

REPORT SYNOPSIS

The Office of the Inspector General (OIG) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) policy and procedures for issuing Notices of Enforcement Discretion (NOED). Specifically, our objective was to examine NRC's compliance with NOED procedural requirements and the document control process for tracking NOEDs.

On March 17, 1993, NRC revised its enforcement policy in the Code of Federal Regulations. This revision allows the NRC staff to choose not to enforce an applicable technical specification or license condition in certain circumstances. This enforcement discretion, an NOED, may only be exercised if the staff is clearly satisfied that the action is consistent with protecting the public health and safety. The action requested by the licensee must be temporary, nonrecurring, and involve minimal or no safety impact. In addition, NRC is expected to take enforcement action for any root cause violation that led to the request for the NOED. NRC granted 84 NOEDs between March 17, 1993, and June 20, 1994.

Our review found that NRC is in general compliance with its procedures for granting NOEDs. However, we found some shortcomings in NRC's administration of the NOED program. First, NRC does not stipulate a timeframe for the close-out of NOEDs which require the issuance of a licensing amendment. Second, conditions for allowing plant startup are not addressed in licensee requests or NRC NOED approvals. Third, NRC does not routinely perform follow-up to determine the root causes leading to the NOEDs requested. Finally, we believe NRC needs to improve the tracking mechanism for NOEDs. We made four recommendations to address these shortcomings.

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INTRODUCTION

The Office of the Inspector General (OIG) has reviewed the U.S. Nuclear Regulatory Commission's (NRC) policy and procedures for issuing Notices of Enforcement Discretion (NOED). Specifically, our objective was to examine NRC's compliance with NOED procedural requirements and the document control process for tracking NOEDs.

Because NRC formed a task force to, among other things, specifically look at the technical determinations for approving NOEDs, we did not evaluate these aspects of NOED decisions. Appendix I contains a detailed description of our objectives, scope, and methodology.

BACKGROUND

The Code of Federal Regulations (CFR)¹ contains the "General Statement of Policy and Procedure for NRC Enforcement Actions." The Office of Enforcement (OE) exercises oversight of and carries out the NRC enforcement program. Subject to the oversight and direction of OE and with the approval of the appropriate Deputy Executive Director (as necessary), regional offices normally issue Notices of Violation and proposed civil penalties. Similarly, the Office of Nuclear Reactor Regulation (NRR) issues Notices of Violation and proposed civil penalties to vendors and suppliers.

On March 17, 1993, NRC revised the CFR by adding a new subsection entitled "Exercise of Discretion for an Operating Facility²." This new subsection states:

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in

¹10 CFR 2, App. C

²10 CFR 2, App. C, § VII.c

plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety.

NRC Inspection Manual, Part 9900 (the Manual or MC 9900), provides NRC's procedures for implementing this policy revision.

MC 9900 states that NRC may exercise enforcement discretion only when the requested action is temporary, nonrecurring, and when the course of action involves minimal or no safety impact. However, "the decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue."³ Therefore, "in each case where the NRC staff has chosen to exercise enforcement discretion, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used."³

NRC intends that enforcement action emphasize that licensees should not rely on NRC's authority to exercise enforcement discretion. Enforcement discretion should not be viewed as a routine substitute for compliance, or for requesting a license amendment.

Guidance in the Manual authorizes the Regions to issue NOEDs if licensees do not need amendments to license conditions or plant technical specifications. However, the duration for exercising this discretion should not exceed 14 days (except in unusual circumstances). NRR has the lead for issuing NOEDs that will result in an amendment to a license condition or plant technical specification.

Since the March 17, 1993 revision to NRC's enforcement policy, NRC had granted 84 NOEDs as of June 20, 1994. Concerns about the NOED policy have been raised by Messrs. Paul Blanch, Stephen Comley, and Ernest Hadley, on behalf of the public interest group *We The People*, and Senator Joseph Lieberman.

³10 CFR 2, App. C, § VII.c

Senator Lieberman's concerns focused on the authority of NRC to grant NOEDs per the Atomic Energy Act. NRC has provided Senator Lieberman with its legal justification with regard to the Atomic Energy Act and NRC's enforcement discretion authority. Because of these concerns, we reviewed NRC's compliance with its procedures for implementing the NOED policy.

