UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001

April 9, 2002

MEMORANDUM TO: FILE

FROM: Terrence Reis
Office of Enforcement

SUBJECT: SUMMARY OF MARCH 12, 2002 WORKSHOP ON THE USE OF ALTERNATIVE DISPUTE RESOLUTION IN THE NRC ENFORCEMENT PROGRAM

On March 12, 2002 the NRC's Office of Enforcement hosted a workshop to further explore the possible use of Alternative Dispute Resolution (ADR) processes in the Agency's enforcement program. The workshop was announced in the *Federal Register* on February 25, 2002 and was open to the public.

The workshop consisted of a brief overview of the Agency's enforcement program followed by a facilitated discussion of a panel of ADR experts as well as public interest group and industry stakeholders. The workshop was facilitated by the Agency's designated ADR expert, Mr. Francis X. Cameron of the Office of General Counsel.

The workshop participants are designated in Attachment 1. The slide presentation and additional materials made available at the workshop are also provided as attachments.

In broad terms, there was general agreement among workshop participants, with the notable exception of the Union of Concerned Scientists and one of the law firm participants that specializes in representing environmental whistle blowers that ADR techniques could be useful in the Agency's enforcement program. A detailed analysis of the representations made at the workshop will be made in a forthcoming staff paper to the Commission and will not be further summarized here.

This workshop was exploratory in nature. Based on analysis of the workshop and comments received on the December 14, 2001 *Federal Register Notice* (Volume 66, Number 241), the staff will make a recommendation to the Commission as to whether there is a role for ADR techniques within the context of the enforcement program. It is the staff's intent that any actual integration of ADR techniques into the enforcement program will be subject to further stakeholder involvement.

The workshop was videotaped and the video tape will be made available for duplication, at a nominal charge, in the Agency's Public Document Room.

Attachments: As stated
1. Workshop participants
2. Workshop agenda
3. Power Point Presentation
4. Federal Register Notice of December 14, 2001
5. Handout of Power Point Presentation
6. Questions for Consideration
7. NRC's Current ADR Policy of August 14, 1992

8. Flow Diagram of Agency's Current Employment Discrimination Process
9. Non-NRC Employees in Attendance

cc: WKane, DEDR

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Attachment 1

Attachment 1

NRC PUBLIC WORKSHOP
ALTERNATIVE DISPUTE RESOLUTION AND THE ENFORCEMENT PROCESS

PARTICIPANTS LIST

David Lochbaum
Union of Concerned Scientists

Charles Pou
Dispute Resolution Services

Ellen Ginsberg
Nuclear Energy Institute

Lynne Bernabei
Bernabei and Katz

Kevin Gallen
Morgan Lewis

Debra Millenson
Solicitor's Office
Department of Labor

Robert Ward
Director
Conflict Prevention and Resolution Center
U.S. Environmental Protection Agency

David Batson
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U.S. Environmental Protection Agency

Roy Lessy
Akin, Gump, Strauss, Hauer & Feld

Billie Garde
Clifford, Lyons & Garde

Richard Miles
ADR Specialist
U.S. Federal Energy Regulatory Commission

Terrence Reis
Senior Enforcement Specialist
Office of Enforcement
U.S. Nuclear Regulatory Commission

AGENDA
NRC PUBLIC WORKSHOP
ALTERNATIVE DISPUTE RESOLUTION (ADR) AND THE NRC ENFORCEMENT PROCESS

March 12, 2002
Kentlands Mansion
Gaithersburg, MD

9:00 am	Welcome and opening statement Frank Congel, Director, Office of Enforcement (OE)
9:10 am	Workshop objectives, format, and ground rules. Participant introductions. ADR orientation. F.X. "Chip" Cameron, Facilitator, NRC Office of the General Counsel
9:40 am	Context: The current NRC enforcement framework Participant questions Terrence Reis, Senior Senior Enforcement Specialist, OE
10:15 am	Context: Overview of "confidentiality" in the context of ADR Participant questions Charles Pou, Professional mediator and ADR expert
10:45 am	Break
11:00 am	NRC Enforcement Scenario 1: Potential Role of ADR Participant discussion Terrence Reis Chip Cameron
11:30 am	NRC Enforcement Scenario 2: Potential Role of ADR Participant discussion Terrence Reis Chip Cameron
12:15 pm	Lunch
1:15 pm	NRC Enforcement Scenario 3: Potential Role of ADR Participant discussion Terrence Reis Chip Cameron
2:00 pm	NRC enforcement Scenario 4: Potential Role of ADR Participant discussion Terrence Reis Chip Cameron
2:45 pm	Break

3:00 pm	Recommendations on the role of ADR in the NRC Enforcement Participant discussion Chip Cameron
4:00 pm	Summary and next steps
4:30 pm	Adjourn

Office of Enforcement
Alternative Dispute Resolution Workshop

March 12, 2002

Opening Remarks

- Frank Congel, Director, Office of Enforcement

Current Enforcement Program

Terrence Reis, Sr. Enforcement Spec.

- NUREG –1600, Enforcement Policy
  - – Available online –
- Purpose and Objectives
  - – Support NRC's overall safety mission
    - Deter noncompliance
    - Encourage prompt identification and prompt, comprehansive corrective action

Current Enforcement Program

Terrence Reis, Sr. Enforcement Spec.

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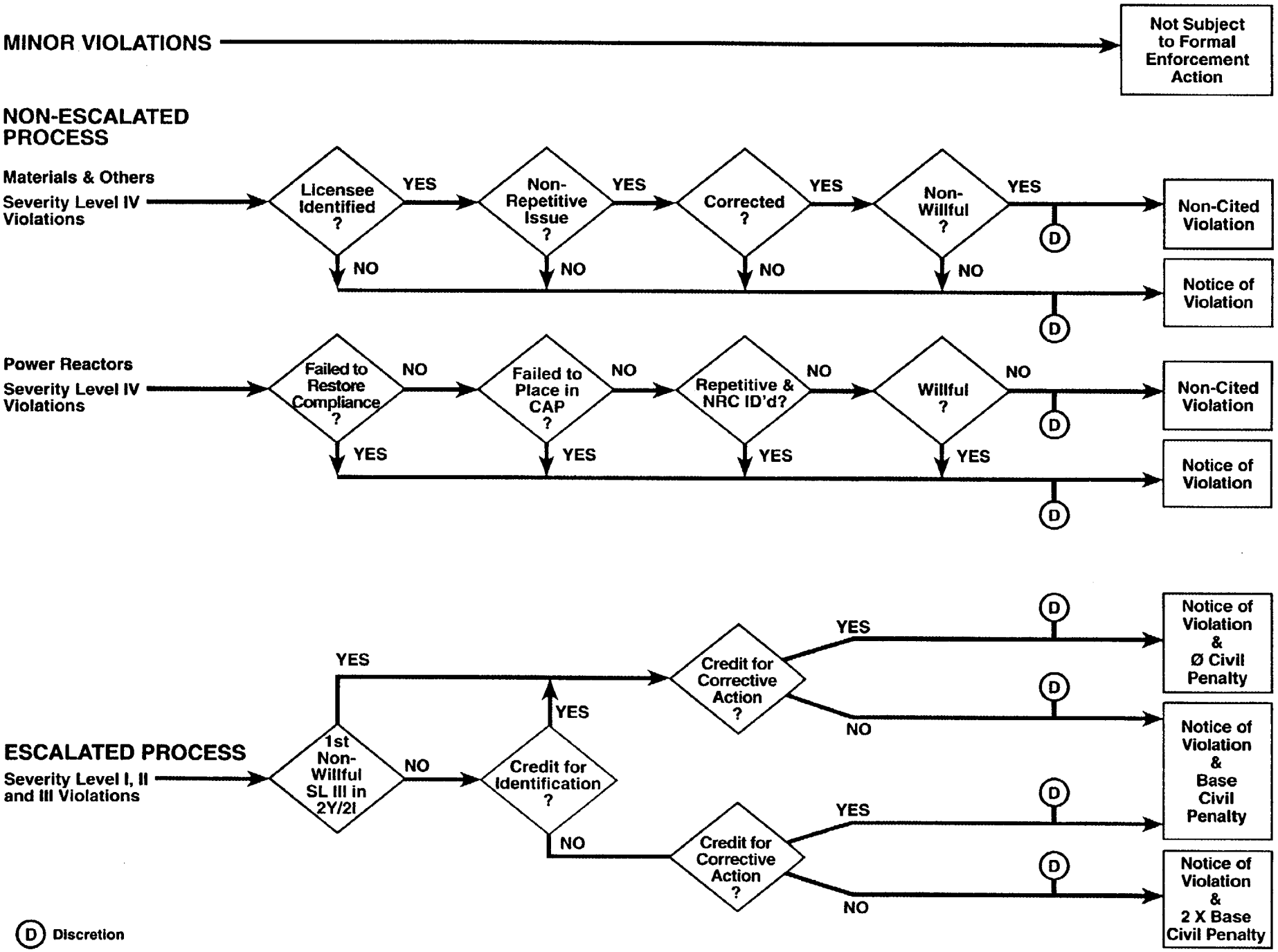
  - – Support NRC's overall safety mission
    - Deter noncompliance
    - Encourage prompt identification and prompt, comprehansive corrective action

NRC ENFORCEMENT PROCESS

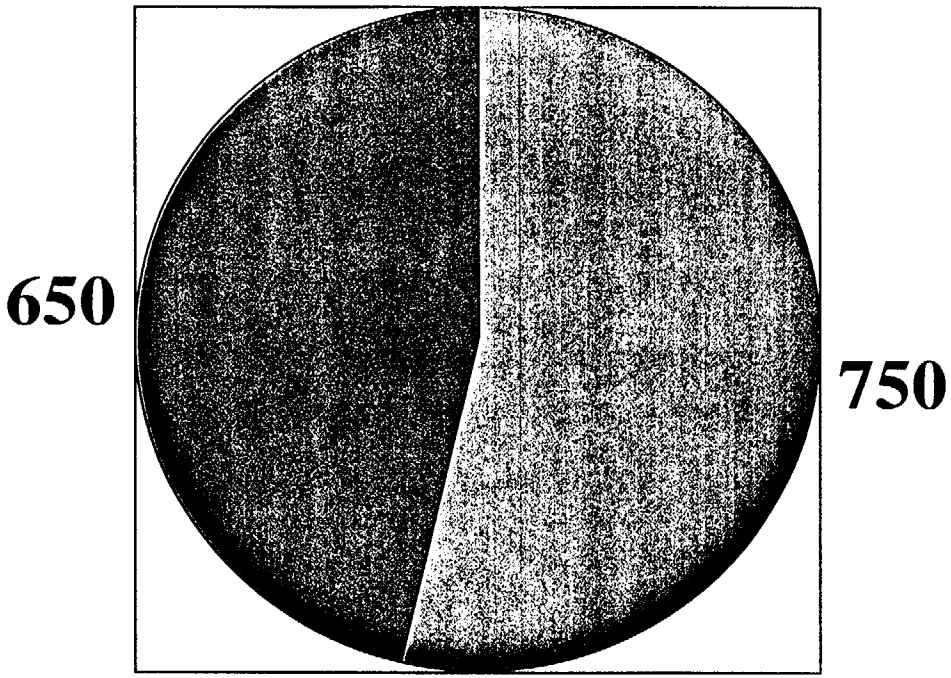


Current Enforcement Program

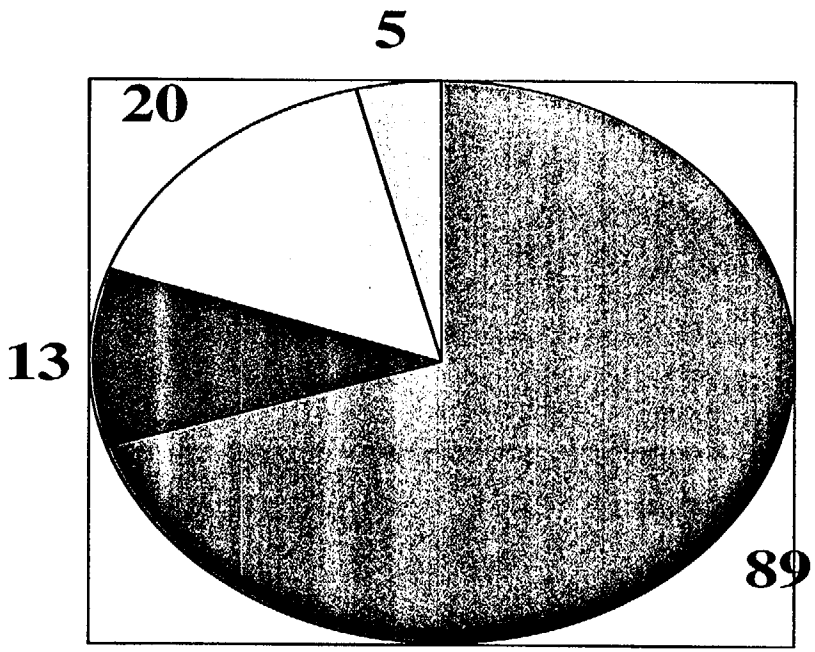
Terrence Reis, Sr. Enforcement Spec

- Significance or Severity of Violation
  - Actual consequences
  - Potential consequences
  - Impacting NRC's ability to perform regulatory function
  - Willful aspects

