



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, DC 20555 - 0001**

August 13, 2004

EGM 99-005 (Revision 2)

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I
William D. Travers, Regional Administrator, Region II
James L. Caldwell, Regional Administrator, Region III
Bruce S. Mallett, Regional Administrator, Region IV
William Borchardt, Deputy Director, NRR
Brian W. Sheron, Associate Director for Project Licensing
and Technical Analysis, NRR
Robert C. Pierson, Director, Division of Fuel Cycle Safety
and Safeguards, NMSS
Charles L. Miller, Director, Division of Industrial and Medical
Nuclear Safety, NMSS
John T. Greeves, Director, Division of Waste Management,
NMSS
William Brach, Director, Spent Fuel Project Office, NMSS
Glenn M. Tracy, Director, Division of Nuclear Security, NSIR
Paul Lohaus, Director, STP

FROM: Frank J. Congel, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM -
INTERIM ENFORCEMENT POLICY FOR LICENSEES POSSESSING
GENERALLY LICENSED DEVICES SUBJECT TO THE REGISTRATION
REQUIREMENTS IN 10 CFR 31.5(C)(13) (REVISION 2)

This Enforcement Guidance Memorandum (EGM) supercedes EGM 99-005 (revised), dated April 27, 2001, and provides changes in the implementation of the "Interim Enforcement Policy For Generally Licensed Devices Containing Byproduct Material" that resulted from progress made in registering general licensees under 10 CFR 31.5(c)(13).

The purpose of the interim policy is to remove the potential disincentive to identify lost or unaccounted for devices due to enforcement action; and to encourage general licensees to search their facilities to ensure that devices are located, determine if applicable requirements have been met, and develop appropriate corrective action when deficiencies are found.

This EGM provides clarification and guidance related to the interim enforcement policy that the NRC will follow for violations of the requirements in 10 CFR 31.5(c)(13).

This EGM applies when it has been determined that:

1. The general licensee is subject to the registration requirements in 10 CFR 31.5(c)(13);
and

2. The general licensee has not registered with the NRC at least once as required by 10 CFR 31.5(c)(13); or
3. The general licensee was not previously notified that it is subject to the requirements of 10 CFR 31.5(c)(13), by a previous inspection or enforcement action.

Enforcement action normally will not be taken for violations of 10 CFR 31.5 if the applicable (see above) general licensee:

- ▶ identifies the violation;
- ▶ reports the violation to the NRC, if reporting is required;
- ▶ takes appropriate corrective action to address the specific violation and prevent recurrence of similar problems; and,
- ▶ otherwise has undertaken good faith efforts to respond to NRC notices that require specific information to be provided back to the NRC.

In addition, enforcement action should not be taken for the following situations:

- ▶ Where a required report is made in an untimely fashion, but the general licensee eventually identifies the need for the report and makes the report, even though it is late.
- ▶ Where a generally licensed device is transferred to an unauthorized recipient and, after learning of the necessary licensing requirements, the unauthorized recipient takes prompt action to either obtain an appropriate specific license for possession and/or use of the device, obtains compliance with the requirements of the general license, or transfers the device to an authorized licensee.

Enforcement action, including issuance of civil penalties and Orders, still may be taken where there is:

- ▶ failure to take appropriate corrective action to prevent recurrence of similar¹ violations;
- ▶ failure to respond and provide the information required by the general license rule (10 CFR 31.5, as amended Feb.16, 2001);
- ▶ willful failure to provide complete and accurate information to the NRC; or
- ▶ other willful violations, such as willfully disposing of generally licensed material in an unauthorized manner.

Credit for identification and corrective action should normally be in accordance with the Enforcement Policy. However, the following additional factors should be considered.

- ▶ The general licensee should be given credit for corrective action in cases where the original corrective action taken or proposed is not acceptable to the NRC, but the licensee does take appropriate corrective action after NRC involvement.

¹The term "similar violation" as used in the Enforcement Policy generally means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation.

- ▶ The general licensee should be given credit for identification in cases where the general licensee cooperates and assists the NRC in determining violations identified during an NRC site visit or reactive inspection, including lost or missing sources.
- ▶ The general licensee should not be given credit for identification for the loss, abandonment, or improper disposal or transfer of a device where a generally licensed device is found and reported to the NRC by an entity other than the general licensee. In these situations, the normal enforcement process will be followed, including the consideration of issuance of a civil penalty. However, after the NRC has identified the general licensee and informed them of the found device, if the general licensee cooperates with the NRC from that point on, then all subsequent related violations, including identification of other abandoned devices, will be handled under the interim policy and this EGM.

Since the initial round of registration has been completed for most applicable general licensees, it is expected that this EGM will be used infrequently. Therefore, all enforcement actions that are considered under the Interim Policy should be coordinated with the Office of Enforcement and the Office of Nuclear Material Safety and Safeguards before they are dispositioned.

The following language should be included in the text of the report discussing the inspection finding when exercising enforcement discretion in accordance with this EGM:

Although a violation of 10 CFR 31.5 was identified, since your actions were not willful, and because you identified and reported the violation to the NRC, and took appropriate corrective action to address the violation and prevent recurrence of similar problems, we are exercising enforcement discretion in accordance with the Interim Enforcement Policy for Generally Licensed Devices (May 1, 2000; 65 FR 25368), and not issuing any enforcement action for this violation. However, any future violations of 10 CFR 31.5 may be considered for enforcement action.

This EGM remains in effect for the duration of the Interim Enforcement Policy For Generally Licensed Devices.

cc: E. Merschoff, DEDR
W. Kane, DEDHPP
M. Virgilio, DEDMRS
J. Strosnider, NMSS