

# Enforcement Policy - Section VII.B.3

## 2. Violations Identified During Extended Shutdowns or Work Stoppages

The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or inspection records for some material cases) and that it meets all of the following criteria:

- (a) It was either licensee-identified as a result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and all of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)
- (b) It is based upon activities of the licensee prior to the events leading to the shutdown;
- (c) It would not be categorized at Severity Level I;
- (d) It was not willful; and
- (e) The licensee's decision to restart the plant requires NRC concurrence.

## 3. Violations Involving Old Design Issues

The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, if the violation is documented in an inspection report (or inspection records for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

- (a) It was a licensee-identified as a result of its voluntary initiative;
- (b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and
- (c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

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In addition, the NRC may refrain from issuing a Notice of Violation for a Severity Level II, III, or IV violation that meets the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation, unless it was likely in the NRC staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative provided the schedule provides for completion of the licensee's initiative by March 30, 2000, for risk-significant items as defined by the licensee's maintenance rule program and by March 30, 2001, for all other issues;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

#### ***4. Violations Identified Due to Previous Enforcement Action***

The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after the NRC has taken enforcement action, if the violation is documented in an inspection report (or inspection records for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous enforcement action;