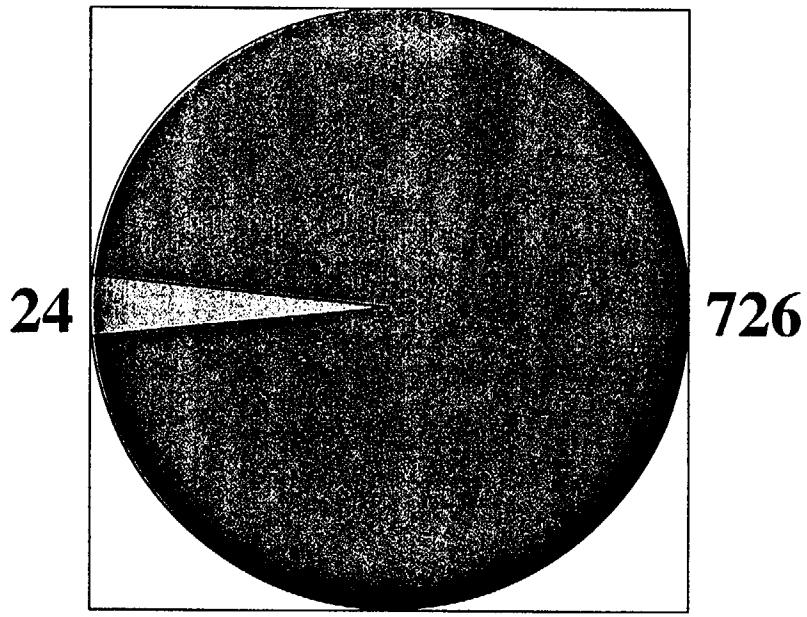
Enforcement Actions by Arena



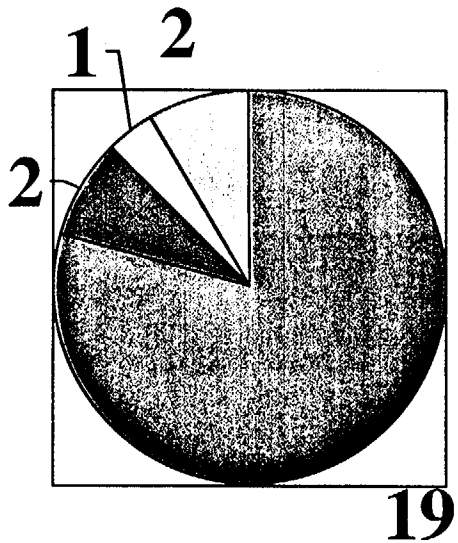
Escalated Enforcement for FY 2001



Reactor Enforcement Actions

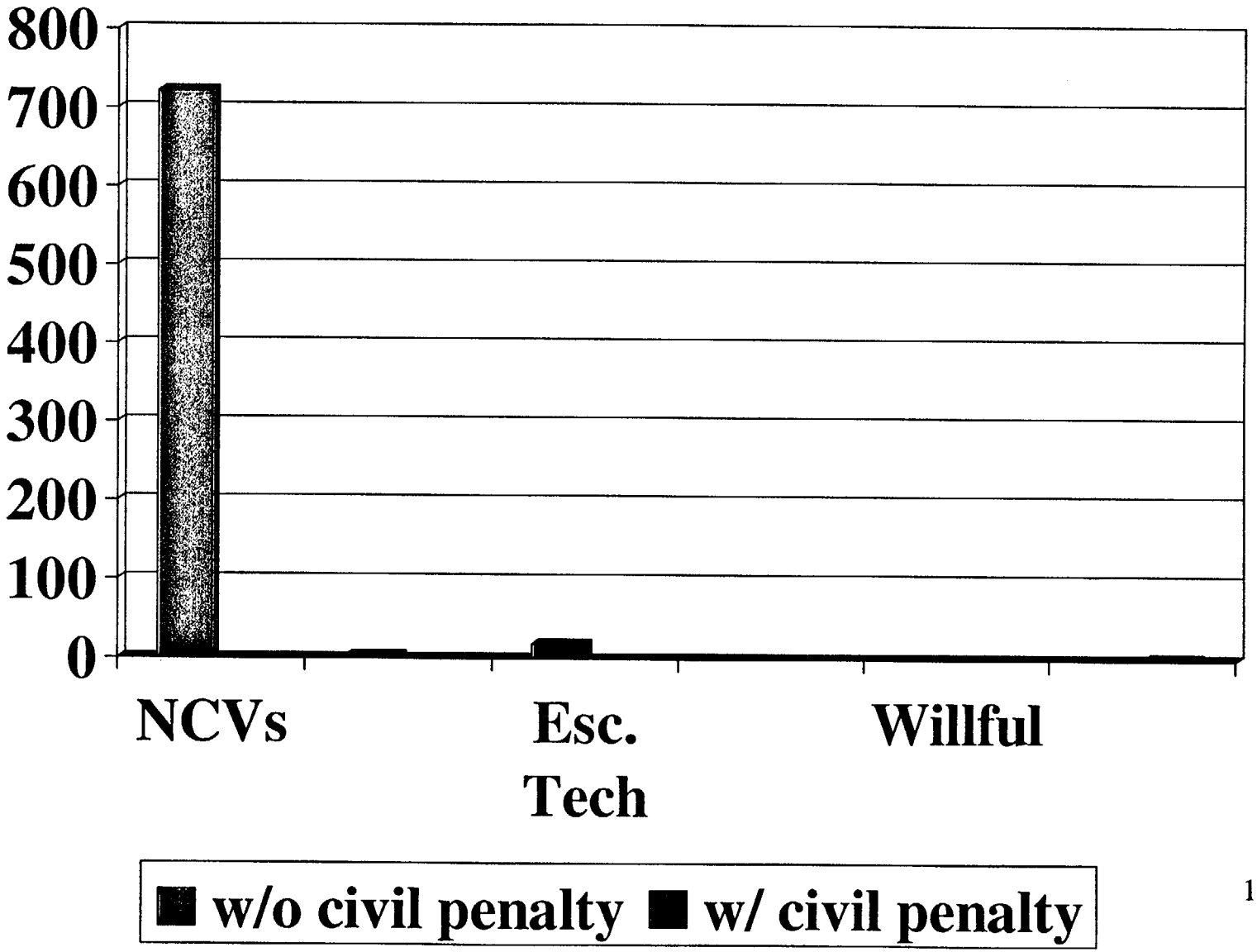


Reactor Escalated Enforcement Breakdown

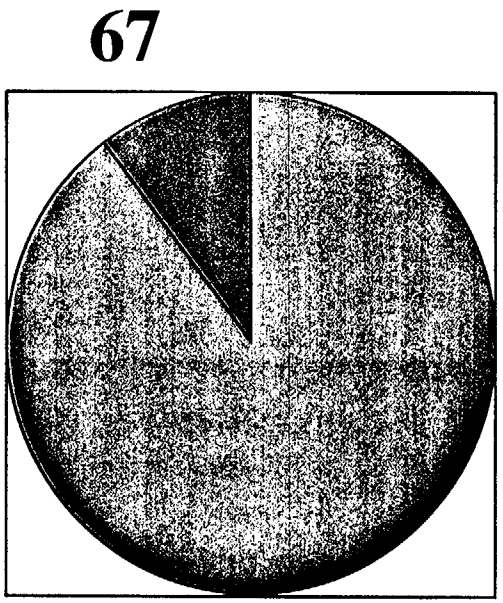


■ SDP ■ Discrimination □ Willful ■ Impacting Process

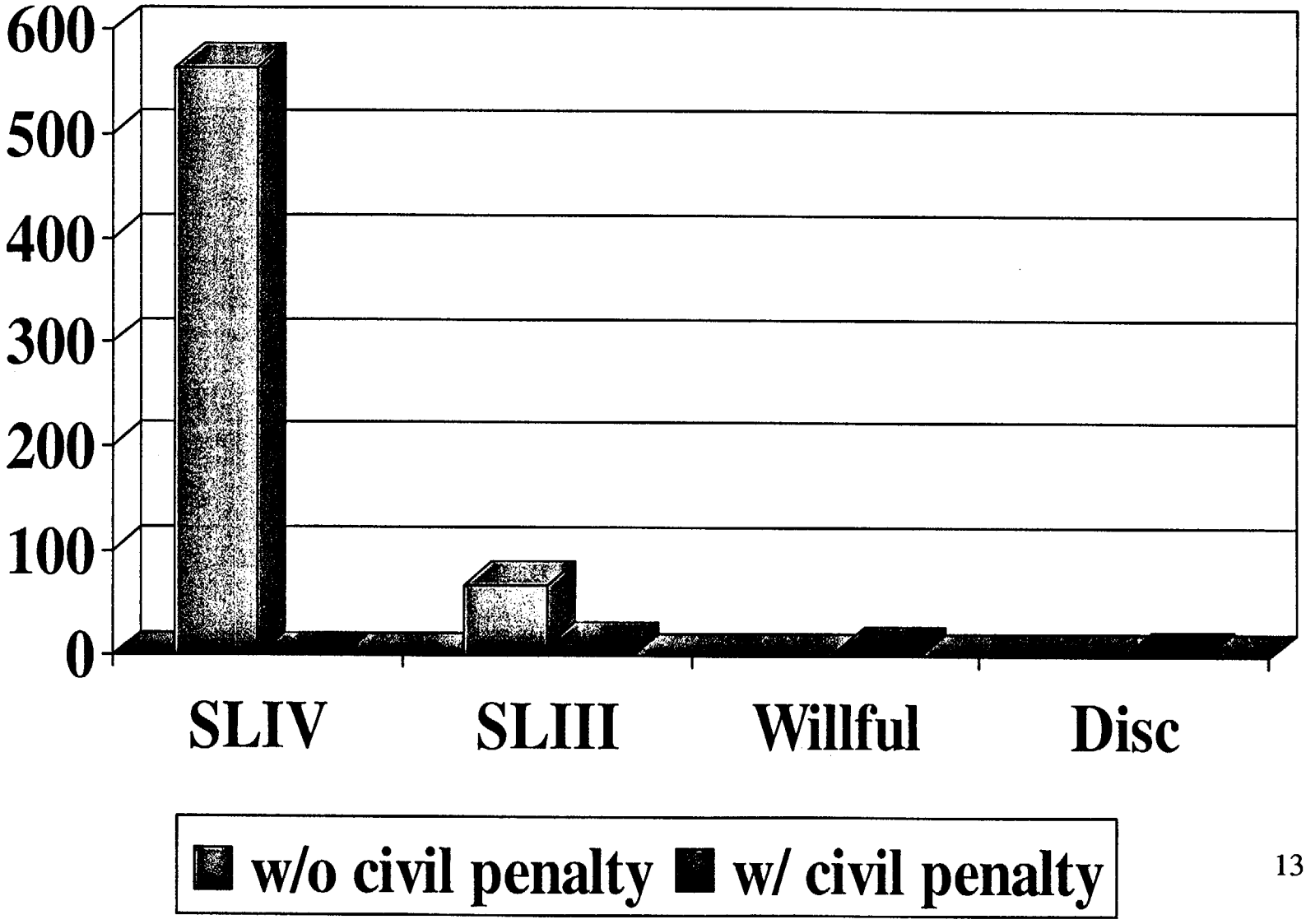
Reactor Enforcement



