



# **ENFORCEMENT PROGRAM**

## **ANNUAL REPORT**

**Calendar Year 2007**

**U.S. Nuclear Regulatory Commission  
Office of Enforcement  
Washington, DC 20555**

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## Abstract

Since 1995, the Enforcement Program Annual Report has provided information addressing the U.S. Nuclear Regulatory Commission's (NRC or Commission) enforcement activities during a given fiscal year (FY). Since 2005, the Office of Enforcement (OE) has employed a Calendar Year (CY) time-frame to align this report with the annual reports of other programs under the responsibility of OE, such as the Allegations Program, as well as alignment with the Reactor Oversight Process.

This report contains information about the escalated enforcement actions that the NRC has taken during CY 2007 as well as changes to the NRC Enforcement Policy, new initiatives, and revised staff guidance.

Please note that security-related escalated enforcement actions involving, for example, notices of violation, civil penalties, and orders, are included for statistical purposes but are not described in this report.

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## Calendar Year 2007 Summary

- The Agency issued 118 escalated enforcement actions, including:
  - 77 escalated Notices of Violation without civil penalties
  - 18 proposed civil penalties totaling \$383,200
  - 22 orders modifying, suspending, or revoking a license, including prohibiting involvement in NRC-licensed activities
  - One order imposing a proposed civil penalty of \$3,250
- The Agency's timeliness performance metric for issuing enforcement actions against NRC licensees was met for all cases (see page 3).
- A Demand for Information (DFI) was issued (see page 5).
- Effective oversight of the Agency's Safety Culture initiative in the Reactor Oversight Process (ROP) continued as well as assessment of applicability of the Agency's Safety Culture initiative to fuel cycle facilities, security issues, and new reactors (see page 10).
- The Agency continued the successful use of the Alternative Dispute Resolution (ADR) program in 11 enforcement cases (see page 11).
- The Agency published a final rule which amended the employee protection regulations to allow the Commission to impose civil penalties on contractors and subcontractors for certain violations of NRC requirements (see page 12).
- A major revision of the Enforcement Policy was initiated.

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## Introduction and Overview

### Mission and Authority

The NRC regulates the civilian uses of nuclear materials in the United States to protect public health and safety, the environment and the common defense and security. This mission is accomplished through: licensing of nuclear facilities and the possession, use and disposal of nuclear materials; the development and implementation of requirements governing licensed activities; and inspection and enforcement activities to assure compliance with these requirements.

The NRC conducts various types of inspections and investigations designed to

ensure that NRC-licensed activities and activities associated with NRC-licensed activities are conducted in strict compliance with the Commission's regulations, the terms of the license, and other requirements.

The NRC's enforcement authority is contained in the Atomic Energy Act of 1954, as amended, (AEA) and the Energy Reorganization Act of 1974, as amended (ERA). These statutes provide the NRC with broad authority. The Agency implements its enforcement authority through Subpart B of 10 CFR Part 2, which is utilized in the enforcement program. The Administrative Dispute Resolution Act of 1996 (ADRA), provides the statutory framework for the Federal Government to utilize alternative dispute resolution.

The NRC Enforcement Policy sets out the general principles governing NRC's enforcement program and provides a process for implementing the agency's enforcement authority in response to violations of NRC requirements. This statement of policy is predicated on the NRC's belief that compliance with NRC requirements is essential to assuring safety, maintaining security, and protecting the environment. The Enforcement Policy applies to all NRC licensees, to various categories of non-licensees, and to individual employees of licensed and non-licensed firms involved in NRC-regulated activities.

The NRC enforces compliance as necessary. Enforcement actions are used as a deterrent to emphasize the importance of compliance with regulatory requirements and to encourage prompt identification and prompt, comprehensive correction of violations. In addition, because violations occur in a variety of activities and have varying levels of significance, the NRC Enforcement Policy contains graduated sanctions.



Figure 1- How NRC Regulates

Most violations are identified through inspections and investigations. Enforcement authority includes the use of Notices of Violation (NOVs), civil penalties, Demands for Information (DFIs), and orders to modify, suspend, or revoke a license. Discretion may be exercised in determining the severity levels of violations and the appropriate enforcement sanctions to be taken.

### **About the Office of Enforcement**

The Office of Enforcement (OE) develops policies and programs for enforcement of NRC requirements. In addition, OE exercises oversight of NRC enforcement, providing programmatic and implementation direction to regional and headquarters offices conducting or involved in enforcement activities, and ensures that regional enforcement programs are consistently implemented.

The Director of OE reports directly to the Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT), and is responsible for ensuring the DEDMRT is kept apprised of certain escalated actions. The DEDMRT is consulted on any case involving novel issues, substantial legal, programmatic, or policy issues raised during the enforcement review process, or where the Director believes it is warranted. The Director's responsibilities include:

- preparation and issuance of enforcement actions, including individual actions
- approval of enforcement actions to be taken by offices in the regions or in headquarters
- preparation of letters requesting investigations, confirming actions, or obtaining information under §§161(c) or 182 of the AEA
- preparation of subpoenas to licensees, companies, individuals, or other persons to assist the Commission in the administration and enforcement of the AEA
- initiation of the necessary or appropriate action in accordance with the decision of an Administrative Law Judge, the Atomic Safety and Licensing Board, or the Commission after enforcement hearings pursuant to 10 CFR Part 2
- approval, after consultation with the Deputy Executive Directors for Operations (DEDOs), as warranted, of the decision to disposition a willful violation as a non-cited violation (NCV)
- preparation of recommendations to the Executive Director for Operations (EDO), through the DEDOs, regarding changes to rules and policies concerning enforcement matters for Commission consideration

The Deputy Director, OE, assists the Director in overseeing, managing and directing the development of enforcement policies and programs, and in issuing enforcement actions.

The Chief of the Enforcement Branch is responsible for supervising the OE staff involved with enforcement activities.

The Chief of the Concerns Resolution Branch is responsible for supervising the OE staff involved in allegations, employee protection/discrimination issues, safety culture, and Freedom of Information Act (FOIA) requests.

To provide accurate and timely information to all interested stakeholders and enhance the public's understanding of the NRC's Enforcement Program, information about the Enforcement Program is available on the NRC's public Web site where it can be retrieved and downloaded at <http://www.nrc.gov/about-nrc/organization/oefuncdesc.html>. The NRC's Enforcement Web site includes a variety of information such as the Enforcement Policy, the Enforcement Manual, and

current temporary enforcement guidance contained in Enforcement Guidance Memoranda (EGMs). This Web site also contains information regarding significant enforcement actions issued to reactor and materials licensees, non-licensees (vendors, contractors, and certificate holders), and individuals and upcoming predecisional enforcement conferences. Although, consistent with NRC practices and policies, most security-related actions and activities are not included on the NRC's public Web site, OE does include security orders that impose compensatory security requirements on various licensees in its enforcement documents collection.

In 2007, there were 19 full-time employees (FTE) authorized for the Office of Enforcement in headquarters. This number includes not only the FTE assigned to work on enforcement cases in the headquarters office, but also includes the FTE assigned to work on the NRC external allegations process, the FTE assigned to the Differing Professional Opinion Program, the non-concurrence process, and the FTE to work on the Safety Culture Initiative. There were 8 FTE assigned to regional enforcement activities, although these FTE report directly to their respective Regional Administrators.

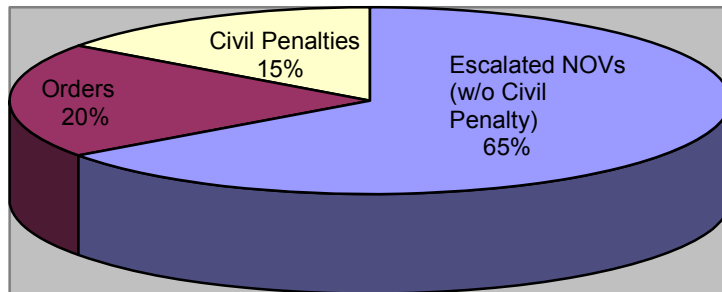
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## I. Escalated Enforcement Actions

Escalated enforcement actions include:

- Notice of Violations (NOVs), including Severity Level I, II, or III violations;
- NOVs associated with Red, Yellow, or White Significance Determination Process (SDP) findings (for operating reactor facilities);
- Civil penalty actions; and
- Orders

Figure 2 provides information addressing the types of escalated enforcement actions issued in CY 2007. The tables and figures on pages 16 through 20 of this report break this information down further by identifying the region/program office which initiated the action, as well as the licensees, non-licensees, and individuals that were involved.



**Figure 2 – Escalated Enforcement by Type**

### A. Notices of Violation without Civil Penalties

During CY 2007, the agency issued 77 NOVs without civil penalties. Eleven of these violations were associated with White Significance Determination Process (SDP) findings under the Reactor Oversight Program (ROP). Two additional violations were associated with Yellow SDP findings.

Appendix A of this report provides brief summaries of each of these NOVs without civil penalties issued to licensees as well as the NOVs associated with SDP findings.

As noted previously, security related issues involving NOVs, civil penalties, orders, etc, are not addressed in the appendices of this report, however, the number of NOVs associated with security related issues are included in the agency value quoted above.

## B. Civil Penalty Actions

During Calendar Year (CY) 2007, the agency processed 18 cases involving proposed civil penalties. Six of these involved willfulness. Willfulness is defined as either deliberate misconduct or careless disregard.

Information regarding willful violations is identified because such violations are of particular concern to the Commission. The NRC’s regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor; therefore, a violation involving willfulness may be considered more egregious than the underlying violation taken alone would have been, and the severity level may be increased.

Table 1 provides information comparing civil penalty assessments for the current CY as well as the previous four years. When reviewing the information in this table, it is important to note that an enforcement action may include more than one civil penalty and/or more than one violation. In addition, a civil penalty may be proposed in one year and paid or imposed in another year. Finally, the amount of a proposed civil penalty may be reduced, for example, as a result of exercising discretion as part of a settlement agreement developed during Alternative Dispute Resolution.

Appendix B includes a brief description of each of the civil penalty actions for 2007.

**Table 1 – Civil Penalty Information**

	CY 2007	CY 2006	CY 2005	CY 2004	CY 2003
<b>Number of Proposed Civil Penalties</b>	18	15	24	26	32
<b>Number of imposed Civil Penalties</b>	1	-	3	3	2
<b>Number of Civil Penalties Paid</b>	17	16	22	22	33
<b>Amount of Proposed Civil Penalties Paid</b>	\$383,200	\$332,350	\$6,099,950 <sup>1</sup>	\$498,700	\$400,600
<b>Amount of Imposed Civil Penalties<sup>2</sup></b>	\$3,250	\$0	\$112,100	\$31,200	\$8,500
<b>Amount of Civil Penalties Paid</b>	\$446,500	\$375,500	\$5,891,900	\$526,900	\$510,100

<sup>1</sup> This amount reflects a \$5,450,000 civil penalty that was issued on April 21, 2005, to FirstEnergy Nuclear Operating Company for multiple violations, some willful, that occurred at its Davis-Besse Nuclear Power Plant.

<sup>2</sup> The NRC issues an “Order Imposing Civil Monetary Penalty” when a licensee refuses to pay a proposed civil penalty, unless a basis exists for withdrawal of the proposed penalty.

## **C. Orders**

During CY 2007, the NRC issued 23 orders to licensees and to individuals. These included eight confirmatory orders that were issued to confirm commitments associated with Alternative Dispute Resolution (ADR) settlement agreements, nine security-related orders, an order suspending licensed activities, and an order imposing a proposed civil penalty.

Appendix C includes a brief description of the orders that were issued in CY 2007, including the order that was issued imposing a proposed civil penalty. Included in the appendix is a brief description of a Demand for Information issued in CY 2007 (see Section G below).

The nine security-related orders issued by the NRC contain requirements for licensees to implement security measures beyond those currently required by NRC regulations and as conditions of licenses. Some of the requirements formalize a series of security measures that licensees took in response to advisories NRC issued in the aftermath of the September 11 terrorist attacks. Other requirements reflect additional security enhancements that have emerged from NRC's ongoing comprehensive security review. A list of these orders is located on the Enforcement Web page. The documents on this Web page do not include specific compensatory measures or safeguards information. Specific compensatory security requirements (which include safeguards information) were addressed in separate attachments to the orders and these attachments have not been released to the public.

