



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

August 8, 2019

EA-17-175  
EA-18-183

Mr. Jesse Erdle  
Chief Executive Officer and President  
Dead Ringer, LLC  
2144 Brighton Henrietta Town Line Rd.  
Rochester, NY 14623

SUBJECT: NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY -  
\$43,500 (NRC INVESTIGATION REPORT NO. 1-2017-006 and 1-2018-006 –  
DEAD RINGER, LLC)

Dear Mr. Erdle:

This letter refers to the investigations initiated by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI), on January 4, 2017, and January 19, 2018, respectively. The purpose of the January 4, 2017, investigation was to determine whether Dead Ringer, LLC was in compliance with regulatory requirements related to Dead Ringer LLC's import and distribution of gun sights containing radioactive material (tritium). The purpose of the July 26, 2018, investigation was to determine whether Dead Ringer, LLC, had continued to willfully distribute gun sights containing tritium, despite having asserted during a December 2017 pre-decisional enforcement conference (PEC) that such sales had halted in early 2016 and that Dead Ringer was no longer selling gun sights containing tritium on Amazon.

The results of the January 4, 2017, investigation, and details regarding the apparent violations were described in the letter the NRC issued to you on November 13, 2017 (EA-17-175), which included a summary of the investigation findings. In the November 13, 2017, letter, you were informed that the NRC was considering escalated enforcement action against Dead Ringer, LLC for three apparent violations, and you were offered a choice to either request a PEC with the NRC or to request Alternative Dispute Resolution (ADR) mediation. You requested a PEC.

On December 12, 2017, a closed PEC was conducted with Dead Ringer, LLC to discuss the apparent violations, their significance, their root causes, the potential willfulness of the violations, and your corrective actions. The PEC was closed to public observation because we discussed the findings of an OI report that has not been publicly disclosed. During the conference, you stated that Dead Ringer, LLC had stopped selling gun sights containing tritium, had issued a recall for them, and that Dead Ringer's products were no longer offered for sale on Amazon. Following the conference, the NRC staff identified products (gun sights containing tritium) for sale on the Dead Ringer Official Store on Amazon. This resulted in the subsequent OI investigation initiated on January 19, 2018.

The results of the January 19, 2018, investigation, and details regarding the apparent violations were described in the letter the NRC issued to you on May 9, 2019 (EA-18-183), which included a summary of the investigation findings. In the May 9, 2019, letter, you were informed that the NRC was considering escalated enforcement action against Dead Ringer, LLC for two apparent violations, which were in addition to the previously identified apparent violations in EA-17-175. You were provided with an opportunity to respond in writing to the two new apparent violations.

In your June 6, 2019, written response, you stated that you accepted the finding of the facts in this matter. However, you indicated that regardless of the definition of willfulness as stated in the letters, you believe that no Dead Ringer, LLC employees acted willfully. The NRC's position is that the circumstances in this case support a willful violation. Based on the facts of this case and the testimony of the President and Vice President, the NRC found sufficient evidence to conclude that despite being aware of the regulatory requirements, the President and Vice President made a deliberate decision to not comply given the cost associated with that compliance. Therefore, between January 2015 and January 2018, NRC determined that Dead Ringer, LLC deliberately distributed and imported gun sights containing tritium without the required licensing authorization and sealed source and device evaluation and registration.

Based on the information developed during both investigations, the December 12, 2017 PEC, including the information you provided during and after the conference, and the information that you provided in your June 6, 2019, response to the NRC letter dated May 9, 2019, the NRC has determined that three violations of NRC requirements have occurred. These violations are cited in Enclosure 1, Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding them are described in detail in Enclosures 1 and 2 of the November 13, 2017, letter and the May 9, 2019, letter, respectively.

The willful violations involved: (1) initially transferring, for sale or distribution, gun sights containing tritium, prior to obtaining an NRC license for such activity pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 30.3, 30.19, 32.22; (2) failing to request an evaluation for a sealed source or device pursuant to 10 CFR 32.210; and (3) importing material (tritium) into the United States without having the required license for possession of the material containing byproduct material, issued by the Agreement State (New York) or the NRC, pursuant to 10 CFR 110.5, 110.9a, 110.20(a), and 110.27(a).

