

AUDIT REPORT

Audit of NRC's Enforcement Program

OIG-08-A-17 September 26, 2008



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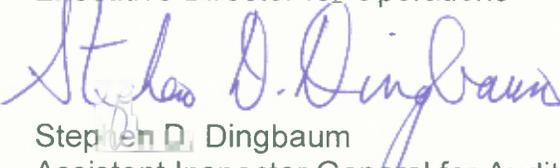


**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
INSPECTOR GENERAL

September 26, 2008

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

FROM: 
Stephen D. Dingbaum
Assistant Inspector General for Audits

SUBJECT: AUDIT OF NRC'S ENFORCEMENT PROGRAM
(OIG-08-A-17)

Attached is the Office of the Inspector General's (OIG) audit report titled, *Audit of NRC's Enforcement Program*.

The report presents the results of the subject audit. Agency comments provided at the September 4, 2008, exit conference have been incorporated into this report, as appropriate.

Please provide information on actions taken or planned on each of the recommendations within 30 days of the date of this memorandum. Actions taken or planned are subject to OIG followup as stated in Management Directive 6.1.

We appreciate the cooperation extended to us by members of your staff during the audit. If you have any questions or comments about our report, please contact me at 415-5915 or Sherri Miotla, Team Leader, Nuclear Safety Audit Team, at 415-5914.

Attachment: As stated

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EXECUTIVE SUMMARY

BACKGROUND

Enforcement is an integral component of NRC's regulatory programs and NRC's Office of Enforcement (OE) has overall responsibility for the oversight of the agency's Enforcement Program. NRC's four regional offices and headquarters-based technical program offices¹ are responsible for implementing NRC's Enforcement Program.

NRC's enforcement process begins when issues of concern are identified as potential violations primarily through region-based inspections and investigations. NRC staff assess potential violations to determine a level of significance by considering, among other things, actual or potential safety consequences and any willful aspects of the violation.

NRC's *Enforcement Policy* applies to all NRC licensees, various categories of non-licensees,² and individual employees of licensed and non-licensed firms involved in NRC-regulated activities. Violations of NRC regulations are subject to enforcement actions as either "escalated" or "non-escalated".³ Although non-escalated violations are not as significant based on risk, assigning this severity level does not mean that a violation has no risk significance and NRC expects licensees to correct these matters. The agency issued 1,450 enforcement actions during 2007, the majority of which involved non-escalated enforcement actions.

PURPOSE

The overall objective of this audit was to determine if NRC's Enforcement Program is comprehensive and consistently implemented, and if enforcement decisions are based on complete and reliable data.

RESULTS IN BRIEF

According to agency documents, enforcement is a vital regulatory activity and NRC expects consistent agencywide implementation of its Enforcement Program. However, the agency's four regional offices inconsistently implement the program in ways that can significantly impact

¹ Technical program offices include the Office of Nuclear Reactor Regulation, Office of New Reactors, Office of Nuclear Security and Incident Response, Office of Nuclear Material Safety and Safeguards, and Office of Federal and State Materials and Environmental Management Programs.

² Non-licensees include vendors, contractors, subcontractors, certificate holders (e.g., certificates of compliance, early site permits, or standard design certificates), and the employees of these non-licensees.

³ "Escalated" violations are designated as Severity Level I, II, and III and violations related to Red, Yellow, or White Significance Determination Process (SDP) findings. "Non-escalated" violations are Severity Level IV or those associated with a Green SDP finding.

the enforcement process. These differences occur because the agency has not issued clear and comprehensive guidance to facilitate program consistency. Regional inconsistencies in Enforcement Program implementation can leave agency enforcement decisions vulnerable to challenge, potentially compromising public confidence in NRC's Enforcement Program.

Furthermore, although NRC staff need complete and reliable enforcement information for decisionmaking and reporting purposes, complete and reliable enforcement data is not readily available in all cases. Data availability and reliability issues exist because NRC has not (1) defined a uniform manner for collecting or tracking non-escalated enforcement activity or (2) instituted a quality assurance process over non-escalated enforcement data used for reporting purposes. Without complete and reliable information, enforcement decisionmakers cannot ensure appropriate processing of enforcement issues, and staff may miss opportunities to identify precedents or trends that would be useful in guiding appropriate enforcement responses. Furthermore, the agency cannot ensure it is reporting accurately on Enforcement Program activity.

RECOMMENDATIONS

This report makes three recommendations. A Consolidated List of Recommendations appears in Section IV of this report.

AGENCY COMMENTS

An exit conference was held with NRC senior executives on September 4, 2008. Agency officials generally agreed with the report's findings and recommendations and decided not to provide formal comments. Informal comments on the draft report provided by the agency were incorporated as appropriate.

