

# Withdrawn

NRC Administrative Letter 1995-05, Revision 1, "Revisions to Staff Guidance for Implementing NRC Policy on Notices of Enforcement Discretion," dated February 19, 1999, has been withdrawn.

ADAMS Accession Number: ML031110281

See *Federal Register* notice 81 FR 31969, dated  
May 20, 2016

J. McKnight  
P1-17

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR REACTOR REGULATION  
WASHINGTON, DC 20555-0001

February 19, 1999

**NRC ADMINISTRATIVE LETTER 95-05, REVISION 1: REVISIONS TO STAFF GUIDANCE FOR IMPLEMENTING NRC POLICY ON NOTICES OF ENFORCEMENT DISCRETION**

Addresses

All holders of operating licenses for nuclear reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this administrative letter to inform addressees of revisions to staff guidance for implementing the NRC's policy on Notices of Enforcement Discretion (NOEDs). No specific action or written response is required.

Background

This administrative letter supersedes in its entirety Administrative Letter 95-05, dated November 7, 1995, on the same subject (Accession Number 9511070162)

NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions," Enforcement Policy, states that the staff, under certain limited circumstances, may choose not to enforce applicable plant-specific power reactor technical specifications (TSs) or other license conditions. This type of discretion is designated as a Notice of Enforcement Discretion (NOED). An NOED may be warranted if forced compliance with a power reactor license would involve an unnecessary plant transient; performance of tests, inspections or system realignments not appropriate for current plant conditions; or unnecessary delays in startup, without any corresponding health and safety benefits. It is a legitimate regulatory mechanism that allows the NRC staff to address unforeseen, temporary situations where the staff believes that strict compliance is neither the correct nor the safest course to follow and no other suitable regulatory approach is available. A valid NOED request that satisfies all the established criteria does not reflect negatively on a licensee's performance unless the licensee created the need for the NOED as a result of poor planning or failure to take appropriate corrective action earlier.

On November 7, 1995, the NRC published Administrative Letter 95-05 to inform all holders of operating licenses or construction permits for nuclear reactors of the issuance of the revised NRC Inspection Manual (IM) Part 9900, "Technical Guidance," which contained staff guidelines for implementing the NOED policy. This guidance has been revised again to address certain

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policy changes described in staff requirements memorandum COMEXM-98-004, dated July 28, 1998; Office of the Inspector General (OIG) audit findings and recommendations documented in OIG/98A-06, "Follow-up Review of NRC's Process for Issuing and Tracking NOEDs," dated July 30, 1998; industry comments received during the Utility/NRC Interface Licensing Workshop, July 20-21, 1998; and staff experience with the prior guidance.

### Discussion

Significant changes to the NOED guidance are as follows:

1. The staff may now grant an NOED in cases involving severe weather or other natural events without prior Commission consultation. The Office of Nuclear Regulation (NRR) is responsible for granting such NOEDs. The Commission will be notified after the issuance of such NOEDs.
2. All teleconferences between the licensee and the staff to discuss NOED requests will be made through the NRC Headquarters' Emergency Operations Center recorded telephone line. This recording provides a record of the discussion and a basis for verification of its consistency with the licensee's followup written request.
3. The NOED will identify by name and title the key staff who participated in the NOED evaluation and approval and, if applicable, when the licensee's followup license amendment request will be or was submitted.
4. When an NOED is granted, either by the region or NRR, the responsible resident inspector will open an Unresolved Item to facilitate prompt tracking, documentation, and closure of inspection, verification, and resolution activities, including enforcement action determinations associated with the NOED.
5. In NOED requests, licensees are no longer required to state (a) whether prior adoption of TS enhancement initiatives (Generic Letter 87-09, "Line Item Improvements or the Improved Standard TS") would have obviated the need for the NOED or (b) whether the noncompliance involves an Unreviewed Safety Question.
6. For NRR-issued NOEDs, the followup TS amendment will usually be issued within 4 weeks as an exigent amendment, unless otherwise justified.
7. An NOED checklist is provided in Attachment D to IM Part 9900 as an aid to the staff in assuring adherence to this guidance. Its use is discretionary and it is a companion to, not a substitute for, the detailed guidance.

The revised guidance is attached to this administrative letter.

This administrative letter requires no specific action or written response. If you have any questions about this letter, please contact one of the persons listed below or the appropriate NRC Project Manager.



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Attachments:

1. NRC Inspection Manual, Part 9900, "Technical Guidance"
2. List of Recently Issued NRC Administrative Letters



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

Attachment 1  
AL 95-05, Rev 1  
February 19, 1999

# NRC INSPECTION MANUAL

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## PART 9900: TECHNICAL GUIDANCE

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OPERATIONS - NOTICES OF ENFORCEMENT DISCRETION NOED.TG  
( NUREG-1600, ENFORCEMENT POLICY SECTION VII C - EXERCISE OF DISCRETION)

### A. PURPOSE

This document provides guidance to staff in the Regional Offices and the Office of Nuclear Reactor Regulation (NRR) on the process for the NRC to exercise enforcement discretion with regard to limiting conditions for operation (LCO) in power reactor Technical Specifications (TS) or other license conditions. This type of discretion is addressed in Section VII.C of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy, NUREG-1600) and is designated as a Notice of Enforcement Discretion (NOED). This guidance is not applicable to non-power or permanently shutdown reactors. NOEDs may be warranted for operating reactors if compliance with a TS LCO or with other license condition would involve: (1) an unnecessary plant transient, or (2) performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or (3) unnecessary delays in plant startup without a corresponding health and safety benefit. An NOED can be issued for a power reactor at power, in startup, or in shutdown, provided the specific applicable criteria set forth below are met. NOEDs may also be appropriate when severe weather and other external events could have a potential impact on the overall health and safety of the public.