Shortly after initiating our review, NRC established a task force to review the implementation of the NOED policy, as well as the NOED policy itself. The Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research (DEDO) charged the task force with recommending improvements to both the NOED policy and its procedures. As a result, the task force charter goes beyond examining procedural compliance. It includes examining technical decisions made in granting NOEDs and considering subsequent root cause enforcement actions. In contrast, and as previously mentioned, our review focused on non-technical compliance issues.

Technical determinations related to the granting of NOEDs include analysis of operational and shutdown risk, as well as the likelihood of a plant transient. In our opinion, these technical determinations are critical when deciding to grant a NOED. Appendix II contains the task force charter.

FINDINGS

During our review we examined procedural compliance for 49 of the 84 NOEDs granted since the agency's policy became effective on March 17, 1993. The 49 NOEDs we reviewed consisted of all those granted by Region III (20) and NRR (29).

Overall, we found that NRC is in general compliance with its procedures for granting NOEDs. With a few exceptions, NOED requests from licensees contained the required information for making an informed decision. Also, NRC approvals of and the durations granted for NOEDs usually followed Manual requirements.

However, we also found that NRC needs to improve its implementation of NOED procedures in four areas. First, we could not determine compliance with timeliness requirements for NOEDs involving license amendments because the Manual does not establish timeframes allowed for those NOEDs. Second, we could not determine if NRC addresses conditions for allowing plant startup because licensee requests and NRC approvals do not specifically identify this information. Third, we also found that NRC does not routinely perform follow-up to determine the root causes leading to the NOEDs requested. Finally, we determined that NRC needs to improve the tracking mechanism for NOEDs.

NRC IS IN GENERAL COMPLIANCE WITH ITS PROCEDURES FOR GRANTING NOEDS

From our sample, we found that licensee requests for enforcement discretion generally contained required information and that NRC complied with MC 9900 documentation requirements for evaluating, responding to, and approving those licensee requests. However, for NOEDs involving license amendments, we could not clearly determine if the NRC is in compliance with requirements because MC 9900 does not contain timeframes for those NOEDs. Additionally, for those cases where the NRC issued a NOED for plant startup, we could not determine whether NRC considered the criteria in MC 9900.

Licensee Requests For NOEDs Generally Contain Required Information

NRC's primary documentation for NOEDs is the licensee request letter. The licensee may initially provide oral information to NRC, but is required to promptly provide written documentation (usually within 24 hours) addressing specific criteria. MC 9900 requires that licensee letters requesting NOEDs discuss specific information in nine areas:

1. The TS or other license condition that will be violated;
2. The circumstances surrounding the situation, including the need for prompt action;

3. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action;
4. Any proposed compensatory measures;
5. The justification for the duration of the noncompliance;
6. The basis for concluding that the noncompliance will not be of potential detriment to the public health and safety, and that it does not involve a significant safety hazard;
7. The basis for concluding that the noncompliance will not involve adverse consequences to the environment;
8. A statement that the facility organization that normally reviews safety issues approved the request; and,
9. Any other information the NRC staff thinks necessary.

We found that, for 42 of the 49 cases, written documentation usually followed the licensees' oral requests within 24 hours. For the remaining seven cases, written documentation followed the oral requests in 1 to 3 business days.

We also found, with a few exceptions, that the licensees' written requests generally discussed all the information required by the Manual. For the most part, licensees' NOED request letters were organized to specifically address each of the nine areas mentioned above. In evaluating compliance with item 9, we found no documented evidence that NRC requested additional information. Therefore, we could not determine compliance with this requirement.

Additionally, in four cases we could not determine if items 6 and 7 were discussed in the licensee request letters. NRC technical staff indicated that they agreed that items 6 and 7 were not specifically discussed. However, they believed the technical basis for these considerations were contained in or could be assumed from other sections of the letters. We could not determine the accuracy of this assertion due to the technical nature of the information provided.

