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NRC IMPROVES GUIDANCE TO STAFF FOR ISSUING
NOTICES OF ENFORCEMENT DISCRETION

The Nuclear Regulatory Commission has informed utilities operating nuclear power plants that it has provided new guidance to the NRC staff for issuing Notices of Enforcement Discretion that allow the NRC not to take enforcement action for certain temporary non-compliances with license conditions. The new guidance should result in fewer Notices of Enforcement Discretion.

The new guidance cites significant instances where enforcement discretion may not be justified because the licensee:

- o Created the time-urgency argument for enforcement discretion by poor planning.
- o Failed to take timely corrective action.
- o Repeatedly requested enforcement discretion for the same reason.
- o Failed to adopt NRC-approved improvements to license technical specifications which would have precluded the need for such discretion.

The new guidance to the staff also emphasizes that Notices of Enforcement Discretion are not appropriate for situations where severe weather or natural disasters, such as earthquakes, may result in a government entity declaring an emergency on the basis of need for power or consideration of other public benefits. In such circumstances, the NRC's Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, after consultation with the Commission, could exercise enforcement discretion if NRC determines that on balance the overall public health and safety implications of not operating outweigh the potential radiological hazards associated with continued operation.

A licensee is required to operate its facility in compliance with license conditions and technical specifications or face NRC enforcement action. However, the NRC recognizes that it is not always possible to anticipate every contingency which might justify the staff not taking enforcement action for temporary non-compliance with a plant's operating license. For such circumstances, NRC policy permits the staff to exercise discretion and not enforce compliance for a specified time period. The staff must be clearly satisfied that the exercise of discretion is consistent with radiological health and safety and is temporary and nonrecurring.

Situations which might justify a Notice of Enforcement Discretion include:

1) When a safety function performed by an inoperable piece of equipment is of marginal or no benefit under existing plant conditions (cold shutdown, for example), and when forcing compliance with the license condition increases the chance of an undesirable challenge to safety systems.

2) When license conditions would require a test, inspection or system realignment that does not provide a safety benefit, or may even be detrimental to safety.

3) When a plant startup would be delayed without a corresponding health and safety benefit.

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