

Introduction and Overview

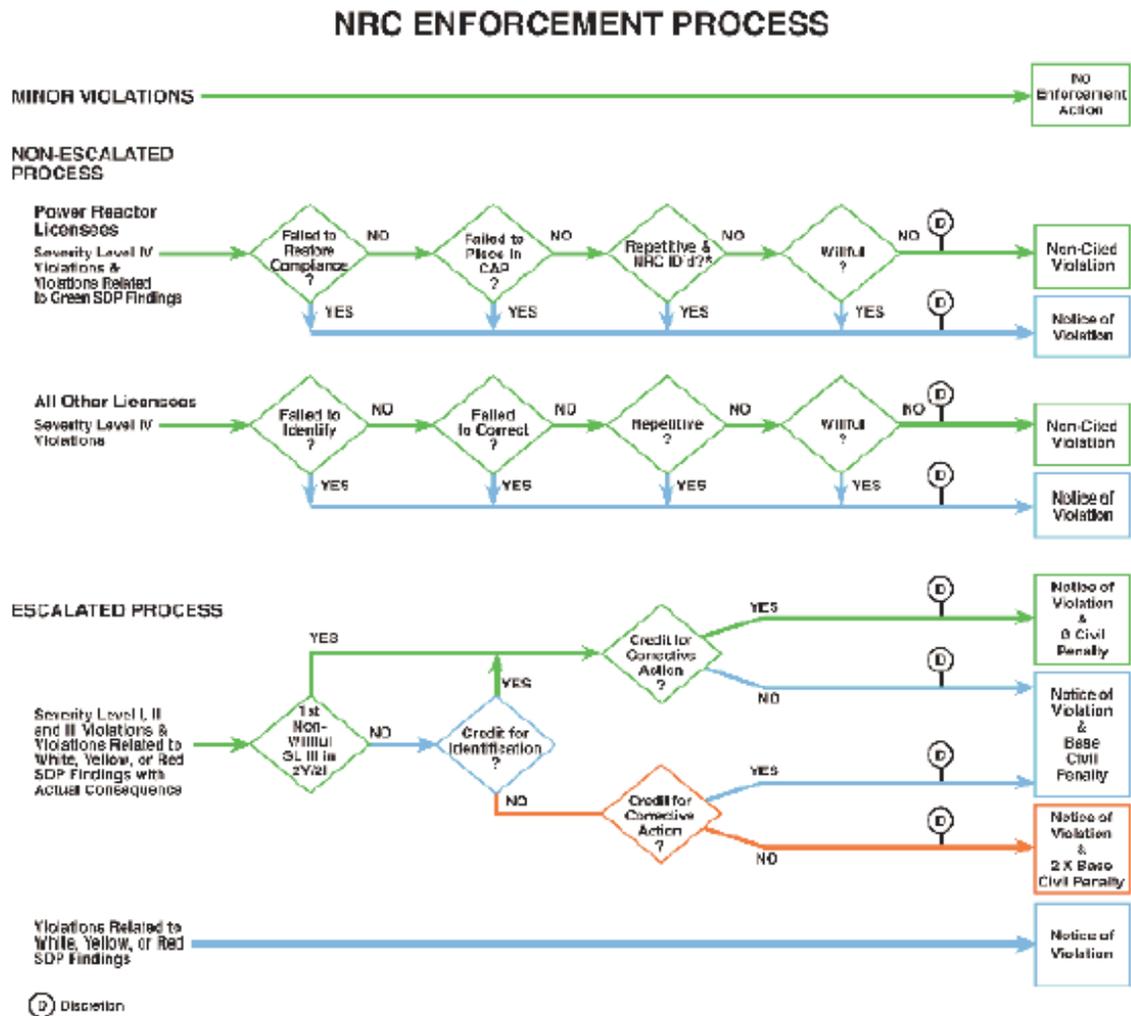


Figure Intro-1 This graphic represents the NRC’s graded approach to dealing with violations, both in terms of addressing their significance and developing sanctions.

- ▶ The NRC’s Enforcement Program uses a graded approach for violations, both in terms of addressing their significance and developing sanctions.

