
***OFFICE OF ENFORCEMENT
ANNUAL REPORT***

Fiscal Year 2001

U.S. Nuclear Regulatory Commission

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Abstract

This annual report of the U.S. Nuclear Regulatory Commission's Office of Enforcement describes enforcement activities occurring during fiscal year 2001 (October 1, 2000 through September 30, 2001). The report addresses significant policy changes, new initiatives, staff guidance, and implementation issues for the agency's enforcement program. It also highlights significant enforcement actions, and includes summaries of cases involving exercise of discretion, discrimination and actions involving individuals. A variety of statistical tables and figures are also included.

Introduction & Overview

Starting with its predecessor, the Atomic Energy Commission, the NRC has always had some type of enforcement program. The Commission's first public statement of policy on enforcement (the first Enforcement Policy) was published in 1980. Since that time, the Enforcement Policy has been revised numerous times to reflect experience and stakeholder input. Throughout these changes, two goals of the enforcement program remain unchanged—to emphasize the importance of compliance with regulatory requirements, and to encourage prompt identification, and prompt, comprehensive correction of violations.

In recent years, numerous stakeholders have voiced concerns that the enforcement program should be modified to have a more appropriate focus on those issues with the most safety significance. Additionally, the enforcement program was viewed as driving the performance assessment process, being overly burdensome, and being too reliant on civil penalties.

Starting in 1998, the enforcement program began a process of significant change. During the past fiscal year, the enforcement program continued to change to support new initiatives in the agency's oversight programs in conjunction with meeting the agency's performance goals of:

- ▶ maintaining safety;
- ▶ reducing unnecessary burden;
- ▶ making NRC activities and decisions more effective, efficient, and realistic; and
- ▶ increasing public confidence.

Changes in the enforcement program have stemmed from changes in inspection initiatives (e.g., reactor oversight process (ROP)) as well as from changes within the enforcement program itself (e.g., eliminating the practice of aggregating multiple low significance violations into escalated enforcement, and establishment of management-level review group to evaluate the processes for handling discrimination issues). The enforcement program will continue to change based on new initiatives in the inspection programs and new initiatives from within the enforcement program itself. This process reflects the NRC's extensive efforts to address industry and other stakeholder concerns and demonstrates the agency's commitment to more risk-informed, performance-based regulatory and enforcement programs.

Successful communication between both external and internal stakeholders is vital to ensure that the enforcement program is both understood and acknowledged as an integral, valuable piece of the agency's regulatory programs.

Key Principles of the Enforcement Program

- ▶ Consistent with the agency's overall safety mission in protecting the public and environment, enforcement actions should be used as a deterrent to emphasize the importance of compliance with regulatory requirements, and to encourage prompt identification, and prompt, comprehensive correction of violations.
- ▶ Enforcement actions are issued commensurate with the significance of the violation. In assessing the significance of a violation the NRC considers: (1) actual consequences, (2) potential safety consequences, (3) the potential for impacting the NRC's ability to perform its regulatory function, and (4) whether there are any willful aspects.

- ▶ Risk insights are used to assess the significance of violations whenever possible. As individual inspection programs become more risk-informed and performance-based, so too will the respective enforcement program.
- ▶ Enforcement is one part of the overall regulatory process. Enforcement should not be viewed as a punitive tool to promote good performance. Enforcement is integrated with other regulatory tools to respond to performance issues.
- ▶ Compliance remains important to safety. Although changes in inspection oversight processes may result in fewer civil penalties being imposed and fewer Notices of Violations being issued (i.e., greater use of Non-Cited Violations), this does not mean that the agency has reduced its emphasis on the importance of compliance. Violations will continue to be identified and documented and licensees will have the responsibility for taking corrective actions to restore compliance and prevent recurrence.

Enforcement Program Performance Measures

As an agency, the NRC adheres to the Principles of Good Regulation, including independence, openness, efficiency, clarity, and reliability. Efficiency includes recognition that regulatory decisions should be made without undue delay. The Office of Enforcement has established the average time to issue escalated enforcement actions (excluding orders) as a performance measure used by the NRC. (See page 13 for additional discussion on this performance measure.) The performance measure goal is 90 percent of the cases completed, on average, within 90 days. During fiscal year 2001, this standard was met, with enforcement actions issued in an average of 61.5 days. Figure 2 on page 13 includes timeliness trends since fiscal year 1996.

Enforcement actions are occasionally challenged by licensees for several reasons; for example, licensees dispute the requirements, the facts of the case, the application of the Enforcement Policy, or the significance of the violation. A high quality product can be characterized as one where the staff interprets and correctly applies the regulatory requirement, accurately details the facts, and consistently and precisely applies the Enforcement Policy. Therefore, the Office of Enforcement has established a metric for quality of enforcement actions as being less than 30 non-escalated enforcement actions being successfully disputed based on interpretation of the requirements, the facts of the case, or the application of the Enforcement Policy. Routinely, a licensee will provide clarifying information that was not available at the time of inspection, that changes whether or not a noncompliance exists. Violations that are overturned based on supplemental information being provided that was not available for the inspector to make his assessment are not counted in the metric. During FY 2001, more than 1200 non-escalated enforcement actions were issued to reactor and material licensees. Out of these actions, 37 violations were disputed. Of the 37 disputed violations, 15 violations were either withdrawn or revised by the NRC. However, in only two cases can it be suggested that the inspector made an erroneous enforcement decision based on the information at hand. Therefore, this metric was met.

Overview of the Enforcement Program

Violations are identified through inspections and investigations. All violations are subject to civil enforcement action and may also be subject to criminal prosecution. After an apparent violation is identified, it is assessed in accordance with the Commission's Enforcement Policy. The Policy is published as NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions,"

to foster its widespread dissemination. As a living policy statement, revisions are noticed in the *Federal Register*. The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at www.nrc.gov/OE. (Note: After September 11, 2001, the NRC took down its web site pending additional review of information. The enforcement page remained unavailable at the end of the fiscal year.) Because it is a policy statement and not a regulation, the Commission may deviate from the Enforcement Policy as appropriate under the circumstances of a particular case.

There are three primary enforcement sanctions available: Notices of Violation, civil penalties, and orders. A Notice of Violation (NOV) identifies a requirement and how it was violated, formalizes a violation pursuant to 10 CFR 2.201, and normally requires a written response. A civil penalty is a monetary fine issued under authority of Section 234 of the Atomic Energy Act (AEA) or Section 206 of the Energy Reorganization Act (ERA). Section 234 of the AEA provides for penalties of up to \$100,000 per violation per day; but that amount has been adjusted by the Debt Collection Improvement Act of 1996 to be \$120,000. The Commission's order issuing authority under Section 161 of the AEA is broad and extends to any area of licensed activity that affects the public health and safety. Orders modify, suspend, or revoke licenses or require specific actions by licensees or persons. NOV's and civil penalties are issued based on violations. Orders may be issued for violations, or in the absence of a violation, because of a public health or safety issue.

The NRC first assesses the significance of a violation by considering: (1) actual safety consequences; (2) potential safety consequences; (3) potential for impacting the NRC's ability to perform its regulatory function; and (4) any willful aspects of the violation. Violations are either assigned a severity level, ranging from Severity Level IV for those of more than minor concern to Severity Level I for the most significant or are associated with findings assessed through the reactor oversight process's Significance Determination Process (SDP) that are assigned a color of green, white, yellow, or red based on increasing risk significance.

The manner in which a violation is dispositioned is intended to reflect the seriousness of the violation and the circumstances involved. Most of the violations identified in the nuclear industry are of low risk significance. Provided certain criteria in Section VI.A of the Enforcement Policy are met, the NRC will normally disposition Severity Level IV violations and violations associated with green SDP findings as Non-Cited Violations (NCVs). NCVs are documented in inspection reports (or inspection records for some materials licensees) to establish public records of the violations, but are not cited in NOV's which normally require written responses from licensees. Dispositioning violations in this manner does not eliminate the NRC's emphasis on compliance with requirements nor the importance of maintaining safety. Licensees are still responsible for maintaining safety and compliance and must take steps to address corrective actions for these violations. Even minor violations must be corrected. However, given their limited risk significance, they are not subject to enforcement action and are not normally described in inspection reports. This approach for violations that have low risk significance is consistent with the agency's performance goals.

A predecisional enforcement conference or a regulatory conference may be conducted with a licensee before making an enforcement decision if escalated enforcement action appears to be warranted, and if the NRC concludes that it is necessary or the licensee requests it. (Escalated enforcement action is defined as action involving Severity Level I, II, or III violations; violations associated with white, yellow, or red findings evaluated by the SDP; civil penalties; or orders.) If the NRC concludes that a conference is not necessary, it may provide a licensee with an opportunity to respond to the apparent violations before making an enforcement decision. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding

of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective action taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action. The decision to hold a conference does not mean that the agency has determined that a violation has occurred or that enforcement action will be taken. In accordance with the Enforcement Policy, conferences are normally open to public observation.

Civil penalties are normally assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act. Civil penalties are considered for Severity Level III violations. Although civil penalties will not normally be used for violations associated with the ROP, civil penalties (and the use of severity levels) will be considered for issues that are willful, that have the potential for impacting the regulatory process, or that have actual consequences.

The NRC imposes different levels of civil penalties based on a combination of the type of licensed activity, the type of licensee, the severity level of the violation, and (1) whether the licensee has had any previous escalated enforcement action (regardless of the activity area) during the past 2 years or past two inspections, whichever is longer; (2) whether the licensee should be given credit for actions related to identification; (3) whether the licensee's corrective actions are prompt and comprehensive; and (4) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or twice the base civil penalty.

If a civil penalty is to be proposed, a written Notice of Violation and Proposed Imposition of Civil Penalty is issued and the licensee has 30 days to respond in writing, by either paying the penalty or contesting it. The NRC considers the response, and if the penalty is contested, may either mitigate the penalty or impose it by order. Thereafter, the licensee may pay the civil penalty or request a hearing.

In addition to civil penalties, orders may be used to modify, suspend, or revoke licenses. Orders may require additional corrective actions, such as removing specified individuals from licensed activities or requiring additional controls or outside audits. Persons adversely affected by orders that modify, suspend, or revoke a license, or that take other action may request a hearing.

The NRC issues a press release with a proposed civil penalty or order. All orders are published in the *Federal Register*.

Fiscal Year 2001 Highlights:

- ▶ two Enforcement Policy revisions
- ▶ 89 escalated Notices of Violation without civil penalties
- ▶ 20 proposed civil penalties (\$342,900)
- ▶ 13 orders
- ▶ 5 orders imposing civil penalties

Office of Enforcement

The Office of Enforcement (OE) exercises oversight of NRC enforcement programs, provides programmatic and implementation direction to regional and headquarters offices conducting or involved in enforcement activities, and ensures that regional enforcement programs are adequately carried out.

The Office of Enforcement reports to the Executive Director for Operations (EDO) through the Deputy Executive Director for Reactor Programs and coordinates enforcement actions involving materials licensees with the Deputy Executive Director for Materials, Research and State Programs.

The Office of Enforcement has 15 full-time employees (FTEs) assigned for headquarters activities and 10 FTEs assigned for regional activities (although these FTEs report to the Regional Administrators).

In March 2001, Dr. Frank J. Congel replaced Richard W. Borchardt as the Director of OE. Dr. Congel's assignment was one of several senior management changes announced on February 23, 2001.

1. Enforcement Policy Changes

This section describes the two revisions to the Enforcement Policy that were made during fiscal year (FY) 2001.

A. October 4, 2000: Adjustment of Civil Monetary Penalties Based on Inflation

On October 4, 2000, the Commission published a revision to the Enforcement Policy in the Federal Register (65 FR 59274) to increase the civil penalty amounts it can impose against licensees for violations of Commission requirements. The increase, mandated by Congress, adjusts fines for inflation. The maximum civil monetary penalty increases from \$110,000 per violation per day to \$120,000 per violation per day. The Commission also approved increases to the lesser civil penalty amounts in Table 1A of the Enforcement Policy to maintain the same proportional relationships between the penalties. This revision became effective on November 3, 2000. The new civil penalty amounts apply only to violations that occur after November 3, 2000.

B. December 18, 2000: Adjustment of Base Civil Penalties for Loss, Abandonment, or Improper Transfer or Disposal of Sources

On December 18, 2000, the Commission published a revision to the Enforcement Policy in the Federal Register (65 FR 79139) addressing base civil penalties for loss, abandonment, or improper transfer or disposal of sources. This revision was published with a companion final rule involving 10 CFR Parts 30, 31, and 32, governing certain industrial devices containing byproduct material that are licensed pursuant to the general license provisions of 10 CFR 31.5. The inclusion of separate base civil penalty amounts considers both the cost of proper disposal and the relative risk to the public from sources that are lost, abandoned, or improperly transferred or disposed of. The new base civil penalty structure is roughly equivalent to three times the cost of proper disposal. The revision became effective on February 16, 2001.

2. Initiatives, Staff Guidance, & Implementation

This section addresses enforcement initiatives during FY 2001 (including ROP activities), new staff guidance, enforcement training, and enforcement program audits.

A. Reactor Oversight Process (ROP)

The first year of implementation of the reactor oversight process (ROP) and in particular, the manner in which the significance determination process (SDP) assesses the safety significance of inspection findings overall has been successful. The assessment and enforcement programs have reached a degree of integration never before achieved under previous oversight programs. While improvement issues still remain, the ROP provides a sound framework for assessing the performance of power reactor licensees and utilizes the NRC's enforcement authority appropriately through a process that is both objective and transparent.

OE was significantly involved in the initial implementation of the ROP. The enforcement staff has used its years of experience implementing the traditional enforcement program to serve as process facilitators during significance determination and enforcement review panels (SERPs), regulatory

conferences, and post conference caucuses/SERPs. OE utilized its presences in the regional offices to assist in the roll out of new program guidance and to provide feedback to the program office on lessons learned during initial implementation. OE reviews changes to program guidance and provided valuable insights in the areas of no-color findings, timeliness, the disposition of old design issues, downgrades, and the treatment of programmatic issues in a risk-informed framework.

OE was involved in the assessment of the first year of initial implementation. OE participated in the Federal Advisory Committee Act (FACA) Panel which was chartered to assess the performance of the ROP during its first year of implementation. Panel members represent various stakeholder interests including public interest groups, individual utility representatives, the Nuclear Energy Institute (NEI), NRC regional offices, and OE. This group developed a final report detailing the panel's findings which was issued to NRR on May 10, 2001. OE participated in the NRR self-assessment process, which involved a number of internal stakeholder meetings designed to identify initial implementation issues. These issues were then taken to a public workshop which was designed to engage external stakeholders to ensure that the staff had identified the correct issues and offered the public and industry the opportunity to provide feedback on possible solutions. OE also participated in the public workshop as panel members during a number of the sessions. Finally, OE provided comments on and authored the enforcement section of SECY-01-0114, "Results of the Initial Implementation of the New Reactor Oversight Process."

The NRC staff issued final significance determination letters for 26 cases identifying a finding that were "greater than green" during FY 2001. A Notice of Violation (NOV) was issued in association with the identified cases on 21 occasions demonstrating the level of integration between the assessment and enforcement program. These 21 cases represent the majority of the escalated enforcement actions taken in the power reactor area during FY 2001. Licensees disputed/appealed only one case involving a violation during FY 2001. The case involved three white SDP findings associated with an NOV for a violation of 10 CFR Part 20 (As Low As Reasonably Achievable (ALARA)) at the Callaway Plant. The licensee disputed the NOV and appealed the three white findings using their respective processes. OE worked with Region IV and NRR to respond to the licensee's arguments and eventually upheld both the NOV and the findings.

On January 31, 2001, the interim enforcement policy for enforcement discretion that was developed to address inaccurate or incomplete information regarding the submission of performance indicator data expired. OE continues to use the guidance contained in the Enforcement Policy to review the appropriateness for discretion for these type violations on a case-by-case bases. The NRC has issued very few violations in this area since the expiration of blanket discretion and no escalated enforcement has been taken.

OE performed an audit of the impact of the ROP on the timeliness with which the NRC dispositions escalated enforcement actions. This audit concluded that the ROP/SDP has incorporated a more technically complex and time consuming process for determining the safety significance of inspection finding than was used under the traditional enforcement program. (See paragraph J. of this section for additional information.)

