

## NOTATION VOTE

SECY-00-0061

March 9, 2000

FOR: The Commissioners  
FROM: William D. Travers /RA/  
Executive Director for Operations  
SUBJECT: PROPOSED REVISION TO THE ENFORCEMENT POLICY TO ADDRESS THE REVISED REACTOR OVERSIGHT PROCESS

- **PURPOSE:**
- **BACKGROUND:**
- **DISCUSSION:**
- **SCHEDULE:**
- **RECOMMENDATION:**
- **RESOURCES:**
- **COORDINATION:**

### **PURPOSE:**

To obtain Commission approval to revise the NRC Enforcement Policy to address several changes needed to support initial implementation of the revised reactor oversight process (RROP), including the incorporation of the Interim Enforcement Policy that was used during the NRC Power Reactor Oversight Process Pilot Plant Study as permanent guidance.

### **BACKGROUND:**

On August 9, 1999 (64 FR 43229), the NRC published an Interim Enforcement Policy that was used during the NRC Power Reactor Oversight Process Pilot Plant Study. The policy was developed as an integral part of the RROP and was designed to complement the structured performance assessment process by focusing on individual violations. Under the new process, the Agency Action Matrix dictates the Commission's response to declining performance, whether caused by violations or other concerns. The intent of the new process is to implement a unified agency approach for determining and responding to performance issues of a licensee that--

- Maintains a focus on safety and compliance;
- Is more consistent with predictable results;
- Is more effective and efficient;
- Is easily understandable; and
- Decreases unnecessary regulatory burden.

The new assessment process will use a Significance Determination Process (SDP) to characterize inspection findings based on their risk significance and performance impact. The SDP will assign a color band of green, white, yellow, or red to each inspection finding to reflect its risk significance. If a violation is associated with the inspection finding, the agency's enforcement program will use the results of the SDP to determine how the violation should be dispositioned--thus, supporting a unified approach to significance. Under this approach, violations are not normally assigned severity levels, nor are they subject to civil penalties. If the finding cannot be evaluated through the SDP, the agency will rely on the guidelines for assessing significance within the Enforcement Policy, including the examples of violations included in the supplements. These violations will be assigned severity levels and be subject to civil penalties.

The Statement of Considerations for the Interim Policy stated that, if successfully implemented through the pilot plant study, the Interim Enforcement Policy would be applied to all reactors.

In developing this Policy revision, the NRC considered comments of various internal and external stakeholders. Consideration was given to written comments submitted in response to (1) [SECY-99-007](#), "Recommendations for Reactor Oversight," dated January 8, 1999,<sup>(1)</sup> (2) the announcement of the Interim Enforcement Policy (August 9, 1999; 64 FR 43229),<sup>(2)</sup> and the July 26, 1999, *Federal Register* notice requesting public comment on the pilot program for the new regulatory oversight program.<sup>(3)</sup> Consideration was also given to information provided during numerous meetings with representatives of the industry and public interest groups as part of the revised reactor oversight process pilot program.

### **DISCUSSION:**

The Commission paper addressing the results of the revised reactor oversight process pilot program ([SECY-00-0049](#)) includes a complete discussion of the pilot study's specific results for the Interim Enforcement Policy, including stakeholder feedback. The same discussion is included as [Attachment 1](#) for your convenience.

Based on the results of the pilot program reviews, the staff considers the Interim Enforcement Policy used at the pilot plants

to have met its stated goals. Therefore, the staff has modified various sections of the Enforcement Policy to incorporate the Interim Enforcement Policy. Additional changes have been made to conform to the philosophy and principles of the Interim Policy and the RROP. These changes are addressed below.

The RROP uses Regulatory Conferences as opportunities for the NRC and licensees to discuss the significance of findings evaluated through the SDP. The Enforcement Policy has been revised to state that Regulatory Conferences may be conducted in lieu of predecisional enforcement conferences if violations are associated with risk significant findings evaluated through the SDP. The Policy notes that Regulatory Conferences are conducted to discuss the significance of findings evaluated through the SDP with or without associated violations to make it clear that the focus of these meetings is on the significance of the issues and not on enforcement. Because the significance assessment from the SDP determines whether or not escalated enforcement action will be issued, a subsequent predecisional enforcement conference is not normally necessary.