## **D. Enforcement Actions Supported By the Office of Investigations**

In CY 2007, 25 percent of the 118 escalated actions were supported by an Office of Investigations (OI) Report. Breaking this down further:

- 6 of the 18 escalated NOV cases with CPs (33 percent)
- 15 of the 77 escalated NOVs without CPs (19 percent)
- 9 of the 23 enforcement orders (39 percent)

## **E. Timeliness of Enforcement Actions**

The protection of public health and safety, as well as the common defense, remains paramount among the agency's goals and drives its decisions. However, the NRC recognizes that it must consider other key issues, including the effect of its decisions on the public's trust in the NRC's regulatory process, the industries the NRC regulates, and its own effectiveness and efficiency. Efficiency includes recognition that regulatory decisions should be made without undue delay.

The agency's performance measure goals for issuing the initial escalated enforcement action for a case are:

- 100 percent of non-investigation cases are completed within 180 calendar days; and
- 100 percent of investigation cases are completed within 360 process days.

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During CY 2007, the agency's performance measures goals were met with all 88 non-investigation cases completed within 180 days and all 30 investigation cases completed within 360 days.

In addition, the Enforcement Program has established administrative goals for completing cases. These are:

- 100 percent of non-investigation cases are completed within an average of 120 calendar days; and
- 100 percent of investigation cases are completed within an average of 180 process days.

During CY 2007, the agency's administrative measures goal for non-investigation cases were met with an average case processing time of 78 days for the 88 non-investigation cases. However, the agency's administrative measures goal for OI investigation cases was not met. Due to the complexity of several cases and the difficulty of the issues involved in the reactor and materials areas, and the use of ADR to settle some disputes with licensees, the average processing time for the 30 investigation cases was 227 days. These cases include Nuclear Fuel Services (EA-2006-129; 329 days), University of Pittsburgh (EA-2006-266; 286 days), and Point Beach (EA-2006-178; 272 days).

For CY 2007, the measuring period started on the latest of the following dates:

- The date of the inspection exit (for non-investigation cases);
- The date of the Office of Investigations (OI) memorandum forwarding the OI investigation to the staff (for investigation cases);
- The date that the Department of Justice (DOJ) informs the NRC that the NRC may proceed (for cases referred to DOJ); or
- The date of the Department of Labor (DOL) decision that is the basis for the action.

### F. Escalated Enforcement Trends

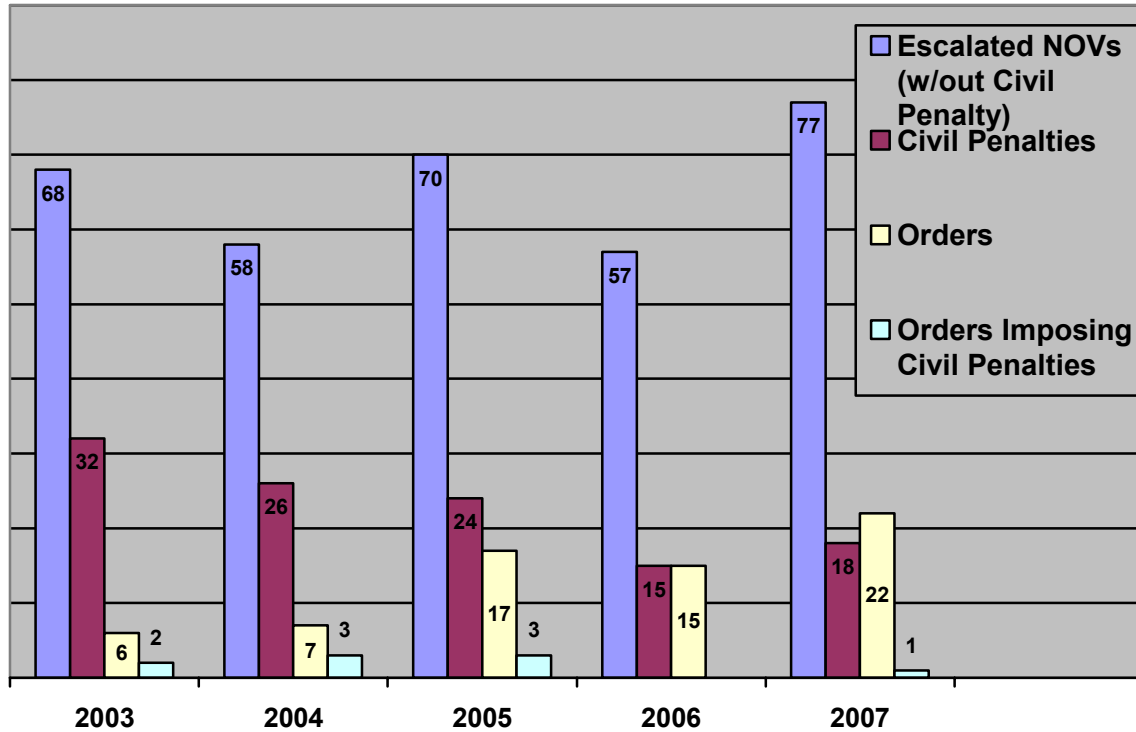
During CY 2007, the agency issued 118 escalated enforcement actions. This number is slightly greater than the average number of 104 escalated enforcement actions issued for the last five years and significantly greater than the number of escalated enforcement actions issued in CY 2006. Table 2 provides information regarding the total number of escalated enforcement actions from FY 2004 to CY 2007. Figure 3 provides this information in graphical form.

**Table 2 – Escalated Action Trends**

	CY 2007	CY 2006	CY 2005	FY 2004	FY 2003	Average
Escalated NOVs (w/o CPs)	77	57	70	58	68	66
Civil Penalties	18	15	24	26	32	23
Orders	22	15	17	7	6	13
Orders Imposing CPs	1	0	3	3	2	2
<b>Total</b>	<b>118</b>	<b>87</b>	<b>114</b>	<b>94</b>	<b>108</b>	<b>104</b>



Figure 3. Escalated Action Trends (FY2003 – CY 2007)



**G. Demands for Information**

When the NRC concludes that additional information is necessary, the NRC may issue to a licensee or other person subject to the jurisdiction of the Commission a Demand for Information (DFI) (see 10 CFR 2.204). A DFI requires the licensee or other person to provide more information or a context for its action(s) so that the NRC is able to determine whether an order or other action is warranted. During CY 2007, one DFI was issued to FirstEnergy Nuclear Operating Company (FENOC) to provide the Commission with reasonable assurance that FENOC was able to continue to operate its licensed facilities in accordance with the terms of its license and the Commission’s regulations. (EA-07-123)

**II. Actions against Individuals and Non-Licensees**

During CY 2007, the agency issued 12 escalated actions to licensed and unlicensed individuals. This number is included in the total number of escalated enforcement actions (NOVs and orders) that the Agency issued in CY 2007. Appendix C provides brief summaries of the orders that were issued to individuals prohibiting or limiting their participation in NRC-licensed activities. Appendix D provides brief summaries of the NOVs that were issued to individuals in CY 2007.

The agency issued two escalated enforcement actions to non-licensees in CY 2007. Appendix E provides a brief summary of the non-security related case involving a contractor.

### **III. Cases Involving Discrimination**

During CY 2007, two cases involving allegations of discrimination were resolved using Alternative Dispute Resolution (ADR).

On January 3, 2007, a Confirmatory Order (Effective Immediately) was issued to the Nuclear Management Company, LLC (NMC), documenting a number of actions the licensee agreed to take as part of an ADR settlement agreement. An ADR session was held at the licensee's request to address the apparent violation of 10 CFR 50.7, "Employee protection." The actions the licensee agreed to take include: (1) revising NMC's policy on writing corrective action program reports; (2) training NMC supervisory employees on safety conscious work environment principles; (3) communicating NMC's safety culture policy to its employees; and (4) conducting a safety culture survey at the Point Beach Nuclear Plant. As reflected in the Order, in response to these actions, the NRC agreed not to pursue further enforcement action; however, the NRC will evaluate the implementation of the Confirmatory Order during future inspections. (EA-06-178)

On April 4, 2007, a Confirmatory Order (Effective Immediately) was issued to the Indiana Michigan Power Company (I&M) as part of a settlement agreement between I&M and the NRC regarding an apparent violation of 10 CFR 50.7, "Employee Protection," issued by the NRC to I&M. In response to an NRC choice letter, I&M requested to resolve the apparent violation. As part of the settlement agreement that resulted from the ADR session, I&M agreed to complete a number of actions, including the completion of the training of all non-supervisory plant workforce and long-term contractors on the subject of a safety-conscious work environment (SCWE), the completion of a Nuclear Safety Culture (including SCWE) survey, the reinforcement of I&M's policy and expectation of its management relating to a SCWE as communicated by an executive level manager, and the implementation of a periodic assessment of I&M's compliance with its hours of work limitation program and evaluation of the results for trends. In exchange for I&M's actions, the NRC agreed to not pursue further enforcement action; however, the NRC will evaluate the implementation of the Confirmatory Order during future inspections. (EA-06-295)

### **IV. Notices of Enforcement Discretion (NOEDs)**

Occasionally, circumstances may arise where a power reactor licensee's compliance with a technical specification (TS) or other license condition would involve an unnecessary plant transient or performance testing, inspection, or other system realignment that is inappropriate for the specific plant conditions. In these circumstances, the NRC staff (staff) may choose not to enforce the applicable requirement(s). This enforcement discretion, designated as a Notice of Enforcement Discretion or NOED, is exercised only if the staff is clearly satisfied that the action is consistent with protecting the public health and safety. The staff may also issue NOEDs in cases involving severe weather or other natural phenomena, when the determination is made that safety will not be compromised by exercising this discretion. NOEDs

require justification from a licensee or certificate holder that documents the safety basis for the request and provides whatever other information the staff deems necessary to issue an NOED.

In 2007, the NRC issued two NOEDs:

- NOED 07-3-01 issued on January 24, 2007, to Exelon Generation Company, LLC (Dresden Nuclear Power Station, Unit 2), providing enforcement discretion allowing the licensee to extend the 8-hour Completion Time for Technical Specification 3.1.7 Condition B to 72 hours to accomplish restoration of the Standby Liquid Control System to an operable status.
- NOED 07-4-01 was issued on July 12, 2007, to Wolf Creek Nuclear Operating Corporation (Wolf Creek Generating Station), providing enforcement discretion allowing the license to extend the length of Allowed Outage Time (AOT) in Technical Specification 3.8.1, "AC Sources - Operating," an additional 48 hours to support corrective maintenance activities on the diesel engine cooling water system without having to shut down.

## **V. Use of Judgment and Discretion in Determining Appropriate Enforcement Sanctions**

After considering the general tenets of NRC's Enforcement Policy and the safety-significance of a violation and its surrounding circumstances, judgment and discretion may be exercised in determining the severity levels of violations and the appropriate enforcement sanctions to be taken. In exercising discretion, the NRC may either escalate or mitigate the enforcement sanctions to ensure that the resulting enforcement action takes into consideration all the relevant circumstances of the particular case, and is in the interest of public health and safety.

Cases where OE exercises enforcement discretion occur for various reasons. For example, in CY 2007, enforcement discretion was applied to several materials cases where licensees had not implemented specific security requirements regarding increased controls (IC) of certain radioactive material in their possession in accordance with NRC Orders issued in CY2005. A total of 48 IC cases were the subject of escalated enforcement in CY 2007. Using the criteria in Enforcement Guidance Memorandum 2006-003, "Guidance for Dispositioning Enforcement Issues Associated With Orders Imposing Increased controls for Licensees Authorized to Possess Radioactive Material Quantities of concern," September 28, 2008. 31 of these cases resulted in the use of enforcement discretion. In these cases, the licensee was issued a close-out letter in lieu of a notice of violation.

Enforcement discretion was also applied to an Agreement State materials user who conducted licensed activities in an area of exclusive federal jurisdiction. After a review of the facts, it became clear that the company believed it was operating in an area of State jurisdiction. In addition, the NRC determined that, based on inspections, the company has had sustained good performance conducting the activities authorized in its Agreement State license.

## VI. Withdrawn Actions

Enforcement actions can be challenged for several reasons, e.g., a licensee might dispute the requirements, the facts of the case, the agency's application of the Enforcement Policy, or the significance of the violation. Licensees may provide clarifying information that was not available at the time of the inspection and this may affect whether a noncompliance exists.

