



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

**REGION IV
1600 EAST LAMAR BOULEVARD
ARLINGTON, TEXAS 76011-4511**

May 3, 2018

EA-17-206

Cornelis Van der Schyf
Vice President for Research
Idaho State University
921 South 8th Ave., Stop 8103
Pocatello, ID 83209-8103

**SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -
\$8,500 NRC INSPECTION REPORT 030-32322/2017-001**

Dear Dr. Van der Schyf:

This letter refers to the event reported to the U.S. Nuclear Regulatory Commission (NRC) Operations Center (Event Notification 53012) on October 13, 2017, involving a lost sealed source containing special nuclear material at your facility in Pocatello, Idaho. You submitted to the NRC a written report, dated November 13, 2017 (NRC's Agencywide Documents Access and Management System (ADAMS) Accession ML18011A069), which presented the facts and circumstances surrounding the event, as well as supporting documentation about the lost source. The purpose of the inspection was to review the event, the associated timeline, as well as the NRC's understanding of the actions taken by Idaho State University to either find the lost source or determine its final disposition. The results of the inspection and details regarding the apparent violations were provided in NRC Inspection Report 030-32322/2017-001, dated February 7, 2018 (ADAMS Accession ML18017A373).

On March 21, 2018, a predecisional enforcement conference was conducted in the Region IV office with you and a member of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions. Based on the information developed during the inspection and the information that you provided during the conference, the NRC has determined that two violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in the subject inspection report.

The violations involved failures to: (1) secure from unauthorized removal or access material stored in a controlled or unrestricted area, and the failure to maintain constant surveillance of licensed material that was in a controlled or unrestricted area that was not in storage; and (2) provide information to the Commission that is complete and accurate in all material respects.

The NRC considers the loss-of-control of licensed radioactive material a significant regulatory concern because of the potential for unauthorized possession or use of licensed radioactive material or the exposure of members of the public to unnecessary radiation. The NRC considers the failure to provide information to the Commission that is complete and accurate in all material respects a significant regulatory concern because it affects the NRC's ability to

perform its regulatory function. Therefore, these violations have each been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy may be found on the NRC's Web site at <https://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

In accordance with the Enforcement Policy, a base civil penalty in the amount of \$8,500 is considered for the first Severity Level III violation (Enclosure 1, Violation A) pertaining to the loss of an NRC-regulated material. A base civil penalty in the amount of \$7,250 is considered for the second Severity Level III violation (Enclosure 1, Violation B).

Because your facility has not been the subject of escalated enforcement actions within the last 2 years (two inspections), the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. Based on your prompt and comprehensive corrective actions, the NRC has determined that *Corrective Action* credit is warranted.

Your corrective actions included: (1) immediately investigating the apparent loss of licensed special nuclear material following identification of the issue; (2) changing inventory practices, including what materials are included on the Idaho State University's internal inventory; (3) changing responsibilities of Idaho State University personnel in the addition and removal of sealed sources from the Idaho State University's internal inventory; (4) more clearly linking the internal Idaho State University's inventory to the NRC Nuclear Materials Management and Safeguards System (NMMSS) inventory; and (5) reducing the inventory of licensed radioactive material.

In evaluating each violation in accordance with the civil penalty assessment process, the NRC has made the following determinations. With regard to the first violation involving the loss of licensed special nuclear material (Enclosure 1, Violation A), the NRC has determined that proposing a civil penalty in the base amount of \$8,500 is consistent with the NRC Enforcement Policy for a Severity Level III violation involving the loss of NRC-regulated material. With regard to the second violation involving the failure to provide complete and accurate information to the NRC in all material respects, the NRC has decided not to propose a civil penalty based on granting corrective action credit.

Therefore, to emphasize the importance of maintaining control of sealed sources, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice in the base amount of \$8,500 for the Severity Level III violation involving the loss of a sealed source. In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. Alternative dispute resolution is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral mediator works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found in Enclosure 3 and at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the Institute on Conflict Resolution at 877-733-9415, and (2) Michael Hay at 817-200-1455 within 10 days of the date of this letter. You may also contact the Institute on Conflict Resolution for additional information about ADR. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalties and the required written response, as identified in the enclosed Notice, until the ADR process is completed.

