

# CHAPTER 1

## RESPONSIBILITIES AND AUTHORITIES

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**Chapter 1 provides information regarding:**

- ▶ **the delegation and re-delegation of responsibilities and authorities for enforcement activities as implemented in the Enforcement Policy and in Volume 9 of the NRC Management Directives (MDs)**
- ▶ **information regarding the requirements for Commission notification and consultation**

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\* Note: Information regarding NRR, NMSS, and STP will be revised when the pending reorganization of these offices has been completed.

### **1.1 Executive Director for Operations (EDO)**

- a. The Executive Director for Operations (EDO) is the chief operating and administrative officer of the Commission. Except as otherwise provided by law, regulation, Commission action, or action by the Chairman, the EDO reports to and is supervised by the Chairman as provided in MD 9.17, "Organization and Functions, Office of the Executive Director for Operations."

- b. The EDO, through the Chairman, ensures that the Commission is fully and currently informed about matters within its function.
- c. The EDO is responsible for the following activities which may involve the agency's enforcement program:
  - 1. Supervising, directing, coordinating, and approving the activities of the offices reporting to the EDO and Deputy Executive Directors (DEDOs);
  - 2. Developing and promulgating rules (as defined in the Administrative Procedures Act and subject to the limitation set out in paragraphs 038, 039, and 0310 of MD 9.17);
  - 3. Developing and approving delegations of authority for offices reporting to the EDO and DEDOs;
  - 4. Exercising the Commission's authority to take enforcement or other action under 10 CFR Part 2, Subpart B; and
  - 5. Issuing subpoenas under Section 161c of the Atomic Energy Act of 1954, as amended, where necessary or appropriate for the conduct of inspections or investigations.
- d. Limitations placed on the authority of the EDO require that the EDO present all significant questions of policy to the Commission for resolution, and with respect to these questions, present all major views of the affected offices to the Commission (see the discussion below regarding Commission notification).

## 1.2 Deputy Executive Directors for Operations (DEDOs)

### 1.2.1 Deputy Executive Director for Materials, Research, State and Compliance Programs (DEDMRS)

- a. The DEDMRS carries out day-to-day supervision, guidance, and direction of the Offices of NMSS, STP, Research (RES), OE, and the Office of Investigations (OI).
- b. The DEDMRS provides oversight across agency lines of authority for all NRC policies and activities related to materials and waste safety.

☞ The title "Deputy Executive Director" and acronym "DEDO" refer to either the DEDR or DEDMRS, as appropriate.
- c. The DEDMRS is responsible to the EDO for the NRC enforcement program and is authorized to approve or issue:
  - 1. All escalated enforcement actions including orders and civil penalties pursuant to 10 CFR Part 2, Subpart B; and
  - 2. Actions involving individuals, including licensed operators.

- d. The DEDMRS is authorized to act, when delegated, in the stead of the EDO or DEDR during the EDO's or DEDR's absence and take action as necessary to perform the EDO's or DEDR's duties.

### **1.2.2 Deputy Executive Directors for Reactor and Preparedness Programs (DEDR)**

- a. The DEDR is responsible for carrying out day-to-day supervision, guidance, and direction of the Offices of NRR, NSIR and the agency's regional offices.
- b. The DEDR provides oversight across agency lines of authority for all NRC policies and activities related to reactor safety and homeland protection and preparedness and has responsibility for matters dealing with the homeland security aspects of physical and personnel security, information security, information technology security, safeguards, emergency response, and threat and vulnerability assessment.
- c. The DEDR is authorized to act, when delegated, in the stead of the EDO or the Deputy Executive Director for Materials, Research, State and Compliance Programs (DEDMRS) during the EDO's or DEDMRS' absence and take action as necessary to perform the EDO's or DEDMRS' duties.

### **1.3 Office of Enforcement (OE)**

In accordance with Management Directive (MD) 9.19, "Organization and Functions, Office of Enforcement," OE has delegated authority to:

- a. Exercise oversight of NRC enforcement programs;
- b. Provide programmatic and implementation direction to the offices in the regions and in OE Headquarters (headquarters) that are conducting or involved in enforcement activities; and
- c. Ensure that regional enforcement programs are adequately carried out.

#### **1.3.1 Delegation of Authority to the Director, OE**

- a. In accordance with MD 9.19, the Director of OE is authorized to:
  - 1. Prepare and issue enforcement actions including notices of deviations, notices of violation (NOVs), proposed impositions of civil penalties, orders, and settlement agreements, in the DEDO's absence or under the DEDO's direction;
  - 2. Manage major enforcement actions (civil penalties, orders, and significant NOVs);
  - 3. Approve or direct enforcement action to be taken by offices in the regions or headquarters in the DEDO's absence or under the DEDO's direction;

4. Prepare letters requesting investigations, confirming actions, or obtaining information under sections 161(c) or 182 of the Atomic Energy Act;
  5. Prepare subpoenas for alleged violations of regulatory requirements, and issue those actions in the DEDO's absence or under the DEDO's direction;
  6. Take necessary or appropriate action in accordance with the decision of an Administrative Law Judge, an Atomic Safety and Licensing Board, or the Commission after enforcement hearings pursuant to 10 CFR Part 2;
  7. Approve, after consultation with the DEDO as warranted, the decision to disposition a willful violation as a non-cited violation (NCV);
  8. Recommend to the EDO, through the DEDO, changes to rules and policies for Commission consideration concerning enforcement matters; and
  9. Provide guidance and training on implementation of the Commission's Enforcement Program.
- b. In accordance with the February 7, 1997, June 2, 1998, and June 2, 2000, re-delegations of authority issued by the DEDO (with the exception of the delegations listed in paragraph c of this section) the Director, OE, is authorized to approve or issue enforcement actions involving:
1. 10 CFR Parts 30, 40, 70, and 76 licensees and certificate holders, including:
    - (a) NOVs and proposed impositions of civil penalties for violations (or problems) categorized no higher than Severity Level II;
    - (b) Orders imposing civil penalties for violations (or problems) categorized no higher than Severity Level II;
    - (c) Confirmatory Orders;
    - (d) Demands for Information (DFIs); and
    - (e) Exercises of Discretion pursuant the Enforcement Policy for:
      - (1) Penalties no higher than the applicable base civil penalty; and
      - (2) Enforcement actions against Agreement State licensees who perform work in areas under exclusive Federal jurisdiction without filing for reciprocity, provided that the Agreement State licensee was not aware, or could not reasonably have been expected to be aware, that such activity is under NRC jurisdiction.

2. 10 CFR Part 50 licensees:
  - (a) NOVs and proposed impositions of civil penalties for violations (or problems) categorized no higher than Severity Level III;
  - (b) NOVs for violations associated with Significance Determination Process (SDP) findings characterized as green, white, or yellow under the Reactor Oversight Process (ROP);
  - (c) Confirmatory Orders; and
  - (d) DFIs.
3. Individual Actions pursuant to 10 CFR Parts 30, 40, 50, 70, and 76, and actions to licensed operators pursuant to 10 CFR Part 55:
  - (a) NOVs without civil penalties, for violations categorized no higher than Severity Level II (Commission consultation is required for Severity Level I actions);
  - (b) Confirmatory Orders; and
  - (c) DFIs.
- c. The delegations described in paragraphs 1.3.1.b.1, 1.3.1.b.2, and 1.3.1.b.3 do not apply to cases where:
  1. The Director, OE, the Director, NRR, the Director, NMSS, or the Regional Administrator are in disagreement on a proposed action; or
  2. The DEDO advises the Director, OE, that the DEDO wishes to retain approval authority in a particular case or matter.
- d. The Director, OE, shall:
  1. Provide updates to the DEDO regarding escalated actions approved pursuant to the delegations described in paragraphs 1.3.1.b.1, 1.3.1.b.2, and 1.3.1.b.3; and
  2. Consult with the DEDO in any case involving novel issues, or substantial legal, programmatic, or policy issues raised during the review process, or where the Director, OE, believes consultation is warranted.

### **1.3.2 Re-delegation of Authority by the Director, OE**

The Director, OE, may re-delegate his/her authority according to the following guidelines:

- a. Subject to the limitations and stipulations in MD 9.19, the Director may, except where expressly prohibited, re-delegate to others the authority delegated to the Director, OE.

- b. The authority discussed in paragraphs 1.3.1.b.1, 1.3.1.b.2, and 1.3.1.b.3 is not to be further delegated without written approval of both the DEDO and the Office of the General Counsel (OGC).

### **1.3.3 Deputy Director, OE**

The Deputy Director, OE:

- a. Assists the Director in overseeing, managing, and directing the development of enforcement policies and programs, and in issuing enforcement actions;
- b. Notifies the Office of the Secretary (SECY) when an enforcement hearing extension request is granted; and
- c. Acts for the Director, OE, in the Director's absence. However, the approval of enforcement actions under paragraphs 1.3.1.b.1, 1.3.1.b.2, and 1.3.1.b.3 requires prior coordination with the DEDO.

