**FORM 5: Cover Letter for Proposed Imposition of a Civil Penalty**

EA-[YY]-[XXX]

NMED NO. {*If applicable*}

[Licensee Official]

[Title]

[Name of Licensee]

[Address]

SUBJECT: {*Use* [PLANT NAME] *for reactor cases*} - NOTICE OF VIOLATION AND PROPOSED IMPOSITION OF CIVIL PENALTY(IES) - $[AMOUNT], NRC {*Include type of inspection, e.g.,* “INTEGRATED,” “SPECIAL”} INSPECTION REPORT ([XXXXXXXX/YYYYY-NNN]) {*If applicable, add* “(AND) INVESTIGATION REPORT ([X-XXXX-XXX])”}

Dear Mr. (Ms.) (Mrs.) [Licensee Official–Last]:

***— Start of Opening Paragraphs Section —***

This letter refers to the inspection {*add, if applicable:* “(and) investigation”} conducted on [date(s)] at (your) {*insert* [plant name] *for reactor licensee; use* [City, State] *or* [temporary job site location] *for materials licensees*} facility. {*Include a purpose statement:* “The purpose of the inspection {*if applicable:* “(and) investigation”} was to [*insert the intended purpose of the inspection and/or investigation*]}. {*This section should also address:* (1) [*the date when the licensee was put on notice of the need to take corrective action*][[1]](#footnote-2); (2) [*if and how it was reported*] *(e.g., 10 CFR 50.72, LER etc.)*; and (3) [when the inspection report(s) related to this action were issued].}

***Add one of the following three paragraphs, as applicable (indented here for clarity):***

On [date], a Predecisional Enforcement Conference (PEC) was conducted at [location] {*e.g., in the Region III office*} with members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions. {*Add the following sentence, if appropriate:*  “The conference was closed to public observation because we discussed the findings of an OI report that has not been publicly disclosed.”}

OR

In the [date] letter transmitting the inspection report, we informed that [number] AV(s) was (were) being considered for escalated enforcement action, including a civil penalty. In the letter, we provided you the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference, engaging the NRC in Alternative Dispute Resolution (ADR) mediation, or by providing a written response before we made our final enforcement decision. In a letter dated [date], you provided a response to the apparent violations.

OR

In a telephone conversation on [date], [Name] of my staff informed [Name and Title of licensee representative] that the NRC was considering escalated enforcement for apparent violations involving {*briefly describe the apparent violations*}. [Name of NRC person] also informed [Name of licensee representative] that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. [Name of licensee representative] indicated that [Name of Licensee] did not believe that a predecisional enforcement conference or written response was needed.]

Based on the information developed during the inspection {*add, if applicable:* “(and) investigation”} and {*Add either, as appropriate:* “the information that you provided during the conference or the information that you provided in your response to the inspection report dated [date]}, the NRC has determined that a violation of NRC requirements occurred and is proceeding with enforcement action. The(se) violation(s) is (are) cited in the enclosed Notice of Violation and Proposed Imposition of Civil Penalty (Notice) and the circumstances surrounding it (them) are described in detail in the subject inspection (investigation) report. {*This section should include a summary of the event or circumstances that resulted in the violation including such issues as:* (1) [the length of time the violation lasted]; (2) [the apparent root cause of the violation]; (3) [the operational mode of the plant at the time of the violation] *(for operating reactors)*; (4) [whether reporting requirements were involved]; and (5) [any other major attributes of the violation necessary for supporting the safety significance of the violation]. *The summary does not need to be as detailed as the discussion in the inspection (investigation) report. However, it should be sufficiently detailed to permit licensee management and others who may review the action to understand the safety significance.*}

{*This section should include a discussion of the safety significance of the violation(s). It should discuss how this safety significance relates to severity level categorization, and MUST indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, a potential for impacting the NRC’s ability to perform its regulatory function, or it was willful.*} Therefore, this (these) violation(s) has (have) been categorized in accordance with the NRC Enforcement Policy at Severity Level (SL) [SL]." {*Alternatively, use:* "Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level (SL) [SL] problem."} The current Enforcement Policy is included on the NRC’s Web site at http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html.

In accordance with the Enforcement Policy, a base civil penalty in the amount of $[Amount] is considered for a SL [SL] violation (problem).

