



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION I
631 PARK AVENUE
KING OF PRUSSIA, PENNSYLVANIA 19406

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REGION I INSTRUCTION 1360.1, Revision 0

PROCESSING OF CIVIL PENALTY PACKAGES

A. Purpose

To set forth the regional procedure for the preparation, processing, approval, and issuance of a civil penalty.

References

10 CFR 2, Appendix C - Section V.B
IE Manual Chapter 0400 - Section 0400-05.06
Regional Instruction No. 1350 - Enforcement Conferences

B. Background

The NRC Enforcement Policy (10 CFR 2, Appendix C) defines a civil penalty as a monetary penalty issued for more significant violations of NRC requirements, for the purpose of emphasizing the need for lasting corrective action and deterring future violations. This instruction serves to identify the responsibilities of regional personnel involved in the preparation, processing, approval and issuance of a civil penalty.

C. Discussion

Generally, a civil penalty is imposed for Severity Level I violations, imposed absent mitigating circumstances for Severity Level II violations, is considered for Severity Level III violations and may be imposed for Severity Level IV violations that are similar to previous violations for which the licensee did not take effective corrective action. Also, a civil penalty is normally assessed for knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act, and for any willful violation of any Commission requirement. A civil penalty is normally issued by the Regional Administrator, with the concurrence of the Director, IE.

The need for a civil penalty is determined at a meeting conducted by the regional staff subsequent to the Enforcement Conference (Reference: Regional Instruction 1350 - Enforcement Conferences). The amount of a

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Revision Responsibility:
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civil penalty is dependent upon the type of licensee and severity level of the violation(s) (Reference: 10 CFR 2, Appendix C - Tables 1.A and 1.B), as well as certain escalation and mitigation factors set forth in Section V.B of 10 CFR 2, Appendix C.

Issuance of a civil penalty is a two stage process. The first stage is the issuance of a "Notice of Violation and Proposed Imposition of Civil Penalty", in response to which the licensee may either pay the proposed civil penalty, or may request partial or full mitigation. If the licensee seeks mitigation, the Region evaluates the response, and the NRC may or may not mitigate the penalty, depending on the circumstances. Unless full mitigation of the civil penalty is deemed appropriate, the second stage of the process is the issuance of an "Order Imposing the Civil Penalty" for either the full or partial amount, in response to which the licensee may either pay the imposed civil penalty or may request a hearing.

D. Action

1. Civil Penalty/Proposed Imposition Stage

- a. If the Region determines, at the staff meeting conducted after the enforcement conference, that a civil penalty or any other action that requires the concurrence of IE/OGC is appropriate, the Enforcement Officer shall, within one week of completion of the enforcement conference, prepare the pertinent enforcement documents, and shall, within two weeks of the Enforcement Conference, obtain the concurrence of the responsible division, other divisions, as appropriate, the Regional Counsel, Deputy Regional Administrator and the Regional Administrator. The enforcement documents shall consist of:
 - (1) A transmittal memorandum from the Regional Administrator to the Director, IE, which clearly and concisely sets forth the regional recommendation, the rationale for proposed severity levels and civil penalty amounts, and consideration of any escalating or mitigating circumstances;
 - (2) A proposed letter to the licensee (sent to a licensee Vice President or equivalent at a minimum, and in significant cases as determined by the Regional Administrator, to the President or Chief Executive Officer) which summarizes the issues, expresses the fundamental NRC concerns, including the underlying deficiencies, and states the civil penalty amount and the reasons a civil penalty is considered appropriate; and
 - (3) A proposed "Notice of Violation and Proposed Imposition of Civil Penalty", prepared in accordance with IE Manual Chapter 0400, which sets forth the specific violation(s) and the associated civil penalty.

In addition to these documents prepared by the Enforcement Officer, the enforcement package transmitted to IE/OGC shall also include a copy of the related inspection report and any other pertinent information. The responsible Division shall provide the Enforcement Officer a copy of the applicable pages of all documents pertinent to each violation, if the document is not maintained in the Region (e.g., station procedures, specific Radiation Work Permit etc). Documents maintained in the Region (e.g., Technical Specifications, Emergency Plans, Security Plans etc.) need not be provided.

- b. If necessary, the responsible Section Chief (URP for reactors) shall inform NRR of the pending action in the event a Board Notification is necessary.
- c. During their review of the action prepared by the Enforcement Officer, the division shall verify that the factual information set forth in the proposed documents is technically accurate and complete and the NRC concerns are adequately addressed, and the Regional Counsel shall verify that the proposed civil penalty and related violations are legally valid.
- d. Upon concurrence by the Regional Administrator, the Secretary to the Enforcement Officer shall mail the enforcement package to the Director, IE, and shall provide a copy of the package to (a) all regional personnel who provided concurrence; (b) the Director of Enforcement, IE; (c) the Assistant General Counsel for Enforcement, Office of the General Counsel; (d) the enforcement counterparts in the other Regions; and (e) the Region I Public Affairs Officer. Further, on the day the Regional Administrator concurs in the package, the Enforcement Officer shall transmit the package via the IBM System 5520 to the Director, IE; Director of Enforcement, IE; and Assistant General Counsel for Enforcement, Office of the General Counsel.
- e. Upon IE/OGC receipt of the proposed package, the Enforcement Officer shall maintain contact with IE/OGC to resolve any questions or issues raised during their review. If any significant changes are made to the Region's proposed package, the Enforcement Officer shall verify, with the responsible Division if necessary, that the changes are technically accurate, and shall obtain the concurrence of the Regional Administrator or Deputy Regional Administrator prior to providing regional concurrence in the changes.
- f. When concurrence is reached between the IE/OGC staffs and the region, and the package is ready for review by the Director, IE, the Enforcement Officer shall provide a draft copy of the revised package to the Public Affairs Officer for preparation of a Press Release.

