

Subsection 4.5

Enforcement Program Elements



4.5 Enforcement Program Elements

Section 4.5 of SA-700, *Handbook for Processing an Agreement* states the Wyoming Department of Environmental Quality (“WYDEQ”) may adopt enforcement procedures modeled on the NRC procedures, or those used by another Agreement State. The Enforcement Program Elements are governed by the Wyoming Environmental Quality Act, Wyoming Statutes §§ 35-11-701, -901, -903 through -904, and the Uranium Recovery Program’s rules and regulations.

SA-700, Handbook for Processing an Agreement

4.5 Enforcement Program Elements

4.5.1 Routine Enforcement Procedures

Routine enforcement procedures describe the actions the program takes in response to a violation of a regulatory requirement that is not serious in nature, and is not a repeated violation.

- See Wyo. Stat. §§ 35-11-701 and -2003;
- See Uranium Recovery Program’s *Enforcement Procedure*, Appendix A of this subsection;
- See Uranium Recovery Program Rules, Chapter 2, *Inspections, Enforcement, and Penalties*; and
- See Uranium Recovery Program Rules, Chapter 8, *Risk Informed, Performance Based Licensing and Inspection*.

4.5.1.1 Information Needed

The State should submit its procedures for routine enforcement.

- See Uranium Recovery Program’s *Enforcement Procedure*, Appendix A of this subsection.

4.5.1.2 Evaluation Criteria

The State should have procedures for assuring the fair and impartial administration of regulatory law. They should scale the actions to the seriousness of the violation.

The procedures should establish standard methods of communicating sanctions to the licensee. The State should give written notice using standardized wording and format. Legal counsel should review the wording and format.

The procedures should include a means for tracking the completion of enforcement actions.

- See Uranium Recovery Program's *Enforcement Procedure*, Appendix A of this subsection.

4.5.2 Escalated Enforcement Procedures

For serious or repeated violations of regulatory requirements, the program should use escalated enforcement.

- See Uranium Recovery Program's *Enforcement Procedure*, Section 3.0 Escalated Enforcement, Appendix A of this subsection; and
- Wyo. Stat. §§ 35-11-115, -701, -901(j) through (k), and -2003.

Escalated enforcement actions usually supplement the routine actions. Escalated enforcement actions may include:

(a) Administrative or civil monetary penalties;

- Wyo. Stat. § 35-11-901(a).

(b) The modification, suspension, or revocation of the license; or

- Wyo. Stat. §§ 35-11-109(a)(xiii), -409, -412, -2003(f).

(c) Referral for criminal prosecution.

- Wyo. Stat. §§ 35-11-901(j) through (k) and -904; and
- See Uranium Recovery Program Rules, Chapter 2, *Inspections, Enforcement, and Penalties*.

4.5.2.1 Information Needed

The State should submit its procedures for escalating enforcement actions.

- See Uranium Recovery Program's *Enforcement Procedure*, Section 3.0, Escalated Enforcement, Appendix A of this subsection.

4.5.2.2 Evaluation Criteria

The State should scale the sanctions in escalated enforcement cases to the seriousness of the violation. The sanctions should be more severe than routine enforcement.

The procedures should address notifying the licensee of proposed escalated enforcement actions. The notice should be written, using standard wording and format when practical.

The enforcement program element manager, or higher, should sign notices of escalated enforcement.

Escalated enforcement actions should be coordinated with legal counsel.

- See Uranium Recovery Program's *Enforcement Procedure*, Section 3.0 Escalated Enforcement, Appendix A of this subsection.

Appendix A to Subsection 4.5, Enforcement Procedure Uranium Recovery Program



1.0 GENERAL INFORMATION

1.1 Purpose

The purpose of the Wyoming Uranium Recovery Program (URP) is to protect public health, safety, and the environment through appropriate enforcement actions. Enforcement action should be used to:

- Deter noncompliance by emphasizing the importance of regulatory compliance; and
- Encourage prompt identification and comprehensive corrective action following the occurrence of violations.

1.2 Applicability

The URP's *Enforcement Procedure* applies to all URP licensees and applicants and those engaging in unlicensed or unpermitted activities. This includes, but is not limited to, the employees, agents, and contractors of licensed or unlicensed entities involved in URP-regulated activities.

1.3 Statutory Authority and Regulatory Framework

The statutory authority for enforcement under the URP is provided in the Wyoming Environmental Quality Act and Wyoming Statutes §§ 35-11-103 and -2001 through -2004.

1.4 References

1. NRC Criteria Policy Statement, Criteria 1, 18, and 23;
2. NRC NUREG-1600, *General Statement of Policy and Procedure for NRC Enforcement Actions*;
3. NRC Inspection Manual Chapters 2800 and 2801; and
4. URP Rules and Regulations, Chapter 2, *Inspections, Enforcement, and Penalties*.

