



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

(FSME-08-073, September, Program, Enforcement Policy)

September 22, 2008

ALL AGREEMENT STATES, MICHIGAN, NEW JERSEY, VIRGINIA

**OPPORTUNITY TO COMMENT ON NRC ENFORCEMENT POLICY REVISION
(FSME-08-073)**

Purpose: To inform Agreement States about the opportunity to provide comments on the final draft of the U.S. Nuclear Regulatory Commission (NRC) Revised Enforcement Policy.*

Background: The Enforcement Policy was first published in the Federal Register on October 7, 1980 in order to promote NRC safety mission through potential enforcement actions and procedures in response to apparent violations to NRC requirements. The Policy has been revised and modified a number of times to address enforcement issues that were not included in the Policy. A notice was published on January 25, 2007, announcing that the NRC was undertaking a major revision of the Enforcement Policy.

Discussion: On September 15, 2008, a notice of availability of the NRC Enforcement Policy Revision draft was published in the Federal Register (73 FR 53286). The goal of this revision is to ensure that the Policy continues to reflect the NRC safety and security mission in areas that were not directly addressed before by encouraging prompt identification and prompt correction of violations. As part of the proposed revisions to the Table of Base Civil Penalties, the Policy proposes to include fines related to the Yucca Mountain high level waste repository and gas centrifuge uranium enrichment facilities, and modify fines for uranium conversion facilities.

The Policy final draft is enclosed with this letter and it is available online through the NRC website ADAMS public library with accession number ML082520457 at <http://www.nrc.gov/readingrm/adams.html>. Also enclosed is the Federal Register notice which includes supplementary information about the Enforcement Policy Revision.

*This information request has been approved by OMB 3150-0029, expiration 08/31/2010. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Comments about the final draft of the Policy should be submitted by November 14, 2008.
Information about methods for submitting your comments is available in the Federal Register notice.

Point of Contact: If you have any questions regarding this correspondence, please contact the individual named below.

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Robert J. Lewis, Director

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Enclosures:

1. Federal Register Notice (73 FR 53286)
2. Final Draft Revised Enforcement Policy

the Final Environmental Impact Statement (NUREG-1437, Supplement 31) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161-0002 (<http://www.ntis.gov>), 703-605-6000, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 (<http://www.gpoaccess.gov>), 202-512-1800. All orders should clearly identify the NRC publication number and the requester's Government Printing Office deposit account number or a VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 8th day of September 2008.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

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NUCLEAR REGULATORY COMMISSION

[NRC-2008-0497]

NRC Enforcement Policy Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of draft and request for comments.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Enforcement Policy (Enforcement Policy or Policy) to more appropriately address the various areas that the NRC regulates, providing a framework that supports consistent implementation of the Enforcement Policy. A notice was published on January 25, 2007, announcing that the NRC was undertaking a major revision of the Enforcement Policy to clarify the use of terms and update the Policy, removing outdated information and adding information addressing enforcement issues in areas that are not currently directly addressed in the Policy. The NRC is now soliciting written comments from interested parties including public interest groups, states, members of the public and the regulated industry, i.e., reactor and materials licensees, vendors, and contractors, on the proposed revised Policy. This request is intended to assist the NRC in revising the Enforcement Policy; NRC does not intend to modify its emphasis on compliance with NRC requirements.

DATES: Submit comments on or before November 14, 2008. This time period allows for the public to respond to this

notice as well as the opportunity to provide general comments on the revision of the Policy. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments will be made available to the public in their entirety; personal information, such as your name, address, telephone number, e-mail address, etc. will not be removed from your submission. You may submit comments by any one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>; search on docket ID: NRC-2008-0497.

Mail comments to: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Office of Administration, Mail Stop: T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, MD 20852, between the hours of 7:45 a.m. and 4:15 p.m., Federal workdays.

You can access publicly available documents related to this notice using the following methods:

Federal e-Rulemaking Portal: Documents related to this notice, including public comments, are accessible at <http://www.regulations.gov>, by searching on docket ID: NRC-2008-0497.

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): The draft Enforcement Policy is available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html> under ADAMS Accession Number ML082520457. From this site, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. In addition, the draft Enforcement Policy will be available at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>. If you do not have Internet access or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Doug.Starkey@nrc.gov, (301) 415-3456.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC Enforcement Policy contains the enforcement policy and procedures that the U.S. Nuclear Regulatory Commission (NRC) uses to consider potential enforcement actions in response to apparent violations of NRC requirements. The primary purpose of the Enforcement Policy is to support the NRC's overall safety mission, i.e., to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. Because it is a policy statement and not a regulation, the Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case.

The Enforcement Policy was first published in the **Federal Register** on October 7, 1980 (46 FR 66754), as an interim policy. The Commission published a final version of the Policy on March 9, 1982 (47 FR 9987). The Enforcement Policy has been modified on a number of occasions to address changing requirements and additional experience and on June 30, 1995 (60 FR 34381), a major revision of the Policy was published. The NRC maintains the Enforcement Policy on its Web site at <http://www.nrc.gov>; select Public Meetings and Involvement, Enforcement, and then Enforcement Policy.

The goal of the Policy is to support the NRC's safety and security mission by emphasizing the importance of compliance with regulatory requirements, and encouraging prompt identification, and prompt, comprehensive correction of violations. Revisions to the Policy have consistently reflected this commitment: for example, in 1998, the NRC changed its inspection procedures to address the Reactor Oversight Process (ROP) initiative. This has been reflected in the Policy's use of risk insights to assess the significance of violations whenever possible. While this may result in fewer Notices of Violation being issued (because of a greater emphasis on the use of non-cited violations), it has not reduced the agency's emphasis on the importance of compliance with NRC requirements. Another example involves the NRC's development of a pilot program in 2005 which focuses on the use of Alternative Dispute Resolution (ADR) for certain kinds of enforcement cases. The NRC enforcement staff has used ADR to resolve reactor, fuel facility, and materials enforcement cases. While the use of ADR in enforcement raises unique issues, it emphasizes creative,

cooperative approaches to handling conflicts in lieu of adversarial procedures.

The NRC is again proceeding with making a major revision to its Enforcement Policy. As discussed above, since it was first published in 1980, sections of the Policy have been updated and additional sections have been included. Terms used under conventional enforcement are now associated with the significance determination process (SDP) performed under the ROP as well; therefore, the use of these terms must be clarified. In addition, there are areas that are not directly addressed in the Supplements of the Enforcement Policy, such as the enforcement issues associated with combined licenses for the proposed new reactors and the construction phase of proposed fuel facilities as well as recently promulgated requirements in the safeguards and security area. These areas must be addressed either by adding them to the text of the existing Policy and Supplements or by revising the Policy and developing new Supplements. Finally, the format of the Enforcement Policy is being reorganized to reflect the changes that have been made to it.

II. Proposed Plan

The NRC envisions revising the Enforcement Policy so that the policy statement follows the actual enforcement process. The NRC's enforcement process has three basic steps: first, violations must be identified; next, the NRC must assess the significance or severity of the violation; and finally, the NRC must disposition the violation. Throughout the process, an organization or individual subject to an NRC enforcement action has multiple opportunities to provide input.

In order for the policy to follow the actual enforcement process some of the material in the current Enforcement Policy has been either removed entirely from the revised Policy or relocated to the NRC Enforcement Manual. The intent is that this revised Policy more closely reflects the Commission's statement of policy and that it not be a guidance document or procedure which discusses every specific implementation aspect of enforcement. Therefore, some of the information in the current policy, which more closely resembles procedural guidance rather than Commission policy, has been either reworded, deleted, or moved to a guidance document, *e.g.*, the NRC Enforcement Manual. One example of such a deletion is found in Section III, Responsibilities, of the current Policy.

Specifically, information regarding delegation of authority was removed because delegation of authority is actually addressed in internal NRC memorandums. Another example is found in Section V, Predecisional Enforcement Conferences (PECs), of the current policy. In particular, the implementation guidance in the current policy regarding conduct of PECs is being relocated to the Enforcement Manual. As a final example, most of the discussion regarding how the civil penalty assessment process is implemented will be relocated to the Enforcement Manual.

The revised Enforcement Policy also includes a proposed revision to a previous **Federal Register** notice, "Base Civil Penalties for Loss, Abandonment, or Improper Transfer or Disposal of Sources; Policy Statement," published December 18, 2000 (65 FR 79139).

The Commission is aware that enforcement actions deliver regulatory messages. Based on this tenet, the goals of this revision are to ensure that the Enforcement Policy: (1) Continues to reflect the Commission's focus on safety, *e.g.*, the need for licensees to identify and correct violations, to address root causes, and to be responsive to initial opportunities to identify and prevent violations; (2) appropriately addresses the various subject areas that the NRC regulates; and (3) provides a framework that supports consistent implementation, recognizing that each enforcement action is dependent on the specific circumstances of the case.

The following draft Table of Contents is consistent with the approach described above:

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 - 1.1 Purpose of the Enforcement Policy
 - 1.2 Applicability of the Enforcement Policy
 - 1.3 Statutory Authority
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 - 3.8 Notices of Enforcement Discretion (NOED) for Reactor Licensees
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- 4.0 ENFORCEMENT ACTIONS AGAINST INDIVIDUALS
 - 4.1 Circumstances When Enforcement Action Against an Individual May Be Taken
 - 4.2 NOVs and Orders to Individuals
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- 7.0 GLOSSARY OF TERMS
- 8.0 TABLE OF BASE CIVIL PENALTIES

III. Proposed Revisions to Table of Base Civil Penalties

Yucca Mountain High Level Waste Repository

Congress enacted the Nuclear Waste Policy Act of 1987 (NWPAA) for the purpose of establishing a comprehensive national program for the safe, permanent disposal of high level waste (HLW). The NWPAA directed the Department of Energy (DOE) to study suitable sites for a deep, underground repository. In 1987, Congress amended the NWPAA and directed the DOE to study only one site, Yucca Mountain, as a potential repository.

The Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended (ERA), and NWPAA, as amended,

authorize the NRC to regulate the siting, development, construction, and operation of the Yucca Mountain repository.

The NRC's authority to regulate the DOE's receipt and possession of source, special nuclear, and byproduct material at Yucca Mountain has been implemented through 10 CFR Part 63, Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca Mountain, Nevada.

The NRC's enforcement authority is set forth in the AEA and the ERA. This statutory authority is implemented through Subpart B of 10 CFR Part 2, which contains the procedures the NRC uses in exercising its enforcement authority, primarily Notices of Violation (NOVs), Civil Penalties, and Orders. Violations are subject to civil enforcement action and may also be subject to criminal prosecution.

Regulatory requirements have varying degrees of safety, security, or environmental significance. For that reason, the NRC imposes various base civil penalties depending on the specific circumstances. The base civil penalties for various reactor, fuel cycle, materials, and vendor programs are set forth in this revised Enforcement Policy, Section 8, Tables A and B.

The NRC uses a graded approach in assessing civil penalties based on the severity level of the violation and the class of licensee, vendor, or other person. Base civil penalties generally take into account the significance of a violation as the primary consideration, while the licensee's ability to pay is a secondary consideration. The NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties in Table A for Severity Level I, II, and III violations as reflected in Table B of the Enforcement Policy, *i.e.*, 100 percent for Severity Level I violations, 80% for Severity Level II violations, and 50 percent for Severity Level III violations. However, in no instance would a civil penalty for any one violation exceed the current statutory limit of \$130,000 per day per violation.

The most viable enforcement option available to the NRC, in addition to NOVs and orders, is the imposition of civil penalties. Currently there are no provisions in Table A of the Enforcement Policy that address DOE as a licensee. Therefore, the NRC is revising Table A of the Policy to ensure that, if the need arises, the NRC has the appropriate tools to take enforcement actions as prescribed in Subpart J, Violations, of 10 CFR Part 63, during the application phase. DOE submitted its

construction license application for Yucca Mountain for review on June 3, 2008. The NRC acknowledged receipt of the application on June 10, 2008, at which time DOE became an NRC license applicant.

Based on the potential nuclear material inventory involved, *i.e.*, at least 70 million metric tons of HLW, the corresponding safety consequences that could arise at the site, specifically to occupational employees, and the DOE's ability to pay, the staff recommends the statutorily allowed maximum base civil penalty of \$130,000 per day for a Severity Level I violation. In determining the base civil penalty that should be applied to the Yucca Mountain repository, the staff also considered the fact that when 10 CFR Part 63 was developed, the licensing criteria used in that part was comparable to the criteria applied to reactors and spent fuel facilities. The staff also recommends that this information be included in Table A under a generic heading, *i.e.*, "Yucca Mountain High Level Waste Repository," to address the possibility of any future engineered underground disposal facilities used for the storage of HLW.

