



ENFORCEMENT PROGRAM ANNUAL REPORT

Calendar Year 2006

**U.S. Nuclear Regulatory Commission
Office of Enforcement
Washington, DC 20555**

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ABSTRACT

Since 1995, the Enforcement Program Annual Report has provided information addressing the U.S. Nuclear Regulatory Commission's (NRC or Commission) enforcement activities during a given fiscal year (FY). Last year's Annual Report employed a calendar year (CY) reporting time-frame to align this report with the annual reports of other programs in the Office of Enforcement such as the "Allegation Program Annual Trends Report."

This year's report again provides information about the NRC's enforcement activities for the previous calendar year (i.e., CY 2006), including the escalated enforcement actions that the agency took, civil penalties that the agency imposed, changes that the agency made to the Enforcement Policy, as well as information regarding new initiatives and revised staff guidance that the agency added.

Security-related issues involving Notices of Violation, civil penalties, orders, Demands for Information, etc., are not addressed in this report.

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CALENDAR YEAR 2006 HIGHLIGHTS

- The Enforcement Policy was revised one time.
- The NRC issued 87 escalated enforcement actions, including:
 - 57 escalated Notices of Violation without civil penalties
 - 15 proposed civil penalties totaling \$ 332,350
 - 15 orders modifying, suspending, revoking a license, or prohibiting involvement in NRC-licensed activities. Included in this number are eight orders that were issued as part of the agency's use of Alternative Dispute Resolution in enforcement cases
 - No orders imposing civil penalties issued
- The performance and administrative metrics for completing cases were met for 100% of enforcement actions taken against NRC licensees.
- On September 28, 2006, the Office of Enforcement completed the fifth full revision of the NRC Enforcement Manual. Revision 5 is a joint effort that draws on the knowledge and experience of the enforcement staff in both headquarters and the regions, and includes multiple changes, e.g., updated and reformatted information and hyperlinks to other NRC documents.
- OE is the lead office for the Safety Culture Initiative. This initiative was developed to enhance the Reactor Oversight Process (ROP) to more fully address safety culture. This activity was completed and the revised process was implemented in July 2006.
- OE led an intra-agency task group to develop an agency-wide non-concurrence process. The non-concurrence process allows NRC employees to not concur on any part of a document in which the employee disagrees and to document the employee's concerns and attach them to the proposed staff position.
- The enforcement Alternative Dispute Resolution (ADR) Process pilot program concluded. The results of the pilot indicated that the use of ADR in certain kinds of enforcement cases was generally successful. Based on the results of the pilot, improvements were made to the ADR process and the agency will continue to use this process for certain kinds of enforcement cases.

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INTRODUCTION AND OVERVIEW

MISSION AND AUTHORITY

The NRC regulates the civilian uses of nuclear materials in the United States to protect public health and safety, the environment and the common defense and security. This mission is accomplished through: the licensing of nuclear facilities and possession, use, and disposal of nuclear materials; the development and implementation of requirements governing licensed activities; and inspection and enforcement activities to assure compliance with these requirements.

The NRC's enforcement authority is contained in the Atomic Energy Act of 1954, as amended, (AEA) and the Energy Reorganization Act of 1974, as amended (ERA). These statutes provide the NRC with broad authority. The agency implements its enforcement authority through Subpart B of 10 CFR Part 2.

The NRC enforces compliance as necessary. OE develops policies and programs for enforcement of NRC requirements. Enforcement actions are used as a deterrent to emphasize the importance of compliance with regulatory requirements and to encourage prompt identification and prompt, comprehensive correction of violations. In addition, because violations occur in a variety of activities and have varying levels of significance, the NRC Enforcement Policy contains graduated sanctions.

Most violations are identified through inspections and investigations. OE provides oversight of the major enforcement actions and assesses the effectiveness and consistency of enforcement actions that the Regional Offices take. Enforcement authority includes the use of Notices of Violation (NOVs), civil penalties, Demands for Information (DFIs) and orders to modify, suspend, or revoke a license.

The following goals underlie NRC enforcement procedures:

1. Consistent responses to enforcement issues
2. Effective and efficient use of agency resources
3. Constant movement of enforcement actions toward resolution
4. Effective tracking of enforcement actions
5. Effective internal communication regarding enforcement actions

THE OFFICE OF ENFORCEMENT

The Office of Enforcement (OE) exercises oversight of the NRC Enforcement Program, providing programmatic and implementation direction to regional and headquarters offices conducting or involved in enforcement activities, to ensure that the agency's program is implemented consistently.

The Director, OE, reports directly to the Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT), and is responsible for updating the DEDMRT regarding escalated actions and consulting with the DEDMRT in any case involving novel, substantial, legal, policy, or programmatic issues raised during the enforcement review process, or where the Director, OE, believes it is warranted. The Director's responsibilities include:

- Preparation and issuance of enforcement actions
- Approval of direct enforcement actions to be taken by offices in the regions or in headquarters
- Preparation of letters requesting investigations, confirming actions, or obtaining information under §§161(c) or 182 of the AEA
- Issuance of subpoenas
- Initiation of the necessary or appropriate action in accordance with the decision of an Administrative Law Judge, the Atomic Safety and Licensing Board (ASLB), or the Commission after enforcement hearings pursuant to 10 CFR Part 2
- Approval, after consultation with the DEDMRT, as warranted, the decision to disposition a willful violation as a non-cited violation (NCV)
- Providing recommendations to the EDO, through the DEDMRT, regarding changes to rules and policies concerning enforcement matters for Commission consideration

The Deputy Director, OE, assists the Director in overseeing, managing and directing the development of enforcement policies and programs, and in issuing enforcement actions, and acts for the Director in the Director's absence.

The Chief of the Enforcement Policy and Program Oversight (EPPO) section is responsible for supervising the OE staff involved with enforcement activities in the execution of their duties, and acts for the Deputy Director, OE, in the Deputy Director's absence.

In 2006, OE was allotted 19 full-time employees (FTE); however, 22 individuals were assigned to OE headquarters, to carry out the full range of its mission. This included the FTE to provide: (1) oversight of the Enforcement Program, including the ADR process; (2) the lead for all agency external discrimination cases; (3) oversight of the NRC external Allegations Program; (4) management of the Differing Professional Opinions (DPO) Program; (5) the development and management of the non-concurrence process; and (6) development and oversight of the policy on the Safety Culture Initiative. The FTE assigned to regional enforcement activities report to their respective Regional Administrators.

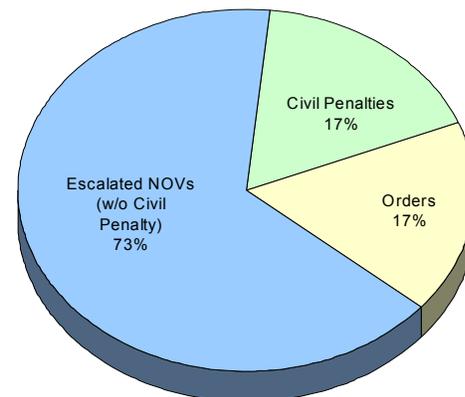
I. ESCALATED ENFORCEMENT ACTIONS

Escalated enforcement is defined as:

- NOVs including Severity Level I, II, or III violations
- NOVs associated with Red, Yellow, or White Significance Determination Process (SDP) findings for operating reactor facilities
- Civil penalty actions
- Orders

Figure 1. Escalated Enforcement by Type

Figure 1 provides information addressing the types of escalated enforcement actions taken in CY 2006. The tables and figures at the conclusion of this report break this information down further by identifying the region/program office which initiated the action, as well as the licensees, non-licensees, and individuals that were involved.



A. ESCALATED VIOLATIONS WITHOUT CIVIL PENALTIES

During CY 2006, the agency issued 57 Notices of Violation (NOVs) without civil penalties. Seventeen of these actions were associated with White SDP findings from the Reactor Oversight Process (ROP). Five of these actions were issued to licensed and unlicensed individuals; and one was issued to a non-licensee.

Appendix A of this report provides brief summaries of the NOVs and NOVs associated with SDP findings without civil penalties that were issued to licensees. Appendix D provides brief summaries of the NOVs without civil penalties that were issued to licensed and unlicensed individuals. Appendix E provides a summary of the NOV issued to a non-licensee.

(As noted previously, security-related issues involving NOVs, civil penalty actions, orders, etc., are not addressed in the Appendices of this report.)

B. CIVIL PENALTY ACTIONS

During CY 2006, the agency issued 15 proposed civil penalty actions of which four involved willfulness.

OE Annual Report

Information regarding willful violations is identified because, by definition, willful violations are of particular concern to the Commission. The NRC's regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor; therefore, a violation involving willfulness may be considered more egregious than the underlying violation taken alone would have been and the severity level may be increased.

Table I provides information regarding the civil penalties for CY 2002 through CY 2006. When reviewing the information in this table, please note that an enforcement action may include more than one civil penalty. In addition, a civil penalty may be proposed in one year and imposed or paid in a subsequent year. Finally, the amount of a civil penalty may be reduced, e.g., as part of a settlement agreement if an issue is resolved through the ADR process.

Table 1. Civil Penalty Information

	CY 2002	CY 2003	CY 2004	CY 2005	CY 2006
Number of Proposed Civil Penalties	22	32	26	24	15
Number of Imposed Civil Penalties	8	2	3	3	-
Number of Civil Penalties Paid	23	33	22	22	16
Amount of Proposed Civil Penalties	\$553,200	\$400,600	\$498,700	\$6,099,950*	\$332,350
Amount of Imposed Civil Penalties**	\$112,800	\$8,500	\$31,200	\$112,100	\$0
Amount of Civil Penalties Paid	\$505,000	\$510,100	\$526,900	\$5,891,900*	\$375,500

* This amount reflects a \$5,450,000 civil penalty that was issued on April 21, 2005, to FirstEnergy Nuclear Operating Company for multiple violations, some willful, that occurred at its Davis-Besse Nuclear Power Plant.

** The NRC issues an "Order Imposing Civil Monetary Penalty" when a licensee refuses to pay a proposed civil penalty, unless a basis exists for withdrawal of the proposed penalty.

Appendix B includes a brief description of the CY 2006 proposed civil penalty actions.

C. ORDERS

During CY 2006, the NRC issued 15 orders modifying, suspending, or revoking a license or prohibiting involvement in NRC-licensed activities, including confirmatory orders that were

issued to confirm commitments associated with ADR settlement agreements. These do not include security orders, or orders modifying licenses that are not associated with an enforcement action. Appendix C includes a brief description of the orders that were issued.

D. ENFORCEMENT ACTIONS WITH OFFICE OF INVESTIGATION REPORTS

In CY 2006, 38% of the 87 escalated actions that the agency issued were supported by an Office of Investigation (OI) report. Breaking this number down further:

- ▶ 15 of 57 escalated NOVs without civil penalties (26%)
- ▶ 4 of 15 proposed civil penalties (27%)
- ▶ 14 of the 15 enforcement orders (there were no impositions) (93%)

E. TIMELINESS OF ENFORCEMENT ACTIONS

The protection of public health and safety remains paramount among the agency's goals and drives its decisions; however, the NRC recognizes that it must consider other key issues, including the effect of its decisions on the public's trust in the NRC's regulatory process, the industries the NRC regulates, and its own effectiveness and efficiency. Efficiency includes recognition that regulatory decisions should be made without undue delay.

