



UNITED STATES
NUCLEAR REGULATORY COMMISSION

REGION II
ATLANTA FEDERAL CENTER
61 FORSYTH STREET, SW, SUITE 23T85
ATLANTA, GEORGIA 30303-3415

July 16, 1998

Regional Office Instruction No. 1001

OFFICE OF INVESTIGATIONS (OI) REPORT REVIEW AND RELEASE OF OI REPORT SYNOPSES

A. Purpose:

To establish Regional Office policy and procedures for the review, processing, and release of OI investigative findings relating to allegations and enforcement programs.

B. Discussion:

The issuance of an OI investigative report initiates staff actions with regard to the allegation or enforcement program, or both, depending on the origin and nature of the issue investigated. Upon issuance, each OI report must be reviewed by the staff for identification of additional technical allegations, the existence of any regulatory/enforcement issues, and the appropriateness of release of the OI conclusions to the licensee and/or alleged. Due to the sensitive nature of issues investigated by OI and the information contained in OI reports, it is essential that the staff strictly adhere to Agency policy when evaluating and processing such investigatory information.

1. Assessing OI Conclusions

Section 7.5 of the NRC Enforcement Manual describes the process for enforcement actions involving violations addressed in OI reports.

Following the issuance of an OI report or notification by the OI Region II Field Office Director of a pending OI willful finding, the Office of Enforcement (OE), the Region II Enforcement and Investigations Coordination Staff (EICS), and the technical staff conduct reviews to determine whether: (1) an immediate safety concern exists; (2) no immediate safety concern exists, but escalated enforcement action appears warranted (usually an OI finding of willfulness); (3) non-escalated violations potentially exist that do not involve an immediate safety concern; (4) no enforcement action appears warranted; or (5) the case involves a pending Department of Labor (DOL) case. Staff actions for each of these cases are discussed in detail in Section C below.

2. Release of OI Conclusions

The Executive Director for Operations (EDO) issued Allegation Guidance Memorandum (AGM) 98-01, "INFORMING ALLEGERS AND LICENSEES OF COMPLETION OF INVESTIGATIONS BY THE OFFICE OF INVESTIGATIONS," on January 29, 1998, and AGM 98-01, Rev. 1 on June 26, 1998, to provide supplemental guidance to the staff regarding informing

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This meeting is typically conducted within three to five weeks of issuance of the OI report.

In preparation for the three-week meeting, the designated Branch Chief is responsible for preparation of an Enforcement Action Worksheet. Key considerations in the development of the Worksheet are: (1) whether the Regional staff agrees with the OI finding; (2) whether technical violations require dispositioning, and (3) what enforcement action appears warranted for both the licensee and individuals involved. Any enforcement action agreed upon at the three-week meeting will be processed in accordance with the normal escalated enforcement process.

- h. Non-escalated or no enforcement: If the OI report does not indicate willfulness, a review of the OI report is still conducted. Upon receipt of the OI report in Region II, the Director, EICS will ensure that the OI report is distributed to the appropriate Region II Division Director via Attachment 2. The responsible Region II Branch Chief will review the report, prepare any recommended non-escalated enforcement action, and provide the results of the review to the Director, EICS using the OI Report Review Worksheet (Attachment 3). This review should be conducted and the results provided to EICS within three weeks of the date of the initiating memorandum.

In parallel (however, delayed due to OE's later receipt of the OI report), OE will conduct a review of the report and exhibits and issue a memorandum to all the affected offices. This memorandum, known as the three-week memorandum, indicates OE's preliminary view of the case and solicits comments within three weeks from the various offices. The EICS Director will provide the Region's enforcement views during this three-week period.

Upon expiration of the three-week comment period, EICS will contact OE to determine if any contrary views to the Regional and OE positions were received from other offices. If no differing views were received, OE will authorize proceeding with the enforcement action and/or release of the OI synopsis.