### **1.3.4 Chief, Enforcement Policy and Program Oversight (EPPO)**

As directed by the Director, OE, the Chief, Enforcement Policy and Program Oversight (EPPO), OE:

- a. Assists the Director, OE, in developing and implementing enforcement policies and programs, and in issuing enforcement actions;
- b. Acts for the Director, OE, in the Director and Deputy Director's absence. Acts for the Deputy Director, OE, in the Deputy Director's absence. However, the approval of enforcement actions under paragraphs 1.3.1.b.1, 1.3.1.b.2, and 1.3.1.b.3 requires prior coordination with the DEDO;
- c. Supervises the OE enforcement staff in the execution of its responsibilities;
- d. Is authorized by the Director, OE, to review and concur on the following enforcement actions, after consultation with the Director or Deputy Director, OE, as appropriate:
  - Rulemakings initiated by other Program Offices
  - Commission papers with enforcement considerations from other offices
  - Licensee correspondence with enforcement considerations generated by other offices
  - Generic communications
  - Technical Interface Agreements (TIAs) and Technical Assistance Requests (TARs) with enforcement considerations
  - Actions utilizing enforcement discretion involving Severity Level III violations/white SDP findings and below
  - Actions utilizing enforcement discretion involving NFPA 805
  - NOV's involving Severity Level III violations and below

- NOVs involving Severity Level III violations with a civil penalty that is no greater than 1 times the base penalty
  - Safety Orders
  - Enforcement Notifications (ENs)
  - Office Input to the Congressional Report on the Enforcement Program
  - OE Web Summaries
  - Acknowledgment letters for civil penalties
  - Close-out letters to individuals
- e. Assigns and reviews quarterly audits of the enforcement program; and
- f. Reviews and approves SDP/EA Request & Strategy Forms (Strategy Forms).

### 1.3.5 OE Staff

As directed by the Director, OE, the OE staff:

- a. Assists the Director, OE, in developing and implementing the enforcement program and Enforcement Policy;
- b. Participates in enforcement panels and Significance Determination Process/Enforcement Review Panels (SERPs) whenever practical and as directed by the Director, OE, to provide enforcement perspectives;
- c. Assigns enforcement action (EA) and individual action (IA) numbers to proposed enforcement actions as appropriate and prepares and maintains Strategy Forms. Strategy forms are submitted to the Chief, EPPO, OE, within five working days of the panel;
- d. Assigns EA numbers to all findings addressed in a SERP/enforcement panel, irrespective of whether a potential violation is involved (in order to allow the agency to keep track of SDP issues);
- e. Provides periodic reports to the Commission regarding cases that may challenge the Statute of Limitations.
- f. Reviews the enforcement strategy for proposed escalated enforcement actions to ensure technical adequacy and conformance to established policy, guidance, and precedent;
- g. Participates in predecisional enforcement conferences and regulatory conferences whenever practical and as directed by the Director, OE, to provide enforcement perspectives;

✓ The Statute of Limitations applicable to NRC civil penalty cases and orders imposing sanctions, requires that the NRC initiate these actions within five years of the date of the violation.

- h. Participates enforcement and SERP caucuses whenever practical and as directed by the Director, OE, to provide enforcement perspectives;
- i. Notifies the Offices of Public Affairs (OPA), State and Tribal Programs (STP), and Congressional Affairs (OCA), of enforcement actions that may impact their offices' interests;
- j. Prepares Enforcement Notifications (ENs) for Severity Level I and II cases, NOVs, and other enforcement activities of particular interest, e.g., specific civil penalty actions, orders, and other enforcement actions.
- k. Prepares Regulatory Notifications (RNs) for significant regulatory actions, such as a Final Significance Determination for a white, yellow, or red finding (that does not include an NOV) or an order that requires additional safety or security measures beyond the regulatory framework (versus an order based on compliance issues, e.g., 2002 security orders);
- l. Reviews press releases when OPA determines that one is needed;
- m. Coordinates the development of and reviews press releases for significant enforcement issues, such as revisions to the Enforcement Policy;
- n. Reviews substantiated OI reports and coordinates with the region, OGC, and the applicable program office to determine whether enforcement action is appropriate;
- o. Responds to "3-week email" regarding unsubstantiated OI reports:
- p. Assists the Director, OE, in preparing letters requesting investigations, confirming actions, or obtaining information under sections 161(c) or 182 of the Atomic Energy Act, and in preparing subpoenas with respect to alleged violations of regulatory requirements;
- q. Evaluates the enforcement program as carried out by the regional offices;
- r. Participates in regularly scheduled conference calls with the Regional Enforcement Coordinators and the Program Office Enforcement Coordinators to discuss enforcement issues and cases;
- s. Maintains and revises the Enforcement Policy and the NRC Enforcement Manual, as directed by the Director, OE;

✓ Press releases that are issued to announce predecisional enforcement or regulatory conferences that are open for public observation, should:

- be carefully worded so as not to prejudice the outcome; and
- include an explicit description of the nature of the conference as a predecisional opportunity for the licensee to present any additional material information before the NRC arrives at a decision.

- t. Maintains the Enforcement Action Tracking System (EATS) and Individual Action Tracking System (IATS);
- u. Maintains enforcement-related information on the NRC's internal and external Web sites;
- v. Prepares an annual report for the enforcement program;
- w. Develops and provides training on the enforcement program;
- x. Serves as petition manager for 10 CFR 2.206 petitions assigned to OE;
- y. Coordinates with the Occupational Safety and Health Administration (OSHA) on the resolution of enforcement issues involving both the NRC and OSHA at NRC facilities;
- z. Reviews documents generated by other Program Offices such as rulemakings, generic communications, TIAs related to enforcement, and 2.206 Director Decisions;
- aa. Prepares Enforcement Guidance Memoranda (EGMs) addressing emergent enforcement issues;
- bb. Prepares input to the Congressional Report addressing enforcement activities associated with the regulation of nuclear power plants, as required; and
- cc. Prepares semi-annual audits of materials non-escalated enforcement trends.

## 1.4 Regional Offices

The regional offices are responsible for implementing the enforcement program subject to the overall policy, program, and implementation guidance of OE.

### 1.4.1 Responsibilities of Regional Offices

In general, the regional offices:

- a. Prepare and issue non-escalated enforcement actions;
- b. Schedule and conduct enforcement and SERP panels, predecisional enforcement and regulatory conferences, and enforcement and SERP caucuses;
- c. Prepare and issue escalated enforcement actions when authorized to do so, or after concurrence by the Director, OE, and approval by the DEDO, as required;
- d. Evaluate licensees' responses to enforcement actions and prepare appropriate responses;

☞ The regional offices are normally responsible for enforcement activities associated with on-site contractors.

- e. Track the status of enforcement actions;
- f. Conduct regional staff training;
- g. Issue regional enforcement procedures; and
- h. Audit regional enforcement actions.

### **1.4.2 Delegation of Authority to the Regional Administrators**

In accordance with the responsibility for supervising and directing the enforcement functions of the region, subject to the overall policy, program, and implementation guidance of OE, Regional Administrators are authorized to:

- a. Approve, sign, and issue non-escalated enforcement actions;
- b. Recommend all escalated enforcement actions to headquarters either: (1) through consultation (usually via an enforcement or SERP panel) or (2) by submitting the actual enforcement action package for review and approval;
- c. Sign and issue escalated enforcement actions (other than orders) after either:
  - 1. Consultation with OE (usually via a panel or caucus); or
  - 2. Actual enforcement action package review and approval by the Director, OE (and the DEDO and Commission, as appropriate);
- d. Sign and issue enforcement actions or letters exercising discretion in accordance with the Enforcement Policy, after consultation with OE, (and the DEDO, when required);
- e. Review licensees' responses to proposed escalated enforcement actions and recommend appropriate action to the Director, OE;
- f. Conduct enforcement and SERP panels, predecisional enforcement conferences, regulatory conferences, and enforcement and SERP caucuses;
- g. Contact the Director, OE, as soon as possible, and generally no later than 24 hours after receiving the Strategy Form, if the Regional Administrator disagrees with an enforcement strategy (or SDP conclusion) arrived at during a SERP or enforcement panel or caucus;
- h. Notify OE when an enforcement action involves significant disagreement within the region, including disagreement by the Regional Counsel;
- i. Ensure that Regional Counsel, as appropriate, reviews and provides legal advice on all regional escalated enforcement action recommendations submitted to headquarters for review and approval;

- j. Review OI reports promptly and notify OE whenever an OI Field Director concludes, during or after an investigation, that willfulness is involved (even if a report has not yet been issued);
- k. Make recommendations to OE for enforcement action, including immediate action, when warranted;
- l. Review all OI reports to determine if OI documents violations (willful or nonwillful) that are not identified as such.
- m. Ensure that appropriate training and instructions are provided to regional staff to implement the enforcement program, including the use of NRC Form 591s
- n. Ensure that region-based enforcement actions, including NRC Form 591s, are periodically audited;
- o. Provide copies of regional instructions and procedures to OE;
- p. Ensure, for cases in which the regional licensing staff receives notice of a licensee bankruptcy action, that the regional enforcement staff determines whether any outstanding civil penalties exist and if so, promptly notifies the Director, OE, so that an appropriate claim can be filed to preserve the NRC's interest;
- q. Ensure that disputed non-escalated enforcement actions (NCVs and NOVs) are coordinated with OE;
- r. Ensure that copies of TIAs that involve potential violations are sent to the Director, OE, and transmitted electronically via email to "OEMAIL;"
- s. Review escalated enforcement actions prior to submitting them for headquarter's review;
- t. Recommend to the Director, OE, as appropriate, changes to the Enforcement Policy or guidance within this Manual.