OE has been monitoring the number and causes for ROP findings that were preliminarily determined to be "greater than green" and subsequently downgraded prior to the final significance determination. OE has been tracking downgraded findings as an opportunity to learn more about the effectiveness and efficiency of the SDP. In addition, downgraded findings have the potential to impact NRC goals

in the area of improving public confidence and reducing unnecessary regulatory burden. OE is planning to conduct an audit in this area during FY 2002.

B. Discrimination Task Group

On July 27, 2000, the NRC established a management-level review group (Discrimination Task Group) to: (1) evaluate the Agency's handling of matters covered by its employee protection standards, (2) propose recommendations for improvements to the Agency's process for handling such matters, including revisions to guidance documents and regulations as appropriate, (3) to ensure that the application of the NRC enforcement process is consistent with the objective of providing an environment where workers are free to raise safety concerns in accordance with the Agency's employee protection standards, and (4) to promote active and frequent involvement of internal and external stakeholders in the development of recommendations for changes to the process.

A Draft Report and Preliminary Recommendations was issued in May 2001 and was made available for public comment. A second round of public meetings was conducted to solicit comment on the draft report.

Overall in FY2001, nine public meetings were conducted. Three of the meetings in FY 2001 were conducted prior to the issuance of the draft report and six were conducted after the draft report was issued. The meeting dates and locations were:

- ▶ October 5, 2000 - US NRC Region III Office, Lisle, Illinois.
- ▶ October 19, 2000 - Paducah Community College, Paducah, Kentucky.
- ▶ November 1, 2000 - Waterford Town Hall, Waterford, Connecticut.
- ▶ June 25, 2001 - US NRC Technical Training Center, Chattanooga Tennessee.
- ▶ July 11, 2001 - US NRC Region III Office, Lisle, Illinois.
- ▶ July 12, 2001 - Paducah Community College, Paducah, Kentucky.
- ▶ August 9, 2001 - San Luis Obispo Public Library, San Luis Obispo, California.
- ▶ August 14, 2001 - Waterford Town Hall, Waterford, Connecticut.
- ▶ August 16, 2001 - US NRC Headquarters Office, Rockville, Maryland.

Following Commission direction, the Discrimination Task Group delayed the scheduled completion of the Final Report and recommendations until comments on Alternative Dispute Resolution (ADR) were received and evaluated (see paragraph F. of this section). The Discrimination Task Group will include an analysis of this issue and comments in the final report. The final Discrimination Task Group report is scheduled for release June, 2002.

In a continuing effort to promote active and frequent involvement of internal and external stakeholders, OE used its web site to highlight activities of the Discrimination Task Group. This web site includes a variety of information about the Discrimination Task Group, including the announcement of its formation and its charter, as well as information about upcoming meetings and background information on the subject of discrimination. The web site also included an Online Form for public comments on the draft report. (Note: After September 11, 2001, the NRC took down its web site pending additional review of information. The enforcement page remained unavailable at the end of the fiscal year.)

C. Enforcement Actions Against Individuals

Enforcement actions involving individuals is an area that the agency takes very seriously. This issue is currently addressed in Section VIII of the Enforcement Policy. The enforcement staff established an internal working group to evaluate and propose recommendations for improvements to this section of the Enforcement Policy, including clarification on the thresholds for issuing individual enforcement sanctions.

On March 9, 2001, a *Federal Register* notice was issued that sought stakeholder feedback on a proposed revision to the guidance in Section VIII, "Enforcement Actions Involving Individuals," of the Enforcement Policy. The proposed policy revision was available for review until April 22, 2001. The NRC received comments from several stakeholders, including the Union of Concerned Scientists and NEI. The staff is currently evaluating these comments and will propose a policy revision to the Commission coincident with the submittal of the final Discrimination Task Group report.

D. Materials Program Support & Initiatives

OE reviews and concurs on rulemakings related to the materials program to ensure the proposed and final rules and the Enforcement Policy and procedures are consistent. In doing so, OE makes any necessary changes to the Enforcement Policy or procedures. Significant rulemakings completed in FY 2001 include revisions to 10 CFR Part 71 concerning NRC's authority to issue orders or take other enforcement actions necessary to ensure that certificate holders and applicants for a Certificate of Compliance comply with Part 71 requirements, similar to NRC enforcement actions in other program areas, the final rule revising 10 CFR 30, 70, 72, and 150 concerning interim storage for greater than Class C waste, and a proposed revision of 10 CFR Part 20 regarding the skin dose limits. OE participated on working groups for these rulemakings and developed related changes to the Enforcement Policy and Enforcement Manual. An OE staff member also served as a working group member on rulemakings for distribution and use of exempt products and for requirements for immediate reporting of events.

During this fiscal year, OE implemented changes in the Enforcement Policy to increase the civil penalties for cases involving loss or unauthorized disposal of licensed sealed sources. The policy change became effective on February 16, 2001. It provides that cases involving loss of a sealed source will normally result in assessment of a civil penalty of at least three times the cost of authorized disposal. This change was necessary to support the NMSS initiative to improve licensees' accountability of sealed sources and devices. The Commission approved the Policy revision on July 11, 2000.

OE proposed and the Commission approved the staff's intent to exercise enforcement discretion for certain violations of 10 CFR 20.1201, "Occupational exposure," by NRC medical use licensees. Specifically, discretion would be exercised with regard to licensees whose employees received exposure from a combination of byproduct material and X-rays and had direct readings on one or more individual monitoring devices that exceeded 5 rem (0.05 Sv) total effective dose equivalent. These licensees have applied a State approved dose evaluation methodology based on weighting factors for calculating whole body occupational dose from medical X-ray fluoroscopic procedures. NRC regulations do not allow the use of a weighing factor, other than one, to calculate the external whole body dose without prior NRC approval. The NRC concluded that discretion was appropriate since there appears to be some technical merit in the use of the weighing factor formula, there appears to be a misunderstanding of the requirements of 10 CFR Part 20 on the part of some

licensees, and some States accept use of the dose evaluation methods for the X-ray portion of the dose. The NRC is currently evaluating the use of alternative dose evaluation methodologies and is developing its regulatory and technical positions on this issue. The NRC will exercise enforcement discretion for these types of cases until 30 days after the issue is addressed in a Regulatory Issue Summary.

As necessary, OE serves as a member of 10 CFR 2.206 Petition Review Boards, Allegation Review Boards, and NRC Bankruptcy Review Teams to provide guidance and support on associated enforcement issues.

In addition, during the fiscal year, OE reviewed a petition for rulemaking submitted by the Natural Resources Defense Council. The petitioner requested that the Commission's regulations be amended to require that no license be issued to, or retained by, any individual or organization whose principal owner, officer, or senior manager: (1) fails to report engaging in, or having knowledge or evidence of, bribery of, or extortion by, Federal, State, or other regulatory officials; or, (2) has acted in any manner that flagrantly undermines the integrity of the regulatory process of NRC or that of an Agreement State. OE reviewed public comments on the petition. On May 14, 2001, NRC denied the petition because the petitioner has neither identified a statutory requirement for promulgating the regulation nor identified a need for such regulation since NRC already has the authority to take the actions requested by the petitioner, and because the NRC believes that imposition of these types of actions should be considered on a case-by-case basis.

E. Reactor Program Support & Initiatives

In addition to activities associated with the ROP, the enforcement staff have supported other initiatives in the reactor program.

OE reviews and concurs on rulemakings related to the reactor program to ensure the proposed and final rules and the Enforcement Policy and procedures are consistent. In doing so, OE makes any necessary changes to the Enforcement Policy or procedures.

During fiscal year 2001, the enforcement staff reviewed proposed rulemaking to revise Appendix E to 10 CFR Part 50, "Emergency Planning and Preparedness for Production and Utilization Facilities," to resolve an ambiguity in the regulations regarding NRC approval of nuclear power plant licensee-initiated changes to emergency action levels (EALs). The staff recommended and the Commission approved the recommendation to exercise enforcement discretion for compliance with the current requirement for changes to EALs until rulemaking is complete.

During fiscal year 2001, the enforcement staff implemented an enforcement approach to address revisions to 10 CFR 50.59, "Changes, tests, and experiments," that would be consistent with the ROP framework. During the transitional period between the new rule and the old rule, OE conducted review panels with NRR, OGC, and the region to evaluate all potential 10 CFR 50.59 violations. These panels were successful in ensuring a high level of consistency for determining when and to what extent violations of 10 CFR 50.59 occurred.

OE also continues to conduct review panels with NRR, OGC, and the region to evaluate all proposed violations of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants" (the Maintenance Rule). The performance-based nature of this rule poses a continuing challenge to inspectors in identifying violations. These panels have been successful in

ensuring a high level of consistency for determining when violations of the Maintenance Rule have occurred. During FY 2000, OE established a working group of OE, NRR, OGC, and regional representatives to develop comprehensive Maintenance Rule enforcement guidance that would eliminate the need for the panels to ensure consistency and identification of Maintenance Rule violations. During FY 2001, OE posted a notice on its web site that sought public comment on a comprehensive revision of the Maintenance Rule enforcement guidance. Two stakeholders provided comments on the draft guidance. OE is evaluating these comments and continuing to refine the draft guidance as experience is gained with the new rule section requiring risk assessments. OE will continue to conduct the panels until regional inspector training sessions, currently being conducted, are completed and the enforcement guidance is finalized and placed in the Enforcement Manual. At that time OE plans to propose that the panels be discontinued.

Another challenge facing the agency is the appropriate treatment and regulatory response to security matters at nuclear facilities. Physical protection against the threat of radiological sabotage or theft of nuclear material is a fundamental obligation of all licensees. Drills using mock adversaries (force-on-force exercises, such as Operational Safeguards Response Evaluations (OSREs)) are an important method for evaluating the effectiveness of licensee's protective strategies. When the staff proposed the revised ROP, bench marking and feasibility reviews were completed for the SDPs, including the physical protection SDP. However, the bench marking and feasibility for the physical protection SDP did not include detailed consideration of OSREs or other force-on-force exercises. In evaluating the first OSRE to be performed under the ROP, the SDP produced a significance determination that was substantially inconsistent with past positions (in that it was more significant) and did not appear appropriate for the circumstances. During late FY 2000, OE took part in developing a recommendation to the Commission to address this issue on an interim basis. In FY 2001, OE provided a staff member to the program office (NRR) safeguards function to re-engineer the process. Significant progress was made until the events of September 11, 2001, diverted resources from the effort. OE will continue to work with NRR in developing an acceptable approach to assess the significance and the appropriate enforcement approach for issues identified during evaluated drills and exercises.

OE also supported NRR in the evaluation of the Safeguards Performance Assessment (SPA) program, an industry-led initiative that puts licensees in charge of developing and executing exercises and drills to test its readiness to protect their facilities. The Commission approved a one-year pilot program for the SPA and the concept of an enforcement discretion policy for licensees who volunteer to participate in the SPA program. The staff was in the process of seeking the Commission's approval of a recommended policy when the events of September 11, 2001, caused the Commission to defer consideration of SPA pending further evaluation of safeguards and security issues and NRC regulations and requirements.

F. Alternative Dispute Resolution

The Administrative Dispute Resolution Act (Act) of November 15, 1990, requires, in part, that agencies examine alternative means of resolving disputes in connection with enforcement actions. As required by the Act, the agency developed a policy in 1992 (57 FR 36678) to address what has come to be known as Alternative Dispute Resolution (ADR). The policy states that opportunities may arise for use of ADR in enforcement.

The enforcement staff actively worked with the Office of the General Counsel (OGC) and consulted with other federal agencies to explore the use of an ADR policy in the NRC enforcement arena. While it appears that other agencies have used ADR in the area of civil enforcement, its use in the

NRC enforcement process poses significant challenges. Specifically, the use of ADR presents challenges to the long established enforcement program. ADR is any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, etc.

The staff provided the Commission with a preliminary overview of ADR. Public as well as internal comment is being solicited and will be evaluated prior to making a final recommendation to the Commission at the end of FY 2002.

G. Increasing Public Confidence

The NRC views building and maintaining public trust and confidence that the NRC is carrying out its mission as an important performance goal for the agency. To reach this goal, the NRC must be viewed as an independent, open, efficient, clear and reliable regulator. This will be accomplished by providing our stakeholders with clear and accurate information about, and a meaningful role in, our regulatory programs.

Since its initial publication in 1980, the NRC Enforcement Policy has been structured to emphasize the importance of compliance with regulatory requirements, and to encourage prompt identification, and prompt, comprehensive correction of violations.

However, because of the recent significant changes and the somewhat complex nature of the enforcement process, the general public, and many of our stakeholders do not fully understand how the enforcement program works.

The Commission took a major step to be more open in 1996 when it published a revision to the Policy to provide that most predecisional enforcement conferences will be open to public observation. Since then, the NRC has taken additional steps to provide meaningful opportunities to participate in the enforcement program.

OE wants to actively engage stakeholders to educate them on how the enforcement program is changing to support new initiatives in the agency's oversight programs in conjunction with meeting the agency's performance goals of maintaining safety; reducing unnecessary burden; making NRC activities and decisions more effective, efficient, and realistic; and increasing public confidence. OE has and will continue to conduct more stakeholder meetings to address the enforcement program and enforcement issues. In addition to the ROP workshops and Discrimination Task Group public meetings, enforcement staff have participated in enforcement stakeholder activities, including:

- ▶ R.W. Borchardt, Director, OE, served as a panelists in two breakout sessions at the 13th annual Nuclear Regulatory Information Conference (RIC) on March 24, 2001. He addressed enforcement issues during the Revised Reactor Oversight Process session and he addressed the enforcement process for discrimination issues during the Allegation session.
- ▶ R. W. Borchardt, Director, OE served as a panelist on the ROP Initial Implementation Evaluation Panel (IIEP). The IIEP was established on October 17, 2000, at the direction of the Commission to convene a panel under the Federal Advisory Committee Act to evaluate the first year's implementation of the ROP. The IIEP issued its final report on May 10, 2001.

- ▶ A member of the OE staff served as a panelist in a breakout session of the March 24, 2001, RIC that addressed the Maintenance Rule and 10 CFR 50.59, "Changes, tests, and experiments."
- ▶ The Region II Enforcement Officer provided training for and participation of a DOL OSHA investigator during a Regional Counsel counterpart meeting conducted in November 2001.
- ▶ The Region III staff provided a presentation at a regional OSHA investigator counterpart meeting on the NRC's allegation and enforcement processes and the interactions with DOL and OSHA on discrimination cases in February 2001.
- ▶ The Region III enforcement staff provided presentations on the Enforcement Policy and enforcement program to visiting regulators from Korea on August 1, 2001.

To provide accurate and timely information to all interested stakeholders and enhance the public's understanding of the enforcement program, OE continues to electronically publish enforcement information on its home page on the Internet, including the current Enforcement Policy; copies of significant enforcement actions issued to reactor and materials licensees, non-licensees (vendors, contractors, and certificate holders), and individuals since 1996; and upcoming predecisional enforcement conferences. (Note: After September 11, 2001, the NRC took down its web site pending additional review of information. The enforcement page remained unavailable at the end of the fiscal year.) During FY 2001, OE modified the web site to include a web page to address the history of the Enforcement Policy. OE also provides summaries of significant enforcement actions issued to materials licensees through the NMSS Newsletter.

In an effort to increase stakeholder involvement in Enforcement Policy and guidance development, OE established a public participation page on the enforcement web site. OE has and will continue to use this site as a way for interested stakeholders to provide input on various enforcement issues (such as the Discrimination Task Force and Maintenance Rule guidance) through online comment forms.

OE staff also participated in the initiative to redesign the agency's external web site. This included the development and release of a prototype on July 11, 2001, for internal and external stakeholders to comment on. The agency is continuing to refine the prototype and plans on releasing the new web site by the end of winter 2002. The enforcement web site will be easier to locate on the agency's new web site because it will show up as a rollover under the "What We Do," icon.

