

June 4, 2012

MEMORANDUM TO: Victor M. McCree
Regional Administrator, Region II

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

SUBJECT: 2012 OFFICE OF ENFORCEMENT'S ASSESSMENT OF
REGION II'S ENFORCEMENT PROGRAM

On March 22, 2012, the U.S. Nuclear Regulatory Commission's (NRC) Office of Enforcement (OE) completed an assessment of Region II's enforcement program. It was the third OE assessment of a regional enforcement program, the first of this fiscal year, and involved a team comprised of three enforcement specialists from OE and an enforcement specialist from Region III. The primary goal of this assessment was to verify consistent application of the NRC's 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 participated in meetings, interviewed regional staff, and reviewed a sample of Region II's enforcement documents. The team placed greater emphasis on the nonescalated violations process and less emphasis on the escalated violations process, with which OE is routinely involved.

The team concluded that Region II maintains a strong regional enforcement program and is effectively implementing the NRC's enforcement policy and procedures largely because of the efficient and effective collaboration among inspectors, enforcement and investigation coordination staff, and division and regional management.

The enclosed report discusses in detail the results of the assessment. The conclusions are grouped into three distinct categories based on the team's assessment goals. The assessment team identified a number of good work practices in Region II 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's enforcement program.

Enclosure:
As stated

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2012 Assessment of the Region II Enforcement Program

Office of Enforcement



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March 19–22, 2012

Enclosure

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Attachment: Enforcement Program Assessment Plan

I. Summary of Assessment Findings

On March 22, 2012, the U.S. Nuclear Regulatory Commission's (NRC's) Office of Enforcement (OE) completed an assessment of Region II's enforcement program. In reviewing Region II's enforcement program, the assessment team observed consistent application of the NRC enforcement policy and processes. The enforcement and investigation coordination staff (EICS) maintains a positive rapport with the technical staff and is a significant strength of Region II's enforcement program. Additionally, the effective implementation of the NRC's enforcement policy and processes can be attributed largely to the clear and continued support of the NRC's enforcement program by regional management. Moreover, inspection staff and division management effectively engage EICS at the early stages of the enforcement decisionmaking process, which results in increased compliance with timeliness metrics and higher quality products.

The assessment team identified many good work practices, including the early involvement of management and EICS in enforcement actions, the use of computer technology to inform branch members and management of real-time issues as they relate to enforcement, and management's enhanced emphasis on timely implementation of the enforcement process within all divisions. The Region II enforcement program also fosters an open and collaborative work environment by encouraging the presentation of differing views. Region II should continue 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's enforcement policy and processes. Overall, the assessment team concluded that Region II 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 III conducted the assessment of Region II's enforcement program. A senior enforcement specialist from OE led the assessment.

The primary goal of this assessment was to review Region II's enforcement program to verify consistent application of the NRC's enforcement program, exchange best practices among regions, 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 II enforcement program, (2) conducting face-to-face interviews with Region II staff members, and (3) reviewing a sample of enforcement documents for both escalated and nonescalated enforcement actions. The team grouped the results of Region II's enforcement program assessment into categories based on these general activities.

B. Team Assessment in Region II

All team members were present in Region II from March 19–22, 2012, to conduct the assessment and to draw conclusions and recommendations from the assessment results.

Prior to the entrance meeting, team members attended the weekly principal staff meeting in which the EICS provides to regional management the status of regional enforcement actions. After an entrance meeting with the regional administrator (RA) and regional management, the team conducted interviews with regional staff members who interact with Region II's enforcement program.

Over the three-and-a-half day assessment period, the team interviewed a total of five branch chiefs, nine inspectors, the deputy director of Division of Reactor Projects (DRP), the division director for Reactor Safety (DRS), and members of EICS. Additionally, team members attended Region II's DRP routine plant status meeting to observe the role that the meeting plays in the regional enforcement program.