ABBREVIATIONS AND ACRONYMS

ADR	Alternative Dispute Resolution
CY	calendar year
EATS	Enforcement Action Tracking System
EGM	Enforcement Guidance Memoranda
FTE	full-time equivalents
FY	fiscal year
MD	management directive
NOV	Notice of Violation
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
OE	Office of Enforcement
OI	Office of Investigations
OIG	Office of the Inspector General
ROP	Reactor Oversight Process
SDP	Significance Determination Process

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
ABBREVIATIONS AND ACRONYMS.....	iii
I. BACKGROUND	1
II. PURPOSE.....	6
III. FINDINGS	7
A. THE ENFORCEMENT PROGRAM LACKS CLEAR AND COMPREHENSIVE GUIDANCE NEEDED TO ENSURE CONSISTENT PROGRAM IMPLEMENTATION.....	7
B. ENFORCEMENT DECISIONS MAY NOT BE BASED ON COMPLETE AND RELIABLE DATA	13
IV. CONSOLIDATED LIST OF RECOMMENDATIONS	18
V. AGENCY COMMENTS	18
 <u>APPENDICES</u>	
A. SCOPE AND METHODOLOGY	19
B. ENFORCEMENT PROCESS AND AVAILABLE SANCTIONS.....	21

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I. BACKGROUND

The Nuclear Regulatory Commission (NRC) develops and implements rules and regulations that govern the civilian uses of nuclear materials to protect public health and safety, the environment, and the common defense and security. NRC regulates commercial nuclear power plants and other uses of nuclear materials through licensing, inspection, and enforcement of its requirements.

Enforcement is an integral component of NRC's regulatory programs. This report focuses on the agency's Enforcement Program, which could result in sanctions to licensees who violate NRC regulations.



Enforcement Program Overview

Organizational Responsibilities

Figure 1. How NRC Regulates

Based in headquarters, NRC's Office of Enforcement (OE) has overall responsibility for the oversight of the agency's Enforcement Program. OE's primary Enforcement Program role is to provide programmatic and implementing direction to the agency's four regional offices and headquarters-based technical program offices⁴ which are responsible for implementing NRC's Enforcement Program. Other NRC offices involved, directly or indirectly, in the enforcement process include the Offices of Investigations, the General Counsel, and Public Affairs.

Enforcement Guidance

NRC's *Enforcement Policy* applies to all NRC licensees, various categories of non-licensees,⁵ and individual employees of licensed and non-licensed firms involved in NRC-regulated activities. The policy includes information on NRC enforcement roles and responsibilities, the agency's statutory authority for enforcement activities, significance of violations, and dispositioning (i.e., handling) of violations. Other guidance

⁴ Technical program offices include the Office of Nuclear Reactor Regulation, Office of New Reactors, Office of Nuclear Security and Incident Response, Office of Nuclear Material Safety and Safeguards, and Office of Federal and State Materials and Environmental Management Programs.

⁵ Non-licensees include vendors, contractors, subcontractors, certificate holders (e.g., certificates of compliance, early site permits, or standard design certificates), and the employees of these non-licensees.

on enforcement issues relative to NRC licensees is available in NRC's *Enforcement Manual*,⁶ *Enforcement Guidance Memoranda*,⁷ and select inspection manual chapters.

To address known shortcomings in its enforcement related guidance, NRC initiated two efforts in 2007 to revise program documents. First, OE announced plans in January 2007 for a major revision of the *Enforcement Policy* to clarify terms, remove outdated information, and include information on enforcement issues not fully addressed in the current policy. The last complete revision to the policy was in May 2000.

Later in 2007, the Office of Nuclear Reactor Regulation (NRR) identified plans to study the use of certain traditional enforcement items as a more integrated input into the assessment process. OE, NRR, and regional representatives are working together to identify options.

Enforcement Process

NRC's enforcement process begins when issues of concern are identified as potential violations primarily through region-based inspections⁸ and investigations. NRC staff assess potential violations to determine a level of significance by considering, among other things, actual or potential safety consequences and any willful⁹ aspects of the violation. Based on this initial assessment, there are two paths available for dispositioning violations: "traditional" enforcement and the Reactor Oversight Process (ROP).¹⁰

NRC's traditional enforcement process is used to evaluate all materials and fuel cycle facility-related violations and certain reactor-related violations. Specifically, traditional enforcement applies to violations that may impact the NRC's ability for oversight of licensed activities and those associated with deliberate misconduct and discrimination matters for all licensees, and reactor-related technical violations in areas such as operator licensing, spent fuel pools, and independent spent fuel storage

⁶ The *Enforcement Manual* provides procedures, requirements, and background information for use by staff that develops or reviews enforcement actions to keep the actions consistent with the *Enforcement Policy*.

⁷ OE issues *Enforcement Guidance Memoranda* (EGM) to provide temporary enforcement guidance, including, in some instances, enforcement discretion when specific criteria are met. EGMs normally describe the situation that has occurred that requires the use of such guidance, as well as the length of time the EGM will be in effect.

⁸ Security-related inspections and some materials inspections are conducted by headquarters inspectors.

⁹ "Willful" is defined as either deliberate misconduct or careless disregard. Willful violations are of particular concern to NRC because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor.

¹⁰ The ROP's graded approach to assessment is intended to be more predictable than previous practices by linking regulatory actions to performance criteria.

installations. A traditional enforcement evaluation focuses on a violation's causes and consequences and results in the assignment of a significance level ranging from Severity Level I for the most significant to Severity Level IV for less significant but "more than minor"¹¹ concerns.

Most reactor-related technical violations are processed through the ROP's Significance Determination Process (SDP).¹² The SDP is used to characterize the safety significance of an inspection finding and any associated enforcement action. Similar to the traditional enforcement process, SDP evaluations also result in the assignment of a significance level. However, the SDP assigns a color-coding of Green, White, Yellow, or Red to represent progressively more safety significance, with Green the lowest level of significance and Red the highest. As represented in Table 1, the SDP color-coded significance categories are related approximately to the traditional enforcement process and its associated escalated and non-escalated categories.

