary Penalty in the amount of \$16,250 was issued on June 08, 2009. This action required extensive interaction between Region I, OE, OI, FSME, Office of the Chief Financial Officer (OCFO), and OGC within the NRC and with the FBI and the Department of Treasury.

### **Tennessee Valley Authority (TVA) Browns Ferry Alleged Discrimination Cases**

On January 6, 2009, OI completed an investigation of alleged discrimination at the TVA Browns Ferry Nuclear Plant involving the termination of a contract employee from the Unit 1 Restart Project in 2005 after he raised a safety concern to site management. On July 31, 2009, OI completed an investigation of a similar alleged discrimination case at Browns Ferry involving an adverse employee action against a TVA employee in early 2008 after he raised a safety concern to management regarding the site's Fitness for Duty program. Although these two investigations resulted in separate OI reports which substantiated separate apparent violations of 10CFR50.7, a single Alternative Dispute Resolution (ADR) mediation session was held in the interest of efficiency and to take advantage of the expected similar corrective actions. On December 4, 2009, an ADR mediation session was held between NRC and TVA management where an agreement was reached. On December 22, 2009, a Confirmatory Order (effective immediately) was issued to the TVA to confirm commitments made as a result of the ADR mediation session. This action involved timely and extensive coordination between OI, OGC, and OE within the NRC and TVA and the Institute on Conflict Resolution (ICR) at Cornell University. As a result of this single ADR session, the licensee agreed to significant improvements to its safety culture programs at all its operating nuclear facilities and at its nuclear construction site.

## **VIII. Hearing Activities**

### **A. Davis Besse**

During CY 2009, two hearings came to a closure that were pending before the Atomic Safety and Licensing Board (ASLB) relating to enforcement actions against two former employees at the Davis Besse Nuclear Power Plant.

In the first case, the NRC issued an order on April 21, 2005, against Mr. Andrew Siemaszko, a former system engineer at Davis-Besse, for deliberately providing inaccurate and incomplete information to the NRC. The order prohibited him from involvement in NRC-licensed activities for 5 years from the effective date of the order. On April 22, 2005, Mr. Siemaszko requested a hearing before the ASLB. On December 31, 2006, the ASLB placed the NRC proceeding on hold because of the concurrent proceeding brought by the U.S. Department of Justice against Mr. Siemaszko in the U.S. District Court for the Northern District of Ohio, Western Division, arising out of the same set of facts and circumstances. In August 2008, a Federal jury found Mr. Siemaszko guilty on three of five counts. Mr. Siemaszko was later sentenced to, among other things, 3 years of probation. On July 16, 2009, the ASLB issued an Order approving a settlement agreement entered into by the NRC and Mr. Siemaszko and dismissed the proceeding. The parties agreed that Mr. Siemaszko's 5 year debarment will be effective from the date of the April 21, 2005 Order, terminating on April 21, 2010, with all other terms of the original enforcement order remaining in effect.

In the second case, the NRC issued an order on January 4, 2006, against Mr. David Geisen, a former Manager of Design Engineering at Davis-Besse, for deliberately providing inaccurate and incomplete information to the NRC. The order prohibited him from involvement in NRC-licensed activities for 5 years. On February 23, 2006, Mr. Geisen requested a hearing before the ASLB. On February 1, 2007, the Commission placed the NRC proceeding on hold because of the concurrent proceeding brought by the U.S. Department of Justice against Mr. Geisen in the District Court for the Northern District of Ohio, Western Division, arising out of the same set of facts and circumstances. In October 2007, a jury found Mr. Geisen guilty on three of five counts. Mr. Geisen was sentenced, among other things, to 3 years of probation during which he was barred from employment in the nuclear power industry. Starting on December 8, 2008, a 5 day evidentiary hearing was held before the ASLB at the NRC Headquarters. On August 28, 2009, the ASLB issued a split initial decision with a majority of the Board finding that the Staff failed to show by a preponderance of the evidence that Mr. Geisen engaged in the deliberate misconduct. The ASLB therefore set aside the sanctions the original enforcement order, including the 5-year ban on his employment in the nuclear industry. On September 21, 2009, the NRC Staff petitioned the Commission for review of the ASLB initial decision and applied for a stay of the effectiveness of the ASLB's decision to allow Mr. Geisen to return to work in the nuclear industry. On November 17, 2009, the Commission denied the Staff's request for a stay. At the end of CY2009, the Commission had not ruled on the Staff's appeal of the initial decision. On January 19, 2010, the Sixth Circuit Court of Appeals heard oral argument in Mr. Siemaszko and Mr. Geisen's appeals from their convictions in the district court.

### **B. Eastern Testing and Inspection, Inc.**

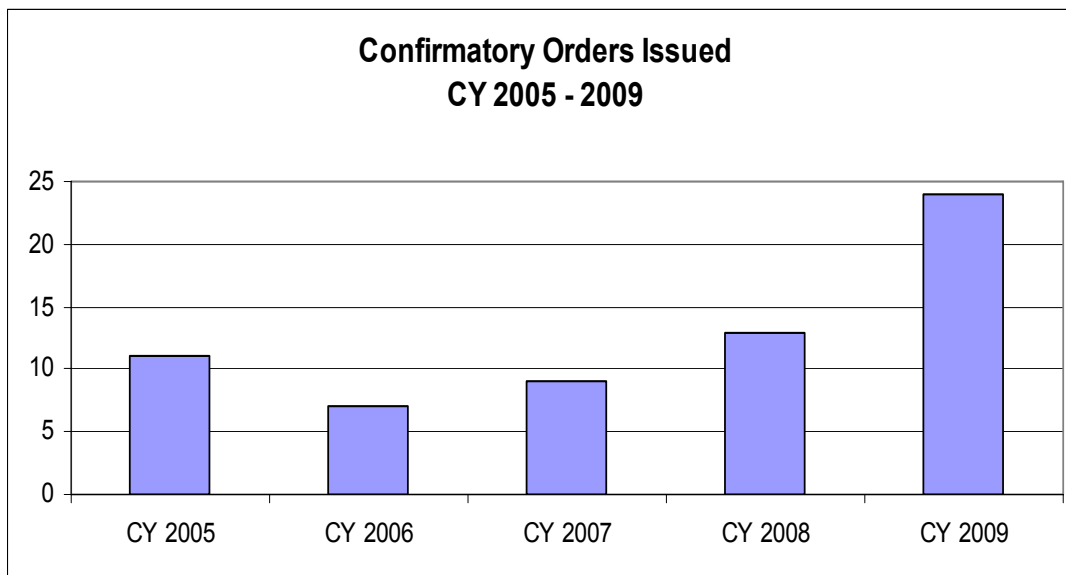
On May 8, 2009, the ASLB granted a request by the President, Himat Soni, and Vice President, Dhiraj Soni, of Eastern Testing and Inspection, Inc. (ETI) for a hearing to resolve issues identified during an NRC investigation. On July 16, 2009, the ASLB approved a settlement negotiated by NRC staff and ETI. Pursuant to the Settlement Agreement: (1) the company paid a \$4,500 civil penalty; and, (2) the NRC and ETI agreed to disagree about the violations identified by the NRC staff. ETI also agreed to develop and implement an annual training program that explains specific requirements to employees who use licensed materials and to contract with a consultant to evaluate the effectiveness of the company's security and radiation safety program prior to taking custody of NRC licensed materials in the future. Additionally, the company agreed that it would not possess licensed nuclear materials in New Jersey before November 10, 2009. Company President, Himat Soni, agreed not to work with NRC licensed material before August 10, 2009. The Vice President, Dhiraj Soni, has since left the company and agreed not to work with NRC licensed material for a year. The complete ASLB Order can be viewed from the NRC's Agency-Wide Document Access and Management System (ADAMS) at ML091970597. For more information see the write up in Section VII of this report about ETI.

**IX. Alternative Dispute Resolution (ADR)**

The term "Post-Investigation ADR" refers to the use of mediation after the NRC Office of Investigations (OI) has completed its investigation and an enforcement panel has concluded that pursuit of an enforcement action appears to be warranted. Under the NRC's Post-Investigation ADR process, mediation may be offered at three points in the enforcement process for discrimination and other wrongdoing cases: (1) before a predecisional enforcement conference; (2) when an NOV is issued; or (3) when cases result in the issuance of an order imposing a civil penalty. Mediation is an informal and voluntary process in which a neutral mediator with no decision making authority assists the parties in reaching an agreement or resolving any differences regarding their dispute. The staff believes for certain escalated enforcement actions mediation affords the parties the opportunity to gain broader or more comprehensive corrective actions than those typically achieved through the traditional enforcement process.

During CY 2009, OE issued 24 confirmatory orders documenting settlement agreements (4 reactor licensee cases, 13 materials licensee cases and 7 individual cases). Of the 24 cases, all but one was negotiated before a predecisional enforcement conference was held. The one exception was negotiated after issuance of the NOV and proposed civil penalty.

The number of confirmatory orders arising out of Post-Investigation ADR process has been gradually increasing with a spike in CY 2009. The increase in CY 2009 is primarily due to a greater than usual number of individual and materials licensee cases.



**Figure 5: Confirmatory Order Trends**

## X. Enforcement Policy Changes and Enforcement Guidance Memoranda

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

During the 2008 public comment period the NRC staff received a wide range of comments on the proposed revised Policy from external stakeholders. The staff subsequently spent considerable time reviewing all the comments and, as a result, incorporated numerous changes throughout the revised Policy. A summary of the comments and the NRC's responses was made available at NRC's Electronic Reading Room and via ADAMS (ML091830260). In mid-2009, the staff also made publicly available a preliminary final draft of the proposed revised Policy. This draft reflected changes the staff made to the proposed revised Policy as a result of comments received during the 2008 public comment period. The preliminary draft of the revised Policy was made available at NRC's Electronic Reading Room and via ADAMS (ML092240160).