During CY 2007, the Agency did not withdraw any escalated enforcement action.

In addition, OE has established a metric for quality of enforcement actions based on the number of disputed and withdrawn non-escalated enforcement actions. The goal is less than 30 withdrawn non-escalated enforcement actions in a calendar year. Violations that are withdrawn based on supplemental information that was not available to an inspector prior to assessing an enforcement sanction are not included in this metric. During CY 2007, approximately 1332 non-escalated enforcement actions were issued to reactor, materials, and fuel facility licensees. Of these actions, nine non-escalated enforcement actions were disputed. In CY 2007, the Agency withdrew all or part of five of these disputed actions.

## VII. Hearing Activities

During CY 2007, two hearings were pending before the Atomic Safety and Licensing Board (ASLB) involving two individuals who worked at the Davis Besse Nuclear Power Plant (Davis-Besse).

In the first case, the NRC issued an Order on April 21, 2005 against Mr. Andrew Siemaszko, a former system engineer at Davis-Besse, for deliberately providing inaccurate and incomplete information to the NRC. The Order prohibited him from involvement in NRC-licensed activities for 5 years from the effective date of the Order. On April 22, 2005, Mr. Siemaszko requested a hearing before the ASLB. As of December 31, 2006, the hearing has been on hold with the ASLB because of the concurrent proceeding brought by U.S. Department of Justice against Mr. Siemaszko in the U.S. District Court for the Northern District of Ohio, Western Division, arising out of the same set of facts and circumstances.

In the second case, the NRC issued an Order on January 4, 2006 against Mr. David Geisen, a former Manager of Design Engineering at Davis-Besse, for deliberately providing inaccurate and incomplete information to the NRC. The Order prohibited him from involvement in NRC-licensed activities for 5 years from the effective date of the Order. On February 23, 2006, Mr. Geisen requested a hearing before the ASLB. As of February 1, 2007, the hearing has been on hold with the Commission because of the concurrent proceeding brought by the U.S. Department of Justice against Mr. Geisen in the District Court for the Northern District of Ohio, Western Division, arising out of the same set of facts and circumstances.

## VIII. Enforcement Policy Changes and Enforcement Guidance Memoranda

The NRC Enforcement Policy is a living document and is revised to reflect experience and stakeholder input. On January 25, 2007, the NRC published notice in the *Federal Register* (FRN) (72 FR 3429) announcing that the agency was undertaking a major revision of its Enforcement Policy to clarify the use of terms and to update the Policy, removing outdated information and adding information addressing enforcement issues in areas that are currently not directly addressed in the Policy. The FRN pointed out that the NRC does not intend to modify its emphasis on compliance with NRC requirements and solicited written comments from interested parties. The comment period expired on March 26, 2007.

OE completed an initial draft of the revised Policy which was provided to the program and regional offices for comment, and is currently reviewing the comments that were provided and making the appropriate changes to the draft Policy. The Supplements are also being revised. The next step will be to publish the revised, draft Policy for public comment. After review and incorporation of appropriate stakeholder comments, a final draft of the Policy will be forwarded to the Commission.

In addition, five Enforcement Guidance Memoranda (EGM) were issued in CY 2007 to provide guidance in the interpretation of specific provisions of the Enforcement Policy. A link to the full text of these EGMs, summarized here, can be found in the Agencywide Documents Access and Management System (ADAMS) and in Appendix A of the NRC Enforcement Manual located on the OE Web site at:

<http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html>.

**A. *January 9, 2007, Enforcement Guidance Memorandum 07-001 – Enforcement Discretion For Certain Violations Associated With DOE Legacy Documents Found In Certain Leased Space***

The purpose of this EGM is to provide guidance for the exercise of enforcement discretion for non-willful involvement of United States Enrichment Corporation (USEC) in discoveries of Department of Energy (DOE) legacy information or materials found in NRC regulated site areas at the Paducah or Portsmouth Gaseous Diffusion Plant. (ML070090074)

**B. *January 26, 2007, Enforcement Guidance Memorandum 07-002 – Interim Guidance for Dispositioning Violations of 10 CFR 74.19(c)***

The purpose of this EGM is to provide guidance for dispositioning inspection findings related to a licensee's implementation of 10 CFR 74.19(c) involving physical inventories of special nuclear material (SNM) prior to November 26, 2005. (ML063180178)

**C. February 12, 2007, Enforcement Guidance Memorandum 07-003 – Disposition of Violations of 10 CFR 50.47(B)(4) for Failure to Maintain a Standard Emergency Action Level Scheme.**

The purpose of this EGM is to provide guidance pertaining to the disposition of noncompliances of 10 CFR 50.47(b)(4) for failure to maintain a standard emergency action level (EAL) scheme and 10 CFR 50.54(q) which states that EAL changes resulting in a decrease in the effectiveness of the emergency plan must be approved by the Commission before implementation. (ML070230310)

**D. June 30, 2007, Enforcement Guidance Memorandum 07-004 – Enforcement Discretion For Post-Fire Manual Actions Used as Compensatory Measures for Fire Induced Circuit Failures**

The purpose of this EGM is twofold: (1) to define September 6, 2007, as the end date for licensees to initiate corrective actions and to implement compensatory measures for noncompliances related to post-fire operator manual actions, except those operator manual actions that are relied upon as the mitigating mechanism for fire induced multiple-spurious actuations; and (2) to emphasize that March 6, 2009, is the date for the completion of corrective actions associated with noncompliances involving operator manual actions. (ML071830345)

**E. September 28, 2007, Enforcement Guidance Memorandum 07-006 Enforcement Discretion for Heavy Load Handling Activities**

The purpose of this EGM is to provide guidance for exercising enforcement discretion in dispositioning current unresolved and future potential performance deficiencies related to handling of heavy loads, particularly reactor vessel heads at nuclear power plants. (ML072550190)

## **IX. Ongoing Activities**

### **A. Safety Culture**

Beginning in CY 2005, OE was the lead office for an initiative to develop changes to the Reactor Oversight Process (ROP) to more fully address safety culture, in response to Commission direction in SRM-SECY-04-0111, "Recommended Staff Actions Regarding Agency Guidance in the Areas of Safety Conscious Work Environment and Safety Culture". The safety culture changes in the ROP were implemented in July 2006. In CY 2007, OE continued to be the lead office for agency safety culture policy development. As such, OE chairs the agency's Safety Culture Working Group (SCWG), and provides assistance and guidance to other offices in safety culture developmental activities. OE also participates as the vice-chair of the Office of Nuclear Reactor Regulation's Safety Culture Focus Team (SCFT). The purpose of the SCFT is to promote the implementation of the ROP safety culture changes in an effective and consistent manner across the regions. The Agency's Allegation Advisor, located in OE, chairs the SCFT's subgroup, the Safety Conscious Work Environment Findings Review Group, whose purpose is to ensure regulatory consistency by reviewing and dispositioning all potential inspection findings in the safety conscious work environment

(SCWE) cross-cutting area of the ROP. Additional information on SCWE activities can be found in the "Allegation Program, 2007 Annual Trends Report."

In an effort to continue the Commission's broad review of issues related to safety culture, a pilot study was developed in CY 2007 to assess the agency's safety culture components for applicability to the Office of Nuclear Materials Safety and Safeguards oversight of their fuel cycle facility licensees to better address safety culture. The pilot study is being conducted at two volunteer fuel facility licensees and will be accomplished in two phases. The first phase of the pilot study, which consists of data gathering, was initiated in CY 2007.

In addition, OE and the SCWG are involved in coordinating with the Office of New Reactors and the Office of Nuclear Security and Incident Response to assist in their developmental approaches related to aspects of safety culture.

## **B. Alternative Dispute Resolution**

At the beginning of FY 2005, the agency implemented a pilot program to evaluate the use of Alternative Dispute resolution (ADR), specifically mediation, in the Allegation and Enforcement Programs. The enforcement portion of the pilot program was initiated after OI had completed its investigation and based on the results of the investigation, the enforcement staff had concluded that further consideration of the issues identified in the OI report was warranted. This portion of the pilot program was typically referred to as "post-investigation" ADR.

Having decided to pursue enforcement based on the OI investigation report, ADR was offered at three points in the enforcement process: (1) prior to a predecisional enforcement conference; (2) when an NOV was issued; and (3) when cases resulted in the issuance of an order imposing a civil penalty. The post-investigation ADR pilot included an evaluation of the position that ADR would be less adversarial, less formal, and could promote greater communication which, in turn, could promote greater cooperation between parties at these points in the enforcement process. The potential for resource savings and a more timely resolution of issues was also anticipated.

The pilot program operated through the first quarter of 2006. On May 5, 2006, SECY-06-0102, "Evaluation of the Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Programs" was issued. In SECY-06-0102, the staff concluded that the use of ADR was, in general, a success and indicated that the program would be continued, pending formal incorporation of ADR into a subsequent Enforcement Policy revision. Despite limited resource savings overall in the enforcement portion of the ADR program, the opportunity for the staff to communicate openly with other parties in mediation with the assistance of a trained mediator helped the staff reach effective agreements that met NRC's interests. Corrective actions were broader and/or more comprehensive than typically achieved through the traditional enforcement process. Parties commented, both formally and informally, that ADR was a less confrontational means to resolve issues, due in large part to the improved communication.

During CY 2007, a total of eleven confirmatory orders documenting settlement agreements were issued (i.e., seven in reactor-related cases, two in fuel facility-related cases, and two in materials-related cases). Of the eleven cases, all but one was

negotiated prior to a Predecisional Enforcement Conference (PEC). The one exception was negotiated after issuance of the NOV and proposed civil penalty.

On December 14, 2007, the Office of the Inspector General (OIG) issued a memorandum report titled "Audit of NRC's Alternative Dispute Resolution Program" (OIG-08-A-03). In its report, the OIG found that the NRC had deemed the ADR pilot program a success and that NRC staff, ADR participants, and other external stakeholders expressed continuing satisfaction with the post-investigative ADR process. OIG also noted weaknesses in the program's guidance and management controls. Most of the issues identified by OIG were already known to the staff; however, insufficient time had elapsed between completion of the pilot program and the initiation of the OIG audit for the staff to address the weaknesses. As part of the audit, those weaknesses are tracked to completion.

Certain ADR process improvements, some generically described in the pilot program evaluation, were addressed during the period, including: (1) guidance, based on lessons learned during the pilot program, was developed on preparing and issuing confirmatory orders after a preliminary agreement is reached; (2) presentations, to further understanding of the process, were provided to NRC senior management development classes, mediator orientation sessions, various internal counterpart meetings, and industry groups; and (3) guidance was developed regarding interaction with agreement states in cases where the party is an agreement state licensee that was operating in NRC's jurisdiction at the time of the apparent violation.

**C. Fire Protection**

In June 2007, OE issued an EGM (see page 10) which provided September 6, 2007, as the end date for licensees to initiate corrective actions and to implement compensatory measures for noncompliances related to post-fire operator manual action. EGM-07-004 "Enforcement Discretion For Post-Fire Manual Actions Used as Compensatory Measures for fire Induced Circuit Failures", emphasized that March 6, 2009, is the date for completion of corrective actions associated with noncompliances involving operator manual actions.

**D. Rulemaking**

On November 14, 2007, the NRC published in the Federal Register (71 FR 5015) a final rule entitled "Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate against Employees for Engaging in Protected Activities." It became effective on December 14, 2007. The final rule amended the Commission's employee protection regulations to allow the Commission to impose civil penalties on contractors and subcontractors for violations of the requirements in 10 CFR 30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7. The final rule also amended 10 CFR 76.7 to bring it into conformance with the provisions of the other NRC's employee protection regulations by providing that the Commission may impose a civil penalty on the United States Enrichment Corporation or a contractor or subcontractor of the United States Enrichment Corporation. Notice of a revision to the Enforcement Policy clarifying the Commission's civil penalty authority over contractors and subcontractors was published in the *Federal Register* on January 7, 2008.



## **E. Public Involvement**

The NRC views building and maintaining public trust and confidence as an important performance goal for the agency as it carries out its mission. To reach this goal, the NRC must be an independent, open, efficient, clear and reliable regulator and must find appropriate ways to convey this message to the public, including providing stakeholders with clear and accurate information about, and a meaningful role in, our regulatory programs.

To further these goals, the NRC's Enforcement Program has been structured to actively engage stakeholders by educating them on how the enforcement program is conducted and how it is changing to support new initiatives in the agency's oversight programs.