The NOED process is designed to address temporary nonconformances from the license conditions and TS only, and is not appropriate for nonconformances with regulations, Updated Final Safety Analysis Reports (UFSARs), or codes. Exemptions from regulations, non-compliance with UFSARs, and reliefs from codes must be processed in accordance with the provisions of Title 10 Code of Federal Regulations (10 CFR) 50.12, 50.59 or 50.55a. Nonconformance with regulations, UFSARs, or codes normally do not, in themselves, require immediate shutdown. In such situations, the licensee must perform a prompt safety assessment of the noncompliance and make an appropriate operability determination. The licensee should further determine what other NRC requirements apply to the situation, e.g., 10 CFR Part 50, Appendix B, Criterion XVI, 10 CFR 50.12, etc. and take required actions. Generic Letter (GL) 91-18, "Information to Licensees Regarding NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions," and associated NRC Inspection Manual Chapter Part 9900 provide staff guidance for addressing such circumstances.

When an NOED is granted, it is recognized that the operating license will be violated, but the NRC is exercising its discretion not to enforce compliance with the operating license for a specified time period. In all cases, appropriate enforcement actions consistent with the NRC's Enforcement Policy should be considered for the root causes leading to the need for the NOED.

## B. CRITERIA

### 1.0 General Considerations

A licensee may depart from its TS in an emergency, pursuant to the provisions of 10 CFR 50.54(x), without prior NRC approval, when it must act immediately to protect the public health and safety. However, situations occur occasionally that are not addressed by the provisions of 10 CFR 50.54(x), and for which the NRC's exercise of enforcement discretion may be appropriate. Provided that the licensee has not abused the emergency provisions of 10 CFR 50.91 by failing to apply for an amendment in a timely manner, it is appropriate that the NRC have the NOED procedure for expeditious notice to a licensee of NRC's intention to exercise enforcement discretion under limited circumstances.

The NRC staff is expected to issue NOEDs infrequently. Although requirements may dictate that a plant must be shut down, refueling activities suspended, or plant startup delayed absent the exercise of enforcement discretion, the NRC staff is under no obligation to issue an NOED. The decision to forego enforcement action is discretionary. An NOED is to be issued only if the NRC staff is clearly satisfied that such action is warranted from a public health and safety standpoint. An NOED should be granted on a case-by-case basis, considering the individual plant circumstances. If the NRC decides not to issue an NOED, the licensee must take the action required by the TS (except as stated in 10 CFR 50.54(x)). In addition, if a Licensee Event Report (LER) is required by 10 CFR 50.73 as a result of the non-conformance, the licensee must submit that LER, notwithstanding the staff's issuance of an NOED.

Careful regulatory scrutiny should be given to any deviation from the required actions of the TS or other license conditions for circumstances involving violations, poor planning, repeated NOED requests for the same reasons, or some similarly avoidable situation. To prevent the potential for such abuse, and the lack of up-front public notice and participation in the NOED process, the staff will apply criteria similar to those in 10 CFR 50.91 to verify that the exigency was unavoidable.

### 2.0 Situations Affecting Radiological safety

The following are NOED criteria applicable for various plant conditions:

1. For an operating plant, the NOED is intended to (a) avoid undesirable transients as a result of forcing compliance with the license condition and, thus, minimize potential safety consequences and operational risks or (b) eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions.
2. For plants in a shutdown condition, the NOED is intended to reduce shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide an overall safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.
3. For plants attempting to start up,<sup>1</sup> the need for an NOED is expected to occur less often than for operating plants, because delaying startup does

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<sup>1</sup> For purposes of this guidance, "startup" is defined as any condition with the reactor being in other than "operation" in Mode 1 or cold shutdown.

not usually leave a plant in a condition in which it could experience undesirable transients. Thus, the issuance of NOEDs for plants attempting to start up must meet a higher threshold, as described below. NOEDs for plants attempting to start up are to be exercised only when the licensee considers and the NRC staff has concluded that:

- a. The equipment or system does not perform a safety function in the mode in which operation is to occur (e.g., a TS which requires the equipment to be operable in a mode not required by the UFSAR); or,
- b. The safety function performed by the equipment or system is of only marginal safety benefit, and remaining in the current mode increases the likelihood of an unnecessary plant transient or,
- c. The TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The letter issuing an NOED should specifically address which of the above three criteria were satisfied. If the criteria, as described above, are not satisfied, the licensee must comply with the license requirements until a license amendment is requested and issued.

### 3.0 Situations Arising from Severe Weather or Other Natural Events<sup>2</sup>

In unusual situations, severe weather or other natural events may result in a government entity or regional power distribution system declaring an emergency on the basis of need for power and overall public safety considerations. In such circumstances, the staff may grant an NOED based on balancing the overall public health and safety implications of not operating, with the potential radiological or other hazards associated with continued operation of the facility while in nonconformance with the particular requirement. In such situations, the request for an NOED must come from the licensee. The licensee must provide the name, organization, and telephone number of the official declaring the emergency. The request must provide details of the basis and nature of the emergency; its potential consequences such as plant trip, controlled shutdown, delayed startup; the condition and operational status of the plant (equipment out of service or otherwise inoperable); status, and potential challenges to off-site and on-site power sources, and the impact of the emergency on plant safety. The licensee must identify actions that it took to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non-emergency loads). In addition, the licensee's request must be sufficiently detailed for the staff to evaluate the likelihood that the event could affect the plant, the capability of the ultimate heat sink, on-site and off-site emergency preparedness status, access to and from the plant, acceptability of any increased radiological risk to the public and the overall public benefit.

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<sup>2</sup> Previously, enforcement discretion necessitated by severe weather or other natural events could only be granted by the Office of the Executive Director for Operations (OEDO), following consultation with the Commission, in accordance with Section III of NUREG-1600. The Commission has revised its policy to allow the staff to grant an NOED in such cases and to inform the Commission after the fact.

