

NRC INSPECTION MANUAL

DLPM

PART 9900: TECHNICAL GUIDANCE

TG OpsNOED.wpd

OPERATIONS - NOTICES OF ENFORCEMENT DISCRETION

A. PURPOSE

This document provides guidance to staff in the Regional Offices and the Office of Nuclear Reactor Regulation (NRR) on the process for the NRC to exercise enforcement discretion with regard to limiting conditions for operation (LCO) in power reactor Technical Specifications (TS) or other license conditions. This type of discretion is addressed in Section VII.C of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy, NUREG-1600) and is designated as a Notice of Enforcement Discretion (NOED). An NOED can be granted for a power reactor at power, in startup, or in shutdown, provided the specific applicable criteria set forth below are met. This guidance is not applicable to non-power or permanently shutdown reactors. NOEDs may be warranted only if compliance with a TS LCO or with other license condition would involve:

- (1) an unnecessary plant transient; or
- (2) performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions; or
- (3) unnecessary delays in plant startup without a corresponding health and safety benefit; or
- (4) the potential for an unexpected plant shutdown during severe weather or other natural phenomena that could exacerbate already degraded electrical grid conditions and could have an adverse impact on the overall health and safety of the public.

The NOED process is designed to address unanticipated temporary noncompliance with license conditions and TS only. NOEDs are not appropriate to: allow planned entries into TS Required Actions to perform maintenance, troubleshooting, or other activities; after a violation of the license has already occurred; or, for operator licenses.

Further, NOEDs are not appropriate for nonconformances with regulations, Updated Final Safety Analysis Reports (UFSARs), or codes. Exemptions from regulations, non-compliance with UFSARs, and reliefs from codes must be processed in accordance with the provisions of Title 10, Code of Federal Regulations (10 CFR) Parts 50.12, 50.59 or 50.55a, respectively, and are not addressed by the NOED policy. In these situations, the licensee must perform a prompt safety assessment of the noncompliance and make an

appropriate operability determination. The licensee should determine what other NRC requirements apply to the situation (e.g., 10 CFR Part 50, Appendix B, Criterion XVI, 10 CFR 50.12) and take the required actions.

When an NOED is granted, it is recognized that the operating license will be violated, but the NRC is exercising its discretion to not enforce compliance with the operating license for a specified time period. In all cases, appropriate enforcement actions consistent with the NRC's Enforcement Policy must be considered for the root causes leading to the need for the NOED.

B. CRITERIA

1.0 General Considerations

A licensee may depart from its TS in an emergency, pursuant to the provisions of 10 CFR 50.54(x), without prior NRC approval, when it must act immediately to protect the public health and safety. However, situations occur occasionally that are not addressed by the provisions of 10 CFR 50.54(x), and for which the NRC's exercise of enforcement discretion may be appropriate. Provided that the licensee has not abused the emergency provisions of 10 CFR 50.91 by failing to apply for an amendment (including an exigent or emergency amendment) in a timely manner, it is appropriate that the NRC have the NOED procedure for expeditious notice to a licensee of NRC's intention to exercise enforcement discretion under limited circumstances. An NOED request may be considered by the staff only if it is not possible to resolve the situation with an emergency license amendment.

The NRC staff expects to grant NOEDs infrequently. Although requirements may dictate that a plant must be shut down, refueling activities suspended, or plant startup delayed, the NRC staff is under no obligation to grant an NOED. The decision to forego enforcement action is discretionary. An NOED is to be granted only if the NRC staff is clearly satisfied that such action is warranted from a public health and safety standpoint. NOEDs should be granted on a case-by-case basis, considering the individual plant circumstances. The staff may perform an independent risk assessment of the NOED request, in addition to the licensee's assessment, as an input to its decision process. Typically, this would involve a joint effort by the regional Senior Reactor Analyst and the NRR's Probabilistic Safety Assessment Branch. If a Licensee Event Report (LER) is required by 10 CFR 50.73 as a result of the non-conformance, the licensee must submit that LER, notwithstanding the staff's granting of an NOED. If the NRC decides not to grant an NOED, the licensee must take the action required by the TS (except as stated in 10 CFR 50.54(x)).

2.0 Types of NOEDs

There are two types of NOEDs: (1) "regular" NOEDs and (2) "severe weather or other natural phenomena-related" NOEDs (severe-weather NOEDs). "Regular" NOEDs are appropriate where forced compliance with the license would involve unnecessary transients which may affect the radiological health and safety of the public. Severe-weather NOEDs involve overall public health and safety considerations (e.g., potential impact on public health and safety because of power delivery challenges as opposed to only radiological safety considerations). Severe-weather NOEDs are only intended for use when an emergency situation has been determined to exist. This determination must be based on an assessment of potential adverse effects to public health and safety in combination with

a potential interruption of power delivery resulting from severe weather or other natural phenomena. When these conditions exist, a severe-weather NOED may be appropriate, if enforcing compliance with specific license requirements could worsen the emergency situation. Situations that meet the prerequisites for a severe weather NOED are rarely expected to occur.

