



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

OFFICE OF THE
INSPECTOR GENERAL

February 25, 2009

MEMORANDUM TO: R. William Borchardt
Executive Director for Operations

FROM: Stephen D. Dingbaum */RA/*
Assistant Inspector General for Audits

SUBJECT: STATUS OF RECOMMENDATIONS: AUDIT OF
NRC'S ALTERNATIVE DISPUTE RESOLUTION
PROGRAM (OIG-08-A-03)

REFERENCE: DIRECTOR, OFFICE OF ENFORCEMENT,
MEMORANDUM DATED JANUARY 7, 2009

Attached is the Office of the Inspector General's analysis and status of recommendations as discussed in the agency's January 7, 2009, update. Based on this response, Recommendation 2 remains resolved and Recommendation 3 is closed. Recommendations 1 and 4 were closed previously. Please provide a status update on Recommendation 2 by June 1, 2009.

If you have questions or concerns, please call me at 415-5915 or Sherri Miotla, Team Leader, at 415-5914.

Attachment: As stated

cc: V. Ordaz, OEDO
J. Arildsen, OEDO
P. Shea, OEDO

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Status of Recommendations

Recommendation 2: Incorporate the interim guidance into the Enforcement Policy and Manual revisions.

Agency Response Dated
January 7, 2009:

Ongoing. As documented in the memorandum from Martin Virgilio, Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs dated January 14, 2008, (ML0800704860), there are commitments from three NRC program offices in addition to the Office of Enforcement (OE) referenced in this recommendation. OE is responsible for incorporating the interim guidance developed in response to Recommendation 1 into the Enforcement Policy and Enforcement Manual. The Office of Nuclear Reactor Regulation (NRR), Office of Federal and State Materials and Environmental Management Programs (FSME), and Office of Nuclear Material Safety and Safeguards (NMSS) are responsible for developing and maintaining procedure guidance on the process for follow-up and closure of alternative dispute resolution (ADR) confirmatory orders falling within their areas of responsibility.

- OE committed to submit the revised Enforcement Policy to the Commission, including ADR program guidance, for Commission approval by December 2008 and issue the Enforcement Manual by July 2009 (6 months following Commission approval of Enforcement Policy).

Ongoing. OE developed post-investigation (enforcement) ADR program guidance for both the Enforcement Policy and the Enforcement Manual. This new guidance was included in the draft revised Enforcement Policy that was published in the Federal Register in September 2008 for public comment, and is scheduled to be submitted to the Commission in the

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Status of Recommendations

Recommendation 2 continued:

spring of 2009. The revision to the Enforcement Manual was issued in December 2008

<http://www.nrc.gov/reading-rm/basic-ref/enf-man/manual.pdf>.

- NRR committed to develop inspection procedure guidance on the process for follow-up and closure of ADR confirmatory orders by July 31, 2008.

Completed. NRR revised inspection procedure (IP) 92702, "Follow-up on Traditional Enforcement Actions Including Violations, Deviations, Confirmatory Action letters, Confirmatory Orders, and Alternative Dispute resolution Confirmatory Orders," dated January 10, 2008, (Reference ML072320154). This procedure includes guidance for tracking and follow-up of ADR confirmatory orders by requiring each item in an ADR order to be documented and tracked in the Reactor Program System/Item Reporting (RPS/IR) module. The Director, Division of Inspection and Regional Support, NRR, issued a memorandum dated July 30, 2008, containing interim reactor inspection program office guidance on follow-up and closure of ADR Confirmatory Order items (Reference ML082060675). The interim guidance has been incorporated by reference into a revision of inspection manual chapter (IMC) 0306, "Information Technology Support for the Reactor Oversight Process," which is scheduled to be issued in December 2008.

- FSME committed to develop inspection procedure guidance on the process for follow-up and closure of ADR confirmatory orders by July 31, 2008.