H. Enforcement Guidance

During FY 2001, OE issued two change notices to the Enforcement Manual. Change Notice Number 2 was issued on November 9, 2000, and Change Notice Number 3 was issued on April 27, 2001. The changes covered a broad range of issues and included numerous changes to the standard formats for enforcement actions and correspondence. Change Notice Number 3 also announced that the Enforcement Manual would: (1) no longer be published as a NUREG document and (2) no longer be published in paper. Eliminating the NUREG publication process and maintaining the Enforcement Manual solely on the web increases the office's efficiency, reduces administrative costs to the agency, and increases the effectiveness of enforcement guidance because the most current guidance is readily available to all staff.

During FY 2001, OE issued two Enforcement Guidance Memoranda (EGMs). EGMs are normally used to transmit temporary guidance, but may also be used to transmit expedited guidance for Enforcement Policy application or enforcement program implementation.

- ◆ EGM 01-001 - Interim Guidance for Enforcement of 10 CFR 73.55(a) - Issued April 3, 2001.
- ◆ EGM 99-005, Rev. 1 - Guidance for Generally Licensed Devices - Issued April 27, 2001.

On December 5, 2000, R.W. Borchardt, the Director, OE, issued a memorandum to the program office directors and the regional administrators entitled, "Dispositioning of Enforcement Issues in a Risk-Informed Framework." This memorandum reinforced that, while changes to inspection and oversight programs resulted in fundamental changes in the disposition of noncompliances, that the importance of compliance with regulatory requirements had not diminished and that proper disposition of violations was necessary. This memorandum is included as Appendix I.

I. Enforcement Training

Successful communication for internal stakeholders is vital to ensure that the enforcement program is both understood and acknowledged as an integral, valuable piece of the agency's regulatory programs. OE has and will continue to conduct training to address the enforcement program and emerging enforcement issues. Headquarters enforcement staff have provided internal stakeholders with the following training:

- ▶ Enforcement staff provided training on the enforcement program for the course, "The NRC: What It Is and What It Does," in June 2001.
- ▶ Enforcement staff helped provide training on the enforcement program included in the "Fundamentals of Inspection," course conducted in Region II in March 2001.
- ▶ Enforcement staff provided a presentation on implementation of the Enforcement Policy regarding Agreement State licensees working under reciprocity in Federal Waters at Public Meeting sponsored by Region IV in Lafayette, Louisiana on May 10, 2001.
- ▶ Deputy Director, OE, provided training to new OI investigators on the enforcement process.

The regions also provided training on the enforcement program in the regional offices.

- ▶ Region I enforcement staff provided training to Region I Division of Nuclear Materials Safety in January 2001 and November 2001. The training addressed a number of issues, including: (1) differentiating between Severity Level IV violations and minor violations, (2) proper handling of contested violations, (3) use of NRC Form 591, and (4) improper disposal of licensed material.
- ▶ Region I enforcement staff provided training to regional staff regarding the existence of Hidden Text in documents and the resultant potential for release of sensitive information.
- ▶ Region II Enforcement Officer and an enforcement specialist from OE provided training on the enforcement program included in the "Fundamentals of Inspection," course conducted in the region in March 2001.

- ▶ Region II Enforcement Officer participated in the Regional Counsel counterpart meeting in November 2001.
- ▶ Region III enforcement staff provided training to Region III inspection staff in October 2000, and February 2001. The training incorporated lessons learned from audits and previous cases in Region III.
- ▶ Region III enforcement staff provided an abbreviated “Fundamentals of Inspection,” course to new regional inspectors on August 28, 2001.
- ▶ Region IV enforcement staff provided training for all Region IV Division of Nuclear Materials Safety staff (all materials inspectors and managers) on minor violations, determining the significance of violations, materials licensee enforcement trends, changes in base civil penalty amounts and current enforcement issues.
- ▶ Region IV enforcement staff conducted the enforcement portion of the “Fundamentals of Inspection,” course for all summer interns in the technical divisions (5 engineering associates) and new inspectors.

J. Audits

OE staff lead specific topic focused audits of the Regional and program office enforcement programs to identify inconsistent application of the Enforcement Policy and enforcement guidance.

Audit of Disputed Violations - 4/12/2001

OE performed an audit of the disputed violations received by the agency. The purpose was to determine the number of disputes received, whether the disputes were handled appropriately and whether the regions had processes for ensuring that disputes received were documented for lessons learned. For the purpose of this audit, a disputed violation was defined as a documented denial received from a licensee.

OE conducted a review of the licensee’s concerns and the region’s responses to all of the disputed violations in the year 2000 in ADAMS and the Enforcement Action Tracking System (EATS) and a cursory review of the disputed violations identified in 1999 in EATS. Through these reviews, OE looked at timeliness, accuracy, whether or not the guidance in the Enforcement Manual was met, and compared the actions taken with the guidance in the Enforcement Manual.

After reviewing the audit findings, OE found that the agency met the Quality Metric (less than 30 enforcement actions successfully disputed based on interpretation of the requirements, the facts of the case, or application of the enforcement policy) set for 2001 in 1999 (8 cases) and 2000 (10 cases). However, only 11 of 69 cases in the past two years met the timeliness goals outlined in the Enforcement Manual. Additional administrative findings identified inconsistencies in the guidance provided in the Enforcement Manual and the methods used to track disputed violations.

The audit report included recommendations to address the specific administrative findings and a recommendation to address the timeliness issue. The recommended approach would be to respond to

the licensee within 30 days to acknowledge the dispute and provide status and a tentative timetable on a case-by-case basis for the resolution of the dispute.

Audit of Unsubstantiated Office of Investigations Reports - 5/17/2001

OE conducted an audit of unsubstantiated Office of Investigations (OI) reports reviewed by the OE staff. The purpose was to determine whether the violations identified in unsubstantiated OI reports were dispositioned in accordance with the enforcement policy.

OE conducted a review of all OI reports generated in the year 2000. Of the 108 unsubstantiated reports reviewed, 16 reports described violations in the synopsis or in the report. These reports and the documentation available through ADAMS for the licensees involved were reviewed to determine if the violations were dispositioned in accordance with the Enforcement Policy. In all but one of the 16 reports, the violations were either dispositioned or still open. In the remaining case, since the violation was minor, it was not dispositioned on the docket.

The audit finding above resulted in one recommendation with regard to dispositioning minor violations identified in OI reports. If a violation is identified in the OI report synopsis or the OI report closure letter, the violation should be dispositioned on the docket to provide a public record of the agency's actions.

Audit of the Timeliness of Escalated Cases Handled under the Revised Reactor Oversight Process - 8/2/2001

OE conducted an audit of the timeliness of escalated actions dispositioned under the revised reactor oversight process (ROP). Timeliness was selected as a measure of process performance because it directly impacts two of the NRC performance goals: (1) making NRC decisions more effective, efficient, and realistic; and (2) increasing public confidence. Maximizing process efficiency is a critical component in effective regulation when faced with the constraint of limited resources. Timely and predictable decision making is also important in the agency's effort to increase public confidence.

The results of the audit showed that there has been a substantive increase in the amount of time that it takes to process an escalated assessment and enforcement case under the revised ROP. At the time of the audit, the average process time for all open and closed cases was 98 days from the final inspection exit to the issuance of the action, which is approximately twice the value recorded for all closed cases in FY 2000.

The audit demonstrated that there are three critical phases of the assessment and enforcement process. First, the time from when an issue is first identified by an inspection or revealed in an event to the time that a SERP is held. This represents the time that it takes the NRC staff to provide an initial risk characterization for an issue. This process is integral to the revised ROP and often requires the involvement of centralized risk expertise in headquarters and the Regions as well as increased coordination with licensees to obtain information needed for risk determination. Currently, this phase of the process is not monitored by any management metric. Second, the conference preparation time is the time required to develop a case from the SERP to a Regulatory Conference. This phase has been the most time intensive for the cases handled to date. Licensee responsiveness plays a role in the time delays associated with this area. Finally, the agency decision time measures the time period from the regulatory conference to the issuance of the final determination letter. This

portion of the process is similar to the traditional enforcement program and only becomes a major impact on timeliness for cases requiring policy decisions.

Audit of Non-Escalated Materials Enforcement Actions - 8/22/2001

Based on information gathered from the regional audits addressed below, OE reviewed 100 percent of non-escalated enforcement actions issued to materials licensees during the second and third quarters of FY 2001. This included a review of violations included in inspection reports as well as those documented on NRC Form 591, "Safety and Compliance Inspection." The audit was performed to ensure accuracy and consistency with the Enforcement Policy and the Enforcement Manual. OE also tracked statistics on the number of inspections performed, the number of inspections with no violations, the number of both cited and Non-Cited Violations, and how many actions were dispositioned using Form 591. Statistics were also formulated for selected types of materials licensees. OE did not identify any significant concerns or adverse trends. However, use of Form 591s should continue to be encouraged to improve inspection efficiency.

Audit of Enforcement Actions in ADAMS - Ongoing

During the last quarter of FY 2001, OE began an audit of enforcement documents in the NRC's record management system, Agencywide Documents Access and Management System (ADAMS). The purpose of the audit was to review the manner in which enforcement-related documents were entered into ADAMS to ensure that these documents could be properly accessed and retrieved. The preliminary results indicated that many documents were difficult to retrieve due to improper document profiling.

Regional Audits

In addition to the headquarters lead audits, the regional enforcement staff also conducted audits of the region's enforcement program. During this fiscal year, the regions routinely reviewed non-escalated reactor and materials enforcement actions to determine: (1) if enforcement issues were adequately described in the inspection reports and if they were properly dispositioned in accordance with the Enforcement Policy and applicable enforcement guidance; and (2) if violations were properly documented and received the appropriate significance categorization either by SDP color or severity level. The audits determined that, for the most part, non-escalated actions were properly dispositioned in accordance with NRC guidance. Some issues that were identified included insufficient documentation, failure to follow process procedures in soliciting OE review, and failure to use standard language in enforcement correspondence.

During this fiscal year, Region I enforcement staff also performed a self-assessment regarding the existence of Hidden Text in documents and the resultant potential for release of sensitive information. Region II enforcement staff routinely participated in Division led peer reviews of inspection reports to ensure inspection report clarity, compliance with Agency policies and procedures (e.g., Manual Chapter 0610*), and whether inspection findings were adequately supported by the report details. In addition to audits, Region IV's enforcement staff participated in nearly all inspection debriefings for reactor and materials inspections to assure that violations of requirements were being properly dispositioned.

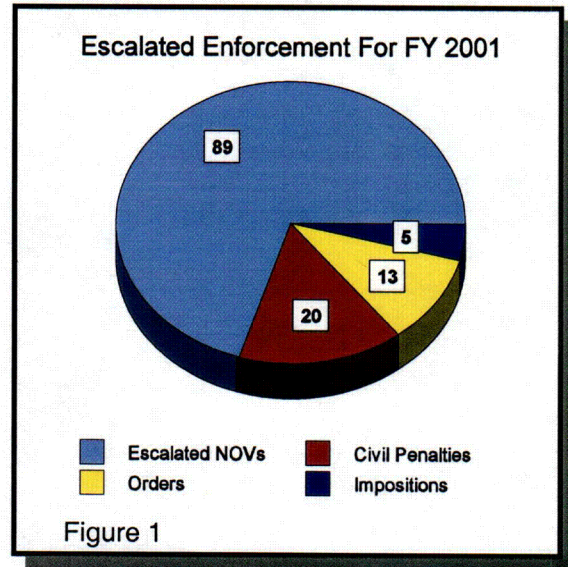
3. Escalated Enforcement and Administrative Items

During fiscal year 2001, the agency issued 127 escalated enforcement items.

Note that an enforcement case or enforcement action issued to a licensee may include more than one individual enforcement item (e.g., a civil penalty and an escalated NOV without a civil penalty).

Escalated NOV's are individual Severity Level I, II, or III violations issued without a civil penalty and individual violations associated with white, yellow, or red SDP ROP findings.

Figure 3 on page 21 includes a numerical breakdown of escalated enforcement items issued by each regional and program office. Figure 4 on page 23 provides a breakdown of escalated enforcement items based on the type of licensee, non-licensee, or individual.



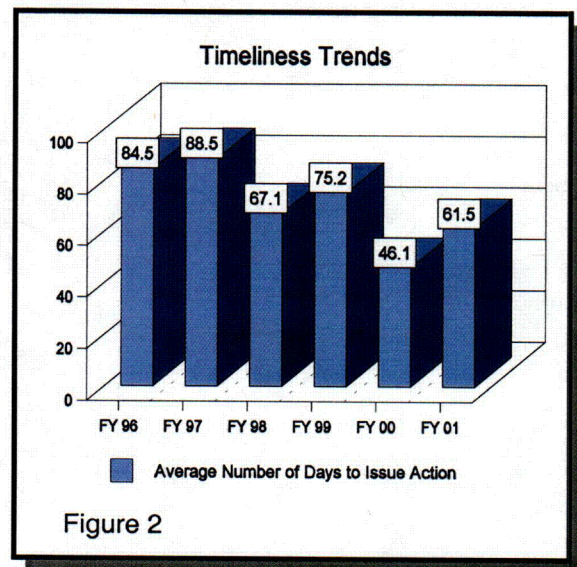
Enforcement Actions With OI Reports

Of the 89 escalated NOV's, 33 (or 37%) had an OI report associated with them. Of the 20 proposed civil penalties, 11 (or 55%) had an OI report. Of the 13 enforcement orders, 11 (or 85%) had an OI report.

Timeliness of Enforcement Actions

The average time to issue escalated enforcement actions (excluding orders) is a performance measure used by the NRC.

For actions that do not involve an investigation, the measurement period begins on the date of the inspection exit meeting. For actions that involve an investigation, but no referral to the Department of Justice (DOJ), the measurement period begins on the date of issuance of the report of investigation. For actions that involve an investigation and referral to DOJ, the measurement period begins on the date DOJ informs the NRC that the NRC may proceed with civil action. For actions that involve discrimination and Department of Labor (DOL) proceedings, the measurement period begins when there is an appropriate decision in the DOL process or sufficient evidence from the NRC's processes to support actions.



The performance measure goal is 90 percent of the cases completed, on average, within 90 days. During fiscal year 2001, this standard was met, with enforcement actions issued in an average of 61.5 days.

A. Escalated Notices of Violation (Without Civil Penalties)

During fiscal year 2001, the agency issued 89 escalated Notices of Violation (without civil penalties). (This number reflects the number of enforcement items versus the number of enforcement cases issued during the year.) Twelve of these items were issued to individuals and two were issued to non-licensees. See Section 5 for more information on enforcement items issued to individuals and other non-licensed persons (i.e., vendors and certificate holders). Nineteen of these issues were associated with a white SDP finding from the ROP, one issue was associated with a yellow SDP finding, and one issue was associated with a red SDP finding. Appendix A includes a short summary description of each of the enforcement issues issued to licensees.

B. Civil Penalty Actions

During fiscal year 2001, the agency issued 20 civil penalty issues. Appendix B includes a short summary description of each of these items. Table 2 includes statistical information on civil penalties. As stated before, an enforcement action may include more than one individual civil penalty issue.

C. Orders

During fiscal year 2001, the agency issued thirteen enforcement orders. Eleven of the orders were issued to individuals and two were issued to non-licensees. (See Section 5 for more information on enforcement actions issued to individuals, vendors, and certificate holders.) In addition to these orders, five civil penalty imposition orders were issued. Appendix C includes a short summary description of the five impositions that were issued to licensees.

D. Demands for Information

A Demand for Information is an administrative enforcement tool issued to a licensee or other person that enables the NRC to determine whether an order or other enforcement action should be issued. OE issued one Demand for Information (DFI) to an individual during fiscal year 2001. This action is summarized in Appendix D.

E. Escalated Enforcement Trends

During fiscal year 2001, the agency issued 127 individual escalated items. Figure 5 show graphical representations of enforcement trends since fiscal year 1995. Table 2 also shows civil penalty statistical comparisons.

It should be noted that direct correlations between the fiscal years is difficult because of the major policy changes that have occurred over the years. Although the number of individual escalated issued is greater than last year, with the exception of actions to radiographers, the number of escalated enforcement issues by type of licensee, individual, and non-licensee is similar to last year. For example, the number of escalated issues for operating reactors in FY 2000 was 24 versus 25 for FY 2001. The number of escalated issues involving radiographers, however, went from six in FY 2000 to 21 in FY 2001.

