

February 24, 2012

MEMORANDUM TO: William M. Dean, Regional Administrator, Region I  
Victor McCree, Regional Administrator, Region II  
Cynthia D. Pederson, Acting Regional Administrator, Region III  
Elmo E. Collins, Regional Administrator, Region IV  
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation  
Michael R. Johnson, Director, Office of New Reactors  
Mark A. Satorius, Director, Office of Federal and State  
Materials and Environmental Management Programs  
Catherine Haney, Director, Office of Nuclear Material Safety  
and Safeguards  
James T. Wiggins, Director, Office of Nuclear Security and  
Incident Response

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

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 12-001 —  
DISPOSITIONING NONCOMPLIANCE WITH ADMINISTRATIVE  
CONTROLS TECHNICAL SPECIFICATIONS PROGRAMMATIC  
REQUIREMENTS THAT EXTEND TEST FREQUENCIES AND ALLOW  
PERFORMANCE OF MISSED TESTS

**Purpose:**

The purpose of this enforcement guidance memorandum (EGM) is to provide guidance on how to disposition licensee noncompliance with Section 5.0, "Administrative Controls", Technical Specification (TS) 5.5, "Program and Manuals," testing requirements that make available surveillance requirement (SR) 3.0.2 or SR 3.0.3 or both. The staff has determined that the enforcement discretion described in this EGM is appropriate because the restructuring of TS chapters during the development of improved standard technical specifications (STS) resulted in unintended consequences when Section 3.0, "Surveillance Requirement Applicability" provisions were made applicable to Section 5.0 TSs. Specifically, applying STS rules of usage would prohibit licensees from using the SR 3.0.2 and 3.0.3 allowances contained in Section 5.0 TSs. Applying the guidance in this memorandum will ensure SR 3.0.2 or SR 3.0.3 or both are made available for TS programs and will properly apply 10 CFR 50.36 requirements for tests associated with inservice test activities under 10 CFR 50.55a(f).

**CONTACTS:**

Doug Starkey, OE  
(301) 415-3456

[Doug.Starkey@nrc.gov](mailto:Doug.Starkey@nrc.gov)

Carl Schulten, NRR  
(301) 415-1192

[Carl.Schulten@nrc.gov](mailto:Carl.Schulten@nrc.gov)

**Background:**

Task Interface Agreement (TIA) 2010-001, "Evaluation of Application of Technical Specification SR 3.0.3, 'Surveillance Requirement Applicability,' at Clinton Power Station," (ADAMS Accession No: ML101100101) documented the staff's review of the licensee's position that SR 3.0.3 from TS 5.5.6, "Inservice Testing Program" applies to non-TS excess flow check valve testing performed under Title 10 of the *Code of Federal Regulations* (10 CFR) 50.55a(f), *Inservice testing requirements*. (SR 3.0.3 allows licensees to apply a delay period before declaring a SR for TS equipment not met when the time limit for performing TSs surveillances is inadvertently exceeded or missed.) The staff determined that applying SR 3.0.3 to a TS 5.5.6 inservice test that does not have an associated TS Surveillance is not appropriate because in order to invoke SR 3.0.3 the licensee must first discover that a TS surveillance was not performed within its specified frequency. Therefore, the delay period provided by SR 3.0.3 does not apply to non-TS support components tested under 10 CFR 50.55a(f), such as the excess flow check valves reviewed under the TIA.

In addition to making available SR 3.0.3, TS 5.5.6 program controls make available SR 3.0.2 to tests under 10 CFR 50.55a(f). (SR 3.0.2 allows up to an additional 25 percent of a specified surveillance frequency to complete a SR.) For the same reason as discussed above for SR 3.0.3, the SR 3.0.2 25 percent test extension does not apply to tests under 10 CFR 50.55a(f) because the tests are not associated with a TS surveillance requirement. Furthermore, the staff evaluation of inservice testing requirements under 10 CFR 50.55a determined that, if a licensee finds that the requirements of TS conflict with the requirements of 10 CFR 50.55a, then the licensee must amend their TS to comply with 10 CFR 50.55a. Also, with regard to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) and 10 CFR 50.55a, the OM Code does not currently make available test allowances similar to either SR 3.0.2 or SR 3.0.3 under 10 CFR 50.55a(f); however, recently the OM Code Committee developed a Code Case that models SR 3.0.2 to make available up to an additional 25 percent of the OM Code test frequency for testing activities.

**Enforcement Guidance for TS 5.5 Programs**

In order to establish a proper generic application of TS requirements and a uniform basis for consistency with TIA 2010-001 and 10 CFR 50.55a, the staff evaluated the application of SR 3.0.2 and SR 3.0.3 provisions to each TS 5.5 program contained in improved STS (NUREGs 1430 through 1434). This review showed that SR 3.0.2 and SR 3.0.3 are not always paired together in TS 5.5 programs, nor are the TS 5.5 program tests necessarily associated with a TS SR and that a few TS 5.5 programs do not apply either the SR 3.0.2 or the SR 3.0.3 provision.

Furthermore, if an administrative controls TS 5.5 program has an associated TS SR, then both SR 3.0.2 and SR 3.0.3 would apply to the program, unless specified otherwise in the TS 5.5 program. These review findings show that enforcement guidance would be beneficial for clarifying how to comply with TSs when administrative controls TS 5.5 programs extend program test frequencies or allow performance of missed program tests.