Completed. FSME reviewed the guidance contained in IMC 2800, "Materials Inspection Program," and noted that it addressed follow-up of both Confirmatory

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Status of Recommendations

Recommendation 2 continued:

Action Letters (CALs) and Orders and thus determined that ADR confirmatory orders were covered under the current IMC guidance. As an enhancement to this basic guidance, FSME indicated it is in the process of expanding IP 92703, "Follow-up of Confirmatory Action Letters," to include reference to Orders, in addition to the current reference to CALs. This procedure provides additional instruction regarding review of commitments made by the licensee or restrictions imposed by NRC as a result of a CAL or an Order issued since the last inspection. These documents (which include Orders) are contained in the appropriate electronic docket file (ADAMS) for the inspectors' review.

- NMSS committed to develop inspection procedure guidance on the process for follow-up and closure of ADR confirmatory orders by July 31, 2008.

Completed. NMSS revised IMC 2600, "Fuel Cycle Facility Operational Safety and Safeguards Inspection Program," dated March 21, 2008, and IMC 2690, "Inspection Program for Dry Storage of Spent Reactor Fuel at Independent Spent Fuel Storage Installations and for Part 71 Transportation Packaging's," dated August 8, 2008, to reference IP 92702 for use as needed to address open items (Reference ML080670196 and ML081690829). IP 92702 includes guidance for follow-up and closure of ADR confirmatory orders by requiring each item in an ADR order to be documented and tracked in RPS/IR.

OIG Analysis:

OIG acknowledges that three NRC program offices committed to assist OE in satisfying this recommendation by revising specific guidance to address the followup and closure of ADR confirmatory orders. We also acknowledge

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Status of Recommendations

Recommendation 2 continued:

that FSME is in the process of expanding IP 92703 to reference ADR orders. However, our review of the cited guidance documents revealed that not all of the necessary revisions were completed as indicated. For instance, IMC 2600 does not include any references to ADR orders, nor does it incorporate by reference the interim guidance in IP 92702. Therefore, this recommendation will be closed when OIG confirms that all of the cited guidance documents were revised in a way that fully satisfies the intent of the recommendation.

Status: Resolved.

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Status of Recommendations

Recommendation 3: Develop a uniform system to track all ADR cases from initiation to closure.

Agency Response Dated
January 7, 2009:

Completed. OE implemented the new enforcement action tracking system (EATS) in December 2008 after six months of full parallel system testing.

OE worked with the Office of Information Services (OIS) in the development and implementation of a new updated EATS. This system allows enforcement specialists and program offices the ability to track enforcement ADR cases from initiation to issuance of a confirmatory order. OIS obtained the authority to operate (ATO) the Case Management System – Web (CMS-W) on June 30, 2008, permitting the operation and use of the system. CMS-W will encompass three subsystems (EATS, Allegation Management System, and the Office of Investigations Management Information System) which track enforcement, allegations, and investigation cases respectively. The ATO permitted OIS to migrate data from the existing system to the new system and allowed OE to enter case information directly into new-EATS and commence system testing.

Program office coordinators and both the headquarters and regional enforcement staff have been trained on the use of the new-EATS system thus providing the program and regional offices with the ability to track ADR cases from initiation to issuance of the order. Follow-up and closure of ADR confirmatory orders is performed in accordance with the guidance developed by the program offices (NRR, FSME, and NMSS) as described in Recommendation 2.

OIG Analysis:

According to the agency's updated status of Recommendation 2, each program office is responsible for developing and maintaining procedure guidance on the process for followup and closure of ADR confirmatory

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Status of Recommendations

Recommendation 3 continued:

orders falling within their areas of responsibilities. Such a process would include tracking the ADR orders. However, as noted in our analysis of the agency's Recommendation 2 update, the needed revisions to cited guidance documents regarding the followup and closeout ADR confirmatory orders are not yet complete. Nonetheless, OIG acknowledges that the agency has developed and OE has implemented a system to uniformly track ADR cases from initiation to closure as intended by this recommendation. Therefore, OIG considers this recommendation closed.

Status: Closed.