Table 1. Approximate Relationship of SDP and Traditional Enforcement Significance Categories

Significant Determination Process	Traditional Enforcement Process
Minor	Minor
Green	Severity Level IV
White	Severity Level III
Yellow	Severity Level II
Red	Severity Level I

■ Non-Escalated Enforcement
 ■ Escalated Enforcement

¹¹ "Minor" violations can be considered as those below the significance of Severity Level IV violations and violations associated with Green inspection findings, and those having minimal safety or environmental significance.

¹² NRC developed different SDP analytical tools to assess different types of performance deficiencies. The resulting information is then assessed and enforcement action is taken on significant inspection findings, as appropriate.

Escalated and Non-Escalated Enforcement

Violations of NRC regulations are subject to either “escalated” or “non-escalated” enforcement actions. More significant violations of NRC regulations are candidates for escalated enforcement. According to OE’s Calendar Year (CY) 2007 *Enforcement Program Annual Report*, the agency issued 1,450 enforcement actions during 2007, the majority of which involved non-escalated enforcement actions.

Escalated Enforcement

Escalated enforcement includes violations designated through the traditional enforcement process as Severity Level I, II, and III and violations related to Red, Yellow, or White SDP findings. Escalated severity level designations reflect the amount of regulatory concern associated with the violations. Per agency guidance, OE staff are directly involved in the development, processing, and tracking of all escalated enforcement actions. Although regional administrators and office directors have limited delegated authority to issue escalated enforcement sanctions, OE retains responsibility for the oversight of these activities.

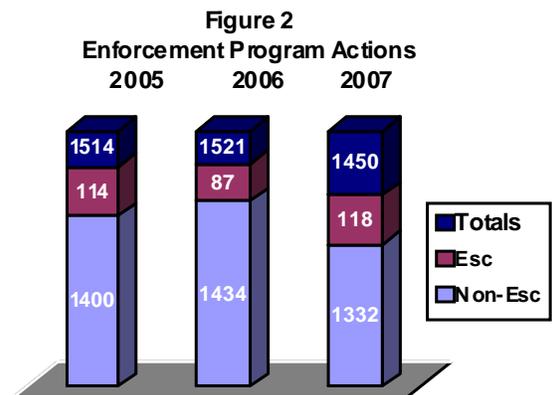
Non-Escalated Enforcement

Non-escalated enforcement refers to less significant violations designated as either Severity Level IV or associated with a Green SDP finding. According to NRC’s *Enforcement Manual*, non-escalated violations are not as significant based on risk, but assigning this severity level does not mean that a violation has no risk significance. Non-escalated actions are primarily handled by the regions and headquarters-based program offices. For non-escalated matters, regional and program office managers are authorized to determine, process, and prepare enforcement sanctions without OE involvement but in accordance with NRC’s *Enforcement Policy* and ROP guidance.

Enforcement Program Sanctions

As indicated in Figure 2, for each of the last 3 years, NRC issued more than 1,400 enforcement actions, the overwhelming majority of which involved non-escalated violations. NRC uses a graded approach for sanctioning escalated and non-escalated violations. (Appendix B provides more details on sanctions.)

For escalated enforcement violations, NRC primarily issues Notices of Violation



(NOV), civil penalties, or orders.¹³ According to OE's annual report, NRC issued 118 escalated and 1,332 non-escalated enforcement actions during CY 2007.

The escalated sanctions included

- ❖ 77 NOVs without civil penalties.
- ❖ 18 proposed civil penalties totaling \$383,200.
- ❖ 22 orders modifying, suspending, or revoking a license.
- ❖ 1 order imposing a proposed civil penalty of \$3,250.

The agency has various sanctions available for dispositioning non-escalated enforcement issues but NRC normally uses Non-Cited Violations which will establish a public record of the violation but does not require a licensee's written response. Dispositioning violations in this manner does not eliminate NRC's emphasis on compliance with requirements or the importance of maintaining safety since licensees must take steps to address corrective actions for these violations. Violations identified as "minor" under the traditional approach and through the SDP are not subject to formal enforcement action. Nevertheless, NRC also expects licensees to correct these matters.

Program Resources

For fiscal year (FY) 2008, OE is allotted 23 full-time equivalents (FTE), including 10 FTE who work primarily on Enforcement Program activities. An additional eight FTE are filled by OE staff assigned to NRC's four regional offices. Per agency guidance, these regional OE staff report directly to their respective regional administrators. The remaining enforcement FTE work to carry out the full range of OE's mission.¹⁴

¹³ Orders can be issued to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or take such other action as may be proper. (See Appendix B for more details.)

¹⁴ OE's full mission includes providing oversight, development, and management for: (1) the Enforcement Program and the Alternative Dispute Resolution process, (2) all agency external discrimination cases, (3) the external Allegations Program, (4) the Differing Professional Opinions Program, (5) the non-concurrence process, and (6) the Safety Culture Initiative policy.

II. PURPOSE

The purpose of this Office of the Inspector General (OIG) audit was to determine if NRC's

- ❖ Enforcement Program is comprehensive and consistently implemented.
- ❖ Enforcement decisions are based on complete and reliable data.

Appendix A provides a detailed description of the audit's scope and methodology.

III. FINDINGS

A comprehensive, reliable, and consistent Enforcement Program provides vital support to NRC's overall safety mission of protecting public health and safety, the environment, and the common defense and security. However, program weaknesses exist that prevent the program from achieving its full potential as a regulatory tool. Specifically,

- A. The Enforcement Program lacks clear and comprehensive guidance needed to ensure consistent program implementation.
- B. Enforcement decisions may not be based on complete and reliable data.