The NRC considers these violations to be significant because they impacted the NRC's ability to perform its regulatory oversight function to ensure that the byproduct material was possessed, stored, imported, and used adequately to protect public health and safety, and the environment. In addition, the NRC considers your actions to be willful. Willful violations are of significant concern to the NRC because the NRC's regulatory programs rely upon the integrity of persons, entities, applicants, and licensees to comply with NRC regulations and requirements.

Each of the three violations identified in the Notice have been categorized in accordance with the NRC Enforcement Policy at Severity Level III. The NRC Enforcement Policy may be found on the NRC website at [www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html).

Because Dead Ringer, LLC has not previously been the subject of escalated enforcement action and all three of the violations were determined to be willful, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the NRC Enforcement Policy. The NRC determined that *Identification* credit was not warranted because all three of the violations were not identified by Dead Ringer, LLC.

For all three violations identified in the Notice, the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process described in Section 2.3.4 of the Enforcement Policy. Dead Ringer, LLC's corrective actions included: (1) directing staff to cease all imports and sales of gun sights containing tritium in accordance with a Court Order; (2) issuing a written product recall notice to all known customers; (3) removing all gun sights containing tritium from Amazon; (4) returning any remaining inventory to the manufacturers in China; and (5) permanent cease of sales of products containing tritium. Therefore, the NRC determined that *Corrective Action* credit was warranted. The NRC also determined that due to the apparent, common cause of the three violations, it was appropriate to characterize the three violations as a single Severity Level III problem.

While the NRC recognizes that normal application of the civil penalty assessment process in accordance with Section 2.3.4 of the Enforcement Policy would have resulted in a base civil penalty in the amount of \$14,500, we considered exercising discretion in accordance with Section 2.3.4 of the Enforcement Policy to increase the civil penalty due to the financial gain involved. The deliberate failure to obtain the appropriate NRC license resulted in the avoidance of the fees associated with the initial application and corresponding annual fees. In addition, a decision to cease distribution until the appropriate license could be obtained would have resulted in lost income from the sales of products during that timeframe. Therefore, due to the economic gain accrued as a result of the violations, and to emphasize the significance of deliberate violations and the importance of compliance with regulatory requirements, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the base amount of \$43,500 (three times the base civil penalty amount of \$14,500) is being issued for the Severity Level III problem. In addition, issuance of this Notice constitutes escalated enforcement action, which may subject Dead Ringer, LLC to increased inspection effort.

If in the future, any applications are submitted under the name Dead Ringer, LLC for an exempt distribution license and a sealed source and device safety evaluation, you may be required to provide a detailed discussion of how the NRC would be confident that these issues would not recur.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request ADR with the NRC in an attempt to resolve this issue. ADR 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 (ICR) 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 ICR at 877-733-9415, and (2) Mr. Hipolito Gonzalez at 301-415-5637 within 10 days of the date of this letter. You may also contact the ICR 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.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in the letter dated June 9, 2019. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position on this matter.

In accordance with 10 CFR 2.390 of the NRC's "Agency Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room and in 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. Hipolito Gonzalez, Chief, Materials Safety and Tribal Liaison Branch, at (301) 415-5637.

Sincerely,

*/RA/*

George A. Wilson, Director  
Office of Enforcement

Enclosures:

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

cc: State of New York

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

NOTICE OF VIOLATION  
AND  
PROPOSED IMPOSITION OF CIVIL PENALTY

Dead Ringer, LLC  
Rochester, New York

EA-17-175 and EA-18-183

During two separate NRC investigations initiated on January 4, 2017, and January 19, 2018, respectively, three 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 Title 10 *Code of Federal Regulations* (10 CFR) 2.205. The particular violations and associated civil penalty are set forth below:

- A. 10 CFR 30.3(a), "Activities requiring license" provides, in part, that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license issued in accordance with the regulations in this chapter."

10 CFR 30.19(a), provides an exemption to the requirement for a license in 10 CFR 30.3(a) for persons who receive, possess, use, transfer, own or acquire tritium, krypton-85, or promethium-147 in self-luminous products manufacture, process, produce, or initially transfer in accordance with a specific license issue pursuant to § 32.22, which license authorizes the initial transfer of the product for use under 10 CFR 30.19. However, the exemption in 10 CFR 30.19(a) excludes "persons... who initially transfer for sale or distribution" such self-luminous products containing tritium.