## C. NOED PROCESS

### 1.0 Regional NOED

A region-issued NOED is appropriate when the noncompliance is nonrecurring, will not exceed 14 days in duration, and a license amendment is not practical because the plant will return to compliance with the existing license in a short period of time. Matters that a region-issued NOED may address include:

1. A noncompliance of short duration with the limits of a function specified in an LCO.
2. A noncompliance with an action statement time limit.
3. A noncompliance with a surveillance interval or a one-time deviation from a surveillance requirement.

The authority to issue an NOED is assigned to the Regional Administrator, who may delegate the authority to the Regional Division Director of Reactor Projects. The NOED should be based on a written request (or in some cases an oral request followed by a written request within 24 hours) from a licensee. Before issuing an NOED, the region should obtain the concurrence of the NRR Project Director (PD). The PD, in turn, should consult with the cognizant NRR technical branch chief(s) concerning the acceptability of issuing the NOED. Whenever a regional NOED is exercised, the staff's evaluation of the licensee's request, including the applicable items in Section C.4 of this guidance, should be documented in a letter to the licensee from the Regional Administrator or his/her designated official. The letter should follow the format and content of Attachment A to this guidance, and specify and discuss the maximum period of time for which the NOED is in effect (not to exceed 14 days). The region may grant an NOED verbally, but this should be followed by written authorization within 2 working days of the verbal NOED authorization. Resolution of the condition that led to the request for enforcement discretion should terminate the NOED. All licensee - staff teleconferences to discuss NOED requests should be made through the NRC headquarter's Emergency Operations Center recorded telephone line (Telephone No. (301) 415-0550). This provides a record of the discussion and a basis for future verification of its consistency with the licensee's follow-up written request.

### 2.0. NRR NOED

Matters that an NRR-issued NOED may address include:

1. A noncompliance with an element specified in a limiting condition for operation until such time as the element can be revised by a license amendment.
2. A noncompliance with an action statement time limit for which a license amendment will be processed to make the extension either a one-time or a permanent change to the TS.
3. A noncompliance with a surveillance interval or change to a surveillance requirement that will be incorporated by an amendment.

The authority to issue an NOED is delegated to the appropriate PD. The NOED should be based on a written request (or in some cases, an oral request followed by a written request within 24 hours) from a licensee. Before issuing an NOED, the NRR PD should obtain concurrence from the responsible Regional Division

Director of Reactor Projects. In addition, the PD should consult with and obtain written concurrence from the appropriate NRR technical branch chiefs. The staff may grant an NOED verbally, but this should be followed by written authorization within 2 working days of the verbal NOED authorization. All licensee - staff teleconferences to discuss NOED requests should be made through the NRC headquarter's Emergency Operations Center recorded telephone line (Telephone No. (301) 415-0550). This provides a record of the discussion and a basis for verification of its consistency with the licensee's follow-up written request. Whenever an NRR NOED is granted, the staff's evaluation of the licensee's request, including the applicable items in Section C.4 of this guidance, should be documented in a letter to the licensee from the appropriate NRR PD. The letter should specify and discuss the maximum period of time for which the NOED is in effect (resolution of the condition that led to the request or issuance of the follow-up license amendment would return the licensee to a condition of compliance with the license), and should follow the format and content of Attachment A to this guidance. Follow-up license amendments for NRR-issued NOEDs should be processed on an exigent basis in accordance with the process for exigent amendments. The follow-up license amendment must be submitted by the licensee within 48 hours of its oral request and should be issued by the NRC staff within 4 weeks of the issuance of the NOED unless otherwise justified by any special circumstances. Such special circumstances should be documented promptly in a memorandum from the responsible PD to the Associate Director for Projects. If necessary, an NOED-related issue that is part of a larger license amendment request should be handled as a separate amendment if that will expedite issuance. When amendments involving NOEDs are issued, the transmittal letter should identify the NOED which the amendment supersedes. Also, the NRR Project Manager (PM) should send an electronic copy of the letter issuing the follow-up license amendment to the E-mail address: NOED.

NRR is responsible for NOEDs involving severe weather conditions or other natural events. NRR has the lead for staff determination of the validity of the emergency and whether to grant an NOED. The PM, with assistance from appropriate technical staff, should make reasonable efforts to get a good assessment of the nature of the emergency. If appropriate and feasible, the staff should obtain a qualitative probabilistic risk analysis (PRA) from the appropriate technical branch as an input to its decision process. A teleconference should be held as soon as possible among senior licensee management, NRR and regional staffs. Participating staff personnel should include: NRR - PM, PD, cognizant technical branch chiefs; Regional Projects Division Director, and Resident Inspector. Following the teleconference with the licensee, the PM should contact the official declaring the emergency to independently confirm the nature of the emergency and expected duration of the emergency. Regardless of the staff's determination, the licensee must immediately submit (within a few hours) a follow-up written request documenting all the bases, justifications, commitments and other considerations and conditions discussed and agreed upon in the teleconference. The PM should inform the Commission through the cognizant Regional Coordinator, OEDO, as expeditiously as possible following granting of the NOED. See Attachment B for a sample memorandum from the OEDO to the Commission. The cognizant PM should prepare this memorandum in draft and give it to the cognizant Regional Coordinator, OEDO, for finalization and processing.

### 3.0 Multiple NOEDs

There may be occasions when several plants in different regions may request NOEDs simultaneously to address common conditions, e.g. a vendor advisory letter. In such cases, the regions and NRR should coordinate closely with each other to avoid potential duplication of effort and/or inconsistent approaches and to obtain any special assistance or expertise needed from NRR. In such cases, plant-

specific NOEDs will be issued, either by the region or NRR, in accordance with Sections C.1 and C.2 of this guidance, to individual licensees. To assure consistency in staff determinations relating to the NOED requests, approvals, root cause violations and enforcement actions, the cognizant NRR technical branch chief(s) should be included in all discussions and decisions.

