

September 27, 2011

MEMORANDUM TO: Elmo E. Collins
Regional Administrator, Region IV

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

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

On August 11, 2011, the U.S. Nuclear Regulatory Commission's (NRC's) Office of Enforcement (OE) completed an assessment of the Region IV Enforcement Program. It was the second OE assessment of a regional enforcement program this fiscal year and involved a team comprising three enforcement specialists from OE and an enforcement specialist from Region I. 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 team observed scheduled meetings, interviewed regional staff, and reviewed a sample of Region IV enforcement documents. The team placed greater emphasis on the nonescalated process and less emphasis on the escalated process, with which OE is routinely involved.

The team concluded that Region IV 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, Allegation Coordination and Enforcement staff (ACES), and division and regional management.

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 IV 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

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2011 Assessment of the Region IV Enforcement Program

Office of Enforcement



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August 9–11, 2011

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Attachment: Enforcement Program Assessment Plan

I. Summary of Assessment Findings

On August 11, 2011, the U.S. Nuclear Regulatory Commission's (NRC's) Office of Enforcement (OE) completed an assessment of the Region IV Enforcement Program. In reviewing the Region IV Enforcement Program, the assessment team observed consistent application of the NRC Enforcement Policy and processes. The Allegation Coordination and Enforcement staff (ACES) maintains a positive rapport with the technical staff and is a significant strength to the Region IV 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 regional management. Moreover, inspection staff and division management effectively engage ACES at the early stages of the enforcement decisionmaking process, resulting in more efficient and higher quality products.

The assessment team identified numerous good work practices, including the early involvement of management and ACES in enforcement actions, the transfer of knowledge that takes place with the inspectors during inspection debriefings, and management's enhanced emphasis on timely implementation of the enforcement process within the Division of Nuclear Materials Safety (DNMS). The Region IV enforcement program also fosters an open and collaborative work environment by encouraging the presentation of differing views. Region IV should continue to implement all of these practices. Other regions and program offices should also review these practices to identify whether they may be applicable or needed to improve the consistent and efficient application of the NRC Enforcement Policy and processes. Overall, the assessment team concluded that Region IV 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 I conducted the assessment of the Region IV Enforcement Program. A senior enforcement specialist from OE led the assessment.

The primary goal of this assessment was to review the Region IV 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 less emphasis on the escalated process with which OE is routinely involved.

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

B. Team Assessment in Region IV

All team members were present in Region IV from August 9–11, 2011, to conduct the assessment and to draw conclusions and recommendations from the assessment results.

After an entrance meeting with the Regional Administrator (RA) and regional management, the team attended debriefings of postinspection findings by DNMS Branches A and B and the Repository and Spent Fuel Safety Branch and conducted interviews with regional staff members who interact with the Region IV Enforcement Program.

Over the 3-day assessment period, the team interviewed a total of six branch chiefs, seven inspectors, the Director of DNMS, and members of ACES. Additionally, team members attended the Region IV RA/Deputy Regional Administrator (DRA) ACES meeting and an enforcement panel prebriefing to observe the role that these meetings play in the regional enforcement program.

The team also attended a Division of Reactor Safety (DRS) postinspection debrief and a Region IV 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 RA and select regional management and staff to briefly review the initial results of the Region IV 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:

- Management Meetings

Observation (A1): ACES conducts bi-weekly briefings with the RA/DRA on the status of the region's escalated enforcement actions with an overview of any new enforcement actions coming to the region. On a weekly basis, the status of near term enforcement actions is discussed with R IV management. This good practice allows regional management to be fully appraised and engaged with enforcement actions for which the region is responsible.

Observation (A2): The technical divisions conduct weekly postinspection debriefings by their lead inspectors, which serve as a forum for knowledge management by engaging inspectors of various disciplines and at differing levels of experience, which result in timely communication of potential enforcement cases to division and regional management and ACES. The assessment team identified the inspector debriefing as a good practice.

Observation (A3): The Region IV Enforcement Program provides ACES with multiple opportunities to meet and communicate with regional and division management. With management support, ACES can establish a unified regional position on enforcement issues and maintain a timely focus on enforcement actions. Specifically, senior management, ACES, and division personnel meet for a regional prepanel 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 an opportunity for management to ask questions before the Headquarters enforcement panel. Establishing a regional position before the enforcement panel is a good practice.

- Enforcement Panels

Observation (A4): Region IV 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 specialists should facilitate earlier communication between ACES and the program offices 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.

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. Specifically, the assessment team observed a Region IV enforcement panel with Headquarters in which an inspector disagreed with the region's proposed enforcement strategy and noted that Region IV discussed the alternate view and provided the individual the opportunity to present his position and basis.

B. Interviews

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

- Allegation Coordination and Enforcement Staff

Observation (B1): ACES performs reviews of nonescalated enforcement actions issued by the DNMS, DRS, and the Division of Reactor Projects (DRP) and provides the divisions with feedback on any discrepancies identified in its review.

Recommendation (B1): ACES should consider implementing a formalized audit program of DNMS, DRS, and DRP's nonescalated enforcement actions, which will help provide the divisions with an external review to ensure that enforcement documents issued by the region are consistent with agency policy.

- Enforcement Action Worksheet

Observation (B2): Some of the Region IV staff members interviewed indicated satisfaction with the current Enforcement Action Worksheet (EAW) format. However, others indicated a desire to redesign the current EAW and streamline the amount of narrative information that is required, specifically for willful cases. The technical staff felt that most of the language written in the EAW comes directly from their inspection report which assists in determining the appropriate enforcement action.