You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. As previously discussed, the NRC considers the loss-of-control of licensed material a significant regulatory concern. During the predecisional enforcement conference, you discussed long term corrective actions that would ensure your nuclear material inventories are appropriately being maintained and accurately reported to the NRC. Please ensure your written response adequately covers those long term corrective actions. If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response will be made available electronically for public inspection in the NRC Public Document Room and from the NRC's ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy or proprietary information so that it can be made available to the public without redaction. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>).

If you have any questions concerning this matter, please contact Mr. Michael Hay of my staff at 817-200-1455.

Sincerely,



Kriss M. Kennedy
Regional Administrator

Docket No. 030-32322
License No. 11-27380-01

Enclosures: see next page

Enclosures:

1. Notice of Violation and Proposed Imposition of Civil Penalty
2. NUREG/BR-0254 Payment Methods
3. NUREG/BR-0317, Post-Investigation Alternative Dispute Resolution Program, Revision 1

cc w/Enclosures 1:

M. Dietrich, State of Idaho
Department of Radiation Control

NOTICE OF VIOLATION
AND
PROPOSED IMPOSITION OF CIVIL PENALTY

Idaho State University
Pocatello, Idaho

Docket: 030-32322
License: 11-27380-01
EA-17-206

During an NRC review of NRC Event Notification 53012, two violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the NRC proposes to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205. The particular violations and associated civil penalty are set forth below:

A. Violation Assessed a Civil Penalty

10 CFR 20.1801 requires that the licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.

10 CFR 20.1802 requires that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage.

Contrary to the above, from 2004 to October 13, 2017, the licensee failed to secure from unauthorized removal or access material stored in a controlled or unrestricted area, and failed to maintain constant surveillance of licensed material (plutonium-239 sealed source) that was in a controlled or unrestricted area and that was not in storage. Specifically, nuclear accident dosimeter plutonium source, serial number AP-237, was reported missing to the NRC on October 13, 2017, and the licensee could not, using historical records and physical searches determine the location or final disposition of the source.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.7.c.10(a)).
Civil Penalty - \$8,500. (EA-17-206)

B. Violation Not Assessed a Civil Penalty

10 CFR 70.9 requires, in part, that information provided to the Commission by a licensee shall be complete and accurate in all material respects.

10 CFR 74.13 requires, in part, that each licensee possessing or who had possessed in the previous reporting period, at any one time and location, special nuclear material in a quantity totaling 1 gram or more of contained plutonium shall complete and submit, in computer-readable format Material Balance Reports concerning special nuclear material the licensee has possessed, transferred, disposed of, or lost.

Contrary to the above, from November 2004 through March 2017, the licensee failed to provide information to the Commission that was complete and accurate in all material respects. Specifically, a nuclear accident dosimeter plutonium-239 source, serial number AP-237, was not on the licensee's internal inventory. However, the licensee

incorrectly reported the source to be in its possession in the Material Balance Reports submitted to the NRC in accordance with 10 CFR 74.13.

This is a Severity Level III violation (NRC Enforcement Policy Section 6.9.c.1).

Pursuant to the provisions of 10 CFR 2.201, Idaho State University is hereby required to submit a written statement or explanation to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with a copy to the Document Control Desk, Washington, DC 20555-0001, and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV within 30 days of the date of this Notice of Violation and Proposed Imposition of Civil Penalty (Notice). This reply should be clearly marked as a "Reply to a Notice of Violation; (EA-17-206)" and should include for each violation: (1) the reason for the violation, or, if contested, the basis for disputing the violation or severity level; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance will be achieved.

Your response to the Notice may reference or include previous docketed correspondence, if the correspondence adequately addresses the required response. If an adequate reply is not received within the time specified in this Notice, the NRC may issue an order or a Demand for Information requiring you to explain why your license should not be modified, suspended, or revoked or why the NRC should not take other action as may be proper. Consideration may be given to extending the response time for good cause shown.