The Enforcement Policy has been modified to clarify that the mitigation discretion addressed in Sections VII.B.2 - VII.B.6 (e.g., violations identified during shutdowns, involving past enforcement actions, old design issues, or special circumstances) does not normally apply to violations associated with issues evaluated by the SDP. The RROP will use the Agency Action Matrix to determine the agency response to performance issues. The Agency Action Matrix has provisions to consider extenuating circumstances that were previously addressed through enforcement mitigation.

The most significant stakeholder comment expressed was the concern with the threshold for citing violations related to errors in submitted Performance Indicator (PI) data. This issue is addressed in detail in [Attachment 1](#). The Enforcement Policy has been modified to include violation examples in Supplement VII to address inaccurate or incomplete PI data. Inaccurate or incomplete PI data that would have caused a PI to change from green to white are categorized at Severity Level IV. Inaccurate or incomplete PI data that would have caused a PI to change from green to either yellow or red, white to either yellow or red, or yellow to red are categorized at Severity Level III. Inaccurate PI data that would not have caused a PI to change color is considered minor. Consistent with existing guidance, no enforcement action will be taken for these minor violations. Also consistent with existing guidance in Section IX, enforcement action will not normally be taken for inaccurate PI data that are corrected before the NRC relies on the information or before the NRC raises a question about the information.

The staff is proposing a unique approach for addressing the accuracy and completeness of PI data. In order to fulfill its regulatory obligations, the NRC is dependent upon its licensees for complete and accurate information. The Commission uses the provisions of [10 CFR 50.9](#) as the primary means of enforcing its expectations for complete and accurate information from reactor licensees. The staff's proposed approach maintains this focus. Unlike current practice with respect to 10 CFR 50.9 violations, the proposed approach does this through both the RROP's Action Matrix and enforcement sanctions. The proposed severity level categorizations of 10 CFR 50.9 violations for inaccurate or incomplete PI data recognizes that an enforcement sanction is one part of the overall regulatory response to the change in PI data. The RROP Action Matrix will cause the staff to consider specific regulatory responses based upon the corrected PI data. An enforcement sanction is appropriate because the inaccurate PI data prevented or delayed the appropriate NRC actions which would have taken place had accurate information been provided. The staff recognizes that the use of thresholds in the RROP results in a situation where errors of the same magnitude may not receive identical enforcement treatment. However, under the RROP, the magnitude of the error in and of itself is not critical, but rather it is the impact on the regulatory process that is important. Inaccurate or incomplete PI data that prevented the proper entry into the yellow or red performance band (i.e., required regulatory response, unacceptable performance, respectively) is more significant than an error that prevented entry into the white band (increased regulatory response). Thus, there is an appropriate distinction between Severity Level III and IV. The staff believes that a Severity Level III enforcement action is a significant action and in combination with the Action Matrix provisions places a strong emphasis on accuracy and completeness of information. The RROP actions might include increased PI verification inspections, Demands for Information (DFIs), or orders. Enforcement sanctions greater than Severity Level III are not necessary for non-willful violations because once the PI data error is corrected, the agency will initiate actions in accordance with the RROP Action Matrix. If a licensee is not capable of reporting accurate and complete data, the NRC will consider other RROP actions. In addition, there is no need to distinguish between the errors that prevented the proper entry into either the yellow or red performance bands in terms of enforcement severity levels because the agency response (Action Matrix and enforcement action) will now address the differences in significance through an approach that integrates various escalating regulatory tools of which enforcement is but one. The RROP and the proposed Enforcement Policy will provide a strong incentive for licensees to submit complete and accurate PI data.