Based on comments received during the 2008 comment period, the staff substantially revised the violation examples contained in the proposed revised Policy. Because of the numerous changes the staff made to violation examples, an additional opportunity for public comments on just the violation examples was deemed appropriate. Thus, on June 8, 2009, NRC published a notice of availability of draft and request for comments regarding the violation examples in the proposed revised Policy (74 FR 27191). The public comments on the revised violation examples and NRC responses to those comments were made available at NRC's Electronic Reading Room and via ADAMS (ML092650309).

In late 2009, the staff made publicly available the latest draft of the proposed revised Enforcement Policy. This draft reflected changes the staff had made to the proposed revised Policy as a result of comments received on the revised violation examples, as well as other edits made since the previous draft was made publicly available earlier in 2009. The draft revised Policy was made available at NRC's Electronic Reading Room and in ADAMS (ML093430119).

In late December 2009, the proposed revised Enforcement Policy was forwarded to the Commission for review and approval in SECY-09-0190.

OE issues Enforcement Guidance Memorandums (EGM) to provide guidance in the interpretation of specific provisions of the Enforcement Policy. A link to the full text of all publicly available EGMs can be found in Appendix A of the NRC Enforcement Manual. The office issued eight EGMs in CY 2009, which are summarized below:

- January 30, 2009, EGM-09-001, "Dispositioning Violations of NRC Requirements for Operability of Gaseous Monitors for Reactor Coolant System Leakage Detection". The purpose of this EGM is to provide guidance for dispositioning violations of NRC requirements for the operability of radioactivity monitors for Reactor Coolant System (RCS) leakage detection.
- March 31, 2009, EGM-09-003, "Dispositioning Violations of NRC Requirements for Initial Validity and Drug Tests at Licensee Testing Facilities". The purpose of this EGM is to provide guidance for dispositioning violations of U.S. Nuclear Regulatory Commission (NRC) requirements for quality control (QC) specimens associated with performing initial drug and validity tests at licensee testing facilities (LTFs).
- May 13, 2009, EGM-09-004, "Dispositioning Violations of Naturally Occurring and Accelerator-Produced Radioactive Materials (NARM) Requirements". The purpose of this EGM is to provide guidance for dispositioning inspection findings related to a licensee's implementation of naturally occurring and accelerator-produced radioactive materials (NARM) requirements.
- May 15, 2009, EGM-09-002, "Enforcement Discretion for Fire Induced Circuit Faults". The purposes of this EGM are to describe the conditions limiting enforcement discretion during the resolution of fire protection concerns involving multiple spurious operations. Enforcement discretion is limited to 3 years from the date of issuance of Regulatory Guide (RG) 1.189, Revision 2: (1) 6 months following the issuance of RG 1.189, Revision 2, for licensees to identify noncompliances related to multiple fire induced circuit faults, place the noncompliances into their corrective action program and implement compensatory measures for the noncompliances and (2) 3 years following the issuance of RG 1.189, Revision 2, for licensees to complete the corrective actions associated with noncompliant multiple fire induced circuit faults. This EGM supersedes EGM 98-002 Revision 2 (ML003710123).
- July 31, 2009, EGM-09-007, "Dispositioning Violations of National Source Tracking System (NSTS) Requirements". The purpose of this EGM is to provide guidance for dispositioning inspection findings related to a licensee's implementation of national source tracking system (NSTS) requirements.
- August 28, 2009, EGM-09-007 (rev 1), "Interim Guidance for Dispositioning Violations of National Source Tracking System (NSTS) Requirements". This revision corrected an inaccurate violation example.
- September 15, 2009, EGM-09-006, "Enforcement Discretion for Violations of 10 CFR Part 72, Subpart K, regarding Implementation of Certificate of Compliance Amendments to previously loaded Spent Fuel Storage Casks". The purpose of this EGM is to provide interim guidance for the disposition of apparent violations of 10 CFR Part 72 general licensees, for any casks loaded with spent nuclear fuel, comply with the terms, conditions, and specifications of the certificate of compliance under which that cask was loaded.

- September 24, 2009, EGM-09-008, "Dispositioning Violations of NRC Requirements for Work Hour Controls Before and Immediately After a Hurricane Emergency Declaration". The purpose of this EGM is to provide guidance for the disposition of violations of work hour control regulations during conditions before and immediately after the declaration of an emergency for a hurricane, when licensees sequester plant staff on site to ensure personnel are available for relief of duties.

## XI. Ongoing Activities

### A. Safety Culture

In CY 2009, OE continued to be the lead office for the agency's external safety culture policy development. On November 6, 2009, the NRC published a draft policy statement on safety culture for public comment that will update and expand an earlier policy statement that was focused on safety in control rooms and throughout nuclear power reactor facilities. The agency's goal in this recent initiative is to develop an overarching statement that is more inclusive of the full range of the NRC's licensed activities, and better able to address security issues. Because safety culture is an indicator of licensee performance and has a bearing on public safety, the NRC has a responsibility to consider safety culture as part of its oversight responsibilities.

In SECY-09-0075 (May 18, 2009), OE provided this policy statement to the Commission. In the SRM for SECY-09-0075 (October 16, 2009), the Commission approved publication of the draft policy statement in the *Federal Register* and instructed the staff to (1) consider making it applicable to vendors and suppliers of safety-related components; (2) engage stakeholders, especially the Agreement States and materials users, to ensure that the final policy statement benefits from consideration of a spectrum of views and provides the necessary foundation for safety culture applicable to the entire nuclear industry; and (3) to consider the use of common terminology. The draft policy statement was published for public comments in the *Federal Register* (November 6, 2009) for a 90-day period. The comment period was extended to March 1, 2010, based on the comments of stakeholders who were part of an external steering committee that OE established to provide logistical input for an NRC 3 day workshop conducted in early February 2010.

OE continues to chair the agency's internal Safety Culture Working Group (SCWG), and provides assistance and guidance to other NRC offices on safety culture developmental activities. This assistance includes efforts in the fuel facility, new reactor construction, and security areas. OE also participates as the vice-chair of the Office of Nuclear Reactor Regulation's Safety Culture Focus Team (SCFT). The purpose of the SCFT is to promote the implementation of the ROP safety culture changes effectively and consistently across the regions. The Agency Allegation Advisor, located in OE, chairs the SCFT's subgroup, the Safety-Conscious Work Environment Findings Review Group, whose purpose is to ensure regulatory consistency by reviewing and handling all potential inspection findings in the safety-conscious work environment cross-cutting area of the ROP.



## **B. Knowledge Management**

In CY 2009, OE engaged in several knowledge management activities. Some of the ongoing activities being conducted to maintain an adequate knowledge base include supporting training, completing reviews and self assessments, developing internal office procedures, and conducting counterpart meetings.

### Training

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

Headquarters and regional enforcement staff provided outreach training to internal stakeholders on the allegation, enforcement, and ADR processes during counterpart meetings and other office training sessions. One example included training for the vendor inspection teams on the writing of notices of violation and notices of nonconformance.

### Reviews and Self Assessments

During 2009, OE completed four self assessments related to implementation of the enforcement program. On February 25, 2009, an assessment was issued related to the posting of web summaries. An assessment of the staff's consistency in placing enforcement related documents in ADAMS was completed on May 11, 2009. The use of Form 591, "Safety Inspection Report and Compliance Record" was reviewed during the third quarter of 2009, and issued on September 30, 2009. Finally, an assessment of the staff's use of EATS was completed during the fourth quarter and issued on January 20, 2010. In general, these assessments identified that the specific aspects of the enforcement program reviewed were being implemented satisfactorily; however, improvements could be made to guidance documents to help ensure a high level of quality. Improvement of these specific guidance documents, as well as others, was an ongoing effort during the year.

### Development of Office Specific Procedures

OE began developing numerous procedures providing guidance on accomplishing specific tasks unique to headquarters enforcement staff. Many of the procedures had been accomplished by on-the-job training and experience. Procedures on developing EGM, writing and issuing enforcement notifications, preparation and approval of enforcement case web summaries, and the use of civil penalty acknowledgement letters are examples of the instructions developed during the year.

### Enforcement Counterpart Meetings

In June 2009, regional and headquarters enforcement staff held a counterpart meeting to discuss ways to improve the enforcement process and communications among staff. The meeting resulted in a number of ideas that are improving the handling of casework.

## XII. Regional Accomplishments

During CY 2009, the regions conducted both routine and focused self assessments of the enforcement area to ensure effective performance and to identify opportunities for continuous improvement. The self-assessments encompassed both the reactor and materials arenas; considered performance associated with development and issuance of both nonescalated and escalated enforcement actions; and included activities that required a high degree of coordination with other NRC stakeholders, such as OI.