***— End of Opening Paragraphs Section —***

***— Start of Civil Penalty Assessment Section —***

***Choose one of the following two discussions (indented here for clarity):***

{*Discussion 1*} Because your facility has been the subject of escalated enforcement actions within the last 2 years (two inspections),[[2]](#footnote-3) {*As shown in the example, insert a footnote here to briefly describe the previous escalated action(s). Although it is not necessary to describe the circumstances of the previous action, it may be appropriate to indicate if the circumstances surrounding the previous action are related or are repetitive, e.g., A Severity Level III violation was issued on January 22, 2001 (EA-YY-NNN) and a $100,000 civil penalty was issued on March 16, 2001 (EA-YY-XXX) for a similar violation of procedural requirements.*} the NRC considered whether credit was warranted for Identification and Corrective Action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. {*This section should include a discussion of whether credit was given for the Identification factor and whether credit was given for the Corrective Action factor and should include a brief description of corrective actions.*}

OR

{*Discussion 2*} Because your facility has not been the subject of escalated enforcement actions within the last 2 years (two inspections), the NRC considered whether credit was warranted for Corrective Action in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy." {*This section should include a discussion of whether credit was given for the Corrective Action factor and should include a brief description of corrective actions. In addition, if discretion was exercised, an additional explanation of that fact as well as a reference to the section of the Enforcement Policy should be included.*}

Therefore, to emphasize the importance of {*State the regulatory emphasis of the case, e.g.,* “system operability,” “procedural compliance,” “attention to detail,” “accurate and complete information,” “control of licensed material,” “compliance with technical specifications,” “compliance with dose limits,” *etc.*} and of prompt {*Depending on the licensee's shortcoming(s), include* “identification” and/or “comprehensive correction”} of violations, {*If applicable, include* “and in recognition of your previous escalated enforcement action(s),”} I have been authorized, {*For actions reviewed by headquarters prior to issuance include:* “after consultation with the Director, Office of Enforcement,” *or, if applicable, use* “the Deputy Executive Director for . . .;” *however, for all cases involving a Commission paper, use* “the Commission,”} to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty(ies) (Notice) in the base amount (twice the base amount) of $[Amount] for the SL [SL] violation(s) (problem(s)). {*Add the following sentence for materials licensees:* “In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.”}

***\* Use the next two paragraphs instead of the previous two paragraphs for cases involving the loss, abandonment, or improper transfer or disposal of a sealed source or device:***

In accordance with Section 2.3.4 of the Enforcement Policy, the NRC is exercising discretion to propose imposition of a civil penalty of at least the base amount for the violation(s) involving the {*Indicate whether the violation involves the loss, abandonment, or improper transfer or disposal of a sealed source or device.*} The base civil penalty amount for the violation discussed above and included in the enclosed Notice is $[Amount]. ***\*See next page.***

***\*Add one of the following sentences to the above paragraph, if appropriate (indented here for clarity):***

While you provided information that three times the actual cost of authorized disposal would be $[3x Disposal Costs], the NRC normally does not reduce the civil penalty to an amount below the lowest base civil penalty amount of $3,000.

OR

Since you provided information that three times the actual cost of authorized disposal would be $[3x Disposal Costs], the NRC has decided to adjust the civil penalty amount to a more appropriate base amount for this (these) violation(s) involving the loss, abandonment, or improper transfer or disposal of a sealed source or device.

Therefore, to emphasize the importance of {*State the regulatory emphasis of the case, e.g.,* “maintaining security and control of sealed sources and devices,” “ensuring sealed sources and devices are properly disposed,” *or* “ensuring recipients of sealed source and devices are properly licensed to possess the material”}, I have been authorized, {*For actions reviewed by headquarters prior to issuance include:* “after consultation with the Director, Office of Enforcement,” *or, if applicable, use* “the Deputy Executive Director for . . .;” *however, for all cases involving a Commission paper, use* “the Commission,”} to issue the enclosed Notice of Violation and Proposed Imposition of Civil Penalty(ies) (Notice) in the base amount of $[Amount] for the SL [SL] violation(s) (problem(s)). {*Add the following sentence for materials licensees:* “In addition, issuance of this Notice constitutes escalated enforcement action that may subject you to increased inspection effort.”}

***— End of Civil Penalty Assessment Section —***

{*Provide a discussion of any violation(s) included in the enforcement action that were not assessed a civil penalty.*}