NRC Generally Complies With NOED Review And Approval Requirements

NRC may orally grant approval for a NOED and then must document that approval in a letter to the licensee within two business days of the request. That letter must include a description of the circumstances, any compensatory measures, and the maximum period for which the exercise of enforcement discretion is in effect. MC 9900 requires that regional NOEDs be 14 days or less in duration. However, the Manual does not restrict the duration of NRR-granted NOEDs.

We found that NRC generally met the above identified requirements in documenting its approval for NOEDs. In all cases NRC documented the circumstances as required. For five NOEDs where the licensee provided compensatory measures, NRC did not reiterate those measures in its response letters. In one case, NRC did not specify the period for the NOED. Finally, in 11 cases, NRC did not issue its response letter within 2 working days. Most were a few days late; however, in one case it took NRC 9 business days to issue its letter. Of the 20 Region-granted NOEDs in our sample, one was greater than 14 days in duration. That NOED had a duration of 15 days.

No Timeframes Are Stipulated For NOEDs Involving License Amendments

For NOEDs that involve an amendment to a license, NRR provides the approval. As a result, NRR's responses to licensees requiring license amendments generally state that NRC effectively grants NOEDs until the staff can process a change to the licensee's TS on an emergency (or exigent) basis. However, NRC's regulations do not contain a requirement that sets the time period for issuing an emergency or exigent amendment.

For 18 of 29 NRR-approved NOEDs in our sample, NRR granted licensing amendments between 1 week and about 1 month from the issuance of the NOED. In two other cases, the licensees submitted an NOED request and a proposed amendment to NRC. However, they shut down their facilities prior to NRC's processing and approval of the amendments requested. NRC had taken over one month to process the amendments and had not yet completed them at the time the licensees shut down their facilities.

For another two NOEDs, licensees had placed requests for license amendments well before their request for enforcement discretion. Therefore, NRC did not process the license amendments on an emergency or exigent basis. For one of these two cases, it took NRC over a year to process the amendment; however, NRC granted the NOED for an 84-hour period. For the other case, it took NRC over 3 months to process the amendment, while the NOED had a duration of 34 days. Another NOED had a duration of 3 months due to an emergency license amendment that took 3 months to complete. Finally, one NOED had a duration of 5 months that did not result in a license amendment.

The disposition of the remaining five NOEDs varied. For three cases, it was determined shortly after requesting the NOED that a license amendment was not necessary. Another NOED had a duration of 7 days for which the licensee never envisioned the need for a license amendment. Procedurally, the region should have had responsibility for this NOED. For the last one, a NOED resulted in a regulatory exemption rather than a license amendment. MC 9900 does not address this possibility.

*Conditions For Allowing Plant Startup Are Not Addressed
In Licensee Requests Or NRC NOED Approvals*

MC 9900 provides that NOEDs for startup may only be granted when the NRC staff has at least concluded that, notwithstanding the conditions of the license:

1. The equipment or system does not perform a safety function in the mode in which operation is to occur; or,
2. The safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or,
3. The TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

Our sample included five cases of NOEDs granted for plant startup. We saw no evidence that these criteria were specifically addressed in either the licensee request or NRC response. However, due to the technical nature of the criteria, we could not determine if they were otherwise considered.

ROOT CAUSE FOLLOW-UP IS INCONSISTENT OR NOT DONE

The Manual provides that NRC normally will take enforcement action for any root cause violation that led to the NOED noncompliance. The intent of enforcement action in this circumstance is to emphasize that a licensee should not rely on the NOED process as a routine substitute for compliance.

We did not evaluate whether enforcement action should have been taken due to the technical nature of such a decision. However, in order to determine whether enforcement action is appropriate, follow-up should normally occur. Lack of root cause follow-up could result in potential violations going unnoted by NRC.

Our review found that NRC does not routinely perform follow-up to determine whether enforcement action is necessary. This was particularly problematic for NOEDs approved by NRR. NRC lacks adequate guidelines for performing and documenting follow-up to determine root cause. For Region-granted NOEDs, it is generally expected that Resident Inspectors are to perform this function and document it where they see fit in an inspection report.