These assessments included the following reviews:

- reactor and materials program nonescalated enforcement actions
- regional instructions compared to guidance in the Enforcement Policy, Enforcement Manual, Management Directives, and Inspection Procedures
- enforcement related matters in Inspection Manual Chapter 0612

Overall, the self-assessments showed that the regions were effectively implementing the Enforcement Program. However, the reviews did identify the need for enforcement guidance and instructions to be updated

**Table 3: CY 2009 – Escalated Enforcement Actions by  
Region and Program Office**

<b>Program Office</b>	<b>Civil Penalties</b>	<b>Orders Imposing Civil Penalty</b>	<b>Orders</b>	<b>Escalated NOVs (w/o Civil Penalty)</b>	<b>TOTAL</b>
Region I	6	1	6	26	<b>39</b>
Region II	1	0	13	17	<b>31</b>
Region III	5	2	6	27	<b>40</b>
Region IV	5	0	3	8	<b>16</b>
NRR	0	0	0	0	<b>0</b>
NMSS	0	0	0	0	<b>0</b>
FSME	0	0	0	0	<b>0</b>
OE	0	0	0	0	<b>0</b>
<b>TOTAL</b>	<b>17</b>	<b>3</b>	<b>28</b>	<b>78</b>	<b>126</b>

**Table 4: CY 2009 – Escalated Enforcement Actions by Type of Licensee, Non-licensee, or Individual**

Type of Licensee	Civil Penalty	Orders Imposing Civil Penalty	Orders	Escalated NOVs (w/o Civil Penalty)	TOTAL
Operating Reactor	1	0	4	22	27
Gauge User	6	1	3	13	23
Radiographer	7	1	2	8	18
Fuel Facility	1	0	8	6	15
Hospital	2	1	0	8	11
Unlicensed Individual (Materials)	0	0	5	2	7
Irradiator	0	0	0	4	4
Unlicensed Individual (Fuel Facility )	0	0	2	2	4
Licensed Individual (Reactor)	0	0	1	3	4
Unlicensed Individual (Reactor)	0	0	3	1	4
Non-licensee	0	0	0	2	2
Materials Distributor	0	0	0	1	1
Pharmacy	0	0	0	1	1
Academic	0	0	0	1	1
UF Conversion Facility	0	0	0	1	1
Research Reactor	0	0	0	0	0
Mill	0	0	0	0	0
Physician	0	0	0	0	0
Radiographer Fabricator	0	0	0	0	0
Waste Disposal	0	0	0	0	0
Well Logger	0	0	0	0	0
Other	0	0	0	3	3
<b>TOTAL</b>	<b>17</b>	<b>3</b>	<b>27</b>	<b>78</b>	<b>126</b>

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## Appendix A: Summary of Cases Involving Civil Penalties\*

### Civil Penalties Issued To Reactor Licensees

Exelon Generation Company, LLC  
Peach Bottom Nuclear Plant

EA-08-298

On January 6, 2009, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$65,000 was issued to Exelon Generation Company, LLC for a Severity Level III problem involving a violation of 10 CFR 73.55 and Peach Bottom License Condition 2.C(3) at Peach Bottom Atomic Power Station. Specifically, an investigation conducted by the NRC determined that multiple security officers at Peach Bottom were deliberately inattentive on multiple occasions. In addition, multiple security officers deliberately failed to report observations of inattentiveness to their supervision.

### Civil Penalties Issued To Material Licensees

Cal Testing Services, Inc.  
Griffith, IN

EA-08-286

On January 5, 2009, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,500 was issued to Cal Testing Services, Inc., for a Severity Level III violation of License Condition 20. Specifically, the licensee failed to connect the control cable to the source assembly before cranking the source out of the radiographic exposure device, as required by the licensee's procedures, resulting in a disconnected source event.

S&M Testing Laboratory  
Caguas, Puerto Rico

EA-08-332

On March 23, 2009, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$16,250 was issued to S&M Testing Laboratory for three Severity Level III violations. The first violation involved a deliberate failure to confine possession of byproduct material to only those locations authorized by the NRC license. Specifically from May 1, 2007, through September 23, 2008, S&M Testing stored portable gauges at a location in Gurabo, Puerto Rico (PR) which was not an authorized storage location on the license. The second violation involved a deliberate failure to provide the NRC an opportunity to inspect byproduct material and the premises where the byproduct material was stored, as required by 10 CFR 30.52(a). Specifically, from May 1, 2007 through August 6, 2008, S&M Testing failed to respond to NRC letters and telephone calls that requested information regarding its licensed activities and storage of licensed material. The third violation involved a failure to utilize a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the gauges were not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(i). Specifically, between May 1, 2007, and September 23, 2008, the portable gauges were stored in locked metal boxes located in an unrestricted area, but the keys to the boxes were left in another unrestricted area and during this period the gauges were not under the control and constant surveillance of S&M Testing.

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

Sabia, Inc.  
San Diego, CA

EA-08-237

On January 29, 2009, a Notice of Violation and Imposition of Civil Penalty in the amount of \$13,000 was issued to Sabia, Inc. for a Severity Level III violation of 10 CFR 20.1101. Specifically, between February 25 and 29, 2008, the licensee conducted gauge dismantlement activities and failed to develop, document, and implement a radiation protection program commensurate with the scope and extent of this licensed activity. This failure created a substantial potential for exposures or releases in excess of the applicable NRC regulatory limits when its activities resulted in contamination of its workers and the facility. In addition, the licensee failed to have a radiation protection program for the gauge dismantlement activities that was sufficient to ensure that occupational doses were as low as is reasonably achievable (ALARA), resulting in worker doses that were not ALARA.

**Civil Penalties Issued To Fuel Cycle Licensees**

Westinghouse Electric Company - Hematite Decommissioning Project      EA-09-084  
Festus, MO

On October 23, 2009, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$16,250 to Westinghouse Electric Company - Hematite Decommissioning Project for a Severity Level III violation involving the failure to implement 10 CFR 70.24 (a) requirements. Specifically, in March 2006, the licensee failed to maintain a criticality accident monitoring system which will energize clearly audible alarm signals when it removed the system from service without prior NRC authorization. In addition, the Notice of Violation included a second Severity Level III violation for which a civil penalty was not proposed, involving the failure to implement 10 CFR 70.9 (a) requirements. Specifically, on March 17, 2006, the licensee provided inaccurate information to the Commission when it informed the NRC that the Process buildings contained less than 250 grams of uranium-235, when in fact, as later determined in November 2008, the Process buildings contained an estimated 2,638 grams of uranium-235. This information was material to the NRC since it was used in part as the basis for granting a license amendment on June 30, 2006, revising the possession limits such that the criticality monitoring system could be disabled.

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## Appendix B: Summary of Escalated Notices of Violation Without Civil Penalties\*

### Notices Issued To Reactor Licensees

Carolina Power & Light Co  
Brunswick Steam Electric Plant

EA-09-121

On September 14, 2009, a Notice of Violation (NOV) was issued to Carolina Power & Light Company for a violation of 10 CFR Part 50, Appendix B, Criterion III, "Design Control" associated with a White Significance Determination Process Finding at Brunswick. Specifically, the licensee failed to correctly replace control relays on all four emergency diesel generators (EDGs) because the termination points for linking control power to the EDG lockout relay reset circuitry were incorrectly designated, such that the EDGs could not be operated locally.

Constellation Generation Group, LLC  
Calvert Cliffs Nuclear Plant

EA-08-351

On April 3, 2009, a Notice of Violation was issued to Constellation Energy for a violation of 10 CFR 50.47(b)(4) and 10 CFR 50, Appendix E, associated with a White Significance Determination Process finding at Calvert Cliffs. Specifically, the licensee failed to maintain its Emergency Plans since an emergency action level table used by operators to assess the functionality of the containment barrier during an accident contained an inaccurate threshold for identifying a potential loss of the containment barrier. This error could have adversely impacted the licensee's ability to accurately classify an emergency condition.

Constellation Energy  
R. E. Ginna Nuclear Plant

EA-09-045

On June 8, 2009, a Notice of Violation was issued to Constellation Energy for a violation of Technical Specification 5.4.1.a, "Procedures," associated with a White Significance Determination Process Finding at the R.E. Ginna Nuclear Power Plant. Specifically, in March 2008, the licensee did not implement steps for cleaning and lubricating the turbine-driven auxiliary feedwater pump's governor linkage assembly, as required. Failure to conduct this preventative maintenance led to the turbine-driven auxiliary feedwater pump being declared inoperable when the governor linkage became stuck, preventing the pump from obtaining the required discharge pressure and flow during surveillance testing in December 2008.

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

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Constellation Energy  
R. E. Ginna Nuclear Plant

EA-09-249

On November 12, 2009, a Notice of Violation was issued to Constellation Energy for a violation of 10 CFR 50, Appendix B, Criterion XVI, "Corrective Action," associated with a White Significance Determination Process finding at the R.E. Ginna Nuclear Power Plant. Specifically, after identifying corrosion on the turbine-driven auxiliary feedwater pump governor control valve stem on April 11, 2005, the licensee did not take adequate measures to identify the cause or prevent recurrence of the significant condition adverse to quality. This led to additional corrosion and binding of the governor control valve, and resulted in failure of the turbine-driven auxiliary feedwater pump on July 2, 2009.

Entergy Nuclear Operations, Inc.  
Palisades Nuclear Plant

EA-08-322

On January 30, 2009, a Notice of Violation was issued for a violation of 10 CFR 20.1501 associated with a White Significance Determination Process finding at Palisades. Specifically, the violation involved the failure to evaluate radiological hazards and assess dose to workers that handled tools used for reconstituting failed fuel during work on the refueling floor in October 2007, to demonstrate compliance with the dose limits of 10 CFR 20.1201.