Contrary to the above, Dead Ringer, Inc. willfully distributed material to unlicensed persons without an NRC license to distribute. Specifically, between approximately January 2015 and January 2018, Dead Ringer, LLC willfully initially transferred, for sale or distribution, approximately 10,350 gun sights containing tritium, which is a byproduct material to unlicensed persons without obtaining a specific license pursuant to 10 CFR 32.22.

- B. 10 CFR 30.19(b) provides, in part, that any person who desires to initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under 10 CFR 30.19(a) should apply for a specific license pursuant to 10 CFR 32.22 and for a certificate of registration in accordance with § 32.210, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to 10 CFR 30.15(a).

Contrary to the above, Dead Ringer, LLC willfully distributed gun sights containing tritium without having an evaluation by the NRC and a registration in the Sealed Source and Device Registry. Specifically, between approximately January 2015 and January 2018, Dead Ringer, LLC willfully distributed approximately 10,350 gun sights containing tritium without having an evaluation by the NRC and a registration in the Sealed Source and Device Registry in accordance with 10 CFR 32.210, as is required by 10 CFR 32.22(a)(3)(ii).

- C. 10 CFR 110.5 states, in part, no person may import any nuclear equipment or material listed in 10 CFR 110.9, unless authorized by a general or specific license issued under this part.

10 CFR 110.9a, List of nuclear equipment and material under NRC import licensing authority, includes byproduct material (i.e. H-3).

10 CFR 110.20 states 'if an export or import is not covered by the NRC general licenses in §§ 110.21 through 110.27, a person must file with the Commission for a specific license in accordance with §§ 110.31 through 110.32.

10 CFR 110.27(a) states "Except as provided in paragraphs (b) and (c) of this section, a general license is issued to any person to import byproduct, source, or special nuclear material if the U.S. consignee is authorized to receive and possess the material under a general or specific NRC or Agreement State license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b of the Atomic Energy Act."

Contrary to the above, Dead Ringer Inc., willfully imported byproduct material listed in 10 CFR 110.9 and the export of the material was not authorized under a general or specific license. Specifically, between approximately January 2015 and May 2017, Dead Ringer LLC. willfully imported approximately 10,350 gun sights, manufactured in China, and containing tritium, without having a possession license issued by the State of New York. Therefore, the import was not authorized under the provisions of a general license.

This is a Severity Level III problem (NRC Enforcement Policy Sections 6.3 and 6.15).  
Civil Penalty - \$43,500 (EA-17-175 and EA-18-183)

The NRC has concluded that information regarding the reason for the violations, the corrective actions taken and planned to correct the violations and prevent recurrence, and the date when full compliance was achieved is already adequately addressed on the docket in the letter dated June 9, 2019. However, if the description therein does not accurately reflect your position or your corrective actions, you are required to submit a written statement or explanation pursuant to 10 CFR 2.201 within 30 days of the date of the letter transmitting this Notice of Violation. In that case, or if you choose to respond, clearly mark your response as a Reply to a Notice of Violation, and send it to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, with copies to the Document Control Desk, Washington, DC 20555-0001, and the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738.

Dead Ringer, LLC 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 will 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-17-175 and EA-18-183" 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 Licensee 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, with copies to the Document Control Desk, Washington, DC 20555-0001, and the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738.

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, the 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 two working days of receipt.

Dated this 8th day of August 2019.

## QUESTIONS?

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

Questions may also be directed to the NRC Accounts Receivable Help Desk by e-mail at [FEEs.Resource@nrc.gov](mailto:FEEs.Resource@nrc.gov), by phone at (301) 415-7554, or by writing to the address below:

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



# Payment Methods

U.S. NUCLEAR REGULATORY COMMISSION  
OCFO/DC/ARB  
Mail Stop T-9-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 to burden estimate to the Records Management Branch (76-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.