### **1.4.3 Re-delegation of Authority by the Regional Administrator**

The Regional Administrator may re-delegate his/her authority according to the following guidelines:

- a. To the Deputy Regional Administrator, the authority to issue:
  - 1. NOVs including Severity Level III violations that do not include civil penalties, and
  - 2. NOVs associated with white and yellow SDP findings;
- b. To Division Directors and above, the authority to sign and issue:

1. Confirmatory Action Letters (CALs), and
  2. Cases where discretion is exercised for matters that would otherwise be Severity Level IV violations.
- c. To Branch Chiefs and above, the authority to issue non-escalated enforcement actions;
- d. To regional management, the authority to conduct enforcement panels, predecisional enforcement conferences, and enforcement caucuses. This authority should generally not be delegated to individuals below a Deputy Division Director; and
- e. To Qualified Inspectors, the authority to issue NRC Form 591.

✓ Division Directors and above should consult with OE by telephone or by email to "OEMAIL" prior to exercising discretion for matters that would otherwise be Severity Level IV violations, and document rationale in a strategy form. These actions require EA numbers.

#### 1.4.4 Regional Counsel

As directed by the Regional Administrator, the Regional Counsel:

- a. Reviews and provides legal advice on all regional escalated enforcement action recommendations, prior to being submitted to headquarters for review and approval, as appropriate; and
- b. Reviews other enforcement actions, as requested.

#### 1.4.5 Regional Enforcement Coordinators

As directed by the Regional Administrator, the Regional Enforcement Coordinators:

- a. Prepare or review all escalated enforcement actions prepared by the regional staff to ensure technical adequacy and conformance to established policy, guidance, and precedents;
- b. Prepare an enforcement or SERP or Panel Worksheet (Panel Worksheet) (forms are included in Appendix D) for all proposed enforcement issues and for all operating reactor findings (even those without associated violations) that will be discussed during an enforcement or SERP panel;
- c. Provide the Panel Worksheet electronically via email to "OEMAIL" at least 72 hours prior to the scheduled panel;
- d. Compile supporting documents for issues to be addressed in enforcement and SERP panels;

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- e. Serve as point of contact for regional reviews, comments, and concurrence for subsequent changes or revisions made to enforcement actions and final SDP letters submitted to headquarters for review and approval;
  - f. Ensure that all enforcement actions issued by the region that were the subject of an enforcement or SERP panel are subsequently transmitted electronically via email to "OEMAIL";
  - g. Review all OI reports and coordinate with regional and headquarters staff to determine whether enforcement action is appropriate;
  - h. Prepare a "3-week email" within 60 days week of receiving an unsubstantiated OI report:
    - 1. Indicating that either:
      - (a) No enforcement action is being considered; or
      - (b) That although a violation appears to be present, willfulness is not involved;
    - 2. Addressed to the Director, OE, the Assistant General Counsel for Materials Litigation and Enforcement, and the appropriate Office Director or Regional Administrator; and
    - 3. Inviting a response to the proposal that barring a different view:
      - (a) There does not appear to be a violation of NRC requirements, therefore, no enforcement action is proposed; or
      - (b) The non-willful violation will be treated in accordance with normal enforcement processes.
  - i. Prepare draft Commission papers for escalated enforcement actions requiring Commission consultation, or review those prepared by the regional staff;
  - j. Track the progress of all escalated enforcement actions and final SDP letters being prepared in preparation in the region;
  - k. Provide a monthly report to OE on the number of materials non-escalated enforcement actions;
  - l. Provide a monthly report (by the 5<sup>th</sup> of every month to provide timely input for Congressional Report) to OE on the number of escalated and non-escalated reactor enforcement actions;
  - m. Strive to achieve timely actions;
  - n. Maintain necessary records and statistics on enforcement actions taken by the region;
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- o. Monitor, audit, and assist in processing non-escalated enforcement actions to ensure that they are consistent with the Enforcement Policy, other guidance, and precedents;
- p. Ensure that disputed minor violations, Severity Level IV violations, or violations associated with green SDP findings (irrespective of whether they were dispositioned as NCVs or in NOVs) are coordinated with OE;
- q. Attend enforcement and SERP panels, predecisional enforcement conferences, regulatory conferences, and SERP and enforcement caucuses, as appropriate;
- r. Participate in regularly scheduled conference calls with OE to discuss enforcement issues and cases;
- s. Train regional personnel in enforcement matters;
- t. Revise regional enforcement procedures, as appropriate;
- u. Inform Regional Public Affairs Officer (RPAO) at least 72 hours prior to issuance of an enforcement action involving a proposed civil penalty or an escalated NOV associated with a red, yellow, or white SDP finding; and
- v. Review press releases for enforcement actions and activities to ensure that they conform to the guidance in this Manual.

#### **1.4.6 Regional Division Directors**

Regional Division Directors are responsible to the Regional Administrator for recommending escalated enforcement actions. Recommendations should include:

- a. An evaluation of the significance of the violation;
- b. Whether a civil penalty or order should be proposed; and
- c. Whether mitigation or escalation of the civil penalty is appropriate.

#### **1.4.7 Resident and Region-Based Inspectors**

As directed by regional management, resident and region-based inspectors:

- a. Identify violations of regulatory requirements and recommend enforcement action;
- b. Appropriately document findings and enforcement action;
- c. Recommend to appropriate regional management the severity level of an apparent violation and provide information that bears on the mitigation or escalation of a civil penalty, if proposed;

- d. Sign and issue NRC Form 591s (if qualified and authorized to do so) for Severity Level IV violations and Non-Cited Violations (NCVs);
- e. Review responses to NOVs submitted by licensees to determine whether corrective actions are adequate;
- f. Prepare or provide input to evaluations of licensees' responses to proposed civil penalties and orders, as appropriate, for submission to regional management; and
- g. Attend enforcement and SERP panels, predecisional enforcement conferences, regulatory conferences, and enforcement and SERP caucuses, as appropriate.

#### **1.4.8 Senior Reactor Analysts**

As directed by regional management, senior reactor analysts support NRC objectives related to improving the utilization of risk insights in the reactor inspection and enforcement programs.

### **1.5 Office of the General Counsel (OGC)**

In accordance with NRC MD 9.7, "Organization and Functions, Office of the General Counsel," the General Counsel supervises and directs the performance of all legal and administrative functions necessary to carry out the assigned responsibilities of the Office of the General Counsel.

#### **1.5.1 Associate General Counsel for Hearings, Enforcement, and Administration**

In accordance with MD 9.7, the Associate General Counsel for Hearings, Enforcement, and Administration:

- a. Reviews and provides legal advice on all matters to be referred to the EDO, e.g., enforcement actions involving OI findings and enforcement-related orders; and
- b. Reviews and provides legal advice on all matters to be referred to the Commission, e.g., enforcement-related Commission papers.

#### **1.5.2 Assistant General Counsel for Materials Litigation and Enforcement**

In accordance with MD 9.7, and as directed by the Associate General Counsel for Hearings, Enforcement, and Administration, the Assistant General Counsel for Materials Litigation and Enforcement serves as the principal OGC contact for all enforcement matters. As such, the Assistant General Counsel:

- a. Provides legal advice concerning NRC inspection and enforcement activities, including:
  - 4. Civil penalties; and

5. Orders.
- b. Provides review and statement of no legal objection for complex and novel cases and enforcement-related OI matters, when requested by OE.
- c. Provides OGC review and statement of no legal objection on all orders as well as enforcement actions included in Commission papers.
- d. Represents the staff in NRC adjudicatory hearings on enforcement actions.

### 1.6 Office of Nuclear Reactor Regulation (NRR)

NRR is responsible for supporting the enforcement program in all areas where NRR evaluates, directly manages, or conducts inspections, including power reactors, vendors and non-power reactors. NRR is responsible for implementing the enforcement program and Enforcement Policy subject to the overall policy, program, and implementation guidance from OE. For cases where NRR is responsible for the allegation or inspection activity, NRR shall assume the role of the regional office, as well, in implementing the enforcement program and Enforcement Policy.