The agency's performance measure goals for issuing escalated enforcement actions (excluding impositions) are:

- ▶ 100% of non-investigation cases are completed within 180 calendar days; and
- ▶ 100% of investigation cases are completed within 360 calendar days.

In addition, the Enforcement Program has established administrative goals for completing cases. These are:

- ▶ 100% of non-investigation cases are completed within an average of 120 calendar days; and
- ▶ 100% of investigation cases are completed within an average of 180 calendar days.

The measuring period starts on the latest of the following dates:

- ▶ The date of the inspection exit (for non-investigation cases);
- ▶ The date of the OI memorandum forwarding the OI investigation to the staff (for investigation cases);
- ▶ The date that the Department of Justice (DOJ) informs the NRC that the NRC may proceed (for cases referred to DOJ); or
- ▶ The date of the Department of Labor (DOL) decision that is the basis for the action.

During CY 2006, performance measures and administrative goals were met with average case times as follows: (1) with all non-OI cases completed within 180 days and all OI cases

completed within 360 calendar days; and (2) an average 84 days of processing time for non-OI cases and an average 178 days of processing time for OI cases.

F. ESCALATED ENFORCEMENT ACTION TRENDS

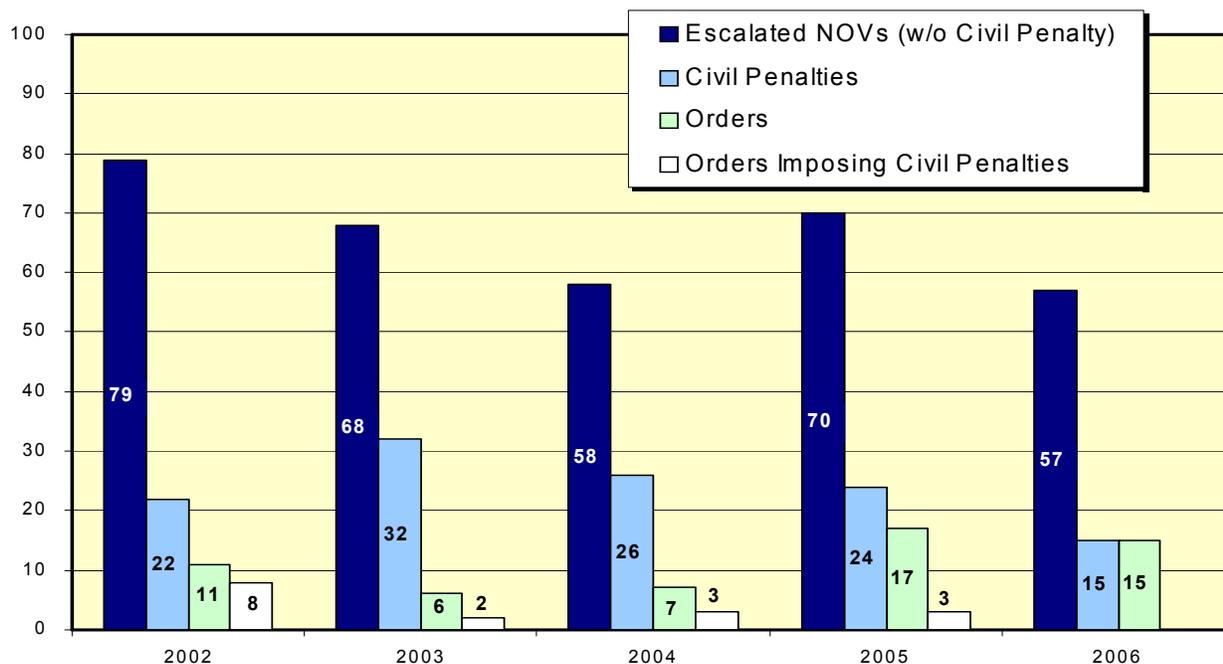
During CY 2006, the agency issued 87 escalated enforcement actions. This number is slightly lower than the average number of 104.4 escalated enforcement actions issued for the last five years. Table 2 provides information regarding the total number of escalated enforcement actions from FY 2002 to CY 2006. Figure 2, provides information regarding the escalated enforcement trends by type of licensee, non-licensee, and individual.

The lower number of escalated actions taken in CY 2006 is a result of several initiatives that the agency has taken in the last few years. Specifically, as discussed in Section V of this report, "Notices of VII.B.6 Enforcement Discretion," enforcement discretion was applied in 17 cases involving violations of 10 CFR 30.34(i) based on the criteria for such discretion contained in a Enforcement Guidance Memorandum 06-01. In these cases, when appropriate corrective actions were taken, discretion was applied to treat these cases as non-escalated enforcement actions rather than as Severity Level III violations. In addition, during CY 2006, discretion was applied in both reactor and materials enforcement cases where it was determined that some licensees who failed to meet the requirements in newly issued security orders, deserved credit for their good faith efforts to meet these newly-imposed requirements. Finally, the agency used the Alternative Dispute Resolution (ADR) process for eight enforcement cases. Some of these cases resulted in a less severe enforcement action and/or a reduced civil penalty or no civil penalty based on the commitments and corrective actions the licensees agreed to during ADR. For example, a civil penalty of \$6,500 was proposed in a radiography enforcement case; however, based on the settlement agreement reached during ADR, the NRC agreed to reduce this amount to \$500 in recognition of the extensive corrective actions the licensee took.

Table 2. Escalated Actions Trends

	CY2006	CY2005	FY2004	FY2003	FY2002	Average
Escalated NOVs (w/o Civil Penalty)	57	70	58	68	79	66.4
Civil Penalties	15	24	26	32	22	23.8
Orders	15	17	7	6	11	11.2
Orders Imposing Civil Penalties	0	3	3	2	8	3.2
Total Escalated Actions	87	114	94	108	120	104.6

Figure 2. Escalated Actions Trends (CY 2002 - CY 2006)



G. Demands for Information

A Demand for Information (DFI) is an administrative enforcement tool issued to a licensee or other person that enables the NRC to determine whether additional enforcement action is warranted, e.g., an order. During CY 2006, no DFIs were issued.

II. ENFORCEMENT ACTIONS AGAINST INDIVIDUALS AND NON-LICENSEES

During CY 2006, the agency issued 13 actions to licensed and unlicensed individuals. This number is included in the total number of escalated enforcement actions (NOVs and orders) that the agency took in CY 2006. Appendix D provides brief summaries of the orders and NOVs that were issued during CY 2006 to licensed and unlicensed individuals prohibiting or limiting their participation in NRC-licensed activities. Appendix E provides a brief summary of the one escalated enforcement action issued to a non-licensee, i.e., an NOV issued to a vendor.

III. CASES INVOLVING DISCRIMINATION

The NRC values the importance of nuclear industry employees feeling unimpeded to raise potential safety concerns to both licensee management and the NRC. The NRC vigorously pursues enforcement action against licensees or licensee contractors who discriminate against their employees for raising such concerns, regardless of the merits of the concern.

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, i.e., employees may not believe they can raise concerns without fear of retaliation. Acts of discrimination include discharge and other adverse actions that relate to an employee’s compensation, terms, conditions, or privileges of employment. In addition, one of the goals of the NRC’s enforcement process 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 shall not be taken against licensee or contractor employees for raising safety concerns, nor shall employers create or support a work climate that has a chilling effect on employees or other individuals who may wish to report safety concerns.

During CY 2006 several cases involving alleged discrimination were referred to OI for investigation; however, none of these cases resulted in escalated enforcement action.

IV. NOTICES OF ENFORCEMENT DISCRETION (NOEDS)

Occasionally, circumstances may arise where a power reactor licensee’s compliance with a technical specification (TS) or other license condition would involve an unnecessary plant transient or performance testing, inspection, or other system realignment that is inappropriate for the specific plant conditions, or would cause unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable requirement(s). This enforcement discretion, designated as a NOED (Notice of Enforcement Discretion), is exercised only if the staff is clearly satisfied that the action is consistent with protecting the public health and safety. The staff may also issue NOEDs in cases involving severe weather or other natural phenomena, when the determination is made that safety will not be compromised by exercising this discretion. NOEDs require justification from a licensee or certificate holder that documents the safety basis for the request and provides whatever other information the staff deems necessary to issue an NOED. Since 2000, no NOEDS have been issued to gaseous diffusion plants.

In 2006, the NRC issued five NOEDs to operating nuclear power plants:

- NOED 06-01-01 was issued on April 20, 2006, to the FirstEnergy Nuclear Operating Company for Beaver Valley Power Station Unit 2 to allow enforcement discretion regarding the actions required in TS 3.0.3.
- NOED 06-02-01 was issued on February 22, 2006, to the Florida Power and Light

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- Company for St. Lucie Unit 2 to allow enforcement discretion for ACTION “c” in TS 3.6.1.7.
- NOED 06-03-01 was issued on October 18, 2006, to the Exelon Generation Company, LLC, for Quad Cities Nuclear Power Station to allow enforcement discretion regarding the actions required in TS 3.1.7.
 - NOED 06-04-01 was issued on December 6, 2006, to the South Texas Project Nuclear Operating Company (STPNOC) for the South Texas Project, Unit 2, granting STPNOC’s request for a NOED to allow STPNOC to extend TS allowed outage time an additional eight days to support corrective maintenance activities on the Unit 2 “A” high head safety injection pump without having to shut down Unit 2.
 - NOED 06-04-02 was issued on December 20, 2006 to the South Texas Project Nuclear Operating Company for the South Texas Project, Unit 1. The NOED granted STPNOC’s request for enforcement discretion for Unit 1 with regard to TS 3.3.3.6, Table 3.3-10, Action Statement 35 and TS 3.7.1.2.b, to allow time to return the affected equipment functions associated with these TS to an operable status.

V. NOTICES OF VII.B.6 ENFORCEMENT DISCRETION

Section VII of the Enforcement Policy addresses those cases where, notwithstanding the normal guidance contained in the Enforcement Policy for assessing the significance of a violation, the NRC may choose to exercise discretion. In such cases, the NRC may either escalate or mitigate the enforcement sanctions to ensure that the resulting enforcement action takes into consideration all of the relevant circumstances of the particular case, and is in the interest of the public health and safety.

As mentioned above, OE applied enforcement discretion to 17 cases involving violations of 10 CFR 30.34(i), based on the criteria for such discretion contained in EGM 06-001, “Enforcement of Security Requirements for Portable Gauges,” published on June 12, 2006. Discretion was applied for first-time, non-willful violations where the gauge was not lost or stolen, and one suitable restraint (i.e., the previous requirement that was superceded by the current requirement to have two independent restraints) existed. In these cases, when appropriate corrective action was taken, discretion was applied to treat these violations as Severity Level IV violations (rather than as Severity Level III violations).