#### 4.0. Request for NOED

The staff should verify that the licensee's request for an NOED includes the following:

1. The TS or other license conditions that will be violated.
2. The circumstances surrounding the situation, including apparent root causes, the need for prompt action and identification of any relevant historical events.
3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action. This evaluation should include at least a qualitative risk assessment derived from the licensee's PRA.
4. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that no significant hazard consideration is involved.
5. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.
6. Any proposed compensatory measure(s).
7. The justification for the duration of the noncompliance.
8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant On-site Review Committee, or its equivalent).
9. The request must specifically address which of the NOED criteria for appropriate plant conditions specified in Section B is satisfied and how it is satisfied.
10. If a follow-up license amendment is required, the NOED request must include marked-up TS pages showing the proposed TS changes and a commitment to submit the actual license amendment request within 48 hours.
11. For NOEDs involving severe weather or other natural events, the licensee's request must be sufficiently detailed for the staff to evaluate the likelihood that the event could affect the plant, the capability of the ultimate heat sink, on-site and off-site emergency preparedness status, access to and from the plant, acceptability of any increased radiological risk to the public and the overall public benefit. In addition to items 1-10 above as appropriate, the licensee must provide:
  - a. The name, organization, and telephone number of the official declaring the emergency.

- b. Details of the basis and nature of the emergency; its potential consequences such as plant trip, controlled shutdown, delayed startup; the condition and operational status of the plant (equipment out of service or otherwise inoperable);
- c. Status, and potential challenges to off-site and on-site power sources, and the impact of the emergency on plant safety.
- d. Demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non-emergency loads).

The request from the licensee should normally be sent by facsimile to the NRR PD and the Regional Projects Division Director. The signed original should be sent to the Document Control Desk. However, if circumstances do not permit time for the written request to be prepared and sent to the NRC, the licensee may make the request orally, describing to the best of its ability the information required by the staff. The licensee's oral request needs to be followed promptly by written documentation (within 24 hours) addressing the appropriate items listed above. In cases where a license amendment is appropriate, the written request for the NOED should be followed within 48 hours by the licensee's request for a license amendment for NRC staff consideration under the provisions of 10 CFR 50.91. The licensee's amendment request must describe and justify the exigency.

If the request is made orally, the NRC should have sufficient information to reach the same conclusions as if it had received a written submittal. The follow-up written request should confirm the information that the staff relied upon in arriving at its conclusion to issue the NOED. If an NOED is authorized orally but the licensee subsequently determines that no violation of the license will occur and thus the NOED is not needed, the licensee and staff should still follow up with appropriate documentation. In such cases, the licensee must submit a letter within 24 hours, documenting its oral request, the NRC's oral approval, and the circumstances that led to the determination that the NOED is no longer needed.

#### D. STAFF EVALUATION AND DOCUMENTATION

Prior to issuance of an NOED, to the extent practicable, the regional Projects Branch Chief and/or the PM should verify the licensee's oral assertions, including root cause and compensatory measures, and that the NOED request is consistent with the staff's policy and guidance. If any of the verifications cannot be made prior to issuance of the NOED, this should be done subsequently, as soon as time permits. The results of the verification activities are to be documented in a subsequent inspection report. When an NOED is granted either by the region or NRR, the responsible resident inspector should open an Unresolved Item (URI), to facilitate prompt tracking, documentation and closure of inspection, verification and resolution activities, including enforcement action determinations, associated with the NOED.

The staff's letter documenting the NOED should be self-standing, address the appropriate items in Section C.4 of this guidance, and demonstrate that issuance of the NOED is consistent with the policy and guidance. The NOED letter should also clearly specify which of the licensee's arguments the staff accepted in reaching its decision and the criterion that is satisfied. The sequence of events in the staff's letter should be clear and include: how and when the licensee

first requested the discretion, what the length of the AOT/surveillance interval involved was, when the allowed time would end, when (if applicable) verbal discretion was issued, the date of the licensee's follow-up written request (if the original was made verbally), the specific period of discretion starting at the end of the AOT and, if the NOED was terminated before the staff's letter is issued, the letter should contain the time the NOED was actually terminated. The staff should document in the NOED letter its verification of the consistency between the licensee's verbal and written requests. The letter should also identify by name and title, the key staff who participated in the NOED evaluation and approval and, if applicable, when the licensee's follow-up license amendment request will be or was submitted.

It is not acceptable to permit the licensee not to follow a TS or license condition while the staff considers a request for discretion. If the licensee is unable to provide the staff an adequate basis before the LCO time ends, the licensee must take the required actions to comply with the TS while endeavoring to provide the staff an adequate basis for granting the NOED. It is recognized that in cases involving short LCO times or complex issues, the staff may have to act before all the information is available. In such cases, if the information presented provides a clear basis that public health and safety is assured and that the criteria of the NOED policy are satisfied, then an NOED may be granted. If subsequent information fails to support the initial issuance of the NOED, it should be terminated, as discussed in Section E. In summary, the time it takes for the staff to evaluate the request for an NOED does not relieve the licensee from taking appropriate actions to comply with the TS.

## E. ENFORCEMENT

### 1.0 Early Termination of NOED

If the NRC decides to terminate the NOED for any reason before the time specified in the NOED, the staff should verify that the licensee takes steps to achieve the appropriate plant status and implement the existing TS-required actions upon oral notification of the termination by the appropriate NRR PD or Regional Division Director.

Upon notification of termination of the NOED, the licensee must inform the NRC of the proposed course of action to restore the plant to a condition of compliance with the license. The termination of the NOED by the NRC should be documented in a letter to the licensee and should address the actions taken or planned by the licensee, including the time necessary for the licensee to achieve the required plant conditions in the most prudent manner considering safety. In all these cases, the NRC will not normally take enforcement action for the TS or license condition violations during the period the NOED was in effect, except for the root causes leading to the noncompliance, as discussed below.