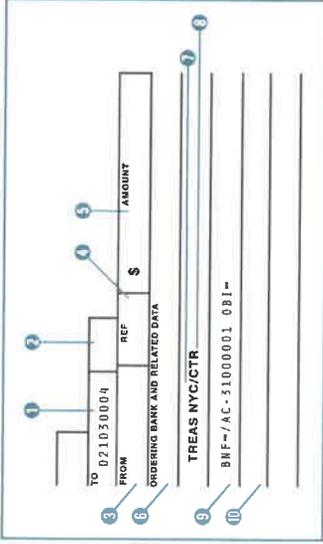
You may also mail or fax NRC Form 629 following the directions on the form. To obtain a copy of NRC Form 629 go to <http://www.nrc.gov> and search for "NRC Form 629" or call the NRC Accounts Receivable Help Desk at (301) 415-7554.



### 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.



- RECEIVER-DFI#** – Treasury's routing number for deposit messages is 021030004.
- TYPE-SUBTYPE-CD** – The sending bank will provide the type and subtype code.
- SENDER-DFI#** – The sending bank will provide this number.
- SENDER-REF#** – The sending bank will insert this 16-character reference number at its discretion.
- AMOUNT** – The transfer amount must be punctuated with commas and decimal point; use of the "\$" is optional. The depositor will provide this item.
- SENDER-DFI-NAME** – The Federal Reserve Bank will automatically insert this information.
- RECEIVER-DFI-NAME** – Treasury's name for deposit messages is "TREAS NYC". The sending bank will enter this name.
- 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.
- 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
- 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 near one of the NRC's offices. However, the parties may agree on any alternate location. Mediation sessions are usually no longer than 1 day. In some cases, the mediation may take longer with the mutual consent of the parties.

## The NRC Mediation Team

The responsible NRC senior manager (i.e., Office Director, Regional Administrator, or his or her designee) will serve as the principal negotiator for the NRC in cases that involve wrongdoing and technical issues. When a case involves discrimination, the Director of the Office of Enforcement will 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 any technical issues under discussion.

## The Confirmatory Order

A CO is a legally binding document that includes the terms of the AIP. The NRC will issue a CO only 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 has completed the terms of the CO, the NRC will verify 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 enforcement ADR program. Accordingly, the NRC expects timely progress 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 the other party.

## Additional Sources of Information

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

- Cornell University's Scheinman Institute on Conflict Resolution  
**Toll-Free Number:** (877) 733-9415
- The NRC's ADR Program Manager in the Office of Enforcement  
**Toll-Free Number:** (800) 368-5642 or (301) 287-9527
- The NRC enforcement ADR program on the agency's Web site at [www.nrc.gov/about-nrc/regulatory/enforcement/adr.html](http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html)



NUREG/BR-0317 Rev. 2  
May 2018

# Enforcement Alternative Dispute Resolution Program

# ENCLOSURE 3

## The Program

The U.S. Nuclear Regulatory Commission's (NRC's) enforcement alternative dispute resolution (ADR) program, formerly referred to as "post-investigation ADR," provides an amicable process for resolving enforcement matters. It is intended to 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, through mediation.

The NRC established the post-investigation ADR program in 2004. In 2015, the NRC expanded its scope to include certain types of enforcement cases that do not involve an investigation. Accordingly, the name of this program was changed from "post-investigation ADR" to "enforcement ADR."

Enforcement ADR includes two distinct case types: (1) discrimination cases or other wrongdoing and, (2) nonwillful (traditional) enforcement cases with the potential for civil penalties (not including violations associated with findings assessed through the Reactor Oversight Process). For discrimination cases or other wrongdoing, mediation is used after the completion of an investigation by the NRC Office of Investigations.

As long as the enforcement matter is within the scope of the program, the NRC normally offers enforcement 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 individual 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 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 enforcement ADR program. Cornell manages the logistics associated with enforcement ADR, including 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 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 can address their differences. The mediator uses consensus-building skills and knowledge of negotiation to help the parties find ways to overcome any misunderstandings and find areas of agreement. The mediator does not act as legal counsel or provide legal advice. Each party should consult an attorney for legal advice as appropriate.

## The Mediation Process

Historically, most enforcement 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 the individual 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, jointly select a mediator. After selecting a mediator, the parties, in coordination with the mediator, set a date and place for the mediation. Typically,

the mediator holds a premediation teleconference with the parties to discuss logistics or any special needs.

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). The CO 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 if the parties had not engaged in ADR.

## Confidentiality

Although the terms of an ADR settlement become publicly available through the issuance of the CO, with certain exceptions, the substance of the discussions during the mediation session is confidential. 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, 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.