2.1 Situations Affecting Radiological Safety - Regular NOEDs

Granting this type of an NOED shall not involve any net increase in radiological risk. Requests for enforcement discretion should provide a risk-informed basis demonstrating that continued operation is essentially within the plant's normal work control levels and, therefore, there is no net increase in radiological risk to the public at those levels or adverse impact on the environment. Normal work control levels, expressed in terms of incremental core damage probability and large early release probability, are specified in industry and NRC guidance on configuration risk management (e.g., R.G. 1.182). Plant-specific transition and shutdown risk models may be used to gain additional risk insights to support an NOED request.

The following are NOED criteria applicable for various plant conditions:

1. For a plant in power operation, an NOED is intended to:
 - a. avoid unnecessary transients as a result of compliance with the license condition and, thus, minimize potential safety consequences and operational risks; or
 - b. avoid testing, inspection, or system realignment that is inappropriate for the particular plant conditions (e.g., an activity that may initiate an unnecessary transient).
2. For plants in a shutdown condition, an NOED is intended to reduce shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide an overall safety benefit or may, in fact, be detrimental to safety in the particular plant condition.
3. For plants attempting to start up, NOED requests are more difficult to justify than for operating plants, because delaying startup¹ does not usually leave a plant in a condition in which it could experience undesirable transients. NOEDs for plants attempting to start up are to be granted only when the licensee demonstrates and the NRC staff has concluded that:
 - a. the equipment or system does not perform a safety function in the Mode in which operation is to occur (e.g., a TS which requires the equipment to be operable in a Mode not required by the UFSAR); or,

¹For purposes of this guidance, "startup" is defined as any condition with the reactor being in other than "operation" in Mode 1 or cold shutdown.

- b. the safety function performed by the equipment or system, in the Mode in which operation is to occur, may have only marginal safety benefit and remaining in the current Mode increases the likelihood of an unnecessary plant transient; or,
- c. the TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition.

The licensee's NOED request should specifically address which of the above criteria were satisfied. If none of the criteria are satisfied, an NOED will not be granted and the licensee must comply with the license requirements until a license amendment is approved.

2.2 Situations Arising from Severe Weather or Other Natural Phenomena

In granting this type of NOED, a determination must be made that public health and safety and the environment will not be impacted unacceptably. This determination is qualitative and must be based upon balancing the effect on public health and safety of not operating, against the potential radiological or other hazards associated with continued operation, using both risk insights and informed judgements, as appropriate.

In unusual situations, severe weather or other natural phenomena may result in a government entity or a responsible independent entity (such as a regional power authority) making the determination that power delivery challenges in combination with potential adverse effects (non-radiological) to public health and safety constitute an emergency situation. Such situations are expected to occur rarely. When these conditions exist, a severe-weather NOED may be appropriate if enforcing compliance with specific license requirements could worsen the emergency situation.

The licensee's request must be sufficiently detailed for the staff to assess and balance the effect on public health and safety of not operating, against the potential radiological or other hazards associated with continued operation and make a determination that public health and safety will not be impacted unacceptably by granting the NOED.

3.0 General Expectations

Whenever possible, licensees should request an emergency license amendment in accordance with 10 CFR 50.91 rather than an NOED. Although the NOED process addresses unanticipated and time-critical conditions, the potential for NOED requests is often predictable. Periodic communication between licensees and the staff, such as routine calls between licensees and their Project Managers (PMs), and daily plant status calls between the region and NRR, should identify situations where an NOED might be requested by the licensee. In addition, Resident Inspectors, PMs, and regional Projects Branch Chiefs should promptly discuss situations that may result in a licensee NOED request.

These routine communications provide adequate advance notice of potential NOED requests to the staff such that the cognizant PM and the regional staff can mobilize appropriate technical and project resources for participating in NOED teleconferences to

discuss and promptly process NOED requests. An internal NRC teleconference should typically be held first, followed by a licensee-staff NOED teleconference. In these situations, the regional Projects Branch Chief and PM will organize the teleconferences with appropriate regional and headquarters personnel and the licensee.