This proposed policy on the treatment of the submission of materially inaccurate or incomplete PI data, from the perspective of enforcement, may be seen as a substantial departure from the Commission's long-standing emphasis on the significance of, and response to, licensees' failures to ensure the completeness and accuracy of information submitted to the Commission. Dating back to its 1976 decision in the VEPCO case (Virginia Electric and Power Co. (North Anna Power Station, Units 1 and 2), 4 NRC 480 (1976), aff'd, 571 F.2d 1289 (4th Cir. 1978)), the Commission has emphasized the paramount importance of complete and accurate reporting. In order to better address licensees' ironclad obligation in this regard, the Commission promulgated its rules on completeness and accuracy of information and its policy of a graded enforcement response in proportion to the degree of culpability associated with, and the significance of, the incomplete or inaccurate submission. This consistent policy was reemphasized in the Commission's decision in Randall C. Orem, D.O. CLI-93-14, 37 NRC 423 (1993). Nevertheless, the staff believes that, when coupled with the agency response required by the RROP Action Matrix, this proposed Enforcement Policy does provide an appropriate and proportionate response to incomplete or inaccurate PI data because, as explained above, RROP Action Matrix allows for escalating staff actions to address a licensee's non-willful section 50.9 violations which result in a two or three shift in color bands. Such escalating actions, although not in the form of increasing NOV severity levels, nonetheless should make clear how increasing regulatory actions will be taken as the significance of the violations increase. As with the previous enforcement approach, the new oversight and assessment process, which integrates enforcement, is intended to achieve lasting corrective action as well as provide a deterrent for licensees.

Because the NRC and licensees are in a learning process for the submission and review of PI data, some errors in the near term, are expected. Therefore, the Enforcement Policy has been modified by adding an interim policy for exercising discretion for non-willful violations of 10 CFR 50.9 for the submittal of PI data that may be inaccurate or incomplete. This interim policy will remain in effect until January 31, 2001. Non-willful violations related to submittal of data, that if accurate, would have resulted in a change in PI color will be documented in inspection reports followed by an explanation that the NRC is exercising this discretion in accordance with Section VII.B.6 of the Enforcement Policy. The interim policy provides that violations involving inaccurate or incomplete PI data submitted to the NRC that would not have caused a PI to change color do not warrant documentation given the minimal safety significance. Consistent with existing policy, no enforcement action will be taken for these minor violations.

In addition to the changes associated with implementation of the reactor oversight program, the staff has changed the Policy as summarized below.