- ▶ **The NRC assesses the significance of a violation by considering:**
 - **actual safety consequences;**
 - **potential safety consequences;**
 - **potential for impacting the NRC’s ability to perform its regulatory function; and,**
 - **any willful aspects of the violation.**
- ▶ **Violations are assigned a severity level ranging from Severity Level I for the most significant violations to Severity Level IV for those of more than minor concern.**
- ▶ **Issues assessed through the Reactor Oversight Process’s (ROP) Significance Determination Process (SDP) are assigned a color, i.e., red, yellow, white or green, based on the risk significance, red being the most significant and green being the least significant.**
- ▶ **Minor violations must be corrected; however, given their limited risk significance, they are not subject to enforcement action and are not normally described in inspection reports.**

Overview of the Enforcement Process

Generally, violations are identified through inspections and investigations. All violations are subject to civil enforcement action and some may also be subject to criminal prosecution. When an apparent violation is identified, it is assessed using the guidance in this Manual, in accordance with the Enforcement Policy.

There are three primary enforcement sanctions available: notices of violation, civil penalties, and orders.

- A **Notice of violation** (NOV) is a written notice that concisely identifies an NRC requirement and how it was allegedly violated. The NOV may require a written explanation or statement in reply in accordance with the guidance provided in the Notice (i.e., 10 CFR 2.201 specifies that the licensee or other person submit a written explanation or statement in reply within 20 days of the date of notice or other time specified in the Notice. The staff may allow additional time to respond upon a showing of good cause).
- A **Civil Penalty** is a monetary fine that is used to emphasize compliance in a manner that deters future violations and to focus licensee’s attention on significant violations. Accordingly, different levels of penalties are provided in Tables 1 and 2, “Base Civil

Introduction and Overview

Penalties,” of the Enforcement Policy. Civil penalties are issued under the authority of Section 234 of the Atomic Energy Act (AEA) or Section 206 of the Energy Reorganization Act (ERA). Section 234 of the AEA provides for penalties up to \$100,000 per violation per day. This amount has been adjusted for inflation by the Debt Collection Improvement Act of 1996 and is currently \$130,000.

- **Orders** can be used to modify, suspend, or revoke licenses or require specific actions by licensees or other persons. Orders can also be used to impose civil penalties. The Commission's order issuing authority under Section 161 of the AEA is broad and extends to any area of licensed activity that the Commission deems necessary to promote the common defense and security or to protect health or to minimize danger to life or property. In addition, as a result of a 1991 rulemaking, the Commission's regulations now provide that orders may be issued to persons who are not themselves licensed.

Enforcement

After an apparent violation is identified, the next step is to gather information about the apparent violation and, thereafter, to assess its significance. Violations are assigned a severity level that reflects their seriousness and safety significance which, in turn, determines how the violation should be dispositioned. Severity Levels range from Severity Level I, for the most significant violations, to Severity Level IV for those of more than minor concern. Minor violations are below the significance of Severity Level IV violations and are typically not the subject of enforcement action. Nevertheless, the root cause(s) of minor violations must be identified and appropriate corrective action(s) must be taken to prevent recurrence.

In many cases, licensees who identify and promptly correct non-recurring Severity Level IV violations, without NRC involvement, will not be subject to formal enforcement action. Such violations will be characterized as "non-cited" violations as provided in Section VI.A of the Enforcement Policy.

For materials licensees, if violations of more than a minor concern are identified by the NRC during an inspection, such violations will be the subject of an NOV and a written response may be required pursuant to 10 CFR 2.201, addressing the causes of the violations and corrective actions taken to prevent recurrence. In some cases, such violations can be documented on NRC Form 591 which constitutes an NOV that requires corrective action but does not require a written response.

When escalated enforcement action appears to be warranted (i.e., Severity Level I, II, or III violations, civil penalties or orders), a predecisional enforcement conference (PEC) may be conducted with a licensee before the NRC makes an enforcement decision. A PEC may also be held when the NRC concludes that it is necessary or the licensee requests it. The purpose of the PEC is to obtain information that will assist the NRC in determining the appropriate enforcement action. The decision to hold a PEC does not mean that the agency has determined that a violation has occurred or that enforcement action will be

Introduction and Overview

taken. If the NRC concludes that a conference is not necessary, it may provide a licensee with an opportunity to respond to the apparent violations in writing or by requesting a PEC before making an enforcement decision.

Civil penalties are normally assessed for Severity Level I and II violations and for NRC-identified violations involving knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act. Civil penalties are considered for Severity Level III violations.