Our review noted that Resident Inspectors performed follow-up on root cause analysis in 14 of the 20 NOEDs granted by Region III. In three of the remaining six cases, Region III granted the NOEDs less than 1 month before our review. Follow-up had not yet occurred, but was expected to be documented in the next inspection report. However, in the three remaining cases we found that no documentation of follow-up was available or expected. Therefore, we could not conclude that follow-up, and resultant enforcement action, as needed, occurred.

We found little documented evidence that NRR assures the performance of follow-up. We found that NRR and regional officials were unclear as to which group (NRR or the Region) should follow up on NRR-granted NOEDs. NRR Assistant Directors for Projects told us that they believed it was the Regions' responsibility.

Regional Directors for Reactor Projects had varying views whether their Region or NRR had the lead. As discussed later, NRC has corrective action underway to address this problem.

NRR COULD IMPROVE ITS NOED TRACKING AND INFORMATION PROCESS

The primary NOED tracking mechanism is a database maintained by NRR. We found that the database does not contain actual closing dates or any follow-up information such as the date and type of follow-up and resultant enforcement action, if any. The database was not designed to include this information.

Most of the 49 NOEDs we sampled did not have the actual closing dates listed in the database. NOED close-out dates listed in the database were usually projected from information in NRC's response letters and do not represent actual dates of closure. For example, when NRC grants a 7 day duration but the licensee uses only 3 days, the database would inaccurately show the effective period for the NOED as 7 days. Also, NRR often grants NOEDs until it can process an emergency or exigent licensing amendment. These usually appear on the database as blank closing dates, instead of containing the date of amendment approval. As previously identified, the database also does not contain follow-up or enforcement information.

We believe that this type of information is important in tracking and assuring that NOEDs are closed out in a timely manner. Also, the information would track the completion of follow-up to identify any root cause violations and help ensure that all required enforcement actions are taken. One NRC task force member told us that the task force has drafted improvements to better define the NOED data captured in periodic reports. He also said they recognized the need to better define which managers should receive those reports.

NRC HAS CORRECTIVE ACTION UNDERWAY

We found that the NRC staff identified the need for improving NOED follow-up for enforcement actions. The Office of Enforcement (OE) has drafted procedures requiring coordination between NRR and the Regions to ensure that the Regions

consider the need for enforcement action for any underlying root cause violation. OE sent these procedures to NRR for comment on May 25, 1994. The draft procedures require semiannual reports to OE containing root cause, root cause violation, and enforcement information.

CONCLUSIONS

We believe that NRC, with some exceptions, is in general compliance with the non-technical requirements of MC 9900 for granting NOEDs. However, current NRC policy and procedures do not stipulate timeframes for the processing and approval of license amendments related to NOEDs. As a result, the agency cannot ensure it is timely in closing out NOEDs with related license amendments. Additionally, NOED documentation (where applicable) does not specifically address the conditions that allow plant startup. Therefore, it cannot be determined if NRC considered and met these requirements. We also found that NRC does not routinely perform follow-up for root causes leading to NOED requests. We believe follow-up is necessary to conclude whether enforcement action is needed. Lack of follow-up could result in potential violations going unnoted by NRC. Additionally, NRC could increase the usefulness of the NOED tracking mechanism by adding pertinent, accurate, closing and follow-up information. Such information would also provide a level of assurance that NOED's were closed out based on specific actions.

NRC established a task force to review the implementation of the NOED policy and to make recommendations for improvements. Therefore, we briefed the task force on the results of our work. The task force agreed with our overall findings and conclusions and said they planned to incorporate them into their report.

RECOMMENDATIONS

In order to improve the NOED program, we recommend that the DEDO:

- (1) Ensure timely closeout of NOEDs requiring license amendments by revising the NOED policy and/or implementing procedures to

clearly define the timeframes for processing and approving license amendments;

- (2) Ensure that justifications allowing plant startup are clearly evident in NOED approval documentation;
- (3) Continue efforts underway with OE to ensure that root cause follow-up is done for all NOEDs and enforcement action is taken as needed; and
- (4) Modify the NOED tracking mechanism to include closeout and other appropriate follow-up information.

AGENCY COMMENTS

On October 11, 1994, the DEDO provided comments on our draft report which are included as Appendix III.