Exelon Generation Company, LLC  
Dresden Nuclear Plant

EA-09-172

On October 22, 2009, a Notice of Violation (NOV) was issued to Exelon Generation Company, LLC for a violation of 10 CFR Part 50.54(j) associated with a White Significance Determination finding at Dresden Unit 3. Specifically, on November 3, 2008, during a maintenance outage, non-licensed operators manipulated the control rod drive system and moved three control rods without the knowledge and consent of a licensed operator present at the controls.

Florida Power and Light Energy  
Duane Arnold Nuclear Plant

EA-09-083

On June 6, 2009 a Notice of Violation was issued to Florida Power and Light Energy for a violation of 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Actions," associated with a White Significance Determination Process finding at Duane Arnold. Specifically, when spurious overspeed trip alarms recurred in June 2008, the licensee did not perform any additional evaluation to identify the cause for the new condition adverse to quality and did not correct the recurring spurious overspeed trip alarms. This allowed the overspeed switch degradation to continue, resulting in the failure of the B emergency diesel generator during the monthly surveillance test conducted in November 2008.



NextEra Energy Seabrook, LLC  
Seabrook Power Station

EA-09-145

On November 12, 2009, a Notice of Violation was issued to NextEra Energy for a violation of 10 CFR 50, Appendix B, Criterion III, "Design Control," associated with a White Significance Determination Process finding at Seabrook. Specifically, a design change to a flange on a jacket water cooling line to the B emergency diesel generator turbocharger did not (1) control welding stresses, verify flange alignment, or evaluate vibration effects, (2) address suitability of gasket material, or (3) consider flange performance history. This resulted in failure of the flange during operation of the B emergency diesel generator, leading to rapid loss of jacket cooling water and inoperability.

Northern States Power Company  
Monticello Nuclear Plant

EA-09-010

On May 27, 2009, a Notice of Violation was issued to Entergy Nuclear Operations, Inc. for a Severity Level III problem involving its failure to properly implement 10 CFR 50.9, 10 CFR 55.23, and 10 CFR 50.74 (c) at Monticello. Specifically, on September 11, 2008, Monticello Nuclear Generating Plant submitted NRC Form 396 for renewal of a senior reactor operator license, certifying that the individual met medical requirements, that contained inaccurate information regarding the individual's medical condition and need for medication. As a result, the license was renewed without the appropriate restrictions. Also, the licensee failed to notify the NRC of a change in the individual's medical condition that occurred in 2004.

Northern States Power Company  
Prairie Island Nuclear Plant

EA-08-272

On January 27, 2009, a Notice of Violation was issued to Northern States Power Company for a violation of Technical Specification 3.7.5.B associated with a White Significance Determination Process finding at Prairie Island. Specifically, the licensee failed to adequately control the position of a normally open pressure switch block valve for the Unit 1 turbine-driven auxiliary feedwater pump. The valve was inadvertently left closed, causing the turbine-driven auxiliary feedwater pump to fail to operate as required following a July 31, 2008, Unit 1 reactor trip. The pump was subsequently determined to have been inoperable for 138 days, a time period that significantly exceeded that allowed by the Technical Specifications.

Northern States Power Company  
Prairie Island Nuclear Plant

EA-08-349

On May 6, 2009, a Notice of Violation was issued to Northern States Power Company for a violation of 49 CFR 173.441(a) and 49 CFR 172.704 associated with a White Significance Determination Process finding at Prairie Island. Specifically, on October 31, 2008, a shipment of radioactive material sent from Prairie Island to a Westinghouse facility in Pennsylvania was found to have a dose rate on an external surface in excess of 200 mrem per hour and a subsequent inspection identified that a number of the personnel involved in preparing this shipment had not been properly trained.

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Northern States Power Company  
Prairie Island Nuclear Plant

EA-09-167

On September 3, 2009, a Notice of Violation was issued to Northern States Power Company for a violation of 10 CFR Part 50, Appendix B, Criterion III, "Design Control," associated with a White Significance Determination Process at Prairie Island. Specifically, the licensee failed to implement design control measures to ensure that the design basis for the component cooling water system was correctly translated into specifications, drawings, procedures, and instructions such that the safety-related function of the component cooling water system was maintained following a high energy line break, seismic, or tornado events affecting the turbine building.

Northern States Power Company  
Prairie Island Nuclear Plant

EA-09-193

On October 27, 2009, a Notice of Violation was issued to Northern States Power Company for a Severity Level III violation involving the failure to properly implement 10 CFR 50.9 and 10 CFR 55.23 at Prairie Island. Specifically, on May 11, 2007, the licensee failed to report a medical condition of a senior reactor operator (SRO) on a license renewal form. This resulted in the NRC renewing the SRO's license without a restriction for the medical condition.

NextEra Energy Seabrook, LLC  
Point Beach Nuclear Plant

EA-09-012

On June 26, 2009, a Notice of Violation was issued to FPL Energy Point Beach, LLC, for a Severity Level III problem involving the failure to implement 10 CFR 50.74(c), 10 CFR 50.9, and 10 CFR 55.23 at Point Beach. Specifically, an individual that initially had been issued a reactor operator license in August 1999 was not medically qualified at the time because he was under treatment for hypertension and the licensee failed to inform the NRC of such, even though Point Beach staff were aware of the medical condition. In October 2008, the licensee informed the NRC of the individual's condition. The medical condition was material to the NRC since the individual's license and subsequent renewed license should have reflected the need for a license condition to ensure that the hypertension was properly treated.

Southern Nuclear Operating Company, Inc.  
Edwin I. Hatch Nuclear Plant

EA-09-054

On June 9, 2009, a Notice of Violation was issued to Southern Nuclear Operating Company, Inc., for a violation of 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Actions" associated with a White Significance Determination Process finding at the Hatch plant. Specifically, since 1988 the licensee had observed cracks in the glands of the emergency diesel generator couplings, but did not recognize the cracking was an indication of coupling deterioration. This fact was not documented during routine maintenance inspections, therefore there was no condition report written to identify and correct the condition. Consequently, the 1B emergency diesel generator coupling developed higher than normal vibration on July 12, 2008, during a routine surveillance test and was declared inoperable.

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

EA-09-103

On July 10, 2009, a Notice of Violation was issued to Southern Nuclear Operating Company, Inc., for a violation of 10 CFR 50.54(q) and 10 CFR 50.47(b) associated with a White Significance Determination Process finding at the Farley plant. Specifically, in January 2008, the licensee identified that approximately 109 tone alert radios had not been provided to residences that were within the 10 mile emergency planning zone (EPZ) of Farley Nuclear Plant. The licensee's subsequent review identified additional residences within the 10 mile EPZ which were required to have tone alert radios in accordance with the Farley emergency plan, but had not been provided such.

**Notices Issued To Material Licensees**

Advex Corporation  
Hampton, VA

EA-09-030

On July 2, 2009, a Notice of Violation was issued for two Severity Level III violations to Advex Corporation. The first violation involved the failure to wear an alarming ratemeter while performing radiography by an assistant radiographer, as required by License Condition 19. Specifically, on January 22, 2008, an assistant radiographer worked in a restricted area (permanent radiography vault) and did not wear an alarm ratemeter. The second violation involved the deliberate failure of the lead radiographer and the assistant radiographer to follow the Operating & Emergency (O&E) Procedure and 10 CFR 34.47(d) requirements, when the assistant radiographer had an off-scale pocket dosimeter. Specifically, on January 22, 2008, neither individual notified the Radiation Safety Officer after the radiographers realized the assistant radiographer's dosimeter was off-scale. The assistant did not remove himself from the restricted area and he was allowed to continue working with and around radioactive material although he was not authorized to return to work, as required by the O&E procedure and 10 CFR 34.47(d).

Cardinal Health  
Dublin, OH

EA-09-221

On December 30, 2009, a Notice of Violation was issued to Cardinal Health for a Severity Level III violation involving the failure to implement License Condition 24. Specifically, on several occasions between January and May 17, 2007, a licensee employee responsible for dispensing radioactive sources deliberately failed to wear finger dosimetry while compounding iodine-131 doses.

Huntington Testing & Technology, Inc.  
Huntington, WV

EA-08-303

On January 22, 2009, a Notice of Violation was issued for a Severity Level III problem. The violations involved the failure to comply with a license condition and to provide event notification as required, in a timely manner. Specifically, on August 20, 2008, the licensee had an event where a radiography camera was disabled and failed to function as designed. The lead radiographer and the field Radiation Safety Officer conducted source retrieval activities and returned the source to its original shielded position even

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though they were not trained or authorized by the NRC license. In addition, the licensee did not notify the NRC until September 3, 2008, two weeks after this event.

Mercy Health Services.  
Ann Arbor, MI

EA-09-181

On September 15, 2009, a Notice of Violation was issued to Mercy Health Services for a Severity Level III problem involving the failure to implement 10 CFR 20.1501 and 10 CFR 20.2003. Specifically, in May 2008, the licensee disposed of iodine-125 into the sanitary sewer system without evaluating the radioactivity of the iodine waste or evaluating the average monthly volume of water released into the sewer system. The licensee released 2.29E-5 microcurie per milliliter of iodine-125 into the sewer which exceeded the regulatory limit of 2E-5 microcurie per milliliter.

Ohio Valley Medical Center  
Wheeling, WV

EA-09-182

On September 17, 2009, a Notice of Violation was issued to Ohio Valley Medical Center for a Severity Level III violation involving the failure to implement 10 CFR 35.615(f)(2) during high dose radiation (HDR) treatments. Specifically, on June 17, 2009 and other occasions prior to that date, neither an authorized user (AU), nor a physician under the supervision of an AU and trained in the operation and emergency response for the unit, were physically present during continuation of HDR treatments.