You may pay the civil penalty proposed above, in accordance with NUREG/BR-0254 (Enclosure 2) and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, a statement indicating when and by what method payment was made, or may protest imposition of the civil penalty in whole or in part, by a written answer addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, within 30 days of the date of this Notice. Should you fail to answer within 30 days of the date of this Notice, the NRC may issue an order imposing the civil penalty. Should you elect to file an answer in accordance with 10 CFR 2.205 protesting the civil penalty, in whole or in part, such answer should be clearly marked as an "Answer to a Notice of Violation; (EA-17-206)" and may: (1) deny the violations listed in this Notice, in whole or in part; (2) demonstrate extenuating circumstances; (3) show error in this Notice; or (4) show other reasons why the penalty should not be imposed. In addition to protesting the civil penalty in whole or in part, such answer may request remission or mitigation of the penalty.

In requesting mitigation of the proposed penalty, the response should address the factors addressed in Section 2.3.4 of the Enforcement Policy. Any written answer addressing these factors pursuant to 10 CFR 2.205 should be set forth separately from the statement or explanation provided pursuant to 10 CFR 2.201, but may incorporate parts of the 10 CFR 2.201 reply by specific reference (e.g., citing page and paragraph numbers) to avoid repetition. The attention of the Idaho State University is directed to the other provisions of 10 CFR 2.205 regarding the procedure for imposing a civil penalty.

Upon failure to pay any civil penalty which subsequently has been determined in accordance with the applicable provisions of 10 CFR 2.205 to be due, this matter may be referred to the Attorney General, and the penalty, unless compromised, remitted, or mitigated, may be collected by civil action pursuant to Section 234c of the Act, 42 U.S.C. 2282c.

The responses noted above, i.e., Reply to Notice of Violation, Statement as to payment of civil penalty, and Answer to a Notice of Violation, should be addressed to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, with a copy to the Document Control Desk, Washington, DC 20555-0001 and the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011-4511.

Your response will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, or proprietary information so that it can be made available to the public without redaction.

If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request that such material is withheld from public disclosure, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

In accordance with 10 CFR 19.11, you may be required to post this Notice within 2 working days of receipt.

Dated this 3rd day of May 2018

QUESTIONS?

If you have questions, please visit <https://www.nrc.gov> and search for "License Fees."

Questions may also be directed to the NRC Account's Receivable Help Desk by e-mail at FEES.Resource@nrc.gov, by phone at (301) 415-7554, or by writing to the address below:

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001



Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION
OCFO/DOC/ARB
Mail Stop T9-E10
Washington, DC 20555-0001
PH (301) 415-7554



NUREG/BR-0254, Rev. 8
February 2018



ENCLOSURE 2

Estimated burden per response to comply with this voluntary collection request: 10 minutes. This brochure provides information about available payment methods. Forward comments about burden estimate to the Records Management Branch (T6-F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0190), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

NRC accepts the methods described below.

PAYMENT BY AUTOMATED CLEARINGHOUSE

To pay by Automated Clearinghouse / Electronic Data Interchange (ACH/EDI), provide a copy of NRC Form 628 to your financial institution. You may obtain a copy of NRC Form 628 by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

PAYMENT BY CREDIT CARD

The NRC is currently accepts credit card payments of up to \$24,999.99. For payment by credit card, go to Pay.gov, search for "U.S. Nuclear Regulatory Commission Fees" and enter the required information.

You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.



PAYMENT BY FEDWIRE DEPOSIT SYSTEM

The NRC can receive funds through the U.S. Department of the Treasury (Treasury) Fedwire Deposit System. The basic wire message format below complies with the Federal Reserve Board's standard structured third-party format for all electronic funds transfer (EFT) messages.

See the sample EFT message to Treasury below. Each numbered field is described below.