1. Section V, "Predecisional Enforcement Conferences," has been modified to capture the previously discussed role of Regulatory Conferences and their relationship to the enforcement program. This section has also been modified to clarify the NRC's position that it will provide an opportunity for an individual to address apparent violations before the NRC takes escalated enforcement action. Whether an individual will be provided an opportunity for a predecisional enforcement conference or an opportunity to address an apparent violation in writing will depend on the severity of the issue and the significance of the action the NRC is contemplating.
2. Section VI, "Disposition of Violations," has been renamed and modified by consolidating all of the guidance on the normal approach for dispositioning violations. Depending on the significance and the circumstances, violations may be considered minor and not subject to enforcement action, dispositioned as Non-Cited Violations (NCVs), cited in Notices of Violation (NOVs), or issued in conjunction with civil penalties or orders. The NCV guidance has been moved out of Section VII.B.1 of the Policy that discusses special types of mitigation discretion and into this section because issuance of an NCV is a routine method for dispositioning Severity Level IV violations and violations associated with green SDP findings. For consistency, the guidance in Section VI.A.8 for dispositioning Severity Level IV violations for all licensees other than power reactor licensees has been reworded to express the guidance in terms of conditions when an NOV should be issued rather than criteria for dispositioning a violation as an NCV. This section also restores the definition of repetitive violation (footnote 7) that was inadvertently deleted during the last Policy revision. (Consideration of the repetitive nature of the violation does not apply to RROP.)
3. Examples of violations in Supplement I--Reactor Operations have been changed for operating reactors regarding changes, tests, and experiments (i.e., [10 CFR 50.59](#)). The previous examples were developed in conjunction with the final rule for 10 CFR 50.59 and were based on the "change acceptability" criterion, i.e., whether the changes would be found acceptable by the Commission. Prior to publication of the *Federal Register* notice for the final rule, the staff determined that the change acceptability criterion was not conducive to efficient or effective enforcement or regulation. The inefficiency stemmed from the fact that the acceptability of a change could not be determined without the formal submission of a required license amendment and taking enforcement action after the often lengthy evaluation of a license amendment was not considered effective. The examples have been modified by basing the significance of the 10 CFR 50.59 or related violation on the resulting physical, procedural, or analytical change to the facility as evaluated through the SDP. This will ensure a consistent approach for significance determinations. Violations will be categorized at Severity Level III if the resulting changes were evaluated by the SDP as having low to moderate, or greater safety significance (i.e., white, yellow, or red finding). Violations will be categorized at Severity Level IV if the resulting changes were evaluated by the SDP as having very low safety significance (i.e., green finding). Violations will be considered minor if there was not a reasonable likelihood that the change requiring 10 CFR 50.59 evaluation would ever require Commission review and approval prior to implementation. Violations of 10 CFR 50.71(e) will be considered minor if the failure to update the FSAR would not have a material impact on safety or licensed activities.
4. Supplement IV--Health Physics ([10 CFR Part 20](#)) has been revised by modifying an existing example (C.11) and adding examples (D.10 and E) to address violations involving the failure to secure, or maintain surveillance over, licensed material. In addition, the example for failure to control material included in Supplement VI (C.1) is deleted in an effort to consolidate the guidance on this subject in one area. The new examples establish a more risk-informed, performance-based approach to determine the types of security violations that should be considered significant, versus those of less serious concern. This guidance is intended to focus licensees' attention on assuring a program of training, staff awareness, detection (auditing), and corrective action (including disciplinary action) to detect and deter security violations. Such a program normally is not a specific regulatory requirement, but rather a function that licensees need to perform as an inherent part of their compliance program. Normally, security violations that occur despite such a program will be considered *isolated*. This approach was previously presented to the Commission in a memorandum dated April 9, 1998, from the Executive Director for Operations (EDO). The memorandum stated that the staff would apply the guidance and seek a revision to the Policy after gaining experience with the guidance. The guidance was subsequently addressed in Enforcement Guidance Memorandum (EGM) 98-004 and Section 8.6.3 of the NRC Enforcement Manual. The staff believes the guidance is consistent with the recent Policy revision involving the process for assessing significance and that it is appropriate to add to the Policy at this time.

The staff recognizes that additional changes may be considered as a result of refinements in the RROP. In addition, changes are anticipated in the materials areas that will conform to the move toward risk-informed performance based inspections in this area. Notwithstanding likely future revisions, the staff recommends that the revised Enforcement Policy be republished as NUREG-1600. Given the importance of material included in this revision, consolidated guidance is appropriate to aid the staff

in following the Commission's Enforcement Policy.

## **SCHEDULE:**

In order for the Policy to support initial implementation of the RROP scheduled for April 2, 2000, the Policy needs to be published in the *Federal Register* by March 31, 2000 (April 2 falls on a Sunday). The staff needs to submit the document to the Office of the Federal Register no later than March 24 to meet this publication date. To allow the staff time to address the Commission's comments and process the package, the staff needs to receive an SRM by March 16, 2000.

## **RECOMMENDATION:**

The staff recommends that the Commission approve publication of the revised Enforcement Policy in the attached *Federal Register* notice to support initial implementation of the RROP scheduled for April 2, 2000.

## **RESOURCES:**

The resources required to implement the revised Enforcement Policy are available within the Fiscal Year 2001 Budget Estimates and Performance Plan. No additional resources are required.

## **COORDINATION:**

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this paper for resource implications and has no objections. The Office of the Chief Information Officer has reviewed this paper for information technology and information management implications and concurs in it.