The team was scheduled to attend the weekly DRS postinspection debrief and Center for Construction Inspection (CCI) post-inspection debrief, but these debriefs were canceled because there were no inspection findings for the inspection week prior to the debriefs. The team reviewed a selection of the region's enforcement documents for both escalated and nonescalated enforcement actions. Finally, the team met with the DRA and select regional management and staff to briefly review the initial results of Region II's 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): EICS conducts 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 early in the week. On a weekly basis, EICS discusses the status of near-term enforcement actions with Region II's management. This good practice allows regional management to be fully apprised of and engaged with enforcement actions (and associated timeliness) for which the region is responsible.

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

Recommendation (A2): If possible, the EICS staff should participate in the weekly divisional meetings that take place regarding postinspection debriefs. With early knowledge of and involvement in potential violations, EICS staff can be more efficient

when all the key regional players who are involved in the internal region enforcement process are aware of the issues at the same time and work toward one consistent regional position.

- Enforcement Panels

Observation (A3): Region II's enforcement specialists engage OE and program office enforcement coordinators before enforcement panels to understand and potentially resolve early questions and issues with pending cases. Region II was instrumental in the passage of enforcement guidance memorandum 11-001 (EGM 11-001), "Modified Enforcement Panel Process," by championing the need to create a process to streamline the panel meetings on selected cases. This process improved the overall timeliness of regional enforcement cases and workload.

Recommendation (A3): OE specialists should continue to facilitate earlier communication between EICS 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 within the headquarters enforcement panel could be answered before the panel takes place. Headquarters has formally implemented this process, and it will be documented as part of the upcoming changes to the enforcement manual.

Observation (A4): In addition to implementing the good practice of defining a regional position before the enforcement panel takes place, the region also promotes an open and collaborative work environment by encouraging the introduction of differing views. It is the practice of the region to voice their views of the issues, even if the other panel participants don't agree, and commence with an open dialogue in the panel process to determine the appropriate enforcement decision for the agency. Prior to the enforcement panel, the region will make contact with the OE specialists to inform them on the region's position to help inform the dialogue.

B. Interviews

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

- Enforcement and Investigation Coordination Staff

Observation (B1): EICS performed an audit of the nonescalated enforcement actions issued by CCI and provided the divisional management with feedback on any discrepancies identified in its review. This audit was extremely valuable to the CCI management team due to the large contingent of new NRC staff in this division. Division management used this information to provide additional training to staff.

Recommendation (B1): EICS should consider implementing a formal audit program of the nonescalated enforcement actions of the Division of Fuel Facility Inspection (DFFI), DRS, CCI, and DRP. A formal audit program will help provide the divisions with an external review to ensure that enforcement documents issued by the region are consistent with agency policy.

Observation (B2): Region II staff recognize the value of the EICS staff, who provide the policy guidance needed to process enforcement issues. Through interviews, assessment team members observed that interaction with EICS staff is extremely important for regional staff to meet the agency's enforcement goals and to be as consistent as possible when presenting enforcement actions and positions to regional management.

Recommendation (B2): EICS organizational structure in relation to that of other regions. Region II's management and EICS should consider implementing the agency's knowledge management program to ensure that critical information is not lost within the EICS group or among regional staff.

- Enforcement Panels

Observation (B3): Some of the Region II staff members and management interviewed indicated satisfaction with the new modified enforcement panel's guidance outlined in EGM 11-001. Individuals recognized the benefits that this process created by minimizing the burden of additional time and resources when processing enforcement issues. One division director voiced support for the new video teleconference feature, added in the last few months, when conducting enforcement panels. This division director believes that it's beneficial on multiple levels when staff members can see their co-workers when presenting and discussing case details.

- Enforcement Guidance

Observation (B4): The assessment team noted a good practice in the region's development of Regional Office Instruction 0926, "Process for Dispositioning Escalated and Nonescalated Enforcement," Revision 1, to assist staff members with the enforcement process. This office instruction provides guidance on how to disposition enforcement actions using the agency's enforcement processes (traditional and reactor oversight process) and the regional process.