As a minimum, the following personnel (or their backups) should be included: resident inspector, PM, Section Chief, regional Projects Branch Chief, cognizant regional director, DRP, regional SRA, SPSB representative, Project Director (PD), and NRR NOED Process Expert. Appropriate additional regional and headquarters personnel will participate as needed to address specific areas of expertise. For severe-weather NOEDs technical reviewers from EEIB, Probabilistic Safety Assessment, Reactor Systems, Plant Systems, Materials and Chemical Engineering, Mechanical and Civil Engineering branches will likely be needed to support the teleconference.

There may be other emergent and unanticipated circumstances, e.g., inoperable equipment, missed surveillances etc. with associated short Completion Times that occur during off-business hours, when a licensee might request an NOED. In the unlikely event that a licensee is unable to make contact with either their resident inspector or PM (or their respective management), licensees should call the Emergency Operations Center (Telephone Number (301) 816-5100), to request a teleconference with cognizant staff. In these cases, the Headquarter's Operations Officer (HOO) will contact appropriate staff personnel so that the NOED request is considered in a timely manner. The Technical Assistant, DLPM, will ensure that the Emergency Operations Center always has an up-to-date roster of PMs and their backups, Section Chiefs, NRR NOED Process Experts, and Project Directors for all plants. If none of the project-specific DLPM staff can be contacted, the HOO will contact the DLPM Director, Deputy Director, or another PD.

C. NOED PROCESS

Typically, licensees request an NOED orally. An oral NOED request must be followed by a written request by the licensee within 2 working days, except in the case of severe-weather NOEDs. Because the staff is required to inform the Commission expeditiously of granting a severe-weather NOED, a written NOED request must be provided within a few hours of the oral request.

The staff may grant an NOED orally, but this must be followed by written authorization within 2 working days of the licensee's written request. When an NOED is granted, the staff's evaluation of the licensee's request, including the applicable items in Section D of this guidance, shall be documented in a letter to the licensee. The letter should follow the format and content of Attachment A to this guidance. All licensee-staff teleconferences to discuss formal NOED requests should be made through the NRC headquarter's Emergency Operations Center recorded telephone line (Telephone No.: (301) 816-5100). This provides a record of the discussion and a basis for future verification of its consistency with the licensee's follow-up written request.

Licensees are encouraged to engage the staff immediately upon identifying a situation that might potentially warrant the licensee to request an emergency license amendment or NOED. This provides an early opportunity for the licensee and staff to discuss the situation

and determine whether an emergency license amendment should be requested rather than an NOED. Preliminary licensee-staff teleconferences to discuss the status of a plant condition or situation, but not formally request an NOED, are not required to be made through a recorded line.

In general, the staff will not consider an NOED request if at least 72 hours of Completion Time remain at the time the situation is identified. Emergency license amendment requests are usually more appropriate in such situations.

The authority to grant an NOED is assigned to the cognizant Regional Administrator, who may delegate the authority to the Regional Director, Division of Reactor Projects (DRP). Before granting an NOED, the region shall obtain the concurrence of the cognizant NRR management individuals. The assigned PD for the plant is authorized to provide the concurrence of NRR, after consulting with appropriate NRR personnel and management and will designate any additional NRR concurrences.

Within 4 working days of oral granting of the licensee's NOED request, the licensee must submit a follow-up exigent license amendment request in accordance with 10 CFR 50.91, unless the staff agrees, in advance of granting the NOED, that a follow-up license amendment is not needed. Staff agreement that a follow-up amendment is not warranted shall be documented in the written NOED authorization.

Generally, permanent, as opposed to temporary (or one-time), license amendments should be requested, either in lieu of or as follow-up to an NOED to resolve plant conditions or situations. The intent of this guidance is to institute permanent solutions that will minimize the likelihood of recurrence. However, there are situations where a temporary amendment is appropriate. Examples include:

- (1) amendments whose acceptability relies on complex compensatory actions that are not practical on a permanent basis;
- (2) risk-informed amendments whose acceptability cannot be demonstrated on a permanent basis; and
- (3) amendments requested and approved until a supportable permanent amendment request can be submitted and approved.

Licensee justification for a temporary amendment should be discussed with the staff during the formal NOED request teleconference, or before submitting an emergency amendment request. The licensee's amendment request shall include justification for the temporary nature of the requested amendment. The staff cannot require the licensee to request a permanent amendment. However, in situations where agreement is not reached but where a licensee's temporary amendment request is otherwise technically justified, the staff's safety evaluation will document: the insufficient justification for the temporary nature of the amendment; that subsequent requests for the same condition might not meet 10 CFR 50.91 emergency criteria; and that recurrence of the condition may be considered inadequate corrective action in accordance with 10 CFR Part 50, Appendix B. If warranted, a license condition may be added to require a permanent amendment request subsequent to approval of a temporary amendment.