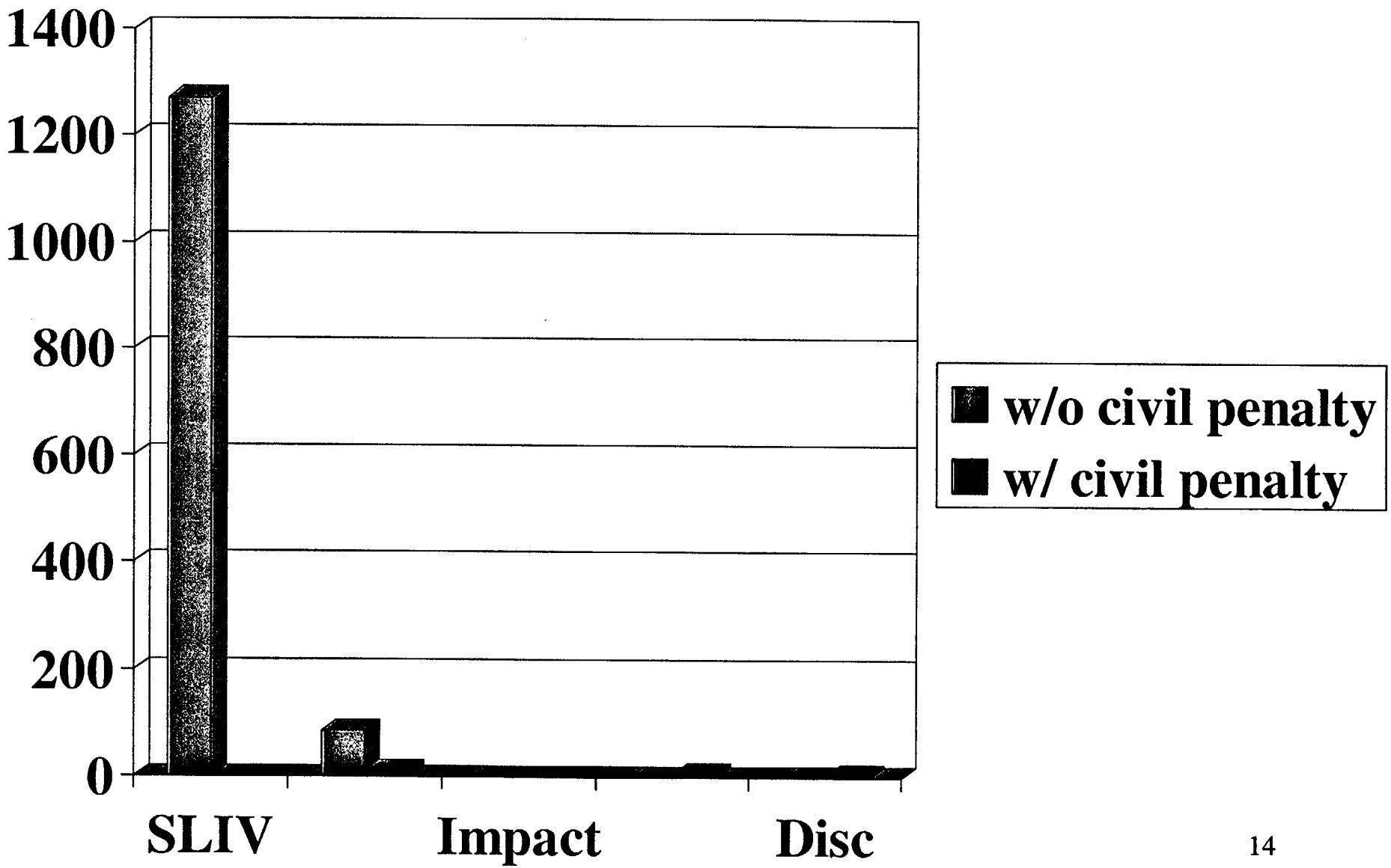
Materials Enforcement



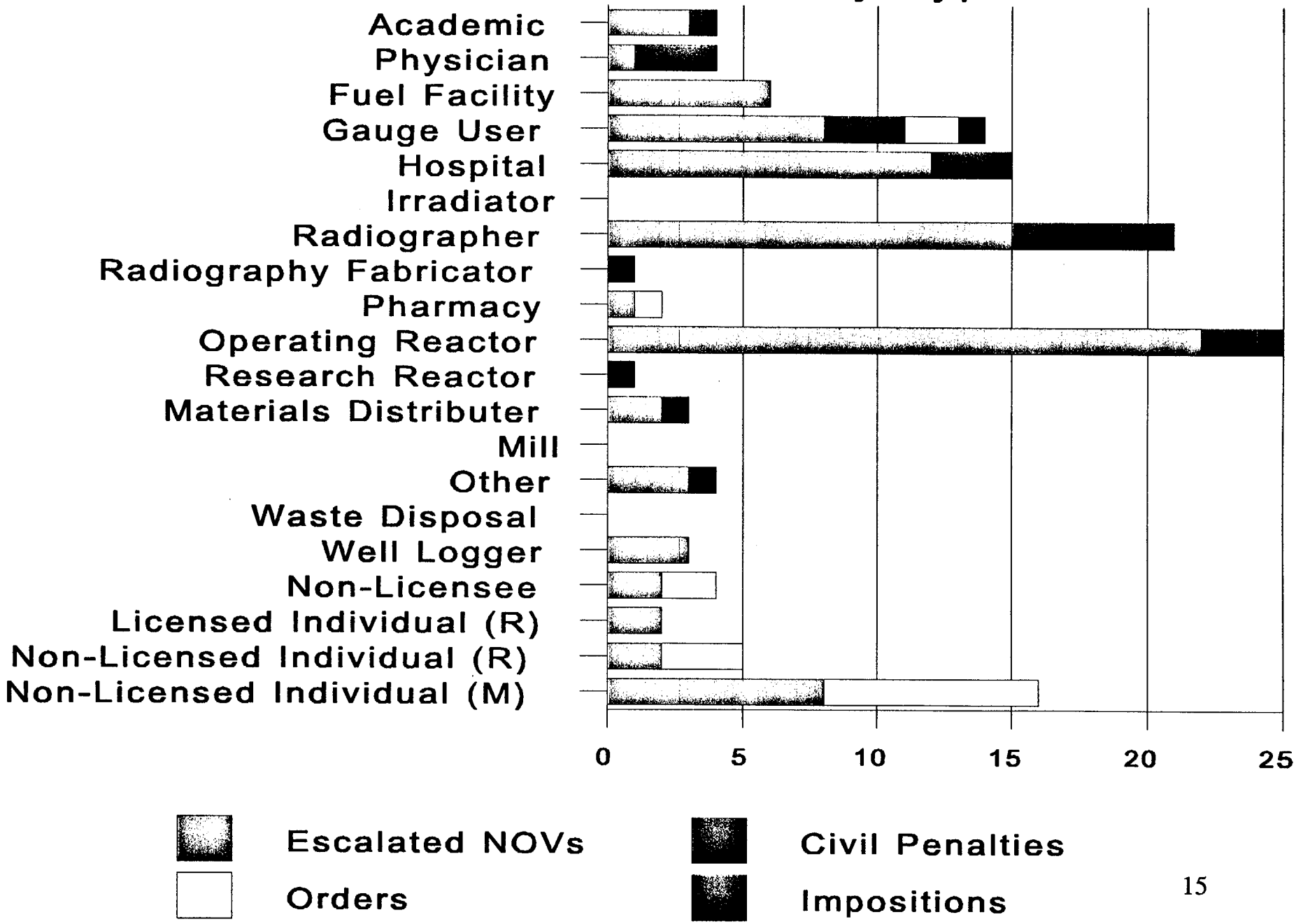
Materials Enforcement Breakdown



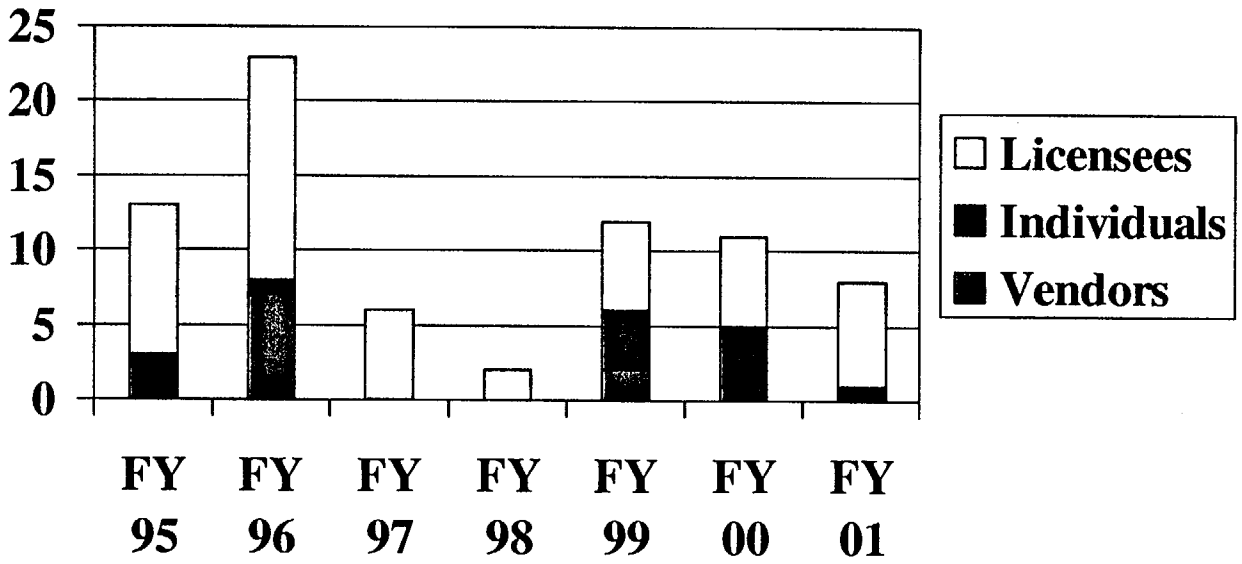
Reactor/Materials Combined Distribution



Escalated Enforcement By Type



Escalated Enforcement Based on Discrimination



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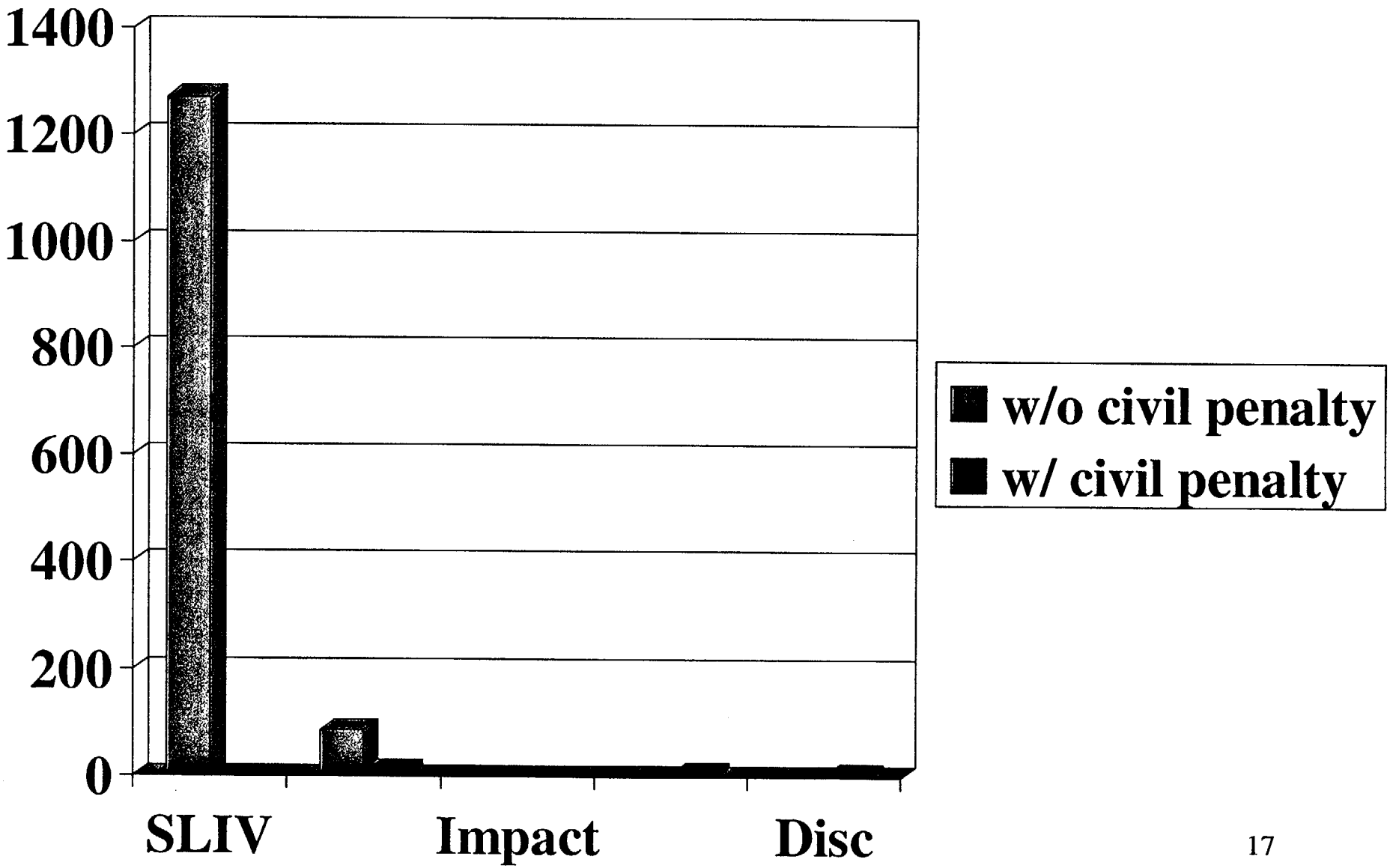
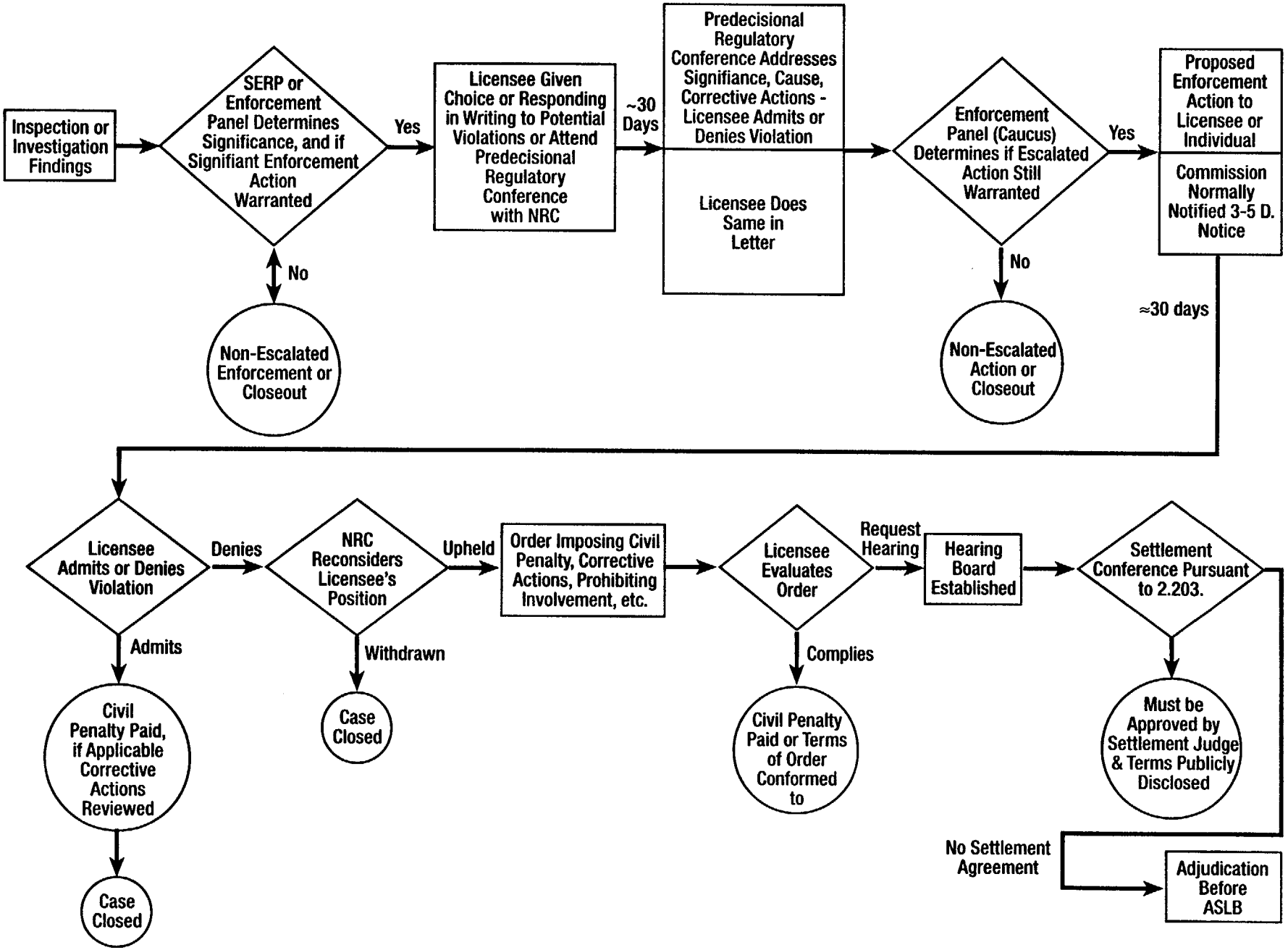


