

Integrated Regulatory Review Service Mission to the United States

MODULE 8: ENFORCEMENT

Overview

The U.S. Nuclear Regulatory Commission (NRC) Enforcement Policy supports the NRC's mission to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. Consistent with that purpose, the policy endeavors to deter noncompliance by emphasizing the importance of compliance with NRC requirements and to encourage prompt identification and prompt, comprehensive correction of violations of NRC requirements to prevent their recurrence. Therefore, licensees, contractors, and their employees who do not achieve the high standard of compliance that the NRC expects will be subject to enforcement sanctions. Each enforcement action depends on the circumstances of the case. However, in no case will licensees who cannot achieve and maintain adequate levels of safety be permitted to continue to conduct licensed activities.

The NRC Enforcement Policy applies to all licensees, such as various types of radioactive materials users and production and utilization facilities, including power reactor facilities. Further, the Enforcement Policy applies a variety of tools to document and disposition violations depending on their safety or regulatory significance.

Generally, enforcement actions begin with the identification of an inspection or investigation finding or violation. The Reactor Oversight Process (ROP) uses the significance determination process (SDP) to evaluate violations associated with most inspection findings at commercial power reactor facilities. The SDP provides a risk-informed framework for discussing significance. The SDP concludes by assigning a color (red, yellow, white, or green) to the finding associated with a violation to distinguish the finding's relative significance. However, violations involving wrongdoing or affecting the NRC's ability to oversee licensed activities are not evaluated by the SDP, but rather through the use of traditional enforcement methods to determine the severity. Traditional enforcement concludes by assigning a Severity Level (I, II, III, or IV) to designate the violation's relative severity. Regardless of the process used (ROP or traditional enforcement), the Enforcement Policy provides the means and guidance for the NRC to evaluate violations and take appropriate action commensurate with the seriousness of the violation.

Authority of the NRC Enforcement Process

The NRC derives its enforcement jurisdiction from the Atomic Energy Act of 1954, as amended (the Act), and the Energy Reorganization Act of 1974, as amended. Provisions of these acts authorize the NRC to conduct inspections and investigations and to issue orders. The acts also authorize the NRC to revoke licenses under certain circumstances, including violations of NRC requirements. The Act authorized civil penalties at a maximum of \$100,000 per day per violation. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, provides for an adjustment to civil penalty sanctions to reflect inflation. As a result, the current maximum civil penalty is now \$140,000 per day. Further, the Act provides for varying levels of criminal penalties (monetary fines and

imprisonment) for willful violations of the Act and regulations or orders issued pursuant to the Act. Alleged or suspected criminal violations of the Act are referred to the U.S. Department of Justice for appropriate action.

Establishment of Enforcement Policy and Procedures

The regulatory body shall establish and implement an enforcement policy within the legal framework for responding to non-compliance by authorized parties with regulatory requirements or with any conditions specified in the authorization.
(GS-R-1, Requirement 30)

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(GS-R-1, Requirement 31)

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," Subpart B, "Procedure for Imposing Requirements by Order, or for Modification, Suspension, or Revocation of a License, or for Imposing Civil Penalties," sets forth the procedures the NRC uses in exercising its enforcement authority. In 10 CFR 2.201, "Notice of Violation," the regulation states that the notice of violation will concisely describe the alleged violation and may require that the licensee or other person submit, within 20 days of the date of the notice or other specified time, a written explanation or statement in reply if the Commission believes that the licensee has not already addressed all the issues contained in the notice of violation, including (1) corrective steps taken by the licensee or other person and the results achieved, (2) corrective steps that will be taken, and (3) the date when full compliance will be achieved. The notice may require the licensee or other person subject to the jurisdiction of the Commission to admit or deny the violation and to state the reasons for the violation, if admitted. It may provide that, if an adequate reply is not received within the time specified in the notice, the Commission may issue an order or a demand for information as to why the license should not be modified, suspended, or revoked, or why such other action as may be proper should not be taken.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission appears in 10 CFR 2.202, "Orders." The licensee or any other person adversely affected by the order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. The regulation in 10 CFR 2.204, "Demand for Information," provides the procedures for issuing a demand for information (demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The demand does not provide hearing rights, as the NRC is only seeking information. A licensee must answer a demand. An unlicensed person may answer a demand either by providing the requested information or explaining why the demand should not have been issued.

The procedure to be used in assessing civil penalties appears in 10 CFR 2.205, "Civil Penalties." This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The notice shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and shall identify specifically the particular provision or provisions of the law, rule, regulation,

license, permit, or cease and desist order involved in the alleged violation. The notice must state the amount of each proposed penalty. The licensee or other person is given an opportunity to contest the proposed imposition of a civil penalty in writing. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity for a hearing is provided if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in district court.