4. Cases Involving Exercise of Discretion

Section VII of the Enforcement Policy addresses those cases where, notwithstanding the normal guidance contained in the Policy, the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case. During FY 2001, fifteen cases that would be considered escalated involved an exercise of discretion.

Section VII.A

Section VII.A of the Enforcement Policy provides that the NRC may increase a sanction up to its full enforcement authority where the action is warranted without applying the normal civil penalty assessment process (Section VI.C.2). It also provides for either increasing the amounts of civil penalties or proposing civil penalties where the normal process would result in no civil penalty. During FY 2001, four cases involved this exercise of discretion.

***Midwest Testing, Inc.
Bridgeton, Missouri***

EA 01-119

On July 20, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of a portable density gauge that resulted in the loss of the gauge. Although the normal civil penalty assessment process would have fully mitigated the civil penalty, a penalty was proposed in accordance with Section VII.A.1.g of the Enforcement Policy to emphasize the significance of the loss of licensed material in this case.

***Southeast Missouri State University
Cape Girardeau, Missouri***

EA 00-201

On September 13, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$11,000 was issued for a Severity Level I problem involving the failure to: (1) control activities to limit doses in accordance with requirements, (2) make necessary surveys to determine radiological hazards, and (3) possess only material authorized on the University's license. Although a base civil penalty would be warranted based on the normal civil penalty assessment process, the NRC exercised enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy and increased the penalty by 100 percent based on the licensee's particularly poor performance.

***Stork/Twin City Testing
St. Paul, Minnesota***

EA 00-169

On December 15, 2000, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$11,000 was issued for a Severity Level III violation involving the deliberate failure to have two individuals present during radiography at a temporary job site. The NRC exercised discretion in accordance with Section VII.A.1 of the Enforcement Policy and increased the amount of the civil penalty based on the duration of the violation, the financial gain as a result of the violation, and the willful nature of the violation.

*University of Medicine & Dentistry of New Jersey
Newark, New Jersey*

EA 01-186

On September 25, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem. The problem included two violations involving the failure to control and maintain constant surveillance of material in controlled or unrestricted areas and the failure to make surveys (i.e., evaluations of the radiological conditions and potential hazards incident to the use, transfer, release, disposal, or presence of radioactive material or other sources of radiation). Although the normal civil penalty assessment process would have fully mitigated the civil penalty, a base civil penalty was proposed in accordance with Section VII.A.1.g of the Enforcement Policy to emphasize the significance of the loss of licensed material in this case.

Section VII.B.1

This section is currently marked as "reserved" in the Enforcement Policy.

Section VII.B.2

Section VII.B.2 provides that civil penalties or NOV's need not be issued for violations identified during extended shutdowns or work stoppages if they are licensee-identified, based upon activities prior to the events leading to the shutdown, non-willful, and not categorized at Severity Level I. This exercise of discretion provides that the licensee's decision to restart the plant requires NRC concurrence. During FY 2001, no cases involved this exercise of discretion.

Section VII.B.3

Section VII.B.3 provides that civil penalties or NOV's need not be issued for old design issues that are licensee-identified and corrected and were not likely to have been identified earlier through routine surveillance. During FY 2001, no cases involved this exercise of discretion.

Section VII.B.4

Section VII.B.4 provides that civil penalties or NOV's need not be issued for violations identified due to previous escalated enforcement action if the violation was licensee-identified, it has a similar root cause as a previous escalated action, it does not substantially change the regulatory concern out of the initial action, and it was corrected. During FY 2001, no cases involved this exercise of discretion.

Section VII.B.5

Section VII.B.5 provides that civil penalties or NOV's need not be issued for violations involving discrimination issues if they are licensee-identified and corrected. During FY 2001, no cases involved this exercise of discretion.

Section VII.B.6

Section VII.B.6 provides that civil penalties or NOV's need not be issued for violations involving special circumstances. During fiscal year 2001, eleven cases involved this exercise of discretion.

***Alaska Industrial X-Ray, Inc.
Anchorage, Alaska***

EA 01-015 and EA 01-016

On April 25, 2001, a Notice of Violation was issued for two Severity Level III violations. The first violation involved the deliberate failure to assure that two qualified radiography personnel were present during radiographic operations. Although a civil penalty would normally be proposed for this case, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty because the violation would not have been identified had the involved radiographer not voluntarily provided information during the investigation. The second violation involved the failure of a radiographer's assistant to wear an alarm ratemeter while involved in radiographic operations.

***Allied Inspection Services, Inc.
St. Clair, Michigan***

EA 01-099

On June 4, 2001, a Notice of Violation was issued for a Severity Level III violation involving the willful failure to test exposure devices using depleted uranium (DU) shielding and an "S" tube configuration for DU contamination within the required interval. Although a base civil penalty would normally be proposed for this case, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty because the safety significance of the violation was low; there was no tangible benefit to the individual or licensee; and the individual accepted responsibility, cooperated with the NRC, and voluntarily disclosed the violation to the NRC.

***Arthur Brisbane Child Treatment Center
Farmingdale, New Jersey***

EA 99-171

On August 16, 2001, a Notice of Violation was issued for a Severity Level III problem involving deliberate improper disposal of radioactive material generated from the cleanup of a broken exit sign and deliberate submittal of inaccurate information to the NRC. Although a base civil penalty would normally be proposed for this case, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty because the licensee was issued a civil penalty for the event by the State of South Carolina and the licensee is no longer a general licensee.

***Duke Energy Corporation
Oconee Nuclear Station***

EA 01-161

On July 30, 2001, the NRC issued a letter documenting its decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrain from issuing enforcement action for a violation of the Technical Specifications for reactor coolant system pressure boundary leakage. Enforcement discretion was warranted because the violation involved an equipment failure that was not avoidable by reasonable quality assurance measures or management controls and was considered to have resulted from matters not within the licensee's controls.

***Gulf Coast Testing Laboratory, Inc.
Pinellas Park, Florida***

EA 01-023

On January 24, 2001, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a violation involving the licensee's use of a portable moisture density gauge at a location within the NRC's jurisdiction without first obtaining an NRC specific or general license. Although the failure to file reciprocity is normally cited as a Severity Level III violation, the NRC

concluded that the lack of clarity of a license condition within the licensee's Florida license contributed to the licensee's misinterpretation that it's Florida license permitted use of the licensed material anywhere in the State of Florida.

***Jameson Memorial Hospital
New Castle, Pennsylvania***

EA 01-103

On September 25, 2001, a letter was issued documenting the NRC's decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy for a Severity Level III violation involving the failure to maintain the whole body dose to a physician below 5 rem. The licensee replied in a letter dated March 22, 2001, that it had used a different dose evaluation methodology that concluded that it was within the regulatory limit. Although this methodology was not specifically approved for use by the licensee, the NRC concluded that discretion was warranted because the licensee's dose evaluation methodology is accepted by the State of Pennsylvania and is similar to other accepted methodologies. The NRC is currently evaluating the use of alternative dose evaluation methodologies and is developing its regulatory and technical positions on this issue.

***NDT Services, Inc.
Caguas, Puerto Rico***

EA 00-031

On October 17, 2000, a Notice of Violation was issued for a Severity Level I violation based on multiple failures of two former Radiation Safety Officers (RSOs) to ensure that radiation safety activities were performed in accordance with approved procedures and regulatory requirements. Discretion was exercised pursuant to Section VII.B.6 of the Enforcement Policy and a civil penalty was not proposed because NDTS transferred all licensed material to authorized recipients; NDTS was no longer conducting business or licensed activities; and NDTS requested that the license be terminated.

***Oklahoma State University
Stillwater, Oklahoma***

EA 00-203

On December 7, 2000, a Notice of Violation was issued for a Severity Level III violation associated with the use of licensed material (tritiated thymidine) in an unapproved and unauthorized location. Although a civil penalty would normally be proposed by the civil penalty assessment process, the NRC exercised discretion in accordance with Section VII.B.6 and did not propose a penalty because of the licensee's corrective actions and the low risk associated with the small amount of radioactive material.

***Tennessee Valley Authority
Browns Ferry Nuclear Plant***

EA 00-163

On October 27, 2000, a Notice of Violation was issued for a Severity Level III violation involving the failure to perform required evaluations for out-of-tolerance measuring and test equipment. Discretion was exercised in accordance with Section VII.B.6 of the Enforcement Policy and a civil penalty was not proposed because the NRC concluded that the underlying safety significance involving the unprocessed nonconformance evaluations was low and because safety related plant component operability was unaffected.

*Texas Engineering Experiment Station
Texas A&M University System*

EA 01-029

On May 21, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,400 was issued for a Severity Level II problem involving the transportation of radioactive material from the research reactor facility to St. Croix, the Virgin Islands. The Severity Level II problem included the failure, prior to shipment of radioactive material, to ensure that each closure device of the package was properly installed, secured, and free of defects and the failure to train all hazardous material workers involved in the shipment. Although a base civil penalty would normally be assessed in accordance with the civil penalty assessment process, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and proposed 50 percent of the penalty because the sequence of events was influenced, in part, by the actions of transportation workers who failed to adequately respond when the integrity of the transportation container was breached.

*Union Electric Company
Callaway Plant*

EA 01-093

On April 25, 2001, the NRC issued a letter documenting its decision to exercise enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrain from issuing enforcement action for a violation of 10 CFR 50.59, "Changes, tests, and experiments." Enforcement discretion was warranted because while this was a violation of the 10 CFR 50.59 rule in effect at the time the change to the facility was made, it would not have violated the current 10 CFR 50.59 rule.

5. Actions Against Individuals and Non-Licensees

During FY 2001, the agency issued 27 actions against individuals and non-licensees. The following sections provide a breakdown of the actions based on whether the actions were issued to licensed or non-licensed individuals, or non-licensees (vendors, contractors, or certificate holders). The section on orders includes orders that were issued to individuals that prohibited or limited their activities in NRC-licensed activities during the fiscal year.

A. Actions Against Licensed Individuals

During FY 2001, the agency issued two NOVs to licensed individuals. Appendix D includes a short summary description of these actions.

B. Actions Against Non-Licensed Individuals

During FY 2001, the agency issued 11 orders and 10 NOVs to non-licensed individuals. Appendix D includes a short summary description of each of these actions.

C. Actions Against Non-Licensees (Vendors, Contractors, and Certificate Holders)

During FY 2001, the agency issued two orders and two NOVs to non-licensees. Appendix E includes a short summary description of each of these actions.

6. Cases Involving Discrimination

The NRC vigorously pursues enforcement action against licensees or licensee contractors who discriminate against their employees for raising nuclear safety concerns. Acts of discrimination include discharge and other adverse actions that relate to an employee's compensation, terms, conditions, or privileges of employment.

The NRC places a high value on nuclear industry employees being free to raise potential safety concerns, regardless of the merits of the concern, to both licensee management and the NRC. Unlawful adverse actions taken against employees for raising safety concerns may create a "chilling effect" on the employee or other workers who may wish to raise concerns. That is, the employees may not feel that they are free to raise concerns without fear of retaliation.

Therefore, one of the goals of the NRC's enforcement program is to ensure, through appropriate enforcement action against a licensee or licensee contractor (and when warranted, against the individual personally responsible for the act of discrimination), that adverse employment actions taken against licensee or contractor employees for raising safety concerns do not have a chilling effect on the individual or others who may wish to report safety concerns.

During FY 2001, the agency issued eight enforcement actions for violations involving discrimination. Seven actions were issued to licensees and one was issued to a vendor. These cases are listed here and discussed further in the appropriate appendix. Figure 6 on page 29 includes escalated enforcement trends since fiscal year 1995 for discrimination cases.

<i>United States Enrichment Corporation</i>	<i>NOV</i>	<i>EA 00-047</i>
<i>Earthline Technologies</i>	<i>\$17,600 Civil Penalty</i>	<i>EA 99-290</i>
<i>Temple University Hospital</i>	<i>\$8,800 Civil Penalty</i>	<i>EA 00-156</i>
<i>Union Electric Company (Callaway)</i>	<i>\$55,000 Civil Penalty</i>	<i>EA 01-005</i>
<i>United States Enrichment Corporation</i>	<i>\$88,000 Civil Penalty</i>	<i>EA 99-110</i>
<i>Department of Veterans Affairs (Philadelphia)</i>	<i>Imposition of \$5,500 Civil Penalty</i>	<i>EA 00-086</i>
<i>Tennessee Valley Authority</i>	<i>Imposition of \$110,000 Civil Penalty</i>	<i>EA 99-234</i>
<i>Wackenhut Nuclear Services</i>	<i>NOV</i>	<i>EA 01-006</i>

7. Hearing Activities

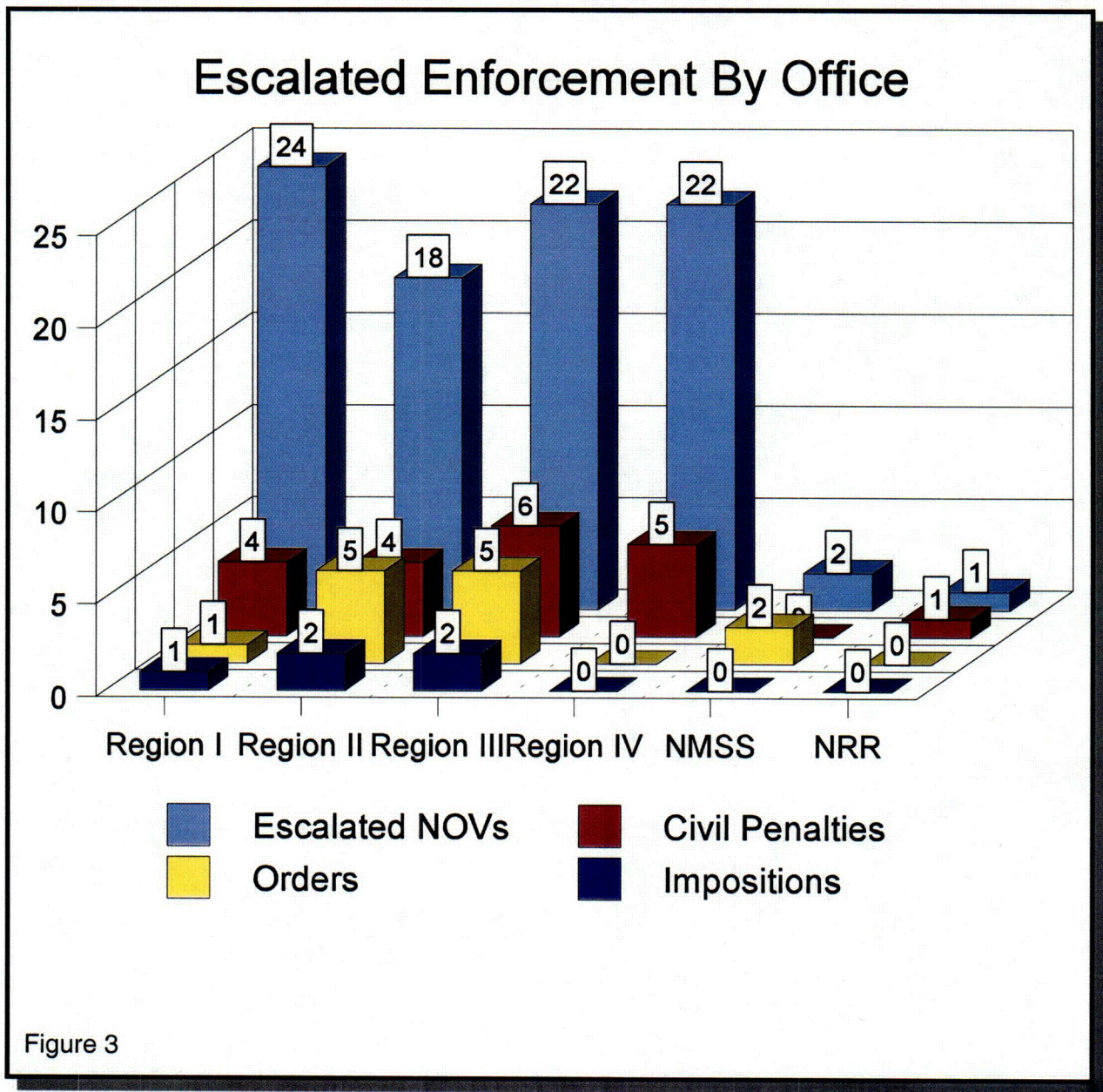
During FY 2001, two cases had some type of hearing activity, i.e., hearing request, settlement, dismissal, discovery, hearing proceeding, appeal, etc. Appendix F includes a short summary of these cases.