Follow-up license amendments should be processed by NRR on an exigent basis in accordance with the process for exigent amendments. Follow-up license amendments should be issued by the staff within 4 weeks of the written authorization of the NOED, unless otherwise justified by special circumstances. Such special circumstances should be documented promptly in a memorandum from the responsible PD to the Associate Director for Project Licensing and Technical Analysis (ADPT). When the follow-up amendment is issued, the transmittal letter should identify the NOED which the amendment supersedes. The PM should ensure that an electronic copy of the letter issuing the follow-up license amendment is sent to the E-mail address: NOED and OE Internet Webmaster, E-mail: OEWEB (file MUST be the FINAL agency document).

For severe-weather NOEDs, the regional and headquarters staffs should make reasonable efforts to assess the nature of the emergency situation. A teleconference should be held as soon as possible among senior licensee management, NRR and regional staffs. Participating staff personnel should include: NRR PM, NRR NOED Process Expert, PD, cognizant technical branch chiefs, including the EEIB chief, if possible, to evaluate the emergency assessment, appropriate regional projects and technical management, the SRA and RI. Following the teleconference the licensee must immediately submit (within a few hours) a written request documenting all the bases, justifications, commitments and other considerations and conditions discussed and agreed upon in the teleconference. The PM should inform the Commission of the granting of the NOED through the cognizant Regional Coordinator, OEDO, as expeditiously as possible. See Attachment B for a sample memorandum from the OEDO to the Commission. The cognizant PM should prepare this memorandum in draft and give it to the cognizant Regional Coordinator, OEDO, for finalization and processing.

There may be occasions when several plants in different regions might request NOEDs simultaneously to address common conditions, e.g, a vendor advisory letter or severe weather conditions. In such cases, the regions and NRR should coordinate closely with each other to avoid potential duplication of effort and/or inconsistent approaches and to obtain any special assistance or expertise needed. In such cases, plant-specific NOEDs will be granted by the cognizant region in accordance with the guidance in this section. To improve consistency in staff determinations relating to the NOED requests, approvals, root cause violations and enforcement actions, the cognizant NRR technical branch chief(s) should be included in all discussions and decisions.

D. STAFF EVALUATION AND DOCUMENTATION

The staff should ensure that the licensee's oral and written requests for an NOED address the following:

1. The TS or other license conditions that will be violated.
2. The circumstances surrounding the situation: including likely causes; the need for prompt action; action taken in an attempt to avoid the need for an NOED; and identification of any relevant historical events.
3. Information to show that the cause and proposed path to resolve the situation are understood by the licensee, such that there is a high likelihood that planned actions to resolve the situation can be completed within the proposed NOED time frame.

4. The safety basis for the request, including an evaluation of the safety significance and potential consequences of the proposed course of action. The following information should be provided in support of this evaluation. To the extent practicable, the licensee should address the quantitative and qualitative aspects noted below. The numerical guidance for acceptance was established to augment qualitative arguments that the continued operation of the plant during the period of enforcement discretion will not cause risk to exceed the level determined acceptable during normal work controls and, therefore, there is no net increase in radiological risk to the public.
 - a. Use the zero maintenance PRA model to establish the plant's baseline risk and the estimated risk increase associated with the period of enforcement discretion. For the plant-specific configuration the plant intends to operate in during the period of enforcement discretion, the incremental conditional core damage probability (ICCDP) and incremental conditional large early release probability (ICLERP) should be quantified and compared with guidance thresholds of less than or equal to an ICCDP of $5E-7$ and an ICLERP of $5E-8$. These numerical guidance values are not pass-fail criteria.
 - b. Discuss the dominant risk contributors (cut sets/sequences) and summarize the risk insights for the plant-specific configuration the plant intends to operate in during the period of enforcement discretion. This discussion should focus primarily on risk contributors that have changed (increased or decreased) from the baseline model as a result of the degraded condition and resultant compensatory measures, if any.
 - c. Explain compensatory measures that will be taken to reduce the risk associated with the specified configuration. Compensatory measures to reduce plant vulnerabilities should focus on both event mitigation and initiating event likelihood. The objectives are to:
 - i. reduce the likelihood of initiating events;
 - ii. reduce the likelihood of unavailability of trains redundant to the equipment that is out-of-service during the period of enforcement discretion;
 - iii. increase the likelihood of successful operator recovery actions in response to initiating events.