- a. When NRR assumes the role of the regional office (i.e., issuing non-SDP enforcement actions), NRR generally:
  1. Prepares and issues non-escalated enforcement actions;
  2. Schedules and conducts enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  3. Prepares and issues escalated enforcement actions when authorized to do so, or after concurrence by the Director, OE, and approval by the DEDO, as required;
  4. Evaluates licensees' responses to enforcement actions and prepares appropriate responses;
  5. Tracks the status of enforcement actions;
  6. Conducts NRR staff training; and
  7. Audits NRR enforcement actions.

☛ NRR reviews the enforcement strategy for escalated enforcement actions for 10 CFR Part 50 and 55 licensees to ensure that the violations have been adequately established and that the significance of the violations has been properly evaluated from an overall agency perspective.

- b. For all cases where the region evaluates, directly manages, or conducts inspections, NRR generally reviews the enforcement strategy for escalated enforcement actions recommended by the regional offices to ensure that:
  - 1. Violations have been adequately established; and
  - 2. The significance of the violations has been properly evaluated from an overall agency perspective.
- c. For the ROP, NRR generally develops and directs the implementation of policies, programs, and procedures for regional application of the SDP in the evaluation of findings and issues associated with the ROP. The output of the SDP provides a direct input into the enforcement program in terms of how a violation will be dispositioned.

### **1.6.1 Delegation of Authority to the Director, NRR**

The Director, NRR is authorized to act according to the following guidelines:

- a. In accordance with MD 9.27, "Organizations and Function, Office of Nuclear Reactor Regulation," the Director, NRR has been authorized to issue orders and DFIs. However, as stated in the Enforcement Policy, use of this authority is expected to be confined to actions not associated with violations.
- b. In accordance with the delegations from the Director, OE, dated July 17, 1987, and February 3, 1998, for enforcement issues involving vendors and non-power reactors, the Director, NRR:
  - 1. Approves, signs, and issues non-escalated enforcement actions;
  - 2. Recommends all escalated enforcement actions to headquarters either:
    - (a) Through consultation (usually via an enforcement panel); or
    - (b) By submitting the actual enforcement action package for review and approval;
  - 3. Signs and issues escalated enforcement actions (other than orders) after either:
    - (a) Consultation with OE (usually via a panel or caucus); or
    - (b) Actual enforcement action package review and approval by the Director, OE, (and the DEDO and Commission, as appropriate);
  - 4. Signs and issues enforcement actions or letters exercising discretion in accordance with the Enforcement Policy after consultation with OE, and the DEDO, when required (These cases require EA numbers);

5. Reviews licensees' responses to proposed escalated enforcement actions and recommends appropriate action to the Director, OE, electronically via email to "OEMAIL";
  6. Conducts enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  7. Ensures that disputed non-escalated enforcement actions (NCVs and NOV) are coordinated with OE; and
  8. Ensures that the enforcement activities conducted under this delegation are consistent with established policy, guidance, and precedent.
- c. The delegations listed above do not apply to cases where the Director, OE, the Director, NRR, or the Regional Administrator are in disagreement on a proposed action; or the DEDO advises the Director, OE that he/she wishes to retain approval authority.
- d. For all cases where the region evaluates, directly manages, or conducts inspections, the Director, NRR, ensures that the NRR staff reviews the enforcement strategy for escalated enforcement actions recommended by the regional offices to ensure that the violations have been adequately established and that the significance of the violations has been properly evaluated from an overall agency perspective.
- e. In accordance with the responsibility for supervising and directing all enforcement-supporting functions of NRR, the Director, NRR:
1. Contacts the Director, OE, as soon as possible, and generally no later than 24 hours after receiving the Strategy Form, if they disagree with an enforcement strategy arrived at during an enforcement panel or enforcement caucus;
  2. Ensures that OI reports are reviewed and that recommendations are made to OE for enforcement action, including immediate action, when warranted;
  3. Ensures that NRR staff receives appropriate training and instructions to implement the enforcement program and that NRR-based enforcement actions are periodically audited;
  4. Ensures that disputed non-escalated actions (NCVs and NOV) are coordinated with OE;
  5. Ensures that copies of TIAs that involve potential violations are sent to the Director, OE, electronically via email to "OEMAIL";
  6. Ensures that the enforcement activities conducted under this function are consistent with established policy, guidance, and precedent;

7. Reviews escalated enforcement actions prior to submitting them for headquarter's review; and
  8. Recommends to the Director, OE, as appropriate, changes to the Enforcement Policy or guidance within this Manual.
- f. In accordance with guidance provided in Part 9900 of the NRC Inspection Manual, the Director, NRR, is responsible for issuing guidance to implement the Enforcement Policy related to issuance of Notices of Enforcement Discretion (NOEDs).

### **1.6.2 Re-delegation of Authority by the Director, NRR**

- a. The Director, NRR may redelegate his/her authority according to the following guidelines:
  1. To the applicable Division Director, NRR, the authority to sign and issue, after coordination with OE, Severity Level III NOVs without civil penalties;
  2. To Division Directors and above, the authority to sign and issue actions and letters exercising discretion in accordance the Enforcement Policy for matters that would otherwise be Severity Level IV violations;
  3. To Deputy Division Directors and above, the authority to sign and issue non-escalated enforcement actions; and
  4. To NRR management, the authority to conduct predecisional enforcement conferences. This authority should generally should not be delegated to individuals below the level of Deputy Division Director.
- b. The Director, NRR, will forward copies of further re-delegations to OE.

### **1.6.3 Associate Director For Operating Reactor Oversight and Licensing, NRR**

As directed by the Director, NRR, the Associate Director For Operating Reactor Oversight and Licensing:

- a. Serves as the principal NRR manager responsible for enforcement matters involving 10 CFR Part 50 and 55 licensees;
- b. Ensures that the enforcement strategy for escalated enforcement actions and cases involving Commission papers for 10 CFR Part 50 and 55 licensees are reviewed to ensure that:
  1. Violations have been adequately established, and
  2. The significance of the violations has been properly evaluated from an overall agency perspective;

- c. Ensures that comments are provided (verbally, electronically via email to "OEMAIL", or in writing) based on the review in paragraph (b) of this section to the Director, OE, generally within 10 working days of receipt of the enforcement package in headquarters;
- d. Ensures that the NRR Enforcement Coordinator and project, technical, and management personnel attend enforcement and SERP panels, predecisional enforcement conferences, regulatory conferences, and enforcement and SERP caucuses, as appropriate;
- e. Contacts the Director, OE, as soon as possible, and generally, no later than 24 hours after receiving the Strategy Form, if he/she disagrees with an enforcement strategy arrived at during an enforcement or SERP panel or caucus;
- f. Reviews applicable OI reports to identify immediate safety issues and provide NRR perspective in determining appropriate enforcement action;
- g. Recommends to the Director, OE, initiation of proposed enforcement action, as appropriate;
- h. Ensures that responses to TIAs are coordinated with OE, as appropriate;
- i. Reviews escalated enforcement actions prior to submitting them for headquarter's review; and
- j. Recommends to the Director, OE, changes to the Enforcement Policy or guidance within this Manual, as appropriate.

#### **1.6.4 NRR Enforcement Coordinator**

As directed by the Associate Director for Operating Reactor Oversight and Licensing Inspection, NRR, the NRR Enforcement Coordinator:

- a. Serves as the principal NRR contact for enforcement matters involving 10 CFR Part 50 and 55 licensees;
- b. Participates in the weekly regional enforcement and SERP panels considering all 10 CFR Part 50 and 55 licensee cases;
- c. Leads the NRR review of the enforcement strategy for enforcement actions discussed during panels and caucuses and notifies the Associate Director for the Division of Inspection and Regional Support of the enforcement strategy, especially in cases where the Enforcement Coordinator disagrees with the strategy;
- d. Obtains necessary technical support from other NRR divisions to ensure that the enforcement strategy for actions proposed by the regions are technically adequate and that reactor safety aspects of the violation have been properly evaluated from an overall agency perspective and are consistent with previous actions or staff positions;

- e. Participates in predecisional enforcement conferences and regulatory conferences with enforcement implications, when the issues warrant;
- f. Consolidates NRR views on the enforcement strategy for proposed escalated actions and forwards NRR comments (verbally, electronically, or in writing) to the Director or Deputy Director, OE, for enforcement actions submitted to headquarters;
- g. Ensures that disputed non-escalated enforcement actions (NCVs and NOVs) involving vendors and non-power reactors are coordinated with OE;
- h. Reviews all applicable OI reports to identify immediate safety issues, coordinates with appropriate NRR staff, and provides NRR's perspective in determining appropriate enforcement action; and
- i. Prepares a "3-week email" within 60 days week of receiving an OI report:
  - 1. Indicating that either:
    - (a) No enforcement action is being considered; or
    - (b) That although a violation appears to be present, willfulness is not involved;
  - 2. Addressed to the Director, OE, the Assistant General Counsel for Materials Litigation and Enforcement, and the appropriate Office Director or Regional Administrator; and
  - 3. Inviting a response to the proposal that barring a different view:
    - (a) There does not appear to be a violation of NRC requirements, therefore, no enforcement action is proposed; or
    - (b) The non-willful violation will be treated in accordance with normal enforcement processes.
- j. Participates in regularly scheduled conference calls with OE, the regions, and the other Program Office Enforcement Coordinators to discuss enforcement issues and cases.