## **Notes:**

1. The staff intends to have this paper released 3 days after issuance to allow stakeholder review.
2. The revision of the Enforcement Policy will be published in the *Federal Register* and will become effective upon publication. This will support initial implementation of the RROP, regardless of when it is actually implemented. Because of the way the Policy is written, the significance of all violations will continue to be assessed by the four considerations until such time that they can be addressed through the SDP (i.e., initial implementation of the RROP). Comments on this revision will be accepted for 30 days after publication and will be considered prior to the next revision to the Enforcement Policy.
3. The revision to the Enforcement Policy will be sent to all licensees as the fourth complete publication of NUREG-1600.
4. The appropriate Congressional Committees will be notified.
5. The change to the Policy Statement does not impact information collections that are subject to the requirements of the Paperwork Reduction Act.
6. The staff has determined that this is not a "major" rule as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2).
7. The Office of Enforcement's Web site will be updated. Necessary changes to the Enforcement Manual and Inspection Manual will also be made.

/RA/

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Attachments: 1. [Enforcement Process excerpt from RROP Commission paper](#)  
2. [Federal Register notice with revised Enforcement Policy](#) 

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ATTACHMENT 1

## **ENFORCEMENT PROCESS**

- [Introduction](#)
- [Pilot Criteria Results](#)

- [Stakeholder Feedback \(NRC/Industry/Public\)](#)
- [Process Changes Resulting From Lessons Learned](#)
- [Issues for Resolution Prior to Initial Implementation](#)
- [Remaining Long-term Issues](#)
- [Conclusion on Readiness of the Enforcement Program for Initial Implementation](#)

## Introduction

This attachment discusses the results of the 6 month pilot program. The metric success criterion for the enforcement process in the pilot program was that the NRC take enforcement actions in a manner consistent with the assessment of inspection findings that result from the Significance Determination Process (SDP). The enforcement policy was revised for plants participating in the pilot process to use the results of the SDP to determine the enforcement action for violations of NRC requirements. As described in EGM 099-06 Rev 1, for issues that are violations and are assessed by the SDP and given a color (green, white, yellow or red), a non cited violation or cited violation is documented. No severity levels or civil penalties are used. Violations that fall outside the SDP, such as those involving willfulness, impacting the regulatory process or actual safety consequences continue to be handled by the Enforcement Policy that uses severity levels and civil penalties.

## Pilot Criteria Results

During the pilot program 85 issues were assessed as of green (very low) significance in issued inspection reports. These issues were documented as non cited violations. Three issues were assessed being of white (low to moderate) significance. For these issues, regulatory conferences were held with the licensees and Notices of Violation (NOV) were issued for the applicable violations. Although experience with the process for issuing NOVs was limited during the pilot program, no fundamental flaws with the approach were identified. As a result, these enforcement outcomes are consistent with guidance in the enforcement policy and result in success with the enforcement program metric that enforcement actions were consistent with the SDP.

## Stakeholder Feedback (NRC/Industry/Public)

The Office of Enforcement solicited feedback on the revised policy for pilot plants from NRC stakeholders during visits to regional offices and other discussions with NRC personnel. OE also solicited feedback from the industry and the public at meetings at the pilot plant sites, at NRC headquarters, in the federal register notice on the new enforcement policy, and at the public Lessons Learned Workshop conducted in January 2000.

Verbal feedback on the new reactor oversight process received by NRC, industry representatives and public participants was generally positive. Overall support was given for the close tie between the SDP process assessment and resulting enforcement action. The feedback suggests that the use of severity levels and civil penalties for violations involving willfulness, actual consequences and impacting the regulatory process was also appropriate. Stakeholders expressed concern with the thresholds for citing violations related to errors in submitted Performance Indicator (PI) data. Minor violations associated with PI errors were documented during the pilot program to be able to assess the ability of licensees to appropriately report PI information. Industry participants were concerned that errors in data that did not cause a PI color change and as a result would not change the NRC actions, should not be considered material errors and therefore were not even minor violations of NRC requirements.

Written feedback received from industry was generally supportive of the enforcement policy changes. The Nuclear Energy Institute (NEI) strongly supports the enforcement policy changes and believes that the principles underlying the new process represent sound public policy. NEI cited three issues as needing more evaluation.

