

April 11, 2011

ALL AGREEMENT STATES, MICHIGAN

U.S. NUCLEAR REGULATORY COMMISSION NOTIFICATION OF ISSUANCE OF ENFORCEMENT GUIDANCE MEMORANDUM-09-007, REVISION 2, "INTERIM GUIDANCE FOR DISPOSITIONING VIOLATIONS OF NATIONAL SOURCE TRACKING SYSTEM REQUIREMENTS" (FSME-11-029)

**Purpose:** On March 2, 2011, the U.S. Nuclear Regulatory Commission (NRC) issued the enclosed revised enforcement guidance memorandum (EGM) for use as guidance in dispositioning violations of the National Source Tracking System (NSTS) requirements in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 20.2207, dated November 2006. This letter is intended to inform all Agreement States of this action. No action or response on the part of the Agreement States is requested or required. The Agreement States may choose to take similar actions.

**Background:** The President signed the Energy Policy Act of 2005 into law on August 8, 2005. The statute contains a national source tracking provision which required the NRC to issue regulations establishing a mandatory tracking system for radiation sources in the United States. In response to that mandate, the NSTS was developed through close cooperation with other Federal and State agencies to enhance the accountability of radioactive sources. The Energy Policy Act of 2005 states Category 1 and Category 2 sources are to be included in the NSTS. The radionuclides and thresholds are identical to the Table I values from the International Atomic Energy Agency *Code of Conduct* and are located in Appendix E to Part 20. The NRC also expanded the list of nationally tracked sources by adding four additional radionuclides (Actinium-227, Polonium-210, Thorium-228, and Thorium-229). The NRC published the Final Rule incorporating the NSTS into the agency's regulations on November 8, 2006 (71 FR 65707, as amended at 72 FR 59163, October 19, 2007), set forth in 10 CFR 20.2207, "Reports of Transactions Involving Nationally Tracked Sources." The NRC determined that the guidance was needed until the enforcement manual could be revised to include the topic of dispositioning NSTS violations.

**Discussion:** The NRC issued the first version of the NSTS EGM on July 31, 2009. The purpose of this EGM is to provide guidance for dispositioning inspection findings related to a licensee's implementation of NSTS requirements. The EGM contains a discussion of the factors that would warrant an exercise of enforcement discretion to issue a Non-Cited Violation (NCV) or a Notice of Violation citing a severity level III or IV violation. The EGM also provides sample inspection report and cover letter language. A revision was made to this EGM on August 28, 2009, to remove an inaccurate example in the escalated enforcement section which stated that a licensee must have a credentialed point of contact. A credentialed person is required for actual use of the internet NSTS database, but credentialing is not needed for a person who is faxing information to the NRC.

A second revision was made to this EGM on March 2, 2011, to add and revise wording to reflect the language used in the NSTS Final Rule, and this revised version is being transmitted in this letter. In the background section, the compliance start date was corrected from January 1, 2009, to January 31, 2009. The section that discusses the dispositioning of violations was revised to emphasize that violations which met the criteria for discretion should be dispositioned as NCVs. Additional language was added to highlight the fact that the violation must be corrected within five business days of the date of discovery. Also, the language in the normal enforcement process section regarding programmatic failures was revised to emphasize that the licensee must have a process to identify and report transactions of tracked sources to NSTS.

This EGM is in effect until further notice.

If you have any questions regarding this correspondence, please contact me at (301) 415-3340, or the individual named below.

POINT OF CONTACT: Glenda Villamar      INTERNET: Glenda.Villamar@nrc.gov  
TELEPHONE:                    (301) 415-8022      FAX:                    (301) 415-3502

***/RA/ by James G. Luehman for***

Terrence Reis, Acting Director  
Division of Materials Safety  
and State Agreements  
Office of Federal and State Materials  
and Environmental Management Programs

Enclosure:  
EGM-09-007, Revision 2

A second revision was made to this EGM on March 2, 2011, to add and revise wording to reflect the language used in the NSTS Final Rule, and this revised version is being transmitted in this letter. In the background section, the compliance start date was corrected from January 1, 2009, to January 31, 2009. The section that discusses the dispositioning of violations was revised to emphasize that violations which met the criteria for discretion should be dispositioned as NCVs. Additional language was added to highlight the fact that the violation must be corrected within five business days of the date of discovery. Also, the language in the normal enforcement process section regarding programmatic failures was revised to emphasize that the licensee must have a process to identify and report transactions of tracked sources to NSTS.

This EGM is in effect until further notice.

If you have any questions regarding this correspondence, please contact me at (301) 415-3340, or the individual named below.

POINT OF CONTACT: Glenda Villamar      INTERNET: Glenda.Villamar@nrc.gov  
 TELEPHONE:                    (301) 415-8022      FAX:                    (301) 415-3502

***/RA/ by James G. Luehman for***

Terrence Reis, Acting Director  
 Division of Materials Safety  
 and State Agreements  
 Office of Federal and State Materials  
 and Environmental Management Programs

Enclosure:  
 EGM-09-007, Revision 2

DISTRIBUTION:  
 MSSA r/f

**ML110810553**

<b>OFFICE</b>	FSME	FSME	FSME	FSME
<b>NAME</b>	GVillamar	JCai	JLuehman	TReis (JLuehman for)
<b>DATE</b>	3/21/11	4/11/11	4/11/11	4/11/11

**OFFICIAL RECORD COPY**