St. John Macomb-Oakland Hospital  
Madison Heights, MI

EA-08-329

On February 18, 2009, a Notice of Violation was issued to St. John Macomb-Oakland Hospital for a Severity Level III violation involving a failure to implement License Condition 11.B which authorized only a specifically named individual to fulfill the responsibilities of the Radiation Safety Officer (RSO) for brachytherapy activities. Specifically, as of November 2007, the authorized individual was no longer employed by the consulting firm retained by the licensee and did not fulfill the RSO responsibilities. The licensee failed to appoint a new RSO following the previous RSO's departure from the consulting firm.

Virtua Health System-West Orange Hospital  
Voorhees, NJ

EA-09-212

On October 21, 2009, a Notice of Violation was issued to Virtua Health System - West Jersey Hospital (Virtua) for a Severity Level III violation involving the failure to implement 10 CFR 35.41(a)(2). Specifically, during patient setup on January 19, 2009, Virtua staff raised questions concerning the visualization and positioning of seeds in the prostate and there were no procedures to ensure resolution of the questions. As a result, all seeds were implanted outside the prostate.

Wal-Mart Stores, Inc.  
Bentonville, AR

EA-09-187

On October 28, 2009, a Notice of Violation was issued to Wal-Mart, Inc. (Wal-Mart) for a Severity Level III problem involving the failure to: (1) appoint an individual responsible for having knowledge of appropriate regulations and requirements to comply with the general license; (2) properly transfer and dispose of generally licensed devices; and (3) transfer generally licensed devices to another general licensee only if the devices remain in use at a particular location. Specifically, between October 2000 and January 2008, Wal-Mart did not appoint a responsible individual to manage its general license program relative to tritium exit signs, improperly transferred or disposed of up to 2,462 tritium exit signs, and also transferred 517 tritium exit signs from various Wal-Mart facilities to other Wal-Mart facilities, which were not authorized in a specific or general license.

**Notices Issued To Fuel Cycle Licensees**

Honeywell International, Inc.  
Metropolis, IL

EA-09-074

On September 2, 2009, a Notice of Violation was issued to Honeywell International, Inc., for a Severity Level III problem involving failures to implement 10 CFR 20.1501(a) and 10 CFR 40.9. Specifically, a health physics technician deliberately failed to perform monthly airflow measurements of 20 chemical fume hoods located throughout the facility, and the associated records were not complete and accurate.

United States Enrichment Corporation - Portsmouth  
Piketon, OH

EA-08-330

On March 4, 2009, a Notice of Violation was issued to United States Enrichment Corporation for a Severity Level III violation involving the failure to implement Technical Safety Requirement 2.1.3.14 of their license. Specifically, on September 8, 2008, the licensee moved a cylinder containing liquid uranium hexafluoride to a storage pad with mobile equipment (straddle carrier) instead of an approved crane. In this case, no adverse affects to the public or environment resulted from this unauthorized moved.



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## Appendix C: Summary of Orders\*

### Orders Issued To Reactor Licensees

Exelon Generating Company, LLC  
Peach Bottom Plant

EA-09-007; EA-09-059

On December 1, 2009, a Confirmatory Order (effective immediately) was issued to Exelon Generating Company, LLC (Exelon) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on September 3, 2009. The commitments were made by Exelon as part of a settlement agreement between Exelon and the NRC regarding apparent violations by a former reactor operator and a former maintenance supervisor. The agreement resolved the two apparent violations involving the deliberate failure of a former reactor operator to report an arrest in a timely manner and the deliberate failure of a former maintenance supervisor to provide complete and accurate information on a personal history questionnaire which were identified during an NRC investigation. Exelon agreed to take the following actions: (1) provide additional training on deliberate misconduct at Peach Bottom and other Exelon sites, for both employees and supervisors; (2) perform an assessment to verify the effectiveness of the deliberate misconduct training; (3) conduct training with licensed operators on the special obligations associated with holding an NRC license; (4) perform an assessment of Peach Bottom employee conduct, including trending; (5) conduct additional Exelon fleet-wide training on the Behavioral Observation Program, fitness for duty requirements, and the Employee Assistance Program; (6) submit a lessons-learned article to two professional organizations requesting publication in their respective newsletters; and (7) discuss with the Institute of Nuclear Power Operations the possibility of incorporating training on deliberate misconduct into its supervisor and operator development programs. In consideration of these commitments, and other actions already completed by Exelon, the NRC agreed to refrain from issuing a civil penalty or Notice of Violation for these violations.

Tennessee Valley Authority  
Sequoyah Nuclear Plant

EA-08-211

On January 5, 2009 a Confirmatory Order (effective immediately) was issued to Tennessee Valley Authority (TVA) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session. The commitments were made by TVA regarding a violation of site security procedures caused by the deliberate actions of one contract security supervisor at the Sequoyah Nuclear Plant, who falsified an inventory form to conceal the supervisor's failure to verify inventory as required by licensee procedures.

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

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Tennessee Valley Authority  
Browns Ferry Plant

EA-09-009; EA-09-203

On December 22, 2009, a Confirmatory Order (effective immediately) was issued to the Tennessee Valley Authority (TVA) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on December 4, 2009. The commitments were made by TVA as part of a settlement agreement between TVA and the NRC regarding two apparent violations of the NRC's employee protection regulation (10CFR50.7) which were identified during two separate NRC investigations at the Browns Ferry. The agreement resolves the two apparent violations. The NRC acknowledged that TVA, prior to the ADR session, had taken numerous actions which address the issues underlying the apparent violations. TVA agreed to take a number of additional actions including implementing a process to review proposed adverse employment actions before they are taken to ensure compliance with 10CFR50.7 and to ensure the action could not negatively impact the Safety Conscious Work Environment (SCWE); issuing a fleet-wide written communication from TVA's executive management communicating TVA's policy and management expectations regarding the employee's right to raise concerns without fear of retaliation; performing two additional independent safety culture surveys before the end of calendar year 2013; and, modifying contractor in-process training and new supervisor training to improve awareness of TVA's policy on SCWE. In consideration of these commitments, and the other actions already completed by TVA, the NRC agreed to refrain from issuing a civil penalty or Notice of Violation for these apparent violations.

### **Orders Issued To Material Licensees**

Earth Exploration, Inc.  
Indianapolis, IN

EA-09-114

On October 1, 2009, a Confirmatory Order (effective immediately) was issued to Earth Exploration, Inc. to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on August 25, 2009. The commitments were made by Earth Exploration as part of a settlement agreement between Earth Exploration and the NRC regarding seven apparent violations which were identified during an NRC investigation. The agreement resolves the apparent violations. Earth Exploration agreed to a number of actions including, but not limited to, retaining a qualified consultant to audit the radiation safety program on an annual basis for a period of five years, receiving training on radiation safety program management, and developing a plan to inform other organizations of the lessons learned and the importance of developing the necessary infrastructure and communication paths to identify and resolve competing priorities. In consideration of these and other actions, the NRC agreed to not categorize the violations as deliberate and to not pursue any further enforcement action.

Eastern Testing and Inspection, Inc.  
Thorofare, NJ

EA-08-174

On July 16, 2009, a Board Order was issued by the Atomic Safety and Licensing Board to Eastern Testing and Inspection, Inc. (ETI) to formalize commitments made by ETI as part of a settlement agreement between ETI and the NRC regarding apparent violations which were identified during an NRC investigation. The agreement resolves the



apparent violations. ETI agreed to take a number of actions including: (1) pay a \$4,500 civil penalty; (2) develop and implement an annual training program that explains specific requirements to employees who use licensed materials; (3) evaluate the effectiveness of the company's security and radiation safety program prior to taking custody of NRC licensed materials in the future; and, (4) not possess licensed nuclear materials in New Jersey before November 10, 2009. In addition, the company president agreed not to work with NRC licensed material before August 10, 2009, and the former Vice President agreed not to work with NRC licensed material for a year. See Section VII for additional details.

Mattingly Testing Services, Inc.  
Molt, MT

EA-08-271

On March 6, 2009, a Confirmatory Order (Immediately Effective) was issued to Mattingly Testing Services, Inc., (Mattingly) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session conducted on February 5, 2009. The commitments were made by Mattingly as part of a settlement agreement between Mattingly and NRC regarding nine apparent violations which were identified during an NRC investigation and inspection. The agreement resolves the apparent violations. As part of the agreement, Mattingly and NRC agreed to disagree regarding the number and nature of the violations identified during the NRC investigation and inspection. Mattingly also agreed to take a number of corrective actions, including: contracting an independent consultant to evaluate the effectiveness of its radiation safety and compliance programs; contracting an independent consultant to provide training to its personnel who engage in licensed activities; submitting a license amendment request updating specified procedures; and, developing and implementing a disciplinary program with a graded approach for infractions. In addition, Mattingly agreed to pay a civil penalty in the amount of \$8,000. In consideration of Mattingly's proposed actions, as well as those actions previously completed, the NRC agreed not to pursue any further enforcement action in connection with the apparent violations and will not count this matter as prior enforcement for the purpose of assessing potential future enforcement actions.