1. The need to re-evaluate the criteria that a licensee has not had any previous enforcement action in the last two years as a factor for determining which path to take in the enforcement process for determining a civil penalty assessment. NEI considers that using the fact that a licensee has had any escalated enforcement action in any area within the previous two years too broad and that the policy should be clarified to state that the criteria is met unless the previous violation is in the same functional area.
2. The regulatory basis for taking enforcement action for issues involving safety conscious work environment.
3. Continue to re-evaluate the Enforcement Policy Supplements to be more risk informed. Resolution of these issues is not required for initial implementation of the new reactor oversight program. However, OE will evaluate these issues during future revisions to the enforcement policy.

## Process Changes Resulting From Lessons Learned

During the pilot program, the regions determined several issues to be of white (low to moderate) risk significance following an SDP phase 2 analysis. To maintain consistency between regions on the assessment of risk, an SDP Panel reviewed white, yellow and red issues. This panel consisted of representatives from NRR, Research, OE, the region presenting the issue, and at least one other region. The panel reviewed the SDP analysis to gain agreement on the region's analysis and discussed any violations of NRC requirements associated with the issues. Following agreement of the panel, the region sent a letter to the licensee describing the NRC's position on the significance of the issue and allowed the licensee to submit more information and/or request a Regulatory Conference to discuss the issue.

Based on the experience gained during the pilot program, a better integration with current panels discussing regional issues is

needed. As a result, NRR and OE have started to integrate the panels into the existing weekly regional panel schedule and an individual in the region and in headquarters will be assigned responsibility for each issue. This integration will ensure that panels are appropriately scheduled, that documentation needed for discussion at the panels is available and that personnel are not required at different meetings being held simultaneously. Personnel assigned the responsibility to track the issues will ensure that they do not remain open and unresolved for extended periods without resolution and that correspondence regarding the NRC decision on significance and any Notice of Violation is issued in a reasonable time. NRR will continue to be responsible for the SDP process and will chair the SDP panel portion of the meeting.

The use of PI data in the process introduced a unique issue. The NRC baseline inspection program requires inspection to verify PIs. During these activities inspectors identified instances of inaccurate PI data. Although licensees are voluntarily submitting this information, it is an important part of the assessment of licensee activities and is used instead of more detailed inspection by the NRC. As a result, PI information is material to NRC processes and is required to be complete and accurate according to 10CFR50.9, Completeness and Accuracy of Information. Inaccurate PI data may cause the NRC to develop a false picture of licensee performance and could result in not performing necessary inspection or not taking other actions as directed by the Action Matrix. Given the importance of this information, it is appropriate that enforcement action is taken for PI data errors commensurate with the significance of an error and its impact on the regulatory process.

During the pilot program, PI data errors that did not change the PI color were considered minor violations that were not required to be documented. Enforcement discretion was used to not cite violations involving PI data errors that would have resulted in a color change had the accurate data been reported. Discretion was appropriate because both the NRC and pilot plant personnel were on a learning curve to determine the best methods to submit the data. This approach was extended for the pilot plants following the pilot program until initial implementation of the reactor oversight process and for historical data submittal by the non pilot plants.

During the January 10-14, 2000 Lesson Learned workshop the question of appropriate enforcement guidance for non willful inaccurate reporting of PI s (10 CFR 50.9) was discussed. The participants evaluated possible approaches for handling inaccurate reporting of performance indicator data and developed recommended resolutions. The consensus of the participants, which the Office of Enforcement supports, was as follows.

- If a reported performance indicator is inaccurate but licensee identified and corrected before NRC reliance on the information, then no enforcement action would be taken regardless of the regulatory impact of the error had the error gone uncorrected. This guidance is consistent with the current enforcement policy.
- Conservative errors, such as those causing a PI to be reported as white when it was really green do not result in the NRC being unaware of adverse information regarding the licensee's performance. Although the inaccurate information may have caused unnecessary increased inspection or other action, while inefficient, the error is not a reason to take enforcement action. As a result, no enforcement action would normally be taken.
- If the inaccuracy does not result in a crossed threshold (i.e., the PI stays in the same color band), then no enforcement action will be taken.
- If the inaccuracy of concern does result in a crossed threshold, then enforcement action will be issued using the following guidelines:

Green → White = Severity Level IV (NCV if criteria are satisfied)

White → Yellow, Yellow → Red, White → Red = Evaluated as a Severity Level III NOV

- Enforcement discretion to not cite violations involving PI data errors that would have resulted in a color change had the accurate data been reported will continue until January 31, 2001 to allow all plants to become familiar with the new PI reporting process.

