

April 5, 2011

MEMORANDUM TO: Mark A. Satorius
Regional Administrator, Region III

FROM: Roy P. Zimmerman, Director */RA/*
Office of Enforcement

SUBJECT: 2011 OFFICE OF ENFORCEMENT ASSESSMENT OF THE
REGION III ENFORCEMENT PROGRAM

On February 24, 2011, the U.S. Nuclear Regulatory Commission (NRC) Office of Enforcement (OE) completed an assessment of the Region III Enforcement Program. It was the first OE assessment of a regional enforcement program in recent years and involved a team comprised of three enforcement specialists from NRC Headquarters and an enforcement specialist from Region IV. The primary goal of this assessment was to verify consistent application of the NRC Enforcement Policy and processes, acknowledge good work practices to share with other regions and program offices, provide assessment team participants with knowledge transfer, and identify needed improvements in OE guidance. The assessment items included observations of scheduled meetings, interviews with regional staff, and reviews of the enforcement documents issued by Region III. The team directed more emphasis to the nonescalated processes and less emphasis to the escalated processes with which OE is routinely involved.

The team concluded that Region III maintains a strong regional enforcement program and is effectively implementing the NRC Enforcement Policy and procedures largely because of the efficient and effective collaboration among inspectors, enforcement and investigation coordination staff, and division management. The success of the enforcement program can be further attributed to the continued support provided by the Regional Counsel and regional management.

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The attached report discusses the results of the assessment in detail. The conclusions are grouped into three distinct categories based on the team's assessment items. The assessment team identified a number of good work practices in Region III that are being shared with the other regions, and program offices. During the assessment, the team also developed recommendations to improve the overall quality and consistency of the NRC Enforcement Program.

Enclosure:
As stated

cc w/encl: W. Dean, Region I
V. McCree, Region II
E. Collins, Region IV

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2011 Assessment of the Region III Enforcement Program

Office of Enforcement



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February 22–24, 2011

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Attachment: Enforcement Program Assessment Plan

I. Summary of Assessment Findings

On February 24, 2011, the U.S. Nuclear Regulatory Commission (NRC) Office of Enforcement (OE) completed an assessment of the Region III Enforcement Program. In reviewing the Region III Enforcement Program, the assessment team identified consistent application of the NRC Enforcement Policy and processes. The Enforcement and Investigation Coordination Staff (EICS) maintains a positive rapport with the technical staff and is a significant strength to the Region III Enforcement Program. Additionally, the effective implementation of the NRC Enforcement Policy and processes can be attributed largely to the clear and continued support of the NRC Enforcement Program by the Regional Counsel and regional management. Moreover, inspection staff and division management effectively use the experienced EICS at the early stages of the enforcement decisionmaking process.

The assessment identified numerous good work practices, including the early involvement of management and EICS in enforcement actions, the execution of internal audits, and the knowledge management transfer that takes place with the inspectors during management debriefings. Region III should continue to implement all these practices. Other regions and program offices should also consider adopting applicable good work practices to improve the consistent and efficient application of the NRC Enforcement Policy and processes. The Region III Enforcement Program also fosters an open and collaborative work environment by encouraging the presentation of differing views. Overall, the assessment team concluded that Region III maintains a strong regional enforcement program and has set a high standard for future assessments.

II. Discussion of the Assessment Process

A. Scope of Review

Three staff members from the OE Enforcement Branch and an enforcement specialist from Region IV conducted the assessment of the Region III Enforcement Program. A senior enforcement specialist from OE led the assessment.

The primary goal of this assessment was to review the Region III Enforcement Program to verify consistent application of the NRC Enforcement Program, exchange best practices among regions, provide participants with knowledge transfer, and identify needed improvements in OE guidance. The assessment included a review of both escalated and nonescalated processes with more emphasis on the nonescalated process and less emphasis on the escalated process.

Logistically, the team assessment consisted of three general activities: (1) attending meetings integral to the implementation of the Region III Enforcement Program, (2) conducting face-to-face interviews with Region III staff members, and (3) reviewing enforcement documents for both escalated and nonescalated enforcement actions. The team grouped the results of the Region III Enforcement Program assessment into categories based on the general activities.