The Enforcement Process

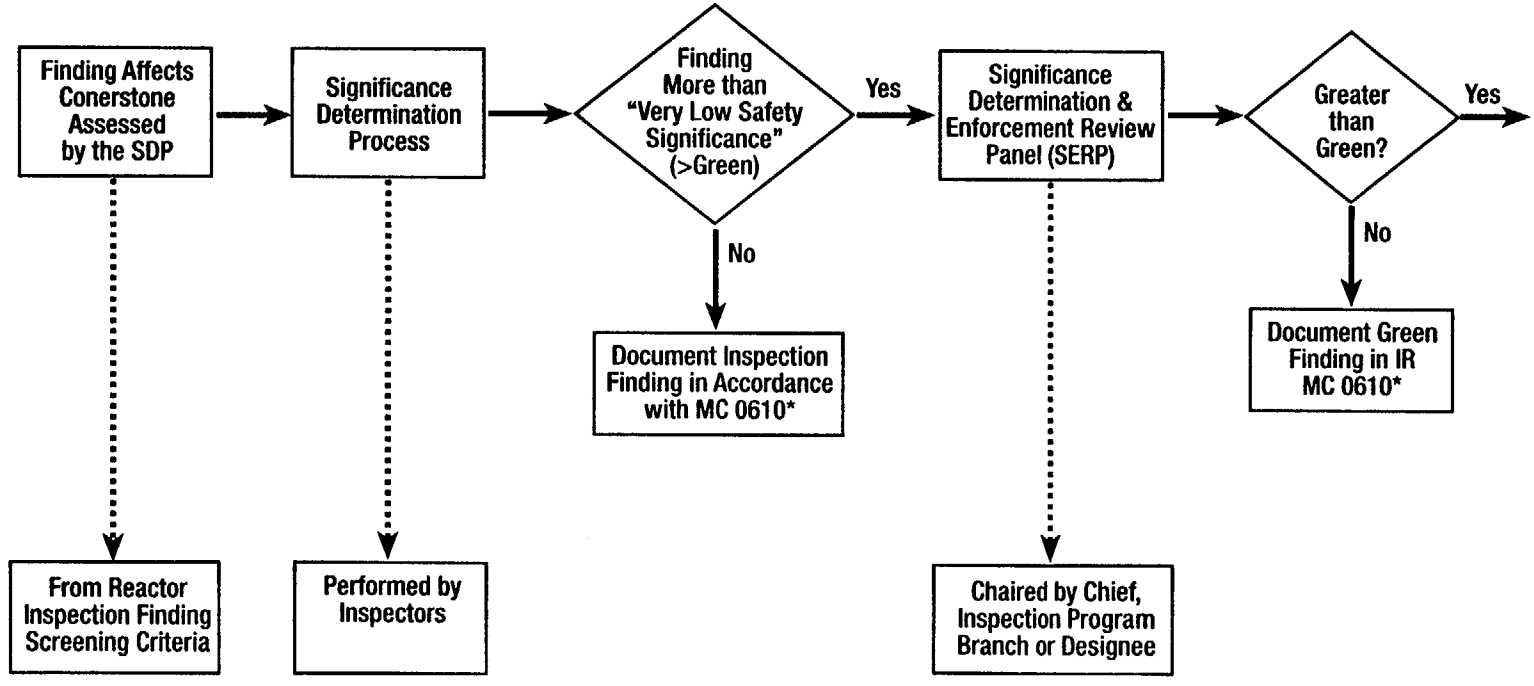
- Characteristics
  - Open*, fact finding and evaluative
  - Transparent to public
  - Early, full disclosure

* Investigations, however, are confidential, and enforcement conferences involving wrongdoing are closed

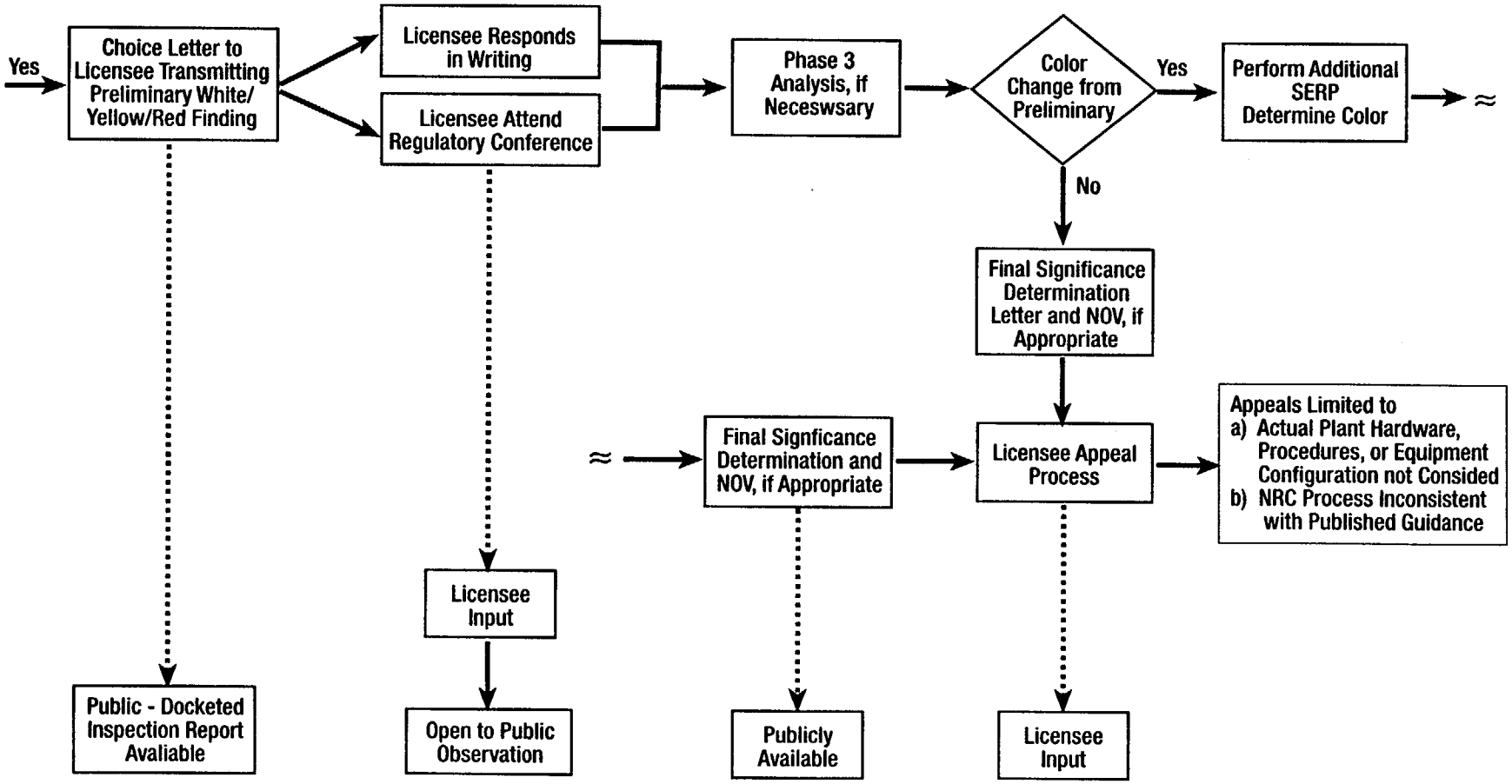
Enforcement Process

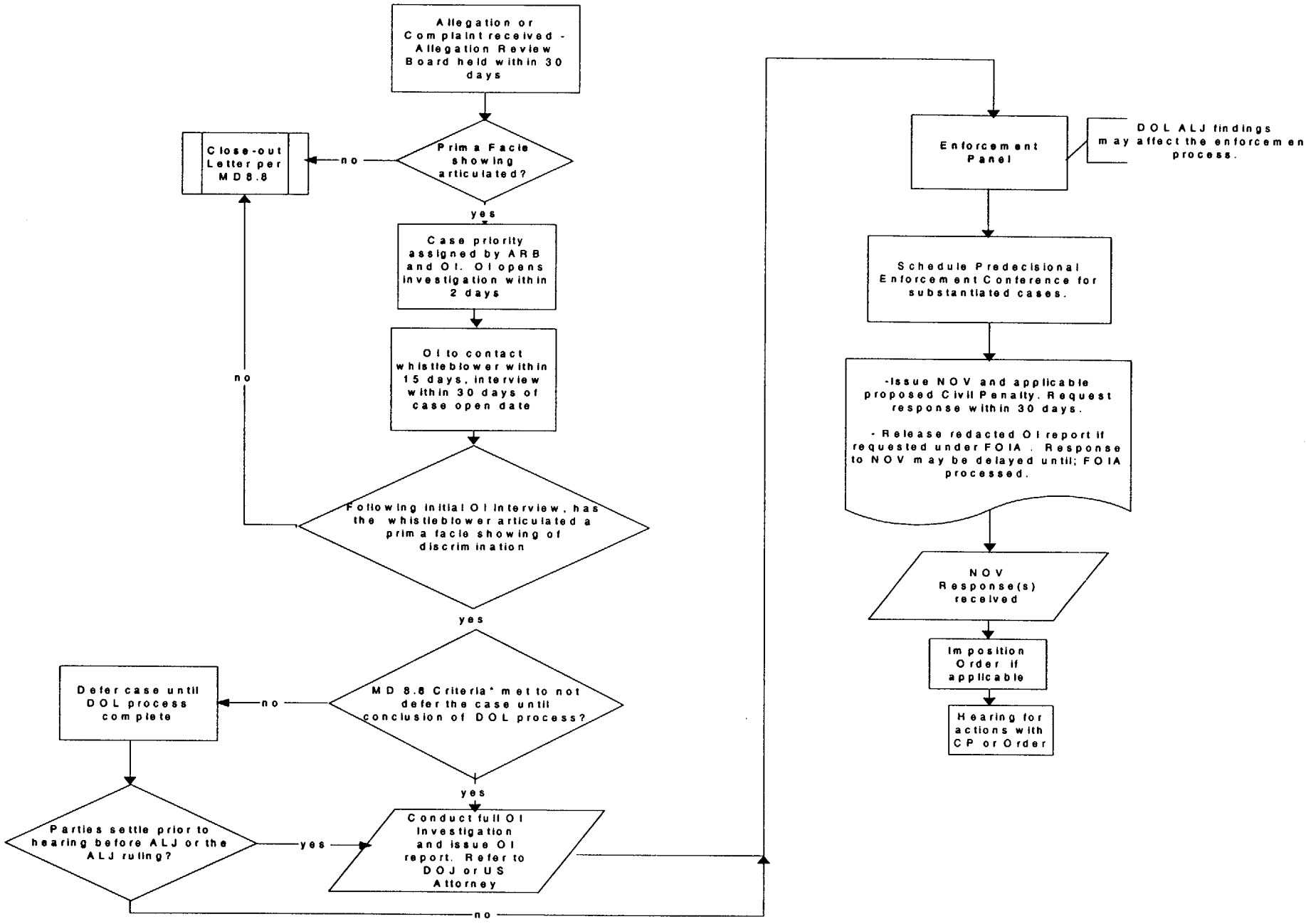


Significance Determination Process



Significance Determination Process





Current Process Flowchart

ADR Orientation

Francis "Chip" Cameron
Office of General Counsel

NRC ADR & Enforcement

- NRC ADR Policy, August 14, 1992
- Administrative Dispute Resolution Act of 1996
- NRC participation in the interagency ADR working group