An example is a situation where a motor-driven auxiliary feedwater (MDAFW) pump has failed and risk insights have established that plant transient initiators may be risk-significant events because the plant has no primary feed-and-bleed capability and only limited secondary feed capability is available. As a compensatory measure during the period of enforcement discretion, the licensee may defer non-essential surveillances or other maintenance activities where human error contributes to the likelihood of a plant scram and subsequent demand on the remaining AFW pumps. Another example of appropriate compensatory measures would be actions that

increase the likelihood of success in manually aligning or starting equipment in response to an initiating event (e.g., stationing operators locally at equipment, "just-in-time training", and/or additional contingency plans).

- d. Discuss how the proposed compensatory measures are accounted for in the PRA. These modeled compensatory measures should be correlated, as applicable, to the dominant PRA sequences identified in item b. above. In addition, other measures not directly related to the equipment out-of-service may also be implemented to reduce overall plant risk and, as such, should be explained. Compensatory measures that cannot be modeled in the PRA should be assessed qualitatively.
 - e. Discuss the extent of condition of the failed or unavailable component(s) to other trains/divisions of equipment and what adjustments, if any, to the related PRA common cause factors have been made to account for potential increases in their failure probabilities. The method used to determine the extent of condition should be discussed. It is recognized that a formal root cause or apparent cause is not required given the limited time available in determining acceptability of a proposed NOED. However, a discussion of the likely cause should be provided with an associated discussion of the potential for common cause failure.
 - f. Discuss external event risk for the specified plant configuration. An example of external event risk is a situation where a reactor core isolation cooling (RCIC) pump has failed and a review of the licensee's Individual Plant Examination of External Events or full-scope PRA model identifies that the RCIC pump is used to mitigate certain fire scenarios. Action may be taken to reduce fire ignition frequency in the affected areas or reduce human error associated with time-critical operator actions in response to such scenarios.
 - g. Discuss forecasted weather conditions for the NOED period and any plant vulnerabilities related to weather conditions.
5. The justification for the duration of the noncompliance.
 6. The condition and operational status of the plant (including safety-related equipment out of service or otherwise inoperable).
 7. The status and potential challenges to off-site and on-site power sources.
 8. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety.
 9. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.
 10. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant On-site Review Committee, or its equivalent).

11. The request must specifically address which of the NOED criteria for appropriate plant conditions specified in Section B is satisfied and how it is satisfied.
12. Unless otherwise agreed as discussed in Section B, a commitment is required from the licensee that the written NOED request will be submitted within 2 working days and the follow-up amendment will be submitted within 4 working days of verbally granting the NOED. The licensee's amendment request must describe and justify the exigent circumstances (see 10 CFR 50.91(a)(6)). The licensee should state if staff has agreed during the teleconference that a follow-up amendment is not needed. If the licensee intends to propose a temporary amendment, the licensee's amendment request shall include justification for the temporary nature of the requested amendment.
13. In addition to items 1-12 above, for a severe-weather NOED request the licensee must provide the following information:
 - a. The name, organization and telephone number of the official in the government or independent entity who made the emergency situation determination. If deemed necessary, the staff may contact the appropriate official to independently verify the information provided by the licensee prior to making an NOED determination.
 - b. Details of the basis and nature of the emergency situation including, but not limited to, its effect on:
 - i. on-site and off-site emergency preparedness;
 - ii. plant and site ingress and egress;
 - iii. off-site and on-site power sources;
 - iv. grid stability; and
 - v. actions taken to avert and/or alleviate the emergency situation (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, or shedding interruptible industrial or non-emergency loads).
 - c. Potential consequences of compliance with existing license requirements (e.g., plant trip, controlled shutdown).
 - d. The impact of the emergency situation on plant safety including the capability of the ultimate heat sink.
 - e. Potential adverse effects on public health and safety from enforcing compliance with specific license requirements during the emergency situation.

The request from the licensee should normally be sent by facsimile or e-mail to the NRR PD and the Regional Director, DRP. The signed original should be sent to the Document Control Desk. However, if circumstances do not permit time for a formal written request to

be prepared and sent to the NRC, the licensee may make the request orally, describing to the best of its ability the information required by the staff.

If the request is made orally, the NRC must have sufficient information to reach the same conclusions as if it had received a written submittal. The follow-up written request must confirm the information that the staff relied upon in arriving at its decision to grant the NOED. If an NOED is authorized orally but the licensee subsequently determines that no violation of the license will occur and thus the NOED is not needed, the licensee and staff should still follow up with appropriate documentation. In such cases, the licensee must submit a letter within 2 working days, documenting its oral request, the NRC's oral approval, and the circumstances that led to the determination that the NOED is no longer needed.