B. Team Assessment in Region III

All team members were present in Region III from February 22–24, 2011, to conduct the assessment and to draw conclusions and recommendations from the assessment results.

On the first day of the assessment, after an entrance meeting with the Deputy Regional Administrator, the team attended various meetings integral to the successful execution of the regional enforcement program. Team members attended an Office of Investigations (OI) outbriefing and a Division of Reactor Safety (DRS) post-inspection debriefing.

On the second day of the assessment, the team primarily conducted interviews with regional staff members who interact with the Region III Enforcement Program. The assessment team interviewed three Branch Chiefs, eight inspectors, various members of division management, and members of EICS. Additionally, the team attended both the Region III daily morning meeting and an enforcement panel pre-briefing and observed the role that these meetings play in the regional enforcement program.

On the third day of the assessment, the team attended a Region III enforcement panel and reviewed a selection of the region's enforcement documents for both escalated and nonescalated enforcement actions. Finally, the team met with the Regional Administrator and select regional management and staff to briefly review the initial findings of the Region III Enforcement Program assessment.

III. Assessment Results and Recommendations

A. Meetings

The assessment team made the following observations and recommendations in response to the meetings attended:

- **Assessment Topic: Management Meetings**

Observation (A1): OI conducts outbriefings with the Regional Counsel and regional management after the completion of field investigation activities and before finishing the written report. This good practice allows regional management to decide whether immediate enforcement action is required before the agency reviews the written report in detail.

Recommendation (A1): At the time of the regional OI outbriefing, EICS could provide early notification to OE of upcoming OI cases to possibly expedite the assignment of an Office of the General Counsel attorney and enforcement specialist and to potentially facilitate an earlier enforcement panel date.

Observation (A2): DRS holds weekly post-inspection debriefings with its lead inspectors; these debriefings serve as a forum for knowledge management by engaging inspectors of various disciplines and at differing levels of experience. The assessment team identified the DRS inspector debriefing as a good practice because it keeps both the Division Director and the Deputy Division Director informed on the outcome of recent inspections and because it allows senior management to know about potential enforcement issues early in the process.

Observation (A3): The Region III Enforcement Program provides EICS with multiple opportunities to meet and communicate with regional and division management. With management support, EICS can establish a unified regional position on enforcement issues and maintain a timely focus on enforcement actions. Specifically, senior management may ask EICS to meet for a pre-panel briefing in preparation for the enforcement panel with OE. This process results in a more efficient use of time spent at the enforcement panel by providing a forum for management to ask questions before the enforcement panel. Establishing a regional position before the enforcement panel is a good practice that the region should continue.

- Assessment Topic: Enforcement Panels

Observation (A4): Region III enforcement specialists engage OE and program office enforcement specialists before enforcement panels to understand and potentially resolve early questions and issues with pending cases.

Recommendation (A4): OE should facilitate earlier communication between the regional EICS and the program office concerning the technical issues in an enforcement case. By engaging in early communication with all participating offices, many of the technical questions that arise during the Headquarters enforcement panel could be answered before the panel takes place. Additionally, OE could establish clear roles and responsibilities for all parties in the NRC Enforcement Program to improve efficiencies.

Observation (A5): In addition to implementing the good practice of defining a regional position before the enforcement panel takes place, the region also encourages an open and collaborative work environment by allowing the introduction of differing views held by regional staff throughout the enforcement process.

B. Interviews

The assessment team made the following observations and recommendations as a result of its interviews:

- Assessment Topic: Enforcement and Investigation Coordination Staff

Observation (B1): EICS performs monthly audits of nonescalated enforcement actions issued by the Division of Nuclear Materials Safety and provides the division with feedback on any discrepancies identified in its audit. This good practice has provided the division with valuable feedback that has improved the documentation of licensee violations in NRC Form 591s and written reports.

Recommendation (B1): EICS should consider similar audits of DRS and the Division of Reactor Projects.

