

December 21, 2011

EGM 11-006

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

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

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 11-006
ENFORCEMENT ACTIONS RELATED TO THE CONSTRUCTION
REACTOR OVERSIGHT PROCESS

PURPOSE:

This enforcement guidance memorandum (EGM) provides enforcement guidance for use during the Construction Reactor Oversight Process (cROP) pilot program.

BACKGROUND:

In SECY-10-0140, "Options for Revising the Construction Reactor Oversight Process Assessment Program," dated October 26, 2010, the staff recommended that the Commission approve the development of a construction assessment program that includes a regulatory framework, the use of a construction significance determination process (SDP) to determine the significance of findings identified during the construction inspection program, and the use of a construction action matrix to determine the appropriate U.S. Nuclear Regulatory Commission (NRC) response to findings. The staff stated that approval of this option by the Commission would require the development of draft Enforcement Policy guidance on the disposition of findings identified through the construction inspection program for use by the staff during a pilot of the new program.

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Specifically, the staff stated that the NRC will take enforcement actions for cROP issues in a manner that is similar to that used for the enforcement actions taken for issues identified at operating reactors under the Reactor Oversight Process (ROP). In Staff Requirements Memorandum (SRM)-SECY-10-0140, dated March 21, 2011, the Commission approved the staff's recommendations.

Beginning on January 1, 2012, the staff will pilot the new construction assessment program for at least 12 months at Vogtle Electric Generating Plant, Units 3 and 4. The staff will also implement the pilot at Virgil C. Summer, Units 2 and 3, subject to a combined license being issued and sufficient construction activity is ongoing for an assessment to be meaningful. The cROP pilot and the guidance in this EGM do not apply to the evaluation of construction activities at Watts Bar Nuclear Plant, Unit 2, because the construction activities are near completion; however, they will apply to any other facilities licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," that are undergoing substantial construction.

DISCUSSION:

The agency will handle the assessment, disposition, and subsequent NRC action related to inspection findings identified at cROP pilot plants in the same manner in which it handles inspection findings at operating reactors under the ROP. Sections 2.2.3 and 2.2.4 of the Enforcement Policy describe the basic enforcement process for operating reactors; this process also applies to cROP pilot plants.

The staff will screen inspection findings identified during the cROP pilot using the guidance in draft Inspection Manual Chapter (IMC) 0613P, "Power Reactor Construction Inspection Reports—Pilot." Violations are divided into two groups: (1) violations that can be dispositioned using the construction SDP as described in draft IMC 2519P, "Construction Significance Determination Process—Pilot," and (2) violations that will be dispositioned using traditional enforcement methods.

The new construction assessment program will use the construction SDP to characterize the significance of nontraditional enforcement construction findings identified during the cROP pilot. The NRC documents inspection findings processed through the construction SDP, including associated violations, in inspection reports and assigns one of the following colors to the findings, depending on their safety significance:

- green—inspection findings with very low safety or security significance
- white—inspection findings with low to moderate safety or security significance
- yellow—inspection findings with substantial safety or security significance
- red—inspection findings with high safety or security significance

With the exceptions noted below, violations associated with inspection findings identified during the cROP pilot are not normally assigned severity levels, nor are they normally subject to civil penalties. The staff will use the construction action matrix in draft IMC 2505P, "Periodic Assessment of Construction Inspection Program Results—Pilot," to determine the appropriate NRC response to these findings.

The staff will use traditional enforcement methods to determine the significance of the following types of violations:

- violations resulting in radiation exposures to the public or plant personnel above regulatory limits
- violations that resulted in actual safety or security consequences
- violations that may impact the ability of the NRC to perform its regulatory oversight function
- violations involving willfulness
- violations of NRC requirements for which no associated cROP performance deficiencies exist

The agency will process these types of violations in accordance with the Enforcement Policy, using both severity levels and civil penalties, as appropriate. In determining the severity level assigned to such violations, the NRC will consider information in the Enforcement Policy, including the violation examples in Section 6.0, and risk-informed information from the cROP screening tools, when available and appropriate.

Section 2.3.2 of the Enforcement Policy describes the enforcement process used to issue non-cited violations to power reactors. This section also applies to cROP pilot plants, with the following exceptions:

- The temporary enforcement guidance in EGM 11-02, "Enforcement Discretion for Licensee-Identified Violations at Power Reactor Construction Sites Pursuant to 10 CFR Part 52," dated June 3, 2011, applies to cROP pilot plants.
- A notice of violation (NOV) will be issued for NRC-identified and self-revealing green cROP findings until a determination is made that the respective licensee's corrective action program is adequate.
- An NOV will be issued for violations that result in the reopening of an inspection, test, analysis, and acceptance criterion (ITAAC) that had been previously verified as closed by the NRC.

ACTION:

This EGM authorizes the staff to disposition enforcement actions during the cROP pilot in a similar manner to its practice for operating reactors, consistent with the enforcement description in SECY-10-0140 and the Commission's direction in SRM-SECY-10-0140. During the cROP pilot, the staff will use the guidance in this EGM; the NRC Enforcement Policy; and draft IMCs 0613P, 2519P, and 2505P to determine the significance or severity level of violations of NRC requirements and to assess licensee performance at reactors under construction. The NRC will consider any Severity Level I, II, or III violation or any violation associated with a white, yellow, or red performance deficiency as an escalated enforcement.

The NRC will normally require a licensee/applicant to respond in writing, under oath or affirmation in accordance with 10 CFR 2.201, "Notice of Violation," to (1) NOVs issued before its determination that the licensee's corrective action program is adequate, (2) NOVs associated with Severity Level I, II, or III violations, or (3) violations associated with white, yellow, or red findings during the pilot cROP, except when the planned corrective actions or those taken are already sufficiently documented in correspondence to the NRC or described in an NRC inspection report or record.

Once the determination is made that the licensee has adequately developed and implemented its corrective action program, noncited violations can be issued for nonrecurring, non-willful, Severity Level IV violations or violations associated with green cROP findings that do not invalidate the closure notification for an inspection, test, analysis, and acceptance criterion (ITAAC) if the licensee/applicant places the issue in its corrective action program to address recurrence and restores compliance within a reasonable time, independent of whether the violation is NRC or licensee identified.

The NRC normally does not consider violations assessed under the cROP screening process for civil penalties. However, the agency may issue civil penalties for violations associated with cROP findings that also involve actual consequences, and for significant violations treated under the traditional enforcement process.

Section 2.4 of the Enforcement Policy will govern the actions for enforcement of cROP violations, including the use of regulatory conferences in lieu of a predecisional enforcement conference for violations associated with white, yellow, or red findings.

The guidance in this EGM will remain in effect through the pilot period. If the cROP pilot is successful, the guidance in this EGM will remain in effect until the NRC issues a revision to the Enforcement Policy using the principles in this EGM.

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