1.5 Definitions

Definitions for the *Enforcement Procedure* may be found in the Wyoming Environmental Quality Act, Wyoming Statute §§ 35-11-101 *et seq.* and the URP's rules and regulations.

2.0 ENFORCEMENT ACTION

This section describes the various ways the URP can handle violations. The manner in which a violation is disposed will vary depending on the nature of the violation and should account for the seriousness of the violation and the circumstances surrounding the violation. The actions, including sanctions and penalties, taken by the URP will be scaled according to the seriousness of the violation(s).

Enforcement actions should be reviewed by the Wyoming Attorney General's Office.

2.1 Administrative Actions

2.1.1 Demands for Information

A written demand for information is used to determine whether an order or other action is warranted.

2.1.2 Inspection Letters

An inspection letter is issued at the conclusion of an inspection to document the occurrence of the inspection, the inspector's findings, and potential or existing violations. An inspection letter may demand resolution of issues or problems identified by the inspector or violation within a certain amount of time as determined by the URP.

2.1.3 Letters of Conference

A letter of conference is issued to notify licensees or non-licensees of potential or existing violations. A letter of violation may request self-identification and remedy of a violation. A letter of violation is generally utilized prior to a Notice of Violation and Order or and may be used prior to the issuance of a Notice of Violation and Order or escalated enforcement.

2.1.4 Informal Enforcement Conference

An informal enforcement conference may occur to discuss potential or existing enforcement actions. An informal enforcement conference can be used to gather more information, resolve any potential or existing violations, or to determine whether an order or other action is warranted.

2.1.5 Stipulated Settlements and Settlement Agreements

The Wyoming Department of Environmental Quality (WYDEQ) and URP may negotiate and enter into stipulated settlements and settlement agreements in lieu of litigation. Stipulated settlements and settlement agreements may involve the payment of penalties, implementation of compliance schedules, or other settlement negotiations.

2.1.6 Enforcement Tracking

Enforcement documentation will be tracked according to the facility license number in addition to the docket number in the case of NOV's and orders. Completion of enforcement actions will be recorded in the facility license file and will be kept secure in the URP headquarters office in Cheyenne, Wyoming.

2.2 Notices of Violation (NOV)

A Notice of Violation is written notification of a violation of the Wyoming Environmental Quality Act, rule, regulation, standard, permit, license, or variance. A Notice of Violation must specify the provision of law being alleged to be violated and the facts alleged to constitute the violation. A Notice of Violation must be signed, at a minimum, by the Director of the Wyoming Department of Environmental Quality.

A Notice of Violation may be accompanied by an Order requiring a person to cease and desist from the violation within a certain amount of time as determined by the Director of the Wyoming Department of Environmental Quality. Additionally, violations are subject to penalties, injunctive relief, and other civil or criminal remedies as provided by the law.

2.3 Monetary Penalties and Injunctions

Any person who violates the Wyoming Environmental Quality Act, rules, regulation, standard, or permit is subject to penalties and/or an injunction. Monetary penalties shall not exceed \$10,000.00 per day per violation. Monetary penalties and injunctions are to be determined by a court of competent jurisdiction in a civil action.

2.4 Orders

An Order is a written directive by the Director of the Wyoming Department of Environmental Quality to demand a licensee or other person cease and desist violations or unauthorized or illegal activities, to suspend or revoke a license, or to take such other action as may be proper. Orders are deemed final unless a request for a hearing before the Wyoming Environmental Quality Council is made no later than 10 days after the date of order.

2.5 Exercise of Discretion

Notwithstanding the normal guidance contained herein, the URP may choose to exercise discretion and either escalate or mitigate enforcement sanctions within URP's statutory authority to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case.

3.0 ESCALATED ENFORCEMENT

This section describes escalated enforcement action that the URP may take for serious or repeated violations. The URP may utilize escalated enforcement pursuant to Wyoming Statutes and the URP's rules and regulations. Enforcement will be handled on a case by case basis and will be scaled according to the seriousness of the violation(s). The URP will notify licensees of escalated enforcement.

Pursuant to Wyoming Statutes and the URP's rules and regulations, the URP is authorized to assess civil or monetary penalties, modify, suspend, and revoke a license, and refer matters for criminal prosecution. Notices of escalated enforcement should be signed by the Director of DEQ and the Administrator of the Land Quality Division. Escalated enforcement actions should be reviewed by the Wyoming Attorney General's office.

3.1 Emergency Orders

An Emergency Order may be issued for conditions which pose immediate and substantial danger to human or animal health or safety, which require immediate action.

3.2 Escalating Civil Penalties

Any person who willfully or knowingly violates the Wyoming Environmental Quality Act, rules, regulation, standard, or permit is subject to higher penalties not to exceed \$25,000.00 per day per violation.

3.3 Criminal Sanctions

Any person who willfully or knowingly violates the Environmental Quality Act, rules, regulation, standard, or permit is subject to imprisonment for not more than one year, or not more than two years for a subsequent conviction.