8. 10 CFR 2.206 Petitions

During FY 2001, one case had some type of petition activity pending before the Office of Enforcement during the fiscal year, i.e., petition request, NRC staff review, Director's Decision, etc. Appendix G includes a short summary of this case.

9. Withdrawn Actions

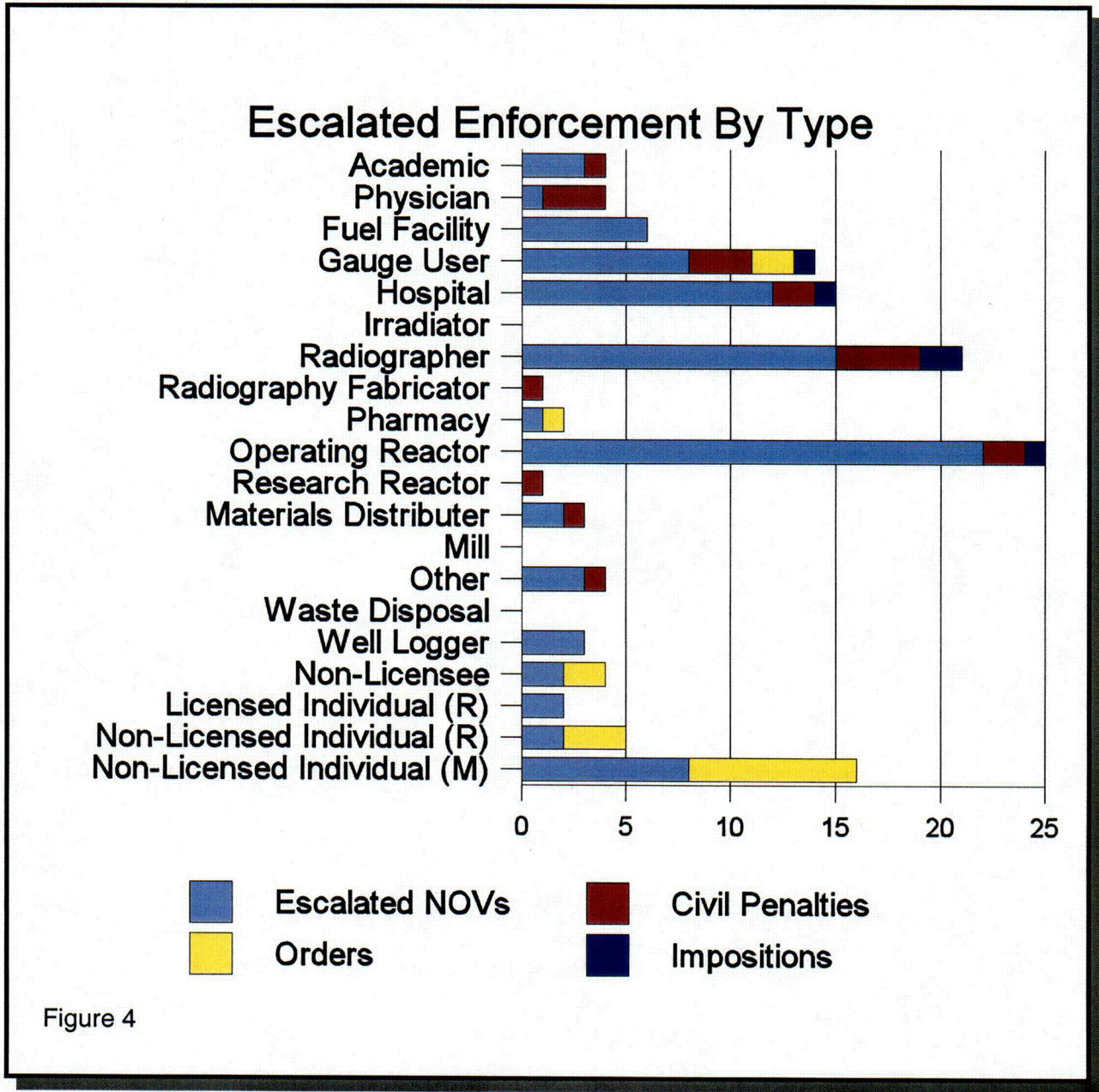
During FY 2001, two civil penalty actions were withdrawn. Appendix H includes a short summary of these cases.



COZ

**TABLE 1: ESCALATED ENFORCEMENT ITEMS
BY TYPE OF LICENSEE, NON-LICENSEE, OR INDIVIDUAL**

Type of Licensee	Escalated NOV's (w/o penalty)	Civil Penalties	Orders	Impositions	Total FY 01
Academic	3	1	0	0	4
Physician	1	3	0	0	4
Fuel Facility	6	0	0	0	6
Gauge User	8	3	0	1	12
Hospital	12	2	0	1	15
Irradiator	0	0	0	0	0
Radiographer	15	4	0	2	21
Radiography Fabricator	0	1	0	0	1
Pharmacy	0	1	0	0	1
Operating Reactor	22	2	0	1	25
Research Reactor	0	1	0	0	1
Materials Distributer	2	1	0	0	3
Mill	0	0	0	0	0
Other	3	1	0	0	4
Waste Disposal	0	0	0	0	0
Well Logger	3	0	0	0	3
Non-Licensee	2	0	2	0	4
Licensed Individual (reactor)	2	0	0	0	2
Non-Licensed Individual (reactor)	2	0	3	0	5
Non-Licensed Individual (materials)	8	0	8	0	16
Total	89	20	13	5	127



NOTE: Licensed and Non-Individual (R) = individuals working for reactor licensee
 Non-Licensed Individual (M) = individuals working for materials licensee

TABLE 2: CIVIL PENALTY INFORMATION

	FY 01	FY 00	FY 99	FY 98	FY 97	FY 96	FY 95
Number of Proposed Civil Penalties	20	16	24	76	112	78	59
Number of Imposed Civil Penalties	5	4	5	6	10	9	10
Number of Civil Penalties Paid	17	16	21	68	108	56	47
Amount of Proposed Civil Penalties	\$342,900	\$446,600	\$1,062,600	\$5,206,600	\$7,422,300	\$3,832,500	\$2,263,950
Amount of Imposed Civil Penalties	\$139,900	\$231,550	\$913,750	\$115,650	\$285,250	\$44,500	\$615,250
Amount of Civil Penalties Paid	\$294,100	\$430,500	\$1,070,850	\$6,493,573	\$6,657,300	\$3,014,000	\$2,265,949

NOTE: This table includes information based on individual civil penalty assessments. An enforcement action may include more than one individual civil penalty. In addition, a civil penalty may be proposed in one fiscal year and paid or imposed in another fiscal year.

Escalated Enforcement Trends

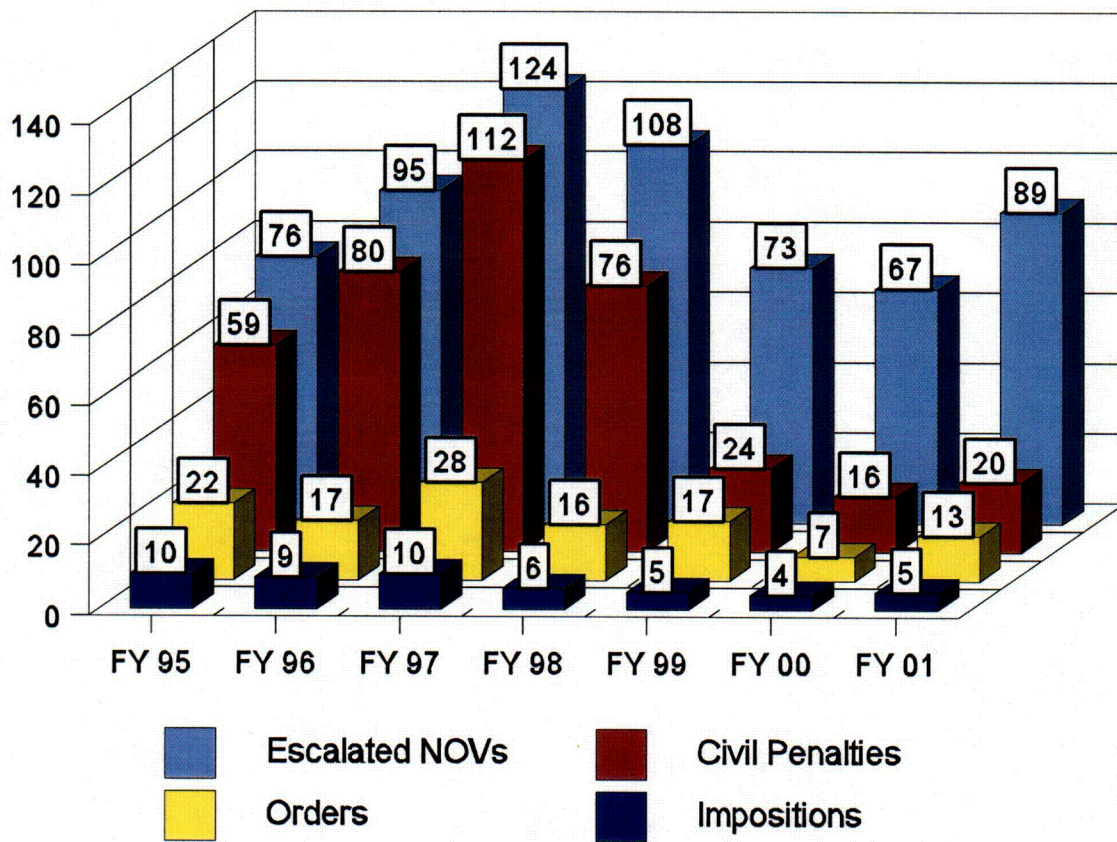


Figure 5

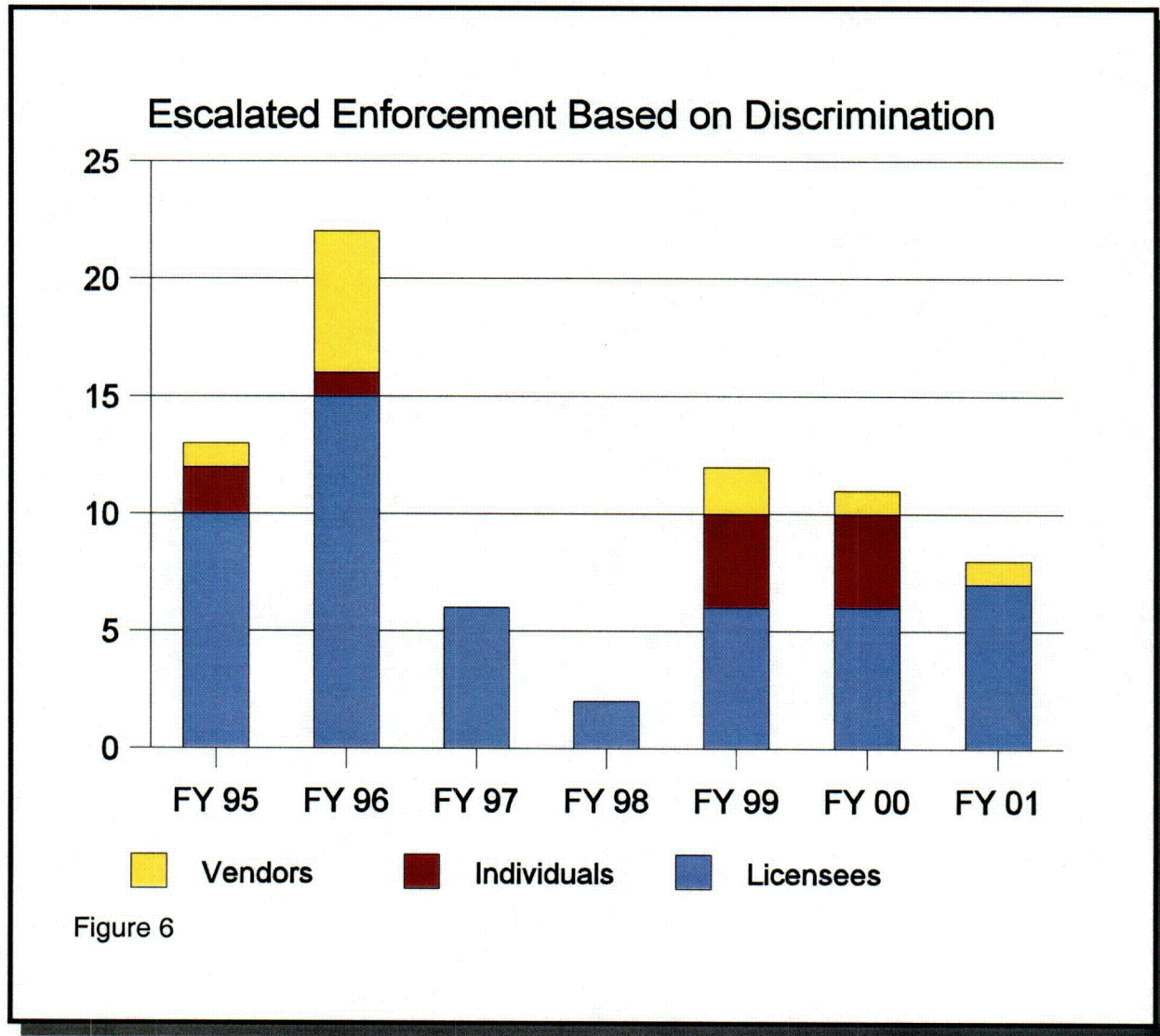


Figure 6

APPENDIX A: SUMMARY OF ESCALATED NOTICES OF VIOLATION (WITHOUT CIVIL PENALTIES)

Accurate NDE & Inspection, LLC
Opelousa, Louisiana

EA 00-300

On January 11, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure of Accurate NDE & Inspection, a licensee of the State of Louisiana, to file NRC Form 241, "Report of Proposed Activities in Non-Agreement State," prior to conducting radiographic operations using iridium-192 on off-shore oil/gas platforms in waters off of the Gulf of Mexico in areas of Federal jurisdiction.

Alaska Industrial X-Ray, Inc.
Anchorage, Alaska

EA 01-015 and EA 01-016

On April 25, 2001, a Notice of Violation was issued for two Severity Level III violations. The first violation involved the deliberate failure to assure that two qualified radiography personnel were present during radiographic operations. Although a civil penalty would normally be proposed for this case, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty because the violation would not have been identified had the involved radiographer not voluntarily provided information during the investigation. The second violation involved the failure of a radiographer's assistant to wear an alarm ratemeter while involved in radiographic operations.

Allied Inspection Services, Inc.
St. Clair, Michigan

EA 01-099

On June 4, 2001, a Notice of Violation was issued for a Severity Level III violation involving the willful failure to test exposure devices using depleted uranium (DU) shielding and an "S" tube configuration for DU contamination within the required interval. Although a base civil penalty would normally be proposed for this case, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty because the safety significance of the violation was low; there was no tangible benefit to the individual or licensee; and the individual accepted responsibility, cooperated with the NRC, and voluntarily disclosed the violation to the NRC.

Allied Inspection Services, Inc.
St. Clair, Michigan

EA 01-213

On September 17, 2001, a Notice of Violation was issued for a Severity Level III violation involving the a radiographer's failure to wear a direct reading dosimeter and a personal dosimeter at all times during radiographic operations.

AmerGen Energy Company, LLC
Three Mile Island

EA 01-115

On July 5, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving the motor driven emergency feedwater (EFW) pump. The violation was based on the licensee's failure to promptly identify and correct a significant condition adverse to quality that resulted

Appendix A

in the 'A' motor driven EFW pump being inoperable for longer than the technical specification allowed outage time.

***Arthur Brisbane Child Treatment Center
Farmingdale, New Jersey***

EA 99-171

On August 16, 2001, a Notice of Violation was issued for a Severity Level III problem involving deliberate improper disposal of radioactive material generated from the cleanup of a broken exit sign and deliberate submittal of inaccurate information to the NRC. Although a base civil penalty would normally be proposed for this case, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and refrained from issuing a civil penalty because the licensee was issued a civil penalty for the event by the State of South Carolina and the licensee is no longer a general licensee.