The diagram shows a structured EFT message with the following fields and their corresponding numbers:

- 1: TO (Routing Number: 021030004)
- 2: TYPE-SUBTYPE (CD)
- 3: SENDER-DFI#
- 4: SENDER-REF#
- 5: AMOUNT
- 6: SENDER-DFI-NAME (TREAS NYC/CTR)
- 7: RECEIVER-DFI-NAME (BNF=/AC-31000001 OBI=)
- 8: PRODUCT CODE (CTR)
- 9: AGENCY LOCATION CODE (ALC)
- 10: THIRD-PARTY INFORMATION (OBI=)

1 RECEIVER-DFI# – Treasury's routing number for deposit messages is 021030004.

2 TYPE-SUBTYPE-CD – The sending bank will provide the type and subtype code.

3 SENDER-DFI# – The sending bank will provide this number.

4 SENDER-REF# – The sending bank will insert this 16-character reference number at its discretion.

5 AMOUNT – The transfer amount must be punctuated with commas and decimal point; use of the "\$" is optional. The depositor will provide this item.

6 SENDER-DFI-NAME – The Federal Reserve Bank will automatically insert this information.

7 RECEIVER-DFI-NAME – Treasury's name for deposit messages is "TREAS NYC". The sending bank will enter this name.

8 PRODUCT CODE – A product code of "CTR" for customer transfer should be the first item in the receiver text field. Other values may be entered, if appropriate, using the American Bankers Association's options. A slash must be entered after the product code.

9 AGENCY LOCATION CODE (ALC) – THIS ITEM IS OF CRITICAL IMPORTANCE. IT MUST APPEAR ON THE FUNDS TRANSFER DEPOSIT MESSAGE IN THE PRECISE MANNER AS STATED TO ALLOW FOR THE AUTOMATED PROCESSING AND CLASSIFICATION OF THE FUNDS TRANSFER MESSAGE TO THE AGENCY LOCATION CODE OF THE APPROPRIATE AGENCY. The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be on one line and cannot contain any spaces. The NRC's 8-digit ALC is: BNF=/AC-31000001

10 THIRD-PARTY INFORMATION – The Originator to Beneficiary Information (OBI) field tag "OBI=" signifies the beginning of the free-form third-party text. All other identifying information intended to enable the NRC to identify the deposit—for example, NRC annual fee invoice number, description of fee, 10 CFR 171 annual fee, and licensee name—should be placed in this field.

The optimum format for fields 7, 8, 9, and 10 using an 8-digit ALC is as follows:

TREAS NYC/CTR/BNF=/AC-31000001 OBI=

The optimum format, shown above, will allow 219 character positions of information following the "OBI=" indicator.

If the licensee's bank is not a member of the Federal Reserve System, the nonmember bank must transfer the necessary information and funds to a member bank, which then must transfer the information and funds to the local Federal Reserve Bank.

For a transfer of funds from local Federal Reserve Banks to be recorded on the same day, the transfer must be received at the New York Federal Reserve Bank by 4 p.m., EST. Otherwise, the deposit will be recorded on the next workday.

PAYMENT BY CHECK

Checks should be made payable to the U.S. Nuclear Regulatory Commission with the invoice number, Enforcement Action number, or other information that identifies the payment, written on the check. Mail the check to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank
P.O. Box 979051
St. Louis, MO 63197-9000

FedEx or overnight mailings must be delivered to the following address:

U.S. Nuclear Regulatory Commission
U.S. Bank Government Lockbox
SL-MO-C2GL
1005 Convention Plaza
St. Louis, MO 63101

TAXPAYER IDENTIFICATION NUMBER

You must file your Taxpayer Identification Number (TIN) with the NRC. Use NRC Form 531 to provide your TIN. You may obtain NRC Form 531 from the NRC Web site at <http://www.nrc.gov> by searching for "NRC Form 531" or by calling the NRC Accounts Receivable Help Desk at (301) 415-7554.

Mediation Location and Duration

The parties usually hold the mediation at, or in the vicinity of, one of the NRC's offices. However, the parties may mutually agree upon any alternate location. Mediation sessions are usually no longer than 1 day. In some cases, the mediation may take longer than 1 day with the mutual consent of the parties.