### 1.6.5 NRR Staff

- a. In accordance with the delegations of authority for areas in which NRR evaluates, directly manages, or conducts inspections (e.g., vendors and non-power reactors) the NRR staff:
  - 1. Ensures that the enforcement activities conducted under current delegation(s) are consistent with established policy, guidance, and precedent;
  - 2. Identifies violations of regulatory requirements and recommends enforcement action;
  - 3. Appropriately documents enforcement actions;

4. Issues non-escalated enforcement actions, including notices of nonconformance, NOVs, and NCVs;
  5. Recommends the severity level of an apparent violation and provides information that bears on the mitigation or escalation of a civil penalty, if proposed;
  6. Conducts enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  7. Prepares a Panel Worksheet and compiles supporting information for enforcement and SERP panels;
  8. Requests EA numbers for all contemplated escalated enforcement actions;
  9. Submits all escalated enforcement actions to headquarters, for review and approval;
  10. Reviews vendor responses to enforcement actions to determine whether corrective actions are adequate;
  11. Reviews OI reports and makes recommendations to OE for enforcement actions including immediate action, when warranted; and
- b. As directed by the Director, NRR, NRR staff and management personnel support enforcement activities initiated by the regions, as follows:
1. Division of Inspection and Regional Support (DIRS) provides oversight and representatives as necessary to support enforcement and SERP panels;
  2. The Division of Risk Assessment (DRA) supports assessment of the safety significance of the event(s) on which the proposed enforcement action is based. This support will include probabilistic risk assessment (PRA) and Accident Sequence Precursor calculations, where appropriate, as part of the integrated process considering all facets surrounding the violation in support of enforcement decisions;
  3. Appropriate project, technical, and management personnel should:
    - (a) Participate in enforcement and SERP caucuses to provide additional agency perspectives associated with the enforcement strategy for potential escalated enforcement actions
    - (b) Participate in enforcement and SERP panels to provide additional agency perspectives associated with the enforcement strategy for potential escalated enforcement actions; and
    - (c) Attend predecisional enforcement conferences and regulatory conferences.
  4. Project, technical, and management personnel will:
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- (a) Review applicable OI reports to identify immediate safety issues and provide NRR's perspective in determining appropriate enforcement action; and
- (b) Coordinate with OE on TIAs that have the potential for enforcement implications.

### **1.7 Office of Nuclear Material Safety and Safeguards (NMSS)**

NMSS is responsible for implementing the enforcement program and Enforcement Policy subject to the overall policy, program, and implementation guidance from OE, for all areas NMSS evaluates, directly manages, or for which it conducts inspections, or issues violations involving: (1) material control and accounting (MC&A), chemical, fire protection, and criticality safety activities at fuel facilities; (2) gaseous diffusion plants; (3) transportation shipping packages; (4) independent spent fuel storage installations; (5) dry storage systems for spent fuel; (6) decommissioning activities; (7) low-level waste licensees; (8) medical and industrial nuclear safety; (7) uranium recovery licensees; and (8) high-level waste repository safety. For cases where NMSS is responsible for the allegation or inspection activity, NMSS shall assume the role of the regional office, as well, in implementing the enforcement program and Enforcement Policy.

- a. When NMSS assumes the role of the regional office, NMSS generally:
  - 1. Prepares and issues non-escalated enforcement actions;
  - 2. Schedules and conducts enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  - 3. Prepares and issues escalated enforcement actions when authorized to do so, or after concurrence by the Director, OE, and approval by the DEDO, as required;
  - 4. Evaluates licensees' responses to enforcement actions and prepares appropriate responses;
  - 5. Tracks the status of enforcement actions;
  - 6. Providing information about certain enforcement actions for Health and Human Services (HHS) database;
  - 7. Conducts NMSS staff training; and
  - 8. Conducts audits of NMSS enforcement actions.
- b. When NMSS is providing technical support to the regions, NMSS generally reviews enforcement strategies for escalated enforcement actions recommended by the regional offices to ensure that:
  - 1. Violations have been adequately established; and

2. The significance of the violations has been properly evaluated from an overall agency perspective.

### **1.7.1 Delegation of Authority to the Director, NMSS**

- a. In accordance with MD 9.26, "Organization and Functions, Office of Nuclear Materials Safety and Safeguards", the Director, NMSS, is authorized to issue orders and DFIs; however, as stated in the Enforcement Policy, use of this authority is expected to be confined to actions not associated with violations.
  - b. In accordance with a delegation of authority issued by the Director, OE, dated November 8, 2001, for all areas where NMSS evaluates, directly manages, or conducts inspections, the Director, NMSS, is authorized to:
    1. Approve, sign, and issue non-escalated enforcement actions;
    2. Recommend all escalated enforcement actions to headquarters either: (1) through consultation (usually via an enforcement panel) or (2) by submitting the actual enforcement action package for review and approval;
    3. Sign and issue escalated enforcement actions (other than orders) after either: (1) consultation with OE (usually via a panel or caucus) or (2) actual enforcement action package review and approval by the Director, OE, (and the DEDO and Commission, as appropriate);
    4. Sign and issue enforcement actions or letters exercising discretion in accordance with the Enforcement Policy, after consultation with OE, and the DEDO, when required (these cases require EA numbers);
    5. Review licensees' responses to proposed escalated enforcement actions and recommends appropriate action to the Director, OE;
    6. Conduct enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
    7. Ensure that disputed non-escalated enforcement actions (NCVs and NOV) are coordinated with OE; and
    8. Ensure that the enforcement activities conducted under this delegation are consistent with established policy, guidance, and precedents.
  - c. The delegations listed above do not apply to cases where the Director, OE, the Director, NMSS, or the Regional Administrator are in disagreement on a proposed action; or the DEDO advises the Director, OE, that he/she wishes to retain approval authority.
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- d. For all areas where the region evaluates, directly manages, or conducts inspections, the Director, NMSS, ensures that NMSS staff reviews the enforcement strategy for escalated enforcement actions recommended by the regional offices to ensure that:
    - 1. Violations have been adequately established; and
    - 2. The significance of the violations has been properly evaluated from an overall agency perspective.
  
  - e. In accordance with the responsibility for supervising and directing all enforcement-supporting functions of NMSS, the Director, NMSS:
    - 1. Contacts the Director, OE, as soon as possible, and generally no later than 24 hours after receiving a Strategy Form, if they disagree with an enforcement strategy arrived at during an enforcement panel or enforcement caucus;
    - 2. Ensures that OI reports are reviewed and that recommendations are made to OE for enforcement action, including immediate action, when warranted;
    - 3. Ensures that NMSS staff receives appropriate training and instructions to implement the enforcement program (including the use of NRC Form 591s);
    - 4. Ensures that NMSS-based enforcement actions (including NRC Form 591s) are periodically audited;
    - 5. Ensures that disputed non-escalated actions (NCVs and NOV) are coordinated with OE;
    - 6. Ensures that copies of TIAs that involve potential violations are sent to the Director, OE;
    - 7. Ensures that the enforcement activities conducted under this function are consistent with established policy, guidance, and precedents;
    - 8. Reviews escalated enforcement actions prior to submitting them for headquarter's review; and
    - 9. Recommends to the Director, OE, as appropriate, changes to the Enforcement Policy or guidance within this Manual.

### **1.7.2 Re-delegation of Authority by the Director, NMSS**

- a. The Director, NMSS, may re-delegate his/her authority according to the following guidelines:
  - 1. To the Deputy Director, NMSS, the authority to sign and issue, after coordination with OE, Severity Level III NOV) without civil penalties;

2. To Division Directors and above, the authority to sign and issue actions and letters exercising discretion in accordance with the Enforcement Policy for matters that would otherwise be Severity Level IV violations;
  3. To Branch Chiefs and above, the authority to sign and issue non-escalated enforcement actions;
  4. To NMSS management, the authority to conduct predecisional enforcement conferences. This authority should not generally be delegated to individuals below the level of Deputy Division Director.
  5. To qualified inspectors, the authority to issue NRC Form 591s; and
- b. The Director, NMSS, will forward copies of further re-delegations to OE.