VI. 10 CFR 2.206 PETITIONS

Under the regulations in 10 CFR 2.206, any person may file a request with the Executive Director for Operations (EDO) to institute a proceeding pursuant to 10 CFR 2.202 to modify, suspend, or revoke a license, or to request other appropriate enforcement action. The EDO

assigns this request to a program office. Upon receipt of the request, the Office Director assigns a petition manager (PM) who coordinates review of the petition and the agency's response, i.e., a Director's Decision (DD) either granting, partially granting, or denying the request. This process includes the PM establishing a Petition Review Board (PRB).

OE supports these activities, as requested. In CY 2006, OE was asked to serve as a member on two PRBs to consider the merits of these requests.

VII. WITHDRAWN ENFORCEMENT ACTIONS

Enforcement actions can be challenged for several reasons, e.g., a licensee might dispute the requirements, the facts of the case, the agency's application of the Enforcement Policy, or the significance of the violation. Routinely, it should be noted, licensees provide clarifying information that was not available at the time of an inspection and this may affect whether a noncompliance exists. During CY 2006, the agency did not withdraw any escalated enforcement actions.

In addition, OE has established a metric for quality of enforcement actions based on the number of withdrawn non-escalated enforcement actions, i.e., less than 30 non-escalated enforcement actions are successfully disputed based on interpretation of the requirements, the application of the Enforcement Policy, or the facts of the case. Violations that are overturned based on supplemental information being provided that was not available for the inspector to make an appropriate assessment are not counted in this metric. During CY 2006, approximately 1,434 non-escalated enforcement actions were issued to reactor and materials licensees. Of these actions, 12 non-escalated enforcement actions were disputed. Of the disputed actions, the NRC either withdrew or recharacterized six of these actions. Therefore, this metric was met.

The following nonescalated enforcement action illustrates when the agency may withdraw or recharacterize an initial enforcement action: During an inspection, the RSO told the NRC inspector that he had not conducted the required inventories of three portable nuclear gauges for the specified periods in CY 2001, 2003, 2004, and 2005. By letter, the RSO later stated that, in fact, he had performed the required inventories. RIV discussed the change in position with the RSO by telephone. During that call, the RSO stated that after receiving NRC's inspection report, he recalled that he had performed the inventories by physically observing the gauges in their storage location. He stated that he failed to document these visual inventories. Based on this new information, RIV issued a letter withdrawing the SL IV violation.

VIII. HEARING ACTIVITIES

During CY 2006, several cases involved individuals who worked at the Davis Besse Nuclear Power Plant. Appendix G provides brief summaries of the hearings involved with these cases.

IX. ENFORCEMENT POLICY CHANGES

The NRC Enforcement Policy, a living document, is revised to reflect experience and stakeholder input. Enforcement Policy changes are published in the *Federal Register*. During 2006, the Enforcement Policy was revised once. "NRC Enforcement Policy: Extension of the Discretion Period of Interim Enforcement Policy" (71 FR 19905) published on April 18, 2006, extends the enforcement discretion period in the "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues" to three years for those licensees that commit to transition to 10 CFR 50.48(c), and to provide clarification and enhancements predominately in the areas of existing non-compliances and the treatment of non-compliances if a licensee withdraws from the transition.

In addition to this revision of the Enforcement Policy, several Temporary Enforcement Guidance Memoranda (EGM) were published in CY 2006. The following EGMs can be found in Appendix A of the NRC Enforcement Manual:

- EGM 05-003, "Statute of Limitations Tracking Guidance," published on January 10, 2006.
- EGM 06-001, "Enforcement of Security Requirements for Portable Gauges," published on June 6, 2006.
- EGM 06-002, "Dispositioning Non-Willful 10 CFR 50.9 Violations Related to Safety System Unavailability Performance Indicator Changes," published on August 18, 2006.
- EGM 98-002, "Disposition of Violations of 10 CFR Part 50, Appendix R, Sections III.G and III.L, Regarding Circuit Failures (Revision 2, Supplement 1)," published on September 6, 2006.
- EGM 06-003, "Guidance for Dispositioning Enforcement Issues Associated with Orders Imposing Increased Controls for Licensees Authorized to Possess Radioactive Material Quantities of Concern," published on September 9, 2006.
- EGM 06-004, "Enforcement Discretion for Violations Associated with Concentrating Uranium at Community Water Systems," published on October 10, 2006.
- EGM 06-005, "Guidance for Dispositioning 10 CFR 70.72, Facility Change and Change Process Violations Related to NRC Regulatory Issues Summary 2006-14, Facility Changes Under 10 CFR 70.72(C)(2)," published on October 17, 2006.

X. AGENCY ALLEGATION REVIEWS

Because the Annual Report for the NRC's Allegation Program provides information about the activities within that program, information about the program is limited in this report. It merits mentioning in this report, however, that in accordance with Management Directive 8.8, "Management of Allegations," OE performs a quality assurance review of all agency outgoing responses to Freedom of Information Act (FOIA) requests that involve allegations. The OE Allegations Assistant reviews both the bracketed and redacted sets of records in order to verify thoroughness and accuracy in what the agency releases. The review and concurrence of these records is used to certify that the information to be disclosed from each record, or portion thereof, will not cause harm to an open allegation, or disclose the identity of an alleged whose identity still warrants protection. In CY 2006, OE reviewed approximately 36,497 pages of material for 45 agency FOIA responses. This included 1,687 pages of records that OE was responsible for reviewing (during the discovery phase) in preparation for the hearing on the first Individual Enforcement Actions response from the Davis-Besse case.

XI. INITIATIVES, PROGRAM OFFICE SUPPORT, STAFF GUIDANCE, & IMPLEMENTATION

A. ALTERNATIVE DISPUTE RESOLUTION

The NRC has a general Alternative Dispute Resolution (ADR) Policy which was issued on August 14, 1992. It supports and encourages the use of ADR in NRC activities. The NRC uses ADR in a variety of circumstances, including rulemaking and policy development, Equal Employment Opportunity (EEO) disputes, and to a more limited degree, in enforcement cases.

WHAT IS ADR?

The Administrative Dispute Resolution Act of 1996 (ADRA) encourages Federal agencies to use ADR. ADR is a term that refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. ADR is a less formal (compared to litigation) method of resolving differences between two or more parties.

Numerous forms of ADR exist, with mediation and arbitration being the most widely recognized. Mediation contains a spectrum of styles. In mediation, the parties develop a settlement agreement between themselves with a mediator's unbiased assistance. While ADR is frequently perceived as "binding arbitration" which concludes with the arbitrator issuing a decision, in mediation cases, the mediator cannot "bind" the parties. The NRC's enforcement ADR program uses mediation rather than arbitration, i.e., the parties develop mutually agreeable corrective actions rather than being obligated by an arbitrator's decision.

HOW IS ADR USED IN THE ENFORCEMENT PROGRAM?

At the beginning of FY 2005, the agency implemented a pilot program to evaluate the use of ADR in the Allegation and Enforcement Programs. The enforcement portion of the pilot program was initiated after OI had completed its investigation and based on the results of the investigation, the enforcement staff had concluded that further consideration of the issues identified in the OI report was warranted. This portion of the pilot program was typically referred to as “post-investigation” ADR.

Having decided to pursue enforcement based on the OI investigation report, ADR was offered at three points in the enforcement process: (1) prior to a predecisional enforcement conference; (2) when an NOV was issued; and (3) when cases resulted in the issuance of an order imposing a civil penalty. The post-investigation ADR pilot included an evaluation of the position that ADR would be less adversarial, less formal, and could promote greater communication which, in turn, could promote greater cooperation between parties at these points in the enforcement process. The potential for resource savings and a more timely resolution of issues was also anticipated.

The pilot program operated through the first quarter of 2006. The staff utilized ADR to resolve reactor, fuel facility, and materials enforcement cases at all points in the enforcement process provided by the pilot program (i.e., prior to a predecisional enforcement conference, with the issuance of an NOV, or with the issuance of an order imposing a civil penalty). Licensees, organizations subject to NRC jurisdiction, and individuals requested and used ADR. The staff used a confirmatory order to document the final settlement agreement that was reached in each case.

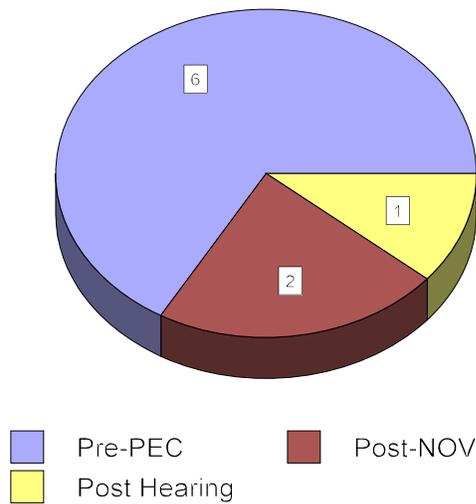
On May 5, 2006, SECY-06-0102, “Evaluation of the Pilot Program on the Use of Alternative Dispute Resolution in the Allegation and Enforcement Programs” was issued. In SECY-06-0102, the staff concluded that the use of ADR was, in general, a success. Despite limited resource savings overall in the enforcement portion of the ADR program, the opportunity for the staff to communicate openly with other parties in mediation with the assistance of a trained mediator helped the staff reach effective agreements that met NRC’s interests. Corrective actions were broader and/or more comprehensive than typically achieved through the traditional enforcement process. Parties commented, both formally and informally, that ADR was a less confrontational means to resolve issues, due in large part to the improved communication.

The staff’s evaluation noted that despite overall success, several opportunities for improvement existed. To improve the process, during 2006: (1) Regional Administrators were delegated the authority to issue confirmatory orders in their regions that were negotiated pursuant to the ADR program; (2) under certain circumstances, regional division directors were designated as lead negotiators; (3) information that is available on both the internal and external web sites was improved; and (4) plans to conduct additional mediator orientation were developed.

During 2006, a total of eight confirmatory orders were issued (i.e., two in reactor-related cases and six in materials-related cases) and one materials user licensee withdrew from the process after initially agreeing to mediate.

Figure 3 illustrates where ADR was requested in the enforcement process.

Figure 3. When ADR Was Requested



B. ENFORCEMENT ACTIONS AGAINST INDIVIDUALS

During CY 2006, no changes were made to Section VIII of the Enforcement Policy which addresses enforcement actions against individuals. The most recent revision was proposed by an internal NRC working group chaired by OE to evaluate and propose recommendations to this section of the Enforcement Policy. The proposed revision was published in the *Federal Register* on March 9, 2001, and sought stakeholder feedback on the proposed revision.

The NRC received comments from several stakeholders including the Union of Concerned Scientists and the Nuclear Energy Institute (NEI). The staff evaluated these comments; however, since the Discrimination Task Group (DTG) was considering a related question, namely whether hearing rights should be granted to individuals who receive NOVs, revision to Section VIII was placed on hold pending issuance of the DTG Staff Requirements Memorandum (SRM). Issued on March 26, 2003, the DGT SRM provided the staff with the Commission's direction to "fully explore the policy and resource implications of providing hearing rights (either formal or informal) to individuals subject to an NOV in connection with violations of the employee protection regulations."