The NRC Enforcement Policy describes the policy and procedures that the NRC and its staff intend to follow in initiating and reviewing enforcement actions in response to violations of NRC requirements. The general policy and procedures are available on the NRC public Web site and the NRC's Agencywide Documents Access and Management System to foster their widespread dissemination. However, the Enforcement Policy is a policy statement and not a regulation. The Commission may deviate from the policy as appropriate under the circumstances of a particular case. The Enforcement Policy describes the statutory authority of the NRC to issue enforcement actions and the responsibilities of various agency managers to issue enforcement actions. It also contains guidance on determining the severity or significance of violations; use of enforcement conferences with licensees to assist the NRC in its determination of a final enforcement action; methods to disposition various violations including use of civil penalties and orders, as necessary; use of discretion to escalate or mitigate enforcement sanctions; enforcement actions involving individuals and nonlicensees; public disclosure of enforcement actions; and referrals to the U.S. Department of Justice for alleged or suspected criminal violations of the Atomic Energy Act, as amended.

The NRC uses a variety of enforcement tools commensurate with the significance of the noncompliance to ensure compliance by licensees. Also, the NRC Enforcement Manual presents detailed guidance regarding the disposition of violations.

Enforcement Actions are Commensurate with the Seriousness of the Violation

The NRC recognizes several forms of noncompliance, including deviations, nonconformances, and violations. Deviations and nonconformances generally involve failures by the licensee or a contractor to meet commitments it has made to the NRC that are not otherwise legally binding requirements. Administrative actions, such as a written Notice of Deviation or Notice of Nonconformance, may be provided to the licensee or contractor to correct these types of noncompliance. Violations, however, are failures by the licensee to meet legally binding regulatory requirements. Regulatory requirements have varying degrees of safety, security, or environmental significance. Therefore, the relative importance or significance of each violation is assessed as the first step in the enforcement process to determine the appropriate action.

In assessing the significance of a violation, the NRC considers four specific issues: (1) actual safety consequences, (2) potential safety consequences, including the consideration of risk information, (3) potential impact on the NRC's ability to perform its regulatory function, and (4) any willful aspects of the violation. For most violations at commercial nuclear power plants, the NRC relies on information from the ROP SDP to evaluate the actual and potential safety significance and to provide a risk-informed framework for discussing and communicating the significance of the violation.

Nonescalated Enforcement

Most violations at nuclear power plants involve nonescalated enforcement actions. Typically, these violations are dispositioned by issuance of a noncited violation. Severity Level IV violations associated with an impact to the regulatory process or involving wrongdoing, or violations associated with green inspection findings, may result in noncited violations. Normally, these noncited violations are described in a written inspection report, issued by NRC management from the office that conducted the inspection activity identifying the finding or violation. Most of these actions are evaluated under the ROP SDP and are determined to have very low safety significance (green).

Severity Level IV violations resulting from an impact to the regulatory process or willfulness are of more than minor concern and involve noncompliances with NRC requirements that are difficult to assess based on risk. Such violations may result in a written notice of violation, depending on the timely implementation of corrective action by the licensee. Normally, however, these violations are described in an inspection report as a noncited violation.

The NRC recognizes that other violations of minor safety or environmental concern may fall below the level of significance of Severity Level IV violations or violations associated with green inspection findings. While licensees must correct these minor violations, minor violations normally do not result in an enforcement action, nor do they warrant documentation in inspection reports or inspection records. To the extent that an inspection report describes such violations, they will be noted as violations of minor significance that are not subject to enforcement action.

Escalated Enforcement

When violations occur at nuclear power plants that are more significant than green findings or Severity Level IV violations, they are considered escalated enforcement actions. Typically, these violations are dispositioned by issuance of a written notice of violation. In more severe cases, the NRC may issue a notice of violation and proposed imposition of a civil penalty or an immediately effective Order. Violations categorized as Severity Level I, II, and III, or associated with red, yellow, and white inspection findings as determined by an SDP, are considered escalated enforcement actions.

Any potential escalated violation must be reviewed by an enforcement panel or a significance and enforcement review panel (SERP) to determine the significance of the violation and to recommend the appropriate enforcement action. Enforcement panels and SERPs are similar in makeup and action; however, SERPs review significant inspection findings under the ROP, using an SDP to determine the appropriate color of the finding to risk-inform the enforcement process, while enforcement panels review significant violations, the significance of which cannot be determined by using an SDP, such as willful violations. Typically, the enforcement or SERP panel has representation from the regional office having oversight of the facility licensee, the appropriate program office (Office of Nuclear Reactor Regulation, New Reactors, or Nuclear Security and Incident Response), and the Office of Enforcement. The panel will determine the significance or severity of the apparent finding or violation and will recommend an action to formally notify the licensee of the apparent violation.