- Enforcement Guidance

Observation (B3): The assessment team identified that certain branches or divisions have created their own training aids to assist with developing enforcement documents. While this practice may be beneficial in the short term, it leads to the possibility that, when enforcement guidance changes, the training aids may not be updated, and the guidance would be outdated or incorrect. ACES should monitor this process to ensure the staff is using current enforcement guidance and forms while conducting this training.

Observation (B4): Region IV, along with the other regions, participates in the Reactor Oversight Process reliability initiative, which includes reviewing guidance in the area of minor violations. As communicated during interviews, Region IV 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 regional management. The staff estimated that approximately 75 percent of inspector-identified issues are determined to be minor. 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.

Recommendation (B4): 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 reliability initiative to generate additional examples of minor violations. Further examples will facilitate the decision making process.

C. Document Review

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

- Choice Letters

Observation (C1): The regional technical division writes choice letters, which ACES then reviews. The assessment team reviewed a representative sample of choice letters issued by the region and verified that all of the letters were consistent with the boilerplate provided by OE. The assessment team noted that when the region feels a face-to-face meeting is warranted, Region IV will issue letters encouraging licensees to meet with the NRC than letters providing a written response option. Additionally, R IV frequently uses the choice call option to communicate with the licensee when they feel a conference is not warranted.

- Factual Summaries

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

- Nonescalated Enforcement Actions

Observation (C3): From its review of select nonescalated enforcement actions, the team identified that the regional staff may benefit from further training and guidance on writing

contrary to statements and on the enforcement-related documentation requirements specified in Inspection Manual Chapter 0612, "Power Reactor Inspection Reports," dated April 30, 2010. The team identified that ACES was aware of this need and that ACES attends and provides training on a variety of enforcement topics during regional counterpart meetings

Recommendation (C3): The team determined that additional enforcement training in different venues would be beneficial to both junior and senior regional staff. The team recommends that Region IV consider providing targeted training for the individual divisions or requesting that OE provide training during a counterpart meeting.

IV. Assessment Logistics

Because this was the second OE assessment of a regional enforcement program this year, the team implemented lessons learned from the first assessment's observations in regard to the logistics of the assessment process. This assessment allowed the team 3 full days to complete its assessment of the Region IV program. The extra day allowed for the team to complete all daily interviews and review the regional enforcement documents, which are two of the three general activities of this 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 ACES to develop the assessment plan, coordinate the assessment logistics, and gather enforcement documents for review. This preparation between OE and ACES allowed the assessment team to gain efficiencies while it was on-site in Region IV.

Recommendation (IV2): The assessment team should continue to provide the document titled, "Support Documents/Scheduling Needs for Regional Assessment," which provided a detailed list of tasks the ACES staff needed to perform before the assessment team arrived in the region.

Observation (IV3): The assessment team was challenged in making the time to review the enforcement documents given the full schedule of meeting observations and staff interviews.

Recommendation (IV3): The assessment team should review some of the enforcement documents either on-site before the entrance meeting or during a preparation week before the assessment. This will assist the team with identifying focus areas and with developing interview questions.

Observation (IV4): The assessment team was provided a work space in a conference room that was equipped with a large conference table and a telephone, as well as individual offices on other floors in which the team could use computers.

Recommendation (IV4): It would be ideal (although not always feasible) for the assessment team to assemble in a room equipped with both workspace and computers that is also close to the enforcement staff.

V. Assessment Conclusions

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

This was the second OE regional assessment of the NRC Enforcement Program this year. Although the preparation for this assessment involved additional staff resources, 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 knowledge transfer from team members and regional personnel in regards to how this region implements its enforcement program was evident throughout all aspects of the process. The team assessment in Region IV led to the recommendations in this report. The team members agreed that these recommendations would improve the overall quality and consistency of the NRC Enforcement Program.

Enforcement Program Assessment Plan
Region IV
August 9–11, 2011

I. Purpose

To review the Region IV 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 the U.S. Nuclear Regulatory Commission's (NRC's) Office of Enforcement (OE).

II. Scope

Review both escalated and nonescalated processes, with greater emphasis on the nonescalated processes and less emphasis on the escalated process portions, with which OE is routinely involved.

III. Activities

A. Nonescalated Enforcement Actions

1. Review a representative sample of noncited violations (NCVs) issued throughout the previous year in all applicable program areas (i.e., reactor, new construction, materials (including NRC Form 591s), independent spent fuel storage facilities).
 - a. Verify that NCVs are valid and properly documented in inspection reports.
 - b. Verify that 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 notice of violations (NOVs) issued from the different inspection program areas.
 - a. Verify that NCV criteria were not met.
 - b. Verify that NOVs were correctly written (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 nonescalated 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 whether the disputed violations were dispositioned properly.

B. Escalated Enforcement Actions

Select three escalated cases—one reactor significance determination process case, one nonwillful materials case, and one willful case—and review the following activities:

1. EAW preparation
2. package preparation
3. conduct of predecisional enforcement conference
4. conduct of alternative dispute resolution, if applicable
5. timeliness of related activities and overall action to assess management controls
6. handling of individual action and enforcement action numbers
7. handling of personal history questionnaire apparent violations

C. Review the tools and methods used by the region to identify, process, track, and complete both escalated and nonescalated enforcement actions for possible best practices that could be shared with other regions and Headquarters (e.g., if possible, observe a regional inspection debrief at which minor violations will likely be discussed). Include in the review the methods used to facilitate open discussions with the divisions and with Office of Investigations staff.

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

IV. Assessment Report or Memorandum

- A. Develop a report or 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.