Because the DOE's activities during the construction application would, most likely, lack direct safety consequences to the public health and safety (*i.e.*, waste will not have been transferred to the site during the first phase), it is likely that many of the violations during this phase could be either cited or non-cited Severity Level IV violations. In addition, the staff expects that escalated enforcement actions during the application review would seldom exceed a Severity Level III. While the staff has the option to mitigate or escalate a violation and/or monetary sanctions based on the circumstances surrounding a violation, the staff believes that few, if any, of these violations would escalate to a Severity Level I or II.

Gas Centrifuge Uranium Enrichment Facilities

The current Enforcement Policy does not provide a base civil penalty for enforcement actions at gas centrifuge uranium enrichment facilities. For that reason, if a violation of NRC requirements were to occur with a proposed civil penalty at this type of facility, the staff would assess the civil penalty utilizing the agency's philosophy as articulated in the Enforcement Policy, *i.e.*, the civil penalty would be based on the circumstances of the case, the type of

licensee involved, and the ability of the licensee to pay the civil penalty.

Currently, NRC staff is performing licensing reviews of two gas centrifuge uranium enrichment facilities with enrichment levels of 5 weight percent uranium-235 (U_{235}) in one case and 10 weight percent U_{235} in the other. Therefore, it is appropriate to provide enforcement guidance for this type of facility at this time.

In developing a base civil penalty for gas centrifuge uranium enrichment facilities, NRC compared the radiological, chemical, and security hazards with both the Gaseous Diffusion Plants (GDPs) and Category III fuel fabricators and, through an overall comparison, provide an appropriate base civil penalty.

To determine the appropriate base civil penalty for gas centrifuge uranium enrichment facilities, the staff first compared the potential impact of noncompliance on public health and safety and the common defense and security with GDPs because both are enrichment facilities utilizing the same kinds of materials and, in addition, both have security implications associated with their operation. This comparison indicates that the radiological and chemical hazards at gas centrifuge uranium enrichment facilities are substantially less than these hazards at GDPs based on the significantly lower quantities of liquid and gaseous uranium hexafluoride (UF_6) in the process systems and the significantly lower potential for releases of large quantities of UF_6 .

Gaseous diffusion cascades operate at pressures that are sub-atmospheric to just above atmospheric pressure. In addition, the current GDP utilizes feed, product withdrawal, and tails withdrawal systems that handle large quantities of pressurized liquid UF_6 . This results in the potential for releases of large quantities of UF_6 . Since the GDP withdrawal stations involve the handling and lifting of up to 14-ton cylinders of liquid UF_6 , there is a significant potential for severe consequences in the event that proper plant procedures are not followed. GDPs have high criticality hazards due to the large size (unsafe geometry) of cascade system piping and components, the large UF_6 inventories processed, and the potential for accumulation of critical masses of UF_6 within these system piping and components. GDPs also handle large amounts of flammable material such as lubricating oil and chemically hazardous material other than UF_6 such as chlorine trifluoride (ClF_3), fluorine (F_2), and chlorine (Cl_2).

The radiological and chemical hazards at gas centrifuge uranium enrichment facilities are, by comparison to the GDPs, substantially reduced. Individual centrifuges and cascades contain much smaller quantities of gaseous UF₆. Although UF₆ is liquefied in the sampling and transfer systems, the cylinders containing liquid UF₆ are not moved. Centrifuge enrichment cascades operate at near-vacuum conditions, minimizing the potential for UF₆ releases. These plant designs substantially reduce the radiological and chemical hazards associated with releases of radioactive and hazardous chemicals in comparison to gaseous diffusion plants. Because of the small quantities of UF₆ in the cascades, a gas centrifuge uranium enrichment facility, limiting its enrichments to less than 20 percent of U₂₃₅ (special nuclear material of low strategic significance, therefore, a Category III fuel fabricator), will also have substantially reduced criticality hazards relative to a GDP.

The staff also considered the security implications associated with the operation of gas centrifuge uranium enrichment facilities as compared to the operation of GDPs and to Category III fuel fabricators. That comparison indicates that the security measures necessary to handle information at a gas centrifuge facility is more similar to the GDPs as both types of facilities handle classified information up to Secret Restricted Data and utilize classified components. Both types of facilities are also required to have comparable materials control and accounting programs and physical security programs, and both types of facilities are expected to have programs for protection against potential terrorist activities.

However, as the following comparison indicates, the overall radiological, criticality, and chemical security implications for gas centrifuge uranium enrichment facilities are more comparable to that of Category III fuel fabricators. First, both gas centrifuge uranium enrichment plants and Category III fuel fabricators have Category III Special Nuclear Material, that is, these facilities are limited to enrichments of less than 20 percent of U₂₃₅ (special nuclear material of low strategic significance). In addition, the radiological and chemical risks of gas centrifuge uranium enrichment facilities are more similar to, and in fact even lower than, Category III fuel fabricators due to the fact that fuel fabricators operate with the greater quantities of licensed material in process components and at higher pressures than gas centrifuge plants. Therefore,

the necessary physical protection requirements (based on the category of facility) for a gas centrifuge facility are similar to those required for Category III fuel fabricators.

The comparison of the security implications at gas centrifuge uranium enrichment and Category III fuel fabrication facilities indicates that:

1. Security of classified information and components: The security of classified information and components at gas centrifuge facilities will require higher levels of protection than Category III fuel fabricators because classified information and components are not used at Category III fuel fabricators. However, Category III fuel fabricators have and are required to yprotect Safeguards Information.

2. Prevention of unauthorized production or diversion of special nuclear material: The prevention of unauthorized production or diversion of special nuclear material would require gas centrifuge enrichment facilities to have materials accounting and control programs similar to those at the GDPs or Category I fuel fabrication facilities. Category III fuel fabricators also have materials accounting and control programs, although the implications of unauthorized production and diversion of special nuclear material would be less significant than a gas centrifuge uranium enrichment plant.

3. Protection of special nuclear material: Due to the possession of special nuclear material of low strategic significance at both types of facilities, gas centrifuge enrichment facility physical protection requirements for special nuclear material and protection requirements against terrorists are similar to Category III fuel fabricators.

4. Protection against potential terrorist activities: Due to the possession of special nuclear material of low strategic significance at both types of facilities, gas centrifuge enrichment facility physical protection requirements against terrorists are expected to be similar to Category III fuel fabricators.

In conclusion, the comparison of the radiological, criticality, and chemical risks of gas centrifuge uranium enrichment facilities to GDPs and Category III fuel fabricators indicates that these risks are lower than the same risks at GDPs and are lower than the risks at Category III fuel fabricators. In addition, two of the four security risk areas at gas centrifuge uranium enrichment facilities are more comparable to Category III fuel fabricators. Finally, the physical protection and terrorist security risks are substantially less significant for gas centrifuge uranium enrichment facilities

than at GDPs, when examined in the context of the radiological and chemical risks at gas centrifuge uranium enrichment facilities. Therefore, after considering both safety and security at gas centrifuge uranium enrichment facilities in terms of their nuclear material inventories and potential for consequences to the public and workers, the staff has concluded that gas centrifuge uranium enrichment facilities are more similar to Category III fuel fabricators than to GDPs. For that reason the staff believes that the base civil penalty for Severity Level I violations at gas centrifuge uranium enrichment facilities in Table A should be established at \$32,500, the amount already established for Category III fuel fabricators.

The Enforcement Policy is also being modified to clarify that the fuel fabricators in "c" of Table A refer to Category III fuel fabricators.

Uranium Conversion Facilities

The staff proposes to raise the base penalty for enforcement activities associated with uranium conversion facilities to a base civil penalty of \$32,500 from the current base civil penalty of \$13,000.

Currently, the only operating conversion plant in the United States is the Honeywell facility located in Metropolis, IL. Honeywell chemically processes the uranium source materials from triuranium octoxide (U₃O₈) to UF₆ prior to shipping the product to enrichment plants. The three main bulk chemicals used at Honeywell are ammonia (NH₃, the source of hydrogen), anhydrous hydrofluoric acid (HF), and fluorine (F₂). Each is a highly hazardous chemical. Release of bulk quantities of UF₆, NH₃, HF, or F₂ could have off-site consequences due the hazardous nature of the chemicals. NH₃, HF, and F₂ are regulated under the Occupational Safety and Health Administration (OSHA) Process Safety Management Rule, 19 CFR 1910.119. The NRC only regulates those chemicals when they come in contact with licensed material, evolve from licensed material, as in HF from the UF₆/water reaction, or adversely impact the safe handling of licensed material.

Uranium conversion facilities such as Honeywell are licensed under the requirements of 10 CFR Part 40, Domestic Licensing of Source Material. Uranium source material is shipped from uranium mills as "yellow cake" in plastic-lined drums. In addition to U₃O₈, yellowcake contains contaminants, including radioactive decay daughter products and various rare earth and other metals. The

yellowcake contains natural uranium, which has only 0.711 percent (U_{235}). Hence, a criticality accident is not possible at a conversion facility. The greatest radiation exposure rates come from processes that concentrate the radioactive decay daughter products in waste streams. Soluble forms of uranium present the greatest health risk from source material at conversion facilities. The health risk is due to the toxic nature of uranium, which is similar to other heavy metals. The radioactive risk is small.

Specifically, the chemical and radiological hazards associated with uranium conversion facilities are as follows:

Chemical Hazards—Uranium is handled in many different chemical forms in UF_6 conversion plants, but UF_6 is the only chemical form of uranium that can be readily dispersed off-site. UF_6 will react with water to form HF and uranium difluorodioxo (UO_2F_2). Because airborne moisture is generally available, the reaction can be expected to occur if UF_6 is released to the atmosphere. Both the HF and the UO_2F_2 produced at a uranium conversion plant are hazardous chemicals. HF is a corrosive acid vapor that can severely harm the lungs and exposed portions of the body. UO_2F_2 , formed as particulate material, produces radioactive and chemical effects when taken into the body, and its chemical effect is the most important because much of the uranium is present in soluble form. UF_6 in the liquid form is the most hazardous.

The Honeywell facility produces UF_6 by fluorination of UF_4 . The UF_6 , which is produced in a gaseous state, is collected in cold traps, where it is solidified by refrigerant cooling. Subsequent heating of the cold traps liquefies the UF_6 for transfer to cylinders, where the UF_6 cools to ambient temperature and again solidifies. The cold traps and the cylinders represent the largest accumulation of heated UF_6 and therefore pose the greatest risk of a significant release of UF_6 . The filled cylinders represent the greater risk because of their temporary use in the process, the large numbers of individual cylinders utilized, their typically larger inventories of UF_6 , and their routine movement within the facilities before solidification. While the filled cylinders are considered to be the greater risk, these risks are also applicable to filled cold traps.

Radiological Hazards—Chemical conversion processes tend to concentrate uranium decay products in the waste streams. Alpha particles resulting from the primary

disintegration of uranium present no external radiation problem because they do not penetrate the skin. However, the uranium decay products include isotopes that emit mildly penetrating beta rays and highly penetrating gamma rays. Beta radiation levels as high as 200 mrad/hr may be found at the surface of UF_6 . When UF_6 is vaporized from a cylinder, the decay products usually remain behind. Thus, the internal surface of an empty cylinder may have beta radiation levels up to several rad/hr. Similarly, the gamma radiation from an empty cylinder will be much higher than from a filled cylinder and may range up to 200 mrad/hr.

The chemical characteristics of these contaminants will cause significant exposure levels of beta and gamma radiation from the uranium decay product activity in certain sections of the process. The risk of radiation exposure increases during maintenance of process equipment, transfer of product, and handling of UF_6 cylinders.

In raising the base civil penalty for uranium conversion facilities, the staff has analyzed the associated radiological, chemical, and security hazards with that of Gaseous Diffusion Plants (GDPs), Category III fuel fabricators, and test reactors and industrial radiographers. Currently, uranium conversion facilities are in the same base civil penalty category as test reactors and industrial radiographers with the base penalty amount of \$13,000.