NRC ADR & Enforcement

- ADR covers a wide range of techniques, e.g.
  - Facilitation
  - Mediation
  - Fact finding
- Key defining characteristic of ADR
  - Use of a neutral third party to assist process
- Eleven issues identified for comment

Case Studies

Case Type I – Example 1
Dispute Over Interpretation of Requirements

- Timeline
  - Inspection conducted
  - Inspection report with "apparent violations" issued one month after final onsite inspection
  - Open, predecisional enforcement conference conducted two months after inspection report issuance
    - Licensee disputes violation
  - Final enforcement action issued less than two months after conference
  - Licensee formally denies violation 30 days later

Case Type I – Example 1
Dispute Over Interpretation of Requirements

- Dispute
  - NRC position that licensee's must analyze for and protect against multiple spurious equipment actuations in an analysis demonstrating capability to safely shutdown reactor.
  - Licensee position that it only has to analyze for one spurious actuation at a time

Case Type I – Example 1
Dispute Over Interpretation of Requirements

- How do you resolve dispute?
  - Generic problem – Industry and NRC simply disagree over interpretation of requirements
- Attributes of dispute
  - Site specific
  - Generic
  - Typical of NRC compliance technical issues involving interpretation of requirements

Case Type I – Example 1
Dispute Over Interpretation of Requirements

- Actual Resolution
  - NRC generically stopped taking formal enforcement actions for these issues while the industry/NRC are working on a resolution
    - Exercise of discretion contingent upon licensee taking compensatory actions
  - Consensus reached?
    - As to enforcement, yes
    - As to issue, no

Case Type I – Example 2
Dispute Over Interpretation of Requirements

- Field inspection finds licensed gauges stored at an unauthorized location
- Severity Level IV violation issued
- Licensee denies violation
  - License provides that gauges can be possessed at temporary jobsites, anywhere the NRC has jurisdiction
- NRC acknowledges that license provides for licensee's claim, but gauge was stored at a dispatch facility – not a jobsite.
- Dispute – what does the license require?
- Violation upheld

Case Type II – Example 1
Dispute Over Whether Requirements were Satisfied

- NRC has concerns with a fundamental safety analysis at a facility
  - Conducts inspection which leads to investigation
    - Very complex issue, lengthy process
  - Issue
    - Regulations require that the plant be analyzed to mitigate broad range of cooling failure accidents
    - This is done by conducting segmented analyses. Integration of the segments would then cover the entire range
    - The licensee had left a gap between two of its segmented analyses and used engineering judgment to conclude adequacy of entire range

Case Type II – Example 1
Dispute Over Whether Requirements were Satisfied

- Dispute
  - Regulation is not sufficiently explicit to preclude engineering judgment
  - NRC finds use of engineering judgment to accept gap in range of analyses to not meet the regulation
  - Licensee considered their position to be within acceptable engineering standards
- How can ADR benefit?

Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- License condition (Technical Specifications) require designated equipment to be operable
  - License specifies what to do when equipment not operable – normally – restore to operability or put plant in condition where equipment not needed – normally shutdown
- Frequently, a piece of equipment will be found in a condition that both the NRC and the licensee will agree is degraded and/or nonconforming
  - But disagree over whether equipment is "operable"

Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- Typical Example
- Alarms received for high temperature bearings on both trains of safety related pumps needed to
  - shutdown the reactor,
  - cool the core long term after an accident
- Pumps declared inoperable
- Licensee investigation into cause of alarms reveals
  - Design changes over the years changed the thermal expansion characteristics of bearings and left them susceptible to overheating when exposed to lower cooling temperatures
  - Long term operability of pumps questionable.

Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- NRC inspection of facts leads NRC to conclude that the pumps were inoperable for the long-term cooling condition
- Licensee expends significant resources
  - Hires expert panel
  - After months of analysis concludes pumps would have functioned for thirty days even with failed bearing

Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- Dispute
  - Licensee provides expert, third party, testimony that pumps, although degraded and at risk, will remain "operable" for thirty days
  - NRC does not find testimony sufficiently convincing
    - Highly dependent on assumptions – variation changes outcome substantially

Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- Resolution
  - NRC takes "operability" violation off the table and issues "design control" violation over which there is no dispute

Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- Resolution
  - NRC takes "operability" violation off the table and issues "design control" violation over which there is no dispute

Technical Cases

- Summary
  - Disputes in Technical cases normally involve
    - interpretations of the regulations/requirements or
    - Sufficiency of actions taken to assure compliance
  - What the licensee did or did not do is not in dispute
- How can ADR benefit?

Case Study - Wrongdoing

- Inspection conducted – nonsignificant violation by skilled technician identified by NRC inspector
- Several days pass – technicians manager discusses situation with resident inspector
  - Provides procedural evidence that issue was not a violation
- NRC determines procedure was a revision and not in place at time of witnessed violation
- Investigation takes place – completed within a quarter

Case Study - Wrongdoing

- Predecisional enforcement conference held 7 months later
- Subsequent formal letters further provide licensee's perspective on issue
  - Licensee maintains the providing of inaccurate information to the NRC was not deliberate.
- NRC concludes deliberate misconduct violation did occur (six months after conference)
  - Issues $55,000 Civil Penalty to Licensee
  - Severity Level III violation to individual
- Licensee pays Civil Penalty but protests deliberate conclusion

Case Study – Reactors
Employment Discrimination

- In a post September 11 environment, an employee begins communicating plant security concerns to both the facility's employee concerns program and the NRC
  - 1 month later the individual receives an unsatisfactory performance appraisal
  - 6 months later he fails to obtain his normal career ladder promotion

Case Study – Reactors
Employment Discrimination

- Individual makes allegation to NRC that he is the subject of employment discrimination
- NRC opens a file
  - Explains to individual his right to take his complaint to DOL, that any personal remedy for substantiated discrimination is through DOL
- Issue is reviewed by NRC's Allegation Review Board
  - Board determines prima facie case exists
  - Investigation opened

Case Study – Reactors
Employment Discrimination

- Office of Investigations (OI) performs fact-finding
  - 10 month OI investigation results in OI substantiating that employment discrimination occurred

- The results of the OI investigation are brought before an NRC staff panel
  - Panel concludes that there is sufficient basis to inform the licensee of an "apparent violation" and invite the licensee to a predecisional enforcement conference
  - Licensee informed
  - Licensee requests time to perform its own investigation

Case Study – Reactors
Employment Discrimination

- Four months later the licensee comes in for a predecisional enforcement conference
  - Provides written documentation of employees declining performance
  - Justifies, in their view, their right to take the personnel action
  - Denies violation

Case Study – Reactors
Employment Discrimination

- NRC reviews information obtained at conference, in conjunction with previously obtained information
  - NRC remains convinced that the preponderance of the evidence suggests violation occurred
    - Employee engaged in protected activity
    - Employer aware of protected activity
    - Adverse action was taken
    - Causal link between adverse action and protected activity
  - NRC determines DOL adjudication likely in near future-delays action awaiting DOL
  - Six months later DOL renders decision supporting discrimination
  - NRC issues Notice of Violation and Proposed $120,000 Civil Penalty

Case Study – Reactors
Employment Discrimination

- Licensee FOIAs OI report and exhibits to respond to violation
- Eight months later licensee denies violation in writing
- Two months later NRC imposes by Order Civil Penalty

Case Study – Reactors
Employment Discrimination

- One month later licensee requests a hearing
- Hearing is scheduled
- Hearing board directs parties to engage in settlement discussions
- Parties agree to settlement language and reduction in Civil Penalty

Case Study – Reactors
Employment Discrimination

- A case of employment discrimination has never been adjudicated

Attachment 4

Enforcement Program and Alternative Dispute Resolution - Federal Register Notice

Federal Register: December 14, 2001 (Volume 66, Number 241)]
[Notices]
[Page 64890-64893]
[7590-01-P]

NUCLEAR REGULATORY COMMISSION
Enforcement Program and Alternative Dispute Resolution
Request for Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing its intent to evaluate the use of Alternative Dispute Resolution (ADR) in the NRC's enforcement program, which is governed by the NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy). The NRC is undertaking this evaluation because ADR techniques have proven to be efficient and effective in resolving a wide range of disputes government-wide. The Commission is seeking public comment in the form of answers to questions presented in the Supplementary Information section of this notice.

DATES: The comment period expires January 28, 2002.

ADDRESSES: Submit written responses to the questions presented in the Supplementary Information section of this notice to Michael Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T-6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. Comments may also be sent electronically to Mr. Lesar, email mtl@nrc.gov.

FOR FURTHER INFORMATION CONTACT: **Terrence** Reis, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001 (301) 415-3281, email txr@nrc.gov, or Francis X. Cameron, NRC ADR Specialist, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555-0001, (301) 415-1642, email mailto:fxc@nrc.gov..

SUPPLEMENTARY INFORMATION:

"ADR" is a term that refers to a number of voluntary processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes and potential conflicts. The Administrative Dispute Resolution Act of 1996 (ADR Act) encourages the use of ADR by Federal agencies, and defines ADR as "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of an ombudsman, or any combination thereof" (5 U.S.C. 571(3)). These techniques involve the use of a neutral third party, either from within the agency or from outside the agency, and are typically voluntary processes in terms of the decision to participate, the type of process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in more efficient resolution of issues, more effective outcomes, and improved relationships between the agency and the other party.

The NRC has a general ADR policy (57 FR 36678; August 14, 1992) that supports and encourages the use of ADR in NRC activities. In addition, the NRC has used ADR effectively in a variety of circumstances, including rulemaking and policy development, and EEO disputes. Section 2.203 of the Commission's regulations provides for the use of "settlement and compromise" in proceedings dealing with enforcement issues. In addition, Section 2.337 of the Commission's proposed revisions to the NRC hearing process provides for ADR in NRC proceedings (see, 66 FR 19610, 19645; April 16, 2001). In at least one instance, an NRC enforcement case has been resolved through the use of a "settlement judge" from the Atomic Safety and Licensing Board Panel pursuant to 10 CFR 2.203 of the Commission's regulations, but there has been no systematic evaluation of the need for ADR in the enforcement process. The NRC's participation in a 1998 interagency initiative to encourage the use of ADR by Federal agencies, and the NRC's receipt of a request to use ADR in a recent enforcement case, have prompted the agency to consider whether a new, specific ADR policy would be beneficial in the enforcement area.

Use of ADR by the NRC and other Federal Agencies. In order to encourage Federal agencies to take advantage of the benefits of ADR, Congress enacted the ADR Act. The Act requires each agency to do the following:

1. Adopt a policy that addresses the use of ADR;
2. Designate a senior official to be the dispute resolution specialist for the agency;
3. Provide ADR training on a regular basis; and
4. Review each standard agency agreement for contracts, grants, and other assistance with an eye towards encouraging the use of ADR.

As noted above, "ADR" is a term that describes a set of processes which assist parties in resolving their disputes quickly and efficiently. Mediation, early neutral evaluation, facilitated dialogues, and arbitration are examples of these ADR processes. Central to each ADR process is the use of an objective third party or neutral, for example, a facilitator or mediator, to assist the parties in resolving their dispute. Experience has shown that ADR can resolve disputes in a manner that is quicker, cheaper, and less adversarial than the traditional litigation process. In ADR, parties meet with each other directly, under the guidance of a neutral professional who is trained and experienced in handling disputes. The parties talk about the problems that led to the dispute and discuss possible resolution strategies. With the assistance of the neutral professional, the parties are able to retain control over their own disputes and work collaboratively to find creative, effective solutions that are agreeable to all sides. ADR commonly involves mediation and facilitation, in which a third party neutral assists the parties in coming to agreement. The neutral in these cases does not impose any decision on the parties.

Many Federal agencies have established or are considering the use of ADR in civil enforcement actions. For example, the Environmental Protection Agency has used ADR to assist in the resolution of numerous disputes related to the enforcement of Superfund and other environmental statutes that EPA administers. Mediated negotiations have ranged from two-party Clean Water Act cases to Superfund disputes involving upwards of 1200 parties. The U.S. Navy has entered into an innovative partnering agreement with the State of Florida to address compliance with environmental regulations at naval installations. The Federal Energy Regulatory Commission has established an alternative licensing process that provides for a facilitated dialogue to assist parties in negotiating licensing agreements. The Federal Mine Safety and Health Review Commission has proposed the use of settlement judges serving as mediators to assist parties in reaching settlement prior to an administrative hearing on contested compliance cases arising under the Federal Mine Safety and Health Act of 1997. The NRC staff has consulted several of these agencies that are experienced in the application of ADR to enforcement cases. These discussions have highlighted a number of important points for the NRC to consider in the course of its evaluation:

The use of ADR should be understood broadly. ADR encompasses many different techniques that might be employed at various points in the enforcement process. For example, although mediation is the most commonly used ADR technique in the enforcement arena, techniques such as neutral fact-finding or facilitated negotiation can also assist in resolving disputes and avoiding potential conflicts. In addition, ADR can be used at any point in the enforcement process where a discussion or negotiation between the parties takes place.