The DEDO agreed with our findings and recommendations. His response to our draft report stated that our audit recommendations would be implemented in conjunction with recommendations made by the NRC task force.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our goal in performing this review was to determine whether the agency has effectively followed its Inspection Manual, Part 9900 (MC 9900) for implementing NRC's Notice of Enforcement Discretion (NOED) policy. To accomplish this goal we:

- (1) Determined the extent of compliance with MC 9900, and
- (2) Determined whether the agency has a sufficient document control process for tracking NOEDs.

We conducted our review in July 1994. We interviewed NRC headquarters staff in the Office of Enforcement (OE) and Office of Nuclear Reactor Regulation (NRR). We also interviewed regional officials from the Divisions of Reactor Projects, and Enforcement and Investigation Coordination Staffs.

We reviewed NRC rules and guidance affecting the issuance of NOEDs. We also reviewed a sample of NOEDs granted for the period March 17, 1993 through June 20, 1994. Our sample represented 49 of the 84 NOEDs issued by the agency during that period. The sample included all NOEDs granted by NRR and Region III. We did not verify the completeness of the sample provided. Because this review examined compliance with MC 9900 only, we did not evaluate the internal controls related to the agency's enforcement policy. We did not evaluate the technical merits of the NOEDs granted.

We conducted our review according to generally accepted Government auditing standards.

NRC TASK FORCE CHARTER

A CHARTER TO REVIEW IMPLEMENTATION OF THE NRC ENFORCEMENT DISCRETION POLICY

I. OBJECTIVES

Perform a comprehensive review of the staff's implementation of the current enforcement discretion policy and determine (1) if the process outlined in agency procedures is consistent with the policy, and (2) if the practice of evaluating and documenting enforcement discretion requests is consistent with agency procedures. If weaknesses in the policy itself are identified, recommendations should also be provided for strengthening the policy. The task force is to perform its evaluation and make recommendations as follows:

- (1) Review all NRC actions on requests for enforcement discretion since the current policy went into effect on March 17, 1993, through May 1994. Determine whether Inspection Manual Chapter 9900 is consistent with the enforcement discretion policy and if it is being implemented properly, and recommend how the guidance can be improved to overcome any weaknesses in the implementation.
 - Prepare a matrix classifying the types of causes that led to the licensees' requests.
 - Determine if the NOEDs granted in the past should have been processed differently (e.g. exemption from regulation).
 - Determine the adequacy of the staff's documentation of the safety rationale.
 - Determine if the duration for which enforcement discretions are granted is excessive. Provide rationale for accepting the current practice or recommend changes.
 - Team members who acted on the request for which NOEDs were granted should not review their own actions.
- (2) Determine if the staff is pursuing enforcement actions for the root causes of violations for which enforcement discretions are sought and recommend improvements needed. Determine if:
 - the staff adequately reviews the accuracy of the licensee's rationale for NOED requests;
 - the staff routinely ensures that the root causes warrant the requests for exercise of enforcement discretion, and that licensees do not abuse the process;
 - the staff evaluates the need for and takes enforcement actions for root causes that result in the violations; and

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- the staff ensures that the licensees' procedures, programs, etc. are evaluated to ensure that the root causes which resulted in NOEDs have been eliminated.
- (3) Review the Office of Enforcement draft enforcement guidance memo (EGM) providing additional guidance on NOEDs, and review comments on EGM provided by the Regions. With the results of the review to date, draft NRR response to EGM for the signature of the Associate Director for Projects, within five working days after all Regional comments have been submitted.
- (4) Develop and recommend improvements in the NOED process.
- Evaluate the role, if any, for public participation. Consider the possibility of post-issuance noticing of NOEDs. Recommend procedures to be used for public noticing (news media, bulletin board systems, etc.).
 - Determine the amount of oversight currently being provided to the enforcement discretion process. Evaluate the need for audits to ensure that the guidance is being adhered to.
- (5) Develop and recommend a process for a comprehensive NOED tracking system which ensures that documentation of the licensees' and the staff's activities on all requests for NOEDs are complete and readily retrievable.
- Verify, to the extent possible, the accuracy of the existing data base on NOEDs since the issuance of the Enforcement Policy on March 17, 1993.
 - Make recommendations for expansion of the current database, and if all NOED correspondence should be tracked in a single database. If so, recommend the type and the format of an appropriate database.
 - Use the categories of NOEDs identified from item (1) of the Objectives to develop a tracking by category concept and fold it into the revised NOED tracking system.
- (6) If weaknesses in the policy are noted, they should be identified and improvements proposed.
- (7) Include as input the findings, conclusions, and recommendations from the ongoing OIG review of the enforcement discretion process which is expected to be completed near the end of July 1994.