Subsequent to the panel or SERP meeting, the licensee receives a written description of the apparent violation and, in most cases, is offered a choice to provide additional written information or to attend a predecisional enforcement conference (PEC) (or a regulatory

conference (RC) for significant ROP findings) in order for the NRC to make a final enforcement determination. Following the PEC (or RC), the NRC will consider any licensee-provided information at a caucus panel or SERP to make a final decision regarding the enforcement action. The caucus panel will determine whether the violation occurred, its significance or severity, and whether a notice of violation or other appropriate action will be issued to the licensee. The director of the office that identified the inspection finding or violation normally issues in writing the final action. The final action will identify the nature and basis of the violation and will specify the actions that the licensee must take in response.

Normally, violations evaluated through the SDP are assigned a color and do not result in a civil penalty. In addition, the ROP uses an Agency Action Matrix to determine the appropriate level of inspection and management oversight that should be provided to each facility, based on the cumulative number and types of findings identified during a specified period.

Violations that cannot be evaluated through the SDP (i.e., violations that may impact the NRC's ability to oversee licensed activities and violations that involve willfulness, including discrimination) are evaluated in accordance with the guidance in the Enforcement Policy and are assigned an appropriate severity level. Severity Level I and II violations are of significant regulatory concern and generally involve actual or high potential consequences on public health and safety for which a written notice of violation and proposed imposition of a civil penalty would normally be assigned. Severity Level III violations are cause for significant regulatory concern for which a proposed imposition of a civil penalty is considered based on other factors, including whether there has been other escalated enforcement within the previous 2 years, whether the violation involves willfulness, whether the violation was identified by the licensee, and whether the licensee's corrective actions have been timely and effective. The NRC may also consider written orders modifying the license, including suspension of operations, for regulatory or safety-significant violations.

Generally, the NRC imposes civil penalties on a licensee organization; however, under certain circumstances, it may impose civil penalties on either individuals or licensee contractor organizations. These actions are rare, since the NRC holds the facility licensee responsible for the actions of its employees and contractors. For example, in most situations involving Severity Level III or IV violations, no action is taken against an individual, even for willful violations. However, on rare occasions, the NRC may consider issuing an order banning an individual from licensed activities (usually for a period of from 1 to 5 years) for actions causing a particularly significant violation. Several factors are evaluated in such decisions, such as the level of responsibility of the individual within the licensee organization and whether the violation was deliberate.

Alternative Dispute Resolution

For significant violations resulting from an NRC investigation or involving willfulness, in lieu of the normal enforcement process as described above, the NRC may also offer alternative dispute resolution (ADR) to licensees or other parties to resolve the concerns. ADR is a general term encompassing various techniques for resolving conflicts using a third-party neutral. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, resolve misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's program

is available at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution at Cornell University has agreed to facilitate the NRC's program as a neutral third party.

The Administrative Dispute Resolution Act of 1996 (ADR Act) encourages the use of ADR by Federal agencies to resolve issues in controversy. The NRC has a general ADR policy that supports and encourages the use of ADR in NRC activities. An interim Enforcement Policy regarding the use of ADR in the enforcement program was published in the *Federal Register* (69 FR 50219) on August 13, 2004.

Generally, the enforcement action and the appropriate corrective actions for willful violations can be resolved using ADR. ADR will normally be considered at three points in the enforcement process after the Office of Investigations has completed an investigation: (1) after an enforcement panel concludes the need for potential enforcement action based on an Office of Investigations case and before the conduct of a PEC, (2) after the initial enforcement action is taken, typically involving a notice of violation and potentially a proposed civil penalty, and (3) after imposition of a civil penalty and before a hearing request.

ADR mediation sessions are conducted with only NRC representatives, licensee representatives and the neutral mediator present. Third parties, such as members of the public or other government agencies, normally are not present during the mediation in order for candid negotiations to take place. Also, the discussions held during the mediation session are considered confidential and are not released to the public. However, to ensure that ADR provides a transparent resolution of apparent violations, the mediation session agreement in principle is documented in a confirmatory order that is published in the *Federal Register* so that all interested external parties are made aware of the action. It should be noted that NRC currently limits ADR use to resolving violations involving wrongdoing. Typically, these wrongdoing issues when dispositioned using traditional enforcement methods, would be discussed at a predecisional enforcement conference that is closed to observation by members of the public.