A. The Enforcement Program Lacks Clear and Comprehensive Guidance Needed To Ensure Consistent Program Implementation

According to agency documents, enforcement is a vital regulatory activity and NRC expects consistent agencywide implementation of its Enforcement Program. However, the agency's four regional offices inconsistently implement the program in ways that can significantly impact the enforcement process. These differences occur because the agency has not issued clear and comprehensive guidance to facilitate program consistency. Regional inconsistencies in Enforcement Program implementation can leave agency enforcement decisions vulnerable to challenge, potentially compromising public confidence in NRC's Enforcement Program.

NRC Expects Consistent Implementation of Its Enforcement Program

Agency documents routinely cite an expectation of consistent implementation of NRC's Enforcement Program. Specifically, OE's FY 2008 Operating Plan states that the Enforcement Program ensures that the agency's *Enforcement Policy* is applied to its reactors and materials licensees in a consistent manner. NRC's *Enforcement Manual* states that regional and program offices are to ensure consistent implementation of the program and that staff are to ensure that proposed enforcement strategies are consistent with office policy, guidance, and past practice (i.e., precedents). Inspection Manual Chapter 0308, "Reactor Oversight Process (ROP) Basis Document," specifically states that regional and program office management should take steps to assure that reactor inspector observations are placed in an appropriate context and do not undermine the overall effort to put inspection and enforcement efforts on a more objective and consistent foundation.

Management Directive (MD) 9.19¹⁵ also cites consistent Enforcement Program implementation and identifies responsibilities for ensuring the expected consistency. In particular, MD 9.19 states that OE is responsible for developing guidance to assist the regions with evaluating enforcement cases, coordinating and reviewing region-prepared enforcement actions to determine appropriateness and technical adequacy, and assessing whether the regions apply enforcement policies and practices in a consistent manner. To further ensure consistency, regional enforcement coordinators are expected to (1) prepare or review all escalated enforcement actions, and (2) monitor, audit, and assist in processing non-escalated enforcement actions.

Regional Offices Do Not Consistently Implement NRC's Enforcement Program

The majority of the agency's enforcement activity occurs in NRC's four regions, which implement the Enforcement Program differently in ways that can significantly impact the enforcement process. Specifically, (1) regional inspectors have varying amounts of authority to disposition enforcement violations onsite and (2) regional enforcement review processes differ.

Regional Inspector Authority To Disposition Enforcement Onsite Varies

Regional inspectors have varying amounts of authority to make enforcement decisions and disposition violations onsite (i.e., while in the field conducting inspections). The significance level of a potential violation is a key consideration for whether an inspector can pursue resolution while onsite or whether the issue requires additional involvement of regional managers. The Enforcement Program provides various methods for inspectors to address violations of minor or low significance while in the field, such as verbal discussions with the licensee at an inspection exit meeting or using an NRC Form 591, *Safety Inspection Report and Compliance Inspection*.

Another key factor that determines whether inspectors can disposition onsite enforcement relates to the amount of authority given to individual regional inspectors by their respective managers. OIG found inconsistencies in regional managers' expectations and in the amount of authority given to regional inspectors to disposition enforcement in the field. For example, inspectors in one region are encouraged to disposition enforcement in the field (on Form 591) whenever possible. At the other end of the spectrum, managers in another region expect their inspectors to bring all potential violations back to the regional office for discussion prior

¹⁵ Management Directive 9.19, *Organization and Functions, Office of Enforcement*, dated May 1989.

to dispositioning. According to OE management, uniform guidance is provided to inspection staff on the use of Form 591s; however, regional implementation varies.

Differences in Regional Enforcement Review Processes Are Significant

The process for evaluating findings and making enforcement decisions is not consistent across the NRC regions. Specifically, the regions use significantly different review processes for evaluating inspection findings to determine whether potential violations should be processed as escalated (which requires OE involvement) or non-escalated (where regions manage the process without headquarters' oversight).

Beyond inspectors and managers, other regional staff have potential roles in the enforcement determinations, particularly enforcement team leaders and their staff, Office of Investigations (OI) staff, and the regional counsels. OIG observed various regional methods for reviewing inspection findings to assess potential violations and to determine appropriate levels of enforcement action. The regions and, in some cases, offices within a region independently decide which staff are involved, and at what point, in the decision process. Table 2 below represents the significantly different regional enforcement decisionmaking processes.

Table 2. Differences in Regional Enforcement Decisionmaking Processes

ROUTINE PARTICIPANTS	REGION A	REGION B
Inspector	X	X
Branch Chief	X	X
Division Director	X	
Managers/staff from other Regional divisions	X	
Regional Administrator or Deputy	X	
Regional Enforcement Specialists	X	
Regional OI Investigators	X	
Regional Counsel	X	

Source: OIG-generated

In practice, the process in Region "A" involves a region-wide debriefing at the end of each reactor and materials inspection, to include a discussion of potential violations. The briefings typically involve staff filling the positions as noted in Table 2. Region "A" managers said that the diverse experiences of those present affords the best opportunity to identify enforcement precedents, generic issues, or performance trends, which results in more consistent processing of violations at the appropriate severity levels. For example, the early involvement of OI staff in this

region's weekly inspection debriefings reportedly had immediate positive impact when violations deemed by the inspection staff as having no willful aspects were challenged by the OI staff present. OI subsequently identified a number of cases to be brought before a review board in order to evaluate the willful aspects of the subject violations.

