


Enforcement Policy Revisions and Alternative Dispute Resolution Enhancements


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Escalated Enforcement Activity 2000-2011 (Power Reactor Licensees)

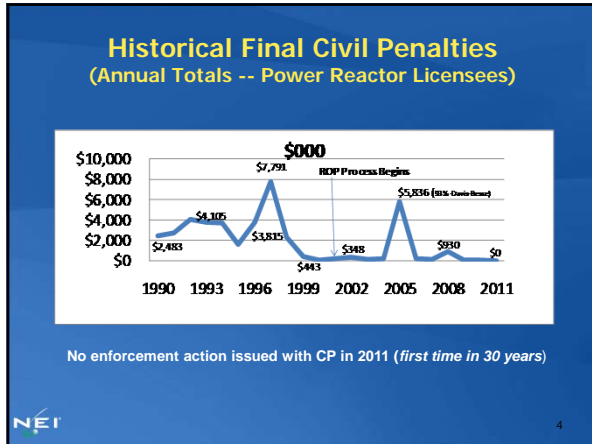
- Escalated Reactor Oversight Process Enforcement Activity
 - Escalated Actions – 14 issued on avg. annual basis
 - Escalated Violations – 16 issued on avg. annual basis
 - FSD Findings – 90% of Low-to-Moderate Safety Significance (“White”)
 - Security Greater-than-Green Findings – 4 issued on avg. annual basis (based on NUREG-1885 data)
- Traditional Enforcement Activity
 - Escalated Actions – 6 issued on avg. annual basis compared with 55 between 1990-1999
 - Actions with Civil Penalty (CP) – >3 issued on avg. annual basis compared with 34 between 1990-1999



Historical Escalated Actions (Power Reactor Licensees)

Year	Traditional	SDP
1990	68	-
1993	55	-
1996	71	-
1999	9	-
2002	9	24
2005	12	17
2008	3	8
2011	1	13





- ### NRC Solicits Comments on Enforcement Policy Revisions
- SRM-SECY-09-0190 – Directed Staff to Evaluate Select Topics for Inclusion in Next Revision to the Policy
 - Staff Solicited Stakeholder Input in Three Phases:
 - Construction-related Topics (including Enforcement Discretion for LWA and COL Holders) – August 2011
 - Additional Topics (including Imposition of Daily Civil Penalties) – September 2011
 - Effectiveness of 2010 Policy & Additional Proposed Revisions (including New Violation Examples) – December 2011
 - Initial Industry Concern:
 - Phased Approach Would Make it Difficult for Stakeholders to Assess Full Effect of Proposed Policy Changes

- ### Proposed Enforcement Policy Revisions Identity of Responsible Entities
- Proposed Revision to Section 1.2, Applicability
 - NRC has proposed new language specifying that it may cite licensees, certificate holders, or applicants for violations committed by its employees, contractors, or vendors and their employees
 - Industry Comment
 - Greater clarity/guidance needed to cover when a violation would be cited against the licensee, vendor, or both
 - If a licensee has properly executed its oversight responsibilities, and a contractor/vendor has instituted an acceptable program, it is more appropriate to cite the contractor/vendor (not the licensee) for any noncompliance given the lack of licensee direct control
 - Guidance is needed for when multiple licensees are affected by a single violation by a vendor

Proposed Enforcement Policy Revisions Credit for Fuel Cycle Licensees CAP

- **Proposed Revision to Section 2.3.2, Non-Cited Violation**
 - Applicability of Section 2.3.2.a. would be expanded from power reactor licensees only to: "Licensees or Applicants with an Approved Corrective Action Program" (including Fuel Cycle Licensees)
- **Industry Comment**
 - Supports NRC's proposal
 - ❖ Clarifying language needed to identify the applicability of the proposed change to the range of possible eligible licensees
 - ❖ No rationale for denying Fuel Cycle licensees equitable treatment

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Proposed Enforcement Policy Revisions Predecisional Enforcement Conference (PEC)

- **Proposed New Section 2.4.1**
 - Purpose: To provide clear and consistent guidance (in response to SRM-SECY-90-0190) regarding when a PEC will be conducted. To add language that the NRC will, to the extent feasible, consider responses to apparent violations before taking final escalated enforcement action.
- **Industry Comment**
 - Revised 2.4.1 states that the NRC can issue an enforcement action (without a CP), without first obtaining a licensee's response.
 - ❖ Because any escalated enforcement can be detrimental to a licensee-even if no CP has been assessed, no escalated action should be taken prior to the licensee's opportunity to be heard on the issues.

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Proposed Enforcement Policy Revisions NOEDs

- **Proposed Footnote to Section 3.8**
 - "NOEDs will not be used at reactors during construction before the Commission's 10 CFR 52.103(g) or 10 CFR 50.57 finding, as applicable"
- **Industry Comment**
 - NRC should remain open to reconsidering the need for an NOED-like process during construction based on experience from the lead Part 52 projects, because:
 - ❖ the effectiveness of the Changes during Construction (CdC) process has not been demonstrated; and
 - ❖ neither the industry nor the NRC can foresee all the complexities associated with building a plant while maintaining compliance with a Part 52 license.