To provide accurate and timely information to all interested stakeholders and enhance the public's understanding of the NRC's Enforcement Program, information about the Enforcement Program has been placed on the NRC's public Web site where it can be retrieved and downloaded. The NRC's Enforcement Web site includes a variety of information such as the Enforcement Policy, the newly revised Enforcement Manual, and current temporary enforcement guidance contained in Enforcement Guidance Memoranda (EGMs). This Web site also contains information regarding significant enforcement actions issued to reactor and materials licensees, non-licensees (vendors, contractors, and certificate holders), and individuals and upcoming predecisional enforcement conferences. Although consistent with NRC practices and policies, most security-related actions and activities are not included on the NRC's public Web site. OE does include security orders that impose compensatory security requirements on various licensees in its enforcement documents collection.

In an effort to increase stakeholder involvement in the development of enforcement policy and guidance, OE also established a public participation page on the Enforcement Web site which allows interested stakeholders to provide input on various enforcement issues, e.g. the use of Alternative Dispute Resolution in enforcement.

## **F. Reviews and Self Assessments**

### **Review of Open Predecisional Enforcement Conferences**

The Office of Enforcement completed a review of predecisional enforcement conferences (PECs) that were open to the public from January 1, 2004, through August 30, 2007. The purpose of the review was to determine whether the meeting announcements for these PECs (1) were posted within the required time in ADAMS and (2) followed the guidelines provided in Chapter 4 of the NRC Enforcement Manual and Management Directive 3.5 which requires the staff to prepare and issue a complete and clear meeting summary within 30 working days of the meeting. The review also included identifying whether any open PECs had been transcribed. The review evaluated PECs Agency-wide rather than examining individual office performances.

The review concluded that in all cases, the summary was sent to the licensee either before or when the enforcement action was issued in accordance with the guidance provided in Chapter 4 of the Enforcement Manual. The summaries were clear and concise and usually had the accession number for material that was relevant to the

meetings (such as slides, licensee or NRC handouts) available in the body of the document. However, some summaries were difficult to find due to the fact that enforcement action (EA) numbers were not directly linked to the package.

Based on the results of the review, several recommendations were provided and are being implemented. These are that: (1) the Regions ensure that meeting notices and summaries include the EA number for the case to make it easier to find all materials that are related to the case; (2) ADAMS templates are revised to include the use of an ADAMS package that will link all material associated with the case including inspection reports, meeting notices, meeting summaries, and notices of violation; and (3) accession numbers of material that was relevant to the PEC in the conference summary continue to be included.

### **Review of Enforcement Assessments - Recommendation Implementation**

The Office of Enforcement completed a review of recommendations resulting from the quarterly enforcement assessments. The purpose of the review was to verify that enforcement assessment recommendations were being implemented and/or tracked in OE Action Item Tracking System (AITS). The assessments reviewed included:

1. Review of Office of Enforcement Action Tracking System, dated July 29, 2005.
2. Review of Factual Summaries of Office of Investigations Reports Attached to Regional Inspection Reports and Choice Letters, dated September 26, 2005.
3. Review of the Enforcement Action Tracking System, dated January 13, 2006.
4. Review of the 3 Week E Mail Process, dated April 11, 2006.
5. Office of Enforcement Review of 10 CFR 50, Appendix B, Criterion XVI, Green Non-Cited Violations, dated July 17, 2006.

OE found that, for the most part, all of the assessment recommendations were either completed, currently being implemented, or included in the AITS database to be completed. The staff noted that the recommendation to develop an internal office procedure for assigning, opening, extending and closing tasks within the AITS was closed in AITS; however, although a procedure was developed, it had not been approved by OE management.

## **X. Regional Accomplishments**

### **Reviews**

During CY 2007, the regions conducted both routine and focused self assessments of the enforcement area to ensure effective performance and to identify opportunities for continuous improvement. The self assessments encompassed both the reactor and materials arenas; considered performance associated with development and issuance of both non-escalated and escalated enforcement actions; and included activities that required a high degree of coordination with other NRC stakeholders, such as the Office of Investigations.

These assessments included the following reviews:

- reactor and materials non-escalated enforcement actions to ensure consistent implementation of the enforcement policy;
- the three-week email process for handling unsubstantiated OI cases;
- effectiveness of the Enforcement Panel Worksheet when considering willfulness;
- draft notices of violation used to support OI investigations

Overall, the self-assessments showed the regions were effectively implementing the Enforcement Program. However, opportunities for improvement were identified associated with some of the administrative tools used to facilitate the enforcement process and with draft and final enforcement products associated with wrong-doing cases. The regions developed recommended corrective actions for each of the items and shared the results of the self assessments with OE. For example, the Enforcement Panel Worksheet was modified to improve effectiveness of enforcement panels.

### **Training**

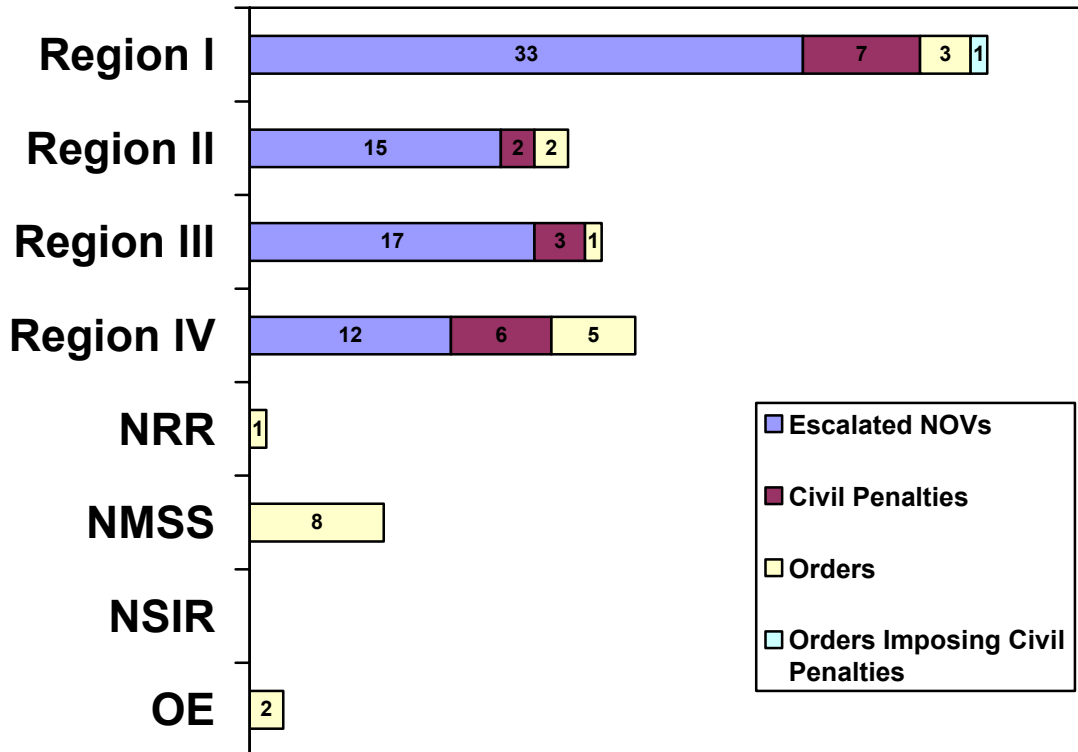
During CY 2007, the regions provided initial and refresher enforcement training to their respective staff, provided directed training to regional staff in response to recommendations developed as a part of the routine and focused self assessments, and provided outreach training to both internal and external stakeholders.

The regional efforts to ensure quality initial and ongoing training to all regional staff has been a critical component in facilitating the timely qualification and contribution of the large number of newly hired staff, including nuclear safety professional program participants. Headquarters and regional enforcement staff provided outreach training to internal stakeholders on the allegation, enforcement, and Alternate Dispute Resolution processes during an annual Office of Investigations Counterpart Meeting. External outreach training on the allegation and enforcement processes was also provided by headquarters and regional staff during licensee employee concerns program forums and regional utility groups. Training provided as a part of the internal and external stakeholder outreach efforts has increased the staff's understanding of the key interests of important stakeholders.

Table 3. CY 2007 – Escalated Enforcement Actions by Regions and Program Office

Program Office	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalty	TOTAL
Region I	33	7	3	1	44
Region II	15	2	2	0	19
Region III	17	3	1	0	21
Region IV	12	6	5	0	23
NRR	0	0	1	0	1
NMSS	0	0	8	0	8
NSIR	0	0	0	0	0
OE	0	0	2	0	2
<b>TOTAL</b>	<b>77</b>	<b>18</b>	<b>22</b>	<b>1</b>	<b>118</b>

Figure 4. CY 2007 – Escalated Enforcement Actions by Regions and Program Office



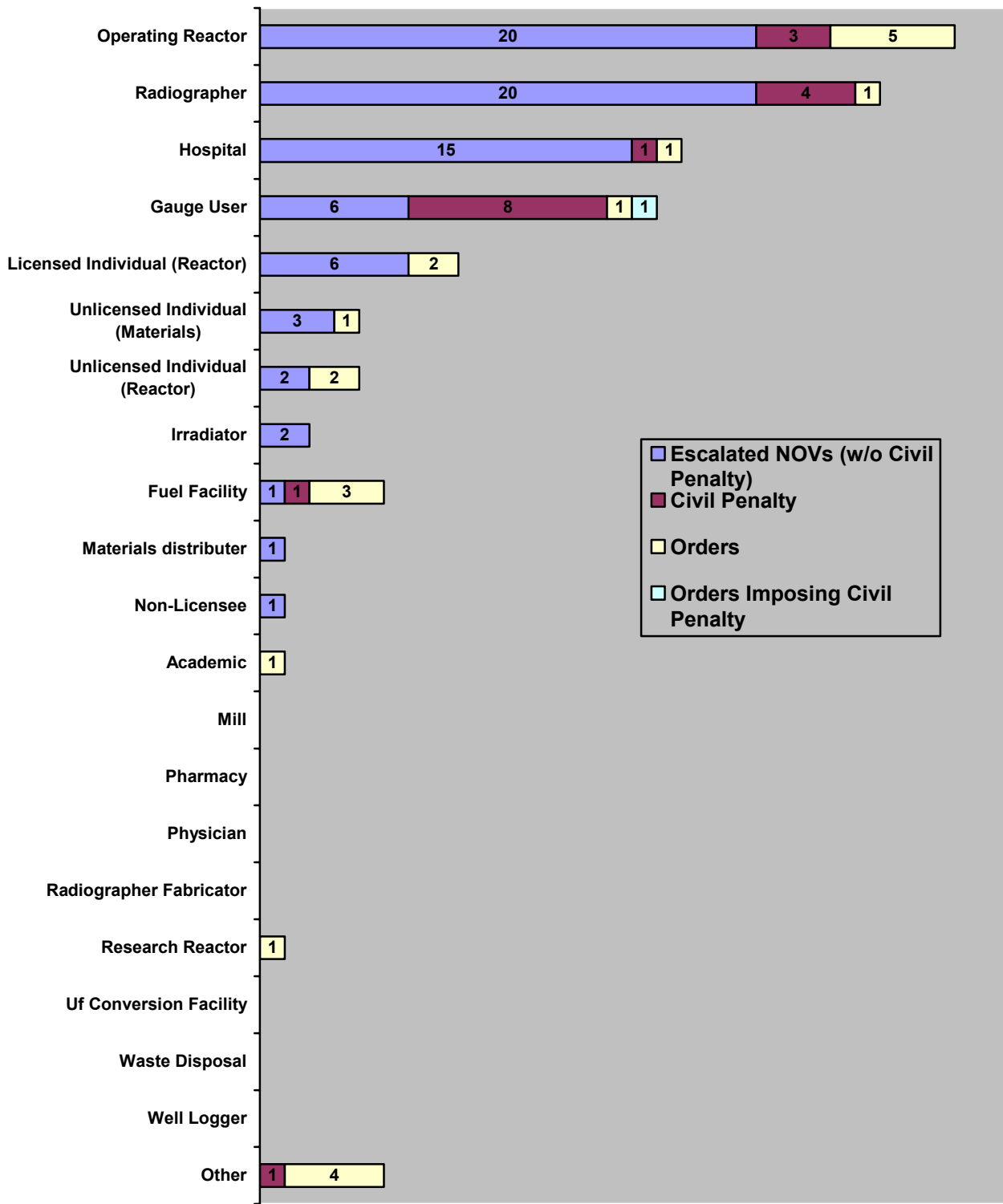
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**Table 4. CY 2007 – Escalated Enforcement Actions  
By Type Of Licensee, Non-Licensee, or Individual**