The decisionmaking processes in the other NRC regions (represented as Region "B" above) routinely involve fewer people. Specifically, the evaluation of potential violations and subsequent enforcement decisions typically involve the relevant inspector and his/her respective branch chief. In these three regions, additional communications with other regional staff, such as division directors, regional enforcement specialists, or OI staff occur only if the inspector and branch chief request assistance. According to staff in these regions, enforcement precedents and consistency with agency policy can be identified through various means including discussions during plant status meetings and senior management meetings, and by reviewing inspection reports.

The Enforcement Program Lacks Clear and Comprehensive Guidance

Differences in program implementation across the regions exist because the agency has no clear and comprehensive guidance to support consistent implementation of the Enforcement Program agencywide, primarily with respect to non-escalated enforcement actions. NRC's *Enforcement Policy* and inspection manual chapters provide overall guidance for handling materials and reactor-related enforcement actions. However, these documents do not provide specific criteria that would ensure consistent program implementation regarding (1) authority to disposition non-escalated enforcement violations onsite and (2) involvement of relevant participants in enforcement decisionmaking processes. For example, although a December 2005 OE memorandum informed regional administrators and office directors of an agency goal to maximize use of Form 591s to handle inspection findings, there is no specific or uniform guidance on when inspectors can or should make independent field-based enforcement decisions.

Although the agency initiated efforts in 2007 to add more clarification and specification to the *Enforcement Policy*, *Enforcement Manual*, and reactor enforcement guidance, these revisions are not yet complete. Furthermore, the scope of the planned revisions will not necessarily address the inconsistencies identified in this report.

Program Inconsistencies Leave Enforcement Decisions Vulnerable to Challenge and Compromise Public Confidence

Differences in regional practices not only challenge the agency's expectation of consistent implementation but can leave enforcement decisions vulnerable to challenge and compromise the public's confidence in NRC's Enforcement Program. Specifically,

- ❖ Inspectors evaluating findings onsite creates a potential for inappropriate dispositioning.
- ❖ Lack of relevant staff involvement in the decision process may result in a less than fully evaluated potential violation.

For example, a regional manager's review of his division's Form 591s identified issues dispositioned by inspectors in the field that would likely have been assigned a higher severity level and a different level of processing had the inspectors consulted their managers. Another example involved a regional OI supervisor whose review of completed enforcement actions identified cases that were processed without OI involvement because probable willful aspects were not appropriately identified by the inspection staff.

And finally, an NRC Commissioner recently stated that consistent implementation of NRC's processes is needed to foster public confidence. Throughout the audit, numerous external NRC stakeholders expressed frustration with apparent inconsistencies in Enforcement Program processes across the NRC regions resulting in agency enforcement decisions that are not clearly understood. Although the stakeholders acknowledged that each case has specific factors that likely affected NRC's enforcement actions, a recurring comment was the appearance that similar violations are processed inconsistently across the NRC regions. Therefore, the absence of clear and comprehensive agency guidance to ensure consistent Enforcement Program implementation may be unintentionally compromising public confidence in NRC as an effective regulator.

Recommendation:

OIG recommends that the Executive Director for Operations:

1. Develop comprehensive agencywide guidance to clearly establish
 - ❖ Expectations for inspectors and managers to independently disposition violations.
 - ❖ Relevant participants needed for enforcement decisionmaking.

B. Enforcement Decisions May Not Be Based on Complete and Reliable Data

Although NRC staff need complete and reliable enforcement information for decisionmaking and reporting purposes, complete and reliable enforcement data is not readily available in all cases. Data availability and reliability issues exist because NRC has not (1) defined a uniform manner for collecting or tracking non-escalated enforcement activity or (2) instituted a quality assurance process over non-escalated enforcement data used for reporting purposes. Without complete and reliable information, enforcement decisionmakers cannot ensure appropriate processing of enforcement issues, and staff may miss opportunities to identify precedents or trends that would be useful in guiding appropriate enforcement responses. Furthermore, the agency cannot ensure it is reporting accurately on Enforcement Program activity.

Enforcement Decisionmakers Need Complete, Reliable, and Readily Available Information

NRC staff need complete and reliable information for enforcement decisionmaking and reporting purposes. NRC's *Enforcement Policy* identifies several elements of the Enforcement Program where factoring all information relevant to a violation is required. The policy gives agency managers the flexibility to increase or decrease a violation's severity level, including consideration of prior violations, based on a review of all data relative to the violation. Further, a recent OE annual report identified effective tracking of enforcement actions as a key Enforcement Program goal.

The collection of escalated and non-escalated enforcement data also is needed to satisfy Enforcement Program reporting requirements. Specifically, OE is responsible for preparing an assortment of periodic reports on Enforcement Program activities to external and internal entities such as Congress and the Commission. In particular, OE is required to report on non-escalated enforcement activity in

- ❖ Semiannual reports to Congress.
- ❖ Semiannual reviews to regional division directors and headquarters office directors.
- ❖ Annual enforcement summary reports to the Commission.
- ❖ Annual performance measure updates.

Federal guidelines¹⁶ also direct that agency programs should have appropriate controls in place to ensure complete, reliable, and readily available information for management decisionmaking.