During the ADR pilot program, the staff engaged in mediation with individuals as well as licensees. Although it was a challenge to coordinate and honor confidentiality issues, the staff, as well as some external stakeholders, believed that ADR offered an opportunity to resolve these matters in a positive manner. The ADR pilot program offered individuals creative actions meeting the agency's interest in deterrence and compliance. In addition, the staff allowed individuals to gain their employer's agreement to certain actions prior to finalizing a settlement agreement. Consequently, the staff concluded in SECY-06-0102, that offering ADR to individuals accused of wrongdoing provides the alternative process for individuals the Commission directed the staff to continue considering in the DGT SRM.

The Enforcement Policy will be revised to incorporate the use of ADR for individuals subject to an NOV in connection with violations of the employee protection regulations.

C. CIVIL PENALTY AUTHORITY AGAINST NON-LICENSEES FOR DISCRIMINATION

OE was the lead office responsible for the proposed rulemaking entitled “Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities.”

In January 2006, the proposed rule was published in the *Federal Register* (71 FR 5015). This rule would amend the Commission’s employee protection regulations in Title 10 of the Code of Federal Regulations (CFR) 30.7, 40.7, 50.7, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, and 76.7, to allow the Commission to impose civil penalties on contractors and subcontractors for violations of these regulations. The proposed rule also recommended amending 10 CFR 76.7 to bring it into conformance with the provisions of the other NRC’s employee protection regulations by providing that the Commission may impose a civil penalty on the United States Enrichment Corporation or a contractor or subcontractor of the United States Enrichment Corporation. The FRN provided the public with the opportunity to comment on the amendments, the draft environmental assessment, and the draft regulatory analysis. The comment period closed on April 17, 2006. The staff anticipates that the final rule will be published during CY 2007. At that time, the Enforcement Policy will also be revised to clarify the Commission’s civil penalty authority over contractors and subcontractors.

D. SAFETY CULTURE INITIATIVE

Beginning in 2005 and continuing in 2006, OE has been the lead office on an initiative to develop changes to the Reactor Oversight Process (ROP) to more fully address safety culture in response to Commission direction in SRM-SECY-04-0111, “Recommended Staff Actions Regarding Agency Guidance in the Areas of Safety Conscious Work Environment and Safety Culture.” The Commission has referenced the International Nuclear Safety Advisory Group’s (INSAG) definition of safety culture as “... that assembly of characteristics and attitudes in organizations and individuals which establishes that, as an overriding priority, nuclear plant safety issues receive the attention warranted by their significance.” The Commission provided further guidance in SRM-SECY-05-0187, “Status of Safety Culture Initiatives and Schedule for Near-Term Deliverables.” The following significant accomplishments were achieved in CY 2006 to complete this initiative.

Early in 2006, the agency held frequent public meetings with external stakeholders to finalize an approach to modify selected inspection procedures (IPs) and inspection manual chapters (IMCs) to incorporate safety culture considerations. During this period, multiple briefings on the status of the safety culture initiative were provided to the Advisory Committee on Reactor Safeguards (ACRS) and other agency staff.

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The inter-office/region safety culture working group modified the following IPs and IMCs to incorporate safety culture enhancements, based on the approach developed with external stakeholder involvement:

- IP 71152 “Identification and Resolution of Problems”
- IP 71153 “Event Follow-Up”
- IP 93812 “Special Inspection”
- IP 93800 “Augmented Inspection Team”
- IP 95001 “Supplemental Inspection for One or Two White Inputs in a Strategic Performance Area”
- IP 95002 “Supplemental Inspection for One Degraded Cornerstone or Any Three White Inputs in a Strategic Performance Area”
- IP 95003 “Supplemental Inspection for Repetitive Degraded Cornerstones, Multiple Degraded Cornerstones, Multiple Yellow Inputs, or One Red Input”
- IMC 0305 “Operating Reactor Assessment Program: Licensee Response, Regulatory Response, Degraded Cornerstone, and Multiple/Repetitive Degraded Cornerstone”
- IMC 0612 “Power Reactor Inspection Reports”

In May 2006, OE developed and submitted SECY-06-0122, “Safety Culture Initiative Activities to Enhance the Reactor Oversight Process and Outcomes of the Initiatives,” to provide information to the Commissioners on the staff’s activities and current status to enhance the ROP to more fully address safety culture.

The revised ROP was implemented in July 2006. Prior to the implementation of the revised ROP, safety culture computer-based training and regional inspector counterpart meeting training was developed and provided to inspection staff.

NRC Regulatory Issue Summary (RIS) 2006-13, “Information on the Changes Made to the Reactor Oversight Process to More Fully Address Safety Culture,” dated July 31, 2006, was issued, providing information to addressees and their contractors regarding the safety culture changes to selected IPs and IMCs.

The chair of the inter-office/region safety culture working group is the vice-chair of the Office of Nuclear Reactor Regulation’s newly established Safety Culture Focus Team (SCFT). The purpose of the SCFT is to promote the implementation of the ROP safety culture changes in an effective and consistent manner across the regions. The Agency’s Allegation Advisor, located in OE, chairs the SCFT’s newly established subgroup, the Safety Conscious Work Environment Findings Review Group, which reviews and dispositions all potential findings in the safety conscious work environment (SCWE) cross-cutting area of the ROP, to ensure regulatory consistency. Additional information on SCWE activities can be found in the “Allegation Program 2006 Annual Trends Report.”

E. DIFFERING PROFESSIONAL OPINIONS PROGRAM

The NRC revised its internal program for addressing differing professional views/opinions on May 16, 2004. OE has the program lead for the Differing Professional Opinions (DPO) program. The DPO program emphasizes that the agency will not tolerate retaliation, harassment or intimidation of employees who raise DPO concerns.

F. NON-CONCURRENCE PROCESS

In CY 2006, OE led an intra-agency task group to develop an agency-wide non-concurrence process. On November 29, 2006, the EDO issued draft Management Directive and Handbook 10.158, "NRC Non-Concurrence Process," as interim policy to provide agency-wide instructions and guidance for processing non-concurrences on documents in the concurrence process. The Non-Concurrence Process (NCP) applies equally to administrative issues, policy issues and technical concerns, and has been made part of the normal NRC document review and concurrence process.

The NCP is open to those on document concurrence, and to document reviewers and contributors provided they were assigned by supervisors to perform these roles. Employees also may request to be removed from concurrence. However, document sponsors must assure the adequacy of the concurrence chain and make document signers aware of important concerns that resulted in the request.

G. REACTOR PROGRAM SUPPORT & INITIATIVES

FIRE PROTECTION ACTIVITIES

As previously noted, OE revised the Enforcement Policy addressing the "Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues," on April 18, 2006 (71 FR 19905). The revision extends the current enforcement discretion period to three years for those licensees that commit to transition to 10 CFR 50.48(c), and provides enhancements predominately in the areas of existing non-compliances and the treatment of non-compliances if a licensee withdraws from the transition.

In September 2006, the agency extended the six-month time frame for the enforcement discretion from September 6, 2006, until a proposed generic letter addressing this subject and an associated EGM is issued.

H. MATERIALS PROGRAM SUPPORT & INITIATIVES

OE supported the following rulemakings:

- ▶ The 10 CFR Parts 40, 72, 74, and 150 rulemaking, "Regulatory Improvements to the Nuclear Materials Management and Safeguards System;"

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- ▶ The 10 CFR Part 70 rulemaking, “The Facility Change Process Involving Items Relied On For Safety;”
- ▶ The 10 CFR Parts 30, 31, and 32 rulemaking, “Exemptions from Licensing, General Licenses, and Distribution of Byproduct Material: Licensing and Reporting Requirements;”
- ▶ The 10 CFR Part 40 rulemaking, “Groundwater Protection at In Situ Leach Uranium Processing Facilities;” and
- ▶ The 10 CFR Part 40 rulemaking, “Uranium In Drinking Water.”

OE served on working groups involved with:

- ▶ The development of the National Source Tracking System; and
- ▶ The definition of Byproduct Material related to Naturally Occurring or Accelerator-Produced Radioactive Material (NARM).

I. SECURITY PROGRAM SUPPORT & INITIATIVES

OE supported the following Security Initiatives:

- ▶ Security Findings Review Panel meetings for NSIR;
- ▶ The 10 CFR 73.55 rulemaking, "Power Reactor Security Requirements;" and
- ▶ The 10 CFR Part 26 rulemaking, “Fitness-For-Duty.”

J. LEGAL PROGRAM SUPPORT

OE worked extensively with the Office of the General Counsel (OGC) to provide support for the Atomic Safety and Licensing Board (ASLB) hearing activities related to enforcement actions issued during 2006 to former employees at the Davis-Besse Nuclear Power Plant (IA-05-021, IA-05-052, IA-05-052, and IA-05-054). Support activities included enforcement specialists attending depositions with OGC attorneys and assisting with the written responses to interrogatories.

K. PUBLIC INVOLVEMENT

The NRC views building and maintaining public trust and confidence as an important performance goal for the agency as it carries out its mission. To reach this goal, the NRC must be an independent, open, efficient, clear and reliable regulator and must find appropriate ways to convey its message to the public, including providing stakeholders with clear and accurate information about, and a meaningful role in, the agency’s regulatory programs.

To further these goals, the NRC's Enforcement Program has been structured to actively engage stakeholders by educating them on how the enforcement program is conducted and how it is changing to support new initiatives in the agency's oversight programs.

To provide accurate and timely information to all interested stakeholders and enhance the public's understanding of the NRC's Enforcement Program, information about the Enforcement Program is available on the NRC's public web site where it can be retrieved and downloaded. The NRC's Enforcement web site includes a variety of information such as the Enforcement Policy; significant enforcement actions issued to reactor and materials licensees, non-licensees (vendors, contractors, and certificate holders), and individuals; upcoming predecisional enforcement conferences; and enforcement guidance, e.g., the newly revised Enforcement Manual and Enforcement Guidance Memoranda (EGMs). Consistent with NRC practices and policies, most security-related actions and activities are not included on the NRC's public web site. OE does include security orders that impose compensatory security requirements on various licensees in its enforcement documents collection.

The draft inspection procedures (IPs) and inspection manual chapters (IMCs) that were changed to more fully address safety culture were provided on OE's public safety culture web site for stakeholder review and comment. The final IPs and IMCs and the resolution of stakeholders comments were also placed on the NRC's public web site as were public meeting materials and summaries, and other relevant documents.

In an effort to increase stakeholder involvement in the development of enforcement policy and guidance, OE has also established a public participation page on the Enforcement web site which allows interested stakeholders to provide input on various enforcement issues, e.g., the use of ADR in enforcement.

In CY 2006, stakeholder activities included:

- ▶ On January 18, February 2, and February 14, 2006, OE chaired public stakeholder meetings on the safety culture revisions to the ROP.
- ▶ On March 1, 2006, OE attended a public meeting addressing fire protection issues.
- ▶ On March 3, 2006, OE made a presentation at a public meeting on the discretion policy for NFPA 805 transition periods.
- ▶ During the March 2006 Regulatory Information Conference (RIC), OE sponsored a panel consisting of stakeholders which discussed the use of ADR in the NRC's Allegation and Enforcement Programs. Representatives from the various groups involved in the NRC's ADR program provided presentations and answered questions.
- ▶ At the March 2006 RIC, OE chaired a panel session on "Safety Culture Initiatives and Implications."