Type of Licensee	Escalated NOVs (w/o Civil Penalty)	Civil Penalty	Orders	Orders Imposing Civil Penalty	TOTAL
Operating Reactor	20	3	5	0	28
Radiographer	20	4	1	0	25
Hospital	15	1	1	0	17
Gauge User	6	8	1	1	16
Licensed Individual (Reactor)	6	0	2	0	8
Unlicensed Individual (Materials)	3	0	1	0	4
Unlicensed Individual (Reactor)	2	0	2	0	4
Irradiator	2	0	0	0	2
Fuel Facility	1	1	3	0	5
Materials Distributer	1	0	0	0	1
Non-Licensee	1	0	0	0	1
Academic	0	0	1	0	1
Mill	0	0	0	0	0
Pharmacy	0	0	0	0	0
Physician	0	0	0	0	0
Radiographer Fabricator	0	0	0	0	0
Research Reactor	0	0	1	0	1
UF Conversion Facility	0	0	0	0	0
Waste Disposal	0	0	0	0	0
Well Logger	0	0	0	0	0
Other	0	1	4	0	5
<b>TOTAL</b>	<b>77</b>	<b>18</b>	<b>22</b>	<b>1</b>	<b>118</b>

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Figure 5. CY 2007 - Escalated Enforcement Actions By Type of Licensee, Non-Licensee, or Individual





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## Appendix A: Summary of Escalated Notices of Violation Without Civil Penalties\*

Alaska Industrial X-ray  
Anchorage, AK

EA-06-304

On June 21, 2007, a Notice of Violation was issued for a Severity Level III violation involving a failure to notify the NRC within 24 hours after the discovery of an event in which equipment failed to function as designated. Specifically, following the determination that a radiographic exposure device had failed to automatically secure the source assembly when it had been cranked back into the fully shielded position, the licensee failed to make the initial report.

Alaska Industrial X-Ray, Inc.

EA-07-261

Anchorage, AK

On October 19, 2007, an Order Suspending Licensed Activities (Effective Immediately) was issued to Alaska Industrial X-Ray, Inc. (AIX) based on the NRC's determination that all AIX radiographers, including AIX's Radiation Safety Officer, and assistants, violated 10 CFR 34.41(a) by performing industrial radiographic operations at a temporary job site with only one qualified individual present during operations. The evidence the NRC relied on indicates that these activities have occurred on numerous occasions, for a period of up to three years. Because the NRC issued a Notice of Violation on April 25, 2001, for a willful violation of 10 CFR 34.41(a) at the same client facility location, serious concerns were raised regarding AIX's willingness to comply with the Commission's requirements and its ability to conduct licensed activities without undue risk to the public's health and safety, resulting in the issuance of this order suspending all radiographic operations authorized by AIX's license.

Arizona Public Service Company  
Palo Verde Nuclear Generating Station, Unit 3

EA-06-296

On February 21, 2007, a Notice of Violation was issued for a violation associated with a WHITE Significance Determination Process finding involving the failure to develop adequate instructions or procedures for corrective maintenance activities on the Unit 3, Emergency Diesel generator (EDG) A K-1 relay and the failure to identify and correct the cause of the erratic K-1 relay operation prior to installation of the relay. This resulted in the emergency diesel generator being inoperable for almost four weeks. The violation was cited against 10 CFR 50, Appendix B, Criteria V, "Instructions, Procedures, and Drawings" and 10 CFR 50, Appendix B, Criteria XVI, "Corrective Action."

Blakemore Construction Corporation  
Rockville, VA

EA-07-174

On October 11, 2007, a Notice of Violation was issued for a Severity Level III violation of 10 CFR 30.34(i). The violation involved the failure to maintain a minimum of two independent physical controls that formed a tangible barrier to secure a portable gauge from unauthorized removal during a period when the gauge was not under direct control or surveillance. Specifically, two portable gauges were stored in an unlocked storage room located in an unlocked building at one of the licensee's job sites.

\* Please note that cases involving security-related issues are not included

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Cal Testing Services, Inc.  
Griffith, IN

EA-07-191

On September 7, 2007, a Notice of Violation was issued for a Severity Level III violation involving a radiographer who, contrary to the requirements in 10 CFR 34.37(a), did not wear a personnel dosimeter on the trunk of the body, during radiographic operations. Specifically, the radiographer placed his personnel dosimeter into his coat pocket and subsequently removed his coat and left the coat (with dosimeter in the pocket) in the vicinity of the camera prior to radiographic operations.

Carolina Power and Light Company  
Brunswick Steam Electric Plant

EA-07-024

On April 20, 2007, a Notice of Violation was issued for a violation associated with a White Significance Determination Process (SDP) finding involving: (1) inadequate corrective actions to prevent a repeat failure of the #9 main crankshaft bearing on emergency diesel generator (EDG) #1; (2) the failure to follow the foreign material exclusion procedure during maintenance performed on EDG #1; and (3) the failure to promptly identify and implement adequate actions to prevent EDG #1 from tripping on low lubricating oil pressure. These conditions ultimately contributed to an EDG #1 trip and a bearing failure during a Unit 2 loss-of-offsite-power event. The violation was cited against Technical Specification 3.8.1, "AC Sources-Operating," because EDG #1 was inoperable from October 30 to November 7, 2006. As a result, while Unit 1 was operating in Mode 1, only three of four EDGs were operable for a period in excess of 7 days.

Constellation Nuclear  
Nine Mile Point Nuclear Station Unit 1

EA-07-001

On March 13, 2007, a Notice of Violation was issued for a violation associated with a WHITE Significance Determination Process finding involving an activity that compromised the integrity of the annual Licensed Operator Requalification (simulator) exam at Unit 1 for calendar years 2005 and 2006. Specifically, the process used by the licensee to select and validate the simulator exam scenarios resulted in the licensed operators being knowledgeable of a significant portion of the exam prior to its administration, affecting the equitable and consistent administration of the exam. The violation was cited against 10 CFR 55.49, "Integrity of examinations and tests."

Cooper Health System  
Camden, NJ

EA-07-102; EA-07-126

On June 8, 2007, a Notice of Violation was issued for two Severity Level III violations. The first violation involved a failure to verify that a high dose rate remote afterloader brachytherapy treatment was administered in accordance with the treatment plan and written directive. The second violation involved a failure to report a medical event. Specifically, a high dose rate remote afterloader treatment fraction was delivered in which the source was positioned outside of the patient's body for a portion of the treatment. The dose delivered to the treatment site differed from the prescribed dose by more than 50 rem to an organ or tissue and the fractionated dose differed from the prescribed dose, for a single fraction, by 50 percent or more.

Department of the Army  
Fort Hood, Texas

EA-07-152

On October 25, 2007, a Notice of Violation was issued for three Severity Level III violations involving the failure to implement Increased Controls. Specifically, the licensee failed to have a program to monitor and immediately detect, assess, and respond to unauthorized access to radionuclides of concern during all periods of time when a blood irradiator containing radionuclides of concern at or above threshold limit; the licensee failed to arrange a plan with Fort Hood security forces that addressed a response to an unauthorized access to radioactive material quantities of concern or devices; and the licensee had not developed, maintained, and implemented policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of its physical protection information for radioactive material.

Department of the Navy  
Albany, Georgia

EA -07-91

On June 29, 2007, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. Specifically, when an Ir-192 radiography source was received, it was improperly stored, and controlled. In addition, the device was not secured from unauthorized removal nor was it maintained under constant surveillance.

Dept. of the Navy  
Portsmouth, Virginia

EA -07-93

On June 29, 2007, a Notice of Violation was issued for a Severity Level III violation involving the failure to maintain continuous direct visual surveillance during a radiographic operation to protect against unauthorized entry into a high radiation area. Specifically, a radiographer exposed a Cobalt-60 sealed source in an area that was occupied by three individuals, creating a high radiation area, without first clearing the area to protect against unauthorized entry into a high radiation area, and without providing visual surveillance of the area.

Dominion Energy Kewaunee  
Kewaunee Power Station

EA-07-058

On April 3, 2007, a Notice of Violation was issued for a violation associated with a Yellow Significance Determination Process finding involving the failure of licensee personnel to follow procedural requirements and enter a fuel leak on the "A" emergency diesel generator into the corrective action program on June 28, 2006, when the leak was first identified. This failure resulted in the leak not being appropriately evaluated and repaired until August 17, 2006. The NRC has determined that this failure is a performance deficiency and is also a violation of the licensee's Technical Specifications which state, in part, that written procedures and administrative policies shall be established, implemented, and maintained.

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Duke Power Company, LLC, d/b/a Duke Energy Carolinas, LLC  
Oconee Nuclear Station

EA-06-294

On February 13, 2007, a Notice of Violation was issued for a violation associated with a WHITE Significance Determination Process finding involving the identification of foreign material in the Unit 3 A and B train reactor building emergency sump (RBES) suction lines during the end-of-cycle 22 refueling outage. Specifically, some time prior to and for the duration of Oconee Unit 3 operating cycle 22, adequate foreign material exclusion controls had not been implemented resulting in the discovery of foreign material in the A and B train RBES suction lines. The violation was cited against Technical Specification 5.4.1, "Procedures," and Section 9.e of the referenced Regulatory Guide 1.33 for the failure to comply with Nuclear System Directive 104, "Material Condition/Housekeeping, Cleanliness/Foreign Material Exclusion, and Seismic Concerns," for the failure to maintain the Unit 3 RBES free of foreign material.

EGS Associates, Inc.  
Atlantic City, NJ

EA 06-288

On January 10, 2007, a Notice of Violation was issued for a Severity Level III violation involving the failure, on two separate occasions, to provide a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal when not under the control and constant surveillance of the licensee. Specifically, on September 21, 2006, a portable nuclear gauge was not secured within an unlocked company vehicle; and, a second gauge was not secured within a locked storage shed.

Entergy Nuclear Operations, Inc.  
Indian Point, Units 1 and 2

EA-07-212

On August 30, 2007, a Notice of Violation was issued for failure to meet the conditions of a July 30, 2007, Order which required the licensee to implement an Emergency Notification System (ENS) with backup power capability by August 24, 2007. Specifically, the licensee failed to obtain necessary approvals by August 24, 2007. The NRC will determine the severity level, any additional civil penalty, and any required responses from Entergy regarding the matter at a later time.

Exelon Generation Company, LLC  
Clinton Power Station

EA-06-291

On February 7, 2007, a Notice of Violation associated with a White Significance Determination Process finding was issued involving the failure to select an appropriate method for calculating the minimum elevation (i.e., the analytical level) of water above the high pressure core spray (HPCS) pump suction line to preclude vortex formation and subsequent air entrainment in the pump's suction. As a result, the analytical level would result in significant air entrainment potentially causing the HPCS to be incapable of completing its safety function.

Exelon Generation Co., LLC  
Limerick Generating Station

EA-07-085

On August 13, 2007, a Notice of Violation was issued for a Severity Level III violation based on the acts of a security supervisor who deliberately violated requirements to remain attentive while standing watch.

Florida Power and Light Energy  
Duane Arnold Energy Center

EA-07-017

On April 2, 2007, a Notice of Violation was issued for a violation associated with a White Significance Determination Process finding involving the failure of the licensee's 2006 full-scale exercise critique to identify a weakness associated with a Risk Significant Planning Standard which was also a Drill and Exercise Participation Performance Indicator. The NRC has determined that this failure is a performance deficiency and is also a violation of emergency preparedness planning standard 10 CFR 50.47(b)(14) and associated risk significant planning standard 10 CFR 50.54(b)(4).

General Testing & Inspection Company  
Bordentown, NJ

EA-07-025

On March 12, 2007, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to implement Increased Controls. Specifically, on May 13, 2006, the licensee possessed approximately 27.6 curies of iridium-192 and did not have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to such radioactive material and failed to have a pre-arranged plan with a local law enforcement agency for assistance in response to an actual or attempted theft of such radioactive material.