AGENCY COMMENTS ON DRAFT REPORT



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

October 11, 1994

MEMORANDUM TO: Thomas J. Barchi
Assistant Inspector General
for Audits
Office of the Inspector General

FROM: James L. Milhoan *James L. Milhoan*
Deputy Executive Director
for Nuclear Reactor Regulation,
Regional Operations and Research

SUBJECT: REVIEW OF NRC'S COMPLIANCE WITH NOTICE OF ENFORCEMENT
DISCRETION POLICY AND PROCEDURES

I am responding to your memorandum of September 13, 1994, in which you transmitted the draft audit report on your review of the NRC's Notice of Enforcement Discretion (NOED) policy and procedures.

I am pleased to note that your audit finds that the NRC is in general compliance with its procedures and requirements for review, approval, and granting of NOEDs, and that licensee requests for NOEDs generally contain the required information.

Your audit focused on nontechnical compliance issues. Concurrent with your audit, an NOED Review Team (review team), which I had chartered, studied both the technical and nontechnical issues relating to NOED policy and procedures. The review team documented its findings, conclusions, and recommendations in a report dated September 1, 1994. The review team also concluded that the NRC is in general compliance with its procedures for granting NOEDs and identified areas where improvements could be made to the program. NRR is studying the review team's report and intends to initiate appropriate actions to enhance the NOED process and develop an action plan for implementing these initiatives. The EDO intends to review the action plan proposed by NRR. I will send you a copy of the action plan upon completion of his review and approval.

Certain issues identified by the review team were considered to warrant more immediate attention. As a result, the Director of NRR issued a memorandum dated September 16, 1994, directing interim staff action on these issues until the long-term improvement initiatives are in place. I am enclosing a copy of the September 16, 1994 memorandum for your information.

Your audit report contains four specific recommendations to improve the NOED program. These recommendations relate to timeliness for closeout of NOEDs requiring license amendments, documentation of justification for allowing plant startup, root cause follow-up and enforcement action, and NOED tracking mechanisms. On the basis of our review of your report, we concur with your recommendations and submit the following responses:

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Recommendation 1

Ensure timely closeout of NOEDs requiring license amendments by revising the NOED policy and/or implementing procedures to clearly define the timeframes for processing and approving license amendments.

Response

Agree

The review team has recommended that NRC Inspection Manual Part 9900 (MC 9900), "10 CFR Part 2 Appendix C Enforcement Discretion," guidance be revised to ensure that NRR processes license amendments associated with NOEDs in a timely manner (time limit to be established). This action, in conjunction with the implementation of a NOED tracking system (per Recommendation 4), should result in timely closeout of all NOEDs requiring license amendments.

Recommendation 2

Ensure that justifications allowing plant startup are clearly evident in NOED approval documentation.

Response

Agree

The review team has recommended that MC 9900 be revised to emphasize that the NRC staff must review the licensee's basis for an NOED request to ensure that it is consistent with NRC policy. Further, the NRC letter approving an NOED would be required to include a summary of the specific bases for the NRC decision. The sample letter in MC 9900 will be revised to show how the licensees' safety basis should be stated, evaluated, and documented.

Recommendation 3

Continue efforts underway with OE [Office of Enforcement] to ensure that root cause follow-up is done for all NOEDs and enforcement action is taken as needed.