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- ▶ On May 8 through 10, 2006, OE participated in the Conference of Radiation Control Program Directors (CRCPD) Annual Meeting and presented the use of ADR in the NRC's Enforcement Program.
- ▶ In May 2006, OE participated in the Nuclear Energy Agency's 8th International Workshop on Inspection Activities in Toronto, Canada, on the topic of Nuclear Regulatory Inspections and Safety Culture.
- ▶ In August 2006, OE attended the annual Fire Protection Information Forum sponsored by the Nuclear Energy Institute (NEI) and made a presentation on the current enforcement issues related to fire protection.
- ▶ In November 2006, OE participated in a panel on "Regulatory Oversight and Involvement in Safety Culture" at the American Nuclear Society Winter Meeting, Albuquerque, New Mexico.

L. ENFORCEMENT GUIDANCE

The NRC's Enforcement Manual was completely revised during CY 2006 and deployed in September 2006. The Manual is located on the NRC's external and internal web sites and in the Agencywide Documents Access and Management System (ADAMS). The revision adds new information and updates current guidance on enforcement issues. No longer provided in hard-copy, the electronic version will be updated as needed to ensure that users have access to the latest enforcement guidance. In addition, the revised Manual is in a more "user-friendly" format for retrieving information.

The guidance in the Enforcement Manual is intended for internal use by the NRC and contains the procedures, requirements, and background information used by the staff who review and process enforcement actions; however, it is also publicly available.

M. INTERNAL COMMUNICATIONS, TRAINING, AND REVIEWS

Successful communications and training for internal stakeholders is vital to ensure that the agency's Enforcement Program is both understood and acknowledged. Annually, headquarters, regional, and program office enforcement staff participate in a counterpart meeting to discuss enforcement issues and present new enforcement initiatives. Weekly conference calls are also held at which enforcement issues and questions about enforcement cases are discussed.

Topic-focused reviews are conducted to provide the enforcement staff with comprehensive feedback regarding the successes and challenges facing the Enforcement Program and to assist the staff in identifying when the Enforcement Policy and enforcement guidance is inconsistently applied to enforcement actions. The following section provides brief summaries of the reviews that were conducted in CY 2006.

Headquarters

REVIEW OF THE ENFORCEMENT ACTION TRACKING SYSTEM (EATS)

On January 13, 2006, OE completed a review of the Enforcement Action Tracking System (EATS) which is used to track the progress of the enforcement actions that OE “opens”. The review looked at cases that were opened in 2005. The purpose of the review was to identify: (1) cases where the final enforcement action has been issued, but the case was not “closed” in EATS; (2) escalated enforcement cases that had been issued, but had not been published on the Enforcement web page within 10 days of their issuance date; and (3) data that was incorrectly or inappropriately (e.g., security considerations) entered.

During the review, the review team found that: (1) several cases where the final enforcement action had been issued were missing final data that would have allowed the case to be closed in EATS; (2) in a few cases, distribution for escalated enforcement actions did not include OE WEB, resulting in a delay in adding these cases to the OE web page; and (3) a number of data entry errors were identified, e.g., a number of cases that either did not have a case open date or had an incorrect open date, several cases that did not include the inspection date, and two cases that did not identify the enforcement specialist associated with the case. In one case the OI Report issue was missing in the OI database.

In response to the review, in CY 2006, OE took the following actions to improve the tracking of enforcement cases within the office: (1) all the errors that were found were corrected; (2) the Deputy Office Director spoke to the staff regarding the importance of providing correct data and maintaining the database at several staff meetings and on the weekly conference call with regional enforcement staff; and (3) OE will continue to monitor cases in EATS to assure that the data is correct and that cases are closed appropriately.

REVIEW OF THE SIGNIFICANCE DETERMINATION PROCESS/ENFORCEMENT ACTION (SDP/EA) REQUEST & STRATEGY FORMS IN ADAMS:

In December 2006, OE completed a review of the Significance Determination Process/Enforcement Action (SDP/EA) request & Strategy Forms (SFs) that have been placed into ADAMS. These forms are used to document enforcement strategies and are required to

be entered into ADAMS after they have been approved by OE management. The purpose of the review was to determine whether (1) all approved SFs have been placed into ADAMS and (2) ADAMS Document Processing instructions OE-005 are being correctly implemented.

The review examined 41 SFs that were processed during the two-month period from September 15, 2006, through November 15, 2006. The results of the review indicated that approximately 90% of the approved SFs were placed into ADAMS. Of the SFs that were placed into ADAMS, the document processing instructions were correctly implemented with a few minor errors, and the ADAMS profiles for the approved SFs included all required document

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fields as indicated in OE-005. Only two SFs did not include the case/document number which while not a required field, is an applicable field.

Based on the results of the review, the following recommendations were made: (1) ensure that each strategy form in ADAMS is profiled correctly by placing a case's EA number in both the "ADAMS Document Manager" field, and the "ADAMS Find" field; (2) explore the possibility of making the EA number a required field; (3) provide document processing training to staff who process documents in ADAMS; (4) provide training to staff that addresses how to retrieve the SFs using different/alternate field searches, such as title, or text, etc., in addition to the use of the EA number; (5) review the ADAMS folder periodically to verify that SFs have been placed in ADAMS as required. Corrective actions based on these recommendations have been planned and are currently being implemented.

REVIEW OF THE 3-WEEK EMAIL PROCESS

In April 2006, the staff completed a review of the "3-week email" process entitled "Audit of the Significance Determination Process/Enforcement Action(SDP/EA) request & Strategy Forms in ADAMS." These emails are used to give responsible offices an opportunity to provide comments on an Office of Investigations (OI) report which indicates that there does not appear to be a violation. The responsible office enforcement coordinator normally issues an email message to affected offices within one week after receiving the OI report indicating that no enforcement action is being considered. If, after three weeks from the date of the email message, the responsible office has not received differing views, the matter is considered closed. The purpose of the review was to verify that 3-week emails were being issued, to determine the timeliness of their issuance, and to solicit suggestions to improve this process. The review covered all unsubstantiated OI reports issued during CY 2005.

The review concluded that: (1) all affected offices issued 3-week emails for all the unsubstantiated OI reports covered by the review or provided justification for those instances where it was not issued; (2) although some offices met the Enforcement Manual guidance to issue the emails within one week, the 1-week issuance guidance, on average, was not being met; and (3) OE historically has not maintained a formal process to ensure that it reviews at least 10 percent of all unsubstantiated OI reports.

Based on the results of this review, the following changes were implemented: (1) the Enforcement Manual timeliness guidance for issuance of 3-week emails was changed from one week to 60 days; (2) the OE Action Item Tracking System (AITS) was revised to include a box for "unsubstantiated" in the OI Reports field, followed by other boxes which can be checked to indicate whether the unsubstantiated report was reviewed by the assigned OE specialist and the date of the review; and (3) an AITS tracking item was opened to ensure that each OE specialist reviews a minimum of two unsubstantiated OI reports each fiscal year.

REVIEW OF 10 CFR PART 50, APPENDIX B, CRITERION XVI, GREEN NON-CITED VIOLATIONS

In July 2006, OE and the four regional offices completed a review entitled “10 CFR 50, Appendix B, Criterion XVI, Green Non-cited Violations.” The purpose of this review was (1) to determine whether inspectors were correctly implementing the NRC Enforcement Policy Non-Cited Violation (NCV) criteria and (2) to determine whether 10 CFR 50, Appendix B, Criterion XVI, “Corrective Action,” NCVs are being correctly cited.

A total of 60 Criterion XVI NCVs, out of a population of approximately 124 Criterion XVI NCVs recorded during CY 2005, were evaluated during this review. The review concluded that approximately 23% of the Green Criterion XVI NCVs evaluated were not valid violations of Criterion XVI. Approximately 7% of the NCVs evaluated were determined to be inadequately supported by the inspection report documentation such that a determination could not be made regarding the validity of the violation. Approximately 30% of the violations described as Significant Conditions Adverse to Quality (SCAQs) or as “failed to prevent recurrence” were determined not to be valid SCAQs. With the exception of Inspection Procedure 88110, “Quality Assurance: Problem Identification, Resolution and Corrective Action (PIRCA) (Construction, Pre-Operation and Operation),” neither the NRC Inspection Manual nor inspection procedures define a condition adverse to quality (CAQ) or SCAQ. Therefore, to a large extent, inspectors must rely on personal judgment to determine whether an issue represents a CAQ or SCAQ and often the inspection report does not adequately justify how the inspector made that determination.

The Office of Nuclear Reactor Regulation (NRR) reviewed the recommendations of this review and agreed to provide additional clarification in inspection program documents and to provide training to inspectors on the attributes of a properly cited Criterion XVI violation. NRR is also working with the industry through the Corrective Action Program Owner’s Group to identify SCAQ examples across the industry in order to reach an industry consensus on the type of issues which would result in a SCAQ.

REGIONAL**REGION I**

Region I conducted two self-assessments (in June and September 2006) of the Enforcement and Allegations Programs, entered the findings from the reviews into Region I’s corrective actions program, and provided training in response to the findings.

▶ SELF-ASSESSMENT: ALLEGATIONS AND NON-ESCALATED ENFORCEMENT ACTIONS

The first Allegation and Enforcement Self-Assessment was conducted to determine Region I’s overall effectiveness in handling allegations in both the reactor and materials areas, as well as the effectiveness of the region’s handling of non-escalated Criterion XVI enforcement actions in the reactor area. In the enforcement area, evaluation of 10 CFR 50, Appendix B, Criterion XVI violations was selected as the topic for review

based on a February 2006 OE request. All regions were requested to evaluate this area because of licensee concerns as to whether the NRC was distinguishing between conditions adverse to quality (CAQ) and significant conditions adverse to quality (SCAQ) when developing related enforcement actions. Two cases were identified where Criterion XVI NCVs did not appear to be valid, although violations of other NRC requirements likely existed. Criterion XVI did not appear to be an appropriate requirement for these issues because the conditions involved component degradation or concerns that, upon evaluation, did not adversely affect functionality or operability, or otherwise could be considered a CAQ or a SCAQ. For the enforcement component of the review, the following recommendations were made: (1) provide training to regional staff regarding documentation of concerns involving violations of Criterion XVI; and (2) request additional guidance from OE and NRR by revising Inspection Manual Chapter (IMC) 0612, "Power Reactor Inspection Reports," regarding the issuance of Criterion XVI violations with respect to handling repetitive issues and SCAQs.