Hackley Hospital  
Muskegon, Michigan

EA-07-071

On June 20, 2007, a Notice of Violation was issued for a Severity Level III violation involving a failure to develop written procedures to provide high confidence that each administration was in accordance with the written directive. Specifically, the licensee's written procedures for prostate seed implant treatment did not include appropriate steps or guidance to ensure that radioactive sources were positioned in the patient in accordance with the written directive and treatment plan.

Hirata & Associates, Inc.  
Aiea, Hawaii

EA-06-300

On June 5, 2007, a Notice of Violation was issued for a Severity Level III violation involving the failure to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal when the gauges were not under the control and constant surveillance of licensee personnel.

JCK & Associates  
Commerce Township, MI

EA-07-217

On June 8, 2007, a Notice of Violation and Exercise of Enforcement Discretion were issued for two Severity Level III violations. The first violation involved the licensee's failure to meet the terms and conditions of an order issued to the licensee for not paying its annual fees. The second violation involved the licensee's failure to use a minimum of two independent physical controls that form tangible barriers to secure three portable gauges from unauthorized removal, when the portable gauges were not under the control and constant surveillance of the licensee. Specifically, the licensee stored the gauges in unlocked transportation cases located inside an unoccupied, unlocked hallway that could be accessed by unauthorized individuals. Although a civil penalty would normally be issued in this case, enforcement discretion was exercised

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because the licensee has transferred all licensed material to an authorized recipient, its NRC license has been terminated, and the licensee has no intention of conducting NRC-licensed activities in the future.

Mercy Hospital  
Scranton, PA

EA-07-018

On April 5, 2007, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to a High Dose Rate Afterloader which was stored in a treatment room, access to which was not restricted as required.

Milton A. Hershey Medical Center  
Hershey, PA

EA-07-048

On April 4, 2007, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to radioactive material located in the nuclear medicine department hot lab, which is a controlled area. In addition, the licensee did not control and maintain constant surveillance of this licensed material.

Nebraska Public Power District  
Cooper Nuclear Station

EA-07-090

On August 17, 2007, a Notice of Violation was issued for a violation associated with a White Significance Determination Process finding involving a violation 10 CFR Part 50, Appendix B, Criterion XVI. The licensee failed to establish measures to promptly identify and correct a significant condition adverse to quality (SCAQ) and failed to assure that the cause of a SCAQ was determined and corrective action taken to preclude repetition. Specifically, the licensee's inadequate procedural guidance for evaluating the suitability of parts used in safety related applications presented an opportunity in which the licensee failed to promptly identify a defective voltage regulator circuit board used in Emergency Diesel Generator (EDG) 2 prior to its installation. Following installation of the defective EDG 2 voltage regulator circuit board, the licensee failed to determine the cause of two high voltage conditions, and failed to take corrective action to preclude repetition. As a result, an additional high voltage condition occurred resulting in a failure of EDG 2.

Nuclear Management Company, LLC  
Point Beach Nuclear Plant

EA-06-274

On January 29, 2007, a Notice of Violation was issued for a Severity Level III violation. The violation involved the licensee's failure to update its Final Safety Analysis Report (FSAR) in 1983 which, combined with the licensee's continued failure to fully understand the facility's licensing and design basis since that time, impacted the licensee's ability in 2005 to understand the current Point Beach licensing and design basis, and resulted in a performance deficiency. The performance deficiency also impacted the NRC's ability to perform its regulatory function. The licensee's failure to update the FSAR and understand the facility's licensing and design basis represented a challenge to the regulatory envelope upon which certain activities were licensed, such as reactor vessel head lift activities.

Omaha Public Power District  
Fort Calhoun Station

EA-07-047

On May 29, 2007, a Notice of Violation was issued for a violation associated with a White Significance Determination Process finding involving the improper installation of the valve disk of a Containment Spray Header Isolation Valve. The improper installation resulted in a condition in which the actual position of the valve was nearly opposite of the indicated position. This condition resulted in an inoperable train of the containment spray system for an entire operating cycle and also provided a reactor coolant system diversion flow path if shutdown cooling was initiated following certain postulated accident conditions. The violation was cited against 10 CFR Part 50, Appendix B, Criterion V, "Instructions, Procedures, and Drawings," for conducting maintenance activities without procedures that were appropriate to the circumstances. Specifically, the maintenance and post-maintenance procedures did not require actions to verify the correct orientation of the valve.

Omaha Public Power District  
Fort Calhoun Station

EA-07-194

On December 7, 2007, a Notice of Violation was issued for violations associated with a White Significance Determination Process finding involving a violation of 10 CFR 50, Appendix B, Criterion XVI, and a violation of the Fort Calhoun Technical Specifications. Specifically, the licensee failed to promptly identify and correct a significant condition adverse to quality involving high resistance across the field flash contacts of a relay in the Train A emergency diesel generator voltage regulator circuit and failed to provide a written procedure for maintenance that could affect the performance of safety-related EDG voltage regulator relay auxiliary contacts.

PK Associates, Inc.  
dba Briggs Engineering & Testing  
Rockland, MA

EA 07-166

On August 2, 2007, a Notice of Violation was issued for a Severity Level III violation of 10 CFR 30.34(i). The violation involved the failure to maintain a minimum of two independent physical controls that formed a tangible barrier to secure a portable gauge from unauthorized removal during a period when the gauge was not under direct control or surveillance. Specifically, a Troxler portable gauge was found unattended on top of a two foot wall, adjacent to a new road construction project. The authorized user was out of the direct line of sight to the gauge, leaving the gauge unattended for approximately ten minutes.

Professional Service Industries, Inc.  
Oakbrook Terrace, IL

EA-06-255

On February 23, 2007, a Notice of Violation was issued for a violation involving the failure to use a minimum of two independent physical controls that formed tangible barriers to secure portable gauges from unauthorized removal when the gauges were not under the control and constant surveillance of licensee personnel.

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South Carolina Electric & Gas Company  
Virgil C. Summer Nuclear Station

EA-07-079

On October 12, 2007, a Severity Level III Notice of Violation and Exercise of Enforcement Discretion were issued to South Carolina Electric & Gas Company (SCE&G). The violation resulted from changes the licensee made to its Emergency Plan between October 1980 and July 2006. Contrary to 10 CFR 50.54(q) which allows a licensee to make changes to emergency plans without Commission approval when such changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b), SCE&G made changes without Commission approval which decreased the effectiveness of their Emergency Plan and resulted in the use of a non-standard scheme of Emergency Action Levels.

Southern Nuclear Operating Company  
Joseph M. Farley Nuclear Plant

EA-07-155

On August 17, 2007, parallel White finding was issued to Southern Nuclear Operating Company as a result of inspections at the Joseph M. Farley Nuclear Plant. The parallel White finding was identified during a supplemental inspection to assess the licensee's evaluation associated with unreliability and unavailability reporting in the Support Cooling Water Systems Performance Indicator (PI) within the Mitigating Systems Performance Index (MSPI). Failures of the licensee's existing safety-related breakers associated with this PI predominantly contributed to the indicator crossing the threshold to White in the second quarter of 2006. This PI was subsequently reported Green in the 3rd quarter of 2006. The supplemental inspection for the White PI identified significant weaknesses related to the thoroughness and quality of several root cause evaluations that challenged the licensee's ability to implement effective overall corrective actions. The licensee's evaluations of the individual failures that contributed to the White PI did not effectively review for systemic aspects of circuit breaker failures. In addition, more recent problems were identified concerning the thoroughness of design reviews for the installation of new breakers. Based on these NRC identified weaknesses, a parallel PI inspection finding (White) was opened to allow the NRC to continue to monitor activities in this area.

Southern Nuclear Operating Company  
Joseph M. Farley Nuclear Plant, Unit 2

EA-07-173

On October 31, 2007, a Notice of Violation was issued for a violation associated with a Yellow Significance Determination Process finding involving a violation of 10 CFR 50, Appendix B, Criterion XVI. Specifically, the licensee failed to promptly identify and correct a significant condition adverse to quality that resulted in the Unit 2 containment sump suction to residual heat removal pump 2A, an encapsulated valve, failing to stroke full open during testing on two occasions. The licensee did not assure that the causes of the condition, including rust/corrosion accumulation on valve components in the valve encapsulation dating back to 2001, were determined and corrective action taken to preclude repetition.

St. Luke's Hospital of Kansas City  
Kansas City, MO

EA-06-315

On March 14, 2007, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to develop written procedures to provide high confidence that each administration is in accordance with the written directive. Specifically, the licensee's written



procedures for high dose rate (HDR) brachytherapy treatment did not include a requirement to verify that the correct HDR catheter length was entered into the treatment planning computer.

Tome & Ubinas Radio Oncology Center  
San Juan, PR

EA-07-103

On October 11, 2007, a Notice of Violation was issued for a Severity Level III violation involving the failure to meet the physical presence requirements in 10 CFR 35.615(f)(2) during High Dose Radiation (HDR) brachytherapy treatments. Specifically, on two occasions the licensee willfully performed HDR brachytherapy treatments without the physical presence of an authorized user and on two additional occasions the licensee willfully performed HDR brachytherapy treatments without the physical presence of an authorized user and continued patient treatments without the authorized user or a physician under the supervision of an authorized user physically present.

University of Pittsburgh  
Pittsburgh, PA

EA-06-266; EA-06-278

On July 23, 2007, a Notice of Violation and Confirmatory Order (Effective Immediately) were issued to the licensee, for a Severity Level III violation. As a result of an Alternative Dispute Resolution (ADR) mediation session conducted at the licensee's request, the NRC agreed to final disposition of this matter by citing a single violation of the requirements in 10 CFR 35.24(b). Specifically, the licensee through the Radiation Safety Officer (a) failed to ensure the physical presence requirements of 10 CFR 35.615(f)(3) from May 13, 2004, to March 10, 2005; and (b) failed to ensure that written directives were consistently signed by all three members of a Gamma Knife team prior to administration of gamma stereotactic radiosurgery treatments in accordance with 10 CFR 35.32 between 1998 and 2000. The NRC concluded that certain aspects of the 10 CFR 35.24(b) violation were willful. The licensee disputed this conclusion. The NRC and the licensee have agreed to disagree regarding any willful aspects of this violation. In light of the actions that the licensee has taken, or has committed to take, as described in the Confirmatory Order, as well as the fact that the violation did not result in any known safety consequences to patients, workers, or the public, the NRC agreed to issue a Notice of Violation without a civil penalty.

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**Appendix B: Summary of Cases Involving Civil Penalties \***

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Accurate NDE and Inspection, LLC  
Broussard, LA

EA-06-281

On March 20, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$13,000 was issued for a Severity Level III problem. The violations involved the failure to secure from unauthorized removal or limit access to a radiographic exposure device that was being improperly stored on an offshore platform, which was in a controlled area or unrestricted area; the failure to wear required personnel dosimetry during radiographic operations; and the failure to provide complete and accurate information on documents provided to an NRC inspector. Because wilfulness was associated with the problem, the NRC considered whether credit was warranted for Identification and Corrective Action in accordance with the civil penalty assessment process in the NRC Enforcement Policy, and determined that in this case, it was not.

Alpha Omega Services, Inc.  
Bellflower, CA

EA-07-215

On December 20, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$19,200 were issued for a Severity Level II violation. In January 2003, the company deliberately provided materially inaccurate information to an NRC licensee and to a contractor for the licensee in violation of 10 CFR 71.8(b)(2). The company Operations Manager/Assistant Radiation Safety Officer signed a maintenance checklist indicating that a package was in compliance with the NRC Certificate of Compliance and approved for use, when he knew it was not. Additionally, in violation of 10 CFR 71.8(b)(1), Alpha Omega Services deliberately caused the NRC licensee to violate NRC requirements for a license when the licensee exported licensed material in nonconforming packages.

C & W Enterprises, Inc.  
Sioux Falls, SD

EA-07-022

On July 13, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III violation. The violation of 10 CFR 30.34(i) involved the licensee's failure to use a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal when the portable gauges was not under the control and constant surveillance of the licensee. Specifically, no tangible barrier was used to secure a portable gauge that was stored in a warehouse, prior to November 27, 2006, and on April 24, 2007, only one physical control that formed a tangible barrier was used to secure the portable gauge from unauthorized removal.

*\* Please note that cases involving security-related issues are not included*

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Englewood Hospital and Medical Center  
Englewood, New Jersey

EA-06-309

On April 30, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem involving the submittal of inaccurate information to the NRC in support of a request to amend the license to add an individual as an Authorized Medical Physicist.

