

I and II violations are of very significant regulatory concern.⁶ In general, violations that are included in these severity categories involve actual or high potential consequences on public health and safety. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern. Violations at Severity Level IV involve noncompliance with NRC requirements that are not considered significant based on risk. This should not be misunderstood to imply that Severity Level IV issues have no risk significance.

The Commission recognizes that there are other violations of minor safety or environmental concern that are below the level of significance of Severity Level IV violations. While licensees must correct these minor violations, they don't normally warrant documentation in inspection reports or inspection records and do not warrant enforcement action. To the extent such violations are described, they will be noted as violations of minor significance that are not subject to enforcement action.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation.

V. PREDECISIONAL ENFORCEMENT CONFERENCES

When the NRC learns of a potential violation for which escalated enforcement action appears to be warranted, or recurring **nonconformance** on the part of a contractor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, contractor, or other person before taking enforcement action. The purpose of the predecisional enforcement conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes, and missed opportunities associated with the apparent violations; (2) a common understanding of corrective actions taken or planned; and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

The NRC may conduct Regulatory Conferences (in lieu of predecisional enforcement conferences) to discuss the significance of findings evaluated by the Reactor Oversight Process's SDP when apparent violations are associated with potentially significant findings.

⁶ Regulatory concern pertains to primary NRC regulatory responsibilities, *i.e.*, safety, safeguards, and the environment.

The purpose of Regulatory Conferences is to get information from licensees on the significance of findings evaluated through the SDP whether or not violations are involved. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued (i.e., a Notice of Violation associated with a white, yellow, or red SDP finding), a subsequent predecisional enforcement conference is not normally necessary.

If the NRC concludes that it has sufficient information to make an informed enforcement decision involving a licensee, contractor, or vendor, a predecisional enforcement conference will not normally be held. If a predecisional enforcement conference is not held, the licensee may be given an opportunity to respond to a documented apparent violation (including its root causes and a description of planned or implemented corrective actions) before the NRC takes enforcement action. However, if the NRC has sufficient information to conclude that a civil penalty is not warranted, it may proceed to issue an enforcement action without first obtaining the licensee's response to the documented apparent violation.

The NRC will normally provide an opportunity for an individual to address apparent violations before the NRC takes escalated enforcement action. Whether an individual will be provided an opportunity for a predecisional enforcement conference or an opportunity to address an apparent violation in writing will depend on the circumstances of the case, including the severity of the issue, the significance of the action the NRC is contemplating, and whether the individual has already had an opportunity to address the issue (e.g., an Office of Investigation or a Department of Labor hearing).

During the predecisional enforcement conference, the licensee, contractor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or **nonconformance** and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, contractors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in the regional offices and are normally open to public observation. Predecisional enforcement conferences will not normally be open to the public if the enforcement action being contemplated:

- (1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;
- (2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;
- (3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or
- (4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor, any associated predecisional enforcement conference with the contractor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open predecisional enforcement conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

VI. DISPOSITION OF VIOLATIONS

This section describes the various ways the NRC can disposition violations. The manner in which a violation is dispositioned is intended to reflect the seriousness of the violation and the circumstances involved. As previously stated, minor violations are not the subject of enforcement action. While licensees must correct these violations, they don't normally warrant documentation in inspection reports or inspection records. Other violations are documented and may be dispositioned as Non-Cited Violations, cited in Notices of Violation, 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. (See Section VII.B, "Mitigation of Enforcement Sanctions.") As discussed further in Section VI.E, related administrative actions such as **Notices of Nonconformance**, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In determining the appropriate regulatory response, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction, such as in transportation matters.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:
 - (a) When a licensee is unable or unwilling to comply with NRC requirements;
 - (b) When a licensee refuses to correct a violation;
 - (c) When licensee does not respond to a Notice of Violation where a response was required;
 - (d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or
 - (e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, or applicants for any of them, and to employees of any of the foregoing, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted under 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

E. Related Administrative Actions

In addition to NCVs, 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.

1. **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.

2. **Notices of Nonconformance** are written notices describing contractors' failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. **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.

3. **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.

4. **Letters of Reprimand** are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. **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.

VII. EXERCISE OF DISCRETION

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case.

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. The NRC also considers violations associated with findings that the Reactor Oversight Process's Significance Determination Process evaluates as having low to moderate, or greater safety significance (i.e., white, yellow, or red) to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$140,000 per violation, per day.

X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or knowing submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Contractors who supply products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with licensees, suppliers may be required to have quality assurance programs that meet applicable requirements, e.g., 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Contractors supplying certain products or services to licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that contractors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their contractors have programs that meet applicable requirements. Notices of Violation will be issued for contractors who violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a contractor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(d)(1). Notices of Violation or orders will be used against non-licensees who are subject to the specific requirements of Parts 71 and 72. **Notices of Nonconformance** will be used for contractors who fail to meet commitments related to NRC activities but are not in violation of specific requirements.

XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, (53 FR 50317; December 14, 1988).

XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.