▶ **SELF-ASSESSMENT: ALLEGATIONS AND NON-ESCALATED ENFORCEMENT ACTIONS**

The second Allegation and Enforcement Self-Assessment was conducted to determine Region I's overall effectiveness in handling allegations in both the reactor and materials areas, as well as the effectiveness of Region I's handling of non-escalated enforcement actions in the materials area. In the Enforcement area, 15 materials inspection reports involving non-escalated enforcement actions from the period March - July, 2006 were reviewed for quality, timeliness, and to determine if the NRC Enforcement Policy criteria were correctly applied in terms of the NRC Enforcement Policy and IMC 0610, "Nuclear Material Safety and Safeguards Inspection Reports." The assessment found that regarding enforcement strengths, inspection report documentation of all 15 reports sampled during the review was considered appropriate and met the Enforcement Policy guidance for documenting non-escalated enforcement actions. The assessment noted that regarding enforcement weaknesses, some administrative documentation weaknesses exist involving attention to detail; however, none were considered significant. The following recommendations were made: (1) provide training, based on the results of this self-assessment, to the Division of Nuclear Materials Safety management and staff regarding the documentation concerns involving materials non-escalated enforcement; (2) complete the recommendation from the first self-assessment to provide technical staff training on Criterion XVI non-escalated enforcement (completed in CY 2006); and (3) provide increased attention to detail in the documentation of materials inspection reports and NOVs to preclude administrative errors.

In addition to reviews, the Region I enforcement staff:

- ▶ Typically participated in inspection debriefings for reactors and materials inspections to assure that violations of requirements were being properly dispositioned; and

- ▶ Compiled a monthly count of all reactor non-escalated enforcement actions which were sent to headquarters for inclusion in the NRC's monthly report to Congress (Congressional Report). In addition, the enforcement staff also compiled materials non-escalated enforcement actions and provided the statistics to headquarters. The results of these compilations were summarized and reviewed by senior regional management.

REGION II

- ▶ Region II's Enforcement and Investigations Coordination Staff (EICS) participated, with OE, in a review of Criterion XVI violations detailed above.
- ▶ EICS participated, with OE, in a review of the 3-week email process, providing input used to develop and inform conclusions related to regional consistency in following the process.
- ▶ In addition to reviews, the regional enforcement staff typically participated in inspection debriefings for reactors and materials inspections to assure that violations of requirements were being properly dispositioned.
- ▶ The Region II enforcement also staff compiled a monthly count of all reactor non-escalated enforcement actions which were sent to headquarters for inclusion in the NRC's monthly report to Congress. In addition, the enforcement staff also compiled materials non-escalated enforcement actions and provided the statistics to headquarters. The results of these compilations were summarized and reviewed by Region II senior management.

REGION III

- ▶ The Region III Enforcement and Investigation Coordination Staff (EICS) also participated in the review of 10 CFR Part 50, Appendix B, Criterion XVI violations, in coordination with OE, in February 2006. Several examples were identified where the Criterion XVI violation did not appear to be valid and was inappropriately cited when other violations, such as Criterion V violations, should have been cited. To address this issue, Region III instituted a process that requires all potential Criterion XVI violations be reviewed with EICS staff prior to issuance.
- ▶ The Region III EICS conducted reviews of all non-escalated enforcement actions in the materials area. The reviews examined the actions for accuracy, quality and timeliness to determine if the non-escalated actions met NRC Enforcement Policy and IMC 0610 guidance. The results of these audits did not identify any significant findings and the results were discussed, as appropriate, with divisional management.
- ▶ In addition to reviews, the Region III EICS frequently participated in inspection debriefings for reactors and materials inspections to ensure that violations of requirements were being properly dispositioned in accordance with applicable enforcement guidance.

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- ▶ The Region III EICS also compiled a monthly count of all reactor non-escalated enforcement actions which were sent to headquarters for inclusion in the NRC's monthly report to Congress and compiled all materials non-escalated enforcement actions and provided summary statistics to OE for its bi-annual review of non-escalated materials enforcement actions. The results of these compilations were summarized and reviewed by Region III senior management.

REGION IV

Each year, all offices in Region IV, including the Allegation Coordination Enforcement Staff (ACES) provide a self-assessment report to regional management on accomplishments for the year.

- ▶ ACES provided its last self-assessment report on August 22, 2006, at the annual program management retreat. The ACES report indicated that over the year ACES focused on improving timeliness and quality of allegation and enforcement activities through improvement initiatives including: (1) biweekly allegation status meetings and monthly enforcement status meetings with senior managers and OI; (2) monthly OI status meetings with the Regional Administrator; (3) weekly OE conference calls; (4) review of OE status of open OI reports; (5) a DNMS allegation closure documentation pilot; (6) routine communications with OE, OGC, other regions, and program offices; and (7) comparing processes with other regions. The report also stated that ACES would look for opportunities to supplement staff. To this end, ACES had one Nuclear Safety Professional Development Program (NSPDP) participant rotate for three months with ACES to assist with allegation and enforcement work in FY 2006. Because this initiative was so successful, ACES will have a NSPDP participant rotate with the ACES staff each quarter of FY 2007-2008. ACES also reported that it would update Region IV's policy guide on allegations consistent with OE's update of M.D. 8.8, Management of Allegations in FY 2007. In that report, ACES emphasized the need for centralized storage space for allegation and enforcement files. The Division of Resource Management and Administration (DRMA) provided ACES with this space in late FY 2006 in close proximity to the enforcement and allegation offices.
- ▶ ACES also reported on its internal (quarterly self-assessment) and external (OE and RIII) allegation assessments in 2006 and its internal quarterly audits of inspection reports in 2006. The inspection reports reviews examined whether enforcement actions are documented in accordance with the NRC Enforcement Policy. These reviews provided no substantive findings, but did find some minor areas for improvement.

With regards to "Openness" in the NRC's Strategic Plan, ACES's assessment indicates that it ensures that regulatory/enforcement conferences are noticed and open, where appropriate, and that publicly available enforcement information is placed in the public portion of ADAMS. The report also notes that ACES will continue to work with Public Affairs to ensure that press releases are issued when appropriate and assist with the development of Communications Plan to support these efforts. In terms of "Effectiveness," ACES found that it ensures that NOVs are provided to OI before

investigations are begun, that ACES promotes and uses ADR, as appropriate, and that ACES takes steps to ensure that experienced GG-14 staff transfer knowledge and mentor GG-13 staff.

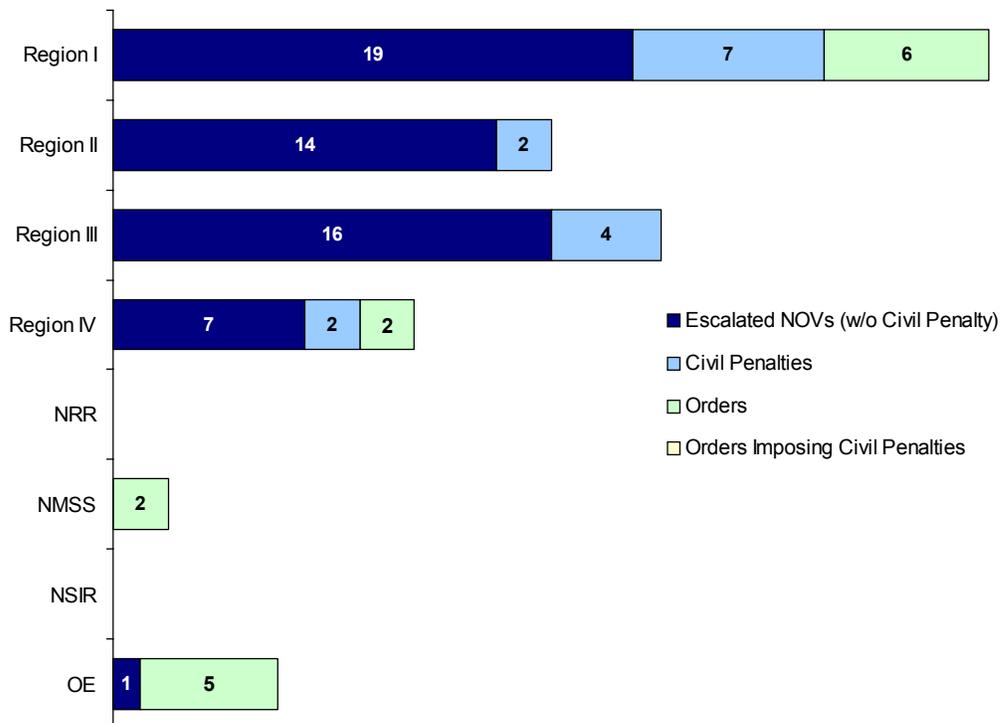
- ▶ The Region IV enforcement staff also compiled a monthly count of all reactor non-escalated enforcement actions. These were sent to headquarters for inclusion in the NRC's monthly report to Congress. In addition, the enforcement staff also compiled materials non-escalated enforcement actions and provided the statistics to headquarters. The results of these compilations were summarized and reviewed by Region IV senior management.

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**TABLE 3. CY 2006 - ESCALATED ENFORCEMENT ACTIONS
BY REGION AND PROGRAM OFFICE**

Program Office	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalties	Total FY 2006
Region I	19	7	6	0	32
Region II	14	2	0	0	16
Region III	16	4	0	0	20
Region IV	7	2	2	0	11
NRR	0	0	0	0	0
NMSS	0	0	2	0	2
NSIR	0	0	0	0	0
OE	1	0	5	0	6
Total	57	15	15	0	87

**FIGURE 4. ESCALATED ENFORCEMENT ACTIONS BY
REGION AND PROGRAM OFFICE**



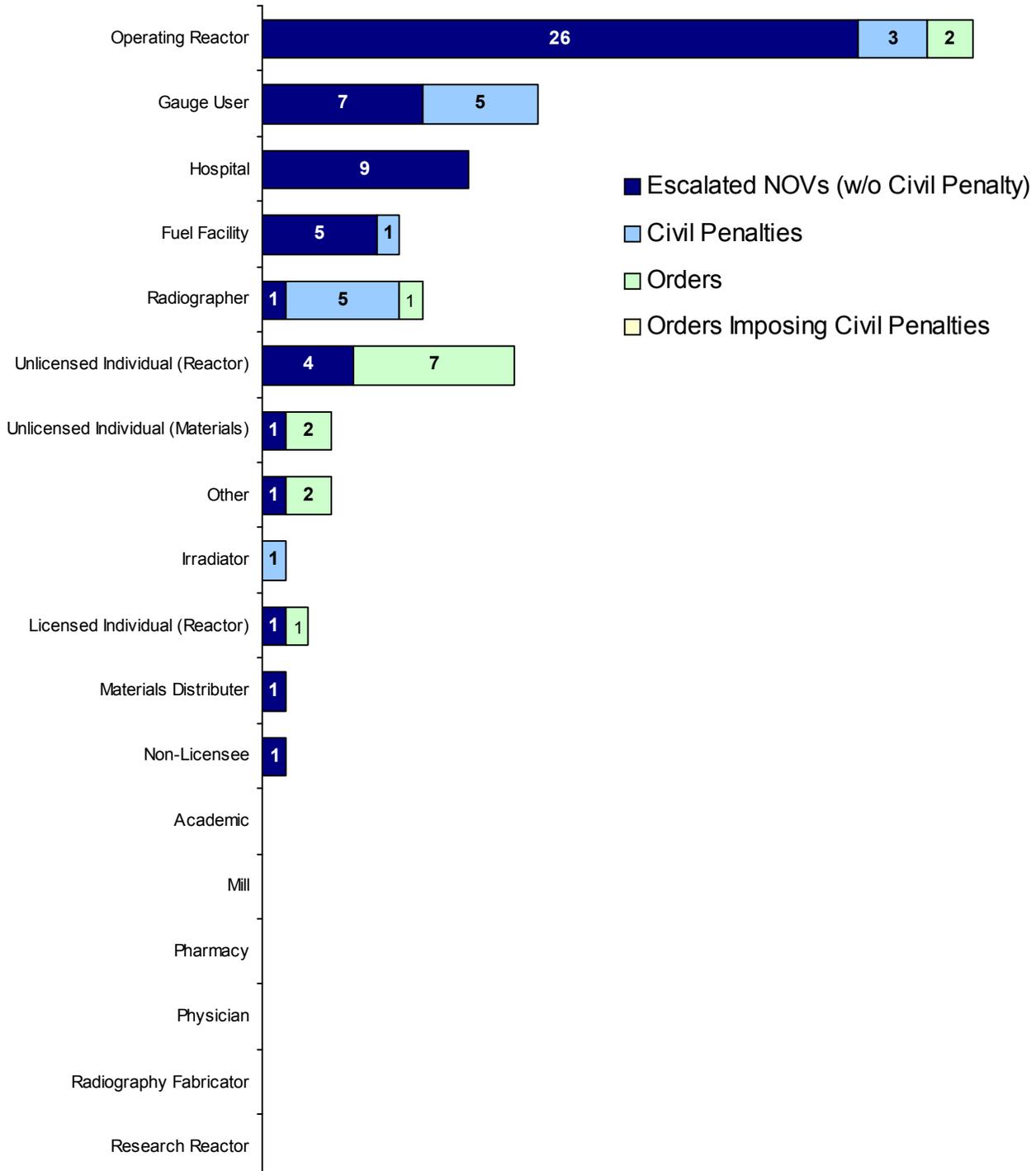
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**TABLE 4. CY 2006 - ESCALATED ENFORCEMENT ACTIONS
BY TYPE OF LICENSEE, NON-LICENSEE, OR INDIVIDUAL**