To determine the appropriate base civil penalty for uranium conversion facilities, the staff first compared the potential impact of noncompliance on public health and safety and the common defense and security with Gaseous Diffusion Plants (GDPs). Gaseous diffusion cascades operate at pressures that are sub-atmospheric to just above atmospheric pressure. In addition, the current GDP utilizes feed, product withdrawal, and tails withdrawal systems that handle large quantities of pressurized liquid UF_6 . This results in the potential for releases of large quantities of UF_6 . Since the GDP withdrawal stations involve the handling and lifting of up to 14-ton cylinders of liquid UF_6 , there is a significant potential for severe consequences in the event that proper plant procedures are not followed. GDPs have high criticality hazards due to the large size (unsafe geometry) of cascade system piping and components, the large UF_6 inventories processed, and the potential for accumulation of critical masses of UF_6 within these system piping and components. GDPs also handle large amounts of flammable material such as lubricating oil and

chemically hazardous material other than UF_6 such as ClF_3 , F_2 , and Cl_2 .

The radiological and chemical hazards at uranium conversion facilities are similar in comparison to the GDPs. At a uranium conversion facility such as Honeywell, all UF_6 filled cylinders when initially filled must be allowed to cool for 5 days to ensure that all UF_6 has solidified. The UF_6 solidifies and volume drops from about 95 percent to about 60 percent full. Only "solid" cylinders are allowed to be shipped off-site. UF_6 is in solid form under ambient temperature and pressure conditions. Any cylinder breach with UF_6 in the solid form will have a limited release. Uranium conversion facilities are designed to process natural uranium, thus, there is no criticality concerns like there are at GDPs. However, the only major risk factor that a conversion facility does not have that is present at a GDP is the criticality risk.

The staff also considered the security implications associated with the operation of uranium conversion facilities as compared to the operation of GDPs and to Category III fuel fabricators. That comparison indicates that the security measures necessary at a uranium conversion facility are similar to that of a Category III fuel fabricators and GDPs. However, because of the large number of potential chemical hazards and certain radiological hazards, protection against potential terrorist activities is required to protect worker and public health and safety.

In comparison, the overall radiological and chemical hazards implications for uranium conversion facilities are much more significant than those of test reactors and industrial radiographer, but just somewhat less than that of GDPs. As delineated in the NRC Enforcement Policy, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. For the reasons stated above the staff believes that the base civil penalty for violations at uranium conversion facilities in Table A should be established at \$32,500, the same amount established for Category III fuel fabricators.

IV. Deletion of Interim Enforcement Policies

The following interim enforcement policies located in the current Enforcement Policy have either been deleted from the revised Policy, for the reasons stated below, or relocated into the revised Enforcement Policy.

Interim Enforcement Policy for Generally Licensed Devices Containing Byproduct Material (10 CFR 31.5)

This interim policy addressed violations that persons licensed pursuant to 10 CFR 31.5 discovered and reported before, as well as during, the initial cycle of a notice and response program related to the revision of 10 CFR 31.5. This interim policy was expected to remain in effect through completion of one cycle of the licensee notice and response program. Since one cycle is complete, this interim policy is no longer in effect.

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fitness-for-Duty Issues (10 CFR Part 26)

10 CFR Part 26, Fitness for Duty Programs, has been amended. The final rule became effective on April 30, 2008 (73 FR 16966). The amended rule addressed the issues covered by the interim enforcement discretion policy. Therefore, this interim policy has been deleted from the revised Enforcement Policy.

Interim Enforcement Policy Regarding the Use of Alternative Dispute Resolution

This interim policy addressed the use of a pilot program for testing the use of Alternative Dispute Resolution (ADR) in the enforcement program. On May 5, 2006, in SECY-06-0102, "Evaluation of the Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Program", the staff provided the Commission with the results of the evaluation of the ADR pilot program. The Office of Enforcement concluded that the program was successful and the staff intends to continue using the ADR program for discrimination and other wrongdoing cases. The ADR program has been incorporated into the revised Enforcement Policy.

Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This interim policy was moved in its entirety into section 3.9 of the revised Enforcement Policy.

V. Procedural Requirements

Paperwork Reduction Act

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major" rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Dated at Rockville, MD, this 9th day of September 2008.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E8-21433 Filed 9-12-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[IA-08-014]

In the Matter of Joseph S. Shepherd; Order Prohibiting Involvement in 10 CFR Part 71 Activities and Conditioning Other NRC Licensed Activities (Effective Immediately)

I

Joseph S. Shepherd was a contractor to Source Production and Equipment Company, Inc. (SPEC), of St. Rose, Louisiana. SPEC was a registered user of a U.S. Nuclear Regulatory Commission (NRC or Commission) Model No. 5979 Shipping Package (Certificate of Compliance (CoC) No. 5979, Revision 10), and an NRC-approved Quality Assurance (QA) Program Approval holder (NRC Docket Number 71-0102) pursuant to Part 71 of Title 10 of the Code of Federal Regulations (10 CFR). The CoC authorized use of the Model No. 5979 package under the general license provisions of 10 CFR 71.12 [currently 10 CFR 71.17]. The QA Program Approval satisfied the requirements of 10 CFR 71.12(b) [currently 10 CFR 71.17(b)], and 10 CFR 71.101(c) [currently 10 CFR 71.101(c)(1)] by authorizing activities to be conducted under criteria of Subpart H of 10 CFR Part 71, "Quality Assurance." SPEC also was an NRC export licensee pursuant to 10 CFR Part 110. SPEC hired Mr. Shepherd to perform certain maintenance

inspections required by the NRC CoC for the Model No. 5979 shipping cask prior to making shipments of NRC licensed radioactive material to Mexico.

II

During an NRC inspection conducted on November 18, 2004, at Alpha-Omega Services, Inc. (AOS), an NRC certificate holder and Quality Assurance (QA) program holder, certain nonconformances regarding a shipping package, serial number 1B, CoC No. 5979, Model No. 5979, were brought to the NRC's attention. The end-caps of the shipping package did not conform to the physical (weight and materials) and dimensional (end cap thickness and length of the bolts) configuration specified by the CoC. In addition, holes had been drilled in the turret of the shipping package. Foss Therapy Services (FTS) had purchased the shipping package from AOS in 2001. FTS holds a State of California radioactive materials license and coordinates source exchanges and recycling for radiation therapy systems at various hospitals. FTS, however, is not an NRC licensee, authorized user, or certificate or QA program holder. AOS happened to be performing its annual inspection of the Model No. 5979 package when NRC conducted its November 18, 2004, inspection at AOS.

The NRC also became aware during its November 18, 2004, inspection at AOS that FTS had been using SPEC, to ship byproduct material for FTS to Mexico. The NRC obtained shipping documents which confirmed that SPEC had used the nonconforming container between June 25, 2001, and May 20, 2004, to make export shipments to Mexico. SPEC hired Mr. Shepherd, an officer and co-owner of FTS, to perform inspections of the Model No. 5979 shipping package prior to three export shipments by SPEC on July 15, 2003, December 4, 2003, and May 20, 2004.

As a result of the NRC's November 18, 2004, inspection, the NRC's Office of Investigations (OI) initiated an investigation to determine whether SPEC had willfully violated NRC regulations relating to its export shipments to Mexico.

Based on the OI investigation, the NRC has concluded that Mr. Shepherd engaged in three examples of deliberate misconduct in violation of 10 CFR 110.7b, "Deliberate Misconduct."

First, on or about July 15, 2003, and December 4, 2003, and in violation of 10 CFR 110.7b(a)(2), Mr. Shepherd deliberately provided materially inaccurate information to SPEC in two checklists and in shipping papers concerning inspections of the Model No.

NRC ENFORCEMENT POLICY

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Preface

The U.S. Nuclear Regulatory Commission (NRC) Enforcement Policy sets forth the general principles governing the NRC's enforcement program and the Commission's expectations regarding the process to be used by the NRC to assess and disposition violations of NRC requirements. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy as appropriate under the circumstances of a particular case. The Policy also describes how organizations and individuals subject to NRC enforcement actions can provide input to the process. A Glossary of Terms is provided which defines specific terms or words as they are used in the context of this Policy. Specific procedures and guidance for implementing this Policy are contained in the NRC Enforcement Manual at <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html#manual>

A compilation of the statutes and materials pertaining to current nuclear regulatory legislation can be found on the NRC Home Page at <http://www.nrc.gov/reading-rm/doc-collections/nureqs/staff/sr0980/>.

Changes to the NRC Enforcement Policy since it was first published with links to a summary of each change and the Federal Register notice (FRN) for each change is maintained at <http://www.nrc.gov/reading-rm/doc-collections/enforcement/history/>

1.0 Introduction

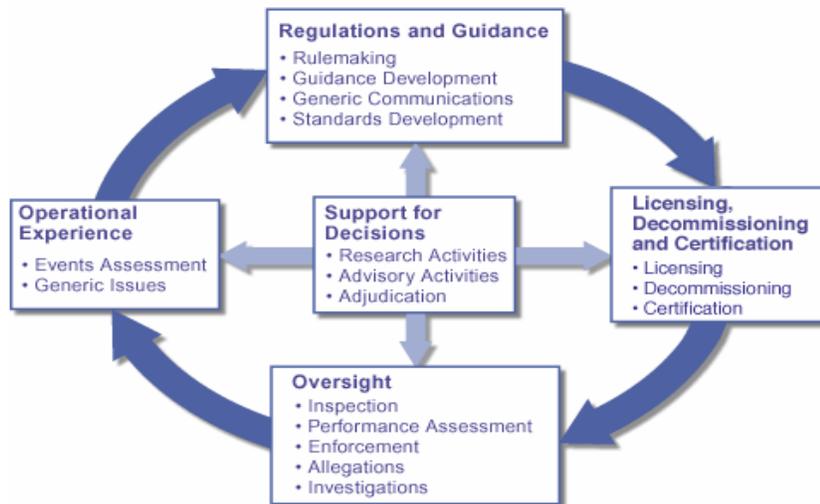
The U.S. Nuclear Regulatory Commission's (NRC, Commission, or Agency) mission is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment.

The NRC carries out its mission, in part, by:

- a. Establishing requirements and guidance addressing the possession and use of source, byproduct, and special nuclear material; and
- b. Licensing applicants to use source, byproduct, and special nuclear material and operate licensed facilities in accordance with NRC requirements and specific license conditions.

Oversight of licensed activities verifies that licensees are complying with NRC requirements and license conditions. Enforcement is an important part of the NRC's oversight activities.

**Figure 1 –
Regulates**



How the NRC

1.1 Purpose of the NRC Enforcement Policy

The NRC Enforcement Policy supports the NRC's mission to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. Compliance with NRC requirements, including regulations, technical specifications, license conditions, and orders, provides confidence to the NRC and the public that safety and security are being maintained. Consistent with this objective, the enforcement policy endeavors to:

- a. Deter noncompliance by emphasizing the importance of compliance with NRC requirements; and
- b. Encourage prompt identification and prompt comprehensive correction of violations of NRC requirements.

1.2 Applicability of the Enforcement Policy

The enforcement policy applies to all NRC licensees and applicants, to various categories of non-licensees, and to individual employees of licensed and non-licensed entities involved in NRC-regulated activities. These include, but are not limited to:

- a. Organizations and individuals holding NRC licenses;
- b. License applicants;
- c. Contractors and subcontractors to NRC licensees;
- d. Holders of and applicants for various NRC approvals, including, but not limited to:
 - 1. NRC certificates of compliance;
 - 2. Early site permits;
 - 3. Standard design certificates;
 - 4. Quality assurance program approvals;
 - 5. Certifications;
 - 6. Limited work authorizations;
 - 7. Construction Authorizations; and
 - 8. Other permits and forms of NRC approval.
- e. Vendors supplying safety related components to NRC licensees; and
- f. Employees of any of the above.

Not all NRC requirements apply to all of the categories listed above, however, the enforcement policy will be used, as appropriate, to address violations of NRC requirements.

1.3 Statutory Authority

The NRC derives its principal authority to license and regulate the civilian use of nuclear materials from two statutes: 1) the [Atomic Energy Act \(AEA\) of 1954](#), as amended, which provides broad authority to license and regulate the civilian use of nuclear materials, and 2) the [Energy Reorganization Act \(ERA\) of 1974](#), as amended, which established the agency and its major offices. The [Administrative Dispute Resolution Act of 1996 \(ADRA\)](#) 5 U.S.C. §§ 571-584, provides the statutory framework for the Federal Government to utilize alternative dispute resolution.

1.4 Regulatory Framework

The NRC's enforcement program is governed by its regulations. Subpart B of Part 2 of Title 10 of the Code of Federal Regulations (10 CFR Part 2), describes the formal procedures the NRC uses to implement its enforcement authority.

1.5 Adequate Protection Standard

Adequate protection of the public health and safety and assurance of the common defense and security is the fundamental regulatory objective. Compliance with NRC requirements plays an important role in giving the NRC confidence that safety is being maintained. Adequate protection is presumptively assured by compliance with NRC requirements.