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Proposed Enforcement Policy Revisions Involving Certain Construction Issues

- **Proposed New Section 3.9**
 - Would establish that general enforcement discretion guidance is applicable to Fuel Cycle facilities & LWA Holders
 - A COL holder would have to submit timely information about the unplanned change that deviates from the current licensing basis (CLB) implemented during construction to support NRC evaluation as part of the license amendment request (LAR) process to receive enforcement discretion
- **Industry Comment**
 - Should be clarified to:
 - ❖ specify that general enforcement discretion is applicable to COL holders
 - ❖ restore the CLB rather than submitting a LAR
 - ❖ modify focus on unplanned changes



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Proposed Enforcement Policy Revisions Enforcement Actions Involving Individuals

- **Proposed Revision to Section 4.0**
 - Would insert language to address the concept that the NRC may inform licensees of information it has developed regarding an individual's trustworthiness and reliability that may impact access authorization
- **Industry Comment**
 - Concur that it is appropriate for the NRC to inform a licensee of potentially disqualifying information
 - A licensee bears the responsibility to evaluate the information provided in accordance with its access authorization program
 - Policy should recognize that a licensee may reasonably reach a conclusion that the information is not disqualifying



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Proposed Enforcement Policy Revisions Individual Civil Penalties for Release of SGI

- **Proposed Revision to Section 4.3.1**
 - Would provide an assessment tool to determine CPs for individuals who release SGI; differentiates between individuals who are NRC licensees or contractors and those not employed by NRC licensees or contractors
 - ❖ Relies upon violation examples in Section 6.13 (Information Security) for use in determining SL of violations
- **Industry Comment**
 - To provide greater clarity to the industry, NRC should discuss why the existing violation examples in Section 6.13 should be considered analogous
 - ❖ Section 4.3.1 does not align completely with Section 6.13
 - NRC should clarify how the release of SGI-M would be dispositioned



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Proposed Enforcement Policy Revisions Severity Level (SL) Violation Examples

- **Proposed Revision to Section 6.0**
 - Would revise, add, & delete various enforcement violation examples relating to materials operations, licensed reactor operators, facility construction, emergency preparedness, and Part 21 reporting
- **Industry Comment**
 - New violation examples should provide useful guidance
 - Several new violation examples (e.g., the new SL-I example for Reactor Operators) are inappropriately severe and/or inconsistent with current agency practice
 - ❖ Staff should reconsider these proposed examples or assign to them a lower SL
 - Several existing SL-IV violation examples should be retained rather than deleted



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Effectiveness, Transparency & Efficiency of ADR Program

- Comments submitted in January 2012 to memorialize views offered during the November 2011 Workshop
- **Overall Industry Position**
 - ADR Program — both Early-ADR and Post-OI ADR — has proven to be a viable alternative to other regulatory processes (e.g., investigations, pre-decisional enforcement conferences)
 - ❖ Early-ADR provides for a timely, non-confrontational forum for the resolution of employment disputes between employees and management
 - ❖ Post-OI ADR outcomes typically convey a strong, transparent regulatory message
 - ADR not only allows all parties to address issues more directly and informally, but generally promotes reconciliation



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Industry Comments Related to Early-ADR

- **Expansion of Early-ADR**
 - ❖ Other types of issues could be resolved via Early ADR
 - ✓ When an allegation of deliberate wrongdoing (involving a low-level employee) has been substantiated and disclosed to NRC by licensee, ADR could be utilized to avoid an OI investigation
- **Should Early-ADR be modified?**
 - ❖ No — If a successful Early ADR settlement does not preclude the initiation of an OI investigation, licensees will simply not use the ADR process.
- **Transparency**
 - ❖ Settlements must continue to be protected from public disclosure
- **Timeliness**
 - ❖ Early-ADR is timely when compared to time (nine-months) to complete an OI investigation



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Industry Comments Related to Post-OI ADR

- **Expansion of the Post-OI ADR**
 - ❖ Post-OI ADR could be expanded to include, for example, non-wrongdoing cases involving the imposition of a civil penalty, thus avoiding the need for an enforcement conference (with participation of a neutral party)
- **Transparency**
 - ❖ Subject matter for Post-OI ADR is set forth in NRC Inspection Reports and enforcement correspondence
 - ❖ Confirmatory Orders provide additional transparency
- **Timeliness**
 - ❖ Trend data indicates that it takes an average of 65 days to reach an agreement in principle
 - ❖ For the NRC to issue the Confirmatory Order, it takes an additional 69 days, which is too long
 - ❖ NRC should tighten its internal review process

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Industry Comments on Additional ADR Topics

- **Mediators**
 - ❖ Pool of mediators should be expanded
 - ❖ Process used to select and monitor the progress of mediators should be re-examined with the goal of attracting, training and retaining highly-qualified mediators
- **Potential Enhancements to ADR Program**
 - ❖ Unsubstantiated discrimination allegations should be screened out from the Early-ADR
 - ❖ Allegers should be encouraged to have legal counsel
 - ❖ Parties should have option to enter into ADR-even after the OI investigation has commenced
 - ❖ Coordination between NRC & DOL should be undertaken to provide DOL with notice of an ADR proceeding with DOL holding its investigation proceeding in abeyance

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Areas of Interest in CY 2012

- **Agency Disposition of Comments on Proposed Draft Enforcement Policy**
- **Reintegration of Security Inputs Into Action Matrix**
- **cROP Assessment Process Pilot Program**

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