Response

Agree

The review team, in its report, concluded that the staff properly took enforcement action for most NOEDs where enforcement was warranted. The review team found three cases which appeared to meet the criteria for non-cited violations. However, these instances were not documented. To address this concern, MC 9900 will be revised to ensure that the root cause follow-up for all NOEDs and the staff determinations for enforcement action are appropriately documented in inspection reports, and in the NOED tracking system.

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Recommendation 4

Modify the NOED tracking mechanism to include closeout and other appropriate follow-up information.

Response

Agree

The review team has recommended that MC 9900 be revised to provide a mechanism for tracking NOEDs from receipt of the request to closeout. Specifically, the tracking system will include applicable NOED closeout information including the Inspection Report number that documents closure of an NOED, enforcement action number, license amendment number and associated dates, and the root cause for the NOED.

We believe that our planned actions to implement the review team recommendations will adequately address your audit recommendations. We are still in the process of establishing completion dates for the above actions. These dates will be incorporated into the stated action plan.

Attachment:
9/16/94 NRR Memo



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

September 16, 1994

MEMORANDUM TO: Thomas T. Martin, Regional Administrator, RI
Stewart D. Ebnetter, Regional Administrator, RII
John B. Martin, Regional Administrator, RIII
Leonard J. Callan, Regional Administrator, RIV
Roy P. Zimmerman, Associate Director for Projects, NRR

FROM: *for* William T. Russell, Director, NRR *Frank J. Murgie*

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION REVIEW TEAM
REPORT

In May 1994, while preparing responses to Congressional and media inquiries on the use of Notice of Enforcement Discretion (NOEDs), the staff discovered some inconsistencies in the implementation of the NOED program. On July 21, 1994, a team was chartered by Jim Milhoan, the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research (DEDR) to review the policy, implementation process, and staff practices for enforcement discretion. The team completed their review and issued the attached report on September 12, 1994. The report contains a number of recommendations to improve the NOED process that are currently under management consideration. An action plan for the implementation of improvement initiatives will be developed by October 7, 1994. We will solicit your comments on the Review Team's Report under a separate request in the near future.

Some of the issues identified in the report are considered to warrant more immediate attention by regional and NRR staff. The following actions are to be implemented for all future NOEDs to address these issues:

1. The review team concluded that the NOED policy does not address severe weather conditions where the need for enforcement discretion does not otherwise exist. Enforcement discretion for weather-related events has been exercised in the past after due consideration of the overall public interest; this has involved balancing actions which have minimum or no safety impact with the overall safety benefit to the public of continued reactor operation. These considerations are beyond the radiological safety considerations of the NOED policy.

Action: Until long-term improvement initiatives are completed, NOEDs for weather-related events will require approval by the DEDR. Furthermore, the Commission will be notified of the above exercise of discretion, as such notification is already

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required in the Enforcement Policy for other situations that require a similar balancing of concerns. Because the exercise of enforcement discretion dictates immediate action, notification of the Commission will normally be accomplished following issuance of the NOED.

2. The review team found that the staff exercised discretion during reactor startup conditions that did not explicitly meet the criteria for enforcement discretion as stated in the NOED policy or Manual Chapter 9900. Although the guidance was sufficient to implement the policy, the staff treated most NOED requests for startup the same as those for power operations. While the staff's determinations in such cases did not detract from safety, the higher standard required for plants in startup was not achieved.

Action: Instruction is to be provided to the staff regarding the established criteria for issuing NOEDs during reactor startup conditions. The established criteria are to be met until long-term improvement initiatives are completed. In the short term, this is expected to result in substantially fewer NOEDs related to reactor startup conditions.