- i. Reports involving discrimination cases pending before DOL: EICS, in consultation with the responsible DRP Branch Chief, will review and disposition report findings involving employee discrimination. If the case is also pending before DOL, the synopsis will be forwarded by EICS to the parties in the DOL proceeding in accordance with EGM 98-003 and EGM 98-003(T). Generally, enforcement action for substantiated or unsubstantiated discrimination findings

MEMORANDUM FOR: Johns P. Jaudon, Director
Division of Reactor Safety (DRS)

FROM: Anne Boland, Director
Enforcement and Investigations
Coordination Staff (EICS)

SUBJECT: OFFICE OF INVESTIGATIONS REPORT NO. 2-XX-XXX -
[SPECIFY FACILITY]

Attached is a copy of the Office of Investigations (OI) Report No. 2-XX-XXX, issued on [date], regarding [issue of OI Report]. Based on an initial review, EICS recommends that the action indicated below be pursued. Please conduct an independent review of the OI report to identify any appropriate enforcement action, and complete the actions as indicated below. Your review should also include a determination as to whether any new allegations were provided during the investigation process. The exhibits to the OI reports are maintained by EICS, and should be reviewed as part of your evaluation of the OI Report. If new allegations are identified, these issues should be documented in accordance with Regional Office Instruction 1030 and forwarded to A. Ignatonis or O. DeMiranda of my staff to be scheduled for review at an Allegation Review Board.

POTENTIAL ESCALATED ENFORCEMENT ACTION:

You are requested to complete your review and be prepared to present your conclusions at an enforcement panel to be scheduled by the Office of Enforcement. The enforcement panel date has been tentatively scheduled for xxxxxxx, 1:00, in the DRP Conference Room. An Enforcement Action Worksheet (EAW) should be prepared to address the appropriate course of action against the utility as well as the individuals involved.

POTENTIAL NON-ESCALATED ENFORCEMENT ACTION OR NO ENFORCEMENT ACTION:

Please determine any appropriate non-escalated enforcement action that is required to disposition issues reviewed and/or raised by OI within three weeks of the date of this memorandum, and inform the Director, EICS, of your recommended resolution via the attached OI Report Review Worksheet. The Director, EICS, must concur on any enforcement action prior to issuance in an Inspection Report.

Please treat this document as "Official Use Only" and appropriately destroy the documents when your work with them is completed. Your cooperation and assistance in achieving a timely review of the report is greatly appreciated. Exhibits to the OI Report are available from any member of my staff.

During the recent review of the allegation process by the General Accounting Office, "Industry Concerns With Federal Whistleblower Protection System," GAO/HEHS-97-162, the industry commented that licensee employees often don't know when an investigation has ended. Therefore, this AGM also provides guidance on notifying licensees of the completion of an OI investigation. Once notified, the licensee is responsible for notifying appropriate employees that the investigation has been completed.

NOTIFICATION WHEN NO ENFORCEMENT ACTION IS INTENDED

Following the issuance of an OI report, the staff determines whether enforcement action is warranted. In those cases where enforcement action is not warranted, the Office of Enforcement issues a memorandum stating that it does not appear that enforcement action is warranted and provides three weeks for addressees to review the report and provide dissenting views. When OE issues the "three-week" memorandum stating that it does not appear that enforcement action is warranted, the region or office responsible for the allegation will prepare letters informing the allegor and the licensee that the investigation has been closed and provide the results of the investigation. The OI synopsis will be provided as an attachment to the letters.² At the end of the three week period, the letters can be sent, provided the approving official of the OI report and the Director, OE, concur in the letter to the licensee. Their concurrence indicates no dissenting views were received or the dissenting views were resolved, DOJ declined the case or completed its action, and the NRC does not intend to take enforcement action on the wrongdoing issue. Copies of both letters will be placed in the allegation file and a copy of the letter to the licensee will be placed in the public document room.

NOTIFICATION WHEN AN ENFORCEMENT ACTION IS PENDING

When an enforcement action is pending, the allegor cannot normally be informed of the results of the investigation until the licensee is informed. The licensee is informed of the results and provided a copy of the synopsis through the issuance of a letter informing it that the NRC is considering an issue for escalated enforcement and inviting it to an enforcement conference or offering it the choice of responding in writing. A copy of the letter to the licensee and the synopsis of the OI report shall be attachments to the letter sent to the allegor. The letter to the allegor will be sent at the time the letter to the licensee is sent. The concurrences on the letter to the licensee are those required by the enforcement process and they also serve as the approval to provide the synopsis to the allegor.³ Copies of both letters are to be placed in the allegation file and a copy of the letter to the licensee is to be placed in the public document room.

² If the region or office believes the release of the OI synopsis may reveal the identity of the allegor, it is acceptable to paraphrase the OI synopsis in the letter to the licensee or contractor rather than attach the synopsis.

³ If the enforcement action is against an individual, without an accompanying action against a licensee or contractor, OE should be contacted before providing the synopsis to the allegor.