Other "minority view" variations of this approach were discussed during the workshop including basing the severity level on crossing multiple color thresholds crossed. That is, using Severity Level IV violations for one threshold crossed, (e.g., green to white; white to yellow; yellow to red) and Severity Level III violations for two thresholds crossed (e.g., green to yellow, white to red). OE considered this approach but did not find it any more compelling than the majority view expressed above.

Another alternative "minority view" position was that no individual PI data error is more significant than another. In this approach all errors would be treated the same regardless of the color band involved. If the error causes a change in the PI color, then the Action Matrix will dictate the NRC response. OE believes that if the inaccurate PI information prevented the timely NRC response, enforcement action is appropriate. If the Action Matrix alone determines the NRC response to data errors, licensees will have little incentive to ensure the errors do not exist. The only consequence for an inaccurate data submittal would be the action that would have occurred had the correct data been submitted originally. The net result is a delay in the increased regulatory scrutiny that would accompany a PI color change. As a result, OE believes that PI reporting errors that may have prevented timely NRC response warrant enforcement action.

OE recognizes that there may be a perceived inconsistency in the handling of errors in the consensus approach. Specifically, a small error at a plant that causes a threshold to be crossed may be treated differently than the same magnitude of error that does not cause a threshold to be crossed. However, OE believes that errors that impede the NRC's ability to perform its regulatory function, which in this case may be increased inspection or other action matrix responses, are more significant. As a

result, errors of similar magnitude may be treated differently based on the impact they had on the NRC action. This inconsistency is inevitable in any system that uses varying thresholds for determining the NRC response. Not varying the enforcement response based on the impact on NRC processes would be inconsistent with the philosophy of varying levels of engagement in the new reactor oversight process. The consensus approach maintains safety by emphasizing the need to provide accurate PI data that can be used to accurately assess performance. Also, it acts to improve public confidence by emphasizing the importance of accurate PI data submittals while accounting for the regulatory impact of inaccurate data on a case by case basis.

Another issue discussed at the workshop was the need to develop a consensus on how much documentation for violations that are being given enforcement discretion. A concern was raised that a high level of detail, at times in a very negative light was being used to discuss violations that in the end were given discretion. The majority view was that the existing approach for documenting these issues is appropriate and to continuously monitor this issue in light of the new Reactor Oversight Process for overall implementation consistency.

## **Issues for Resolution Prior to Initial Implementation**

The only major open issue is the treatment of 10CFR50.9, Completeness and Accuracy of information, violations for PI data reporting errors. Based on the discussions during the lessons learned workshop, OE recommends the consensus approach discussed in Section 5.3. OE will continue to evaluate the stakeholder comments for future policy changes.

## **Remaining Long-term Issues**

OE is planning to make a revision to the enforcement policy to incorporate the interim policy for the pilot plants into the body of the policy that will be applicable for all reactor plants. This change will be presented to the Commission in time to allow publication of the policy revision before the planned initial implementation of the reactor oversight process on April 2, 2000.

## **Conclusion on Readiness of the Enforcement Program for Initial Implementation**

Based on the results of the pilot program reviews, the staff considers the new enforcement approach used at the pilot plants to have met its stated goals. The enforcement process uses the results of the SDP when applicable to formulate the enforcement action. As a result, enforcement and the assessment process use the same significance for an issue to determine appropriate agency actions. With the revision of the Enforcement Policy the enforcement process is ready for initial implementation.

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1. See letter from Ralph Beedle of the Nuclear Energy Institute, to David L. Meyer of the NRC, dated February 22, 1999.
  2. See letter from Robert W. Bishop of NEI, to David L. Meyer of the NRC, dated September 8, 1999.
  3. The Commission paper addressing the results of the revised reactor oversight process pilot program includes a complete list of the 21 commentors and their comments.