When non-compliance with NRC requirements occurs, the NRC must evaluate the degree of risk posed by that non-compliance to determine whether immediate action is required. If the NRC determines that the non-compliance itself is of such safety significance that adequate protection is no longer provided, or that the non-compliance was caused by a failure of licensee controls so significant that it calls into question the licensee's ability to ensure adequate protection, the NRC may demand immediate action, up to and including a shutdown or cessation of licensed activities.

2.0 **NRC Enforcement Process**

The NRC's enforcement process has three basic steps.

- a. First, violations must be identified;
- b. Next, the NRC must assess the significance or severity of the violation; and
- c. Finally, the NRC must disposition the violation.

Throughout the process, an organization or individual subject to an NRC enforcement action has multiple opportunities to provide input.

2.1 Identification of Violations

The enforcement process begins with the identification of violations, either through NRC inspections or investigations or through a licensee report or by substantiation of an allegation.

All violations are subject to consideration for civil enforcement action; some violations may also be considered for criminal prosecution by the U.S. Department of Justice. After an apparent violation is identified, it is assessed in accordance with this Policy. The NRC's enforcement assessment process is fact-driven and risk-informed. The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level appropriate to the safety-significance of the particular violation.

2.2 Assessment of Violations

After a violation is identified, its significance or severity is assessed. The assessment of the significance of a violation is generally reflected by the severity level (SL) assigned to the violation. For most violations committed by power reactor licensees, the significance of a violation is assessed using the significance determination process (SDP) under the Reactor Oversight Process (ROP) as discussed in section 2.2.3 below. Plants under construction are not subject to the SDP. Therefore, traditional enforcement will be utilized including the issuance of civil penalties as described in section 2.3.2.c.

2.2.1 Factors Affecting Assessment of Violations

The NRC uses risk information whenever possible in assessing the safety-significance of violations and assigning severity levels. In determining the appropriate enforcement response to a violation, the NRC considers the following factors, which apply to both material and reactor licensees.

- a. Whether the violation resulted in actual safety or security consequences. In evaluating actual consequences, the NRC considers issues such as whether the violation resulted in the onsite or offsite releases of radiation, onsite or offsite radiation exposures, accidental criticality, core damage, loss of significant safety barriers, and loss of control of radioactive material or radiological emergencies or the security system did not function as required and, as a result of the failure, there was a significant event.
- b. Whether the violation has potential safety or security consequences. In evaluating potential consequences, the NRC considers whether the violation created a credible accident or exposure scenario that could potentially have significant actual consequences. Duration is an appropriate consideration in assessing the significance.
- c. Whether the violation impacted the ability of the NRC to perform its regulatory oversight function. The NRC considers the safety implications of noncompliances that may impact the NRC's ability to carry out its statutory mission. Noncompliances may be significant because they may challenge the regulatory envelop upon which certain activities were licensed. These

types of violations include failures such as: failures to provide complete and accurate information, failures to receive prior NRC approval for changes in licensed activities, failures to notify NRC of changes in licensed activities, failures to perform 10 CFR 50.59 and similar analyses, reporting failures, etc. The existence of a regulatory process violation does not automatically mean that the issue is safety significant. In determining the significance of a violation, the NRC will consider appropriate factors for the particular regulatory process violation. These factors may include: the significance of the underlying issue, whether the failure actually impeded or influenced regulatory action, the level of individuals involved in the failure and the reason why the failure occurred given their position and training, and whether the failure invalidates the licensing basis.

d. Whether the violation involved willfulness. Willful violations are of particular concern because the NRC's regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by the Commission. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. Violations with willful aspects will typically be considered for escalated enforcement, i.e., SL I, SL II, or SL III. The term "willfulness" as used in this policy refers to conduct involving either a careless disregard violation of requirements or deliberate violation of requirements.

2.2.2 Severity Levels

The NRC assesses significance, under its traditional enforcement process, by assigning a severity level to all violations by those subject to the NRC's enforcement authority as defined in Section 1.2 and to some violations by operating power reactor licensees. However, the majority of violations by reactor licensees are assessed under the ROP using the SDP (see section 2.2.3). (Examples of Severity Level I, II, III, and IV violations in 13 activity areas are provided in Section 6.0 of this Policy. Expanded examples of violations at the various severity levels are contained in the NRC Enforcement Manual. Neither the examples in this Policy nor the examples in the Enforcement Manual are intended to be exhaustive or controlling.)

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions. This judgment and discretion includes the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the significance of the violations and the surrounding circumstances.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

a. Severity Level I violations are violations that resulted in or could have resulted in serious safety or security consequences; violations that involved systems failing when actually called upon to prevent or mitigate a serious safety or security event; or violations associated with a significant regulatory concern.

- b. Severity Level II violations are violations that resulted in or could have resulted in significant safety or security consequences, i.e., violations that created a potential of resulting in substantial safety or security consequences; or violations that involved systems not being capable, for an extended period, of preventing or mitigating a serious safety or security event.
- c. Severity Level III violations are violations that resulted in or could have resulted in moderate safety or security consequences, i.e., violations that created a high potential of resulting in moderate safety or security consequences; or violations that involve systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event.
- d. Severity Level IV violations are violations that are less serious that resulted in no or relatively inappreciable potential safety or security consequences, i.e., violations that created potential of resulting in more than minor safety or security consequences. This does not imply that Severity Level IV issues have no risk significance.
- e. Minor violations are violations of minor safety or environmental concern that are below the level of concern of Severity Level IV violations. Minor violations generally do not warrant enforcement action, but nevertheless, must be corrected.

a. 2.2.3 Significance Determination Process

The majority of violations by reactor licensees are assessed under the ROP using the SDP. The significance determination process described in NRC Inspection Manual Chapter (IMC) 0609, "Significance Determination Process", uses risk insights, where appropriate, to assist NRC staff in determining the safety or security significance of inspection findings identified within the ROP. Inspection findings processed through the SDP, including associated violations, are documented in inspection reports and are assigned one of the following colors, depending on their safety significance.

- a. Red - Inspection findings with high safety or security significance;
- b. Yellow - Inspection findings with substantial safety or security significance;
- c. White - Inspection findings with low to moderate safety or security significance;
- d. Green - Inspection findings with very low safety or security significance.

These violations are not normally assigned severity levels, nor are they normally subject to civil penalties, although discretion may be used to assess a civil penalty for any violation that involved actual consequences.

2.2.3.1 Exceptions to the Use of the SDP

Certain violations at operating power reactors cannot be evaluated through the SDP and are instead assigned severity levels and will be considered for civil penalties. These types of violations include:

- a. Violations that resulted in or could have resulted in substantial actual safety consequences, including, but not limited to:
 - 1. Violations resulting in radiation exposures to the public or plant personnel above regulatory limits;
 - 2. Violations involving failures to make required notifications that impact the ability of Federal, State, or local agencies to respond to actual emergencies;
 - 3. Violations resulting in transportation events; and
 - 4. Violations resulting in substantial releases of radioactive material.
- b. Violations that impact the ability of the NRC to perform its regulatory oversight function; and
- c. Violations involving willfulness.

In determining the severity level assigned to such violations, the NRC will consider information in this policy and its supplements, as well as SDP-related information available for issues that can be assessed by the SDP (i.e., the color that would have been assigned to underlying issues).

2.3 Disposition of Violations

This section describes the various ways the NRC can disposition violations.

2.3.1 Minor violations: Violations of minor safety or security concern generally do not warrant enforcement action or documentation in inspection reports, but must be corrected. Specific examples of minor violations and guidance for documenting minor violations can be found in the NRC Enforcement Manual, IMC 0610, IMC 0612 (Appendix E), and IMC 0613.

2.3.2 More than minor violations: Violations that are considered to represent more than a minor safety or security concern may be dispositioned in several ways as discussed below.

- a. Non-Cited Violation (NCV): Severity Level IV violations and violations associated with green SDP findings are normally dispositioned as NCVs. NCVs are documented in inspection reports or inspection records and include a brief description of the corrective action the licensee has taken or plans to take. Licensees are not required to provide written responses to NCVs; however, licensees may provide a written response if they disagree with the NRC's description of the NCV and/or dispute the validity of the NCV. Specific guidance regarding the use of NCVs is addressed in the Enforcement Manual. However, typically, all the following criteria must be met for a violation to be dispositioned as an NCV :

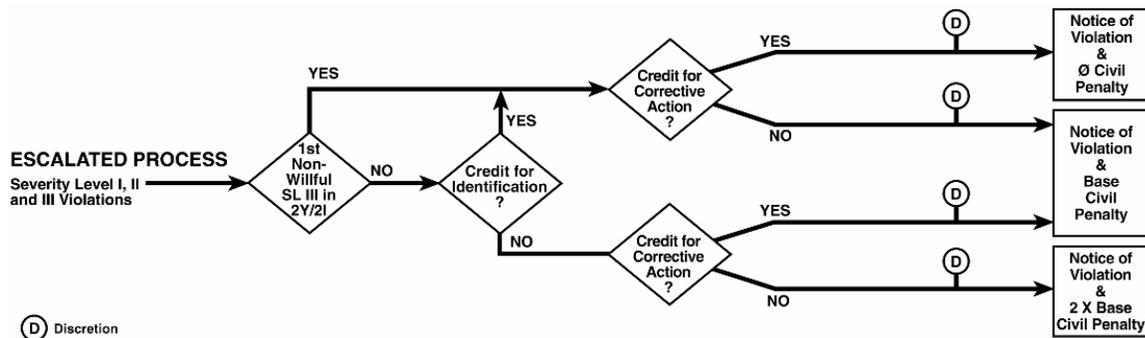
1. The licensee must place the violation into a corrective action program to address recurrence;
 2. The licensee must restore compliance or commit to restore compliance within a reasonable period of time after a violation was identified;
 3. The violation must not be repetitive as a result of inadequate corrective action and was not identified by the NRC. NOTE: This criteria does not apply to violations associated with green SDP findings; and
 4. The violation was not willful. Notwithstanding willfulness, an NCV, under certain circumstances may still be appropriate. The approval of the Director, OE, is required for dispositioning willful violations as NCVs.
- b. Notice of Violation (NOV): A NOV ([see 10 CFR 2.201](#)) is a written notice setting forth one or more violations and normally requires the recipient to provide a written response describing: (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken; and (4) the date when full compliance has been, or will be, achieved. The NRC may waive all or portions of a written response to the extent that relevant information has already been provided to the NRC in writing or documented in an NRC inspection report or inspection record. The NRC may require responses to NOV's to be under oath; however, normally, responses under oath will be considered only for Severity Level I, II, or III violations; violations assessed using the SDP as White, Yellow or Red; or violations of NRC orders. An NOV may be issued in conjunction with a civil penalty.
- c. Civil Penalty: A civil penalty ([see 10 CFR 2.205](#)) is a monetary penalty that the NRC may impose for violation of (1) certain specified licensing provisions of the AEA or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the [ERA](#). Based on the circumstances of a specific case, the NRC may increase a civil penalty where application of the guidance in this Policy would normally result in a zero penalty or a base civil penalty, in order to ensure that the proposed civil penalty reflects the safety-significance of the case. The NRC's policy of imposing graduated civil penalties generally takes into account the gravity of the violation as the primary consideration. Thus, operations involving greater nuclear material inventories and consequences to the public and workers receive higher civil penalties. The NRC does not intend that the economic impact of a civil penalty be so severe that it adversely affects a licensee's ability to safely conduct licensed activities or puts a licensee out of business (orders, rather than civil penalties, are used when the NRC's intent is to suspend or terminate licensed activities).

The civil penalty assessment process considers four factors:

1. Whether the licensee has had any previous escalated enforcement action for a non-willful violation (regardless of the activity area) during the past two years or past two inspections, whichever, is longer;

2. Whether the licensee should be given credit for actions related to identification of the violation;
3. Whether the licensee's corrective actions were prompt and comprehensive; and
4. Whether, in view of circumstances surrounding the violation, the NRC should exercise enforcement discretion to either escalate or mitigate the amount of the civil penalty.

The flow chart presented below is a graphic representation of the civil penalty assessment process.



Violations assessed under the SDP normally are not considered for civil penalties. However, civil penalties are considered for violations associated with inspection findings evaluated through the ROP's SDP that involved actual consequences.

The NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues. The NRC may exercise this discretion when a licensee was aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to

do so; however, the NRC would take this action only when it believes a strong regulatory message is warranted.