The NRC Mediation Team

The responsible Regional Administrator or his or her designee will serve as the principal negotiator for the NRC in cases that involve wrongdoing and related technical issues, if any. When a case involves discrimination, the Director of the Office of Enforcement will normally serve as the principal negotiator. The other members of the NRC mediation team typically include an enforcement specialist, an attorney, and a staff representative who is familiar with the technical issues under discussion.

The Confirmatory Order

A CO is a legally binding document that includes the terms of the AIP. For a licensee, a CO serves as an amendment to its NRC license. Regardless of the type of entity, a CO has the same legal force against any party to which it is issued.

The NRC will only issue a CO with the prior written consent of the other party, and with a waiver of the right to a hearing. After the entity or the individual, as applicable, has completed the terms of the CO, the NRC will conduct verification activities to ensure that the terms of the CO have been satisfied in a timely manner. Because the CO is legally binding, failing to comply with its terms exposes the entity or individual to additional enforcement action.

Although the substance of the mediation session remains confidential, the details of the settlement will normally be made public via a press release and the publication of the CO in the *Federal Register*.

Timeliness Goals

The timely resolution of issues is one of the goals of the post-investigation ADR program. Accordingly, the NRC expects a timely progression of a case at each stage of the mediation process. In cases where the parties achieve settlement, the NRC expects to issue a CO within 90 calendar days of the date of the agency's letter offering the ADR option to an entity the other party.

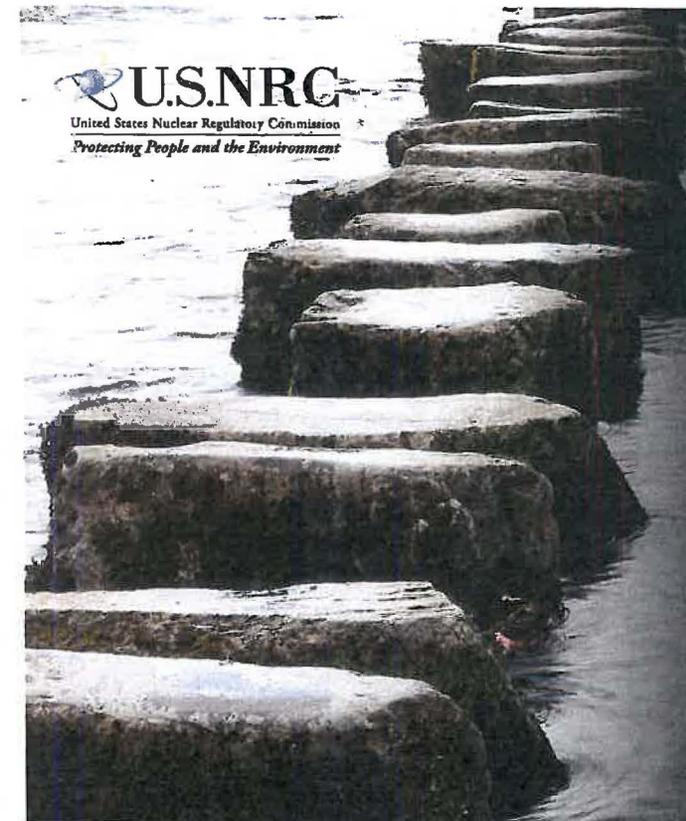
Additional Sources of Information

Further information about the NRC's ADR program is available from the following:

- Cornell toll free at (877) 733-9145
- NRC ADR Program Manager in the Office of Enforcement toll free at (800) 368-5642 or (301) 415-2741
- NRC enforcement ADR program on the agency's Web site at www.nrc.gov/about-nrc/regulatory/enforcement/adr.html



NUREG/BR-0317 Rev. 1
July 2011



Post-Investigation Alternative Dispute Resolution Program

ENCLOSURE 3

The Program

The U.S. Nuclear Regulatory Commission's (NRC's) post-investigation alternative dispute resolution (ADR) program provides an amicable process to resolve enforcement matters. It may produce more timely and effective outcomes for the NRC and an entity (e.g., an NRC licensee, certificate holder, or contractor of an NRC licensee or certificate holder) or an individual who is subject to an enforcement action. Following the congressional endorsement of the use of ADR by Federal agencies, the NRC established the post-investigation ADR program in 2004. Post-investigation ADR offers the opportunity to resolve discrimination cases or other wrongdoing and related matters through mediation rather than through the NRC's traditional enforcement process.