If the two parties agree to certain actions at the ADR mediation session, then the NRC can disposition the apparent violation through ADR. Successful ADR mediation sessions will result in an agreement in principle that is documented in a confirmatory order. As a result, through ADR, any licensee-committed corrective action will be legally binding and become part of the facility license. Also, since the licensee will agree to the issuance of a confirmatory order, the licensee will waive its hearing rights to this action, although other affected parties may request a hearing within the time specified in the confirmatory order. If the parties cannot agree to terms at the ADR mediation session, then the NRC will resume the traditional enforcement process to disposition the apparent violation.

Licensee Appeal Rights for Enforcement Actions

NRC regulations, primarily 10 CFR Part 2, contain the authority for the licensee to challenge enforcement actions. Licensees can challenge enforcement actions for several reasons; for example, a licensee might dispute the requirements, the facts of the case, the agency's application of the Enforcement Policy, or the significance of the violation. Licensees may provide clarifying information not available at the time of the inspection, which may affect the finding of noncompliance.

In addition, the notice of violation, which forwards either escalated or nonescalated cited violations, provides specific actions for the licensee to take to dispute or challenge the associated enforcement action. For significant cases involving an enforcement order, the licensee is granted rights, described in the order, to request a hearing to stay or rescind the action within a specified time. For other significant actions involving civil penalties, the licensee can dispute the violation or appeal the application of the civil penalty in whole or in part.

For ROP enforcement actions, the licensee can dispute the violation, as well as appeal the results of the SDP. Inspection Manual Chapter 0609.02, "Process for Appealing NRC Characterization of Inspection Findings," presents information regarding such appeals.

For violations that are treated as noncited violations, typically the letter from the NRC forwarding the noncited violation to the licensee will offer the licensee the opportunity to dispute or challenge such noncited violations.

NRC Enforcement Process is Publicly Available

The NRC Office of Enforcement maintains a Web page through the NRC Web site, which provides enforcement information to all interested parties, including NRC staff, licensees, and members of the public. The NRC Enforcement Policy, Enforcement Manual, and a description of significant enforcement actions are examples of the information available on the enforcement Web page. In addition, the NRC publishes changes to the Enforcement Policy in the *Federal Register*.

The NRC Enforcement Manual is the primary source of guidance regarding implementation of agency Enforcement Policy and procedures for NRC staff. The manual contains procedures, requirements, and background information that are essential to those who develop or review enforcement actions for the NRC. The manual provides guidance consistent with the NRC Enforcement Policy. The Enforcement Manual is a living document and is maintained on the NRC enforcement Web site. Change notices posted in the Change Notice Index on the enforcement Web page show changes to the manual. Finally, the Enforcement Manual contains temporary guidance in the form of an Enforcement Guidance Memorandum. These temporary guidance procedures provide greater specificity for the staff in handling unique enforcement situations.

Assessment Summary

As part of the Complementary Self-Assessment, the NRC staff reviewed its programs against the goals and objectives of the International Atomic Energy Agency (IAEA) and found the NRC programs to be in agreement with IAEA requirements.

The review identified two issues where the NRC processes use a graded approach to meet the IAEA requirement and, therefore, need clarification.

The first issue involves the authority of NRC inspectors to issue enforcement action in the field, as described in IAEA Reference LGI 5.24. The NRC has not granted reactor inspectors the authority to perform spot enforcement. The NRC inspection and enforcement processes rely on reactor inspectors to immediately inform both the licensee and NRC management of such concerns. Once informed, the licensee is responsible for initiating appropriate measures based on its assessment of the concern. Also, after reviewing the concern and depending on the

urgency of the situation, NRC management will take necessary actions to restore compliance in a timely manner. For very significant concerns, the NRC could issue an immediately effective order to modify, suspend, or revoke the license. For less significant concerns, an administrative action could be taken by issuing a confirmatory action letter. For nonescalated enforcement actions, the violation would be dispositioned as either a cited or noncited violation and documented in an inspection report by the inspector's management.

The second issue involves documenting the time that licensees have to restore compliance once a noncompliance is identified, as described in IAEA Reference Draft GS-R-1 4.59 and 4.60. The NRC process uses a graded approach in establishing the time allowed to implement corrective actions for violations. For the most significant issues, such as those that would result in an immediately effective order to modify, suspend, or revoke the license, the order would specify the date by which the licensee must implement specified actions. For issues that are significant but do not rise to the need for an immediately effective order, the licensee may provide committed actions to the NRC that, in turn, could be described in a written confirmatory action letter. However, unlike the dates specified in an order, the committed dates described in a confirmatory action letter are not legally binding requirements. For less significant issues resulting in either a cited or noncited violation, the NRC does not specify the corrective action due dates. Rather, the licensee will determine when the corrective actions are to be taken. For most cited violations, the licensee will describe the corrective actions and the time when full compliance will be achieved in a written response to the notice of violation. Upon review of the licensee response, NRC management may issue additional enforcement measures to ensure timely correction of the violation.