### **1.7.3 NMSS Regional Coordinators**

As directed by NMSS management, the Regional Coordinators:

- a. Participate in the weekly regional enforcement panels considering all material licensee cases;
- b. Provide assistance to the lead division, on request, in reviewing inspection and investigation findings to identify apparent violations that may warrant escalated enforcement action;
- c. Provide assistance to the lead division, on request, in developing enforcement action worksheets, agendas for enforcement panels with OE, and issuing background information to all participants at least 72 hours in advance;
- d. Schedule matters to be considered during OE enforcement panels;
- e. Review and coordinate comments within NMSS, after OE review, on escalated enforcement actions for all material cases submitted by the regions or prepared by OE;
- f. Ensure that all applicable OI reports are reviewed and that recommendations are made to OE for enforcement action, including immediate action, when warranted;
- g. Prepare a "3-week email" within 60 days week of receiving an OI report:
  1. Indicating that either:
    - (a) No enforcement action is being considered; or
    - (b) That although a violation appears to be present, willfulness is not involved;

2. Addressed to the Director, OE, the Assistant General Counsel for Materials Litigation and Enforcement, and the appropriate Office Director or Regional Administrator; and
3. Inviting a response to the proposal that barring a different view:
  - (a) There does not appear to be a violation of NRC requirements, therefore, no enforcement action is proposed; or
  - (b) The non-willful violation will be treated in accordance with normal enforcement processes.
- h. Participate in all NMSS and regional predecisional enforcement conferences, when the issues warrant;
- i. Determine whether a licensee has been the subject of previous escalated enforcement action for purposes of the civil penalty assessment process;
- j. Provide assistance to the lead division, upon request, in drafting escalated enforcement actions, including cover letters, orders, DFIs, proposed civil penalties, orders imposing civil penalties, and Commission papers to ensure technical adequacy and conformance to established policy guidance and precedents, and coordinate with OE during this process;
- k. Serve as point of contact for NMSS reviews, comments, and concurrence for subsequent changes or revisions made to enforcement actions;
- l. Provide assistance to the lead division, upon request, in arranging and conducting predecisional enforcement conferences, including developing opening remarks on the Enforcement Policy and process;
- m. Provide policy advice to NMSS Divisions including the Spent Fuel Project Office (SFPO) concerning enforcement matters, including information on enforcement actions in similar cases;
- n. Provide training on enforcement matters within NMSS;
- o. Track progress of all escalated enforcement actions while in preparation in NMSS and strive to achieve timely actions;
- p. Ensure that disputed non-escalated enforcement actions (NCVs and NOV) are coordinated with OE;
- q. Participate in regularly scheduled conference calls with OE, the regions, and the other Program Office Enforcement Coordinators to discuss enforcement issues and cases; and
- r. Coordinate with appropriate NMSS Division concerning possible enforcement action based on OI reports.

### 1.7.4 NMSS Staff

- a. In accordance with the delegations of authority for areas where NMSS evaluates, directly manages, or conducts inspections, the NMSS staff:
  1. Identifies violations of regulatory requirements and recommends enforcement action;
  2. Appropriately documents enforcement actions;
  3. Issues non-escalated enforcement actions, including notices of nonconformance, NOVs, and NCVs;
  4. Signs and issues NRC Form 591s (if qualified and authorized to do so) for Severity Level IV violations and NCVs;
  5. Recommends the severity level of an apparent violation and provides information that bears on the mitigation or escalation of a civil penalty, if proposed;
  6. Prepares a Panel Worksheet and compiles supporting information for SERP and enforcement panels;
  7. Conducts enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  8. Requests EA numbers for all contemplated escalated enforcement actions;
  9. Submits all escalated enforcement actions to OE for review and approval;
  10. Reviews responses to enforcement actions to determine whether corrective actions are adequate;
  11. Reviews OI reports and makes recommendations to OE for enforcement action, including immediate action, when warranted; and
  12. Ensures that the enforcement activities conducted under current delegation(s) are consistent with established policy, guidance, and precedent;
- b. In accordance with guidance from the Director, NMSS, to support the enforcement program, appropriate project, technical, and management personnel from NMSS:
  1. Participate in enforcement panels to provide additional agency perspectives associated with the enforcement strategy for potential escalated enforcement actions;
  2. Attend predecisional enforcement conferences;

3. Participate in enforcement caucuses to provide additional agency perspectives associated with the enforcement strategy for potential escalated enforcement actions;
- c. In accordance with guidance from the Director, NMSS, to support the enforcement program, the NMSS staff:
1. Reviews the enforcement strategy for regional escalated enforcement actions for material licensees to ensure that the violations have been adequately established and that the safety significance of the violations has been properly evaluated from an overall agency perspective;
  2. Provides comments (verbally, electronically via email to "OEMAIL" or in writing) based on the review conducted under the preceding paragraph of this section to OE, generally within five working days of receipt of the enforcement package; and
  3. Reviews all applicable OI reports and makes recommendations to OE for enforcement action, including immediate action, when warranted.

## 1.8 Office of Nuclear Security and Incident Response (NSIR)

NSIR is responsible for supporting the enforcement program where NSIR has program ownership or where NSIR evaluates, directly manages, or conducts inspections involving security at nuclear facilities or security of nuclear materials and nuclear activities. This inspection responsibility typically includes force-on-force (FOF) inspections and inspection activities associated with security-related information or security-related violations involving non-licensees and vendors. NSIR is responsible for implementing the enforcement program and Enforcement Policy subject to the overall policy, program, and implementation guidance from OE. NSIR is also responsible for reviewing the enforcement strategy for escalated enforcement actions prepared by the regions to ensure that the significance of the violations has been properly evaluated from an overall agency perspective. For cases where NSIR is responsible for the allegation or inspection activity, NSIR shall assume the role of the regional office, as well, in implementing the enforcement program and Enforcement Policy.

- a. When NSIR assumes the role of the regional office, NSIR generally:
1. Prepares and issues non-escalated enforcement actions;
  2. Participates in enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  3. Prepares and issues escalated enforcement actions when authorized to do so, or after concurrence by the Director, OE, and approval by the DEDO, as required;
  4. Evaluates licensees' responses to enforcement actions and prepares appropriate responses;

5. Tracks the status of enforcement actions;
  6. Conducts NSIR staff training; and
  7. Audits NSIR enforcement actions.
- b. When NSIR is providing technical support to the regions, NSIR generally reviews enforcement strategies for escalated enforcement actions recommended by the regional offices to ensure that:
1. Violations have been adequately established; and
  2. The significance of the violations has been properly evaluated from an overall agency perspective.

### **1.8.1 Delegation of Authority to the Director, NSIR**

- a. In accordance with the delegation of authority issued by the Director, OE, dated May 25, 2005, (ML050260007) for all areas where NSIR evaluates, directly manages, or in which it conducts inspections, the Director, NSIR, is authorized to:
1. Approve, sign, and issue non-escalated enforcement actions;
  2. Recommend all escalated enforcement actions to headquarters either: (1) through consultation (usually via an enforcement panel) or (2) by submitting the actual enforcement action package for review and approval;
  3. Sign and issue escalated enforcement actions (other than orders) after either: (1) consultation with OE (usually via a panel or caucus) or (2) actual enforcement action package review and approval by the Director, OE (and the DEDO and Commission, as appropriate);
  4. Sign and issue enforcement actions or letters exercising discretion in accordance with the Enforcement Policy, after consultation with OE, and the DEDO, when required (these cases require EA numbers);
  5. Review licensees' responses to proposed escalated enforcement actions and recommends appropriate action to the Director, OE;
  6. Conduct enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  7. Ensure that disputed non-escalated enforcement actions (NCVs and NOVVs) are coordinated with OE; and
  8. Ensure that the enforcement activities conducted under this delegation are consistent with established policy, guidance, and precedents.
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- b. The delegations listed above do not apply to cases where the Director, OE, the Director, NSIR, or the Regional Administrator are in disagreement on a proposed action; or the DEDO advises the Director, OE, that he/she wishes to retain approval authority.
- c. In accordance with the responsibility for supervising and directing all enforcement-supporting functions of NSIR, the Director, NSIR:
  - 1. Contacts the Director, OE, as soon as possible, and generally no later than 24 hours after receiving the Strategy Form, if they disagree with an enforcement strategy arrived at during an enforcement panel or enforcement caucus;
  - 2. Ensures that OI reports are reviewed and that recommendations are made to OE for enforcement action, including immediate action, when warranted;
  - 3. Ensures that NSIR staff receives appropriate training and instructions to implement the enforcement program and that NSIR-based enforcement actions are periodically audited;
  - 4. Ensures that disputed non-escalated actions (NCVs and NOVs) are coordinated with OE;
  - 5. Ensures that copies of TIAs that involve potential violations are sent to the Director, OE;
  - 6. Ensures that the enforcement activities conducted under this function are consistent with established policy, guidance, and precedents;
  - 7. Reviews escalated enforcement actions prior to submitting them for headquarter's review; and
  - 8. Recommends to the Director, OE, as appropriate, changes to the Enforcement Policy or guidance within this Manual.

### **1.8.2 Re-delegation of Authority by the Director, NSIR**

- a. The Director, NSIR, may re-delegate his/her authority according to the following guidelines:
  - 1. To the Deputy Director, NSIR, the authority to sign and issue, after coordination with OE, Severity Level III NOVs without civil penalties;
  - 2. To Deputy Division Directors and above, the authority to sign and issue non-escalated enforcement actions;
  - 3. To Deputy Division Directors and above, the authority to sign and issue actions and letters exercising discretion in accordance with the Enforcement Policy for matters that would otherwise be Severity Level IV violations; and

4. To NSIR management, the authority to conduct predecisional enforcement conferences. This authority should not generally be delegated to individuals below the level of Deputy Division Director.
- b. The Director, NSIR, will forward copies of further re-delegations to OE.