- Assessment Topic: Enforcement Action Worksheet

Observation (B2): EICS includes a “panel outcome” section to the enforcement action worksheet (EAW) after the enforcement panel takes place but before the agency enters the EAW into the Agencywide Documents Access and Management System. The “panel outcome” section of the EAW details the panel’s decision and notes whether the

severity level of a violation or proposed violation changed and why it changed. EICS initiated this practice because the strategy form, in some instances, is not completed by the OE enforcement specialist in a timely manner and has since become a permanent part of the final EAW.

Recommendation (B2): OE should review the strategy form process and improve completion timeliness.

Observation (B3): Region III staff members do not see the EAW as cumbersome and expressed no problems with the current format. The general consensus among the staff of the Region III Enforcement Program is that the current EAW format is satisfactory. In fact, the technical staff felt that the details required by the current format are those that would likely be the subject of questions in determining the appropriate enforcement actions. Moreover, Region III inspectors stated that much of this information comes directly from their inspection reports.

- Assessment Topic: Enforcement Guidance

Observation (B4): The Region III staff has identified some gaps in the guidance that addresses the application of the NRC Enforcement Policy to identified violations within the independent spent fuel storage installation (ISFSI) program.

Recommendation (B4): OE should develop additional guidance in the form of violation examples for enforcement issues under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, "Domestic Licensing of Special Nuclear Material," and 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste." This recommendation specifically relates to ISFSI and dry cask storage inspections. The lack of guidance raises questions among regional staff when documenting 10 CFR Part 70 and 10 CFR Part 72 violations in an integrated inspection report to a licensee under 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," including the crosscutting aspects of the violations and where the boundary exists between 10 CFR Part 70, 10 CFR Part 72, and 10 CFR Part 50. Additional guidance is necessary because the NRC uses traditional enforcement methods to disposition 10 CFR Part 70 and 10 CFR Part 72 violations, whereas the agency uses the Reactor Oversight Process (ROP) to disposition operating reactor licensee violations. Additional guidance may reduce any confusion as to what enforcement method should be used if violations are identified at ISFSIs or dry cask storage operations at operating reactor facilities.

Observation (B5): Region III, along with the other regions, participates in the ROP reliability initiative, which includes reviewing guidance in the area of minor violations. As communicated during interviews, Region III staff members are appropriately evaluating violations to determine whether the violations are more than minor by using the criteria in NRC guidance and by discussing issues with peers and with regional management. The staff estimated that approximately 75 percent of inspector-identified issues are determined to be minor.

Recommendation (B5): Many inspectors relied on their experience and on the knowledge of their colleagues to differentiate between minor violations and those that are more than minor. To reduce the number of judgment calls in the field, OE and the

Office of Nuclear Reactor Regulation should assist the regions in this agency initiative to generate additional examples of minor violations. Additional examples will facilitate the decisionmaking process; however, additional real life examples may be difficult to identify because minor violations are typically not documented.

C. Document Review

The assessment team made the following observations and recommendations as a result of the documents reviewed:

- Assessment Topic: Choice Letters

Observation (C1): The regional technical division writes choice letters with review by EICS. The assessment team reviewed a representative sample of choice letters issued by the region and verified that all the letters were consistent with the boilerplates provided by OE.

- Assessment Topic: Factual Summaries

Observation (C2): The assessment team reviewed a representative sample of factual summaries prepared by EICS and issued by the region. Factual summaries were well written and consistent with OE expectations for the content and clarity.

- Assessment Topic: Nonescalated Enforcement Actions

Observation (C3): Before documenting nonescalated enforcement actions, regional inspectors often consult with colleagues and with their Branch Chiefs about the details of the violation. The assessment team reviewed a representative sample of inspection reports and specifically focused on nonescalated enforcement actions. The nonescalated enforcement actions detailed in the sample were consistent with the guidelines in the NRC Enforcement Policy, the NRC Enforcement Manual, and the ROP.

IV. Assessment Logistics

Because this was the first OE assessment of a regional enforcement program in recent years, the team identified additional observations with regard to the logistics of the assessment process. The following observations and recommendations should be considered when planning future OE assessments of regional enforcement programs:

Observation (IV1): The inclusion of both regional and Headquarters personnel on the assessment team was a significant strength and should be continued in future assessments of regional enforcement programs.