- g. On the date the Director, IE concurs in the package, the Director of Enforcement, IE will issue an Enforcement Notification (EN) to the Commission which informs it that the civil penalty will be issued in 3 working days. On that same date, the Enforcement Officer shall provide an unsigned, undated, copy of the enforcement package to the Regional Administrator, Deputy Regional Administrator, Division Directors, State Liaison Officer (SLO), PAO, appropriate Branch Chief and Section Chief, Regional Counsel, and if the package involves a reactor licensee, to the resident inspector. If the package involves Safeguards Information, the Enforcement Officer shall provide the package to the Nuclear Materials Safety and Safeguards Branch Secretary for appropriate stamping.
- h. On the scheduled date of issuance of the civil penalty, as indicated on the EN, the Regional Administrator shall sign the package, and either the Regional Administrator or Deputy Regional Administrator shall inform the licensee of the action by telephone. Immediately after the telephone notification, the Enforcement Officer shall facsimile a copy of the package to the licensee (if the licensee possesses that capability), unless the package involves Safeguards Information. Subsequently, the Enforcement Officer shall inform: (a) the SLO for notification to the State; (b) the Public Affairs Officer for issuance of the press release no sooner than 24 hours later; and (c) the responsible Division Director and resident inspector for general information.

Further, the Secretary to the Enforcement Officer shall mail the package to the licensee "Certified Mail-Return Receipt Requested", and shall express mail the concurrence copy and facsimile a clean copy of the final signed, dated package to the Director of Enforcement, IE.

2. ACTION - CIVIL PENALTIES/IMPOSED STAGE

- a. Upon receipt of a licensee's response to a "Notice of Violation and Proposed Imposition of Civil Penalty", the Enforcement Officer shall review the response, and if the licensee admits the violations and has paid the civil penalty in full, shall provide the response to the appropriate Division for review of the adequacy of the licensee's stated corrective actions.
- b. If the licensee denies any of the violations or seeks mitigation of the civil penalty, the Enforcement Officer shall summarize the licensee's response, including significant licensee contentions in support of their requests, and shall provide copies of the summary and response to the Regional Administrator, Deputy Regional Administrator, Regional Counsel, appropriate Divisional personnel, Public Affairs Officer, State Liaison Officer and the docket room. The responsible Division

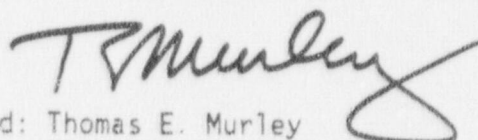
shall review the response and summary and provide any comments to the Enforcement Officer within one week. If necessary, the Enforcement Officer shall meet with the Division to discuss the licensee's response.

- c. Within four weeks of receipt of the licensee's response, the Enforcement Officer shall prepare an appropriate enforcement package which shall consist of:
- (1) A transmittal memorandum from the Regional Administrator to the Director, IE, which concisely summarizes the licensee's response, and sets forth the regional recommendation regarding further enforcement action;
 - (2) A letter from the Director, IE to the licensee which summarizes the NRC evaluation of the licensee's response, and sets forth the forthcoming enforcement action;
 - (3) An Order Imposing a Civil Penalty, in full or in part, unless complete mitigation of the proposed penalty has been deemed appropriate; and
 - (4) An appendix which provides an evaluation and conclusion of the licensee's response, including a summary of each licensee contention, and NRC evaluation and conclusion regarding each contention.
- d. Within six weeks of the licensee response, the Enforcement Officer shall obtain the concurrence of the responsible Divisions, Regional Counsel, Deputy Regional Administrator and Regional Administrator in the proposed enforcement package. Upon concurrence of the Regional Administrator, the Secretary to the Enforcement Officer shall mail the package to the Director, IE, Director of Enforcement, IE and the Assistant General Counsel for Enforcement, OGC, and on the same day, the Enforcement Officer shall transmit the package to these same individuals via the IBM System 5520.
- e. Upon IE/OGC receipt of the package, the Enforcement Officer shall maintain contact with the IE/OGC staff to resolve any questions, and verify the accuracy of any changes. If significant changes are made to the region's proposed package, the Enforcement Officer shall obtain the concurrence of the Regional Administrator or Deputy Regional Administrator prior to providing regional concurrence to IE/OGC. Upon issuance of the package by the Director, IE, the Enforcement Officer shall obtain from IE, via the facsimile, a signed and dated copy of the package, and shall provide the package to the Regional Administrator, Deputy Regional Administrator, Regional Counsel, appropriate Division personnel, Public Affairs Officer, and State Liaison Officer.

- f. Unless the civil penalty is withdrawn or the amount of the imposed penalty is different than the amount of the proposed penalty, the PAO will not normally issue a press release when the civil penalty is imposed.

E. Effective Date

This Regional Instruction is effective upon receipt and will remain in effect until superseded.



Approved: Thomas E. Murley
Regional Administrator

Dated: _____

2/8/87

Distribution:

Office of Regional Administrator

Division Directors

Chief, Administrative Management Branch (original)

Resident Offices