

January 9, 2007

EGM 07-001

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I  
William Travers, Regional Administrator, Region II  
James L. Caldwell, Regional Administrator, Region III  
Bruce Mallet, Regional Administrator, Region IV  
James Dyer, Director, Office of Nuclear Reactor Regulation  
Jack R. Strosnider, Director, Office of Nuclear Material Safety  
and Safeguards  
Roy Zimmerman, Director, Office of Nuclear Security and  
Incident Response  
Charles L. Miller, Director, Office of Federal and State Materials  
and Environmental Management Programs

FROM: Cynthia A. Carpenter, Director */RA/*  
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM - ENFORCEMENT  
DISCRETION FOR CERTAIN VIOLATIONS ASSOCIATED WITH  
DOE LEGACY DOCUMENTS FOUND IN CERTAIN LEASED SPACE

On October 29, 2004, the U.S. Nuclear Regulatory Commission (NRC) notified the U.S. Department of Energy (DOE) in correspondence to Mr. Larry W. Clark, Office of Nuclear Fuel Security, Oak Ridge Operations Office, that the NRC would notify DOE of any discovery of inappropriately marked or controlled DOE classified information or material discovered in NRC regulated site areas leased by the U.S. Enrichment Corporation (USEC) within the Paducah or Portsmouth gaseous diffusion plant (GDP).

The correspondence was in response to an audit report authored by the DOE Office of Inspector General (OIG) that discussed the discovery of documents and materials that were not adequately marked for classification and were not being properly protected. The NRC recognized in its communication that the unprotected documents and/or materials were DOE legacy items that were not covered under USEC's Certificate of Compliance with the NRC, and ensured that if and when discoveries occurred in the future, DOE would be notified.

While the NRC has security cognizance for matters pertaining to protection of classified matter in USEC leased space, the kind of matter referenced in the DOE OIG report does not come under NRC purview. Accordingly, the NRC will normally exercise enforcement discretion for non-willful involvement of USEC in discoveries of DOE legacy information or materials found in NRC regulated site areas at the Paducah or Portsmouth GDP.

When exercising enforcement discretion in accordance with this Enforcement Guidance memorandum (EGM), the following language should be included in the letter to the certificatee:

Based on the results of this inspection, errors were identified in the manner in which you have been maintaining compliance with the provisions of 10 CFR 95.35. (Include a brief description of the errors and how they were identified.) As such, the NRC has determined that (quantity) Severity Level (III or IV) violation(s) of 10 CFR 95.35 occurred. This (These) violation(s) was(were) evaluated in accordance with the Enforcement Policy, which is included on the NRC's Web site at [www.nrc.gov](http://www.nrc.gov); select **What We Do, Enforcement**, then **Enforcement Policy**. However, after consultation with the Director, Office of Enforcement, (and the Deputy Executive Director for Materials, Research, State and Compliance Programs, if applicable), I have been authorized to exercise enforcement discretion pursuant to Section VII.B.6, Violations Involving Special Circumstances, of the Enforcement Policy to refrain from issuing a Notice of Violation. Discretion is warranted in this case because the NRC has determined that: the violation is not willful, the (material or information) is legacy DOE (material or information), and the (material or information) was not appropriately classified prior to your assumption of control of the leased space in which the (material or information) was discovered.

When exercising enforcement discretion in accordance with this EGM, the following language should be included in the text of the report discussing the inspection finding:

Based on the results of this inspection, errors were identified in the manner in which you have been maintaining compliance with the provisions of 10 CFR 95.35. (Include a brief description of the errors and how they were identified.) As such, the NRC has determined that (quantity) Severity Level (III or IV) violation(s) of 10 CFR 95.35 occurred. However, because this (these) error(s) was (were) not willful, and because the NRC has determined that the (material or information) is legacy DOE (material or information) that was not appropriately classified prior to your assumption of control of the leased space in which the (material or information) was discovered, the NRC is exercising enforcement discretion pursuant to Section VII.B.6, Violations Involving Special Circumstances, of the Enforcement Policy to refrain from issuing a Notice of Violation in this case.

The Regional Administrator should normally sign the letter (containing the enforcement action (EA) tracking number) transmitting the exercise of discretion if it includes an issue that could have been considered as escalated action (Severity Level I, II, or III) had it not been for the exercise of discretion. However, the Deputy Regional Administrator or a Division Director may sign the letter provided it includes a statement that the Regional Administrator has been consulted.

This EGM will be in effect until further notice.

If you have any technical questions, contact J. Keith Everly at 301-415-7048. If you have any enforcement questions, contact Michael R. Burrell at 301-415-2740.

cc: L. Reyes, EDO  
SECY  
M. Virgilio, DEDMRS  
W. Kane, DEDR  
M. Johnson, OEDO  
B. Boger, NRR  
R. Pierson, NMSS  
L. Camper, FSME  
E. W. Brach, NMSS  
D. Dorman, NSIR

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