If a civil penalty is to be proposed, a written NOV and proposed imposition of a civil penalty must first be issued. The NOV must advise the person charged with the violation that the civil penalty may be paid in the amount specified, or the proposed imposition of a civil penalty may be contested in whole or in part, by a written response, either denying the violation or showing extenuating circumstances. The NRC will evaluate the response and use that information to determine if the civil penalty should be mitigated, remitted, or imposed by order. Thereafter, the licensee may pay the civil penalty or request a hearing.

Orders may be used to modify, suspend, or revoke licenses. Orders may require additional corrective actions, such as removing specified individuals from licensed activities or requiring additional controls or outside audits. Persons adversely affected by orders that modify, suspend, revoke a license, or that take other action, may request a hearing.

☞ The NRC may issue a press release with a proposed civil penalty, Demand for Information (DFI), or order. All orders and DFIs are published in the *Federal*

In addition to the orders used to modify, suspend, or revoke licenses, the agency may issue a Demand for Information (DFI). A DFI is a significant enforcement action which can be used with other enforcement actions such as an imposition of a civil penalty. As its name implies, a DFI is a request for information from licensees and applicants for a license, vendors and contractors, in order to determine, e.g., whether a license should be granted, suspended, or revoked, or whether further enforcement action is warranted.

The Enforcement Component of the Reactor Oversight Program

The Reactor Oversight Process (ROP) utilizes the results of performance indicators (PIs) and baseline inspection findings to determine the appropriate regulatory action to be taken in response to a licensee's performance. Because there are many aspects of facility operation and maintenance, the NRC inspects utility programs and processes on a risk-informed sampling basis to obtain representative information. The objective is to monitor performance in three broad areas -- reactor safety (avoiding accidents and reducing the consequences of accidents if they occur); radiation safety for both plant workers and the public during routine operations; and protection of the plant against sabotage or other security threats. The ROP has been in effect since April 2000.

Introduction and Overview

Under the ROP, the staff assesses certain inspections findings at nuclear power plants through the Significance Determination Process (SDP). The SDP is a risk-informed framework that was developed to evaluate the actual and potential safety significance of these findings. Such findings may contribute to potential safety concerns or programmatic weaknesses that do not violate NRC regulations. The SDP provides a basis for discussing and communicating the significance of such findings with the licensee. Some findings are associated with violations of the regulations. The final disposition of the violations associated with findings that have been evaluated through the SDP is contingent on the risk significance attributed to the findings (assigned the colors of green, white, yellow, or red with increasing risk).

The Enforcement Policy has been revised to state that Regulatory Conferences will be conducted in lieu of predecisional enforcement conferences if violations are associated with risk significant findings evaluated through the SDP. The Policy notes that Regulatory Conferences are conducted to discuss the significance of findings evaluated through the SDP with or without associated violations. The focus of these meetings is on the significance of the issues and not necessarily on the correction actions associated with the issue. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued, a subsequent predecisional enforcement conference is not normally necessary. In addition, the Enforcement Policy has been modified to clarify that the mitigation discretion addressed in Sections VII.B.2 - VII.B.6 (e.g., violations identified during shutdowns, involving past enforcement actions, old design issues, or special circumstances) does not normally apply to violations associated with issues evaluated by the SDP.

Enforcement Actions Involving Individuals

The NRC will normally take an enforcement action against an individual only if the staff is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew or should have known, the required actions; and knowingly or with careless disregard (i.e., with more than mere negligence) failed to take required actions which have actual or potential safety significance.

Actions can be taken directly against individuals either because they are individually licensed or because they violated the rules on deliberate misconduct. Generally, when enforcement action is taken against an individual, enforcement action is taken against a licensee.

Statute of Limitations

The Statute of Limitations is applicable to NRC civil penalty cases (see 28 USC §2462), and requires that the NRC initiate an action imposing a civil penalty, issuing an order to modify, suspend, or revoke a license or an order prohibiting

☞ The **Statute of Limitations** is an affirmative defense which can be raised by a person against whom such a sanction is proposed.

Introduction and Overview

involvement in NRC licensed activity (enforcement sanction) within the 5-year statutory period.

The Statute of Limitations does not prevent the staff from issuing an NOV (without a civil penalty or other sanction) even if the underlying violation occurred more than five years earlier, or from issuing an order requiring an action needed to ensure compliance with existing requirements regarding protection of the public health and safety, promoting the common defense and security, or protecting the environment.