***Black Warrior Wireline Corporation
Columbus, Mississippi***

EA 01-095

On May 27, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure of Black Warrior Wireline Corporation, a licensee of the State of Louisiana, to file NRC Form 241, "Report of Proposed Activities in Non-Agreement State, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," prior to conducting well logging operations using americium-241/beryllium sealed sources in offshore waters off of the Gulf of Mexico in areas of Federal jurisdiction.

***Carolina Power & Light Company
Shearon Harris Nuclear Power Plant***

EA 00-263

On February 2, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving the inoperability of the charging/safety injection pump (CSIP). The violation was based on the licensee's failure to maintain operability of the CSIP in accordance with the technical specifications.

***Central Michigan Community Hospital
Mount Pleasant, Michigan***

EA 99-005

On April 2, 2001, a Notice of Violation was issued for a willful Severity Level III violation involving the use of byproduct material (technetium-99m) by an unqualified individual who was not under the supervision of an authorized user.

***CE Nuclear Power LLC
Festus, Missouri***

EA 00-200

On December 8, 2000, a Notice of Violation was issued for a Severity Level III problem based on the failure to properly classify, describe, mark, and label packages containing radioactive material when the licensee shipped uranium/gadolinium pellets and enriched pellets to Sweden and the failure to promptly complete a Nuclear Material Transaction Report for the shipment of natural uranium pellets to Sweden.

***Citizens General Hospital
New Kensington, Pennsylvania***

EA 01-134

On June 1, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to provide required security and control of two licensed sources, each of which contained approximately 40 millicuries of gadolinium-153.

***Columbia/HCA Healthcare Corporation
Anchorage, Alaska***

EA 00-221

On October 13, 2000, a Notice of Violation was issued for a Severity Level III violation based on the failure of the licensee's quality management program to include written procedures to ensure brachytherapy treatments were in accordance with written directives that resulted in four medical misadministrations.

***Consolidated Edison Company of New York
Indian Point 2***

EA 00-179

On November 20, 2000, a Notice of Violation was issued for a violation associated with a red SDP finding. The violation involved the licensee's failure to identify and correct a significant condition adverse to quality involving the presence of primary water stress corrosion cracking flaws in the steam generator tubes, despite opportunities during the 1997 refueling outage. As a result, one of the tubes failed on February 15, 2000, when the reactor was at 100% power.

***Constellation Nuclear
Calvert Cliffs***

EA 01-206

On September 19, 2001, a Notice of Violation was issued for a violation associated with a yellow SDP finding involving the failure of the auxiliary feedwater pump (AFW) turbine bearing. The violation cited the licensee's failure to follow procedures involving reassembly of the AFW pump outboard bearing housing.

***Cooperheat-MQS Inspection, Inc.
Houston, Texas***

EA 01-166

On September 18, 2001, a Notice of Violation was issued for a Severity Level III violation involving multiple failures to use certified radiographers while performing radiography operations.

***Detroit Edison Company
Fermi 2 Nuclear Power Plant***

EA 01-092

On September 14, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving a catastrophic bearing failure of the emergency diesel generator (EDG). The violation was cited against the licensee's failure to establish adequate design control measures for modifying the oil sight glass indicator and associated piping for the EDG outboard bearing.

Appendix A

District Health Partners, L.P.
George Washington University Hospital

EA 01-020

On March 22, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure of the licensee's quality management program to include a written procedure to ensure that brachytherapy applicators were adequately secured during treatment so that the intended treatment site received the prescribed exposure treatment and other sites received the planned dose.

Draper Aden Associates
Richmond, Virginia

EA 01-107

On June 4, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to properly block and brace a portable gauge prior to and during transport that resulted in the loss of control of the gauge.

Duke Energy Corporation
Oconee Nuclear Station

EA 00-137

On November 9, 2000, a Notice of Violation was issued for a violation associated with a white SDP finding. The violation involved the failure to adequately establish design control measures involving the high pressure injection system using the spent fuel pool as a suction source following a tornado.

Duke Energy Corporation
Oconee Nuclear Station

EA 01-125

On July 18, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding. The violation involved inadequate procedures for aligning the station auxiliary service water pump to mitigate a tornado and the licensee's failure to take prompt corrective action for this adverse condition even though the licensee had identified the condition approximately one year earlier.

Earthline Technologies (previously RMI Environmental Services)
Ashtabula, Ohio

EA 01-037

On September 24, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to licensed material in an unrestricted area and failure to control and maintain constant surveillance of licensed material. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$17,600 was also issued in conjunction with this case (see EA 99-290 in Appendix B).

Exelon Generation Company, LLC
Clinton

EA 01-147

On August 22, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding. The violation involved the licensee's failure to correct self-identified deficiencies disclosed through control room communicator drills in 1999 and 2000.

Exelon Generation Company, LLC
Peach Bottom

EA 01-148

On August 22, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding. The violation involved the licensee's failure to maintain adequate emergency facilities and equipment (public address and evacuation alarm system) required to support an emergency response.

Framatome ANP Richland, Inc.
Richland, Washington

EA 99-154

On June 5, 2001, a Notice of Violation was issued for a Severity Level III problem involving willfully: (1) shipping licensed material in unapproved packages, (2) exporting licensed material that did not meet required packaging requirements, (3) certifying in shipping papers that an export shipment complied with applicable shipping requirements, and (4) failing to maintain approved operating procedures.

Franklin Hospital Corporation
Franklin, Virginia

EA 01-200

On August 1, 2001, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to maintain control and constant surveillance of licensed byproduct material involving radiopharmaceuticals in an unrestricted area.

GeoConsult, Inc.
San Juan, Puerto Rico

EA 00-279

On January 23, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to maintain control and constant surveillance of licensed material (a moisture density gauge containing 10 millicuries of cesium-137 and 50 millicuries of americium-241) in an unrestricted area.

Gilmore and Associates, Inc.
New Britain, Pennsylvania

EA 01-010

On February 13, 2001, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to maintain control and constant surveillance of licensed material (a portable gauge containing 8 millicuries of cesium-137 and americium-241) in an unrestricted area.

Global X-Ray & Testing Corporation
Morgan City, Louisiana

EA 01-046

On March 8, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to perform radiation surveys following radiographic exposures using pipeliner radiography devices. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 for a Severity Level III violation was also issued in conjunction with this case (see EA 00-272 in Appendix B).

Appendix A

Griffith Electric Company, Inc.
Trenton, New Jersey

EA 01-114

On May 4, 2001, a Notice of Violation was issued for a Severity Level III violation involving the transfer of licensed byproduct material (EXIT signs containing tritium) without a specific license.

Gulf Coast Testing International Inspection, Inc.
Houma, Louisiana

EA 00-294

On March 27, 2001, a Notice of Violation a Severity Level III violation involving the failure of a radiographer to wear an alarming ratemeter when conducting radiographic operations. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,000 for a Severity Level III violation was also issued in conjunction with this case (see EA 00-293 in Appendix B).

Idaho State University
Pocatello, Idaho

EA 01-081

On April 5, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance over licensed material (1.5 millicuries of iodine-125) that was in a controlled area.

Law Engineering and Environmental Services, Inc.
Dorado, Puerto Rico

EA 00-302 and EA 00-304

On January 24, 2001, a Notice of Violation was issued for a Severity Level III problem and a Severity Level III violation involving an event that occurred during a radiography source exchange. The Severity Level III problem involved: (1) failure to survey, (2) failure to follow procedures in accordance with manufacturer's instructions, (3) failure to receive proper training prior to use, and (4) failure to perform required visual and operability check prior to using the source changer. The Severity Level III violation involved the radiographer's and Radiation Safety Officer's failure to stop activities and read the survey meter upon the sounding of the alarm ratemeter.

Macia Consulting Enterprises, Inc.
Poughkeepsie, New York

EA 01-123

On May 31, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to maintain required security of two portable nuclear density gauges containing 8 millicuries of cesium-137 and 40 millicuries of americium-241 at a temporary job site (Newark International Airport).

Mallinckrodt, Inc.
Maryland Heights, Missouri

EA 00-178

On December 21, 2000, a Notice of Violation was issued for a Severity Level III violation involving the failure to properly survey. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$125,000 was also issued for a Severity Level I problem (see EA 00-178 in Appendix B).

***Mallinckrodt, Inc.
Maryland Heights, Missouri******EA 01-108***

On July 3, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to prepare a package containing licensed material that was transported outside the confines of the licensee's plant, so that under conditions normally incident to transport, the radiation levels would not exceed 200 millirems per hour at any point on the external surface of the package.

***Martin Marietta Aggregates
Raleigh, North Carolina******EA 01-163***

On August 21, 2001, a Notice of Violation was issued for a Severity Level III violation involving the unauthorized transfer of a fixed gauging device containing 50 millicuries of cesium-137 to a metal recycling facility that was not authorized to receive and possess such licensed material.

***Medical X-Ray Center, P.C.
Sioux Falls, South Dakota******EA 01-018***

On February 15, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material (iridium-192) that was in a controlled or unrestricted area and not in storage.

***Mercy Hospital
Pittsburgh, Pennsylvania******EA 01-133***

On June 12, 2001, a Notice of Violation was issued for a Severity Level III violation involving the transfer of depleted uranium to an entity (South Pittsburgh Cancer Center) that was not authorized to receive such material under the terms of an NRC or Agreement State license.

***National Institutes of Health
Bethesda, Maryland******EA 01-001***

On January 17, 2001, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to make surveys that were necessary to assure compliance with the regulations that limit radiation exposure to the skin of a minor to 5 rem.

***NDT Services, Inc.
Caguas, Puerto Rico******EA 00-031***

On October 17, 2000, a Notice of Violation was issued for a Severity Level I violation based on multiple failures of two former Radiation Safety Officers (RSOs) to ensure that radiation safety activities were performed in accordance with approved procedures and regulatory requirements. Discretion was exercised pursuant to Section VII.B.6 of the Enforcement Policy and a civil penalty was not proposed because NDTS transferred all licensed material to authorized recipients; NDTS was no longer conducting business or licensed activities; and NDTS's license was terminated on October 16, 2000.

**Nebraska Public Power District
Cooper Nuclear Station**

EA 01-154

On August 13, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding. The violation involved the failure to correct a risk-significant performance weakness that was identified in an emergency planning exercise in August 2000, such that it repeated during an April 2001 drill.

**Niagra Mohawk Power Corporation
Nine Mile Point Nuclear Station**

EA 01-011

On May 2, 2001, a Notice of Violation was issued for a Severity Level III violation involving the deliberate failure of an NRC-licensed chief shift operator to provide complete and accurate information on health history forms that were required for the Fitness-For-Duty regulations.

**Nondestructive & Visual Inspection, Inc.
Harvey, Louisiana**

EA 01-216

On September 28, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure of Nondestructive & Visual Inspection, Inc., a licensee of the State of Louisiana, to file NRC Form 241, "Report of Proposed Activities in Non-Agreement State," prior to conducting radiographic operations using curie quantities of iridium-192 on off-shore platforms in waters off of the Gulf of Mexico in areas of Federal jurisdiction.

**North Atlantic Energy Services Corporation
Seabrook Station**

EA 01-032

On June 29, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving the emergency diesel generator (EDG). The violation was based on the licensee's failure to take adequate corrective actions to address degraded components associated with the EDG.

**Nuclear Management Company, LLC
Kewanee Nuclear Power Plant**

EA 00-214

On February 28, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving the emergency response staffing drills. The violation was based on the fact that timely augmentation of response capabilities was not available and that the licensee failed to correct deficiencies that were identified as a result of several monthly drill failures.

***Northeast Nuclear Energy Company
Millstone Unit 2***

EA 00-236

On December 6, 2000, a Notice of Violation was issued for a violation associated with a white SDP finding involving the degraded condition of the turbine-driven auxiliary feedwater (TDAFW) pump. The violation was based on the licensee's failure to promptly correct a significant condition adverse to quality involving the speed control mechanism for the TDAFW.

***Nuclear Management Company, LLC
Prairie Island Nuclear Power Plant***

EA 00-282

On February 20, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving the potential inability of the deep cooling water (service water) pumps to perform their intended safety function. The violation was based on the licensee's failure to ensure that design control measures would verify the adequacy of the design and would assure that appropriate quality standards were specified.

***Oklahoma State University
Stillwater, Oklahoma***

EA 00-203

On December 7, 2000, a Notice of Violation was issued for a Severity Level III violation associated with the use of licensed material (tritiated thymidine) in an unapproved and unauthorized location. Although a civil penalty would normally be proposed by the civil penalty assessment process, the NRC exercised discretion in accordance with Section VII.B.6 and did not propose a penalty because of the licensee's corrective actions and the low risk associated with the small amount of radioactive material.

***Pechiney Rolled Products, LLC
Ravenswood, West Virginia***

EA 00-232

On December 1, 2000, a Notice of Violation was issued for a Severity Level III problem involving: (1) the failure to properly control access to licensed material contained in an Accuracy Model U-6 fixed gauge, (2) the failure to ensure workers were properly trained on the operation and maintenance of the gauging system, and (3) the removal and relocation of the gauge by individuals not authorized to do so.

***Perf-O-Log, Inc.,
Broussard, Louisiana***

EA 01-060

On April 10, 2001, a Notice of Violation was issued for a Severity Level III violation based on Perf-O-Log Inc., a State of Louisiana Licensee, conducting well logging operations using americium-241/beryllium sealed sources in offshore waters without filing a Form 241, "Report of Proposed Activities in Non-Agreement State," with the NRC.

***PPL Susquehanna, LLC
Susquehanna Steam Electric Station***

EA 01-012

On March 12, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving a substantial potential for personnel to sustain external radiation exposures in excess of occupational exposure limits. The violation involved the failure to perform an adequate evaluation of radiation hazards to assure that occupational dose limits would not be exceeded.

***PPL Susquehanna, LLC
Susquehanna Steam Electric Station***

EA 01-187

On September 13, 2001, a Notice of Violation was issued for a violation associated with a white SDP finding involving certain emergency preparedness functions for an emergency at the site not being met. The violation involved the failure to ensure that procedures were adequate and staffing levels were maintained to meet the site's emergency plan requirements.

***Sibley Memorial Hospital
Washington, DC***

EA 00-245

On February 26, 2001, a Notice of Violation was issued for a Severity Level III violation involving failure of the licensee's quality management program to include an adequate written procedure to meet the objective that each administration of byproduct material or radiation from byproduct material is in accordance with a written directive.

***Sioux Valley Hospital Association
Sioux Falls, South Dakota***

EA 00-177

On November 30, 2000, a Notice of Violation was issued for a Severity Level III violation. The action was based on multiple failures to implement the licensee's quality management program from calendar year 1997 through April 2000. The technologist failed to verify, prior to administering byproduct material, that the specific details of the administration were in accordance with the written directive. These failures contributed to 66 recordable events and one medical misadministration.

***South Carolina Electric & Gas Company
Virgil C. Summer***

EA 00-238

On December 28, 2000, a Notice of Violation was issued for a violation associated with a white SDP finding involving the inoperability of the turbine driven emergency feedwater (TDEFW) pump. The violation cited the licensee's failure to properly follow procedures which resulted in the failure to comply with the technical specification for TDEFW pump operability.

***Southeast Missouri State University
Cape Girardeau, Missouri***

EA 01-151

On September 13, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to a strontium-90 sealed source with a nominal activity of 20 millicuries and failure to control and maintain constant surveillance of this licensed material. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$11,000 for a Severity Level I problem was also issued (see EA 00-201 in Appendix B).

***St. Mary's Medical Center
Evansville, Indiana***

EA 00-193

On October 27, 2000, a Notice of Violation was issued for a Severity Level III violation involving the failure to prepare written directives prior to administering quantities of sodium iodide iodine-131 for diagnostic whole-body imaging.

***Stork MSC
Louisville, Kentucky***

EA 01-194

On August 3, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to control or maintain constant surveillance of a radiography exposure device containing approximately 29 curies of iridium-192 in an unrestricted area.