Type of Licensee	Escalated NOVs (w/o Civil Penalty)	Civil Penalties	Orders	Orders Imposing Civil Penalties	Total CY 2005
Operating Reactor	26	3	2	0	31
Gauge User	7	5	0	0	12
Hospital	9	0	0	0	9
Fuel Facility	5	1	0	0	6
Radiographer	1	5	1	0	7
Unlicensed Individual (Reactor)	4	0	7	0	11
Unlicensed Individual (Materials)	1	0	2	0	3
Other	1	0	2	0	3
Irradiator	0	1	0	0	1
Licensed Individual (Reactor)	1	0	1	0	2
Materials Distributer	1	0	0	0	1
Non-Licensee	1	0	0	0	1
Academic	0	0	0	0	0
Mill	0	0	0	0	0
Pharmacy	0	0	0	0	0
Physician	0	0	0	0	0
Radiography Fabricator	0	0	0	0	0
Research Reactor	0	0	0	0	0
UF Conversion Facility	0	0	0	0	0
Waste Disposal	0	0	0	0	0
Well Logger	0	0	0	0	0
Total	57	15	15	0	87

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FIGURE 5. CY 2006 ESCALATED ENFORCEMENT ACTIONS BY TYPE OF LICENSEE, NON-LICENSEE, OR INDIVIDUAL



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**APPENDIX A: SUMMARY OF ESCALATED NOTICES OF VIOLATION
WITHOUT CIVIL PENALTIES***

***Advantage Engineering, LLC
Mechanicsburg, PA***

EA-06-214

On October 18, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure by the authorized gauge operator to control and maintain constant surveillance of a portable nuclear gauge. Specifically, the gauge, which contained NRC-licensed radioactive material (two radioactive sources), was damaged when it was run over by a bulldozer after the authorized gauge operator had left it unattended for approximately five minutes at a job site.

***AmerGen Energy Company, LLC
Oyster Creek Generating Station***

EA-05-199

On January 9, 2006, a Notice of Violation was issued for a violation associated with a White Significance Determination Process (SDP) finding involving the licensee's failure to properly utilize the Emergency Plan emergency action level (EAL) matrix during an actual event. Specifically, operators did not recognize that plant parameters met the EAL thresholds for declaring an Unusual Event and a subsequent Alert. Since an Alert was not declared, licensee personnel did not activate their emergency response organization to assist operators in mitigating the event. Additionally, State and local agencies, who rely on information provided by the facility licensee, might not have been able to take initial offsite response measures in as timely a manner had the event degraded further. The violation was cited against 10 CFR 50.54(q), 10 CFR 50.47(b)(4), and the Oyster Creek Generating Station Emergency Plan.

***Andrews Environmental Engineering, Inc.
Naperville, IL***

EA-06-299

On December 27, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. Specifically, the gauge user left the portable gauge unattended at a job site to answer a phone call, thus failing to control access to the unrestricted area and provide constant surveillance of the gauge.

* Please note that cases involving security-related issues are not included.

**Community Hospitals of Indiana, Inc.
Indianapolis, IN****EA-06-101**

On July 10, 2006, a Notice of Violation was issued for a Severity Level III problem involving the licensee's failure to develop written procedures to provide high confidence that each administration is in accordance with a written directive. Specifically, the licensee's written procedure for high dose rate (HDR) brachytherapy did not describe that the HDR metal interface connector was to be attached during treatment simulation to determine appropriate location of the sources within the patient. In addition the licensee did not notify the NRC Operations Center by the next calendar day following discovery of the medical event.

**Constellation Generation Group, LLC
Calvert Cliffs Nuclear Power Plant****EA-06-198**

On October 27, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving inadequate design control during the establishment of the over-current trip setting for an electrical circuit breaker that supplies power to the support systems for the 1A emergency diesel generator (EDG). The violation was cited against 10 CFR Part 50, Appendix B, Criterion III, "Design Control," because the licensee failed to ensure that design control measures provided for verifying or checking the adequacy of the design when Calvert Cliffs modified the on-site electrical distribution design by installing a new 1A EDG in 1996. In addition, the licensee did not conduct adequate design reviews, alternate calculations, nor did it conduct suitable testing to identify that the over-current trip setting was incorrect.

**Dickinson County Road Commission
Iron Mountain, MI****EA-05-226**

On January 24, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure or maintain constant surveillance of NRC-licensed material contained in a portable moisture/density gauge. Specifically, during a routine safety inspection, an NRC inspector entered the licensee's offices in an unlocked public building and found the gauge unsecured.

**Digirad Imaging Solutions, Inc.
Bemus Point, NY****EA-05-136**

On January 27, 2006, a Notice of Violation for a Severity Level III violation with no civil penalty and an immediately effective Confirmatory Order was issued to confirm commitments made as part of a settlement agreement concerning submission of inaccurate information to the NRC. The settlement agreement was reached as a result of an Alternative Dispute Resolution session that was held at the request of the licensee. In addition to the NOV, the licensee has changed its procedures to ensure that any information it submits to NRC will be complete and accurate, and the Radiation Safety Officer will submit articles to various medical and health physics journals describing the incident to provide an opportunity for other licensees in the industry to learn from the incident. (This case is also summarized in Appendix C.)

**Duke Power Company, LLC
Oconee Nuclear Station****EA-06-199**

On November 22, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to effectively control maintenance activities and the failure to assess and manage the risk associated with removing an access cover in the south wall of the standby shutdown facility to facilitate installation of temporary electrical power cables. The violation was cited against the licensee's technical specifications based on an inadequate procedure and against 10 CFR 50.65(a)(4) based on the licensee's failure to adequately assess and manage the increase in risk from maintenance activities.

**Eastern Shoshone & Northern Arapaho Tribes
Fort Washakie, WY****EA-06-040**

On July 14, 2006, a Notice of Violation was issued for a Severity Level III problem involving the licensee's failure to conduct operations so that the total effective dose equivalent to individual members of the public would not exceed 0.1 rem in a year. Specifically, a member of the public, working in close proximity to the portable gauge storage area, received a calculated dose in excess of 0.1 rem during calendar years 2000 and 2001. In addition, from March 2000 through May 2006, the licensee failed to make or cause to be made surveys of radiation levels in unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public as required. The NRC has exercised enforcement discretion to refrain from issuing a civil penalty because the licensee has transferred all NRC-licensed material to an authorized recipient, and requested termination of its NRC license.

**ECS Mid-Atlantic, LLC
Chantilly, VA****EA-05-177**

On May 22, 2006, 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 portable gauge containing licensed material, while the gauge was in an unrestricted area and not in storage. In addition, the licensee did not control and maintain constant surveillance of the gauge and while unattended, the gauge was run over by a front end loader and destroyed.

**Entergy Nuclear Operations, Inc.
Vermont Yankee Nuclear Power Station****EA-06-253**

On December 20, 2006, a Notice of Violation associated with a White SDP finding was issued involving the shipment of a package containing radioactive material via an exclusive-use open transport vehicle. The package did not conform to the applicable Department of Transportation (DOT) regulatory requirements when it arrived at another facility. The violation was cited against 10 CFR 71.5, "Transportation of Licensed Material," and 49 CFR 173.441(a) (a DOT regulation) because the package containing the radioactive material was not designed and prepared to assure, under conditions normally incident to transportation, that the radiation level on any point on the external surface of the package would not exceed 200 millirem per hour.

**Exelon Generation Company
Braidwood Nuclear Power Plant****EA-06-081**

On June 29, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving multiple failures by the licensee to adequately evaluate the radiological hazards associated with the leaks from the circulating water blowdown line vacuum breakers and to assess the environmental impact of the resultant onsite and offsite tritium contamination.

**Exelon Generation Company
Quad Cities Nuclear Power Plant, Unit 1****EA-06-112**

On June 29, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to establish measures to ensure that the Unit 1 electromatic relief valves remained suitable for operation prior to implementing an extended power uprate (EPU). This resulted in multiple ERVs becoming inoperable and unavailable due to being subjected to significantly higher vibration levels during Unit 1 operation at EPU power levels.

**Exelon Generation Company, LLC
La Salle County Station, Unit 2****EA-06-022**

On March 31, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to comply with the written procedures required by the facility's Technical Specifications addressing entry into high radiation areas (HRAs). Specifically, a contractor pipefitter foreman and two contractor pipefitters entered a properly posted HRA without reviewing and signing the appropriate radiation work permit and without a briefing from radiation protection personnel for entry into a HRA.

**FirstEnergy Nuclear Operating Company
Beaver Valley Power Station****EA-06-215**

On December 12, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving an inadequate emergency preparedness implementing procedure that would be used during certain emergency conditions to assess the offsite radiological consequences for the purpose of developing protective action recommendations. The violation was cited against 10 CFR 50.47(b)(9) because the licensee's emergency plan failed to have an adequate method for assessing actual and potential offsite consequences of a radiological emergency.

