



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

December 4, 2019

EGM-19-001

MEMORANDUM TO: David C. Lew, Regional Administrator, Region I
Laura A. Dudes, Regional Administrator, Region II
Darrell J. Roberts, Regional Administrator, Region III
Scott A. Morris, Regional Administrator, Region IV
Ho K. Nieh, Director, Office of Nuclear Reactor Regulation
John W. Lubinski, Director, Office of Nuclear Material Safety
and Safeguards
Brian E. Holian, Director, Office of Nuclear Security
and Incident Response

FROM: George A. Wilson, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM (EGM) 19-001,
CLARIFICATION OF INSPECTION DOCUMENTATION
REQUIREMENTS IN SECTION 2.2.3 OF THE ENFORCEMENT
POLICY

PURPOSE:

The purpose of this EGM is to clarify that Section 2.2.3, "Assessment of Violations Identified Under the ROP and cROP" of the Enforcement Policy (Policy) acknowledges that the identification, assessment, disposition, and subsequent NRC action related to Reactor Oversight Process (ROP) and construction ROP (cROP) findings, including associated non-compliances, are governed by the applicable inspection manual chapters. Since the inspection program utilizes a sampling approach to assess licensees' compliance with safety and licensing requirements, it cannot, nor was it ever intended to, document all non-compliances that may occur at a licensee's facility and allows for the use of risk insights in deciding which non-compliances to document. Specifically, if an issue is considered to be of very low or no safety significance but is unclear whether the issue is an actual violation, additional inspection resources and documentation may not be warranted.

BACKGROUND:

In the late 1990s, the staff developed and began implementation of the ROP. During early implementation, some staff expressed a concern that the ROP would document findings in the inspection reports but would deemphasize or omit from the documentation a determination of associated regulatory or licensing non-compliances.

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External stakeholders also expressed a concern that the inspection reports would become less open or transparent and would focus on the identification of findings but that associated non-compliances would not be described or explicitly documented.

On December 5, 2000, R.W. (Bill) Borchardt, then-Director, Office of Enforcement (OE), issued a memorandum, "Dispositioning of Enforcement Issues in a Risk Informed Framework," (ML003777558). This memorandum built on and provided additional guidance related to an August 25, 1997, Commission Staff Requirements Memorandum, "SRM COMSAJ-97-008 - Discussion on Safety and Compliance," (ML003753992). Specifically, the Borchardt memorandum made clear that it was inappropriate to document findings and their associated non-compliances in inspection reports without dispositioning the associated regulatory or licensing non-compliances. The memorandum stated:

*"While the current Enforcement Policy, with its expanded use of NCVs and risk information, has significantly reduced unnecessary regulatory burden, the proper disposition of documented violations remain an NRC responsibility. We have reduced unnecessary regulatory burden by changing the way we and our licensees disposition violations, not by failing to determine whether an inspection finding is a violation. Failing to disposition valid violations, that have more than minor safety significance, does not further any of the agency's goals. It can only serve to create the impression that there are unimportant requirements. **In short, if an issue warrants documentation in an inspection report it also warrants a determination as to whether or not a violation exists.**" (Emphasis added)*

In summary, the Borchardt memorandum emphasized the need for the appropriate disposition of violations that are documented (i.e., more than minor). In other words, once a decision is made to document a non-compliance, it must be dispositioned. However, the Borchardt memorandum does not state that every non-compliance must be documented.

DISCUSSION:

Recently, OE has become aware that some inspection staff may be misinterpreting and misapplying aspects of Section 2.2.3 of the Policy and of the guidance in the Borchardt memorandum regarding the extent to which findings and associated violations need to be identified and documented in inspection reports. Specifically, some staff have expressed a view that the Policy and the Borchardt memorandum require that all inspection issues of concern, regardless of significance, be documented. This view appears to be based on a sentence at the end of the second paragraph of Section 2.2.3 which states:

"Inspection findings processed through the SDP, including associated violations, are documented in inspection reports and are assigned one of the following colors, depending on their significance."

It is important to place this statement in context with the Borchardt memorandum which states:

*"In short, **if an issue warrants documentation** (emphasis added) in an inspection report, it also warrants a determination as to whether or not a violation exists."*

The intent of the statement from Section 2.2.3 of the Policy is to remind inspectors to evaluate the compliance aspect of any findings (i.e., more than minor performance deficiencies) documented in inspection reports. The purpose of the Borchardt memo was to state that if a non-compliance was documented in a report, the determination of whether it was a violation

should also be documented, not that all non-compliances had to be documented. Guidance on what to document is contained in inspection program policies and manual chapters.

The Agency's inspection program utilizes a sampling approach to assess licensees' compliance with safety and licensing requirements. As a result, the inspection program cannot, nor was it ever intended to, document all the non-compliances that may occur at a licensee's facility. Consequently, the operating reactors and new reactors inspection programs provide the principal guidance regarding the decision to document and how to document inspection findings, including associated violations. This specific inspection program guidance is consistent with Policy requirements and the Borchardt memorandum guidance.

A more complete excerpt of Section 2.2.3 of the Policy is provided below. When read in full context, this excerpt states that inspection findings, and associated violations, are identified and documented as specified in inspection manual chapters. These documents also provide the general guidance regarding the content of inspection reports (i.e., whether and how to document inspection findings, including associated violations).

The assessment, disposition, and subsequent NRC action related to inspection findings identified at operating power reactors are determined by the ROP, as described in NRC Inspection Manual Chapter (IMC) 0305, "Operating Reactor Assessment Program," and IMC 0612, "[Issue Screening]".

Inspection findings identified through the ROP are assessed for significance using the SDP described in IMC 0609, "Significance Determination Process." Inspection findings identified through the cROP are assessed for significance using the SDP described in IMC 2519, "Construction Significance Determination Process." The SDPs use risk insights, where possible, to assist the NRC staff in determining the significance of inspection findings identified within the ROP or cROP. Inspection findings processed through the SDP, including associated violations, are documented in inspection reports and are assigned one of the following colors, depending on their significance.

ACTION:

Inspection staff should continue to follow the applicable inspection manual guidance with respect to the identification, assessment, and disposition of findings and related non-compliances.

As part of a future, periodic Policy update, the staff will consider the need to propose language for Commission approval consistent with the interpretation provided in this EGM to clarify Section 2.2.3 of the Policy and make necessary revisions to the Enforcement Manual.

EXPIRATION:

This EGM will remain in effect until the next revision of the Policy. At that time, the staff may propose a change to further clarify Section 2.2.3 of the Policy.

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 19-001, CLARIFICATION OF
INSPECTION DOCUMENTATION REQUIREMENTS IN SECTION 2.2.3 OF THE
ENFORCEMENT POLICY DATE: December 4, 2019

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