Quality Inspection Services, Inc.  
Buffalo, NY

EA-09-158

On March 10, 2009, a Confirmatory Order (effective immediately) was issued to Quality Inspection Services, Inc. (QISI) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session. The commitments were made by QISI as part of a settlement agreement between QISI and the NRC regarding NRC's September 15, 2008, Notice of Violation and Proposed civil penalty of \$6,500, for a willful violation of 10 CFR 34.71, involving the failure to maintain utilization logs of radiographic activities and three other related violations. The agreement resolves the apparent violations. QISI agreed to take a number of actions including revising the existing Operations and Emergency (O&E) Manual, adding a radiation safety component to an existing newsletter, developing a video recording that can be used for a presentation at a national industry conference, and increasing audits of the radiographers working areas. In consideration of QISI's proposed extensive corrective actions, in addition to corrective actions already taken, the NRC agreed to reduce the civil penalty originally proposed to \$500.

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Schlumberger Technology Corporation  
Sugar land, TX

EA-09-261

On February 24, 2009, a Confirmatory Order (effective immediately) was issued to Schlumberger Technology Corporation (Schlumberger) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session. The commitments were made by Schlumberger as part of a settlement agreement between Schlumberger and the NRC regarding two violations which were identified during an inspection and investigation involving: (1) a willful failure to maintain required records complete and accurate as required by 10 CFR 30.9, and (2) failure to maintain control over licensed material as required by 10 CFR 20.1802. The agreement resolves the apparent violations. Schlumberger agreed to take a number of actions including: developing and implementing an enhanced accountability and security program for licensed materials; conducting additional line management reviews of the radiation safety program; and paying a civil penalty in the base amount of \$3250. In consideration of these and other actions, as well as those actions previously completed, the NRC agreed not to pursue further enforcement action against Schlumberger for the violations.

### **Orders Issued To Fuel Cycle Licensees**

AREVA NP, Inc.  
Aiken, SC

EA-08-278

On July 23, 2009, a Confirmatory Order (effective immediately) was issued to AREVA NP (AREVA), to formalize commitments made as a result of an Alternative Dispute Resolution mediation session. The commitments were made by AREVA as part of a settlement agreement between AREVA and the NRC regarding an apparent violation involving deliberate misconduct by a former AREVA security officer identified during an NRC investigation. Specifically, on five separate occasions and without authorization or approval, an individual signed the name of authorizing individuals on Site Access Authorization - Unescorted forms, instead of obtaining the signature of an individual listed on the Authorization List, as required by procedure. As a result, individuals were granted access to the site without proper authorization. The agreement resolves the apparent violations. AREVA agreed to a number of corrective actions and enhancements related to its access authorization process, including communicating the underlying facts of the violation to all AREVA employees, as well as staff at other U.S. AREVA licensed facilities to emphasize lessons learned from this incident. In consideration of these corrective actions, the NRC agreed to refrain from proposing a civil penalty and issuing a Notice of Violation or other enforcement action for the apparent violation.

Nuclear Fuel Services, Inc.  
Erwin, TN

EA-08-103

On November 23, 2009, a Confirmatory Order (effective immediately) was issued to Nuclear Fuel Services, Inc. (NFS) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on September 15, 2009. The commitments were made by NFS as part of a settlement agreement between NFS and the NRC regarding seven apparent violations, some apparently committed deliberately, of NRC fitness for duty (FFD) requirements related to a March 2006 incident involving a

senior executive at NFS which were identified during an NRC investigation. The agreement resolves the apparent violations. NFS agreed to take actions to strengthen the FFD program, including: (1) establishment of an oversight board for behavioral observation program (BOP), FFD, and other issues; (2) enhancements to the employee concerns program; (3) changes to the FFD training program to include a discussion of case studies, including this incident, and issue reporting; (4) improvements to procedures and processes associated with FFD and BOP; (5) improved procedural guidance for, and assessment of, the medical review officer; and (6) changes to the process for responding to NRC requests for information to ensure completeness and accuracy of information. In consideration of these commitments, the NRC agreed to refrain from issuing a civil penalty or Notice of Violation for these apparent violations.

Nuclear Fuel Services, Inc.  
Erwin, TN

EA-08-321

On November 23, 2009, a Confirmatory Order (effective immediately) was issued to Nuclear Fuel Services, Inc. (NFS) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on September 16, 2009. The commitments were made by NFS as part of a settlement agreement between NFS and the NRC regarding two apparent violations of NRC requirements involving a primary physician who apparently deliberately certified that two security officers had been given a hearing examination when, in fact, they had not. The agreement resolves the apparent violations. NFS agreed to take the following actions to preclude recurrence of these violations: (1) complete an assessment of why this issue was not entered into the corrective action program and why a root cause analysis was not completed; (2) complete an extent of condition review; (3) benchmark other licensee's oversight of primary physicians to identify best practices; (4) ensure the primary physician participates in periodic meetings with a physician engaged in NRC-regulated activities to review issues relevant to compliance with NRC regulations; (5) ensure the primary physician initiates an evaluation of procedures and processes with a physician engaged in NRC-regulated activities; (6) establish standards for primary physicians and other contract medical specialists; and (7) enhance selected administrative procedures. In consideration of these commitments, the NRC agreed to refrain from issuing a civil penalty or Notice of Violation for these apparent violations.

Shaw AREVA MOX Services  
Aiken, SC

EA-09-117

On November 24, 2009, a Confirmatory Order (effective immediately) was issued to Shaw AREVA MOX Services (MOX Services) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on October 8, 2009. The commitments were made by MOX Services as part of a settlement agreement between MOX Services and the NRC regarding an apparent deliberate violation of 10 CFR 70.9, "Completeness and accuracy of information," which was identified during an NRC investigation. Specifically, a senior structural engineer directed or allowed a junior engineer to sign the senior structural engineer's signature on travelers, which are used as part of MOX Services process to signify that field drawings match design drawings. The agreement resolves the apparent violations. MOX Services agreed to take a number of corrective actions, including: (1) periodic quality assurance assessments and surveillances of vendor submittals, including drawings, to ensure

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design requirements are properly implemented; (2) periodic training for all MOX Services project personnel, including onsite contractors, on the definition of and consequences associated with material false statements, as well as the obligations of the signer of project records; and (3) periodic safety conscious work environment surveys through the life of construction. In consideration of these commitments, and additional corrective actions previously taken by MOX Services in response to this issue, the NRC agreed to refrain from issuing a civil penalty or Notice of Violation for this apparent violation.

United States Enrichment Corporation Inc.  
Paducah, KY

EA-06-140

On August 13, 2009, a Confirmatory Order (effective immediately) was issued to United States Enrichment Corporation Inc. and its subsidiary the United States Enrichment Corporation to formalize commitments made as a result of an Alternative Dispute Resolution mediation session. The commitments were made by USEC Inc. as part of a settlement agreement between USEC Inc. and the NRC regarding an apparent violation of 10 CFR 76.7, "Employee protection." The action is based on the United States Department of Labor Administrative Review Board's (ARB's) August 19, 2008, Final Decision and Order (ARB Case Nos. 06-055, 06-058, and 06-119) affirming a DOL Administrative Law Judge's finding. The agreement resolves the apparent violations. USEC agreed to take a number of actions that, among others, included: a third party independent assessment of the safety conscious work environment (SCWE) at the Paducah site; and providing SCWE training (including case studies) to Paducah and Portsmouth Gaseous Diffusion Plants, American Centrifuge Plant, American Centrifuge Lead Cascade Facility, and designated USEC Headquarters managers and employees.

United States Enrichment Corporation  
Paducah, KY

EA-08-280

On August 18, 2009, a Confirmatory Order (effective immediately) was issued to United States Enrichment Corporation (USEC) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on July 1, 2009. The commitments were made by USEC as part of a settlement agreement between USEC and the NRC regarding an apparent violation of 10 CFR 95.39(b)(3) which was identified during an NRC investigation at the licensee's Paducah facility. The agreement resolves the apparent violation. USEC agreed to take a number of actions including: (1) revising procedures and related training; (2) continuation of recurring training for Operations and Maintenance supervisors to reinforce conduct of principles and procedure compliance; (3) conducting interactive informational training sessions with employees to identify critical job tasks and tools to prevent and protect against causing adverse events when performing critical tasks; and, (4) communicating the facts of the violation and lessons learned to employees at all USEC facilities. In consideration of these actions, the NRC agreed to refrain from proposing a civil penalty and issuing a Notice of Violation or other enforcement action for the apparent violation.

United States Enrichment Corporation  
Paducah, KY

EA-08-344

On August 18, 2009, a Confirmatory Order (effective immediately) was issued to United States Enrichment Corporation (USEC) to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on July 2, 2009. The commitments were made by USEC as part of a settlement agreement between USEC and the NRC regarding four apparent violations which were identified during an NRC investigation at the USEC-Paducah facility. Specifically, the violations involved: (1) failing to disconnect equipment during movement of a Uranium Hexafluoride (UF<sub>6</sub>) cylinder causing damage to the manifold; (2) deliberately attempting to conceal the damage; (3) deliberately falsifying documents indicating the equipment was properly disconnected; and (4) deliberately denying knowledge of the procedure violations. The agreement resolves the apparent violations. USEC agreed to take a number of actions including: (1) actions to address the willful actions of USEC employees and procedural use; (2) recurring training for Operations and Maintenance supervisors to reinforce conduct of principles and procedural compliance; and, (3) subsequent effectiveness reviews of corrective actions. In addition, USEC committed to conducting a review of this incident and a limited number of other significant events, to determine if weaknesses in any of the 13 safety culture components, as identified in NRC Regulatory Information Summary 2006-13, caused or significantly contributed to the event. In consideration of these actions, the NRC agreed to refrain from proposing a civil penalty and issuing a Notice of Violation or other enforcement action for the apparent violations.