Prior to issuance of an NOED, to the extent practicable, the regional Projects Branch Chief and/or the PM should verify the licensee's oral assertions, including likely cause and compensatory measures, and that the NOED request is consistent with the staff's policy and guidance. Verification can be accomplished by NRC regional and/or headquarters personnel through various methods including, but not limited to: independent reviews of licensee records; physical observations; or reviews of docketed information. If any of the verifications cannot be made prior to issuance of the NOED, this should be done subsequently, as soon as time permits. The results of the verification activities are to be documented in a subsequent inspection report. When an NOED is granted, the responsible resident inspector should open an Unresolved Item (URI) to facilitate prompt tracking, documentation and closure of inspection, verification and resolution activities, including enforcement action determinations, associated with the NOED.

The staff's letter documenting the NOED should be self-standing, address the appropriate items in Section D of this guidance, and demonstrate that issuance of the NOED is consistent with the policy and guidance. The NOED letter should also clearly specify which of the licensee's reasons the staff accepted in reaching its decision and the NOED criterion that is satisfied. The sequence of events in the staff's letter should be clear and include: how and when the licensee first requested the discretion, what the length of the Completion Time/surveillance interval involved was, when the allowed time will end, when (if applicable) oral discretion was granted, the date of the licensee's follow-up written request (if the original was made orally), the specific period of discretion starting at the end of the Completion Time and, if the NOED was terminated before the staff's letter is issued, the letter should contain the time the NOED was actually terminated. The staff should document in the NOED letter its verification of the consistency between the licensee's oral and written requests. The letter should also identify by name and title, the key NRC staff who participated in the NOED evaluation and approval and, when the licensee's follow-up license amendment request will be or was submitted. If the staff and licensee were unable to agree on whether the follow-up amendment should be permanent, the staff shall document this information in the NOED letter, and include a statement that, if a temporary amendment is proposed, recurrence of the situation may be considered as ineffective corrective action in accordance with 10 CFR Part 50, Appendix B and subsequent requests related to the same situation may not meet the 10 CFR 50.91 emergency criteria.

Once an NOED request is made, either orally or in draft or final written form and the licensee-staff teleconference to discuss the request has been made through the NRC Headquarter's Emergency Operations Center recorded telephone line, the staff must follow

up with a letter documenting its decision and bases for its decision even if the NOED request is denied or if the need for the NOED dissipates (see Attachment A).

It is not acceptable to permit the licensee to not follow a TS or license condition while the staff considers a request for discretion. If the licensee is unable to provide the staff an adequate basis before the Completion Time ends, the licensee must take the Required Actions to comply with the TS while endeavoring to provide the staff an adequate basis for granting the NOED. It is recognized that in cases involving short Completion Times or complex issues, the staff may have to act before all the information is available. In such cases, if the information presented provides a clear basis that public health and safety is assured and that the criteria of the NOED policy are satisfied, then an NOED may be granted. If subsequent information fails to support the initial issuance of the NOED, it should be terminated, as discussed in Section E.

E. ENFORCEMENT

1.0 Early Termination of NOED

The NRC may terminate an NOED for any reason before the time specified in the NOED as a matter of its discretion. In such cases, the staff should verify that the licensee takes steps to achieve the appropriate plant status and implement the existing TS Required Actions upon oral notification of the termination by the cognizant Regional Division Director.

Upon notification of termination of the NOED, the licensee must inform the NRC of the proposed course of action to restore the plant to a condition of compliance with the license. The termination of the NOED by the NRC should be documented in a letter to the licensee and should address the actions taken or planned by the licensee, including the time necessary for the licensee to achieve the required plant conditions in the most prudent manner, considering safety.

2.0 Consideration of Enforcement

The decision to exercise enforcement discretion by granting an NOED does not change the fact that a violation will occur, nor does it imply that enforcement discretion is being exercised for any violation that may have led to the need for the NOED. In each case where the NRC staff has chosen to exercise enforcement discretion, appropriate enforcement action, in accordance with the NRC's Enforcement Policy, will normally be taken for any violations that contributed to the noncompliance. Such enforcement action is intended to emphasize that licensees should not rely on the NRC's NOED process as a substitute for compliance or for requesting a license amendment.

The staff should follow the guidance in the NRC Enforcement Manual located on OE's website (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/notices/more.html>), to evaluate the need for and process any appropriate enforcement action. OE approval is required if more than a minor violation is involved and the staff determines not to pursue an enforcement action, i.e., notice of violation or a non-cited violation. The enforcement action should reference the NOED number. All staff determinations regarding enforcement actions associated with granting an NOED should be documented by the region in the next appropriate inspection report under the URI established to track that NOED, regardless of whether or not the determination is to take enforcement action.