### **1.8.3 NSIR Enforcement Coordinator**

As directed by NSIR management, the NSIR Enforcement Coordinator:

- a. Serves as the principal NSIR contact for enforcement matters involving security at nuclear facilities and security of nuclear materials and nuclear activities;
- b. Participates in the weekly regional SERP and enforcement panels for all cases involving security at nuclear facilities and security of nuclear materials and nuclear activities;
- c. Leads the NSIR review of the enforcement strategy for enforcement actions discussed during panels and caucuses and notifies appropriate NSIR management of the enforcement strategy, especially in cases where the Enforcement Coordinator disagrees with the strategy;
- d. Obtains necessary technical support from other NSIR divisions/directorates to ensure that the enforcement strategy for actions proposed by the regions are technically adequate and that reactor safety aspects of the violation have been properly evaluated from an overall agency perspective and are consistent with previous actions or staff positions;
- e. Participates in predecisional enforcement conferences and regulatory conferences with enforcement implications, when the issues warrant;
- f. Consolidates NSIR views on the enforcement strategy for proposed escalated actions and forwards NSIR's comments, i.e., verbally, electronically via "OEMAIL", or in writing, to the Director or Deputy Director, OE, for enforcement actions submitted to headquarters;
- g. Participates in regularly scheduled conference calls with OE, the regions, and the other Program Office Enforcement Coordinators to discuss enforcement issues and cases;
- h. Reviews all applicable OI reports to identify immediate safety issues, coordinates with appropriate NSIR staff, and provides NSIR perspective in determining appropriate enforcement action; and
- i. Prepares a "3-week email" within 60 days week of receiving an OI report:
  1. Indicating that either:
    - (a) No enforcement action is being considered; or
    - (b) That although a violation appears to be present, willfulness is not involved;

2. Addressed to the Director, OE, the Assistant General Counsel for Materials Litigation and Enforcement, and the appropriate Office Director or Regional Administrator; and
3. Inviting a response to the proposal that barring a different view:
  - (a) There does not appear to be a violation of NRC requirements, therefore, no enforcement action is proposed; or
  - (b) The non-willful violation will be treated in accordance with normal enforcement processes.

#### 1.8.4 NSIR Staff

- a. In accordance with the delegations of authority for areas where NSIR evaluates, directly manages, or conducts inspections, the NSIR staff:
  1. Identifies violations of regulatory requirements and recommends enforcement action;
  2. Appropriately documents enforcement actions;
  3. Issues non-escalated enforcement actions, including notices of nonconformance, NOVs, and NCVs;
  4. Signs and issues NRC Form 591s (if qualified and authorized to do so) for Severity Level IV violations and NCVs;
  5. Recommends the severity level of an apparent violation and provides information that bears on the mitigation or escalation of a civil penalty, if proposed;
  6. Prepares a Panel Worksheet and compiles supporting information for SERP and enforcement panels;
  7. Conducts enforcement panels, predecisional enforcement conferences, and enforcement caucuses;
  8. Requests EA numbers for all contemplated escalated enforcement actions;
  9. Submits all escalated enforcement actions to OE for review and approval;
  10. Reviews responses to enforcement actions to determine whether corrective actions are adequate;
  11. Reviews OI reports and makes recommendations to OE for enforcement action, including immediate action, when warranted; and,
  12. Ensures that the enforcement activities conducted under current delegation(s) are consistent with established policy, guidance, and precedent;

- b. In accordance with guidance from the Director, NSIR, to support the enforcement program, appropriate project, technical, and management personnel from NSIR:
  - 1. Participate in enforcement panels to provide additional agency perspectives associated with the enforcement strategy for potential escalated enforcement actions;
  - 2. Attend predecisional enforcement conferences;
  - 3. Participate in enforcement caucuses to provide additional agency perspectives associated with the enforcement strategy for potential escalated enforcement actions;
- c. In accordance with guidance from the Director, NSIR, to support the enforcement program, the NSIR staff:
  - 1. Reviews the enforcement strategy for regional escalated enforcement actions for material licensees to ensure that the violations have been adequately established and that the safety significance of the violations has been properly evaluated from an overall agency perspective;
  - 2. Provides comments (verbally, electronically via email to "OEMAIL" or in writing) based on the review conducted under the preceding paragraph of this to OE generally within five working days of receipt of the enforcement package; and,
  - 3. Reviews applicable OI reports and makes recommendations to OE for enforcement action, including immediate action, when warranted.

### **1.9 Office of the Chief Financial Officer (OCFO)**

OCFO has delegated authority to issue orders to licensees who violate Commission regulations by nonpayment of license and inspection fees.

### **1.10 Office of State and Tribal Programs (STP)**

STP, including the Regional State Liaison Officer, work in conjunction with the regional and program offices as well as the Agreement State within which the NRC plans to take enforcement action, to ensure proper transmittal of the NRC's actions to individuals licensed by the State and enforcement actions issued to Agreement State Licensees.

## 1.11 Office of Public Affairs (OPA)

OPA, including the Regional Public Affairs Officer (RPAO):

- a. May issue press releases for various enforcement-related actions or activities that the agency views as significant or newsworthy; and
- b. Coordinates the issuance of press releases involving enforcement actions or activities with the regional enforcement staff, and OE, as appropriate.

✓ Press releases announcing predecisional enforcement conferences and regulatory conferences that are open for public observation, should:

- Be brief and carefully worded so as not to prejudge the outcome; and
- Include an explicit description of the nature of the conference as a predecisional opportunity for the licensee to present any additional material information before the NRC arrives at a decision.

## 1.12 Special Task Forces

- a. NRC management may establish a special task force to investigate or otherwise review circumstances surrounding activities which may result in an enforcement action.
- b. Special task forces can serve a valuable purpose by bringing special expertise and insight into the investigative and enforcement processes.
- c. Special task forces formed to investigate or otherwise review circumstances surrounding activities which may result in an enforcement action should have a charter or tasking memorandum that:
  1. Delineates their role within the agency's existing investigative and enforcement processes;
  2. Clearly defines the responsibilities of the special task force and establishes a work plan at the outset that describes how the special task force will document task force findings;
  3. Addresses whether the special task force's activities and work products should be independent or integrated within the existing investigative and enforcement processes;
  4. Includes a clear strategy addressing how the special task force's work will ultimately be used by the agency, e.g.:
    - (a) Whether the special task force should prepare an independent report or should prepare input for an OI, NRR, NMSS, NSIR or region-based report.

- (b) Whether the special task force should participate in enforcement decision-making activities, such as enforcement panels, conferences, and caucuses.

### **1.13 Signature Authority for Escalated Enforcement**

- a. Escalated NOV's without civil penalties should be signed and issued according to the following guidelines:
  - 1. The Regional Administrator normally signs and issues NOV's with Severity Level I, II, and III violations and NOV's associated with red, yellow, or white SDP findings, after appropriate coordination with OE (and the DEDO, if applicable).
  - 2. The Regional Administrator may redelegate the authority to sign and issue NOV's with Severity Level III violations and NOV's associated with yellow or white SDP findings to the Deputy Regional Administrator, after appropriate coordination with OE (and the DEDO, if applicable).
  - 3. The Director, NRR, normally signs and issues escalated NOV's involving vendors and non-power reactors, after appropriate coordination with OE (and the DEDO, if applicable).
  - 4. The Director, NRR, may redelegate to Associate Directors and above, the authority to sign and issue NOV's for Severity Level I and II violations involving vendors, after appropriate coordination with OE (and the DEDO, if applicable) and may redelegate to Division Directors and above, the authority to sign and issue NOV's with Severity Level III violations involving vendors after appropriate coordination with OE (and the DEDO, if applicable).
  - 5. The Director, NRR, may redelegate to the Deputy Director, the authority to sign and issue NOV's for Severity Level I and II violations involving non-power reactors, after appropriate coordination with OE (and the DEDO, if applicable) and may redelegate to the Division Director and above, the authority to sign and issue NOV's with Severity Level III violations involving non-power reactors after appropriate coordination with OE (and the DEDO, if applicable).
  - 6. The Director, NMSS, normally signs and issues NOV's with Severity Level I, II, or III violations involving areas that they inspect, after appropriate coordination with OE (and the DEDO, if applicable).
  - 7. The Director, NMSS, may redelegate to the Deputy Director, the authority to sign and issue NOV's with Severity Level III violations, after appropriate coordination with OE (and the DEDO, if applicable).
  - 8. The Director, NSIR, normally signs and issues NOV's with Severity Level I, II, or III violations involving areas that they inspect (e.g., force-on-force exercises, security issues related to non-licensees and vendors, as well as information security), after appropriate coordination with OE (and DEDOs, if applicable).