Observation (IV2): The assessment team facilitated prior communication with EICS to develop the assessment plan, coordinate the assessment logistics, and gather enforcement documents for review. This preparation between OE and EICS allowed the assessment team to gain efficiencies while it was on site in Region III.

Observation (IV3): The assessment team did not have enough time to review the region's disputed violation process, as requested. The team also ran out of time to evaluate the complete selection of enforcement documents for both escalated and nonescalated enforcement actions provided by EICS. However, the assessment team retained these materials and reviewed them later at Headquarters.

Recommendation (IV3): For future assessments, the assessment teams should receive more time to provide a more complete review of the regional enforcement program.

V. Assessment Conclusions

Region III efficiently and effectively implements the agency's Enforcement Program because of support from the Regional Counsel and regional management, early involvement by division management, the positive rapport between EICS and the technical staff, and the open and collaborative work environment.

This was the first OE regional assessment of the NRC Enforcement Program in recent years. Although the preparation for this assessment involved many unknown factors, the team felt that the endeavor was worthwhile and provided added value to the agency's implementation of a consistent and effective enforcement program. The recommendations in this report were developed during the team assessment in Region III. The team members agreed that these recommendations would improve the overall quality and consistency of the NRC Enforcement Program.

Enforcement Program Assessment Plan
REGION III
FEBRUARY 22-24, 2011

I. Purpose

To review the region III enforcement program to verify consistent application of the enforcement program, exchange best practices between regions, provide knowledge transfer for participants, and identify needed improvements in guidance provided by OE.

II. Scope

Review both escalated and non-escalated processes, with more emphasis on the non-escalated processes and less emphasis on the escalated process portions already involving HQ.

III. Activities

A. Non-escalated enforcement actions

1. Review a representative sample of Non-cited Violations (NCV) issued throughout the previous year in all applicable program areas (i.e., reactor, new construction, materials (including 591s), Independent Spent Fuel Storage Facilities, etc).
 - a. Verify NCVs are valid and properly documented in inspection reports
 - b. Verify NCV criteria are met
2. Review use of the "minor" guidance to verify appropriate threshold in considering issues "minor" (conduct interviews with several Branch Chiefs and inspectors since minor violations are not documented)
3. Review a representative sample of SL IV NOVs issued from the different inspection program areas.
 - a. Verify NCV criteria were not met
 - b. Verify correctly written NOV (i.e., requirement and "contrary to" statement)
4. Review use / application of enforcement discretion guidance, especially those that do not require further reviews by OE or the regional enforcement staff.
5. Review the conduct and handling of Security related non-escalated enforcement actions, including the process to determine the significance level of the violation.
6. Review a representative sample of disputed violations in the applicable program areas and determine if the disputed violations were dispositioned properly.

B. Escalated enforcement actions (e.g., select three escalated cases; one reactor SDP, one non-willful materials, and one willful case) and review the following activities:

1. EAW preparation
2. Package preparation
3. Conduct of Pre-Decisional Enforcement Conference

4. Conduct of Alternative Dispute Resolution, if applicable
5. Timeliness of related activities and overall action to assess management controls
6. Proper handling of Individual Action and Enforcement Action numbers
7. Review how region handle Personal History Questionnaire apparent violations.

C. Review the tools and methods used by the region to identify, process, track, and complete both escalated and non-escalated enforcement actions for possible best practices that could be shared with other regions and headquarters (e.g., if possible, observe a regional inspection debrief. The debrief is also where minor violations will likely be discussed). Include in the review the methods used to facilitate open discussions with the divisions and with OI staff.

D. Interview regional staff to gauge their level of understanding of the regional enforcement practices and needs.

IV. Assessment Report/Memorandum

A. Develop a report/memorandum that includes the assessment team's consensus of best practices identified and any recommendations for implementation of guidance or other identified best practices.

B. Include recommendations for improvement of guidance contained in the Enforcement Manual.