Westinghouse Electric Company, LLC  
Columbia, SC

EA-08-244

On August 6, 2009, a Confirmatory Order (effective immediately) was issued to Westinghouse Electric Company, LLC (WEC) to formalize commitments made as a result of an ADR mediation session. The commitments were made by WEC as part of a settlement agreement between WEC and the NRC regarding apparent violations of NRC requirements by a former contract foreman. The agreement resolves the apparent violations involving WEC's maintaining inaccurate records associated with employee training and testing of a ventilation system filter which was identified during an NRC investigation. WEC agreed to a number of corrective actions. In consideration of these commitments, the NRC agreed to refrain from further enforcement action for this apparent violation.

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### **Orders Issued To Individuals**

Daniel Culver

IA-09-025

On December 1, 2009, an Order was issued to Mr. Daniel Culver, a former maintenance supervisor at Peach Bottom Atomic Power Station (Peach Bottom), prohibiting him from involvement in NRC-licensed activities for a period of 3 years from the date the Order was issued. This enforcement action is based on Mr. Culver's deliberate failure to provide complete and accurate information on a personnel history questionnaire used to obtain unescorted access authorization at Peach Bottom. Specifically, Mr. Culver provided inaccurate information regarding his rank in the military, his history of misconduct in the military, and the nature of his military discharge. Mr. Culver also listed a peer, who was also a personal friend, as a former supervisor on his application for employment, even though this individual was not Mr. Culver's supervisor at the time he submitted his application. This represents a violation of 10 CFR 50.5(a)(2), which, in part, prohibits licensee employees from deliberately submitting to a licensee information that the person knows to be incomplete or inaccurate in some respect material to the NRC.

Duane Kuhn

IA-09-023

On December 1, 2009, a Confirmatory Order (effective immediately) was issued to Mr. Duane Kuhn, a former reactor operator at Peach Bottom Atomic Power Station (Peach Bottom), formalizing commitments agreed to during an Alternate Dispute Resolution mediation session held on September 24, 2009. This enforcement action is based on an apparent deliberate violation of Peach Bottom's Behavioral Observation Program and Physical Security Plan, which require that individuals with unescorted access authorization report any arrests or criminal charges on their first day back to work after the incident. Contrary to this requirement, Mr. Kuhn was arrested on October 13, 2007, but failed to report the arrest until April 29, 2008. Mr. Kuhn agreed to: (1) author an article in which he discusses the incident and what he learned from it; (2) submit the article to Exelon for consideration to use it in its training program; and (3) submit the article to two professional organizations requesting publication in their respective newsletters. In consideration of these commitments, the NRC agreed not to pursue additional enforcement action against Mr. Kuhn for this apparent violation.

Dr. Cedric Fernando

IA-09-012

On November 23, 2009, a Confirmatory Order (effective immediately) was issued to Dr. Cedric Fernando, the medical review officer for Nuclear Fuel Services, Inc., to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on May 15, 2009. This enforcement action is based on two apparent deliberate violations of NRC requirements involving Dr. Fernando's certification that two security officers had been given a hearing examination when, in fact, they had not. Dr. Fernando agreed to: (1) ensure that an independent assessment is conducted to identify causes of this event; (2) implement lessons learned and corrective actions based on the results of the assessment; (3) participate in periodic meetings with a physician engaged in NRC-regulated activities to review issues relevant to compliance with NRC regulations; (4) take a course addressing best practices for administrative office procedures and record keeping; and (5) communicate lessons learned and experiences

of this incident to an appropriate audience. In consideration of these commitments, the NRC agreed not to pursue additional enforcement action against Dr. Fernando for the apparent violations.

Dr. Cedric Fernando

IA-08-036

On November 23, 2009, a Confirmatory Order (effective immediately) was issued to Dr. Cedric Fernando, the medical review officer (MRO) for Nuclear Fuel Services, Inc. (NFS), to formalize commitments made as a result of an Alternative Dispute Resolution mediation session held on May 14, 2009. This enforcement action is based on three apparent deliberate violations of NRC fitness for duty (FFD) requirements related to a March 2006 incident involving a senior executive at NFS who consumed alcohol less than five hours before a scheduled working tour. Dr. Fernando agreed to: (1) ensure that an independent assessment by a certified MRO into the FFD incident discussed above is conducted; (2) implement lessons learned and corrective actions based on the results of the assessment; (3) participate in periodic meetings with an MRO engaged in NRC-regulated activities to review issues relevant to compliance with NRC regulations; (4) attend an MRO symposium; and (5) solicit information from an MRO certification program on improvements to the MRO referral process. In consideration of these commitments, the NRC agreed not to pursue additional enforcement action against Dr. Fernando for the apparent violations.

Christopher S. Loyd

IA-09-044

On October 1, 2009, a Confirmatory Order (effective immediately) was issued to Mr. Loyd, Radiation Safety Officer for Earth Exploration, Inc., to formalize commitments made as a result of an Alternative Dispute Resolution (ADR) mediation session held on August 25, 2009. The NRC had preliminarily concluded that Mr. Loyd's deliberate actions contributed to Earth Exploration, Inc., being in violation of NRC requirements based on his failure to: (1) perform annual reviews of the radiation protection program; (2) perform leak testing of sealed sources; (3) perform physical inventories every six months of sealed sources; (4) ensure that dosimetry provided to gauge users was processed and evaluated; and (5) ensure compliance with NRC requirements and license conditions as the Radiation Safety Officer. Mr. Loyd agreed to take a number of actions including: (1) conducting a "lessons learned" training to address oversight of the radiation safety program; (2) submitting a report describing the radiation safety activities completed every 3 months for a period of 2 years to the licensee and NRC; and, (3) submitting a plan on how assigned duties will be accomplished and what steps will be taken to ensure that the infrastructure exists for those duties. In consideration of these and other actions, the NRC agreed to not categorize the violations as deliberate and to not pursue any further enforcement action against Mr. Loyd for these violations.

Keith Davis

IA-09-014

On April 1, 2009, an Order was issued to Mr. Keith Davis, prohibiting the former Senior Reactor Operator at Susquehanna Steam Electric Station (SSES), from involvement in all NRC-licensed activities for a period of three years. The Order was issued because Mr. Davis failed to follow the actions of a prior Confirmatory Order. The previously issued Confirmatory Order required Mr. Davis to complete the settlement actions within three months of the date of the Confirmatory Order and then inform the NRC of

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completion of these activities by March 27, 2008. Mr. Davis failed to complete the actions of the Confirmatory Order which was a violation of 10 CFR 2.202(b). In consideration of this violation, the NRC issued the new order banning Mr. Davis from NRC activities.

Jennifer O'Neill-Torres

IA-08-072

On March 23, 2009, an Order was issued to Ms. Jennifer O'Neil-Torres, the Radiation Safety Officer (RSO), President, and an owner of S&M Testing Laboratory, prohibiting her from involvement in NRC-licensed activities for a period of five years from the date the Order was issued. The Order was issued based on her engagement in deliberate misconduct, which caused the licensee to be in violation of 10 CFR 30.34(c) & 10 CFR 30.52(a). Specifically, as the RSO/President/owner, Ms. O'Neill-Torres deliberately failed to (1) obtain NRC approval via an amendment to S&M Testing's NRC license to authorize storage of licensed gauges at an alternate location prior to moving all gauges from the authorized storage location to an unauthorized storage location; (2) failed to provide the NRC an opportunity to inspect the gauges; (3) failed to respond to repeated contact attempts by the NRC; and, (4) refused to provide the NRC information regarding the licensed gauges including their location and conditions of storage. In this case, she not only deliberately failed to respond to repeated NRC correspondence and communication attempts, but also failed to address or correct the violations.

Mark Ficek

IA-08-055

On March 6, 2009, a Confirmatory Order (effective immediately) was issued to Mr. Mark Ficek, President of Mattingly Testing Services, Inc. in Molt, Montana. The Order is a result of an Alternative Dispute Resolution mediation session held on February 5, 2009. The Order specifies that Mr. Ficek and NRC agree to disagree on whether Mr. Ficek violated 10 CFR 30.10. Further, the Order formalizes commitments from Mr. Ficek to (1) refrain from engaging in licensed activities for a period of 2 years, including NRC licensed activities and activities of Agreement State licensees conducted pursuant to 10 CFR 150.20; and, (2) for a period of 1 year after the 2 year period of prohibition has expired, Mr. Ficek will notify the NRC within 20 days of his becoming involved with NRC-licensed activities. In consideration of these commitments from Mr. Ficek, the NRC agrees not to pursue any further enforcement action in connection with the subject apparent violation.

Michael Hackett

IA-09-026

On July 28, 2009, a Confirmatory Order (effective immediately) was issued to Mr. Michael Hackett, Radiation Safety Officer for the Department of Veterans Affairs Medical Center, Lexington, Kentucky (VAMC Lexington). The Order is a result of an Alternative Dispute Resolution (ADR) mediation session held on June 26, 2009. ADR was requested by Mr. Hackett after an NRC investigation determined that Mr. Hackett's actions caused VAMC Lexington to be in apparent violation by not implementing portions of the radiation safety program including: (1) failing to hold periodic Radiation Safety Committee meetings; (2) not performing annual program reviews; and, (3) not performing required hazardous material training. The Order specifies that Mr. Hackett made no admission that he violated any NRC requirements and formalizes commitments from Mr. Hackett for additional actions on his part to provide both the NRC and the



National Health Physics Program (NHPP) for the Department of Veterans Affairs the minutes from quarterly Radiation Safety Committee meetings, annual program review results, and specific information following completion of the next training on transportation and receipt of radioactive material. Additionally, Mr. Hackett will inform the NRC of his specific plans if he is assigned and has accepted responsibility for additional collateral duties; inform NHPP and the NRC if he is unable to perform his duties; submit to NRC an article with specific information for submittal and consideration for publication by NHPP; and inform NRC if he leaves his position before the terms of the Order are completed. In consideration of these commitments from Mr. Hackett, the NRC agrees not to pursue any further enforcement action in connection with the apparent violations.