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- b. NOV/Civil penalty actions should be signed and issued according to the following guidelines:
1. The DEDO may choose to sign any civil penalty action. For cases that involve multiple actions (e.g., a single overall occurrence that results in an order, and a civil penalty), each of the actions should be signed by the same individual.
  2. The Regional Administrator normally signs and issues all civil penalty actions, after appropriate coordination with OE (and the DEDO and the Commission, if applicable).
  3. The Director, NRR, may redelegate to Associate Directors and above, the authority to issue civil penalty actions for violations involving vendors, after review and approval by the Director, OE (and the DEDO and the Commission, if applicable).
  4. The Director, NRR, may redelegate to the Deputy Director, the authority to issue civil penalty actions for violations involving non-power reactors, after review and approval by the Director, OE (and the DEDO and the Commission, if applicable).
  5. The Director, NMSS, normally signs and issues civil penalty actions involving areas that NMSS inspects, after review and approval by the Director, OE (and the DEDO and the Commission, if applicable))
- c. Orders Imposing Civil Penalties should be signed and issued according to the following guidelines:
1. The DEDMRS signs:
    - a. All impositions for 10 CFR Part 50 and 55 licensees; and
    - b. Impositions involving Severity Level I violations of 10 CFR Part 30, 40, 70, and 76.
  2. The Director, OE, signs impositions involving violations up to and at Severity Level II of 10 CFR Part 30, 40, 70, and 76.
- d. Orders (other than those imposing civil penalties) should be signed and issued according to the following guidelines:
1. The Director, OE, normally signs:
    - (a) The following orders for 10 CFR Parts 30, 40, 70, and 76 licensees:
      - (1) Confirmatory Orders; and
      - (2) Orders Imposing Civil Monetary Penalties for violations up to and including Severity Level II;
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- (b) Confirmatory Orders for 10 CFR Part 50 licensees; and
  - (c) Confirmatory Orders for individual actions under 10 CFR Parts 30, 40, 50, 70, and 76.
2. The DEDMRS signs all other orders.
- e. The Director, OE, normally signs DFIs issued to 10 CFR Part 30, 40, 50, 55, 70, and 76 licensees and to individuals.
- f. The Regional Administrator (or designee) normally signs and issues Letters of Reprimand (LORs), after review and approval by the Director, OE.

### 1.14 Commission Notification and Consultation

To ensure that the Commission has all information relating to the performance of its enforcement duties:

- a. The staff notifies the Commission of its intent to issue an escalated enforcement action by issuing an Enforcement Notification (EN).
1. A same-day EN is issued for:
- (a) All immediately effective orders;
  - (b) Any case on which the Commission was previously consulted and a 3-day EN has not been issued;
  - (c) All notices of enforcement discretion involving natural events, such as severe weather conditions. (See NOED guidance in Part 9900 of the Inspection Manual for format.)
2. A 3-day EN is issued for:
- (a) All escalated NOV's associated with white, yellow, or red SDP findings;
  - (b) The following enforcement actions when they are not subject to a same-day EN:
    - (1) All civil penalties (Note: This does not include orders imposing a civil penalty);
    - (2) All Severity Level I and II enforcement actions;
    - (3) All Severity Level III enforcement actions associated with civil penalties;

- (4) Enforcement actions that have special interest and would not otherwise receive an EN (e.g., discrimination issues, unique or significant issues, escalated actions that have been withdrawn for which an EN was previously issued, issues for which a press release was published);

✓ The region or program office with the lead for the enforcement action should ALWAYS consult with OE prior to issuing the action when it requires an EN or RN, to ensure that (any) comments from the Commission are considered prior to issuance.

- (5) All enforcement orders (except those associated with non-payment of fees) that are not immediately effective; and

- (6) Enforcement DFIs

3. General Information regarding ENs:

- (a) OE prepares or coordinates the preparation of ENs with the region or program office that is the lead for the enforcement action (e.g., issues where OE previously agreed to the enforcement strategy through a panel or caucus).

- (b) OE issues ENs for enforcement actions that are submitted to and reviewed by OE.

✓ There is a standard distribution list for the distribution of ENs; however, if the subject of an EN involves an enforcement action taken by one region against the subsidiary of a company that is located in another region, the region in which the parent company resides should be advised of the action.

- (c) ENs should clearly state when an order is issued to a licensed operator or a non-licensee.

- (d) Normally, the region or program office that is the lead for the enforcement action, is responsible for contacting the licensee or individual prior to the enforcement action being taken.

- b. The staff notifies the Commission of its intent to issue a significant regulatory action, such as a Final Significance Determination for a white, yellow, or red finding (that does not include an NOV) or an order that requires additional safety measures beyond the regulatory framework (versus an order based on compliance issues), by providing the Commission with a Regulatory Notification (RN).

1. A same-day RN is issued for:

- (a) All immediately effective safety orders;

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- (b) Any case on which the Commission was previously consulted and a 3-day RN was not already required;
      - (c) All significant regulatory actions that are being modified, withdrawn or rescinded, and the Commission was previously notified of their issuance.
    2. A three-day RN is issued for:
      - (a) All Final Significance Determination letters with a white, yellow, or red finding (that does not include an NOV).
      - (b) Issues of special interest that would not otherwise receive an RN.
    3. General information regarding RNs:
      - (a) OE prepares or coordinates the preparation of RNs with the region or program office that is the lead for the enforcement action in a manner similar to the issuance of ENs.
      - (b) OE issues RNs for enforcement actions that are submitted to and reviewed by OE.
      - (c) OE uses the standard format in Appendix B and assigns the RN the next sequential number from the EN system.
  - c. When the Commission should receive a more detailed and earlier explanation of an enforcement action than an EN or RN provides, e.g., if the action is likely to have implications for broader sanctions or involves issues that are of substantial public interest [SECY-96-222; SRM 11/26/96], the Commission is consulted via either a SECY paper or memorandum prior to taking such action (unless the urgency of the situation dictates immediate action). Such actions include, e.g.:
    1. Any change to the Enforcement Policy.
    2. An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation.

✓ When the Commission is consulted via a SECY paper or memorandum prior to taking an enforcement action, the region or program office with the lead for the enforcement action is responsible for drafting the document. OE and the EDO should be included on concurrence.
    3. Proposals to impose a civil penalty for a single violation or problem that is greater than three times the Severity Level I value shown in Table 1A of the Enforcement Policy for that class of licensee [61 FR 65128; 12/10/1996].
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4. Any proposed enforcement action that involves a Severity Level I violation.
5. Any action the EDO believes warrants Commission involvement.
6. For enforcement cases involving OI reports where the NRC staff (other than the OI staff) disagrees with the conclusions of the OI report concerning willfulness, Commission consultation (via a SECY paper or memorandum) is needed unless the Director, OI, agrees that it is not warranted. The Commission paper should include a summary of the rationale upon which OI based its conclusions and a summary of the non-OI staff's basis for reaching different conclusions. If the Commission is not consulted, OE should document the disagreement in its case file.
7. Any proposed enforcement action on which the Commission asks to be consulted.
8. Any enforcement action initiated more than 18 months after a violation is initially identified (based on the completion date of the inspection), or more than 18 months after referral of a potential violation to OI where the enforcement action in the case was affected or modified as a result of the age of the action and the EDO believes that Commission consultation is warranted. The region should draft a Commission paper for headquarters' review that explains:
  - (a) The reasons for the delay (with input from OI, as necessary); and
  - (b) The rationale for the staff's proposal with a specific focus on what effect the delay has on the proposed action. This would include consideration of factors such as, but not limited to:
    - (1) Whether the effectiveness of the proposed enforcement action will be affected by the delay;
    - (2) Whether the focus of the action should be modified as a result of the delay (e.g., if the staff has observed several years of good licensee performance in the area in question, perhaps the enforcement action should focus on sending a message to individual wrongdoers rather than to the licensee;
    - (3) Whether the delay affects our ability to find or obtain credible evidence from organizations or individuals; and
    - (4) Whether the expected benefits to public health and safety or common defense and security are justified by using limited NRC resources to pursue this action.

✓ In cases where a memorandum from the Director, OE, to the DEDO is appropriate, a copy of this memorandum should also be provided to the Commissioner's assistants at least five days before the action is to be taken.

- (c) A Commission paper is not necessary if:
  - (1) The enforcement action in the case was not affected or modified as a result of the age of the action; or,
  - (2) The enforcement action was affected by the age of the action but the EDO does not believe that Commission consultation is warranted. In such cases OE should issue a memorandum (using the appropriate form in Appendix B) from the Director, OE, to the DEDO that:
    - (A) Explains the reasons or problem that caused the delay (with input from OI and the applicable regional office, as appropriate); and
    - (B) Explains the rationale for the staff's proposal with a specific focus on what effect the delay has on the proposed action and brief consideration of the factors included in paragraph c.8 above.