At the conclusion of its review, the staff determined that while pursuing a permanent change to the STS, the NRC will exercise enforcement discretion to allow applying SR applicability provisions to TS 5.5 programs as they are written into the plant-specific TS 5.5 programs with

the following exception. The provisions of SR 3.0.3 cannot be applied to TS 5.5 Inservice Testing Program tests because the SR 3.0.3 provision does not apply to missed 10 CFR 50.55a(f) tests. This enforcement discretion does not permit a licensee to change any TS 5.5 program to make available both SR 3.0.2 and SR 3.0.3 when either applies or to make available either SR 3.0.2 or SR 3.0.3 when neither applies. Any such changes to TS 5.5 programs would constitute noncompliance with plant TS.

Additionally, failure to either perform or meet an inservice test program for tests associated with 10 CFR 50.55a(f) results in nonconformance with the OM Code requirements and should be resolved as discussed in RIS 2005-20, Revision 1 (ADAMS Accession No: ML073531346).

### **Actions:**

#### Immediate Action

In accordance with the NRC Enforcement Policy, Section 3.5, "Violations Involving Special Circumstances," the NRC will exercise enforcement discretion and not cite licensees for violations of TS related to applying SR 3.0.2 or SR 3.0.3 (as the allowance(s) is currently applied to the TS 5.5 program test) for TS 5.5 program tests that are not associated with a Limiting Condition for Operation surveillance requirement.

Violations of other requirements (e.g., 10 CFR 50.59, "Changes, Tests and Experiments"; or 10 CFR Part 50, Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants, Criterion III, "Design Control," or Criterion V, "Instructions, Procedures, and Drawings") that may have contributed to the TS violation will be considered for enforcement discretion under this EGM on a case-by-case basis. The regional offices should consult with the Office of Enforcement in those cases.

Non-escalated violations associated with this enforcement discretion do not require discussion at an enforcement panel. They do require, however, the assignment of an enforcement action tracking system (EATS) number, and they shall be documented in an inspection report. The cover letter to the inspection report that discusses the violation should include the following or similar language:

A violation of Technical Specification [insert the applicable TS number] was identified. Because the violation was identified during the discretion period described in Enforcement Guidance Memorandum 12-001, the NRC is exercising enforcement discretion in accordance with Section 3.5, "Violations Involving Special Circumstances," of the NRC Enforcement Policy and is, therefore, not issuing enforcement action for this violation.

#### Long-Term Action

The generic resolution of this issue will include a proposed TS Task Force Traveler for revising standard TS and will include the development of model License Amendment Requests (LARs), model safety evaluations, and model no-significant-hazards consideration determinations using the NRC Consolidated Line Item Improvement Process, issuance of Notices of Availability (NOAs) for the models, and the timely processing of license amendments by the staff. In order to continue receiving this enforcement discretion, affected licensees shall submit an LAR that is accepted by the staff for review, within 4 months after the issuance of the NOA

applicable to a licensee's reactor type (i.e., Pressurized Water Reactor or Boiling Water Reactor). The NRC will consider extending the 4-month period on a case-by-case basis, with adequate justification from the licensee.

This enforcement discretion will continue to be in place until the NRC disposes a licensee's LAR or 3 years from the issuance of the NOA applicable to a licensee's reactor type, whichever is sooner.

cc: R. W. Borchardt, EDO  
M. Weber, DEDMRT  
M. Virgilio, DEDR  
N. Mamish, OEDO  
B. Boger, NRR  
M. Ashley, NRR  
SECY

applicable to a licensee's reactor type (i.e., Power Water Reactor or Boiling Water Reactor). The NRC will consider extending the 4-month period on a case-by-case basis, with adequate justification from the licensee.

This enforcement discretion will continue to be in place until the NRC dispositions a licensee's LAR or 3 years from the issuance of the NOA applicable to a licensee's reactor type, whichever is sooner.

cc: R. W. Borchardt, EDO  
 M. Weber, DEDMRT  
 M. Virgilio, DEDR  
 N. Mamish, OEDO  
 B. Boger, NRR  
 M. Ashley, NRR  
 SECY

Electronic DISTRIBUTION:

OE r/f  
 EGM File Binder  
 RidsEDOMailCenter  
 OE-Web (3 days after issuance)  
 OE staff  
 Regional Enforcement Coordinators, NMSS, NSIR, NRO, NRR  
 Nrr\_Dirs\_Itsb distribution

ADAMS Accession No.: ML11258A243

OFFICE	STSB:DSS	OE:ES	CPTB:DE	STSB:DSS	DORL	DSS	RI
NAME	CSchulten	DStarkey	AMcMurtray	RElliott	MEvans	WRuland	ADeFrancisco
DATE	11/14/11	11/18/11	11/17/11	11/15/11	11/27/11	11/28/11	12/2/11
OFFICE	RII	RIII	RIV	Tech Editor	OGC	OE:BC (acting)	OE:D
NAME	VMcCree	JUhle	HGepford		MLemoncelli for CScott	ARivera- Varona	RZimmerman
DATE	12/5/11	12/2/11	12/1/11	11/14/11	1/17/12	2/9/2012	2/24/2012

OFFICIAL RECORD COPY