Complete and Reliable Information Is Not Readily Available

Complete and reliable Enforcement Program data is not readily available to NRC staff to inform enforcement decisionmaking. In particular,

- ❖ Non-escalated enforcement data is not uniformly collected.
- ❖ Non-escalated data that is collected is of questionable reliability.

Non-Escalated Enforcement Data Is Not Uniformly Collected or Verified

NRC's Enforcement Program does not provide for the uniform collection of available information on the majority of the agency's enforcement activities, which are non-escalated. Non-escalated enforcement data is not collected or tracked in any uniform manner even though this level of activity constitutes 90 percent or more of the 1,400+ enforcement actions NRC issues per year. For example, although there is guidance for tracking power reactor related non-escalated data through the Reactor Program System, implementation throughout the regions is inconsistent. Figures 3 through 5 reflect that the majority of NRC's enforcement activity over the past 3 years was non-escalated (i.e., Severity Level IV violations or violations associated with Green SDP findings).¹⁷

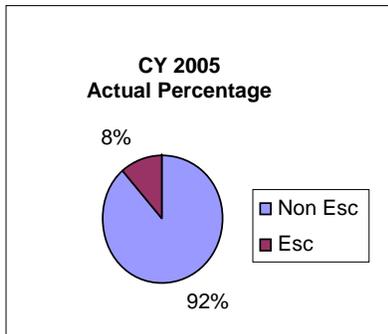


Figure 3

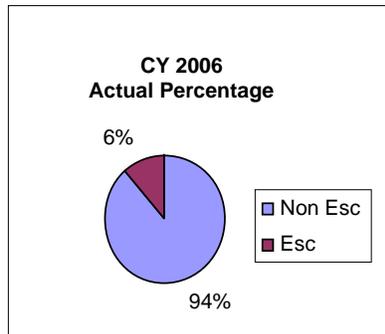


Figure 4

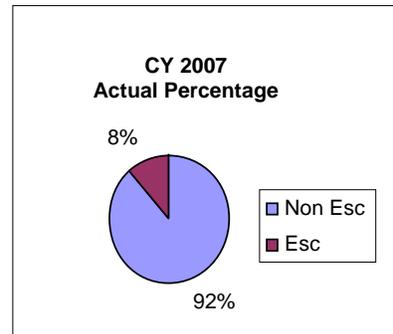


Figure 5

¹⁶ Office of Management and Budget Circular No. A-123, *Management Accountability and Control*, and the Government Accountability Office's GAO/AIMB-002-21.3.1, *Standards for Internal Controls in the Federal Government*.

¹⁷ Non-escalated actions comprised 1,400 of the 1,514 total actions in CY 2005; 1,434 of the 1,521 actions in CY 2006; and 1,332 of the 1,450 actions in CY 2007.

Agency managers acknowledge that non-escalated enforcement data can help to identify precedents and performance trends, and it is needed to help prepare input for reporting purposes. Therefore, enforcement and inspection staff make efforts to collect various pieces of non-escalated information. Individual organizations within NRC headquarters and the four regions decide what non-escalated enforcement data to collect based on their individual programmatic needs and the different offices use varying means to capture and track the information. The collection methods range from maintaining information in hardcopy form to individually-developed data spreadsheets and other types of electronic files. However, there is no assurance that data is uniformly collected or that what is collected is reliable. Although staff conduct periodic reviews of non-escalated enforcement actions, results of these reviews typically focus on the number of violations rather than the accuracy of the information.

The Enforcement Action Tracking System (EATS), the primary centralized database of Enforcement Program information, does not systematically collect non-escalated enforcement information. The agency is currently in the process of implementing a new and updated EATS; however, according to OE managers, there are no plans for this system to routinely capture non-escalated enforcement information.

Enforcement Program Lacks Uniform Data Collection Requirements and a Quality Assurance Process

NRC's Enforcement Program lacks the controls needed to ensure that complete and reliable enforcement data is readily available. Specifically, the Enforcement Program lacks (1) uniform data collection requirements for non-escalated data and (2) an organized quality assurance review of non-escalated data compiled for reporting purposes.

Data Collection Requirements Not Defined

Enforcement Program participants do not have access to a complete universe of known data because a methodology for the systematic collection of all available enforcement information has not been defined. Specifically, the Enforcement Program has no uniform data collection requirements that pertain to minor and non-escalated¹⁸ enforcement actions. NRC's *Enforcement Manual* and reactor guidance (which includes regional specific guidance) do not require tracking of most minor and non-escalated information because of their low safety significance. Yet, in apparent contrast, these same documents state that information regarding these low level violations can be used by NRC staff for

¹⁸ The non-escalated enforcement actions required to be tracked include cases involving: willfulness, certain NOVs, individuals, potential escalation, or related to a proposed escalated action.

aggregation and discretion purposes and that these issues must be addressed by NRC licensees. Further, in certain cases, NRC inspectors are expected to verify that the licensees' corrective actions were effective.

Quality Assurance Review Process Is Missing

The reliability of information related to non-escalated enforcement actions compiled and submitted for reporting purposes is questionable because NRC has not instituted a comprehensive quality assurance review process over the information. Agency officials, in both the regions and headquarters, pointed out that some quality assurance checks do occur for enforcement actions through the routine review and approval process. However, the Enforcement Program does not have an established process designed to assure the quality of the non-escalated enforcement data submitted for inclusion in reports to internal and external NRC stakeholders.