ADR should not be viewed as an alternative to settlement. Agencies, including the NRC, have traditionally attempted to settle disputes in the enforcement area. ADR is simply a set of

additional tools that an agency can use to more effectively address potential settlement issues, whether in the enforcement area or elsewhere. A key distinguishing feature of ADR-assisted settlement discussions is the presence of a neutral third party (i.e., a mediator, a facilitator) with expertise in conflict resolution techniques. "Effectiveness" in this context may include a faster and more systematic settlement process, as well as better and more enduring outcomes, reduced transaction costs, and improved relationships between the parties. However, the potential effectiveness of ADR must be evaluated within the context of an agency's mission, process, and procedures.

The use of ADR is not appropriate in all circumstances. There will always be cases that should go to litigation, rather than be settled, for example, because of an important policy objective or in cases of first impression.

Although there are many potential beneficial uses of ADR, the ADR Act also identifies several situations where an agency should consider not using ADR:

1. A definitive or authoritative resolution of the matter is required for precedential value;
2. The matter involves significant questions of government policy that require additional procedures before a final resolution is made;
3. Maintaining established policies is of special importance so that variations among individual decisions are not increased;
4. The matter significantly affects persons or organizations that are not parties to the proceeding;
5. A full public record of the proceeding is important and a dispute resolution proceeding cannot provide such a record; and
6. The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of changed circumstances.

The NRC intends to consider these factors, along with the public comments on this notice, in evaluating whether, and to what extent, a specific ADR policy in the enforcement area is needed.

The NRC Enforcement Process. The NRC's Enforcement Process is generally based on open, fact-finding and evaluative processes that rely on the principles of transparency to the public and early and full discourse to the party responsible for the apparent violation.(1)

In brief, the agency's enforcement process, as governed by the Enforcement Policy (NUREG-1600, General Statement of Policy and Procedure for NRC Enforcement Actions, February 16, 2001), can be summarized as follows:

Agency enforcement actions arise from the results of inspections and investigations. Following identification of potentially escalated enforcement actions the issue is brought to a multi-disciplinary NRC staff panel to achieve consensus that a violation of NRC requirements has occurred and that the violation warrants escalated enforcement action. Enforcement actions also include the issuance of orders to modify, suspend or revoke a license which may be based on a violation or noncompliance with a requirement or other public health and safety issue. If consensus is reached, the licensee or individual is then formally notified that the NRC considers an issue an apparent violation and is told the basis for the apparent violation. The licensee or individual is then offered an opportunity to have a conference with the NRC or provide its position in writing. The licensee or individual subject to the action is always asked to state whether it agrees or disagrees with apparent violations as stated. After the licensee or individual presents its case, the multi-disciplinary panel meets again to determine what enforcement action, if any, is appropriate. If it is determined that a civil penalty is warranted in accordance with the enforcement policy, that decision and the basis for it are formally transmitted to the licensee or individual in the form of a Notice of Violation and Proposed Civil Penalty. At this stage the licensee or individual has the opportunity to restate its case in writing. If after reviewing the response, the NRC continues to maintain the action is appropriate, the civil penalty is imposed by order. After imposition, the licensee or individual then has the opportunity to request a hearing and proceed with adjudication. After a hearing has been requested, settlement is subject to the provisions in 10 CFR 2.203.

If only a Notice of Violation is proposed, such is normally the case for issues dispositioned under the Reactor Oversight Process, the licensee is required to respond to the violation and may contest it. However, in such cases there are no hearing rights as there are in cases where an

Order is issued or a civil penalty is imposed.

Data on enforcement cases suggest that the agency's current enforcement process offers ample opportunity for settlement and avoids costly litigation without specifically employing ADR techniques. Since 1988, out of approximately 1300 civil penalties proposed, there have been 222 Orders imposing civil monetary penalties, and 29 related requests for hearings (out of a total of 79 enforcement related hearing requests). The majority of those requests were settled prior to hearing. However, these statistics do not provide insights as to whether there might be additional opportunities to use ADR at various points in the enforcement process or whether existing settlement discussions might be improved by the use of ADR.

Specific Issues. The NRC has identified a number of issues that it believes must be evaluated in order to determine whether an enforcement specific ADR policy is needed. Two of the more notable issues are:

At what point in the enforcement process should ADR be used? If the agency is to pursue implementing ADR in its enforcement processes, it must decide what types of disputes would be appropriate for resolution through ADR. Enforcement is intended to act as a deterrence and to ensure appropriate and lasting corrective action to prevent the recurrence of a non-compliance; in this sense, it is one means by which the agency ensures compliance with its regulations and license requirements, which, in turn, supports the "adequate protection" standard of the Atomic Energy Act. Enforcement sanctions are a function of the significance of violations. Viewing ADR from a narrow perspective, one could argue that, in terms of the enforcement program, only disputes pertinent to the existence and significance of a violation need be considered. The NRC's rules of practice for enforcement, as set forth in Subpart B of 10 CFR Part 2, provide the right to request a hearing in connection with orders imposing civil penalties, orders modifying, suspending, or revoking a license, or orders restricting an individual's right to engage in a licensed activity. There are no hearing rights for notices of violation issued without a corresponding civil penalty. Given the limited scope of issues in dispute in the enforcement arena - existence and significance of violations, and in the case of civil penalties, the appropriate amount - should the use of ADR techniques be reserved only for those issues that are eligible to be adjudicated?

What are the implications of ADR for the confidentiality of settlement discussions in the enforcement area? The ADR Act (5 U.S.C. 571-584) provides for confidentiality of "dispute resolution communications" in "dispute resolution proceedings" involving a Federal agency "administrative program." A Federal agency "administrative program" includes any Federal function which involves the protection of the public interest and the determination of the rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing or investigation. NRC enforcement processes and proceedings would fall under this definition. A "dispute resolution proceeding" is any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate. The ADR Act provides for a broad reading of the term "dispute resolution proceeding" and incorporates all ADR forms and techniques, including convening, facilitation, mediation, and fact-finding. The neutral may be a private person or a Federal government employee who is acceptable to the parties. The ADR Act supports the use of neutrals to assist parties during all stages of the resolution of a disagreement, from the convening of the participants and design of an effective process to the conduct of settlement discussions. "Confidential Information," in the context of a dispute resolution proceeding, means information that a neutral or a party cannot, by law or agreement, voluntarily disclose to anyone, or if disclosed, cannot be admitted into evidence in any future legal proceeding. Note that a key distinction between 'dispute resolution proceedings" under the ADR Act and traditional settlement discussions conducted by the NRC and other agencies is the presence of a neutral who functions specifically to aid the parties in resolving the controversy.

Settlement discussions between NRC staff and licensees or other parties have traditionally been closed and the information kept confidential. Like the practice under the ADR Act, the settlement agreement itself must be disclosed. Unlike the ADR Act, oral and written communications by the parties during joint sessions may be kept confidential. No discovery has been allowed on the issues in settlement discussions in NRC enforcement cases.

Confidentiality can be a critical component of a successful ADR process. Guarantees of confidentiality, whether in joint session of all the parties with the neutral, or in a caucus involving the neutral and one party, allow parties to freely engage in candid, informal discussions of their

interests in order to reach the best possible settlement of their claims. A promise of confidentiality allows parties to speak openly without fear that statements made during an ADR process will be used against them later. Confidentiality can reduce "posturing" and destructive dialogue among parties during the settlement process. Neutrals try to promote a candid and informal exchange regarding events of concern, as well as about the parties' perceptions of and attitudes toward these events, and encourage parties to think constructively and creatively about ways in which their differences might be resolved. This frank exchange may be achieved only if the participants know that what is said in the ADR process will not be used to their detriment in some later proceeding or in some other manner. These considerations would seem to apply regardless of whether a neutral was involved in the settlement discussions.

However, some ADR practitioners believe that mediation and other forms of ADR will work without confidentiality and that there is no need to preserve confidentiality in an ADR process. As noted above, the ADR Act does not provide confidentiality to statements or written comments by the parties made during joint session. Therefore, it may be possible to limit confidentiality to the caucuses involving the neutral and one of the parties, and still open the information provided in the joint sessions to public scrutiny, if not public observation. In addition, public policies that place an emphasis on access rather than confidentiality may lead to disclosure of information in joint ADR sessions. In fact, to the extent that settlement discussions on enforcement issues are public, there may be a value in having these sessions assisted by a neutral.

The policy choice may not be between ADR-assisted settlement discussions and traditional settlement discussions without the assistance of a neutral. Rather, the choice seems to be whether or not to engage in any confidential settlement discussions on enforcement issues, particularly certain types of enforcement issues, such as when wrongdoing is involved.

Questions for Public Comment. In order for the NRC to evaluate whether, and to what extent, ADR should be used in the enforcement arena, the NRC has identified a number of issues for public comment. The NRC is seeking public comment on the following specific questions and also invites general comments on the questions, and also invites general comments on the use of ADR in NRC enforcement cases.

It should be noted that the NRC's Discrimination Task Group already addressed and initially rejected the use of ADR in employment discrimination cases in its draft report which has been released for public comment (66 FR 32966 dated June 19, 2001 and http://www.nrc.gov/ - Electronic Reading Room, ADAMS Accession No. ML011200244). The Commission, however, desires to more thoroughly examine the use of ADR in enforcement proceedings, including discrimination cases. Accordingly, the Discrimination Task Group will await evaluation of comments received as a result of this *Federal Register Notice* before finalizing its recommendation on the use of ADR.

The specific questions are as follows.

1. Is there a need to provide additional avenues, beyond the encouragement of settlement in 10 CFR 2.203, for the use of ADR in NRC enforcement activities?
2. What are the potential benefits of using ADR in the NRC enforcement process?
3. What are the potential disadvantages of using ADR in the NRC enforcement process?
4. What should be the scope of disputes in which ADR techniques could be utilized?
5. At what points in the existing enforcement process might ADR be used?
6. What types of ADR techniques might be used most effectively in the NRC enforcement process?
7. Does the nature of the existing enforcement process for either reactor or materials licensees limit the effectiveness of ADR?
8. Would any need for confidentiality in the ADR process be perceived negatively by the public?
9. For policy reasons, are there any enforcement areas where ADR should not be used, e.g., wrongdoing, employment discrimination, or precedent-setting areas?
10. What factors should be considered in instituting an ADR process for the enforcement area?
11. What should serve as the source of neutrals for use in the ADR process for enforcement?

Dated at Rockville, Maryland, this 10th day of December 2001.

For the Nuclear Regulatory Commission.
/signed by/
Frank J. Congel, Director
Office of Enforcement

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1. Investigations, however, are confidential, and enforcement conferences involving wrongdoing are closed.

Alternative Dispute Resolution
&
NRC Enforcement Program
March 12, 2002

1

Opening Remarks

- Frank Congel, Director, Office of Enforcement

2

Current Enforcement Program

Terrence Reis, Sr. Enforcement Spec.

- NUREG –1600, Enforcement Policy
  - Available online –
- Purpose and Objectives
  - Support NRC's overall safety mission
    - Deter noncompliance
    - Encourage prompt identification and prompt, comprehansive corrective action

3

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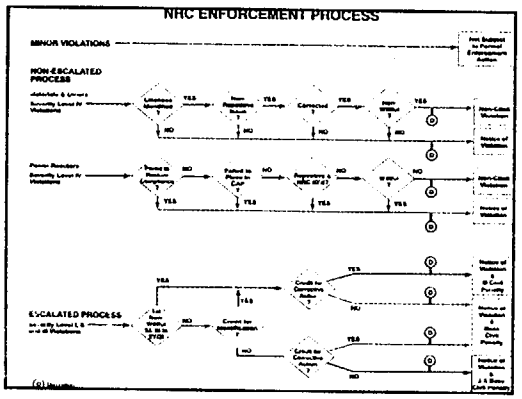
4



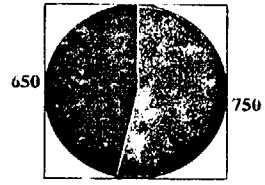
Current Enforcement Program

Terrence Reis, Sr. Enforcement Spec

- Significance or Severity of Violation
  - Actual consequences
  - Potential consequences
  - Impacting NRC's ability to perform regulatory function
  - Willful aspects