F. DISTRIBUTION

Copies of the letter to the licensee are distributed according to established regional and NRR procedures and should include the following:

1. Regional Coordinator, OEDO
2. Regional Administrator
3. ADPT, NRR
4. Division Director, Division of Licensing Project Management (DLPM), NRR
5. Director, Office of Enforcement
6. Director, Division of Reactor Projects, Region [X]
7. Public
8. Technical Assistant, DLPM, NRR
9. Electronic copy (WordPerfect file) to E-mail address: NOED
10. Electronic copy (WordPerfect file) to OE Internet Webmaster, E-mail: OEWEB (file MUST be the FINAL agency document).
11. Appropriate Branch Chiefs (Region and NRR)
12. Appropriate NRR PD and Section Chief
13. Appropriate NRR PM
14. Appropriate Senior Resident Inspector

Further, the issuing region should ensure that the licensee's request is profiled into the Agencywide Documents Access and Management System (ADAMS) as "publicly available" in accordance with agency policy. Electronic copies of NOEDs should also be prepared in accordance with Attachment C. OE will post the staff's NOED approval or denial letter on the NRC external web page:

(<http://www.nrc.gov/reading-rm/doc-collections/enforcement/notices/>).

The NOED database manager in DLPM, NRR, will maintain a file of all NOEDs. Also, the PM should send an electronic copy of the letter issuing the follow-up license amendment to the E-mail address: NOED.

G. TRACKING OF NOTICES OF ENFORCEMENT DISCRETION

The cognizant NRR PM should open a Technical Assignment Control (TAC) number under Licensing Action code LD for all NOED actions consuming at least 4 hours of NRR resources. The cognizant regional Branch Chief will assign the appropriate work tracking codes for the regional staff.

Each NOED request will be assigned a number to permit tracking (regardless of whether granted or not). The cognizant region will assign a number consisting of seven characters (five numbers and two dashes) in the format XX-X-XX. The first two numbers indicate the year, the third number indicates the number of the region, and the last two numbers are the sequential number of the NOED for that region during the current calendar year. For example, NOED 04-3-02 is the 2nd NOED issued by Region III in 2004. The NOED number should be included in parenthesis at the end of the subject line for the NOED written authorization, for example: (NOED 04-3-02) and in the ADAMS profile per the ADAMS template. NOED numbers will be assigned and tracked by designated regional personnel. OE will post the staff's NOED approval letter on the NRC external web page:

(<http://www.nrc.gov/reading-rm/doc-collections/enforcement/notices/>).

Each region is responsible for tracking the NOEDs it grants and for entering the required data into its tracking system. Additionally, each region is responsible for inspection, follow-up, and enforcement for NOEDs it granted.

On a semi-annual basis, the DLPM NOED database manager will request the regions to provide updated database information regarding follow-up actions to previously granted NOEDs. This should include references to documents and dates for verification of licensees' oral assertions in the NOED requests, the determination to take or to not take enforcement action for any violations that may have led to the need for the NOED, and any follow-up inspections of licensees' root cause determinations, and corrective actions.

H. REFERENCE

NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Actions, Section VII C. 'Exercise of Discretion for an Operating Facility'"

END

Attachments:

- A. Sample Letter Granting an NOED
- B. Sample Memorandum for Notification to the Commission Regarding Granting an NOED for Severe Weather or Other Natural Phenomena.
- C. File Format for Electronic Copy (WordPerfect file) of NOED Approval / Disapproval Letters.

Attachment A
SAMPLE LETTER FOR GRANTING AN NOED(*)

Addressee

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR [LICENSEE NAME]
REGARDING [PLANT NAME(S)] [TAC NO. XXXXXX, NOED NO. XX-X-
XX]

By letter dated [date of letter], you requested that the NRC exercise discretion to not enforce compliance with the actions required in [TS or license requirement citation]. Your letter documented information previously discussed with the NRC in a telephone conference on [date] at [time]. The principal NRC staff members who participated in that telephone conference included [list name and titles of the principal staff participants]. You stated that on [date and time] the plant(s) would not be in compliance with [TS or license requirement] which would require [statement of the requirement including the Completion Time and the date and time when the required action was entered]. You requested that a Notice of Enforcement Discretion (NOED) be granted pursuant to the NRC's policy regarding exercise of discretion for an operating facility, set out in Section VII.C, of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600, and be effective for the period [state licensee's requested period for the NOED]. This letter documents our telephone conversation on [date and time] when we orally issued this NOED. [If appropriate: We understand that the condition causing the need for this NOED was corrected by you causing you to exit from the [TS/license condition] and from this NOED on [date and time].