Enforcement Decisions May Not Be Fully Informed and Program Reporting May Not Be Accurate

Without timely consideration of complete and reliable information, enforcement decisionmakers cannot ensure appropriate responses to NRC enforcement issues or an accurate representation of Enforcement Program activities.

Enforcement Decisions May Not Be Fully Informed

Without the systematic collection of non-escalated enforcement information, managers will not have timely access to all relevant factors regarding repeat violations, precedents, or trends in declining licensee performance. Such factors could impact the decisions regarding the proper level of enforcement action NRC should pursue. Regional and OE managers also acknowledged that absent a readily available collection of enforcement data, it can be difficult and time consuming to identify detailed information relative to lower level enforcement activities. This information is needed to assess whether licensees met the requirements of the enforcement actions. In some cases, developing this information depends on staff members' individual recollections of violation details.

Accurate Reporting May Be Compromised

Without an established and organized quality assurance process, the accuracy of the information used to report on the full range of Enforcement Program activities may be compromised. Specifically, there is no assurance that the agency accurately depicts non-escalated enforcement actions in required reports. Agency staff acknowledge that there is no systematic verification that the non-escalated statistics

compiled and submitted to OE by individual offices are accurate. Nonetheless, this information serves as the basis for OE reports to Congress and the Commission on Enforcement Program activity and effectiveness.

Recommendations:

OIG recommends that the Executive Director for Operations:

2. Define systematic data collection requirements for non-escalated enforcement actions.
3. Develop and implement a quality assurance process that ensures that collected enforcement data is accurate and complete.

IV. CONSOLIDATED LIST OF RECOMMENDATIONS

OIG recommends that the Executive Director for Operations:

1. Develop comprehensive agencywide guidance to clearly establish
 - ❖ Expectations for inspectors and managers to independently disposition violations.
 - ❖ Relevant participants needed for enforcement decisionmaking.
2. Define systematic data collection requirements for non-escalated enforcement actions.
3. Develop and implement a quality assurance process that ensures that collected enforcement data is accurate and complete.

V. AGENCY COMMENTS

An exit conference was held with NRC senior executives on September 4, 2008. Agency officials generally agreed with the report's findings and recommendations and decided not to provide formal comments. Informal comments on the draft report provided by the agency were incorporated as appropriate.

SCOPE AND METHODOLOGY

The purpose of this audit was to determine if NRC's

- ❖ Enforcement Program is comprehensive and consistently implemented.
- ❖ Enforcement decisions are based on complete and reliable data.

To address the audit objectives, OIG reviewed relevant management controls, internal and external enforcement-related documentation, and Federal statutes, including reviews of:

- ❖ The Atomic Energy Act.
- ❖ NRC's *Enforcement Policy and Enforcement Manual*.
- ❖ Related OIG reports published between 1989 and 2008.
- ❖ Regional enforcement guidance.
- ❖ Inspection Manual Chapters.
- ❖ Office of Management and Budget and Government Accountability Office Standards for Internal Control in the Federal Government.

Auditors interviewed approximately 120 members of NRC and the public regarding the NRC's Enforcement Program. Interviewees included:

- ❖ NRC senior managers and staff from:
 - Headquarters, Rockville, Maryland
 - Region I, King of Prussia, Pennsylvania
 - Region II, Atlanta, Georgia
 - Region III, Lisle, Illinois
 - Region IV, Arlington, Texas.
- ❖ Industry representatives.
- ❖ Intervener groups and other external stakeholders.

This audit progressed in two phases. OIG began its review of the overall NRC Enforcement Program in March 2007 and promptly learned that the Office of Enforcement planned to complete a major revision of the *Enforcement Policy* that would address and promote expansion of NRC's newly developed ADR program. Because significant weaknesses in the ADR program were identified early in OIG's review, the general audit was

suspended to allow auditors to focus on aspects of the ADR program. OIG subsequently issued two memorandum reports of ADR findings in December 2007 and March 2008¹⁹ so that the agency could take corrective actions prior to OE's late 2008 estimated completion date for the policy revisions. Fieldwork on the audit of the overall Enforcement Program resumed full-time in late November 2007 and continued through June 2008 to determine the most recent agency activities.

OIG conducted this audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Major contributors to this report were Sherri Miotla, Team Leader; Catherine Colleli, Audit Manager; James McGaughey, Senior Management Analyst; Rebecca Underhill, Senior Auditor; Timothy Wilson, Management Analyst; Andrea Ferkile, Management Analyst; and Daniel Livermore, former OIG Technical Advisor.

¹⁹Memorandum Report, OIG-08-A-03, *Audit of NRC's Alternative Dispute Resolution Program*, dated December 14, 2007, and Memorandum Report, OIG-08-A-08, *Audit of NRC's Contract for Alternative Dispute Resolution Services*, dated March 26, 2008.