6

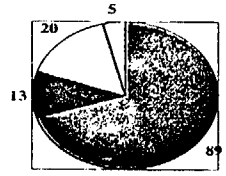
Enforcement Actions by Arena



■ Reactors ■ Materials

7

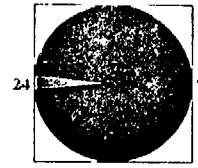
Escalated Enforcement for FY 2001



■ Escalated NOVs ■ Orders
□ Civil Penalties □ Impositions

8

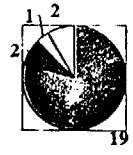
Reactor Enforcement Actions



■ Escalated ■ Nonescalated

9

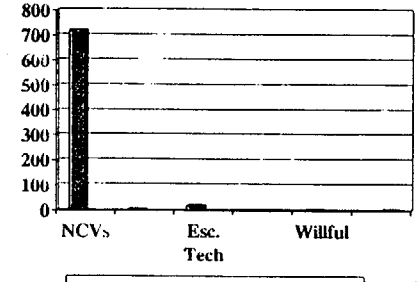
Reactor Escalated Enforcement Breakdown



■ SD ■ Discrimination ■ Willful ■ Impacting Process

10

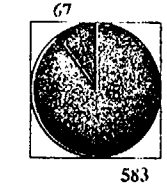
Reactor Enforcement



■ w/o civil penalty ■ w/ civil penalty

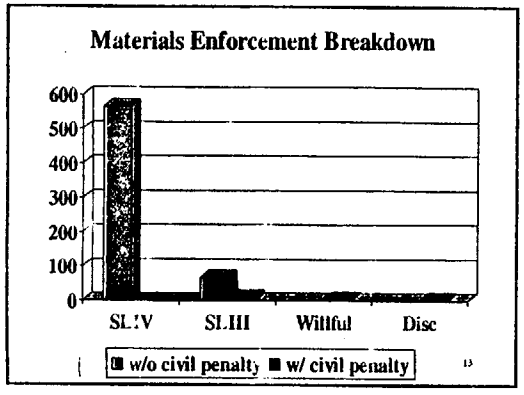
11

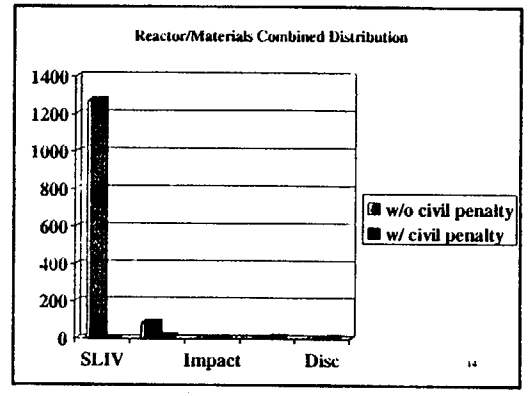
Materials Enforcement

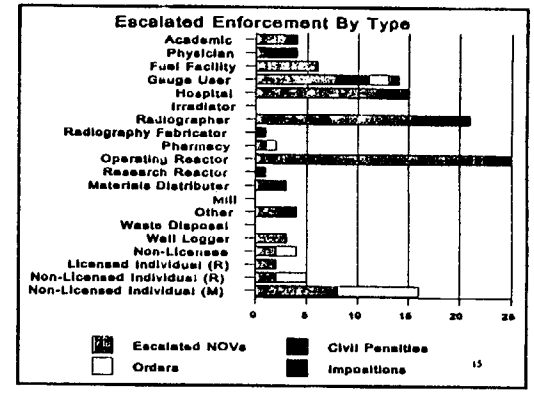


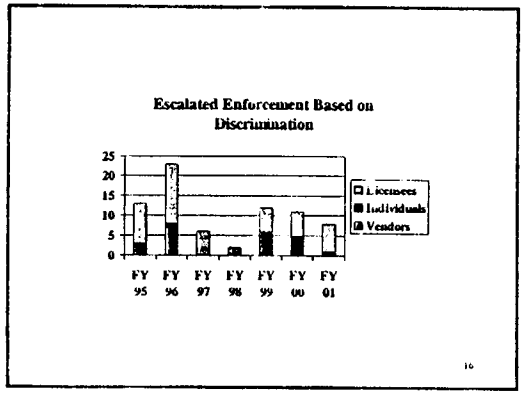
■ Nonescalated ■ Escalated

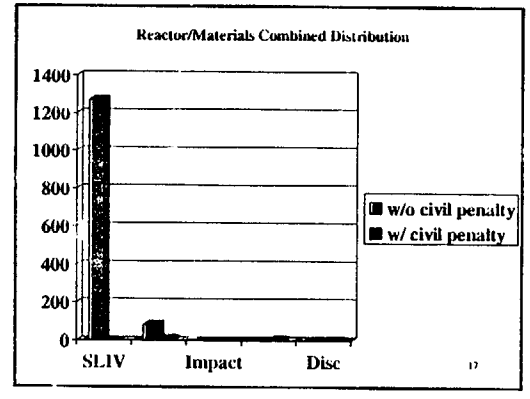
12









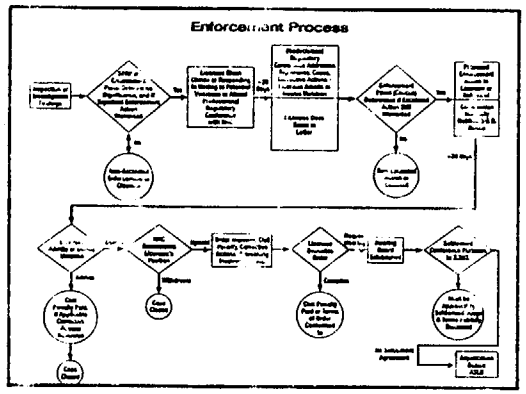


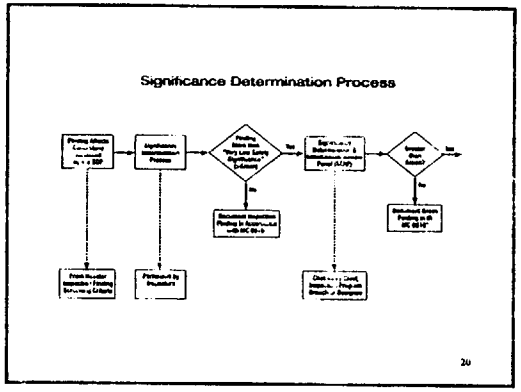
The Enforcement Process

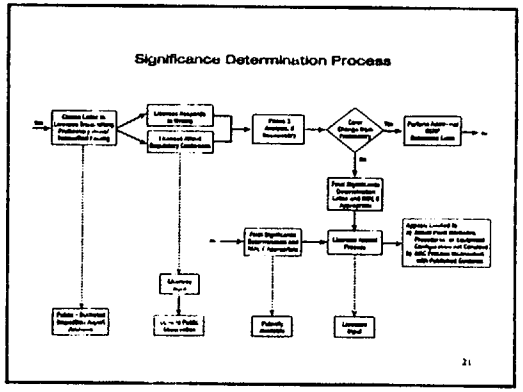
- Characteristics
  - Open*, fact finding and evaluative
  - Transparent to public
  - Early, full disclosure

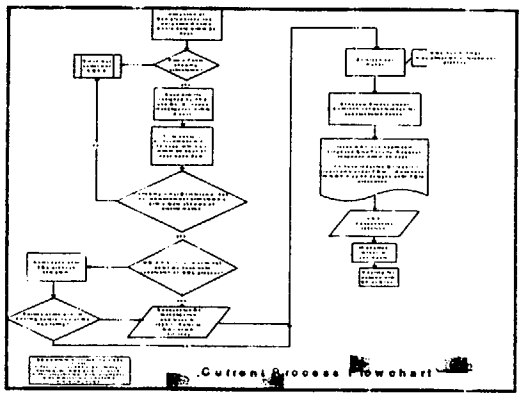
* Investigations, however, are confidential, and enforcement conferences involving wrongdoing are closed

18









ADR Orientation

Francis "Chip" Cameron
Office of General Counsel

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NRC ADR & Enforcement

- NRC ADR Policy, August 14, 1992
- Administrative Dispute Resolution Act of 1996
- NRC participation in the interagency ADR working group

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NRC ADR & Enforcement

- ADR covers a wide range of techniques, e.g.
  - Facilitation
  - Mediation
  - Fact finding
- Key defining characteristic of ADR
  - Use of a neutral third party to assist process
- Eleven issues identified for comment

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Case Studies

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Case Type I – Example 1
Dispute Over Interpretation of Requirements

- Timeline
  - Inspection conducted
  - Inspection report with "apparent violations" issued one month after final onsite inspection
  - Open, predecisional enforcement conference conducted two months after inspection report issuance
    - Licensee disputes violation
  - Final enforcement action issued less than two months after conference
  - Licensee formally denies violation 30 days later

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Case Type I – Example 1
Dispute Over Interpretation of Requirements

- Dispute
  - NRC position that licensee's must analyze for and protect against multiple spurious equipment actuations in an analysis demonstrating capability to safely shutdown reactor.
  - Licensee position that it only has to analyze for one spurious actuation at a time

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Case Type I – Example 1
Dispute Over Interpretation of Requirements

- How do you resolve dispute?
  - Generic problem – Industry and NRC simply disagree over interpretation of requirements
- Attributes of dispute
  - Site specific
  - Generic
  - Typical of NRC compliance technical issues involving interpretation of requirements

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Case Type I – Example 1
Dispute Over Interpretation of Requirements

- Actual Resolution
  - NRC generically stopped taking formal enforcement actions for these issues while the industry/NRC are working on a resolution
    - Exercise of discretion contingent upon licensee taking compensatory actions
  - Consensus reached?
    - As to enforcement, yes
    - As to issue, no

30

Case Type I – Example 2
Dispute Over Interpretation of Requirements

- Field inspection finds licensed gauges stored at an unauthorized location
- Severity Level IV violation issued
- Licensee denies violation
  - License provides that gauges can be possessed at temporary jobsites, anywhere the NRC has jurisdiction
- NRC acknowledges that license provides for licensee's claim, but gauge was stored at a dispatch facility – not a jobsite.
- Dispute – what does the license require?
- Violation upheld

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Case Type II – Example 1
Dispute Over Whether Requirements were Satisfied

- NRC has concerns with a fundamental safety analysis at a facility
  - Conducts inspection which leads to investigation
    - Very complex issue, lengthy process
  - Issue
    - Regulations require that the plant be analyzed to mitigate broad range of cooling failure accidents
    - This is done by conducting segmented analyses. Integration of the segments would then cover the entire range
    - The licensee had left a gap between two of its segmented analyses and used engineering judgment to conclude adequacy of entire range

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Case Type II – Example 1
Dispute Over Whether Requirements were Satisfied

- Dispute
  - Regulation is not sufficiently explicit to preclude engineering judgment
  - NRC finds use of engineering judgment to accept gap in range of analyses to not meet the regulation
  - Licensee considered their position to be within acceptable engineering standards
- How can ADR benefit?

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Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- License condition (Technical Specifications) require designated equipment to be operable
  - License specifies what to do when equipment not operable – normally – restore to operability or put plant in condition where equipment not needed – normally shutdown
- Frequently, a piece of equipment will be found in a condition that both the NRC and the licensee will agree is degraded and/or nonconforming
  - But disagree over whether equipment is "operable"

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Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- Typical Example
- Alarms received for high temperature bearings on both trains of safety related pumps needed to
  - shutdown the reactor,
  - cool the core long term after an accident
- Pumps declared inoperable
- Licensee investigation into cause of alarms reveals
  - Design changes over the years changed the thermal expansion characteristics of bearings and left them susceptible to overheating when exposed to lower cooling temperatures
  - Long term operability of pumps questionable.

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Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- NRC inspection of facts leads NRC to conclude that the pumps were inoperable for the long-term cooling condition
- Licensee expends significant resources
  - Hires expert panel
  - After months of analysis concludes pumps would have functioned for thirty days even with failed bearing

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Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- Dispute
  - Licensee provides expert, third party, testimony that pumps, although degraded and at risk, will remain "operable" for thirty days
  - NRC does not find testimony sufficiently convincing
    - Highly dependent on assumptions – variation changes outcome substantially

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Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

- Resolution
  - NRC takes "operability" violation off the table and issues "design control" violation over which there is no dispute

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Case Type II – Example 2
Dispute Over Whether Requirements were Satisfied

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39

Technical Cases

- Summary
  - Disputes in Technical cases normally involve
    - interpretations of the regulations/requirements or
    - Sufficiency of actions taken to assure compliance
  - What the licensee did or did not do is not in dispute
- How can ADR benefit?

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Case Study - Wrongdoing

- Inspection conducted – nonsignificant violation by skilled technician identified by NRC inspector
- Several days pass – technicians manager discusses situation with resident inspector
  - Provides procedural evidence that issue was not a violation
- NRC determines procedure was a revision and not in place at time of witnessed violation
- Investigation takes place – completed within a quarter

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Case Study - Wrongdoing

- Predecisional enforcement conference held 7 months later
- Subsequent formal letters further provide licensee's perspective on issue
  - Licensee maintains the providing of inaccurate information to the NRC was not deliberate.
- NRC concludes deliberate misconduct violation did occur (six months after conference)
  - Issues $55,000 Civil Penalty to Licensee
  - Severity Level III violation to individual
- Licensee pays Civil Penalty but protests deliberate conclusion

Case Study – Reactors
Employment Discrimination

- In a post September 11 environment, an employee begins communicating plant security concerns to both the facility's employee concerns program and the NRC
  - 1 month later the individual receives an unsatisfactory performance appraisal
  - 6 months later he fails to obtain his normal career ladder promotion

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Case Study – Reactors
Employment Discrimination

- Individual makes allegation to NRC that he is the subject of employment discrimination
- NRC opens a file
  - Explains to individual his right to take his complaint to DOL, that any personal remedy for substantiated discrimination is through DOL
- Issue is reviewed by NRC's Allegation Review Board
  - Board determines prima facie case exists
  - Investigation opened

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Case Study – Reactors
Employment Discrimination

- Office of Investigations (OI) performs fact-finding
  - 10 month OI investigation results in OI substantiating that employment discrimination occurred
- The results of the OI investigation are brought before an NRC staff panel
  - Panel concludes that there is sufficient basis to inform the licensee of an "apparent violation" and invite the licensee to a predecisional enforcement conference
  - Licensee informed
  - Licensee requests time to perform its own investigation

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Case Study – Reactors
Employment Discrimination

- Four months later the licensee comes in for a predecisional enforcement conference
  - Provides written documentation of employee declining performance
  - Justifies, in their view, their right to take the personnel action
  - Denies violation

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Case Study – Reactors
Employment Discrimination

- NRC reviews information obtained at conference, in conjunction with previously obtained information
  - NRC remains convinced that the preponderance of the evidence suggests violation occurred
    - Employee engaged in protected activity
    - Employer aware of protected activity
    - Adverse action was taken
    - Causal link between adverse action and protected activity
  - NRC determines DOL adjudication likely in near future-delays action awaiting DOL
  - Six months later DOL renders decision supporting discrimination
  - NRC issues Notice of Violation and Proposed $120,000 Civil Penalty

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Case Study – Reactors
Employment Discrimination

- Licensee FOIAs OI report and exhibits to respond to violation
- Eight months later licensee denies violation in writing
- Two months later NRC imposes by Order Civil Penalty

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Case Study – Reactors
Employment Discrimination

- One month later licensee requests a hearing
- Hearing is scheduled
- Hearing board directs parties to engage in settlement discussions
- Parties agree to settlement language and reduction in Civil Penalty

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Case Study – Reactors
Employment Discrimination

- A case of employment discrimination has never been adjudicated

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FRN Questions for Consideration

1. Is there a need to provide additional avenues, beyond the encouragement of settlement in 10 CFR 2.203, for the use of ADR in NRC enforcement activities?