### 2.0 Consideration of Enforcement

The decision to exercise enforcement discretion by issuing an NOED does not change the fact that a violation will occur, nor does it imply that enforcement discretion is being exercised for any violation that may have led to the need for the NOED. In each case where the NRC staff has chosen to exercise enforcement discretion, enforcement action will normally be taken for any violations that contributed to the root causes leading to the noncompliance. Such enforcement action is intended to emphasize that licensees should not rely on the NRC's NOED process as a routine substitute for compliance or for requesting a license amendment.

NRR-issued NOEDs should be closely coordinated with the appropriate region to ensure that the region considers the need for enforcement action for any root cause violations that led to the NOED issued by NRR. The staff should follow the guidance in the NRC Enforcement Manual, NUREG\BR-0195, to determine and process the appropriate enforcement action. OE approval is required for not issuing an enforcement action if a violation is involved. The enforcement action should reference the NOED number. All staff determinations regarding enforcement action associated with the issuance of an NOED should be documented by the region in the next appropriate inspection report under the URI established to track that NOED, regardless of whether or not the determination is to take enforcement action. If the root cause underlying an NOED request results in an escalated action, the time during which the NOED is effective will not be counted in considering the impact of the violation.

#### F. DISTRIBUTION

Copies of the letter to the licensee shall be distributed according to established regional and NRR procedures and shall include the following:

1. Regional Coordinator, OEDO
2. Regional Administrator
3. Associate Director for Projects, NRR
4. Associate Director for Technical Review, NRR
5. Division Director, Division of Reactor Projects ( I/II or III/IV), NRR
6. Director, Office of Enforcement
7. Public
8. Technical Assistant, Division of Reactor Projects - I/II, NRR
9. Electronic copy (WordPerfect file) to E-mail address: NOED
10. Electronic copy (WordPerfect file) to NRC Internet Webmaster, E-mail: NRCWEB
11. Appropriate Branch Chiefs (Region and NRR)
12. Appropriate NRR PD
13. Appropriate NRR PM
14. Appropriate Senior Resident Inspector

Further, the issuing office should ensure that the licensee's request is also placed in the Public Document Room and that electronic copies of NOEDs are prepared in accordance with Attachment C. NRR will post the staff's NOED approval or denial letter on the NRC public web page. The NOED will remain on the bulletin board for 6 months for easy public access. The Technical Assistant (TA), Division of Reactor Projects (DRP)- I/II, NRR, will maintain a file of all NOEDs. Also, for NRR-issued NOEDs, the PM should send an electronic copy of the letter issuing the follow-up license amendment to the E-mail address: NOED.

#### G. TRACKING OF NOTICES OF ENFORCEMENT DISCRETION

The NRR PM should open a Technical Assignment Control (TAC) number under Licensing Action code LD for any NOED action involving NRR resources.

Each NOED will be assigned a number to permit tracking. The issuing office (region or NRR) will assign a number consisting of six digits. The first two digits indicate the year, the third digit indicates the number of the region (or 6 for NRR), and the last three digits are the sequential number of the NOED for the issuing office. For example, NOED 98-3-02 is the 2nd NOED issued by Region III in 1998. This number should be included in parenthesis at the end of the subject line for the NOED, for example: (NOED 98-3-02). The TA, DRP I/II, NRR,

will assign numbers for all NRR NOEDs and regional assignments will be made in accordance with regional procedures.

Each office (region or NRR) is responsible for tracking the NOEDs it issues and for entering the required data into its tracking system. Additionally, each region will be responsible for inspection, follow-up, and enforcement for all NOEDs issued, including those issued by NRR, for plants in that region.

On a semi-annual basis, the TA, DRP-I/II, will request the regions to provide updated database information regarding follow-up actions to previously issued NOEDs. This should include reference documents and dates for verification of licensees' oral assertions in the NOED requests, the determination to take or to not take enforcement action for any violations that may have led to the need for the NOED, and any follow-up inspections of licensees' root cause determinations, and corrective actions.

#### H. NOED CHECKLIST

An NOED checklist is provided in Attachment D as an aid to the staff in assuring adherence to this guidance. It's use is discretionary and it is a companion, not a substitute, for the detailed guidance.

END

#### Attachments:

- A. Sample Letter for NOED Issuance
- B. Sample Letter for Notification to the Commission Regarding Issuance of NOEDs for Severe Weather or Other Natural Events.
- C. File Format for Electronic Copy (WordPerfect file) of NOED Approval / Disapproval Letters.
- D. NOED Checklist

Attachment A  
SAMPLE LETTER FOR NOED ISSUANCE

Addressee

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR [LICENSEE NAME] REGARDING [PLANT NAME(S)] [TAC NO. XXXXXX (if applicable), NOED NO. XXXX]

By letter dated [date of letter], you requested that the NRC exercise discretion not to enforce compliance with the actions required in [TS or license condition citation]. Your letter documented information previously discussed with the NRC in a telephone conference on [date] at [time]. The principal NRC staff members who participated in that telephone conference included [list name and titles of the principal staff participants]. You stated that on [date and time] the plant(s) would not be in compliance with [TS/license condition] which would require [statement of the requirement including the AOT and the date and time when the action statement was entered]. You requested that a Notice of Enforcement Discretion (NOED) be issued pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.c, of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, and be effective for the period [state licensee's requested period for the NOED]. This letter documents our telephone conversation on [date and time] when we orally issued this NOED. [If appropriate: We understand that the condition causing the need for this NOED was corrected by you causing you to exit from the [TS/license condition] and from this NOED on [date and time].