ENFORCEMENT PROCESS AND AVAILABLE SANCTIONS

The NRC's enforcement program is based on the recognition that violations occur in a variety of activities and have varying levels of significance. The manner in which the NRC processes a violation is intended to reflect the significance of the violation and the circumstances involved. After a violation is identified, the staff assesses the significance of a violation by considering:

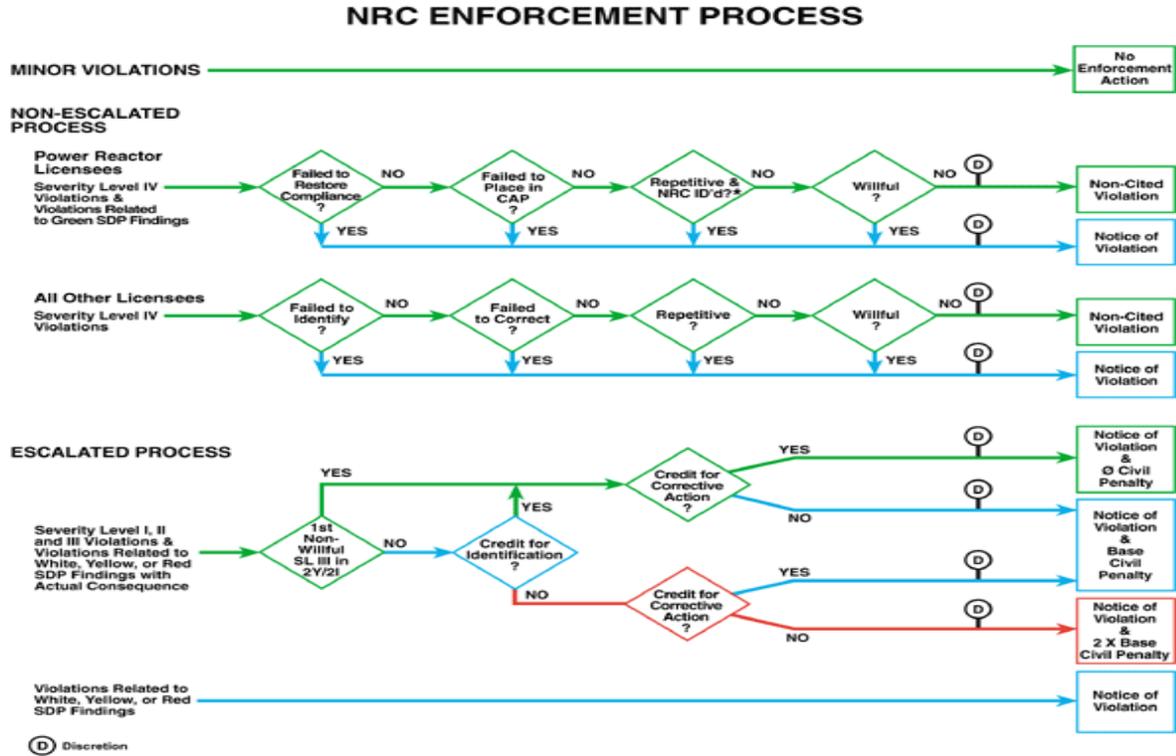
- ❖ Actual safety consequences.
- ❖ Potential safety consequences.
- ❖ Potential for impacting the NRC's ability to perform its regulatory function.
- ❖ Any willful aspects of the violation.

Violations are either:

- ❖ Assigned a severity level, ranging from Severity Level IV for those of more than minor concern to Severity Level I for the most significant.
- ❖ Associated with findings assessed through the ROP's SDP that are assigned a color of Green, White, Yellow, or Red based on increasing risk significance.

The Commission recognizes that there are violations of minor safety or environmental concern that are below Severity Level IV violations and below violations associated with Green SDP findings. Although minor violations must be corrected, given their limited risk significance, they are not subject to enforcement action and are not normally described in inspection reports. All other violations are documented and may be dispositioned as Non-Cited Violations, cited in NOVs, or issued in conjunction with civil penalties or various types of orders. The NRC may also choose to exercise discretion and refrain from issuing enforcement action.

The following diagram is a graphical representation of the NRC's graded approach for processing violations:



Source: NRC

For escalated violations, NRC primarily uses any of the following three sanctions:

- ❖ An NOV identifies a requirement and how it was violated, formalizes a violation pursuant to 10 CFR 2.201, and normally requires a written response from the licensee. Under certain circumstances, NOV's can be used for non-escalated violations and an NRC Form 591 may be used as an NOV for materials licensee violations.
- ❖ A civil penalty is a monetary fine issued under authority of Section 234 of the Atomic Energy Act which provides for penalties of up to \$100,000 per violation per day. The Debt Collection Improvement Act of 1996 adjusted the limit of a civil penalty to \$130,000 per violation per day.
- ❖ Orders can be issued to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or take such other action as may be proper. Orders may be issued in lieu of, or in addition to civil penalties. The NRC may also issue an order to impose a civil penalty where a licensee refuses to pay a civil

penalty. In addition, the NRC may issue an order to an unlicensed person (including vendors) where the NRC has identified deliberate misconduct.

Severity Level IV violations and violations related to Green SDP findings are addressed within the "non-escalated" enforcement process. Although NOVs can be used as discussed above, the primary sanction for non-escalated violations is the Non-Cited Violation.

- ❖ Non-Cited Violations are documented in inspection reports (or inspection records for some materials licensees) to establish public records of the violations, but are not cited in NOVs which normally require written responses from licensees. Dispositioning violations in this manner does not eliminate the NRC's emphasis on compliance with requirements nor the importance of maintaining safety. Licensees are still responsible for maintaining safety and compliance and must take steps to address corrective actions for these violations.

In addition to Non-Cited Violations, NOVs, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its Enforcement Program. The NRC expects licensees and contractors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

- ❖ Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests that a licensee provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.
- ❖ Notices of Nonconformance are written notices describing contractors' failures to meet commitments which have not been made legally binding requirements by NRC. Notices of Nonconformances request that non-licensees provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.
- ❖ Confirmatory Action Letters are letters confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

- ❖ Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.
- ❖ Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.