Post-investigation ADR refers to the use of mediation *after* the completion of an investigation by the NRC Office of Investigations and the staff's conclusion that pursuit of an enforcement action appears warranted. As long as the enforcement matter is within the scope of the program, the NRC normally offers post-investigation ADR at each of the following stages of the enforcement process: (1) before an initial enforcement action, (2) after the initial enforcement action is taken, typically upon issuance of a notice of violation, and (3) when a civil penalty is imposed but before a hearing request.

Mediation is an informal process in which a trained and experienced mediator works with the parties to help them reach a resolution. The parties are the NRC and the entity or an individual, as applicable, in the mediation. The mediator focuses the attention of the parties on their needs and interests rather than on their stated positions. Mediation gives the parties an opportunity to discuss issues, clear up misunderstandings, identify creative ways to address issues, find areas of agreement, and resolve their dispute.

Participation in the program is entirely voluntary. The NRC and the entity or the individual, as applicable, may withdraw from the mediation process at any time.

The Program Administrator

The NRC has a contract with the Cornell University Scheinman Institute on Conflict Resolution (Cornell) to serve as the program administrator for the post-investigation ADR program. Cornell administers the program's day-to-day operations, including handling the logistical matters and working with the parties to select a mediator from Cornell's roster of mediators. Cornell uses a network of independent and experienced mediators who help the parties find areas of agreement and help them settle their dispute.

The Mediator

The mediator is an experienced neutral individual who is mutually selected by the parties. He or she has no stake in the outcome of the mediation or any power to make decisions that may bind either party. The role of the mediator is to facilitate communication between the parties and to provide an environment where the parties have an opportunity to address their differences. The mediator uses consensus building skills and knowledge of negotiation to help the parties find ways to overcome any misunderstandings and attempt to find areas of agreement. The mediator does not act as legal counsel or provide legal advice to any party. Each party should consult an attorney for legal advice as such party deems appropriate.

The Mediation Process

Historically, most post-investigation ADR mediations have occurred at the first stage of the enforcement process (i.e., before an initial enforcement action). In those cases, the NRC presents the entity or an individual, as applicable, with the opportunity to engage in mediation with the agency before it makes an enforcement decision. If the entity or the individual elects ADR, Cornell will help the NRC and the entity or the individual, as applicable, to jointly select a mediator. After the parties select a mediator, the parties, in coordination with the mediator, set a date and place for the mediation. Typically, the mediator holds a pre-mediation teleconference with the parties to discuss logistical matters or any special needs of either party.

During the mediation, the mediator will give the parties an opportunity to discuss their views on the issue. Often, the mediator will meet privately with each party to develop a clear understanding of the party's perspective and explore and assess options. Although the mediator does not have any power to make decisions that may bind either party, he or she may ask questions intended to help the parties assess the merits of their positions, help them converse in a respectful atmosphere, and identify potential settlement options.

If the parties reach a settlement agreement during the mediation session, they will typically document the terms of their agreement in writing by developing an agreement in principle (AIP) document. The AIP is not enforceable by either party against the other, but it is the basis on which the NRC drafts a confirmatory order (CO), which is a legally binding document used to confirm the commitments made in the AIP.

However, if the parties do not reach a settlement agreement, the traditional enforcement process resumes—that is, the enforcement process continues as it would have, had the parties not engaged in ADR.

Confidentiality

Although the terms of an ADR settlement become publically available through the issuance of the CO, with certain exceptions, the substance of the discussions during the mediation session is confidential regardless of the mediation outcome. The mediator is prohibited from discussing the mediation proceedings, testifying on anyone's behalf concerning the mediation, or submitting a report on the substance of the discussions.

Cost

The NRC and the entity or individual, as applicable, equally share the fees and travel expenses of the mediator and any meeting room fees. However, each party is responsible for its own expenses, such as travel, lodging, and legal representation.