Entergy Nuclear Operations, Inc.  
Indian Point Nuclear Generating Station

EA-07-092

On April 23, 2007, a Severity Level III Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$130,000 was issued to Entergy Nuclear Operations, Inc. for failure to meet the requirements of a Confirmatory Order (EA-05-190) issued on January 31, 2006. The Order required that the licensee provide and maintain a backup power supply for the Indian Point Emergency Notification System (ENS). Specifically, the "radio only activation" feature, the portion of the ENS for which the backup power capability was provided, was required to meet its test acceptance criteria by April 15, 2007. The licensee did not meet its test acceptance criteria, resulting in the ENS not being fully operable by April 15, 2007.

Exelon Generation Company, LLC  
Dresden Nuclear Power Station

EA-07-200

On November 27, 2007, a Notice of Violation and Exercise of Discretion for Proposed Imposition of Civil Penalty in the amount of \$65,000 was issued for a Severity Level III problem consisting of four violations involving the licensee's failure to comply with 10 CFR 74.19 between 1959 and 2007. In summary, the licensee failed to (a) keep complete records showing the inventory (including location and unique identity), transfer, and disposal of all special nuclear material (SNM) in its possession; (b) establish, maintain, and follow written MC&A procedures that were sufficient to enable the licensee to account for SNM in its possession; and (c) conduct a physical inventory of all SNM in its possession at intervals not to exceed 12 months. This resulted in the failure to account for two fuel pellets and a number of incore detectors containing SNM.

Indiana Department of Transportation  
Greenfield, Indiana

EA-07-253

On December 12, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem. The licensee twice failed to use a minimum of two independent controls that form tangible barriers to secure portable gauges from unauthorized removal during a period when the portable gauges were not under the control and constant surveillance of the licensee, resulting in a violation of 10 CFR 30.34(i). Specifically, a gauge was stolen from a temporary job site when the gauge operator walked away from the gauge while the gauge was on the ground behind the back of a pick-up truck. On another occasion the gauge was secured to the truck bed with only one physical control while not under the constant surveillance of an authorized user.

MC Squared, Inc.  
Tampa, FL 33610

EA-07-101; EA-07-104

On November 30, 2007, an Order Imposing Civil Monetary Penalty was issued to MC Squared, Inc. Following the NRC's September 13, 2007, Notice of Violation and Proposed Imposition of a Civil Penalty in the amount of \$3,250, the licensee requested negating or significantly reducing the civil penalty. The Notice of Violation and proposed civil penalty was issued to the licensee for its failure to maintain a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal during a period when the portable gauge was not under the control and constant surveillance of the licensee. This failure may have contributed to the theft of the gauge. In addition, the licensee failed to file NRC Form 241 at least three days prior to engaging in licensed activities in areas of exclusive NRC jurisdiction. MC Squared, Inc., did not present an adequate basis for the NRC to retract the violation or mitigate the civil penalty, and in addition, did not provide any evidence that payment of the civil penalty would create a financial hardship. Accordingly, NRC concluded that the violation remains valid and issued an order imposing Civil Monetary Penalty in the amount of \$3,250.

R&M Engineering, Inc.  
Juneau, AK

EA-07-180; EA-07-181

On October 23, 2007, a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III violation of 10 CFR 30.34(i) involving the licensee's failure, on two instances, to maintain a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal during a period when the portable gauge was not under the control and constant surveillance of the licensee. In the second instance, this resulted in the loss of the gauge into the public domain. Specifically, in the first instance, an authorized portable gauge user left the portable gauge unattended and unsecured in the bed of a company truck as he returned to the office to retrieve paperwork. In the second instance, the licensee failed to use two independent physical controls to secure a portable gauge after it fell out of a company vehicle onto a public highway and until it was retrieved and returned by a member of the public a few minutes later.

TRC Engineers, Inc. (Formerly SITE-Blauvelt Engineering, Inc.)  
Mount Laurel, NJ

EA-06-286

On January 30, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250, was issued for a Severity Level III violation of 10 CFR 30.34 (i), involving the reported theft of a portable nuclear density gauge containing licensed material. The licensee failed to use a minimum of two independent physical controls to secure a portable gauge while it was not under the control and surveillance of your staff, as required. Specifically, the licensee provided one independent barrier by securing the gauge in a locked container and placing it in a locked shed for overnight storage at a temporary job site. However, the licensee failed to provide a second independent barrier when it did not secure the gauge to the shed.

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Universal Testing, LLC  
Clearfield, Utah

EA-06-259

On February 23, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,500 was issued for a violation involving the failure to secure from unauthorized removal or access licensed material that was stored in an unrestricted area. Specifically, while transporting a radiography exposure device, a radiographer stopped for about 90 minutes leaving the device unattended and unsecured in the open bed of a pickup truck. Later that evening, the radiographer was involved in a traffic accident, resulting in his arrest and the impoundment of the pickup truck (with the unsecured radiography source in the bed of the truck) by the Wyoming State Police. The radiographer informed the police that the radioactive source was in the bed of the truck and requested that the truck be locked inside a garage at the impound yard.

U.S. Engineering Laboratories, Inc.  
Rahway, NJ 07065

EA-07-035

On May 22, 2007, a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty in the amount of \$9,750 was issued for a Severity Level III violation involving the failure to secure licensed material from unauthorized removal resulting in the loss of a portable nuclear density gauge. The gauge was missing for approximately 5-months before it was found in the public domain in Philadelphia, Pennsylvania. A second NOV involved the failure to immediately report the loss of the licensed material to the NRC.

Valley Quarries, Inc.  
Chambersburg, PA

EA-07-156

On August 16, 2007, a Notice of Violation (NOV) and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III violation of 10 CFR 30.34(i) involving the failure to maintain a minimum of two independent physical controls that formed tangible barriers to secure a portable gauge from unauthorized removal during a period when the portable gauge was not under the control and constant surveillance of the licensee, which may have contributed to the theft of the gauge. Specifically, a portable nuclear gauge was stolen from an unattended licensee vehicle that was parked at an employee residence. While the gauge was unattended, the licensee had only a single tangible barrier in place to prevent the theft.

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**Appendix C: Summary of Orders\*****Orders Issued To Licensees**

Arizona Public Service Company  
Palo Verde Nuclear Generating Station

EA-07-162

On October 19, 2007, a Confirmatory Order (Effective Immediately) was issued to Arizona Public Service Company (APS) to formalize commitments made as a result of a successful alternative dispute resolution (ADR) mediation session. The commitments were made by APS as part of a settlement agreement between APS and the NRC concerning the falsification, by a qualified senior reactor operator, at the Palo Verde Nuclear Generating Station (PVNGS), of a record related to a steam generator blowdown. As part of the settlement agreement, APS agreed to take a number of actions. In recognition of these actions, and those corrective actions already completed by APS, the NRC is satisfied that its concerns will be addressed.

Entergy Nuclear Operations, Inc.  
Indian Point Nuclear Generating Station

EA-07-189

On July 30, 2007, an Immediately Effective Order was issued to Entergy Nuclear Operations, Inc., to ensure compliance with the regulations and implementation of the requirements of the Energy Policy Act of 2005. The Order supplemented the requirements of NRC Confirmatory Order (EA-05-190) which required, in part, a backup power system for the Emergency Notification System (ENS). The Confirmatory Order was issued to the Indian Point Nuclear Generating Unit Nos. 2 and 3 on January 31, 2006, and was amended by the NRC on January 23, 2007, extending the implementation date for the required ENS backup power system to April 15, 2007. The requirements of the January 31, 2006, Confirmatory Order remain in effect except as specifically modified or supplemented by this Order.

FirstEnergy Nuclear Operating Company  
Davis Besse, Perry, Beaver Valley Nuclear Power Plants

EA-07-199

On August 15, 2007, a Confirmatory Order (Effective Immediately) was issued to FirstEnergy Nuclear Operating Company (FENOC) to formalize commitments made by FENOC following the NRC staff's issuance of a Demand for Information (DFI) on May 14, 2007. The DFI was issued in response to the information provided by FENOC relative to its re-analysis of the time line and root causes for the 2002 Davis-Besse reactor pressure vessel head degradation event following its receipt of a report prepared by Exponent Failure Analysis Associates and Altran Solutions Corporation (Exponent). On June 13, 2007, FENOC provided its response to the DFI. On July 16, 2007, FENOC provided a supplemental response to the DFI which provided additional detail regarding the planned implementation of commitments established in its June 13, 2007, response to the DFI.

*\* Please note that cases involving security-related issues are not included*

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Indiana Michigan Power Company  
D.C. Cook Nuclear Power Plant

EA-06-295

On April 4, 2007, a Confirmatory Order (Effective Immediately) was issued to the Indiana Michigan Power Company (I&M) as part of a settlement agreement between I&M and the NRC regarding an apparent violation of 10 CFR 50.7, "Employee Protection," issued by the NRC to I&M. In response to an NRC choice letter, I&M requested Alternative Dispute Resolution (ADR) to resolve the apparent violation. As part of the settlement agreement that resulted from the ADR session, I&M agreed to complete a number of actions, including the completion of the training of all non-supervisory plant workforce and long-term contractors on the subject of a safety-conscious work environment (SCWE), the completion of a Nuclear Safety Culture (including SCWE) survey, the reinforcement of I&M's policy and expectation of its management relating to a SCWE as communicated by an executive level manager, and the implementation of a periodic assessment of I&M's compliance with its hours of work limitation program and evaluation of the results for trends. In response to I&M's actions, the NRC agreed to not pursue further enforcement action; however, the NRC will evaluate the implementation of the Confirmatory Order during future inspections.

Nuclear Management Company, LLC  
Point Beach

EA-06-178

On January 3, 2007, a Confirmatory Order (Effective Immediately) was issued to the Nuclear Management Company, LLC (NMC), documenting a number of actions the licensee has agreed to take as part of an Alternative Dispute Resolution (ADR) settlement agreement. An ADR session was held at the licensee's request to address the apparent violation of 10 CFR 50.7, "Employee protection." The actions the licensee has agreed to take include: (1) revising NMC's policy on writing corrective action program reports; (2) training NMC supervisory employees on safety-conscious work environment principles; (3) communicating NMC's safety culture policy to its employees; and (4) conducting a safety culture survey at the Point Beach Nuclear Plant. As reflected in the Order, in response to these actions, the NRC agreed not to pursue further enforcement action on this issue.

Universal Testing, LLC  
Clearfield, Utah

EA-06-259; EA-07-230

On November 6, 2007, a Confirmatory Order (effective immediately) was issued to confirm commitments made as a result of an Alternative Dispute Resolution (ADR) settlement agreement. The licensee requested ADR following the NRC's February 23, 2007, Notice of Violation and Proposed civil penalty of \$6,500 for a willful violation involving the licensee's failure to secure from unauthorized removal or access licensed material that was stored in an unrestricted area. As part of the agreement, Universal Testing has agreed to implement a comprehensive management review and oversight program. In addition, Universal Testing has agreed to write and submit an article for publication by the Non-Destructive Testing Managers Association (NDTMA) addressing the value that the new Universal Testing management oversight program adds to overall safe and effective operations. In recognition of Universal Testing's extensive corrective actions, the NRC agreed to reduce the civil penalty originally proposed to \$500.



University of Pittsburgh  
Pittsburgh, PA

EA-06-266; EA-06-278; EA-07-206

On July 23, 2007, a Notice of Violation and Confirmatory Order (Effective Immediately) were issued to the licensee, for a Severity Level III violation. As a result of an Alternative Dispute Resolution (ADR) mediation session conducted at the licensee's request, the NRC agreed to final disposition of this matter by citing a single violation of the requirements in 10 CFR 35.24(b). Specifically, the licensee through the Radiation Safety Officer (a) failed to ensure the physical presence requirements of 10 CFR 35.615(f)(3) from May 13, 2004, to March 10, 2005; and (b) failed to ensure that written directives were consistently signed by all three members of a Gamma Knife team prior to administration of gamma stereotactic radiosurgery treatments in accordance with 10 CFR 35.32 between 1998 and 2000. The NRC concluded that certain aspects of the 10 CFR 35.24(b) violation were willful. The licensee disputed this conclusion. The NRC and the licensee have agreed to disagree regarding any willful aspects of this violation. In response to the actions that the licensee has taken, or has committed to take, as described in the Confirmatory Order, as well as the fact that the violation did not result in any known safety consequences to patients, workers, or the public, the NRC agreed to issue a Notice of Violation without a civil penalty.