The Commission recognizes that violations occur in a variety of activities and have varying impacts; therefore, the civil penalty Tables A and B in Section 8.0 to this Policy contain graduated sanctions based on the severity level of the violation. The tables present the base civil penalty, i.e., normal civil penalty, for any severity level violation for each type of licensee before consideration of factors to either escalate or use discretion to increase or decrease those amounts. The civil penalty amounts applied should be those in effect at the time of the violation. The application of this policy is to ensure that associated enforcement actions properly reflect the safety or security significance of such violations.

Loss of NRC regulated material is a significant regulatory concern due to potential unauthorized possession, use or overexposure to members of the public. Violations where regulated radioactive material remains out of the required control by a licensee for

any period of time are treated separately, regardless of the use, license type, quantity, or type of radioactive material. Such violations may include but are not limited to, for example, the loss, abandonment, improper transfer, or disposal of a device, source, or other form of regulated material. Notwithstanding the normal civil penalty assessment process, in cases where a licensee has lost required control of its regulated radioactive material for any period of time, the NRC normally should impose at least a base civil penalty. However, NRC may mitigate or escalate a civil penalty amount based on the merits of a specific case. When appropriate, NRC may consider, for example, information concerning the actual expected cost of authorized disposal and the actual consequences of the material remaining out of the control of the licensee.

The NRC will normally take enforcement action for violations of requirements related to import and export of NRC regulated radioactive material. Specifically, the import and export of the radioactive material (1) within the scope of an NRC license and (2) with implementation of any security programs that may be required are two examples of matters of importance where violations of corresponding requirements warrant consideration of escalated enforcement action.

- d. Orders: An order is a written NRC directive to modify, suspend or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see [10 CFR 2.202](#)). Orders may be issued in lieu of, or in addition to, civil penalties, as appropriate, for Severity Level I, II, and III violations. Unless a separate response is warranted pursuant to [10 CFR 2.201](#), an NOV does not need to be issued in addition to the order when the NOV is based on violations described in the order. Orders are made immediately effective, without prior opportunity for a hearing, whenever the NRC determines that the public health, safety, interest, or common defense and security so requires. Otherwise, a prior opportunity for a hearing on the order is afforded.

Orders may also be issued to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, or applicants for any such approvals, and to employees of any of the foregoing and to licensed individuals, such as licensed reactor operators, and non-licensed individuals.

- e. Demand for Information: The Commission may also issue a Demand for Information (DFI) (see 10 CFR 2.204) for the purpose of determining whether an order under 10 CFR 2.202 should be issued or whether other action should be taken.
- f. Related Administrative Actions: The NRC also uses administrative actions, such as Confirmatory Action Letters (CALs), Notices of Deviation (NODs), and Notices of Nonconformance (NONs) to supplement its enforcement program. These administrative actions are explained in the Enforcement Manual. The NRC expects licensees and other persons subject to the Commission's jurisdiction to adhere to any obligations and commitments resulting from administrative actions and will consider issuing additional orders, as needed, to ensure compliance.

2.3.3 Reopening Closed Enforcement Actions

Under special circumstances, i.e., where substantial new information is received or obtained by NRC which indicates that an enforcement sanction was incorrectly applied, consideration may be given, on a case-by-case basis, to reopening a closed enforcement action in order to increase or decrease the severity of a sanction or to correct the record.

Special circumstances include, but are not limited to, (a) a situation where persons provided incomplete or inaccurate information that would have been considered material to the NRC's disposition of a case, (b) information was deliberately withheld or obscured, or (c) the licensee made errors in calculations that would not have normally been reviewed by the NRC. Special circumstances do not include the discovery of additional information that was reasonably available at the time the agency made its initial enforcement decision.

2.3.4 Enforcement Guidance Memorandum

Enforcement Guidance Memoranda (EGMs) are used to provide the NRC staff with temporary enforcement guidance, including, in some instances, enforcement discretion, when specified criteria are met. EGMs normally describe the situation that has occurred that requires the use of such guidance, as well as the length of time the EGM will be in effect. For a list of the current EGMs, see [Appendix A](#) of the NRC Enforcement Manual.

2.3.5 Commission Notification and Consultation

Certain enforcement actions require either advance written notification to the Commission or advance consultation with and approval by the Commission depending on the nature of the proposed sanction. Specific enforcement actions requiring Commission prior notification and consultation include, but are not limited to the following:

- a. Notification:
 - 1. All enforcement actions involving civil penalties or orders; and
 - 2. All Notices of Enforcement Discretion involving natural events, such as severe weather conditions.

- b. Consultation:
 - 1. An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating against the potential radiological or other hazards associated with continued operation;
 - 2. Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table A for that class of licensee;
 - 3. Any proposed enforcement action that involves a Severity Level I violation;
 - 4. Any action the EDO believes warrants Commission involvement;

5. Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and
6. Any proposed enforcement action on which the Commission asks to be consulted.

2.4 Participation in the Enforcement Process

Prior to making a final enforcement decision in cases where the NRC is considering taking escalated enforcement action, i.e., a Severity Level III or higher NOV or a greater than green SDP finding, the organization or individual subject to the enforcement action will typically be offered a conference with the NRC to present facts relevant to the assessment and disposition of the violation. The conference is normally held at an NRC regional office and is normally open to public observation except when the proposed enforcement action involves discussions of safeguards information, privacy information, proprietary information, or other sensitive, non-public information. In addition, licensees and individuals can be offered Alternative Dispute Resolution (see section 2.4.3).

2.4.1 **Predecisional Enforcement Conference:** For violations assessed using a Severity Level, the conference is called a Predecisional Enforcement Conference (PEC). The purpose of the PEC is to obtain information to assist the NRC in determining the appropriate enforcement action, such as (a) a common understanding of the facts, root causes and missed opportunities associated with the apparent violation, and (b) a common understanding of the corrective actions taken or planned to be taken.

2.4.2 **Regulatory Conference:** For power reactor inspection findings assessed using the significance determination process, the conference is called a Regulatory Conference. For reactor inspection findings that are preliminarily assessed as greater than Green, the licensee will normally be given an opportunity to meet with the NRC to exchange information related to that assessment. Because the significance assessment typically requires a determination whether violations occurred, a subsequent PEC is not normally required.

2.4.3 **Alternative Dispute Resolution:** The [Administrative Dispute Resolution Act of 1996 \(ADRA\)](#) authorizes and encourages the use of Alternative Dispute Resolution (ADR) by Federal agencies. ADR is a term that refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. Mediation is the form of ADR typically utilized by the NRC. The use of ADR in the NRC's enforcement program is provided for cases involving discrimination and other wrongdoing cases after the NRC Office of Investigations has completed an investigation, i.e., post-investigation ADR, and the NRC concludes that pursuit of an enforcement action appears warranted. ADR may also be used for discrimination violations based solely on a finding by the U.S. Department of Labor (DOL); however, the NRC will not negotiate the finding by DOL. Individuals within the Commission's jurisdiction may also be offered ADR. Generally, post-investigation ADR proceeds in parallel and works in conjunction with the traditional NRC enforcement program. ADR may be offered (1) prior to a PEC, (2) with the issuance of an NOV, or (3) with the imposition of a civil penalty. Use of the ADR program is voluntary by all parties, including the NRC, and may be ended by any participant at any time; mediation activities are kept confidential in accordance with 5 U.S.C.

574; and the terms of the settlement agreement are normally formalized in a Confirmatory Order which is published in the *Federal Register*. Normally, there is a press release regarding the settlement.

There may be circumstances under which it may not be appropriate for the NRC to engage in ADR, e.g., there has been substantial U.S. Department of Justice involvement in the case, cases in which the subject matter is such that a Confirmatory Order detailing the terms of a settlement agreement cannot be made public, or other particularly egregious cases in which the public interest is not served by engaging in ADR. The Director, OE, must be consulted in those cases where the staff does not offer ADR.

3.0 Use of Enforcement Discretion

The NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions or otherwise refrain from taking enforcement action within the Commission's statutory authority. The exercise of discretion allows the NRC to determine what actions should be taken in a particular case, notwithstanding the guidance contained in this statement of policy. After considering the general tenets of this policy and the safety-security significance of a violation and its surrounding circumstances, judgment and discretion may be exercised in determining the severity levels of violations and the appropriate enforcement sanctions to be taken.

3.1 Violations Identified During Extended Shutdowns or Work Stoppages

Notwithstanding the outcome of the normal NOV and civil penalty assessment processes, the NRC may reduce or refrain from issuing a NOV or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after:

- a. the NRC has taken significant enforcement action based on a major safety event contributing to an extended shutdown of an operating nuclear reactor or a material licensee (or a work stoppage at a construction site), or
- b. the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or inspection records for some materials cases); and that it meets all of the following criteria:
 1. The violation was either licensee-identified as a result of a comprehensive program for violation identification and correction developed in response to the shutdown or identified as a result of an employee or contractor concern identified to the licensee through its internal processes; and
 2. The violation was based upon activities of the licensee prior to the events leading to the shutdown; and
 3. The violation would not be categorized at Severity Level I; and
 4. The violation was not willful; and

5. The licensee's decision to restart the plant requires NRC concurrence.

The approval of the Director, Office of Enforcement, is required for exercising such discretion when a willful violation is involved.

3.2 Violations Involving Old Design Issues

The NRC may exercise discretion to refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, if the violation is documented in an inspection report (or inspection records for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

- a. it was licensee-identified as a result of its voluntary initiative;
- b. it was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and
- c. it was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for a Severity Level II, III, or IV violation that meets the above criteria provided the violation was caused by conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

3.3 Violations Identified Due to Previous Enforcement Action

The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a Severity Level II, III, or IV violation that is identified after the NRC has taken enforcement action, if the violation is licensee-identified as part of the corrective action for the previous enforcement action and the violation has the same or similar root cause as the violation for which enforcement action was previously issued. Additionally, the new example must not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation and must be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

3.4 Violations Involving Certain Discrimination Issues

For violations of the NRC's employee protection regulations, e.g. 10 CFR 50.7 and 10 CFR 52.5, the NRC may exercise discretion to mitigate enforcement sanctions and refrain from issuing a civil penalty and/or an NOV when a licensee who, without the need for

government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. In addition, licensees can utilize ADR to resolve discrimination complaints prior to the initiation of an investigation by OI, i.e., early-ADR. Licensees may utilize the NRC's ADR program (see NRC Management Directive 8.8, "Management of Allegations") or a licensee sponsored program.

Similarly, the NRC may exercise discretion when a licensee settles a complaint filed with the Department of Labor (DOL) under section 211 of the [ERA](#) before the DOL makes an initial finding of discrimination, and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee, and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated.

The NRC may also exercise discretion in discrimination cases in which a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor, allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

3.5 Violations Involving Special Circumstances

Notwithstanding the outcome of the normal enforcement process, the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II, III, or IV violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the significance of the violation, the clarity of the requirement, the appropriateness of the requirement, the overall sustained performance of the licensee, and other relevant circumstances, including any that may have changed since the violation occurred. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted. In addition, the NRC may refrain from issuing enforcement action for violations resulting from matters not within a licensee's control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees and contractors. Accordingly, this policy should not be construed to excuse personnel or contractor errors.

3.6 Use of Discretion in Determining the Amount of a Civil Penalty

Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section 2.3.2, the NRC may exercise discretion by either proposing a civil penalty where

application of the civil penalty assessment factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty in order to ensure that the proposed civil penalty appropriately reflects the significance of the issue. The Commission must be notified if the amount of the proposed civil penalty is more than two times the base civil penalty shown in Tables A and B for the severity level violation being considered.

Civil Penalty discretion should be considered for, but is not limited to, the following:

- a. Problems originally categorized at a Severity Level I or II;
- b. Overexposures, or the release of radiological material in excess of NRC requirements;
- c. Particularly poor licensee performance;
- d. Willfulness;
- e. Instances where the licensee made a conscious decision to be in noncompliance with NRC requirements in order to obtain an economic benefit; or
- f. Situations where the violation resulted in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase in risk.

3.7 Exercise of Discretion to Issue Orders

The NRC may exercise discretion, where necessary or desirable, by issuing orders with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3.8 Notices of Enforcement Discretion (NOED) for Power Reactors and Gaseous Diffusion Plants

The NRC may choose not to enforce the applicable Technical Specification (TS) Limiting Condition for Operation or other license conditions, in circumstances where compliance would involve an unnecessary plant transient or the performance of a test, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup, without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or technical specification or other certificate condition would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards, or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

An NOED will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety or security. The NRC staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena. The use of an NOED is based upon balancing the public health and safety or common defense and security of not operating against the potential radiological or other hazards associated with

continued operation, and a determination that safety or security will not be impacted unacceptably by exercising this discretion.