[Briefly restate the licensee's description of the events leading up to the request for the NOED and a summary of their safety rationale for issuing the NOED. Include any compensatory measures that the licensee has proposed.]

[Summarize the staff's evaluation of the licensee's request and supporting safety rationale including the items in Section C.4 of this guidance, state which of the licensee's justifications the staff accepted to the extent that staff verification of the licensee's oral assertions including root causes and compensatory measures, has been made prior to issuance of this letter, such verification should be documented here], and cite the explicit criterion in Section B of this guidance that the licensee satisfied.]

On the basis of the staff's evaluation of your request, we have concluded that an NOED is warranted because we are clearly satisfied that this action involves minimal or no safety impact, is consistent with the enforcement policy and staff guidance, and has no adverse impact on public health and safety. Therefore, it is our intention to exercise discretion not to enforce compliance with [TS/license condition] for the period from [date and time] until [if region-issued: date and time; if NRR-issued: until issuance of a license amendment, and state when the amendment request was or will be submitted; state if the approved NOED effective duration differs from the requested time and why]. [For NRR-issued NOEDs: The staff plans to complete its review and issue the license amendment within 4 weeks of the date of this letter.

As stated in the Enforcement Policy, action will be taken, to the extent that violations were involved, for the root cause that led to the noncompliance for which this NOED was necessary.

signature

Project Director, NRR

or

Regional Administrator or designee.

Docket No(s): 50-xxx

Attachment B

SAMPLE MEMORANDUM FOR NOTIFICATION OF NOED FOR SEVERE WEATHER  
OR OTHER NATURAL EVENT

(Date)

OFFICE OF NUCLEAR REACTOR REGULATION  
NOTIFICATION OF ISSUANCE OF AN NOED  
FOR SEVERE WEATHER OR OTHER NATURAL EVENT

Licensee: (Name of Licensee)  
Facility:  
Docket No:  
NOED No.

To: Chairman and Commissioners

SUBJECT: ISSUANCE OF AN NOED FOR [Be specific: SEVERE WEATHER OR OTHER  
NATURAL EVENT]

This is to inform the Commission that a Notice of Enforcement Discretion (NOED) as a result of [severe weather or other natural events] was issued on [date] to [licensee name and facility].

This action is based on the licensee's request on [date] for an NOED. This is an information memorandum and requires no Commission action.

[Describe in summary form: the name and organization of the official declaring the emergency, details of the basis and nature of the emergency; its potential consequences such as plant trip, controlled shutdown, delayed startup; the condition and operational status of the plant (equipment out of service or otherwise inoperable); status, and potential challenges to off-site and on-site power sources, and the impact of the emergency on plant safety; demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non emergency loads).

Contact: (name), NRR, 415-XXXX

Distribution:  
Regional Administrators  
Director, NRR  
Cognizant PM/PD

Attachment C

FILE FORMAT FOR ELECTRONIC COPY (WORDPERFECT FILE)  
OF NOED APPROVAL/DISAPPROVAL LETTER

1. Replace the WordPerfect Letterhead Paper Size with Standard Paper Size and include typed letter heading, and letter issue date, as follows:

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
Washington, D.C. 20555-0001  
October 5, 1998

or for a Region

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION II  
U.S. Nuclear Regulatory Commission  
61 Forsyth Street, SW., Suite 23T85  
Atlanta, GA 30303-3415  
October 5, 1995

2. Remove the concurrence page and any attached internal distribution list.
3. Include the following above the letter author's name:  
  
/original signed by (identify person who signed letter)/
4. Save the WordPerfect file with the following filename: NEyyrser.wpd  
  
where the number of the NOED is yy-r-ser, for example, NOED 98-1-001 for the first NOED issued by Region 1 in 1998. (WPD just tells users that it is a WordPerfect 6 document.)
5. E-mail WordPerfect file to NRCWEB and NOED.

NOED CHECKLIST

NOTE: This is an aid to the staff in assuring adherence to this guidance. Its use is discretionary and it is a companion, not a substitute, for the detailed guidance.

Oral Request Date: \_\_\_\_\_  
NOED No. \_\_\_\_\_

TAC No. \_\_\_\_\_  
NRC NOED Letter Date \_\_\_\_\_

I. APPLICABILITY

| Item  | Check | Guidance  |
|---|-------|---|
| 1. Non-compliance related to non-power or permanently shutdown power reactors   | Yes   | Stop. NOED is not applicable.   |
|   | No    |   |
| 2. Non-compliance with TS or license condition  | Yes   |   |
|   | No    | Stop. NOED is not applicable.   |
| 3. NOED is for short duration (not exceed 14 days), one-time situations   | Yes   | Regional responsibility   |
|   | No    | NRR responsibility  |
| 4. Non-compliance related to severe weather or other natural events that require balancing of overall public health and safety. | Yes   | NRR responsibility. NOED per Section B3. Verify justification per Section C 4, item 11. Inform the Commission of the NOED issuance expeditiously. |
|   | No    |   |
| 5. NOED request is caused by licensee failing to apply for an amendment in a timely manner, i.e., Poor planning.                | Yes   | Carefully scrutinize to preclude abuse of NOED process. Evaluate criteria for an exigent amendment per 10 CFR 50.91.                              |
|   | No    |   |
| 6. AOT has expired prior to staff approval of NOED  | Yes   | Stop. Licensee must comply with TS.   |
|   | No    |   |
| 7. Do any of the following apply:<br>a. TS has been violated<br>b. Poor planning<br>c. Repeated NOEDs for same reasons          | Yes   | NOED approval requires closer scrutiny.   |
|   | No    |   |