### **Orders Issued To Individuals**

Robbie E. Balentine

IA-06-043

On April 13, 2007, a Confirmatory Order (Effective Immediately) was issued to Mr. Balentine as a result of a settlement agreement entered into as a result of Alternative Dispute Resolution requested by the individual. The settlement agreement acknowledges the NRC and the individual's agreement to disagree that the individual deliberately violated 10 CFR 50.5, "Deliberate Misconduct," when, as Lead Foreman for Stone and Webster Engineering Company, he directed and allowed unauthorized open blasting to be performed inside the torus of the Browns Ferry Nuclear Plant, Unit 1, causing the Browns Ferry Nuclear Plant to be in violation of its procedures associated with radiation protection. The individual did acknowledge that, as Lead Foreman, his communications to employees in the area of safe work practices must be especially clear and unequivocal and that, contrary to this, his communications were poor and failed to convey clear instructions or expectations.

Keith Davis

IA-07-014

On November 26, 2007, a Confirmatory Order (Effective Immediately) was issued to Mr. Davis, former Senior Reactor Operator at the Susquehanna Steam Electric Station (SSES), as a result of a settlement agreement entered into as a result of Alternative Dispute Resolution requested by the individual. This action relates to an incident that occurred on June 27, 2007, when Mr. Davis reported to work and failed to report an arrest which occurred on June 19, 2007, for driving under the influence of alcohol, coincident with a single motor vehicle accident. Mr. Davis' SRO license and site access was immediately terminated and he was assigned other duties. Subsequently, his employment at SSES was terminated. During the mediation session, Mr. Davis agreed, among other things to: (1) write an operating experience report addressing lessons learned from this violation; (2) provide a written report to the NRC for review, subsequently submitting the report to a minimum of three national organizations for possible

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publication, including the Institute of Nuclear Plant Operations (INPO) and the Nuclear Energy Institute (NEI); (3) provide a written response to the NRC explaining the reasons why the NRC can have confidence in his following procedures in the future; (4) provide a training plan for licensed and non-licensed operator training at SSES regarding procedure compliance; and (5) agree to the issuance of a Severity Level III Notice of Violation. The agreement did not prohibit Mr. Davis from all 10 CFR Part 50 activities but required Mr. Davis to inform the NRC before resuming work involving NRC licensed activities. In light of Mr. Davis' agreement, the NRC will not pursue any further enforcement action related to the incident.

Cary W. Hedger

IA-07-048

On December 20, 2007, an Immediately Effective Order was issued to Mr. Cary Hedger, the Radiation Safety Officer (RSO), President, and an owner of Alpha Omega Services, Inc., prohibiting him from involvement in all NRC-licensed, certificate, and Quality Assurance Program Approval activities for a period of three years from the date the Order. The Order was issued because Mr. Cary Hedger violated 10 CFR 71.8, "Deliberate Misconduct." In January 2003, Mr. Cary Hedger, both the Operations Manager and Assistant RSO at the time, performed a maintenance inspection of a shipping package and signed a maintenance checklist indicating that the package was in compliance with the NRC Certificate of Compliance and approved for use, when he knew it was not. The materially inaccurate information was then provided to an NRC licensee and to a contractor for the licensee. Additionally, Mr. Cary Hedger deliberately caused the NRC licensee to violate NRC requirements for a license when the licensee exported licensed material in nonconforming packages.

James Francis Mattocks

IA-07-008

On March 21, 2007, an Order (Immediately Effective) Prohibiting Involvement in NRC-Licensed Activities was issued to Mr. Mattocks for engaging in deliberate misconduct as defined in 10 CFR 50.5, "Deliberate misconduct." Specifically, while Mr. Mattocks was employed as a security officer at the St. Lucie Nuclear Power Plant, he deliberately removed a Bushmaster .223 caliber assault rifle and thermal imaging scope from the facility without authorization, causing an NRC licensee to be in violation of its Physical Security Plan. This order is in effect for five years from its issuance.

Mark Sharp

IA-07-039

On October 19, 2007, a Confirmatory Order (Effective Immediately) was issued as part of a settlement agreement confirming commitments reached during alternative dispute resolution (ADR) mediation. In this case, the NRC concluded that the individual deliberately falsified a steam generator blowdown log entry in order to cover up an error he had made. As part of the settlement agreement, the individual agreed to take a number of actions including: restricting his 10 CFR Part 55 related activities until certain specified actions were accomplished; submitting a letter to the NRC outlining why the NRC can have confidence in his future activities in the industry; and sharing his lessons learned with the industry through several venues.

**Orders Imposing a Civil Penalty**

MC Squared, Inc.

EA-07-101; EA-07-104

On September 13, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 were issued for a Severity Level III problem composed of two Severity Level III violations. The first violation involved the failure of MC Squared, Inc., an Agreement State licensee (licensee), to file NRC Form 241 at least three days prior to engaging in licensed activities within NRC jurisdiction. Specifically, the licensee stored or used a portable gauge containing byproduct material (americium-241 and cesium-137) at two Indian Reservations which are areas of exclusive NRC jurisdiction regarding the use of NRC-licensed materials. The licensee did not file NRC Form 241 prior to using the material at these sites. The second violation involved the licensee's failure to use a minimum of two independent physical controls to secure a portable gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee. This failure may have contributed to the theft of the gauge which was reported. Specifically, the licensee stored the gauge in an unlocked trailer, located in an unrestricted area when an authorized user was not present. Although the gauge was in a locked container, the gauge had no physical control to form tangible barriers to secure the gauge from unauthorized removal, because the gauge container was not secured to the trailer, nor was access to the trailer controlled.

**Orders Suspending Licensed Activity**

Alaska Industrial X-Ray, Inc.

EA-07-261

On October 19, 2007, an Order Suspending Licensed Activities (Effective Immediately) was issued to Alaska Industrial X-Ray, Inc. (AIX) based on the NRC's determination that all AIX radiographers, including AIX's Radiation Safety Officer, and assistants, violated 10 CFR 34.41(a) by performing industrial radiographic operations at a temporary job site with only one qualified individual present during operations. The evidence the NRC relied on indicates that these activities have occurred on numerous occasions, for a period of up to three years. Because the NRC issued a Notice of Violation on April 25, 2001, for a willful violation of 10 CFR 34.41(a) at the same client facility location, serious concerns were raised regarding AIX's willingness to comply with the Commission's requirements and its ability to conduct licensed activities without undue risk to the public's health and safety, resulting in the issuance of this order suspending all radiographic operations authorized by AIX's license.

On November 8, 2007, a Relaxation of Order Suspending Licensed Activities (Effective Immediately- dated October 19, 2007) was issued to Alaska Industrial X-Ray, Inc. (AIX) based on the licensee's proposal to implement several actions to provide the NRC with assurance that AIX will comply with the 2-person rule during NRC-licensed radiographic operations. Specifically, the licensee's actions include: use of a capable, independent consultant to perform unannounced audits of AIX's radiographic activities, with emphasis on the 2-man rule and results of the audits will be reported to NRC monthly; strengthening of the controls over personnel access to the radiography location; construction of a dark room at the radiographic locations; communication of AIX's schedule for radiographic activities in advance to both the consultant and NRC; and designation of a different Radiation Safety Officer. However, this

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relaxation does not have any effect on the ongoing Office of Investigation's investigation or any potential enforcement action that may be taken based on the outcome of that investigation.

### **Demand for Information**

FirstEnergy Nuclear Operating Company  
Davis Besse, Perry, Beaver Valley Nuclear Power Plants

EA-07-123

On May 14, 2007, a Demand for Information (DFI) was issued to FirstEnergy Nuclear Operating Company (FENOC) in response to information provided by FENOC in a report, dated December 15, 2006, prepared by its contractor, Exponent Failure Analysis Associates and Altran Solutions Corporation (Exponent), associated with the root causes and time line for the 2002 Davis Besse reactor pressure vessel head degradation event. In particular, the DFI required FENOC to provide detailed and specific information relative to the timing of FENOC's review of the Exponent Report and the factors FENOC considered when determining whether the conclusions in the report should be communicated to the NRC. The DFI also required FENOC to provide information in order for the NRC to understand the depth and completeness of FENOC's evaluation of the assumptions, methods, and conclusions of the Exponent Report and to understand the differences between the Exponent Report and the technical and programmatic root cause reports previously developed by FENOC relative to the 2002 Davis-Besse event. In addition, the DFI required information in order for the NRC to understand FENOC's position regarding a second contractor report prepared for FENOC entitled, "Report of Reactor Pressure Vessel Wastage at the Davis-Besse Nuclear Power Plant," dated December 2006. Regarding the second report, the DFI required specific information relative to FENOC's endorsement of the report's conclusions and the implications of any new positions taken by FENOC compared to those previously communicated to the NRC in response to the Notice of Violation and Proposed Imposition of Civil Penalties, dated April 21, 2005.

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**Appendix D: Summary of Escalated Enforcement Actions Against Individuals\*****Notices of Violation**

John Branyan

IA-07-010

On May 22, 2007, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate misconduct which caused his former employer, U.S. Engineering Laboratories, Inc., to be in violation of 10 CFR 20.2201. Specifically the individual failed to report a portable nuclear density gauge as lost or missing when the location of the gauge was unknown for approximately 5-months. The gauge was subsequently found in the public domain.

Mr. Brandon Fontenot

IA-07-002

On March 20, 2007, a Notice of Violation for a Severity Level III violation was issued for a violation involving the individual's deliberate misconduct which caused his former employer, Accurate NDE & Inspection, LLC, to be in violation of 10 CFR 20.1801 and 1802, and 10 CFR 30.9. Specifically the individual failed to (1) secure a radiographic exposure device, and (2) provide complete and accurate information in the daily radiation survey form which was provided to the NRC inspector.

Robert E. Galloway

IA-07-001

On February 23, 2007, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate failure to secure a radiographic exposure device while the device was in the open bed of a pickup truck. The truck was located in an unrestricted area and was not under the control or constant surveillance of the individual. The individual's deliberate behavior caused his employer, Universal Testing LLC, an NRC licensee, to be in violation of 10 CFR 20.1801 and 1802.

Michael R. Hess

IA-07-015

On May 1, 2007, a Notice of Violation was issued for a Severity Level III violation involving 10 CFR 55.53, "Conditions of Licenses" and "Exelon Nuclear's Fitness-for-Duty Program," which is required by 10 CFR 26.20. Specifically, the individual, a licensed operator, reported for duty at the Braidwood Station, operated by Exelon Nuclear, after having used an illegal substance.

Lee-Cheng (Jean) Peng

IA-07-023

On April 30, 2007, a Notice of Violation was issued for a Severity Level III violation involving the deliberate submittal of information that the individual knew to be inaccurate, to an NRC licensee. The licensee subsequently submitted the inaccurate information to the NRC causing the licensee to be in violation of NRC regulations.

*\* Please note that cases involving security-related issues are not included*

## **OE Annual Report**

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Ching Chong Yang, Ph. D.

IA-07-022

On April 30, 2007, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate misconduct that caused two NRC licensees to be in violation of 10 CFR 30.9. Specifically, the individual submitted information to each licensee that he knew to be inaccurate in violation of 10 CFR 30.10. The licensees subsequently submitted the inaccurate information to the NRC causing them to be in violation of NRC regulations.

### **Orders**

Five Orders were issued to individuals during 2007 and are discussed in Appendix C.

**Appendix E: Summary of Escalated Enforcement Actions Against  
Non-Licensees  
(Vendors, Contractors and Certificate Holders)\***

**Notice of Violation**

Alpha Omega Services, Inc.  
Bellflower, CA

EA-07-215

On December 20, 2007, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$19,200 were issued for a Severity Level II violation. In January 2003, the company deliberately provided materially inaccurate information to an NRC licensee and to a contractor for the licensee in violation of 10 CFR 71.8(b)(2). The company Operations Manager/Assistant Radiation Safety Officer signed a maintenance checklist indicating that a package was in compliance with the NRC Certificate of Compliance and approved for use, when he knew it was not. Additionally, in violation of 10 CFR 71.8(b)(1), Alpha Omega Services deliberately caused the NRC licensee to violate NRC requirements for a license when the licensee exported licensed material in nonconforming packages.

*\* Please note that cases involving security-related issues are not included*