***— Start of Licensee Response Instructions Section —***

You may choose to pay the proposed civil penalty, or the cumulative amount of the civil penalties if more than once civil penalty is proposed, by submitting your payment, with the invoice enclosed to this letter, to the following address:

Office of the Chief Financial Officer

U.S. Nuclear Regulatory Commission

P.O. Box 979051

St. Louis, MO 63197

In addition, you may pay the proposed civil penalty in accordance with NUREG/BR-0254. When using NUREG/BR-0254 to pay the civil penalty, the invoice number should be used as the “enforcement action identifier” when submitting your payment through one of the approved methods listed in the brochure. The NRC may consider a request for additional time to pay the proposed civil penalty, including the option to enter into an installment agreement, if payment of the civil penalty as a lump sum in the required timeframe would pose a financial hardship. To request additional time to pay, you must submit a written request, with appropriate justification explaining your financial hardship, to NRCCollections.Resource@nrc.gov. All requests should be submitted in sufficient time to allow the NRC the ability to review your request for additional time to pay before the 30‑day payment period expires.

If you disagree with this enforcement sanction, you may deny the violation, as described in the Notice, or you may request alternative dispute resolution (ADR) with the NRC in an attempt to resolve this issue. ADR is a general term encompassing various techniques for resolving conflicts using a neutral third party. The technique that the NRC has decided to employ is mediation. Mediation is a voluntary, informal process in which a trained neutral (the “mediator”) works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information concerning the NRC's ADR program can be found at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate the NRC's program as a neutral third party. If you are interested in pursuing this issue through the ADR program, please contact: (1) the ICR at (877) 733-9415; and (2) [name] at [phone number] within 10 days of the date of this letter. You may also contact both ICR and [name] for additional information. Your submitted signed agreement to mediate using the NRC ADR program will stay the 30-day time period for payment of the civil penalties and the required written response, as identified in the enclosed notice, until the ADR process is completed.

***Choose one of the following paragraphs, as appropriate (indented here for clarity):***

{*Response required.*} You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. {*Other specific responses required should be addressed as appropriate.*} If you have additional information that you believe the NRC should consider, you may provide it in your response to the Notice. The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements.”

OR

{*Response NOT required.*} The NRC has concluded that information regarding: (1) the reason for the violation(s), or if contested, the basis for disputing the violation(s); (2) the corrective steps that have been taken and the results achieved; and (3) the corrective steps that will be taken; and (4) the date when full compliance will be (was) achieved is already adequately addressed on the docket in {Indicate correspondence, e.g., Inspection Report No. [XXXXXXXX/YYYYY-NNN] *or* LER [YY-NN], *or* your letter dated [date].} Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. {*NOTE: The last paragraph of the letter should also be modified by deleting the reference to your response directed by the letter and Notice.*}

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response, if you choose or are required to provide one, will be made available electronically for public inspection in the NRC Public Document Room and from the NRC’s Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. The NRC also includes significant enforcement actions on its Web site at [http://www.nrc.gov/reading rm/doc collections/enforcement/actions/](http://www.nrc.gov/reading%20rm/doc%20collections/enforcement/actions/).

***If the package contains Safeguards Information, replace the preceding paragraph with:***

The material enclosed herewith contains Safeguards Information as defined by 10 CFR Part 73.21 and its disclosure to unauthorized individuals is prohibited by Section 147 of the Atomic Energy Act of 1954, as amended. Therefore, the material will not be made available electronically for public inspection in the NRC Public Document Room or from the NRC’s document system (ADAMS), accessible from the NRC Web site at http://www.nrc.gov/reading-rm/adams.html

If you have any questions concerning this matter, please contact [name] of my staff at [phone number].

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Regional Administrator

(Or designee)

Docket No.

License No.

Enclosure: Notice of Violation and Proposed

 Imposition of Civil Penalty(ies)

Civil Penalty Invoice No. [Invoice Number]

NUREG/BR-0254 Payment Methods (Licensee only)

1. This date is necessary to establish a starting point for purposes of determining whether the licensee has had a previous escalated action during the past 2 years or previous 2 inspections. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication [↑](#footnote-ref-2)
2. e.g., A Severity Level III violation was issued on January 22, 2001 (EA-YY-NNN) and a $100,000 civil penalty was issued on March 16, 2001 (EA-YY-XXX). [↑](#footnote-ref-3)