Issuance of 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 violation at issue. In each case where the NRC has chosen to issue an NOED, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used.

Additional guidance on the process for issuing an NOED is found on the NRC's website at <http://www.nrc.gov/reading-rm/doc-collections/insp-manual/technical-guidance/tgnoed.pdf>.

3.9 Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)

This section sets forth the interim enforcement policy that the U.S. Nuclear Regulatory Commission (NRC) will follow to exercise enforcement discretion for certain noncompliances of requirements in 10 CFR 50.48, "Fire protection," (or fire protection license conditions) that are identified as a result of the transition to a new risk-informed, performance-based fire protection approach included in paragraph (c) of 10 CFR 50.48 and for certain existing identified noncompliances that reasonably may be resolved by compliance with 10 CFR 50.48(c). Paragraph (c) allows reactor licensees to voluntarily comply with the risk informed, performance-based fire protection approaches in National Fire Protection Association Standard 805 (NFPA 805), "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants," 2001 Edition (with limited exceptions stated in the rule language).

For those noncompliances that the NRC identifies during the licensee's transition process, this enforcement discretion policy will be in effect for up to 3 years from the date specified by the licensee in their letter of intent to adopt the requirements in 10 CFR 50.48(c). The enforcement discretion will continue to be in place, without interruption, until NRC approval of the license amendment request to transition to 10 CFR 50.48(c).

An additional period of enforcement discretion may be granted on a case-by-case basis, if a licensee has made substantial progress in its transition effort. This additional period of discretion, if granted, would end 6 months after the date of the safety evaluation approving the second pilot plant¹ LAR review.

The NRC will assess "substantial progress" based on accomplishment of tasks that are not resource-limited with respect to fire probabilistic risk assessment (PRA) technical expertise (e.g., classical fire protection transition, deterministic nuclear safety performance criteria transition, non-power operational transition, radioactive release transition, development of the NFPA 805 monitoring program, operator manual action transition to NFPA 805 recovery actions). In order for the NRC to adequately evaluate the transition progress, licensees that request enforcement discretion beyond the three years currently available should make their request to the NRC in writing at least 3 months before the expiration of the 3-year discretion

¹ The NRC accepted the request from both Duke Power (ML051080005) and Progress Energy (ML052140391) to allow Oconee Nuclear Power Station and Shearon Harris Nuclear Power Station respectively, to become pilot NPFA 805 plants.

period and compile or submit the following information:

- Compile, for on-site NRC audit/inspection, a list of all fire protection-related noncompliances and the related compensatory measures for those noncompliances.
- Document, for onsite NRC audit/inspection, that each Operator Manual Action put in place as compensatory measures are feasible and reliable, in accordance with staff provided guidance in Regulatory Issue Summary 2005-07, “Compensatory Measures to Satisfy the Fire Protection Program Requirements.”
- Submit a description of the physical modifications performed, if any, to address existing risk-significant fire protection issues.
- Submit a status report of the transition, including a schedule of milestones for completing the fire PRA. The status report should be broken down into the following major areas:
 - Classical fire protection transition (in accordance with NFPA 805 Chapter 3)
 - Nuclear Safety Performance Criteria transition (in accordance with NFPA 805 chapters 1, 2 and 4)
 - Nonpower operational transitions
 - NFPA 805 monitoring program

If the NRC determines that a licensee has not made sufficient progress during the transition to NFPA 805, the NRC will deny the request for an extension of enforcement discretion.

If, after submitting the letter of intent to comply with 10 CFR 50.48(c) and before submitting the license amendment request, the licensee decides not to complete the transition to 10 CFR 50.48(c), the licensee must submit a letter stating its intent to retain its existing licensing basis and withdrawing its letter of intent to comply with 10 CFR 50.48(c). After the licensee’s withdrawal from the transition process, the staff, as a matter of practice, will not take enforcement action against any noncompliance that the licensee corrected during the transition process and will on a case-by-case basis, consider refraining from taking action if reasonable and timely corrective actions are in progress (e.g., an exemption has been submitted for NRC review). Noncompliances that the licensee has not corrected, as well as noncompliances identified after the date of the above withdrawal letter, will be dispositioned in accordance with normal enforcement practices.

a. Noncompliances Identified During the Licensee’s Transition Process

Under this interim enforcement policy, enforcement action normally will not be taken for a violation of 10 CFR 50.48(b) (or the requirements in a fire protection license condition) involving a problem such as in engineering, design, implementing procedures, or installation, if the violation is documented in an inspection report and it meets all of the following criteria:

1. It was licensee-identified, as a result of its voluntary initiative to adopt the risk-informed, performance-based fire protection program included under 10 CFR 50.48(c) or, if the NRC identifies the violation, it was likely in the NRC staff’s view that the licensee would have identified the violation in light of the defined scope, thoroughness,

and schedule of the licensee's transition to 10 CFR 50.48(c) provided the schedule reasonably provides for completion of the transition within 3 years of the date specified by the licensee in their letter of intent to implement 10 CFR 50.48(c) or other period granted by NRC;

2. It was corrected or will be corrected as a result of completing the transition to 10 CFR 50.48(c). Also, immediate corrective action and/or compensatory measures are taken within a reasonable time commensurate with the risk significance of the issue following identification (this action should involve expanding the initiative, as necessary, to identify other issues caused by similar root causes);
3. It was not likely to have been previously identified by routine licensee efforts such as normal surveillance or quality assurance (QA) activities; and
4. It was not willful.

The NRC may take enforcement action when these conditions are not met or when a violation that is associated with a finding of high safety significance is identified.

While the NRC may exercise discretion for violations meeting the required criteria where the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report.

b. Existing Identified Noncompliances

In addition, licensees may have existing identified noncompliances that could reasonably be corrected under 10 CFR 50.48(c). For these noncompliances, the NRC is providing enforcement discretion for the implementation of corrective actions until the licensee has transitioned to 10 CFR 50.48(c) provided that the noncompliances meet all of the following criteria:

1. The licensee has entered the noncompliance into their corrective action program and implemented appropriate compensatory measures;
2. The noncompliance is not associated with a finding that the Reactor Oversight Process Significance Determination Process would evaluate as Red, or it would not be categorized at Severity Level I;
3. It was not willful; and
4. The licensee submits a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

After December 31, 2005, as addressed in number 4 above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices. However, licensees that submit letters of intent to transition to 10 CFR

50.48(c) with existing noncompliances will have the option to implement corrective actions in accordance with the new performance-based regulation. All other elements of the assessment and enforcement process will be exercised even if the licensee submits its letter of intent before the NRC issues its enforcement action for existing noncompliances.

4.0 Enforcement Actions Against Individuals

Enforcement actions involving individuals, including licensed operators, are significant actions and will be closely scrutinized and judiciously applied. An enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual:

- a. Fully understood his or her responsibility;
- b. Knew the required actions were not taken; and
- c. Knowingly failed to take required actions which have actual or potential safety significance.

Although the NRC considers the above before taking action against both licensed and non-licensed individuals, enforcement actions may be taken against NRC licensed operators, regardless of whether the violation involved willfulness, since the enforcement action would be taken directly against the operator as a licensee. Enforcement actions against non-licensed individuals will only be taken in those cases involving deliberate misconduct. Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other action should be issued.

The NRC will normally provide the individual an opportunity to address the apparent violation at a PEC or in writing before taking any enforcement action. The opportunity to address the apparent violations will depend on the circumstances of the case, including the severity of the issue, the enforcement sanction the NRC is contemplating, and whether the individual has already had an opportunity to address the issue (e.g., an OI investigation or a Department of Labor hearing).

4.1 Circumstances When Enforcement Action Against An Individual May Be Taken

The NRC's policy is that, in general, licensees are responsible for the acts of their employees and contractors; therefore, normally the NRC will cite only the licensee in most violations involving individuals. For more serious violations, including those involving the integrity of an individual (e.g., providing inaccurate or incomplete information) concerning matters within the scope of the individual's responsibilities, the NRC will consider taking enforcement action against the individual as well as against the facility licensee. Violations involving careless disregard by an unlicensed individual may result in enforcement action against a licensee that may indirectly impact an individual. Typically, the NRC will not take enforcement action against the individual if management's failures (e.g., improper training or inadequate procedures) are responsible for the individual's improper actions. In deciding whether to issue an enforcement

action to an unlicensed person as well as to the licensee, judgments will be made on a case-by-case basis.

a. Deliberate Misconduct

The NRC has the authority to issue enforcement actions to any individual (licensed or unlicensed) who (1) deliberately causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license issued by the Commission related to NRC-licensed activities; or (2) deliberately provides materially inaccurate or incomplete information to the NRC, a licensee, an applicant or a licensee, or a contractor or subcontractor of a licensee or applicant for a license . (see, for example, 10 CFR 30.10, 10 CFR 50.5, 10 CFR 52.4, and 10 CFR 76.10)

b. Additional Circumstances

In deciding whether to issue an enforcement action to an individual as well as to the licensee, the NRC recognizes that judgments will have to be made on a case-by-case basis. The NRC may choose to refrain from taking action or propose a different action to ensure that the agency position takes into consideration all of the relevant circumstances of each case. Factors considered in determining the appropriate enforcement sanction (if any) include, but are not limited to the following:

1. The significance of the underlying technical issue (not considered in discrimination cases).
2. The benefit to the wrongdoer, e.g., direct personal or corporate gain.
3. The degree of management responsibility or culpability.
4. The individual's position within the organization, i.e., notwithstanding an individual's job title, the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.
5. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.

4.2 NOVs and Orders to Individuals

4.2.1 Licensed Individuals

The Commission has the authority to issue NOVs to any individual who holds an NRC license (e.g., licensed reactor operators) for violations of NRC requirements, regardless of whether willfulness, either deliberate misconduct or careless disregard, was involved. However, individual actions other than willful violations are rare. In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a NOV to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license.

Orders may also be issued to licensed individuals which include provisions that would prohibit involvement in NRC-licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications, and normally requires (a) notification to the NRC before the individual resumes work in NRC-licensed activities, and (b) the individual to inform a prospective employer or customer engaged in NRC-licensed activities that the person has been subject to an NRC order. Such orders may also involve revocation of the individual's license.

4.2.2 Non-Licensed Individuals

The Commission's enforcement policy is also applicable to non-licensees, including contractors and subcontractors, holders of NRC approvals, e.g., certificates of compliance, early site permits, standard design certificates, quality assurance program approvals, or applicants for any of them, and to employees of any of the foregoing, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. However, NRC will not normally issue an enforcement action against a non-licensed individual unless the individual's actions were a result of deliberate misconduct. Notices of Violation issued to non-licensed individuals will not normally be assigned severity levels. When needed to ensure adequate protection of public health and safety and the public interest, the NRC may issue an order to an unlicensed person, whether a firm or an individual, requiring: (a) the removal of the person from all NRC licensed activities for a specified period of time or indefinitely, (b) prior notice to the NRC before engaging in NRC-licensed activities, or (c) NRC licensees to inform other persons or licensees, who make reference inquiries, of the issuance of such an order. In addition, orders to employers might require retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.

4.3 Civil Penalties to Individuals

Except for individuals subject to civil penalties under section 206 of the [ERA](#), as amended, the NRC will not normally impose a civil penalty against an individual. However, section 234 of the AEA gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in section 11s. of the AEA to include individuals, a variety of organizations, and their representatives or agents.

4.4 Confirmatory Orders to Individuals

Agreements with individuals reached as a result of the ADR process are normally formalized by the issuance of a Confirmatory Order. ADR is typically offered to individuals consistent with the process used for licensees (see sections 2.4.3 and 3.4 of this Policy)

5.0 **Public Availability of Information Regarding Enforcement Actions**

In accordance with 10 CFR 2.390, enforcement actions and licensees' responses are normally made publicly available for inspection. However, some security-related information will not be made available to the public. The Office of Public Affairs (OPA) is responsible for making final

decisions as to whether press releases will be issued; however, such releases are normally issued for orders and civil penalties at the same time that the order or proposed imposition of the civil penalty is issued. Press releases may also be issued when a civil penalty is withdrawn or substantially mitigated. Press releases are not normally issued for NOVs that are not accompanied by orders or proposed civil penalties, unless the issue or licensee involved is one of some particular interest.

6.0 Supplements – Examples of Violations

This section provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in each of 13 activity areas. The violation examples in this Policy are intentionally broad in scope and, as such, are not intended to address every possible circumstance and are therefore neither exhaustive nor controlling. Expanded examples of the four severity levels in each activity area can be found in the implementing guidance in the in NRC Enforcement Manual.