Recommendation (B4): Though Regional Office Instruction 0926 is a valuable tool to assist the staff in the enforcement process, it is dated February 1, 2006. A periodic review of this guidance should be conducted to ensure that the current enforcement policy information is included to the current revision.

Observation (B5): Region II, 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 II staff members are appropriately evaluating violations to determine whether they are more than minor by using the criteria in the NRC's guidance and by discussing issues with peers and regional management. The staff believes that this region has a high threshold when determining an issue to be more than minor, and some staff estimated that approximately 75 percent of inspector-identified issues were determined to be minor. Many inspectors relied on their experience and on the knowledge of their management and colleagues to differentiate between minor violations and those that are more than minor.

Recommendation (B5): Staff in all regions feel additional guidance is warranted in this area. This has been a consistent observation in all regional assessments. To reduce the number of judgment calls in the field, OE and the Office of Nuclear Reactor

Regulation should assist the regions to generate additional guidance that will enable the staff to determine what constitutes a minor violation. Further examples would facilitate the decisionmaking 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 EICS then reviews. The assessment team reviewed a representative sample of choice letters issued by the region and verified that the letters were sufficiently consistent with the boilerplates provided by OE.

- Factual Summaries

Observation (C2): The assessment team reviewed a representative sample of factual summaries prepared by EICS 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): Before documenting nonescalated enforcement actions, regional inspectors often consult with colleagues, project managers, and their branch chiefs about the details of the violation. The assessment team reviewed a representative sample of inspection reports and specifically focused on nonescalated enforcement actions. The nonescalated enforcement actions detailed in the sample were consistent with the guidelines in the NRC's enforcement policy, the *NRC Enforcement Manual*, and the reactor oversight process. One branch in DRP uses a SharePoint site to provide real-time information on potential findings or violations. This process provides branch members with prompt notification of potential issues at licensee locations and provides the opportunity to comment and reach agreement on all findings within the branch's responsibility.

Recommendation (C3): The team determined this process was a "best practice" in that all branch members view potential performance deficiencies in real time so that other branch members, assigned to the same fleet of licensees, can evaluate the issues within their licensees' facilities. Other regions may want to evaluate this process for use within their regions.

IV. Assessment Logistics

Because this was the third OE assessment of a regional enforcement program, the team implemented lessons learned from the previous assessments. This assessment allowed the team three and a half days to complete its assessment of the Region II 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 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 EICS to develop the assessment plan, coordinate the assessment logistics, and gather enforcement documents for review. This preparation between OE and EICS allowed the assessment team to be more productive while it was on site in Region II.

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 that the EICS staff needed to perform before the assessment team arrived in the region.

Observation (IV3): Even with the changes made from the previous assessments, it was still a challenge for the team to complete their review of 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 in identifying areas of focus and developing interview questions. Future assessment teams should consider traveling in the morning the day prior to the entrance to start the document review process.

Observation (IV4): The assessment team was provided a work space in a conference room that was equipped with a large conference table, a computer, and a telephone, as well as individual offices on the same floor for each team member.

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

V. Assessment Conclusions

Region II efficiently and effectively implements the agency's enforcement program because of support from regional management, early involvement by division management, the positive rapport between EICS and the technical staff, and an open and collaborative work environment.

This was the third OE regional assessment of the NRC's enforcement program and the first of this fiscal 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 II led to the recommendations in this report. The team members agree that these recommendations would improve the overall quality and consistency of the NRC's enforcement program.

Enforcement Program Assessment Plan
Region II
March 19–22, 2012

I. Purpose

To review the Region II 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 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—and 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 ascertain the 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 severity level IV notices of violation (NOVs) issued from the inspection program areas.
 - a. Verify that NCV criteria were not met.
 - b. Verify that NOVs were correctly written (i.e., including a requirement and “contrary to” statement).
4. Review the use and application of enforcement discretion guidance, especially when it does not require further review 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. enforcement action worksheet 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 the 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.