

December 5, 2000

MEMORANDUM TO: S. J. Collins, Director, Office of Nuclear Reactor Regulation  
W. F. Kane, Director, Office of Nuclear Material Safeguards and Security  
H. J. Miller, Regional Administrator, RI  
L. A. Reyes, Regional Administrator, RII  
J. E. Dyer, Regional Administrator, RIII  
E. W. Merschoff, Regional Administrator, RIV

FROM: R. W. Borchardt, Director, Office of Enforcement /RA/

SUBJECT: DISPOSITIONING OF ENFORCEMENT ISSUES IN A RISK INFORMED FRAMEWORK

The changes to the inspection and oversight programs being implemented offer the promise of an improved regulatory approach for how we carry out our responsibilities as a regulator. The enforcement program has been, and continues to be modified in order to fully support these initiatives and ensure that the enforcement program is implemented in a predictable and consistent manner. Identifying an issue, assessing its risk significance, and verifying that the licensee has taken corrective action are important elements of our mission. However, our responsibilities are not complete unless we also evaluate whether issues documented in NRC inspection reports constitute violations and we disposition them accordingly.

As a regulatory agency, it is our responsibility to establish and enforce requirements. Integral to this responsibility is the need to accurately disposition all violations that are discussed in inspection reports. Licensees bear the responsibility to take appropriate corrective actions for identified problems. These are appropriate and necessary regulatory burdens. I believe that the current enforcement program fully supports the agency's performance goals by emphasizing the importance of compliance with existing requirements (maintain safety), fully dispositioning documented violations (public confidence), being fully coordinated with the NRR and NMSS oversight programs (effectiveness and efficiency), and utilizing risk information and the NCV policy (reducing unnecessary regulatory burden).

As we have made the transition to the Reactor Oversight Process and the new Enforcement Policy, the Commission adopted the following language into both the Enforcement Policy and NRC Inspection Manual Part 9900: Technical guidance. "While safety is the fundamental regulatory objective, compliance with NRC requirements plays an important role in giving the NRC confidence that safety is being maintained. NRC requirements have been designed to ensure adequate protection—which corresponds to "no undue risk to public health and safety"—through acceptable design, construction, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid." This language is often referred to as the nexus between safety and compliance.

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While the current Enforcement Policy with its expanded use of NCVs and risk information has significantly reduced unnecessary regulatory burden, the proper disposition of documented violations remain an NRC responsibility. We have reduced unnecessary regulatory burden by changing the way we and our licensees disposition violations, not by failing to determine whether an inspection finding is a violation. Failing to disposition valid violations that have more than minor safety significance does not further any of the agency's goals. It can only serve to create the impression that there are unimportant requirements. In short, if an issue warrants documentation in an inspection report it also warrants a determination as to whether or not a violation exists.

I would like to emphasize the following points:

- 1) All issues documented in inspection reports that constitute violations must be dispositioned in accordance with the Enforcement Policy (NCV, NOV, or exercise of discretion, where appropriate)
- 2) The fact that an NCV does not require a response does not relieve the NRC of the responsibility to appropriately disposition the noncompliance nor does it relieve the licensee of the responsibility to restore compliance and take corrective actions to preclude recurrence.
- 3) The NRC's responsibility to ensure the legitimacy of violations dispositioned as NCVs is not reduced as a result of an issue being dispositioned without a formal citation. In documenting NCVs the staff must clearly describe how violations of legally binding requirements exist.
- 4) The Reactor Oversight Process and Significance Determination Process appropriately focus inspection staff attention first on the significance of issues. Compliance, however, must not be considered only an afterthought in the assessment process. The agency cannot dismiss enforcement when an issue is determined to be of low significance. The reasons for this are numerous but include: a) having noncompliances placed in licensee corrective action programs to ensure compliance is restored and corrective actions to preclude recurrence are taken in a timeframe commensurate with safety; b) maintaining and instilling public confidence that our regulations are enforced, and; c) to enable us to make better informed regulatory decisions in the future.
- 5) We will not manage to violation quotas or goals. The number of Severity Level IV violations in the reactor program has markedly decreased since the spring of 1998 and there are many factors which influenced this change. These factors include more explicit guidance on minor violations as well as fundamental changes in the inspection program. However, the need to properly disposition documented issues (and violations) has not changed. The Offices of NRR, NMSS and OE will continue to work together to define what issues are to be documented in inspection reports in a manner commensurate with the evolving inspection, oversight and enforcement programs.
- 6) An integral part of NRC Manual Chapter 0610\*, Appendix E, "Thresholds for Documentation," is answering the question of whether a finding is a violation. For issues of very low safety significance, it is not expected that an extensive inspection be conducted to determine if a legally defensible violation exists; however, it is reasonable to expect that necessary support documentation would be gathered in order to attempt to make the determination and to

construct and document a violation, if one exists. For more risk significant issues, it is expected that inspection effort will be expended to obtain the information necessary to construct legally defensible violations, if they exist.

Fundamentally, the changes that have occurred since the summer of 1998 are based on the premise that enforcement should not drive assessment and inspection. Rather, enforcement should be an integral element of the risk informed inspection and assessment programs. The transition in no way diminishes the importance of compliance.

I or my staff are available to further discuss this issue in any appropriate forum including counterpart meetings and formal training. We also welcome any feedback on the principles communicated herein.

cc: F. J. Miraglia, DEDR  
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A. Boland, RII  
B. Clayton, RIII  
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