***SWVA, Inc. d/b/a Steel of West Virginia, Inc.
Huntington Beach, West Virginia***

EA 01-128

On June 27, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to three gauges containing 500 mCi of cesium-137 (Cs-137) and failure to control and maintain constant surveillance of this licensed material.

***Tennessee Valley Authority
Browns Ferry Nuclear Plant***

EA 00-163

On October 27, 2000, a Notice of Violation was issued for a Severity Level III violation involving the failure to perform required evaluations for out-of-tolerance measuring and test equipment. Discretion was exercised in accordance with Section VII.B.6 of the Enforcement Policy and a civil penalty was not proposed because the NRC concluded that the underlying safety significance involving the unprocessed nonconformance evaluations was low and because safety related plant component operability was unaffected.

***Testwell Laboratories, Inc.
Ossining, New York***

EA 01-149

On June 14, 2001, a Notice of Violation was issued for a Severity Level III violation based on Testwell Laboratories, Inc., a licensee of the State of New York, using portable gauges in New Jersey, a non-Agreement State, without a specific license from the NRC and without filing a Form 241, "Report of Proposed Activities in Non-Agreement State," with the NRC.

***Titan Atlantic Group
Raleigh, North Carolina***

EA 00-191

On October 12, 2000, a Notice of Violation was issued for a Severity Level III violation based on the performance of radiography in an NRC jurisdiction by individuals who were not certified through a radiographer certification program.

Appendix A

***Union Electric Company
Callaway***

EA 00-208

On January 9, 2001, a Notice of Violation was issued for a violation associated with three white SDP findings involving performance deficiencies in the licensee's procedures and engineering controls designed to achieve occupational doses that are as low as is reasonably achievable (ALARA).

***Union Electric Company
Callaway***

EA 01-130

On July 23, 2001, a Notice of Violation was issued for a violation associated with a white SDP inspection finding involving the essential service water (ESW) pump. The violation cited the inoperability of two essential service water trains for approximately 132 hours.

***United States Enrichment Corporation
Paducah Gaseous Diffusion Plant***

EA 99-256 and EA 00-047

On January 3, 2001, A Notice of Violation was issued for a Severity Level III problem involving: (1) creation of classified information on an unclassified computer system and (2) deliberate failure to report the infraction to the NRC Regional Administrator per regulation; and (3) the deliberate failure to initiate a corrective action report for the security infraction. A Notice of Violation was also issued for a Severity Level III violation involving the Corporation discriminating against a security supervisor through the actions of the then site Security Manager for having engaged in protected activities at the Paducah Gaseous Diffusion Plant.

***South Carolina Electric & Gas Company
Virgil C. Summer Nuclear Station***

EA 01-150

On August 31, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to perform an adequate written safety evaluation to determine whether a change to the facility involved an unreviewed safety question.

***Weatherford Drilling International, Inc.
Houston, Texas***

EA 01-030

On February 5, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure of Weatherford International, Inc., a licensee of the State of Louisiana, to file NRC Form 241, "Report of Proposed Activities in Non-Agreement State," prior to conducting well logging operations using americium-241/beryllium sealed sources in offshore waters in areas of Federal jurisdiction.

***Westinghouse Electric Company
Columbia, South Carolina***

EA 01-174

On August 31, 2001, a Notice of Violation was issued for a Severity Level III problem involving multiple violations related to an event involving the failure of criticality safety controls on the licensee's ammonium diuranate process lines.

Wheeling Hospital, Inc.
Wheeling, West Virginia

EA 00-187

On October 12, 2000, a Notice of Violation for a Severity Level III was issued based on the failure to maintain adequate security or control of licensed materials (brachytherapy device containing an 8.98 curie iridium-192 sealed source and a transportation container containing a 3.422 curie iridium-192 sealed source).

X-Ray Inspection, Inc.
Alvin, Texas

EA 01-215

On September 27, 2001, a Notice of Violation was issued for a Severity Level III violation involving the failure to have two qualified individuals present during radiography conducted at a temporary jobsite.

APPENDIX B: SUMMARY OF PROPOSED CIVIL PENALTIES

*Bayou Inspection Services, Inc.
Amelia, Louisiana*

EA 00-297

On April 2, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 was issued for a Severity Level III problem involving a willful failure to notify the NRC prior to conducting industrial radiography operations in offshore waters (i.e., failure to file NRC Form 241) and a willful failure to obtain an exemption from the NRC for the use of pipeliner radiography devices in offshore waters.

*Biomedical Scanning Services, Inc.
St. Louis, Missouri*

EA 00-288

On February 21, 2001, a Notice of Violation and Proposed imposition of Civil Penalty in the amount of \$8,800 was issued for a Severity Level II problem involving deliberate violations. These included: (1) delivery of byproduct material without an authorized individual present, (2) delivery of byproduct material to a client's address, and (3) providing inaccurate and incomplete information to the NRC.

*Construction Engineering Labs, Inc.
Pearl City, Hawaii*

EA 01-181

On September 27, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem involving willfulness. The problem consisted of two violations involving the failure to secure and maintain constant surveillance over a gauge and failure to assure that gauges were routinely secured in vehicles according to procedures.

*Earthline Technologies (previously RMI Environmental Services)
Ashtabula, Ohio*

EA 99-290

On September 24, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$17,600 was issued for a Severity Level II violation. The violation was based on the licensee discriminating against a radiation protection technician for engaging in protected activities. A Notice of Violation for a Severity Level III violation was also issued in conjunction with this case (see EA 01-037 in Appendix A).

*El Señorial PSI
Río Piedras, Puerto Rico*

EA 01-145

On September 28, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,750 was issued for a Severity Level III violation. The violation was based on the failure to issue film or thermoluminescent dosimeter whole body monitors to all individuals who were occupationally exposed to ionizing photon radiation on a regular basis.

Global X-Ray & Testing Corporation
Morgan City, Louisiana

EA 00-272

On March 8, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 was issued for a Severity Level III violation involving the failure to use pipeliner radiography devices in a manner described in a 1999 exemption granted by the NRC. A Notice of Violation for a Severity Level III violation was also issued in conjunction with this case (see EA 01-046 in Appendix A).

Gulf Coast Testing International Inspection, Inc.
Houma, Louisiana

EA 00-293

On March 27, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 was issued for a Severity Level III violation involving the licensee's willful failure to post radiation and high radiation areas as required prior to conducting radiographic operations. A Notice of Violation for a Severity Level III violation was also issued in conjunction with this case (see EA 00-294 in Appendix A).

Mallinckrodt, Inc.
Maryland Heights, Missouri

EA 00-180

On October 4, 2000, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,750 was issued. The action was based on the failure to control the occupational dose to the skin or to any extremity of an individual below the annual dose limit of 50 rems shallow-dose equivalent, and the failure to make adequate surveys to assure compliance with 10 CFR 20.201.

Mallinckrodt, Inc.
Maryland Heights, Missouri

EA 00-178

On December 21, 2000, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$125,000 was issued for a Severity Level I problem based on numerous failures to: (1) control activities to keep occupational doses to workers within regulatory limits, (2) use procedures and engineering controls to maintain doses as low as reasonably achievable, and (3) make necessary surveys to ensure compliance with the regulations for protection against radiation. Although the normal civil penalty assessment process would have resulted in a base civil penalty in the amount of \$27,500, the NRC exercised discretion in accordance with Section VII.A.1 of the Policy and increased the penalty due to: (1) the number of overexposures (31), (2) the severity of the overexposures, (3) the time frame over which the exposures occurred, (4) the failure to identify the exposures despite multiple precursor events, and (5) the licensee's poor enforcement history. A Notice of Violation was also issued for a Severity Level III violation for a subsequent failure to properly survey (see EA 00-178 in Appendix A).

Midwest Testing, Inc.
Bridgeton, Missouri

EA 01-119

On July 20, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of a portable density gauge that resulted in the loss of the gauge. Although the normal civil penalty assessment process would have fully mitigated the civil penalty, a penalty was proposed in accordance with Section VII.A.1.g of the Enforcement Policy to emphasize the significance of the loss of licensed material in this case.

***Nuclear Management Company, LLC
Palisades Nuclear Generating Station******EA 01-088***

On June 27, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$55,000 was issued for a Severity Level III violation. The action was based on the licensee's failure to provide complete and accurate information in letters to the NRC requesting enforcement discretion and an exigent Technical Specification change.

***South Pittsburgh Cancer Center
Pittsburgh, Pennsylvania******EA 01-132***

On August 22, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$8,800 was issued for a Severity Level II violation involving the deliberate possession of depleted uranium (in the form of bricks used for shielding within two linear accelerators) without authorization in a specific license issued by the NRC.

***Southeast Missouri State University
Cape Girardeau, Missouri******EA 00-201***

On September 13, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$11,000 was issued for a Severity Level I problem involving the failure to: (1) control activities to limit doses in accordance with requirements, (2) make necessary surveys to determine radiological hazards, and (3) possess only material authorized on the University's license. Although a base civil penalty would be warranted based on the normal civil penalty assessment process, the NRC exercised enforcement discretion in accordance with Section VII.A.1 of the Enforcement Policy and increased the penalty by 100 percent based on the licensee's particularly poor performance. A Notice of Violation for a Severity Level III violation was also issued (see EA 01-151 in Appendix A).

***Stork/Twin City Testing
St. Paul, Minnesota******EA 00-169***

On December 15, 2000, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$11,000 was issued for a Severity Level III violation involving the deliberate failure to have two individuals present during radiography at a temporary job site. The NRC exercised discretion in accordance with Section VII.A.1 of the Enforcement Policy and increased the amount of the civil penalty based on the duration of the violation, the financial gain as a result of the violation, and the willful nature of the violation.

***Temple University Hospital
Philadelphia, Pennsylvania******EA 00-156***

On October 19, 2000, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$8,800 was issued for a Severity Level II violation based on discrimination against a former Nuclear Medicine Technologist for raising safety concerns.

*Testing Technologies
Woodbridge, Virginia*

EA 00-231

On November 14, 2000, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 was issued. The action was issued for a Severity Level III problem involving the failure to (1) limit unrestricted area doses to less than two mrem in any one hour, (2) to post each radiation and high radiation area with the appropriate sign, (3) to perform surveys necessary to demonstrate compliance with the regulations and to evaluate the radiological hazards present. Although the normal civil penalty assessment process would have mitigated the civil penalty, the NRC exercised discretion in accordance with Section VII.A.1 of the Enforcement Policy and proposed a base civil penalty in this case because the failures involved particularly poor performance with respect to the overall conduct of radiographic operations including fundamental radiological controls such as surveying, postings, and surveilling.

*Texas Engineering Experiment Station
Texas A&M University System*

EA 01-029

On May 21, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$2,400 was issued for a Severity Level II problem involving the transportation of radioactive material from the research reactor facility to St. Croix, the Virgin Islands. The Severity Level II problem included the failure, prior to shipment of radioactive material, to ensure that each closure device of the package was properly installed, secured, and free of defects and the failure to train all hazardous material workers involved in the shipment. Although a base civil penalty would normally be assessed in accordance with the civil penalty assessment process, the NRC exercised enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy and proposed 50 percent of the penalty because the sequence of events was influenced, in part, by the actions of transportation workers who failed to adequately respond when the integrity of the transportation container was breached.

*Turabo Corporation
Caguas, Puerto Rico*

EA 01-126

On June 20, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III violation involving the failure to secure from unauthorized removal or limit access to two gauges containing approximately eight millicuries of cesium-137 and 50 millicuries of americium-241 and failure to control and maintain constant surveillance of this licensed material.

*Union Electric Company
Callaway*

EA 01-005

On May 14, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$55,000 was issued for a Severity Level III violation involving the Wackenhut Corporation, a contractor of Union Electric (see EA 01-006 in Appendix E), and Union Electric discriminating against a security officer and training instructor for having engaged in protected activity.

*University of Medicine & Dentistry of New Jersey
Newark, New Jersey*

EA 01-186

On September 25, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,000 was issued for a Severity Level III problem. The problem included two violations involving the failure to control and maintain constant surveillance of material in controlled or unrestricted areas and the failure to make surveys (i.e., evaluations of the radiological conditions and potential hazards incident to the use, transfer, release, disposal, or presence of radioactive material or other sources of radiation). Although the normal civil penalty assessment process would have fully mitigated the civil penalty, a base civil penalty was proposed in accordance with Section VII.A.1.g of the Enforcement Policy to emphasize the significance of the loss of licensed material in this case.

APPENDIX C: SUMMARY OF ORDERS

IMPOSITION OF CIVIL PENALTY ORDERS

Braun Intertec Corporation
Minneapolis, Minnesota

EA 00-147

On November 14, 2000, an Order Imposing Civil Monetary Penalty in the amount of \$5,500 for a Severity Level III violation involving the failure to have two qualified individuals present during radiographic operations. The NRC reviewed the licensee's request for civil penalty mitigation dated September 12, 2000, and concluded that the agency's original proposal remained valid.

Department of Veterans Affairs Medical Center
Philadelphia, Pennsylvania

EA 00-086

On December 14, 2000, an Order Imposing Civil Monetary Penalty in the amount of \$5,500 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$5,500 that was issued on July 20, 2000, for a violation of the employee protection requirement. The licensee's August 29, 2000, response denied the violation and requested that the violation be withdrawn and the civil penalty rescinded. After considering the licensee's response, the NRC concluded that the violation occurred as stated and that there was not an adequate basis for withdrawing the civil penalty.

Moisture Protection Systems Analysis, Inc.
Washington, DC

EA 98-213

On April 2, 2001, an Order Imposing Civil Monetary Penalty in the amount of \$5,500 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount \$5,500 that was issued on April 30, 1998, for failure to maintain licensed material, facilities, and records available for inspection as required by 10 CFR 30.52. As of April 2, 2001, the licensee did not respond to the Notice, nor did it comply with the requirements that it maintain licensed material in safe storage, immediately notify the NRC of its current business location and status of licensed material, test the sealed source for leak tightness, and transfer the licensed material to an authorized recipient. The licensee has been unresponsive to the NRC's repeated attempts to discuss licensed activities associated with the licensee. After considering the licensee's unresponsiveness, the NRC concluded that the violation occurred as stated and that the penalty proposed for the violation should be imposed.

Stork/Twin City Testing
St. Paul, Minnesota

EA 00-169

On February 20, 2001, an Order Imposing Civil Monetary Penalty in the amount of \$11,000 was issued. The action was based on a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$11,000 that was issued on December 15, 2000, for a Severity Level III violation involving the deliberate failure to have two individuals present during radiography at a temporary job site. The licensee's December 21, 2001, response contested the violation and requested partial mitigation of the civil penalty. After considering the licensee's response, the NRC concluded that the violation occurred as stated and that there was not an adequate basis to mitigate the civil penalty.

*Tennessee Valley Authority
Watts Bar, Sequoyah, and Browns Ferry Nuclear Power Plants*

EA 99-234

On May 4, 2001, the NRC issued an Order Imposing Civil Monetary Penalty in the amount of \$110,000 for a Severity Level II violation involving employment discrimination against a former corporate employee for engaging in protected activities. The NRC reviewed the licensee's denial of the violation and protest of the civil penalty dated January 22, 2000, and concluded that the agency's original proposal remained valid.

CONFIRMATORY, MODIFICATION, SUSPENSION, AND CEASE & DESIST ORDERS

None.

APPENDIX D: SUMMARY OF ACTIONS AGAINST INDIVIDUALS (LICENSED & NON-LICENSED)

ORDERS

Hiram J. Bass

IA 00-032

On October 27, 2000, an Order prohibiting involvement in NRC-licensed activities was issued based on individual's deliberate failure to perform required evaluations for out-of-tolerance measuring and test equipment.

Virgil J. Hood, Sr.

IA 01-021

On September 12, 2001, an immediately effective Order prohibiting involvement in NRC-licensed activities was issued based on the individual's deliberate actions (as President and Radiation Safety Officer of Moisture Protection Systems Analysts) that caused the licensee to be in violation of an Order Modifying Order Suspending License and Order Revoking License dated April 20, 1998, and 10 CFR 20.2201(a)(1)(i).