Robert C. Robbirds

IA-09-036

On October 29, 2009, an Order (Effective Immediately) was issued to Robert C. Robbirds, a former Nuclear Security Officer at Southern Nuclear Company's Farley Nuclear Plant, for violating 10 CFR 50.5, "Deliberate misconduct." Specifically, on June 27, 2008, Mr. Robbirds deliberately consumed alcohol before reporting for duty and while on post as an armed responder inside the protected area. The Order prohibits Mr. Robbirds from participating in NRC licensed activities for a period of 3 years.

### **Orders Imposing a Civil Penalty**

S&M Testing Laboratory  
Caguas, Puerto Rico

EA-08-332

On June 8, 2009, an Order Imposing Civil Monetary Penalty was issued to S&M Testing Laboratory. Following the NRC's March 23, 2009, Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$16,250, the licensee failed to respond to the Notice and the proposed civil penalties. The Notice of Violation and proposed civil penalty was issued to the licensee for (1) the deliberate failure to confine possession of byproduct material to only those locations authorized by the NRC license; (2) the deliberate failure to provide the NRC an opportunity to inspect byproduct material and the premises where the byproduct material was stored, as required by 10 CFR 30.52(a); and, (3) the failure to utilize a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the gauges were not under the control and constant surveillance of the licensee, as required by 10 CFR 30.34(i). Accordingly, NRC concluded that the violation remains valid and issued an order imposing Civil Monetary Penalty in the amount of \$16,250.

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### **Demand For Information**

Various General Licensees  
General Motors Corporation

EA-09-001  
EA-09-131

A Demand for Information (DFI) was issued on January 14, 2009, to certain general material licensees and on May 29, 2009, to General Motors Corporation, pursuant to 10 CFR 31.5. The DFI required certain general licensees to provide further information to determine whether NRC can have reasonable assurance that licensees are aware of their responsibility to account for tritium exit signs in their possession, and properly dispose of them at the end of their useful life. Therefore the DFI required certain general licensees to provide: an explanation of how they maintain accountability of tritium exit signs currently in their possession; the number of tritium exit signs they currently possess, and whether this number matches the number in their inventory records; the number of tritium exit signs, if any, that they have determined to be lost; the number of tritium exit signs that they have not yet verified as lost, but which they are unable to locate; if losses of signs are discovered, any actions they have taken, or plan to take, to prevent future losses of devices; and any other actions they have taken, or plan to take, to resolve any discrepancy between the number of signs they currently possess and the number of signs identified in their inventory records.

Dr. Gary Kao  
Department of Veterans Affairs, Philadelphia

IA-09-035

A Demand for Information (DFI) was issued on May 26, 2009, to Dr. Gary Kao, an authorized user under the Department of Veteran Affairs (DVA), Philadelphia, Pennsylvania, pursuant to 10 CFR 2.204. The DFI required Dr. Kao to obtain specific information regarding his activities related to using byproduct material. Specifically, a written list of current and planned participation in any activity using byproduct material including but not limited to brachytherapy activities, was required to be submitted to the NRC. Additionally, Dr. Kao was required to inform the NRC 72 hours prior to engaging in any activity using byproduct material subsequent to the DFI. This is in regard to concerns raised during an inspection that occurred between February 2002 and May 5, 2008, of the DVA and Dr. Kao's activities as an authorized medical user at the facility.

## Appendix D: Summary of Escalated Enforcement Actions Against Individuals\*

### Orders

The orders issued to individuals during 2009 are discussed in Appendix C.

### Notices of Violation

Paul M. Alley

IA-09-002

On January 15, 2009, a Notice of Violation was issued to Paul M. Alley for a Severity Level III violation involving 10 CFR 26.10(a) and 10 CFR 55.53(j). Specifically, Mr. Alley, a supervisor in the licensee's organization, tested positive for marijuana on November 3, 2008, while taking part in Tennessee Valley Authority's random fitness for duty testing program.

Robert S. Beveridge

IA-09-054

On February 24, 2009, a Notice of Violation was issued to Robert S. Beveridge for a Severity Level III violation involving a deliberate submission of information to the licensee knowing that the information was incomplete or inaccurate in some respect material to the NRC and deliberately caused his employer, Schlumberger Technology Corporation, to be in violation of NRC regulations. Specifically, Mr. Beveridge, Schlumberger's former Radiation Safety Officer, deliberately entered data into inventory records indicating that the inventory had been completed, when in actuality the inventory had not been completed as required.

Martin Ferenc

IA-09-028

On July 2, 2009, a Notice of Violation was issued to Martin Ferenc for a Severity Level III violation involving the individual's deliberate misconduct that caused his employer, Advex Corporation, to be in violation of its Operating & Emergency (O&E) Procedure and 10 CFR 34.47(d) for an off-scale pocket dosimeter. Specifically, on January 22, 2008, after the assistant radiographer's pocket dosimeter went off-scale, Mr. Ferenc, as the lead radiographer, deliberately continued to work and did not notify the Radiation Safety Officer, as required by the O&E procedure.

Frank B. Mitchell

IA-09-032

On May 13, 2009, a Notice of Violation was issued to Frank B. Mitchell for a Severity Level III violation involving 10 CFR 55.53(d), 10 CFR 26.10(a) and 10 CFR 26.20. Specifically, on February 25, 2009, Mr. Mitchell, a licensed senior reactor operator at the Virgil C. Summer Nuclear Station, reported to requalification training while under the influence of alcohol and marijuana.

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

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Kurt I. Tetzlaff

IA-09-031

On August 12, 2009, a Notice of Violation was issued to Mr. Kurt I. Tetzlaff for a Severity Level III violation of 10 CFR 55.53(I). Specifically, on three occasions between January 27, and February 11, 2008, Mr. Tetzlaff performed the functions of a senior reactor operator, as defined in 10 CFR Part 55, without meeting one of the conditions on his license.

John W. Wade

IA-09-015

On August 6, 2009, a Notice of Violation was issued to Mr. John Wade for two violations of 10 CFR 70.10, "Deliberate Misconduct," that were categorized as a Severity Level III problem. Specifically, while performing duties as a contract foreman at Westinghouse Electric Company, LLC (WEC) – Nuclear Fuel Division in Columbia, SC, Mr. Wade (1) deliberately falsified training records by accessing and acknowledging procedure training records governing job responsibilities as having been completed by his reporting employees when in fact the training had not been completed; and, (2) on three separate occasions (May 12 - 13, 2007, June 10, 2007, and July 7 – 8, 2007), deliberately submitted information to WEC that he knew to be inaccurate, associated with reporting his having taken plant roof ventilation filter differential pressure readings, when in fact, no readings had been performed.

Brian S. Watt

IA-09-007

On July 23, 2009, a Notice of Violation was issued to Mr. Brian S. Watt, formerly a security officer at AREVA NP, Inc., Richland, Washington, for violations of 10 CFR 70.10(a)(1), and 10 CFR 70.10(a)(2), that were categorized as a Severity level III problem. Specifically, on five separate occasions and without authorization or approval, the individual signed the name of an authorizing individual on Site Access Authorization - Unescorted forms, instead of obtaining the signature of an individual listed on the Authorization List, as required by procedure. As a result, individuals were granted access to the site without proper authorization. On the aforementioned five occasions, the individual deliberately submitted information to an NRC licensee, AREVA NP, Inc., that he knew to be inaccurate in a material respect. Specifically, he knowingly submitted access authorization records to the licensee that did not have the actual signatures of individuals authorized to grant access to individuals entering the facility.

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

Wackenhut Nuclear Services  
Palm Beach Garden, FL

EA-08-301

On January 6, 2009, a Severity Level III Notice of Violation was issued to Wackenhut Nuclear Services (WNS) involving 10 CFR 50.5, which prohibits any contractor of a licensee from engaging in deliberate misconduct that causes a licensee to be in violation of any NRC regulation or condition of a license issued by the Commission. NRC investigations determined that multiple security officers employed by WNS were deliberately inattentive on multiple occasions at Exelon's Peach Bottom Atomic Power Station. In addition, multiple security officers deliberately failed to report observations of inattentiveness to their supervision. These security officers put Exelon in violation of 10 CFR 73.55, which requires armed responders to maintain continuous communication with each alarm station and be available to immediately respond to threats, and Peach Bottom License Condition 2.C(3), which requires, in part, reporting of aberrant behavior.

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



## **Appendix F: Summary of Notices of Enforcement Discretion**

NOED 09-3-01, issued January 29, 2009, to Dominion Energy Kewaunee, Inc., (Kewaunee Power Station), provided enforcement discretion that allowed the licensee to operate for 14 days without enforcing the 35,000-gallon limit of fuel oil for the Emergency Diesel Generators (EDG) specified in Technical Specification (TS) 3.7.a.7. This allowed the licensee to submit a license amendment to change the limit in TS 3.7.a.7 from 35,000 gallons to 31,858 gallons. This license amendment was allowed based on calculations that this is a sufficient amount of fuel to operate the EDG for seven days during an accident and the qualitative and quantitative risk evaluation of the new fuel requirement had no adverse impact on public health and safety or the environment.