**II. SAFETY CONSIDERATIONS**

| Item   | Check |  | Guidance                            |
|--|-------|--|-------------------------------------|
| 1. NOED is for an operating plant  | Yes   |  | Item 1a or 1b, must be satisfied.   |
|  | No    |  | Proceed to Item 2.                  |
| a) NOED is for avoiding undesirable plant transient, i.e., shutdown.   | Yes   |  | Item 1a or 1b, must be satisfied    |
| b) NOED would eliminate testing, inspection or system realignment that is inappropriate for particular plant conditions.   | No    |  |                                     |
|  | Yes   |  |                                     |
| No   |       |  |                                     |
| 2. Is the plant in a shutdown condition?   | Yes   |  | Item 2a must be satisfied.          |
|  | No    |  | Skip 2a and proceed to Item 3.      |
| a. NOED would reduce shutdown risk by avoiding testing, inspection or system realignment that is inappropriate for particular plant conditions?                                    | Yes   |  | NOED is not allowed.                |
|  | No    |  |                                     |
| 3. Is the plant in a startup condition?  | Yes   |  | Item 3a, 3b or 3c must be satisfied |
|  | No    |  |                                     |
| a) the equipment or system does not perform a safety function in the mode in which operation is to occur, or   |       |  | Item 3a, 3b or 3c must be satisfied |
| b) equipment or system safety function is of only marginal safety benefit, <u>and</u> remaining in the current mode increases the likelihood of an unnecessary plant transient, or |       |  |                                     |
| c) test, inspection or system realignment is inappropriate for the particular plant conditions because it does not provide a safety benefit, or may be detrimental to safety       |       |  |                                     |

III. PROCESS

| Item  | Chk | Guidance  |
|---|-----|---|
| 1. Licensee's request                                 |     | <ol style="list-style-type: none"> <li>1. May be oral. Arrange licensee-staff telephone discussions thru the recorded line (301) 415-0550.</li> <li>2. Written request within 24 hours. Address items in Section C.4.</li> <li>3. Submit follow-up license amendment within 48 hrs.</li> </ol>  |
| 2. TAC number assigned                                |     | Licensing Action Code: LD.  |
| 3. Verification                                       |     | Region project's Branch Chief/ NRR PM - Verify licensee's oral assertions, to the extent practical.   |
| 4. Concurrence  |     | Region-issued: Requires NRR (PD) concurrence.<br>NRR-issued: Requires regional Divisional Director of Reactor Projects' and cognizant NRR technical branch chief(s) concurrence.  |
| 4. Issuing authority                                  |     | Region: Regional Administrator or designee<br>NRR: Project Director   |
| 5. NOED number  |     | NRR: Obtain from TA, DRPE.<br>Region: Per Region guidance   |
| 6. NOED granting                                      |     | May be oral, to be followed by NOED letter within 2 working days.   |
| 7. Specify maximum period for which NOED is in effect |     | Region: Maximum 14 days<br>NRR: Until the issuance of amendment (4 weeks maximum).  |
| 8. NOED letter  |     | <ol style="list-style-type: none"> <li>1. Follow sample (See Attachment A).</li> <li>2. If subsequent to oral granting of an NOED, the licensee determines that no violation of the license will occur and thus the NOED is not needed, the licensee and staff should still followup with appropriate documentation.</li> <li>3. Document consistency between the oral and written requests.</li> <li>4. Cite and demonstrate how the specific NOED criteria satisfied.</li> <li>5. Identify by name and title principal staff participants in the NOED approval.</li> <li>6. Evaluate and document applicable items in Section C.4</li> <li>7. Specify time period for which NOED will be in effect..</li> </ol> |
| 9. Follow-up license amendment (NRR)                  |     | <ol style="list-style-type: none"> <li>1. Issue exigent amendment within 4 weeks. If not, justify promptly by a memo to ADP.</li> <li>2. Send a copy of the amendment letter to email:NOED</li> </ol>   |
| 10. Root cause violations                             |     | Determination made. NRR coordinate with the regions   |
| 11. Inspection Report                                 |     | Region to document root cause violation determination, NOED approval basis, results of verification activities to close URI.  |
| 12. Enforcement action                                |     | Coordinate with OE. For all NOEDs, Region to open an URI and document determinations in the next appropriate inspection report.   |
| 13. Licensee LER                                      |     | Required even if NOED is issued (if otherwise required).  |
| 14. Distribution                                      |     | See Part 9900. Note: Electronic copy of Word Perfect file to Email addresses: NOED and NRCWEB   |

**IV. LICENSEE REQUEST FOR ENFORCEMENT DISCRETION**

| Item  | Chk | Remarks |
|---|-----|---------|
| 1. The TS or other license conditions that will be violated.  |     |         |
| 2. The circumstances surrounding the situation, including root causes, the need for prompt action and identification of any relevant historical events.   |     |         |
| 3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action.  |     |         |
| 4. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that a significant hazard consideration is involved.   |     |         |
| 5. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.   |     |         |
| 6. Any proposed compensatory measure(s).  |     |         |
| 7. The justification for the duration of the noncompliance.   |     |         |
| 8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant Onsite Review Committee, or its equivalent).  |     |         |
| 9. The request must specifically address which of the criteria specified in Section B is satisfied and how.   |     |         |
| 10. If a follow-up license amendment is required, the request must include marked-up TS pages showing the proposed TS changes, and a commitment to submit the actual license amendment request within 48 hours.   |     |         |
| <p>11. For NOEDs involving severe weather or other natural events, the licensee must provide:</p> <ul style="list-style-type: none"> <li>a. the name, organization, and telephone number of the official declaring the emergency.</li> <li>b. details of the basis and nature of the emergency; its potential consequences such as plant trip, controlled shutdown, delayed startup; the condition and operational status of the plant (equipment out of service or otherwise inoperable);</li> <li>c. status, and potential challenges to offsite and onsite power sources, and the impact of the emergency on plant safety.</li> <li>d. demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non-emergency loads).</li> </ul> |     |         |