William and Joan Kimbley

IA 00-024 and IA 00-025

On November 28, 2000, an immediately effective Order prohibiting involvement in NRC-licensed activities was issued based on the individuals' deliberate possession of licensable byproduct material in the form of nuclear moisture density gauges in violation of a June 12, 1995, Confirmatory Order issued by the NRC. The two individuals were previously officers of Midwest Testing, Inc.

David D. Klepadlo

IA 00-039

On November 3, 2000, an immediately effective Order prohibiting involvement in NRC-licensed activities was issued to the individual for providing false information to the NRC regarding the possession of two nuclear density gauges.

Rodney Lillard

IA 00-006

On October 17, 2000, an Order prohibiting involvement in NRC-licensed activities was issued based on the former Radiation Safety Officer's deliberate failure to report or ensure that a report was made to the NRC within 30 days of the occurrence of a 1995 source disconnect event and failure to provide complete and accurate information to the NRC when he advised an NRC inspector during a June 1995 inspection that no reportable events had occurred.

Don Nottingham

IA 00-008

On October 17, 2000, an Order prohibiting involvement in NRC-licensed activities was issued based on the former senior radiographer's deliberate misconduct in violation of 10 CFR 30.10 when he permitted assistant radiographers to perform unsupervised radiography on numerous occasions during the period of 1994 through 1995.

Appendix D

Garner W. Reed

IA 00-028

On December 4, 2000, an Order prohibiting involvement in NRC-licensed activities was issued to the individual based on deliberately submitting incomplete and inaccurate information on the history questionnaire for unescorted access to Salem, Point Beach and Donald C. Cook Nuclear Power Plants regarding his previous criminal history.

Johnny Lee Rochelle

IA-007

On October 17, 2000, an Order prohibiting involvement in NRC-licensed activities was issued based on the former senior radiographer's deliberate actions which caused a licensee to be in violation of NRC regulations including (1) the creation of excessive radiation levels in unrestricted areas; (2) the failure to survey and monitor areas surrounding the location where radiographic operations were being conducted; (3) the failure to post radiation areas; (4) the failure to control access to areas that were required to be restricted; and (5) permitting assistant radiographers to conduct radiographic operations without direct observation.

Paige Rowland

IA 01-023

On April 2, 2001, an Order prohibiting involvement in NRC-licensed activities was issued based on the individual deliberately making false statements to the NRC that she had administered technetium-99m to a patient at Central Michigan Community Hospital when she knew that an unqualified technician had administered the technetium-99m under her direction.

Gail C. VanCleave

IA 00-016

On November 6, 2000, an Order prohibiting involvement in NRC-licensed activities was issued to the individual based on deliberately submitting incomplete and inaccurate information to the D.C. Cook Nuclear Power Plant and communicating to an NRC investigator that she would repeat the deliberate acts of falsification if in a similar financial situation.

NOTICES OF VIOLATION (NOVs)

Antonio J. Ambrad, M.D.

IA 01-035

On August 22, 2001, a Notice of Violation was issued for a Severity Level II violation involving the deliberate possession of depleted uranium (in the form of bricks used for shielding within two linear accelerators) without authorization in a specific license issued by the NRC while acting as the Radiation Safety Officer/owner of the South Pittsburgh Cancer Center.

Robert J. Bellan

IA 01-032

On August 16, 2001, a Notice of Violation was issued for a Severity Level III problem while the individual was employed at the Arther Brisbane Child Treatment Center that involved the deliberate improper disposal of radioactive material generated from the cleanup of a broken exit sign and the deliberate submittal of inaccurate information to the NRC.

Joseph Bieri***IA 01-009***

On February 9, 2001, a Notice of Violation was issued for a Severity Level III violation based on violation of NRC requirements governing fitness-for-duty as a licensed operator while employed at the D.C. Cook Nuclear Power Plant.

John Carter***IA 01-044***

On September 27, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual (while employed at Construction Engineering Labs, Inc.) deliberately leaving a moisture density gauge unsecured and unattended and deliberately providing false information to the NRC.

Kenneth D. Covell***IA 01-015***

On September 24, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate failure while employed at Earthline Technologies, to secure from unauthorized removal or limit access to licensed material in an unrestricted area and failure to control and maintain constant surveillance of licensed material.

David Fitterer***IA 00-034***

On December 15, 2000, a Notice of Violation was issued for a Severity Level III violation involving the Radiation Safety Officer's deliberate failure while employed at Stork/Twin City Testing to have two individuals present during radiography at a temporary job site.

Andrew Grace***IA 00-009***

On January 3, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate misconduct while employed as the security manager at the U.S. Enrichment Corporation's Paducah Gaseous Diffusion Plant that caused the licensee to be in violation of NRC requirements. The individual failed to promptly report a security infraction to the licensee and failed to document the infraction in a corrective action report or report the infraction to the NRC.

James Halstead***IA 01-004***

On February 21, 2001, a Notice of Violation was issued for a Severity Level II problem involving deliberate violations at Biomedical Scanning Services, Inc. These included: (1) delivery of byproduct material without an authorized individual present, (2) delivery of byproduct material to a client's address, and (3) providing inaccurate and incomplete information to the NRC.

Michael G. Keogh***IA 01-041***

On August 24, 2001, a Notice of Violation was issued for a Severity Level III violation involving deliberate actions (while employed as a licensed operator at the Pilgrim Nuclear Power Station) in creating a falsified record of a tour of the reactor building.

Appendix D

Michael Mennucci

IA 01-024

On May 4, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate actions while employed at the Palisades Nuclear Station. Mr. Mennucci deliberately falsified information on a corrective action document indicating that he had reviewed and revised three radioactive material shipping procedures, when, in fact, two of the three procedures had not been revised.

Joel Ramos, M.D.

IA 01-040

On September 28, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate actions, while employed as a Radiation Safety Officer at El Señorial PSI Nuclear Medicine Laboratory, in failing to issue film or thermoluminescent dosimeter whole body monitors to all individuals who were occupationally exposed to ionizing photon radiation on a regular basis.

Paul E. Ramseyer

IA 01-028

On June 27, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate actions (while employed at PECO Power Labs (PPL)) in fabricating and providing false information to PPL (a reactor licensee contractor) and subsequently NRC-licensed facilities.

Craig P. Sanford

IA 01-033

On August 16, 2001, a Notice of Violation was issued for a Severity Level III violation involving the individual's deliberate actions (while employed at the Arthur Brisbane Child Treatment Center) in providing the NRC with incomplete and inaccurate information.

DEMANDS FOR INFORMATION (DFIs)

Virgil J. Hood, Jr.

IA 01-022

On September 12, 2001, a Demand For Information was issued requesting information regarding (1) the individual's responsibilities as Vice President of NRC licensee, Moisture Protection Systems Analysts; (2) whether he was an authorized user of the licensee's moisture density gauge; (3) why he failed to respond to previous NRC communications; and (4) whether the individual would comply with NRC regulatory requirements.

**APPENDIX E: SUMMARY OF ACTIONS
AGAINST NON-LICENSEES
(VENDORS, CONTRACTORS, AND CERTIFICATE HOLDERS)**

ORDERS

*JL Shepherd & Associates
San Fernando, California*

EA 01-164

On July 3, 2001, an immediately effective Order Withdrawing Quality Assurance Approval was issued. The Order was based on the agency's lack of confidence that the company would implement the NRC-approved Quality Assurance (QA) Program in accordance with the regulations in a manner that would assure the required preparation and use of transportation packages in full conformance with the terms and conditions of the NRC Certificate of Compliance and 10 CFR Part 71.

*JL Shepherd & Associates
San Fernando, California*

EA 01-164

On September 19, 2001, a Confirmatory Order was issued that relaxed certain provisions of the July 3, 2001, Order Withdrawing Quality Assurance Approval. The Confirmatory Order allowed the licensee to make limited shipments based on the licensee's completion of specified corrective actions and the NRC's inspection of those actions. The Quality Assurance Approval continues to be withdrawn.

CIVIL PENALTIES

None.

NOTICES OF VIOLATION (NOVs)

*SMI East Coast Medical Waste, Inc.
Morrisville, Pennsylvania*

EA 01-064

On August 16, 2001, a Notice of Violation was issued for a Severity Level III violation involving the company's deliberate actions in receiving byproduct material that it was not authorized to possess in accordance with a general or specific license and in providing the NRC with incomplete and inaccurate information.

*Wackenhut Nuclear Services
Palm Beach Gardens, Florida*

EA 01-006

On May 14, 2001, a Notice of Violation was issued for a Severity Level III violation involving this contractor of Union Electric, a 10 CFR Part 50 licensee, and Union Electric (see EA 01-005) discriminating against a security officer and training instructor for having engaged in protected activity.

DEMANDS FOR INFORMATION (DFIs)

None.

APPENDIX F: SUMMARY OF HEARING ACTIVITY

FirstEnergy Nuclear Operating Company (Perry Nuclear Power Plant)

EA 99-012

On October 18, 2000, the licensee requested a hearing in response to an August 12, 2000, Order Imposing Civil Monetary Penalty in the amount of \$110,000. The civil penalty was based on a violation of the employee protection requirement. On May 31, 2001, the Atomic Safety and Licensing Board approved settlement of the case that included reducing the civil penalty from \$110,000 to \$80,000.

Tennessee Valley Authority

EA 99-234

Watts Bar, Sequoyah, and Browns Ferry Nuclear Power Plants

On June 1, 2001, the licensee requested a hearing in response to a May 4, 2001, Order Imposing Civil Monetary Penalty in the amount of \$110,000 for a Severity Level II violation involving employment discrimination against a former corporate employee for engaging in protected activities. At the close of the fiscal year, the case was still in adjudication with both parties in the discovery process.

APPENDIX G: SUMMARY OF 10 CFR 2.206 ACTIVITY

Petition Regarding Hydro Nuclear Services/Westinghouse

A petition was received on July 18, 2000, regarding Hydro Nuclear Services/Westinghouse and/or its successors, requesting: (1) that the NRC immediately ban Westinghouse from doing business in the nuclear industry for willfully failing to comply with a U.S. Department of Labor (DOL) order; (2) that a fine immediately be assessed against Westinghouse commensurate with a Severity Level I violation; and (3) that each day of noncompliance count as a separate violation, with its own fine. The petitioner asserted that Westinghouse's failure to comply with a DOL order created a chilled environment in the nuclear industry. The staff concluded in a letter to the petitioner on October 18, 2000, that there was no support for such an allegation in the petition and therefore, concluded that further review was not warranted.

APPENDIX H: SUMMARY OF WITHDRAWN ACTIONS

*Alfonso DeLeo, Jr.
Ardmore, Pennsylvania*

EA 99-057 and EA 99-217

On December 26, 2000, the NRC withdrew civil penalties that had been issued to the licensee in 1999 for willful unauthorized possession of two nuclear density gauges. The NRC withdrew the civil penalties because the licensee had transferred the gauges to an authorized recipient on October 23, 2000, and the NRC terminated its license on November 9, 2000.

APPENDIX I: DISPOSITIONING OF ENFORCEMENT ISSUES IN A RISK-INFORMED FRAMEWORK

December 5, 2000

MEMORANDUM TO: S. J. Collins, Director, Office of Nuclear Reactor Regulation
W. F. Kane, Director, Office of Nuclear Material Safeguards and Security
H. J. Miller, Regional Administrator, RI
L. A. Reyes, Regional Administrator, RII
J. E. Dyer, Regional Administrator, RIII
E. W. Merschoff, Regional Administrator, RIV

FROM: R. W. Borchardt, Director, Office of Enforcement /RA/

SUBJECT: DISPOSITIONING OF ENFORCEMENT ISSUES IN A RISK INFORMED
FRAMEWORK

The changes to the inspection and oversight programs being implemented offer the promise of an improved regulatory approach for how we carry out our responsibilities as a regulator. The enforcement program has been, and continues to be modified in order to fully support these initiatives and ensure that the enforcement program is implemented in a predictable and consistent manner. Identifying an issue, assessing its risk significance, and verifying that the licensee has taken corrective action are important elements of our mission. However, our responsibilities are not complete unless we also evaluate whether issues documented in NRC inspection reports constitute violations and we disposition them accordingly.

As a regulatory agency, it is our responsibility to establish and enforce requirements. Integral to this responsibility is the need to accurately disposition all violations that are discussed in inspection reports. Licensees bear the responsibility to take appropriate corrective actions for identified problems. These are appropriate and necessary regulatory burdens. I believe that the current enforcement program fully supports the agency's performance goals by emphasizing the importance of compliance with existing requirements (maintain safety), fully dispositioning documented violations (public confidence), being fully coordinated with the NRR and NMSS oversight programs (effectiveness and efficiency), and utilizing risk information and the NCV policy (reducing unnecessary regulatory burden).

As we have made the transition to the Reactor Oversight Process and the new Enforcement Policy, the Commission adopted the following language into both the Enforcement Policy and NRC Inspection Manual Part 9900: Technical guidance. "While safety is the fundamental regulatory objective, compliance with NRC requirements plays an important role in giving the NRC confidence that safety is being maintained. NRC requirements have been designed to ensure adequate protection—which corresponds to "no undue risk to public health and safety"—through acceptable design, construction, maintenance, modification, and quality assurance measures. In the context of risk-informed regulation, compliance plays a very important role in ensuring that key assumptions used in underlying risk and engineering analyses remain valid." This language is often referred to as the nexus between safety and compliance.

While the current Enforcement Policy with its expanded use of NCVs and risk information has significantly reduced unnecessary regulatory burden, the proper disposition of documented violations remain an NRC responsibility. We have reduced unnecessary regulatory burden by changing the way we

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and our licensees disposition violations, not by failing to determine whether an inspection finding is a violation. Failing to disposition valid violations that have more than minor safety significance does not further any of the agency's goals. It can only serve to create the impression that there are unimportant requirements. In short, if an issue warrants documentation in an inspection report it also warrants a determination as to whether or not a violation exists.

I would like to emphasize the following points:

1) All issues documented in inspection reports that constitute violations must be dispositioned in accordance with the Enforcement Policy (NCV, NOV, or exercise of discretion, where appropriate).

2) The fact that an NCV does not require a response does not relieve the NRC of the responsibility to appropriately disposition the noncompliance nor does it relieve the licensee of the responsibility to restore compliance and take corrective actions to preclude recurrence.

3) The NRC's responsibility to ensure the legitimacy of violations dispositioned as NCVs is not reduced as a result of an issue being dispositioned without a formal citation. In documenting NCVs the staff must clearly describe how violations of legally binding requirements exist.

4) The Reactor Oversight Process and Significance Determination Process appropriately focus inspection staff attention first on the significance of issues. Compliance, however, must not be considered only an afterthought in the assessment process. The agency cannot dismiss enforcement when an issue is determined to be of low significance. The reasons for this are numerous but include: a) having noncompliances placed in licensee corrective action programs to ensure compliance is restored and corrective actions to preclude recurrence are taken in a time frame commensurate with safety; b) maintaining and instilling public confidence that our regulations are enforced, and; c) to enable us to make better informed regulatory decisions in the future.

5) We will not manage to violation quotas or goals. The number of Severity Level IV violations in the reactor program has markedly decreased since the spring of 1998 and there are many factors which influenced this change. These factors include more explicit guidance on minor violations as well as fundamental changes in the inspection program. However, the need to properly disposition documented issues (and violations) has not changed. The Offices of NRR, NMSS and OE will continue to work together to define what issues are to be documented in inspection reports in a manner commensurate with the evolving inspection, oversight and enforcement programs.

6) An integral part of NRC Manual Chapter 0610*, Appendix E, "Thresholds for Documentation," is answering the question of whether a finding is a violation. For issues of very low safety significance, it is not expected that an extensive inspection be conducted to determine if a legally defensible violation exists; however, it is reasonable to expect that necessary support documentation would be gathered in order to attempt to make the determination and to construct and document a violation, if one exists. For more risk significant issues, it is expected that inspection effort will be expended to obtain the information necessary to construct legally defensible violations, if they exist.

Fundamentally, the changes that have occurred since the summer of 1998 are based on the premise that enforcement should not drive assessment and inspection. Rather, enforcement should be an integral element of the risk informed inspection and assessment programs. The transition in no way diminishes the importance of compliance.

I or my staff are available to further discuss this issue in any appropriate forum including counterpart meetings and formal training. We also welcome any feedback on the principles communicated herein.