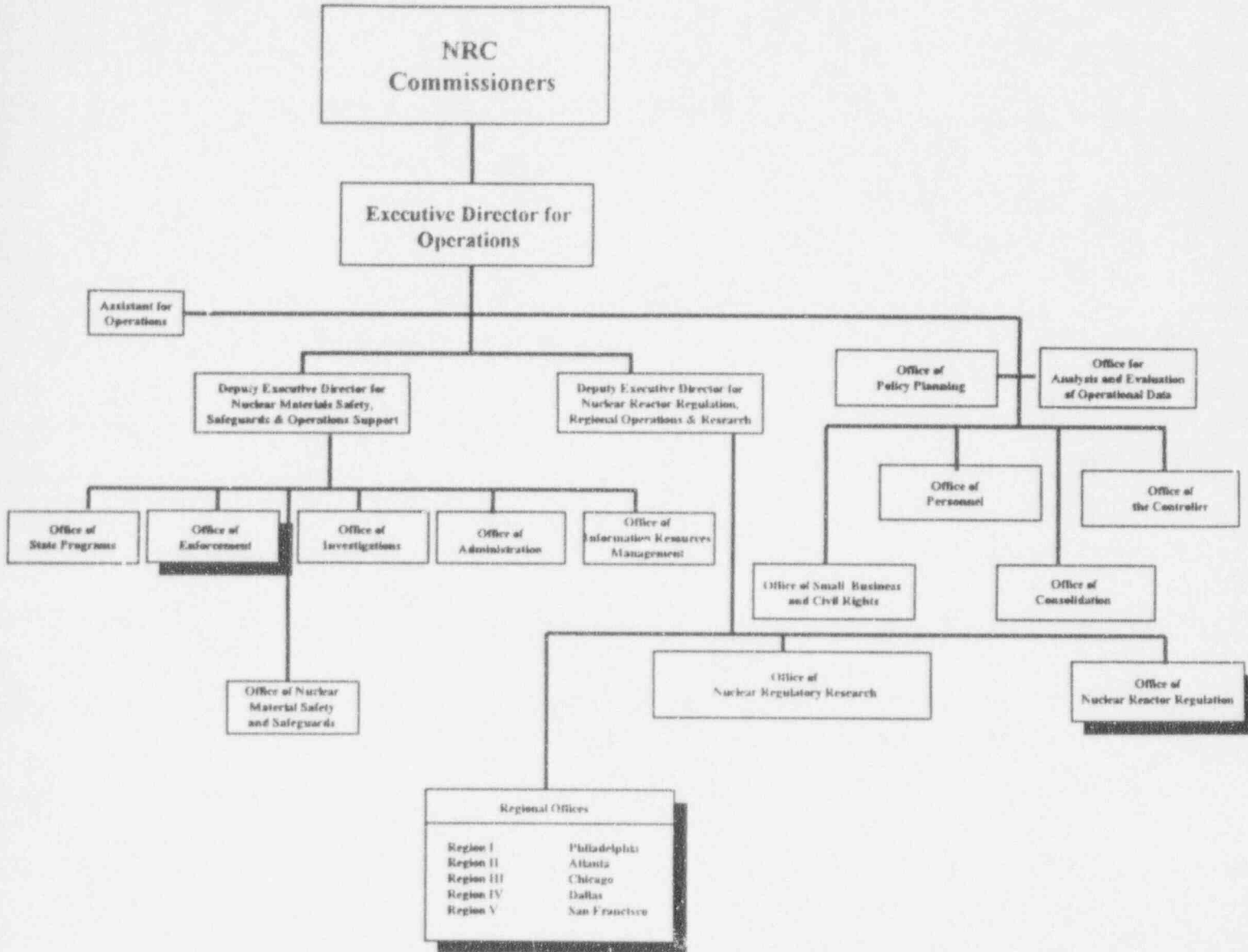
3. The review team found that on two occasions, the staff appeared not to enforce compliance with Technical Specification (TS) requirements once an allowed outage time (AOT) had expired, if the staff was considering an enforcement discretion request. The NOED policy and implementation procedures are silent on this action. The practice of allowing licensees to not comply with TS requirements once an AOT has expired, while the staff is considering a discretion request, is inappropriate.

Action: Instruction is to be provided to the staff which reinforces that this practice is unacceptable and reiterates management's expectations for compliance with TS requirements.

If you have any questions or need additional information, please contact the Review Team Leader, J. Hannon at (301) 504-1389, Mail Stop O-13E21.

Attachment:
Notice of Enforcement Discretion
Review Team Report

U.S. NRC FUNCTIONAL ORGANIZATION CHART



Area Audited

MAJOR CONTRIBUTORS TO THIS REPORT

Anthony C. Lipuma, Team Leader

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Judith L. Leonhardt, Auditor

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