**LIST OF RECENTLY ISSUED  
 NRC ADMINISTRATIVE LETTERS**

| <b>Administrative Letter No.</b> | <b>Subject</b>  | <b>Date of Issuance</b> | <b>Issued to</b>  |
|----------------------------------|---|-------------------------|---|
| 98-10                            | Dispositioning of Technical Specifications That are Insufficient To Assure Plant Safety   | 12/29/98                | All holders of operating licenses   |
| 98-09                            | Priority for NRR Review of Risk-Informed Licensing Actions  | 10/30/98                | All holders of operating licenses for nuclear power reactors.   |
| 98-08                            | Availability of Revised NRC Form 3, "Notice to Employees" and Closure of NRC Walnut Creek Field Office                            | 10/09.98                | All NRC licensees.  |
| 98-07                            | Interim Suspension of the Systematic Assessment of Licensee Performance (SALP) Program  | 10/02/98                | All holders of operating licenses for nuclear power reactors  |
| 98-06                            | Electronic Availability of 10 CFR Part 21 and 10 CFR 50.55(e) Notifications   | 10/02/98                | All holders of licenses for nuclear power reactor and vendors for nuclear power reactors  |
| 98-05                            | Availability of Summarize In Electronic Format of Technical Reports by the Office for Analysis and Evaluation of Operational Data | 8/3/98                  | All holders of operating licenses for nuclear power reactors  |
| 98-04                            | Availability of Common-Cause Failure Database   | 7/30/98                 | All holders of operating licenses for nuclear power reactors, except those licensees who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel |
| 96-05, Rev. 1                    | Compliance with the Rule "Timeliness in Decommissioning of Material Facilities"   | 7/14/98                 | All material and fuel cycle licensees   |

OL = Operating License  
 CP = Construction Permit

This administrative letter requires no specific action or written response. If you have any questions about this letter, please contact one of the persons listed below or the appropriate NRC Project Manager.

*ISI'd By SFN  
for*

David B. Matthews, Director  
 Division of Regulatory Improvement Program  
 Office of Nuclear Reactor Regulations

Contacts: L. Raghavan, NRR  
 301-415-1471  
 E-mail: [lxr1@nrc.gov](mailto:lxr1@nrc.gov)

Herbert N. Berkow, NRR  
 301-415-1485  
 E-mail: [hnb@nrc.gov](mailto:hnb@nrc.gov)

Attachments:

1. NRC Inspection Manual, Part 9900, "Technical Guidance"
2. List of Recently Issued NRC Administrative Letters

\*See Previous Concurrence

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|        |           |          |            |           |
|--------|-----------|----------|------------|-----------|
| OFFICE | PECB:DRPM | Tech Ed  | PDII-3     | PD:PDII-2 |
| NAME   | TGreene*  | BCalure* | LRaghaven* | HBerkow*  |
| DATE   | 2/12/99   | 1/28/99  | 2/4/99     | 2/12/99   |

|        |           |                     |
|--------|-----------|---------------------|
| OFFICE | (A)C:PECB | D:DRPM              |
| NAME   | RDennig*  | DMatthews <i>DM</i> |
| DATE   | 2/12/99   | 2/12/99             |

OFFICIAL RECORD COPY

This administrative letter requires no specific action or written response. If you have any questions about this letter, please contact one of the persons listed below or the appropriate NRC Project Manager.

David B. Matthews, Director  
 Division of Reactor Program Management  
 Office of Nuclear Reactor Regulations

Contacts: L. Raghavan, NRR  
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- Attachments:
1. NRC Inspection Manual, Part 9900, "Technical Guidance"
  2. List of Recently Issued NRC Administrative Letters

\*See Previous Concurrence

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|        |           |          |            |           |
|--------|-----------|----------|------------|-----------|
| OFFICE | PECB:DRPM | Tech Ed  | PDII-3     | PD:PDII-3 |
| NAME   | TGreene   | BCalure* | LRaghaven* | HBerkow   |
| DATE   | 2/1/99    | 1/28/99  | 2/4/99     | 2/1/99    |

|        |            |           |
|--------|------------|-----------|
| OFFICE | (A/C:PECB) | D:DRPM    |
| NAME   | RDennig    | DMatthews |
| DATE   | 2/1/99     | / /99     |

OFFICIAL RECORD COPY

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David B. Matthews, Director  
 Division of Reactor Program Management  
 Office of Nuclear Reactor Regulation

Contacts: L. Raghaven, NRR  
 301-415-1471  
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 E-mail: hnb@nrc.gov

- Attachments:
1. IM Part 9900: "Technical Guidance"
  2. List of Recently Issued NRC Administrative Letters

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|        |                   |          |   |                    |         |
|--------|-------------------|----------|---|--------------------|---------|
| OFFICE | PECB:DRPM         | TECH ED  | N | PDII-3             | PDII-2  |
| NAME   | TGreene <i>ag</i> | BCalure* |   | LRaghaven <i>U</i> | HBerkow |
| DATE   | 2 13 /99          | 1/28/99  |   | 2 14 /99           | 1 /99   |

|          |          |           |
|----------|----------|-----------|
| ASC/PECB | ABC/PECB | D/DRPM    |
| TKoshy   | RDennig  | DMatthews |
| 1 /99    | 1 /99    | 1 /99     |

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2. List of Recently Issued NRC Administrative Letters

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|--------|-----------|------------------|-------------|-------------|
|        |           | <i>N</i>         |             |             |
| NAME   | T. Greene | <i>S. Caluso</i> | L. Raghaven | H. Berkow   |
| DATE   | / /99     | <i>11/8/99</i>   | / /99       | / /99       |

| OFFICE | ASC/PECB:DRPM | ABC/PECB/DRPM | D/DRPM      |
|--------|---------------|---------------|-------------|
| NAME   | T. Koshy      | R. Dennig     | D. Matthews |
| DATE   | / /99         | / /99         | / /99       |

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*6/11*