[Briefly restate the licensee's description of the events leading up to the request for the NOED. Cite the explicit criterion in Section B of this guidance that the licensee satisfied. Summarize the staff's evaluation of the licensee's request and supporting safety rationale including all applicable items in Section D of this guidance and document the staff's basis for determining the acceptability of the request. State which of the licensee's justifications the staff accepted and to what extent that staff verified the licensee's oral and written assertions, prior to issuance of this letter.

The licensee's commitments with regard to a follow-up amendment and the nature of the request (i.e., permanent or temporary) should be discussed. If the licensee intends to propose a temporary amendment, the staff should discuss the acceptability of the licensee's position. The staff cannot require the licensee to request a permanent amendment. However, in situations where a licensee states its intention to propose a temporary amendment, the staff will document in the NOED, that if insufficient justification for the temporary nature of the amendment is provided: that subsequent requests for the same condition might not meet 10 CFR 50.91 emergency criteria; that recurrence of the condition may be considered inadequate corrective action in accordance with 10 CFR Part 50, Appendix B; and if warranted, a license condition may be added to require a permanent amendment request subsequent to approval of a temporary amendment.]

On the basis of the staff's evaluation of your request, we have concluded that granting this NOED is consistent with the Enforcement Policy and staff guidance, and has no adverse impact on public health and safety or the environment. Therefore, it is our intention to exercise discretion to not enforce compliance with [TS or license requirement] for the period from [date and time] until [date and time: state if the approved NOED effective duration differs from the requested time and why].

[The staff plans to complete its review and disposition the follow-up license amendment within 4 weeks of the date of this letter].

As stated in the Enforcement Policy, action will be taken, to the extent that violations were involved, for the root cause that led to the noncompliance for which this NOED was necessary.

signature

Regional Administrator or designee

Docket No(s): 50-xxx

* Note: A similarly formatted letter should be used for situations when an NOED request is denied based on its technical/safety merits or when early termination is required.

Attachment B

SAMPLE MEMORANDUM FOR NOTIFICATION OF NOED FOR SEVERE WEATHER
OR OTHER NATURAL PHENOMENA

(Date)

OFFICE OF NUCLEAR REACTOR REGULATION
NOTIFICATION OF ISSUANCE OF AN NOED
FOR SEVERE WEATHER OR OTHER NATURAL PHENOMENA

Licensee: (Name of Licensee)

Facility:

Docket No:

NOED No.

To: Chairman and Commissioners

SUBJECT: NOED GRANTED FOR [Be specific: SEVERE WEATHER OR OTHER
NATURAL PHENOMENA]

This is to inform the Commission that a Notice of Enforcement Discretion (NOED) as a result of [severe weather or other natural phenomena] was granted on [date] to [licensee name and facility] by Region [X].

This action is based on the licensee's request on [date] for an NOED. This is an information memorandum and requires no Commission action.

[Describe in summary form: the name, organization and telephone number of the official that made the emergency assessment, Details of the basis and nature of the emergency; consequences of compliance with the license conditions to the plant and to exacerbation of the emergency situation; status, and potential challenges to off-site and on-site power sources, and the impact of the emergency on plant safety; demonstrated actions taken to avert and/or alleviate the emergency situation, including steps taken to avoid being in the noncompliance, as well as efforts to minimize grid instabilities (e.g., coordinating with other utilities and the load dispatcher organization for buying additional power or for cycling load, shedding interruptible industrial or non emergency loads)].

Contact:(name), NRR, 415-XXXX

Distribution:

Regional Administrators

Director, NRR

Cognizant PM/PD/Regional DRP Director

Attachment C

FILE FORMAT FOR ELECTRONIC COPY (WORDPERFECT FILE)
OF NOED APPROVAL LETTER

1. Replace the WordPerfect Letterhead Paper Size with Standard Paper Size and include typed letter heading, and letter issue date, as follows:

UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
U.S. Nuclear Regulatory Commission
61 Forsyth Street, SW., Suite 23T85
Atlanta, GA 30303-3415
[Date]

2. Remove the concurrence page and any attached internal distribution list.
3. Include the following above the letter author's name:

/RA/ or /RA by (identify person who signed letter) for/
4. Save the WordPerfect file with the following filename: NEyyrnn.wpd

where the number of the NOED is yy-r-nn, for example, NOED 04-2-01 for the first NOED granted by Region 2 in 2004. (WPD just tells users that it is a WordPerfect document.)
5. E-mail WordPerfect file to NOED and OEWEB (file MUST be FINAL agency document).
6. ADAMS accession number.