6.1 Reactor Operations

a. *Severity Level I* Violations involving, for example:

1. A system designed to prevent or mitigate a serious safety event not being able to perform its intended safety function when actually called upon to work.
2. An accidental criticality or exceeding a Safety Limit.

b. *Severity Level II* Violations involving, for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function;

c. *Severity Level III* Violations involving, for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time.

d. *Severity Level IV* Violations involving, for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time.

6.2 Fuel Cycle Operations

This supplement provides examples in the area of fuel cycle operations for licensees with an Integrated Safety Analysis (ISA) under 10 CFR Part 70, Subpart H, and fuel cycle licensees without an ISA.

- a. *Severity Level I* Violations involving, for example:
 - 1. Under 10 CFR Part 70, Subpart H, a high-consequence result occurs.
 - 2. For licensees not under 10 CFR Part 70, Subpart H, a consequence commensurate with a 10 CFR Part 70 High Consequence occurs from licensed materials or hazardous chemicals produced from licensed materials.

- b. *Severity Level II* Violations involving, for example:
 - 1. Under 10 CFR Part 70, Subpart H, a high-consequence sequence is now “not unlikely” based on the approved licensee ISA.
 - 2. Under 10 CFR Part 70, Subpart H, an intermediate-consequence result occurs.
 - 3. For licensees not under 10 CFR Part 70, Subpart H, a very substantial increase in the likelihood of a consequence commensurate with a Part 70 High Consequence occurs.
 - 4. For licensees not under 10 CFR Part 70, Subpart H, a consequence commensurate with a Part 70 Intermediate Consequence occurs from licensed materials of hazardous chemicals produced from licensed materials.

- c. *Severity Level III* Violations involving, for example:
 - 1. Under 10 CFR Part 70, Subpart H, a high-consequence sequence is now “unlikely” based on the approved licensee ISA.
 - 2. Under 10 CFR Part 70, Subpart H, an intermediate-consequence sequence is now “not unlikely” based on the approved licensee ISA.
 - 3. For licensees not under 10 CFR Part 70, Subpart H, a significant increase in the likelihood of a consequence commensurate with a Part 70 High Consequence occurs.
 - 4. For licensees not under 10 CFR Part 70, Subpart H, a very substantial increase in the likelihood of a consequence commensurate with a Part 70 Intermediate Consequence occurs.

- d. *Severity Level IV* Violations involving, for example:
 - 1. Under 10 CFR Part 70, Subpart H, A failure to meet the performance requirements of 10 CFR 70.61, or Appendix A to 10 CFR Part 70, that does not result in a Severity Level I, II, or III violation.
 - 2. A failure of safety systems or controls such that an acceptable safety margin has not been maintained that does not result in a Severity Level I, II, or III violation.

6.3 Materials Operations

- a. *Severity Level I* Violations involving, for example;

1. Violations that resulted in a loss of control of material, that resulted in radiation exposures or releases to the environment in excess of five times the regulatory limits, or that resulted in loss of control of a risk-significant quantity of material equivalent to Category 1.
- b. *Severity Level II* Violations involving, for example;
1. Failure to meet transportation requirements that resulted in a loss of control of material, that resulted in radiation exposures or releases to the environment in excess of the regulatory limits, or that resulted in loss of control of a risk-significant quantity of material.
- c. *Severity Level III* Violations involving, for example;
1. Failure to meet transportation requirements that resulted in the potential for radiation exposures or releases to the environment in excess of the regulatory limits, or that could have resulted in the potential for loss of control of reportable quantity of material.
- d. *Severity Level IV* Violations involving, for example;
1. Violations that have more than minor safety significance, or that are isolated and not likely to have caused loss of reportable quantities of material, exposures in excess of the regulatory limits.

6.4 Licensed Operators

Note that the term "system" as used in this supplement, includes administrative and managerial control systems, as well as physical systems.

- a. *Severity Level I* Violations involving, for example:
1. Very significant failures that result in licensed operator/senior licensed operator actions in an actual event that complicate the event or the recovery from the event.
- b. *Severity Level II* Violations involving, for example:
1. Very significant failures on the part of a licensed operator at the controls of a reactor or a senior licensed operator directing licensed activities.
- c. *Severity Level III* Violations involving, for example:
1. Significant failure on the part of a licensed operator or senior licensed operator.
- d. *Severity Level IV* Violations involving, for example:
1. Failure on the part of a licensed operator or senior licensed operator.

6.5 Facility Construction (Part 50 and 52 licensees, and Fuel Cycle Facilities)

a. *Severity Level I* Violations involving, for example:

1. A significant breakdown of a licensee QA program for construction resulting in multiple systems, structures, or components not being able to satisfy their intended safety purpose.

b. *Severity Level II* Violations involving, for example:

1. A significant breakdown of a licensee QA program for construction resulting in multiple deficiencies related to more than one work activity (e.g., structural, piping, electrical, foundations) or a single system, structure, or component not being able to satisfy its intended safety purpose.

c. *Severity Level III* Violations involving, for example:

1. A breakdown of a licensee QA program for construction related to a single work activity or resulting in a single system, structure, or component being of unknown quality.

d. *Severity Level IV* Violations involving, for example:

1. Failure to meet regulatory requirements of one or more QA Criterion that have more than minor safety significance.

6.6 Emergency Preparedness

It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (1) training, procedural, or repetitive failures for which corrective actions have not been taken, (2) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (3) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

a. *Severity Level I* Violations involving, for example:

1. Licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff) during a General Emergency.

b. *Severity Level II* Violations involving, for example:

1. Licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff) during a site emergency.

2. Licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.
- c. *Severity Level III* Violations involving, for example:
1. Licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff) during an alert.
 2. Licensee failure to meet or implement one emergency planning standard involving assessment or notification.
- d. *Severity Level IV* Violations involving, for example:
1. Licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.
- 6.7 Health Physics
- a. *Severity Level I* Violations involving, for example;
1. Violations that resulted in a loss of control of material, that resulted in radiation exposures or releases to the environment in excess of five times the regulatory limits, or that resulted in loss of control of a risk-significant quantity of material equivalent to Category 1.
- b. *Severity Level II* Violations involving, for example;
1. Failure to meet transportation requirements that resulted in a loss of control of material, that resulted in radiation exposures or releases to the environment in excess of the regulatory limits, or that resulted in loss of control of a risk-significant quantity of material.
- c. *Severity Level III* Violations involving, for example;
1. Failure to meet transportation requirements that resulted in the potential for radiation exposures or releases to the environment in excess of the regulatory limits, or that could have resulted in the potential for loss of control of reportable quantity of material.
- d. *Severity Level IV* Violations involving, for example;
1. Violations that have more than minor safety significance, or that are isolated and not likely to have caused loss of reportable quantities of material, exposures in excess of the regulatory limits.

6.8 Transportation

a. *Severity Level I* Violations involving, for example;

1. Failure to meet transportation requirements that resulted in a loss of control of material or a breach in package integrity, that resulted in radiation exposures or releases to the environment in excess of five times the regulatory limits, or that resulted in loss of control of a risk-significant quantity of material equivalent to Category 1.

b. *Severity Level II* Violations involving, for example;

1. Failure to meet transportation requirements that resulted in a loss of control of material or a breach in package integrity, that resulted in radiation exposures or releases to the environment in excess of the regulatory limits, or that resulted in loss of control of a risk-significant quantity of material.

c. *Severity Level III* Violations involving, for example;

1. Failure to meet transportation requirements that resulted in the potential for radiation exposures or releases to the environment in excess of the regulatory limits, or that could have resulted in the potential for loss of control of reportable quantity of material.

d. *Severity Level IV* Violations involving, for example;

1. Failure to meet transportation requirements that have more than minor safety significance.

6.9 Inaccurate and Incomplete Information and Reporting

a. *Severity Level I* Violations involving, for example:

1. Inaccurate or incomplete information deliberately provided to the NRC or maintained/withheld by a licensee or contractor with the knowledge of a licensee official that, had it been complete and accurate, would likely have resulted in regulatory action such as an immediate order required to protect the public health and safety.

2. Failure to make a required report which, had it been submitted, would have resulted in an extremely significant NRC action such as the issuance of an Immediately Effective Order.

b. *Severity Level II* Violations involving, for example:

1. Inaccurate or incomplete information provided in careless disregard to the NRC or maintained/withheld by a licensee or contractor with the knowledge of a licensee official, that had it been complete and accurate, would likely have resulted in regulatory action such as an order required to protect the public health and safety.

2. Inaccurate or incomplete information associated with an ITAAC Notification letter that, had it been accurate and complete, would have resulted in the NRC rejecting closure of that ITAAC.

3. Failure to make a required report which, had it been submitted, would have resulted in a very significant NRC action such as the issuance of an Order or immediate dispatch of inspection resources.

c. *Severity Level III* - Violations involving, for example:

1. Inaccurate or incomplete information provided to the NRC or maintained/withheld by a licensee or contractor that, had it been complete and accurate, would likely have resulted in a reconsideration of a regulatory position or substantial further inquiry.

2. Inaccurate or incomplete information associated with an ITAAC Notification letter that, had it been accurate and complete, would have resulted in substantial further inquiry by the NRC.

3. Failure to make a required report which, had it been submitted, would have resulted in the consideration of the issuance of an Order, Confirmatory Action Letter or dispatch of inspection resources.

4. Inaccurate or incomplete performance indicator (PI) data submitted to the NRC by a Part 50 licensee 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 – regardless of when (i.e., what quarter) the inaccurate or incomplete data submittal occurred.

d. *Severity Level IV* Violations involving, for example:

1. Inaccurate or incomplete information provided to the NRC or maintained/withheld by a licensee or contractor that was of more than minor significance.

2. Failure to make a required report which, had it been submitted, would have resulted in, for instance, increasing the inspection scope of the next regularly scheduled inspection.

3. Inaccurate or incomplete performance indicator (PI) data submitted to the NRC by a Part 50 licensee that would have caused a PI to change from green to white—regardless of when (i.e., what quarter) the inaccurate or incomplete data submittal occurred.

6.10 Discrimination

a. *Severity Level I* Violations involving, for example:

1. Employee discrimination involving significant tangible adverse action taken or approved by a senior corporate officer or manager, or which has wide spread site or organizational impact.

b. *Severity Level II* Violations involving, for example:

1. Employee discrimination involving significant tangible adverse action taken or approved by a mid-level manager, or which does not have wide spread site or organizational impact.
2. Employee discrimination involving a tangible adverse action that was taken by a senior corporate officer, had wide spread site or organizational impact; or where the licensee, contractor, or subcontractor's management failed to follow-up on a discrimination complaint made by one of its own employees, or where the licensee's management failed to follow-up on a discrimination complaint made to the licensee by a contractor or subcontractor employee.

c. *Severity Level III* Violations involving, for example:

1. Employee Discrimination involving tangible adverse action taken or approved by a mid-level manager or below.
2. Employee Discrimination violations involving a non-significant tangible adverse action that was taken or approved by at least a mid-level manager, or because an employee came to the NRC or another government agency with a concern; or which has wide spread site or organizational impact.

d. *Severity Level IV* Violations involving, for example:

1. Employee Discrimination violation which, in itself, does not warrant a Severity Level III categorization.

6.11 Reactor and Fuel Facility Security

a. *Severity Level I* Violations involving, for example:

1. The theft, diversion, or act of sabotage involving a formula quantity of special nuclear material (SNM), or very significant quantity of other radioactive material.
2. The loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, which results in significant injury or loss of life, whether radioactive material is released or not.
3. Radiological sabotage in which the security system¹ did not function as required and, as a result of the failure, there was a significant event, such as a Safety Limit being exceeded; a system designed to prevent or mitigate a serious safety or security event was not able to perform its intended function when actually called, an accidental criticality occurred or core damage.

¹ Security system as used in this supplement includes personnel who are, at the time of the failure, filling a function required to implement the licensee's protective strategy.