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FRN Questions for Consideration

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11. What should serve as the source of neutrals for use in the ADR process for enforcement?

NUCLEAR REGULATORY COMMISSION
AGENCY: Nuclear Regulatory Commission.

57 FR 36678

August 14, 1992

Alternative Means of Dispute Resolution; Policy Statement
ACTION: Policy statement.

SUMMARY: This Policy statement presents the policy of the Nuclear Regulatory Commission (NRC) on the use of "alternative means of dispute resolution" (ADR) to resolve issues in controversy concerning NRC administrative programs. ADR processes include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration or combination of these processes. These processes present options in lieu of adjudicative or adversarial methods of resolving conflict and usually involve the use of a neutral third party.

DATES: This policy statement is effective on August 14, 1992. Because this is a general statement of policy, no prior notice or opportunity for public comment is required. However, an opportunity for comment is being provided. The period for comments expires on September 28, 1992. Comments received after this date will be considered to the extent practical; however, to be of greatest assistance to the Commission in planning the implementation of its ADR policy, comments should be received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC, between 7:45 a.m. and 4:15 p.m.
FOR FURTHER INFORMATION CONTACT: James M. Cutchin IV, Special Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 504-1568.

TEXT: SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Administrative Dispute Resolution Act (Public Law 101-552) on November 15, 1990. The Act requires each Federal agency to designate a senior official as its dispute resolution specialist, to provide for the training in ADR processes of the dispute resolution specialist and certain other

employees, to examine its administrative programs, and to develop, in consultation with the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS), and adopt, a policy that addresses the use of ADR and case management for resolving disputes in connection with agency programs. Although the Act authorizes and encourages the use of ADR, it does not require the use of ADR. Whether to use or not to use ADR is committed to an agency's discretion. Moreover, participation in ADR processes is by agreement of the disputants. The use of ADR processes may not be required by the agency.

Discussion

The Act provides no clear guidance on when the use of ADR is appropriate or on which ADR process is best to use in a given situation. However, section 581 of the Act appears to prohibit the use of ADR to resolve matters specified under the provisions of sections 2302 and 7121(c) of title 5 of the United States Code, and section 582(b) identifies situations for which an agency shall consider not using ADR. Nevertheless, numerous situations where the use of ADR to resolve disputes concerning NRC programs would be appropriate may arise. A document issued by ACUS in February 1992, entitled "The Administrative Dispute Resolution Act: Guidance for Agency Dispute Resolution Specialists," suggests that the use of ADR may be appropriate in situations involving a particular type of dispute when one or more of the following characteristics is present:

Parties are likely to agree to use ADR in cases of this type;

Cases of this type do not involve or require the setting of precedent;

Variation in outcome of the cases of this type is not a major concern;

All of the significantly affected parties are usually involved in cases of this type;

Cases of this type frequently settle at some point in the process;

The potential for impasse in cases of this type is high because of poor communication among parties, conflicts within parties or technical complexity or uncertainty;

Maintaining confidentiality in cases of this type is either not a concern or would be advantageous;

Litigation in cases of this type is usually a lengthy and/or expensive process; or

Creative solutions, not necessarily available in formal adjudication, may provide the most satisfactory outcome in cases of this type.

As the Act requires, a Dispute Resolution Specialist has been designated, NRC administrative programs have been reviewed, a policy on the use of ADR has been adopted, and the training of certain NRC employees has begun. As the Act requires, input on development of the policy has been sought from ACUS and FMCS. Although the Act does not require it, input on the policy and its implementation is being sought from the public, including those persons whose activities the NRC regulates, because the possible benefits of ADR cannot be realized without the agreement of all parties to a dispute to participate in ADR processes. Among the possible benefits of ADR are:

More control by the parties over the outcome of their dispute than in formal adjudication;

A reduction in levels of antagonism between the parties to a dispute; and

Savings of time and money by resolving the dispute earlier with the expenditure of fewer resources.

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Statement of Policy

This statement sets forth the policy of the Commission with respect to the use of "alternative means of dispute resolution" (ADR) n1 to resolve issues in controversy concerning NRC administrative programs.

n 1 ADR is an inclusive term used to describe a variety of joint problem-solving processes that present options in lieu of adjudicative or adversarial methods of resolving conflict. These options usually involve the use of a neutral third party. ADR processes include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration or combinations of these processes.

The Commission has conducted a preliminary review of its programs for ADR potential and believes that a number of them may give rise to disputes that provide opportunities for the use of ADR in their resolution. For example, as the Commission has long recognized, proceedings before its Atomic Safety and Licensing Boards (ASLBs) provide opportunities for the use of ADR and case management. The Commission has encouraged its ASLBs to hold settlement conferences and to encourage parties to negotiate to resolve contentions, settle procedural disputes and better define substantive issues in dispute. The Commission also has stated that its ASLBs at their discretion should require

trial briefs, prefiled testimony, cross-examination plans and other devices for managing parties' presentations of their cases, and that they should set and adhere to reasonable schedules for moving proceedings along expeditiously consistent with the demands of fairness. Statement of Policy on Conduct of Licensing Proceedings, (46 FR 28533, May 27, 1981); CLI-81-8, 13 NRC 452 (1981). In addition, the Commission has indicated that settlement judges may be used in its proceedings in appropriate circumstances. Rockwell International Corporation (Rocketdyne Division), CLI-90-5, 31 NRC 337 (1990).

Opportunities for the use of ADR in resolving disputes may arise in connection with programs such as those involving licensing, contracts, fees, grants, inspections, enforcement, claims, rulemaking, and certain personnel matters. Office Directors and other senior personnel responsible for administering those programs should be watchful for situations where ADR, rather than more formal processes, may appropriately be used and bring them to the attention of the NRC's Dispute Resolution Specialist. Persons who become involved in disputes with the NRC in connection with its administrative programs should be encouraged to consider using ADR to resolve those disputes where appropriate.

The Commission supports and encourages the use of ADR where appropriate. The use of ADR may be appropriate: (1) Where the parties to a dispute, including the NRC, agree that ADR could result in a prompt, equitable, negotiated resolution of the dispute; and (2) the use of ADR is not prohibited by law. The NRC's Dispute Resolution Specialist is available as a resource to assist Office Directors and other senior personnel responsible for administering NRC programs in deciding whether use of ADR would be appropriate. That individual should receive the cooperation of other senior NRC personnel: (1) In identifying information and training needed by them to determine when and how ADR may appropriately be used; and (2) in implementing the Commission's ADR policy.

The Commission believes that certain senior NRC personnel should receive training in methods such as negotiation, mediation and other ADR processes to better enable them: (1) To recognize situations where ADR processes might appropriately be employed to resolve disputes with the NRC; and (2) to participate in those processes.

The Commission recognizes that participation in ADR processes is voluntary and cannot be imposed on persons involved in disputes with the NRC. To obtain assistance in identifying situations where ADR might beneficially be employed in resolving disputes in connection with NRC programs and steps that can be taken to obtain acceptance of NRC's use of ADR, input from the public, including those persons whose activities the Commission regulates, should be solicited.

After a reasonable trial period, the Commission expects to evaluate whether use of ADR has been made where its use apparently was appropriate and whether use of ADR has resulted in savings of time, money and other resources by the NRC. The Commission will wait until some practical experience in the use of ADR has been accumulated before deciding whether specific regulations to implement ADR procedures are needed.

Public Comment

The NRC is interested in receiving comments from the public, including those persons whose activities the NRC regulates, on any aspect of this policy statement and its implementation. However, the NRC is particularly interested in comments on the following:

Specific issues, that are material to decisions concerning administrative programs of the NRC and that result in disputes between the NRC and persons substantially affected by those decisions, that might appropriately be resolved using ADR processes in lieu of adjudication.

Whether employees of Federal government agencies should be used as neutrals in ADR processes or whether neutrals should come from outside the Federal government and be compensated by the parties to the dispute, including the NRC, in equal shares.

Actions that the NRC could take to encourage disputants to participate in ADR processes, in lieu of adjudication, to resolve issues in controversy concerning NRC administrative programs.

Dated at Rockville, Maryland this 7th day of August, 1992.

For the Nuclear Regulatory Commission.

Samul J Chilk,

Secretary of the Commission.

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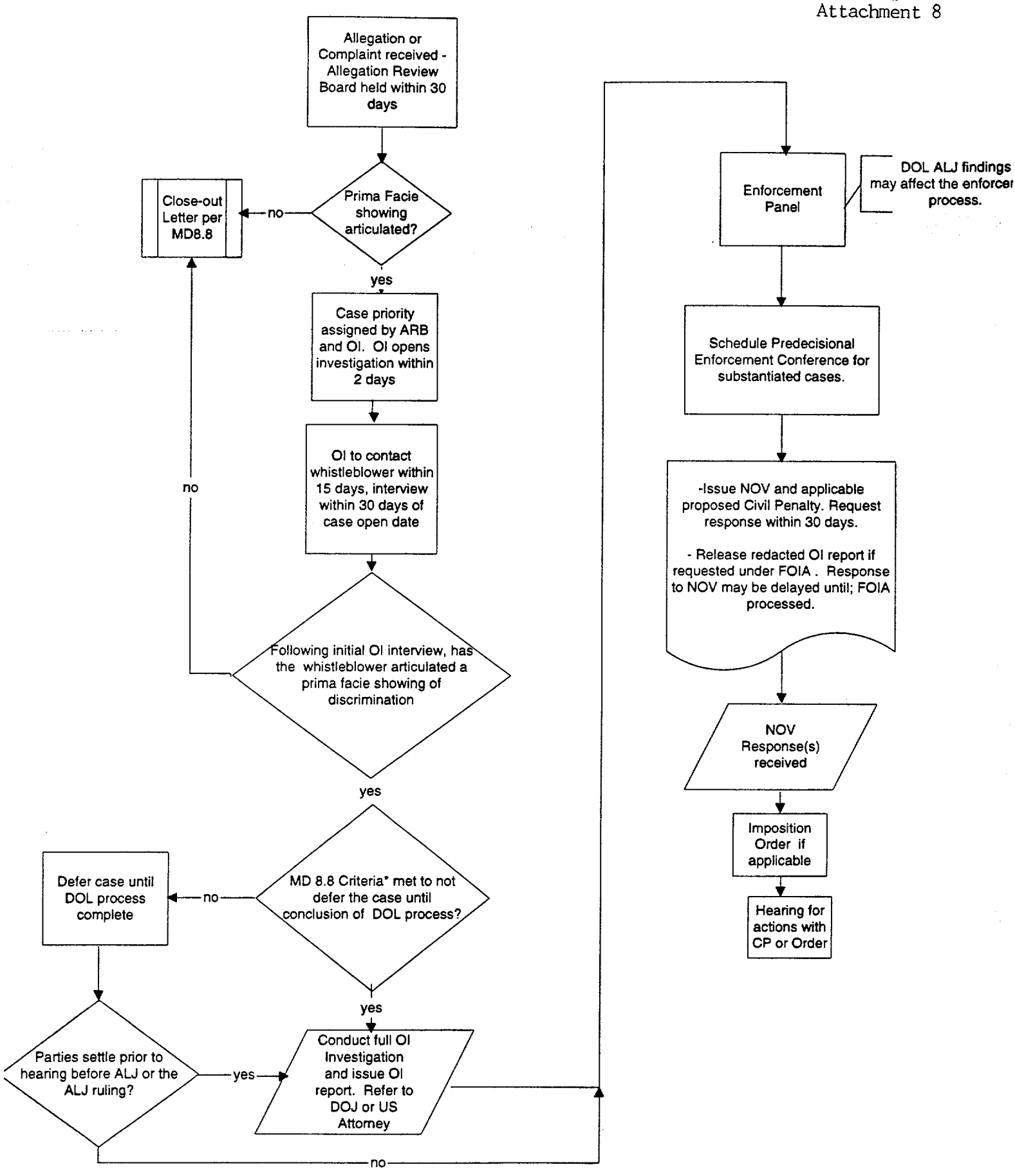

*MD 8.8 criteria for not deferring to DOL include:
1. There been an NRC or DOL finding of discrimination within the last 24 month.
2. The allegation is particularly egregious.
3. Performance issues indicate a deteriorating SCWE.

Current Process Flowchart

Attachment 9

Non NRC Employees in Attendance

Mr. J. Carey, PSEG
Mr. T. Lake, PSEG
Ms. B. Taggert, Entergy Nuclear
Ms. D. Raleigh, NSC Services
G. Twachtman, Platts (Inside NRC)