



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

MAY 12 1987

MEMORANDUM FOR: W. Russell, Regional Administrator, Region I
N. Grace, Regional Administrator, Region II
B. Davis, Regional Administrator, Region III
R. Martin, Regional Administrator, Region IV
J. Martin, Regional Administrator, Region V
J. Keppler, Director, Office of Special Projects

FROM: James Lieberman, Director
Office of Enforcement

SUBJECT: ENFORCEMENT PROCEDURES

By memorandum dated March 5, 1987 I provided my plans for the Office of Enforcement. Since that time I have discussed those plans with various regions and the enforcement coordinators during their March meeting in Dallas and have received helpful comments. I remain convinced that if enforcement is given sufficient priority we can issue timely, quality, and consistent enforcement actions. I intend to implement the philosophy expressed in the March memorandum in a revised manual chapter on enforcement (MC 0400). I will circulate the manual chapter for comment prior to its issuance. However, pending the issuance of the manual chapter the following actions should be taken:

- (1) Enforcement actions should be processed expeditiously with a goal of seven weeks from the exit interview for issuance of routine escalated cases. The following milestones should be met to meet this goal:

- Week 0 - exit interview
- by Week 3 - issue inspection report
- by Week 4 - hold enforcement conference
- by Week 5 - submit regional enforcement recommendation to OE
- by Week 7 - decide initial escalated action and issue the associated EN

The schedule for non-routine cases such as those based on OI, IIT AIT, team inspection, and DOL efforts may take longer but should be issued as soon as possible.

- (2) Regions ^{1/} should provide draft orders imposing civil penalties within 30 days of the licensee's response and the Office of Enforcement (OE) should issue the order within the following 30 days.

^{1/} When the term "region" is used in this memorandum, it includes the Office of Special Projects to the extent that it is involved in enforcement activities, e.g., issuing CALs, Notices of Violations or proposed civil penalties, or holding enforcement conferences.

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- (3) Regions should provide OE with their views orally on the enforcement action, if any, recommended be taken in response to OI reports within two weeks after the OI report is issued or sooner if immediate action is appropriate.
- (4) The enforcement policy provides that civil penalties normally are assessed for willful violations at any severity level. Every case involving willful violations should be considered for escalated action with at least a civil penalty. All cases involving willfulness require OE concurrence.
- (5) Enforcement actions based on findings for plants with major shutdowns should be processed substantially before restart is contemplated. Therefore, cases should be submitted to OE at least two months before scheduled start up. This should permit the case to be issued and the licensee's corrective action to be received prior to start up and will avoid issuing sanctions at the same time or after start up is authorized. A similar procedure should be followed for plants to be licensed.
- (6) CALs should be sent to OE and the appropriate program office. If the actions to be taken appear to require more than 30 days to complete, OE after consultation with the regions and program office will determine whether an order confirming the CAL is appropriate. This should result in the issuance of orders confirming shutdown for plants with major shutdowns caused by violations or poor performance. Each CAL should end with the following language: "Issuance of this confirmatory action letter does not preclude the issuance of an order formalizing the above commitments. If your understanding differs from that set forth above, please call me immediately."
- (7) Upon receipt of a CAL, OE will assign an EA number if the CAL is based on noncompliance and the region will be notified of the number. If an EA number has not been assigned to a case, the EA number will be assigned when the region notifies OE that an enforcement conference will be held. Notice of an enforcement conference should continue to be given by telephone to OE promptly after the decision is made to hold a conference. Once an EA number is assigned, meeting notices, memoranda, correspondence to the licensee transmitting the inspection report, proposed enforcement action, etc. should refer to the EA number.
- (8) If an enforcement conference is held and it is concluded after the conference that the violations are clearly Severity Level IV and do not fit examples of Severity Level III or meet the criteria in EGM 87-01, regions need not send the action to OE for review prior to issuance. However, regions should send a copy of the issued NOV to OE to close out the EA number.
- (9) When an enforcement conference is held with a licensee and does not result in an escalated action, the enforcement action should be signed by the Regional Administrator or attending Division Director. If no Division Director attends the conference, the next senior management official at the conference should sign the action. The person who signs the action should sign the NOV.

- (10) Copies of all documents associated with an EA number (notices, inspection reports, regional recommendations, etc, should be sent simultaneously to the Director, OE, Assistant General Counsel for Enforcement, and Associate Director for Projects, NRR, for reactors or the appropriate NMSS division director for non-reactor cases. Drafts of actions for OE concurrence shall be sent via the 5520 system to OE, OGC, and the appropriate program office. Other material should be sent via the 5520 system, facsimile machine or express mail to the same individuals. For non-safeguards inspection reports and correspondence that are mailed, three copies should be sent to OE.
- (11) The regional counsel is expected to review each case before the action is submitted to OE. The transmittal correspondence should indicate if the regional counsel has not reviewed the case.
- (12) Regions are expected to develop the facts associated with the enforcement action, recommend an enforcement action, and provide justification for the recommendation. OGC and program offices are expected to provide comments on the legal and technical merits, respectively, of the package. OE will process the case and appropriately discuss the case with the region, program office and OGC. Following tentative approval of the action by the Director of OE, the approved package will be sent to the regional office for final comment. This is intended to be a short review, no longer than about four hours. If there is a substantial difference between the region and OE, the Director, OE, intends to discuss the matter with the Regional Administrator before obtaining concurrence of the Deputy Executive Director for Regional Operations. Similarly, if there are significant differences with OGC or the program office, the Director, OE, will discuss the matter with them.
- (13) As indicated in item 12, the regions are responsible for the facts and justification. These are important parts of the process and completeness is necessary for timely processing by OGC, the program office, and OE. At this time OE is not directing that the Regional Enforcement Recommended Report attached to the March 5, 1987 memo be used. However, it is expected that the package be comprehensive and contain essentially the information requested by the RERR. Region III's alternative circulated on April 3, 1987 provides a good check list that might also be used. Whatever the approach, packages that do not contain the necessary facts to apply the enforcement policy will not be processed by OE and will be returned to the regions for further development. This is an area for which further guidance will be provided.
- (14) Initial responses to licensee's submittals made to OE or the DEDRO should be for OE or DEDRO signature. These include orders imposing a civil penalty, acknowledgement of the payment of a civil penalty, and letters withdrawing a violation which was an escalated case.
- (15) Regular conference calls will be conducted each Friday morning at 10 AM Bethesda time with OE and the enforcement coordinators to discuss enforcement issues and cases.

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List of Addressees

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If you have any questions, comments, or suggestions on the above guidance, please call me.

James Lieberman, Director
Office of Enforcement

cc: J. Taylor, DEDO
T. Murley, NRR
H. Thompson, NMSS
J. Goldberg, OGC
bcc: Enforcement Coordinators
J. Axelrad, OSP

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Lieberman
5/11/87