4. Actual unauthorized production of a formula quantity of SNM.
- b. *Severity Level II* Violations involving, for example:
1. A substantial potential for an act of radiological sabotage of a significant quantity of radioactive material.
 2. The theft or diversion of a significant quantity of SNM of moderate strategic significance or significant quantity of other radioactive material in which the security system did not function as required.
 3. The loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, which results in the substantial potential for a significant injury or loss of life, whether radioactive material is released or not.
 4. The entry of an unauthorized individual into a vital area or a material access area.
 5. Actual unauthorized production of SNM.
 6. Actual damage to components of a target set, i.e., safety-related components or vital equipment.
 7. A failure, degradation or other deficiency of the protected area or vital area intrusion detection system (e.g., the security computer, CAS/SAS ability to monitor IDS and/or cameras), without the implementation of appropriate compensatory measures.
- c. *Severity Level III* Violations involving, for example:
1. A substantial potential for an act of radiological sabotage of radioactive material.
 2. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM, or significant quantities of other radioactive material.
 3. A failure to perform an appropriate evaluation of a background investigation, psychological assessment, background re-investigation or psychological re-evaluation that resulted in unescorted access or retaining unescorted access.
 4. A failure to conduct a search or conducting an inadequate search at any protected area access control point that resulted in the introduction of firearms, explosives, or incendiary devices or reasonable facsimiles thereof that could assist in committing radiological sabotage or theft or diversion of strategic SNM.
 5. A significant failure to maintain protected area intrusion detection system, vital area alarm capability, CCTV or delay barriers in an operable condition, without the implementation of appropriate compensatory measures.

6. A failure to protect or control classified or safeguards information of licensees protective strategies, contingency plans or documents that directly reflect the implementation of strategies.

7. A failure to maintain the required number of responders to respond to an event, as described in the licensee's NRC approved security plan(s) and/or the licensee's protective strategy, to provide protection to vital equipment or strategic SNM.

8. A failure of contraband detection equipment without the implementation of appropriate compensatory measures.

d. *Severity Level IV* Violations involving, for example:

1. A potential for an act of radiological sabotage of radioactive material.

2. A loss of SNM of low strategic significance or less significant quantities of other radioactive material, that was not detected within the time period specified in the security plan, other relevant document, or regulation.

3. A failure to properly secure or protect classified or safeguards information not considered to be significant inside the protected area, accessible to those not authorized to have access to such information.

4. A failure to conduct an adequate search at the exit from a material access area.

5. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation.

6. A failure to control work hour limits within requirements.

7. Other violations that have more than minor safeguards significance.

6.12 Materials Security

a. *Severity Level I* Violations involving, for example;

1. Failure to implement adequate security controls that results in the theft, diversion, or sabotage of a risk significant quantity of material, equivalent to Category 1.

b. *Severity Level II* Violations involving, for example;

1. Failure to implement adequate security controls that results in the theft, diversion, or sabotage of a risk significant quantity of material, equivalent to Category 2.

c. *Severity Level III* Violations involving, for example;

1. Significant or programmatic failure to implement adequate security controls over risk significant quantity of material, regardless of whether it results in the theft, diversion, or sabotage.

d. *Severity Level IV* Violations involving, for example;

1. Isolated failure to implement adequate security controls over risk significant quantity of material, regardless of whether it results in the theft, diversion, or sabotage, and that was not likely to be exploited.

6.13 Information Security

a. *Severity Level I* Violations involving, for example:

1. Failure to control secret or top secret information where the information was removed or disclosed to an unauthorized person.

b. *Severity Level II* Violations involving, for example:

1. Failure to control confidential or safeguards information where the information was removed or disclosed to an unauthorized person.

c. *Severity Level III* Violations involving, for example:

1. Failure to control classified or safeguards information where there was the substantial potential that the information could have been removed or disclosed to an unauthorized person.

d. *Severity Level IV* Violations involving, for example:

1. Failure to control classified or safeguards information where the information was not removed and was not disclosed to an unauthorized person.

7.0 **Glossary of Terms**

Several terms or words have been included in this glossary to ensure that the user is aware that under some circumstances, the ordinary meaning attributed to a word may be appropriate while under other circumstances, the same word may be a “word of art.” Use of the term “safety significance” is an example. Under the Reactor Oversight Process, the term “safety significance” when used to qualify an object, such as a system, structure, component, accident sequence, or cut set, identifies that object as having an impact on safety, whether determined through risk analysis or other means that exceeds a predetermined significance criterion. However, “safety significance” is also used to describe the impact or potential impact a violation had on the public health and safety.

Activity Area refers to the area of NRC-licensed activity that a licensee (or other person)

engages in, e.g., radiography, reactor operations, etc.

Actual Consequences include actual onsite or offsite releases of radiation, onsite or offsite radiation exposures, accidental criticality, core damage, loss of significant safety barriers, loss of control of radioactive material, etc.

Alternative Dispute Resolution (ADR) refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. Mediation and arbitration are the most widely recognized processes. The NRC's ADR program uses mediation rather than arbitration, i.e., the parties develop mutually agreeable corrective actions rather than being obligated by an arbitrator's decision.

Apparent Violation refers to an issue that is being considered for enforcement action.

Careless Disregard refers to situations in which an individual acts with reckless indifference to at least one of three things: (1) the existence of a requirement, (2) the meaning of a requirement, or (3) the applicability of a requirement. Careless disregard occurs when an individual is unsure of: whether there is a requirement, the meaning of a requirement, or whether the requirement is applicable to the situation, but proceeds to engage in conduct that the individual knows might cause a violation. The individual is aware that to proceed might cause a violation, but proceeds without first ascertaining whether a violation would occur.

Civil Penalty is a monetary penalty that may be imposed for violations of (1) certain specified licensing provisions of the AEA or supplementary NRC rules or orders; (2) any requirements for which a license may be revoked; or (3) reporting requirements under section 206 of the ERA.

Confirmatory Action Letter (CAL) is a letter confirming a licensee's or contractor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

Confirmatory Order is an order which confirms the commitments made by a licensee or individual to take certain actions. The terms of the confirmatory order are mutually agreed upon by the licensee or individual and the NRC prior to issuance.

Contractor as used in this policy includes vendors who supply products or services to be used in an NRC-licensed facility or activity.

Corrective Action Program (CAP) is a licensee's process for tracking, evaluating, and resolving deficiencies.

Deliberate Misconduct occurs when an individual voluntarily and intentionally: (1) engages in conduct which the individual knows to be contrary to a requirement, procedure, instruction, contract, purchase order or policy of a licensee, applicant for a license, or a contractor or subcontractor of a licensee or applicant for a license; or (2) provides materially inaccurate or incomplete information to a licensee, applicant for a license, or a contractor or subcontractor of a licensee or applicant for a license.

Demand for Information (DFI), as defined in 10 CFR 2.204, is an Order requiring a licensee or

other person subject to the jurisdiction of the Commission to respond with specific information for the purpose of enabling the NRC to determine whether an order should be issued or whether other action should be taken.

Discrimination, as described in 10 CFR 50.7 (or similar provisions in 10 CFR Parts 30, 40, 52, 60, 61, 63, 70, 71, 72, and 76.) is an act against an employee that includes discharge and other adverse actions that relate to compensation, terms, conditions, or privileges of employment in retaliation for engaging in certain protected activities.

Escalated Enforcement Actions include Severity Level I, II, and III NOVs, NOVs associated with an inspection finding that the SDP evaluates as having low to moderate (White), or greater safety significance, civil penalties, NOVs to individuals, orders to modify, suspend, or revoke NRC licenses or the authority to engage in NRC-licensed activities, and orders issued to impose civil penalties.

Event, as used in this policy, means (1) an occurrence characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

Impacts the NRC's Ability to Perform Its Regulatory Function is a situation which prevents the NRC from using appropriate regulatory tools to address a noncompliance because the agency is unaware that the noncompliance exists, e.g., providing inaccurate and incomplete information or failing to submit a required report.

Individual, as used in this policy, is any person licensed by the NRC such as a reactor operator licensed under 10 CFR Part 55; or any person applying for an NRC license; or any person working for an NRC licensee or applicant; or any contractor of a licensee or applicant.. Such individuals are subject to NRC jurisdiction.

License Applicant as used in this statement of policy means any person who submits an application for review.

Licensee is any person or entity licensed by the NRC.

Licensee Official as used in this statement of policy means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, the NRC will consider the individual's responsibilities relative to the oversight of licensed activities and the use of licensed material.

Lost Source Policy is the policy of the NRC to normally issue a civil penalty of at least the base civil penalty amount in the case where regulated material is out of the control of the licensee for any period of time regardless of the use, license type, quantity, or type of radioactive material (examples include loss, abandonment, improper transfer, or disposal of regulated material) Violations associated with this quantity of material normally result in escalated enforcement actions.

Minor Violation is a violation that is less safety-significant than a Severity Level IV violation or less significant than a Green SDP finding. Minor violations and minor SDP findings do not warrant enforcement action and are not normally documented in inspection reports. However, minor violations must be corrected. SDP findings that are determined to be minor are not assigned a color.

Non-cited Violation (NCV) is a non-recurring Severity Level IV violation that is not subject to formal enforcement action if the licensee places the violation in a corrective action program to address recurrence, restores compliance within a reasonable period of time, and the violation was not willful.

Non-Escalated Enforcement Actions include NOVs that are disposition by NRC as Severity Level IV or minor violations.

Notice of Deviation (NOD) is a written notice describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A NOD requests that a licensee provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

Notices of Nonconformance (NON) is a written notice describing a licensee's contractor's failure to meet commitments which have not been made legally binding requirements by NRC, e.g., a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. [If the contractor deliberately fails to meet the terms of a procurement contract, a violation may be issued under the Deliberate Misconduct Rule, i.e., 10 CFR 50.5.] NONs request that non-licensees provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

Notice of Violation (NOV) is a written notice setting forth one or more violations of a legally binding requirement (see [10 CFR 2.201](#)).

Order is used to modify, suspend, or revoke a license, or for taking other action against a licensee or other person subject to the jurisdiction of the Commission (see [10 CFR 2.202](#)).

Potential Safety or Security Consequences include potential outcomes based on realistic and credible scenarios, i.e., the staff considers the likelihood that safety or security could have been negatively impacted under these scenarios.

Predecisional Enforcement Conference (PEC) may be conducted with a licensee or individual before the NRC makes an enforcement decision when escalated enforcement action

appears to be warranted (i.e., Severity Level I, II, or III violations, civil penalties or orders). The purpose of a PEC is to obtain information that will assist the NRC in determining the appropriate enforcement action.

Regulatory Conference is conducted with a reactor licensee to discuss the significance of findings evaluated through the Significance Determination Process (SDP) with or without associated violations. The focus of such meetings is on the safety significance of the issues and not necessarily on the corrective actions associated with the issues. 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.

Requirement as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

Repetitive Violation is a violation which could reasonably be expected to have been prevented by a licensee's corrective action for the same, or similar, previous violation or a previous licensee finding that occurred within the past two years of the current violation, or that occurred within the period covered by the last two inspections, whichever is longer.

Risk Information is used wherever possible to develop realistic and credible scenarios to use when assessing the safety-significance of a violation and assigning severity levels.

Severity Levels are used (1) to indicate significance of a violation assessed under conventional enforcement; and (2) to determine the appropriate enforcement action to be taken.

Significance as used in this policy for violations that do not involve application of the ROP, describes the seriousness of the violation. The significance of violations assessed under the ROP is determined by the Significance Determination Process (SDP), described in IMC 0609 and related documents.

Substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 describes a situation where it was fortuitous that the resulting exposure or release did not exceed the limits of 10 CFR Part 20. The concern is not the significance of the resulting or potential exposure, but whether the licensee provided adequate controls over the situation, as required, to prevent exceedance of the 10 CFR Part 20 limits.

Tangible Adverse Action has an actual, negative effect on an employee. Factors include, but are not limited to: (1) a monetary effect; (2) downgrade of a position; (3) transfer from a supervisory to non-supervisory position; (4) loss of promotion; and (5) overall performance appraisal downgrade.

Violation is the failure to comply with a requirement.

Willful violations involve either deliberate intent to violate requirements or to falsify information, or careless disregard violation of requirements or for the completeness and accuracy of information provided.

8.0 Table of Base Civil Penalties

TABLE A

a.	Power reactors, gaseous diffusion plants, and Yucca Mountain High Level Waste Repository	\$130,000
b.	Fuel fabricators authorized to possess Category I or II quantities of SNM	\$65,000
c.	Fuel fabricators authorized to possess Category III quantities of SNM, industrial processors, ¹ independent spent fuel and monitored retrievable storage installations, mills and uranium conversion facilities, and gas centrifuge uranium enrichment facilities	\$32,500
d.	Test reactors, contractors, waste disposal licensees, industrial radiographers, and other large material users	\$13,000
e.	Research reactors, academic, medical, or other small material users ²	\$6,500
f.	Loss, abandonment, or improper transfer or disposal of regulated material, regardless of the use or type of licensee: ³	
	1. Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium)	\$50,000
	2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i).....	\$16,500
	3. Sources and devices not otherwise described above	\$6,500

¹Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

²This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

³These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

TABLE B

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table A)
I	100%
II.....	80%
III.....	50%