FirstEnergy Nuclear Operating Company
Beaver Valley Power Station**EA-06-152**

On December 19, 2006, a Notice of Violation and an immediately effective Confirmatory Order was issued as a result of an investigation of deliberate wrongdoing by a former contract mechanical engineer. The NOV includes two violations of 10 CFR Part 50, Appendix B, Criterion III, "Design Control," and the licensee's procedures for engineering changes and design interface reviews and evaluations, which were categorized as one Severity Level III problem. The licensee requested Alternative Dispute Resolution. As a result, both parties agreed, among other things, that: (1) the former contract engineer deliberately failed to adhere to procedural requirements; (2) the licensee took multiple corrective actions to prevent recurrence; (3) there was a need for additional corrective actions at the licensee's facilities as well as an opportunity for other licensees in the industry to learn from this incident; (4) in light of the corrective actions the licensee has taken and has committed to take, the NRC would issue a Severity Level III violation with no civil penalty; and (5) the NRC would issue a Confirmatory Order confirming this agreement. (This case is also summarized in Appendix C.)

Florida Power and Light Company
Turkey Point Unit 3**EA-06-200**

On November 22, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure to adequately assess and manage the increase in risk of performing maintenance on the A-train 480-volt 3C load center while the facility was operating in decay heat removal mode with one operating A-train residual heat removal pump. The violation was cited against 10 CFR Part 50.65(a)(4) for failure to adequately assess and manage the increase in risk before performing maintenance on the A-train 480-volt 3C load center.

Florida Power and Light Energy, LLC
Duane Arnold Energy Center**EA-04-053**

On May 1, 2006, a Notice of Violation was issued for a Severity Level III violation involving failure to complete a Pre Fuel Move Checklist prior to relocating three irradiated fuel bundles in the Duane Arnold Spent Fuel/Cask Pool. Specifically, a designated fuel handling supervisor failed to complete the checklist, as required by a Duane Arnold fuel handling procedure, before moving the irradiated fuel bundles.

Florida Power & Light Energy, LLC
Duane Arnold Energy Center**EA-06-047**

On May 1, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure of a designated fuel handling supervisor to complete a Pre Fuel Move Checklist prior to relocating three irradiated fuel bundles in the Duane Arnold Spent Fuel/Cask Pool.

**Florida Power and Light Company
Turkey Point Nuclear Plant****EA-06-027**

On April 17, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving the licensee's failure to restore the B auxiliary feedwater (AFW) pump to operable status within 30 days, to place the unit in at least Hot Standby during this time, and to identify and correct the condition adverse to quality even though pump bearing vibration levels and oil samples provided indication of the adverse condition. In this case, the B AFW pump was placed in service on September 10, 2003, in an inoperable condition due to a misaligned radial bearing, and the inoperable condition was not identified until November 7, 2005. The violation was cited against the licensee's failure to implement the requirements in Technical Specification 3.7.1.2 and 10 CFR Part 50, Appendix B, Criterion XVI, "Corrective Action."

**Hospital Andres Grillasca, Inc.
Ponce, PR****EA-06-125**

On July 21, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to implement written procedures to provide high confidence that each patient treatment is in accordance with the treatment plan and written directive, and that both manual and computer generated dose calculations are verified. As a result of the failure to verify that an HDR treatment was administered in accordance with the written directive, a dose was calculated and delivered to a depth of one centimeter rather than the prescribed two centimeter depth, resulting in an underdose of 57%.

**IUPUI/Indiana University Medical Center
Indianapolis, IN****EA-06-095**

On July 10, 2006, a Notice of Violation was issued for a Severity Level III violation involving the licensee's failure to develop, implement, and maintain written procedures to provide high confidence that each administration of NRC-licensed material is in accordance with the written directive of an authorized user physician, as required by 10 CFR 35.41, "Procedures for Administrations Requiring a Written Directive."

**Mallinckrodt, Inc.
Maryland Heights, MO****EA-06-280**

On December 27, 2006, a Notice of Violation was issued for a Severity Level III problem involving the failure to close or check several valves during a planned release of certain radioactive material into a sanitary sewer system resulting in an inadvertent release of other radioactive material into the system.

***New Jersey Department of Transportation
Trenton, NJ******EA-06-287***

On December 14, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to use two independent physical controls that formed tangible barriers to secure a portable gauge containing NRC-licensed material from unauthorized removal when the portable gauge was not under the control and constant surveillance of the licensee. Specifically, the licensee stored the gauge in a locked transportation case inside a locked wooden box located inside an unoccupied, unlocked building. The wooden box was not under the licensee's control, was not secured, and could be accessed by unauthorized individuals.

***Nuclear Management Company, LLC
Prairie Island Generating Plant******EA-06-162***

On September 28, 2006, a Severity Level III Notice of Violation was issued to the Nuclear Management Company, Inc. (NMC), for a violation of 10 CFR 50.9, "Completeness and Accuracy of Information," involving information that NMC provided to the NRC in two applications for reactor operator licenses at the licensee's Prairie Island facility. Specifically, the facility licensee provided information on each application indicating the applicant performed reactivity control manipulations on the Prairie Island plant simulator and that the simulator had a current core model that replicated the plant as verified by performance testing. However, the licensee failed to retain records for simulator performance testing associated with reactivity control manipulations that was conducted on the plant-referenced simulator.

***Quaker Sales Corporation
Johnstown, PA******EA-06-194***

On September 13, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to control and maintain constant surveillance of a portable nuclear gauge resulting in damage to the gauge. Specifically, the gauge was left unattended for approximately five minutes while the gauge user was approximately 150 feet away from the gauge. During the time the gauge was not within the user's line of sight, it was run over by a bulldozer.

***St. Joseph Health Center
St. Charles, MO******EA-06-188***

On October 20, 2006, a Notice of Violation was issued for a Severity Level III violation involving the administration of greater than 30 microcuries of I-131 sodium iodide without a written directive that was signed and dated by an authorized user. Specifically, a technologist administered 5.4 millicuries of I-131 sodium iodide to a patient that was scheduled to receive 15 microcuries of I-131 sodium iodide, without a written directive that was dated and signed by an authorized user before administering the I-131 sodium iodide dose.

**St. Peter's University Hospital
New Brunswick, NJ****EA-06-228**

On November 30, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to secure licensed material from unauthorized removal or access, and/or maintain constant surveillance of licensed material that was stored in a controlled or unrestricted area. Specifically, an HDR unit containing Iridium-192 was left unsecured and unattended, contrary to the requirements in 10 CFR 20.1801 and 10 CFR 20.1802.

**South Carolina Electric & Gas Company
Virgil C. Summer Nuclear Station****EA-06-046**

On May 5, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving the shipment of radioactive material in a package with radiation levels on an external surface that exceeded applicable regulatory requirements. The Notice of Violation cited the licensee's failure to properly design and prepare for shipment a package containing radioactive material that was transported from the licensee's facility to an offsite waste processing vendor.

**Southern California Edison Company
San Onofre Nuclear Generating Station, Unit 1****EA-06-149**

On September 13, 2006, a Notice of Violation was issued for a Severity Level III problem involving a transportation event in which a shipment of low specific activity liquid radioactive waste from San Onofre Unit 1 leaked from its transport container in Utah. The violations involved failures to: (1) ensure by examination or appropriate tests that the top discharge valve of the tanker was properly closed and sealed; (2) load the tanker to the required fill density; and (3) maintain, fill, and close the tanker so that, under conditions normally incident to transportation, there would be no identifiable release of materials to the environment.

**Southern Nuclear Operating Company, Inc.
Vogtle Electric Generating Plant****EA-06-132**

On September 18, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding. The violation cited emergency preparedness planning standards 10 CFR 50.47(b)(14) and 10 CFR 50.47(b)(4) as well as the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.g, because the licensee failed to identify weak or deficient areas during its formal critique of an emergency preparedness exercise. Specifically, the exercise critique failed to identify that the Emergency Director's Site Area Emergency event classification was an incorrect classification.

**South Jersey Healthcare
Vineland, NJ****EA-05-214**

On January 17, 2006, 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 package containing licensed material that was stored in a mail room which was an unrestricted area. In addition, the licensee did not control and maintain constant surveillance of this licensed material while in the unrestricted area.

**Southside Community Hospital
Farmville, VA****EA-06-097**

On July 12, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to perform surveys or secure from unauthorized removal or limit access to six vials, at least two of which contained radioactive material, i.e., iodine-131 sodium iodide. The vials were subsequently disposed of as non-radioactive waste on December 1, 2005.

**Southwest X-Ray Corporation
Glenrock, WY****EA-06-014**

On May 25, 2006, a Notice of Violation was issued for a Severity Level III violation involving a radiographer assistant's failure to wear a direct reading dosimeter and personnel dosimeter on the trunk of his body during radiographic operations.

**Star-Lite Global, Inc.
Beverly Hills, CA****EA-05-174**

On February 28, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to obtain an exempt distribution license, as required by 10 CFR 30.15, prior to transferring specialty light bulbs containing radioactive material (Kr-85). The NRC is exercising discretion to refrain from issuing a civil penalty in this case because Star-Lite Global: (1) stopped importing and distributing the Kr-85 bulbs by the fall of 2003; (2) no longer operates or conducts transactions; and (3) plans to file for bankruptcy. The low safety significance of the Kr-85 bulbs was also a factor.

**Tennessee Valley Authority
Watts Bar Nuclear Power Plant****EA-05-169**

On April 7, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving a challenge to reactor coolant system (RCS) integrity by multiple pressurizer power-operated relief valve (PORV) actuations and a challenge to RCS inventory control by loss of RCS coolant via the open PORV, during transition to solid plant operations. The violation cited the licensee's failure to slowly raise charging flow to fill the pressure at less than 30 gallons per minute as required by Technical Specification 5.7.1.1 and Procedure GO-6, Unit Shutdown from Hot Standby to Cold Shutdown.

**Thomas Jefferson University Hospital
Philadelphia, PA****EA-05-237**

On March 3, 2006, a Notice of Violation was issued for a Severity Level III violation involving the failure to control the annual occupational shallow dose equivalent to 50 rem, and the failure to conduct adequate surveys. Specifically, a nuclear medicine technologist (NMT) received an exposure to the skin of the right thumb when the thumb became contaminated with sodium iodide (iodine 131) during treatment of a patient. The NMT did not perform adequate surveys necessary for the timely identification of skin contamination and assessment of dose to the skin of her right thumb. As a result, the NMT's skin was contaminated for 26 hours before being detected.

**Virginia Electric and Power Company
Surry, Units 1 & 2****EA-06-071**

On July 25, 2006, a Notice of Violation was issued for a violation associated with a White SDP finding involving the failure of a licensee's full-scale exercise critique to identify a weakness associated with a risk-significant planning standard which was determined to be a drill/exercise performance-performance indicator opportunity failure. The violation was cited against emergency preparedness planning standards 10 CFR 50.47(b)(4) and 10 CFR 50.47(b)(14) as well as the requirements of 10 CFR Part 50, Appendix E, Section IV.F.2.g, because the licensee failed to identify the above weakness during its emergency exercise critique.

**Washington Hospital Center
Washington, DC****EA-06-029**

On May 4, 2006, a Notice of Violation was issued for a Severity Level III violation involving the deliberate failure to secure from unauthorized removal and failure to maintain constant surveillance over licensed material. Specifically, the lock on the door to the hot lab, a controlled area which contained licensed material, had been deliberately disabled with tape to allow ease of access and the hot lab was left unattended with the door lock disabled.

**Westinghouse Electric Company
Columbia, SC****EA-06-043**

A Notice of Violation was issued on May 12, 2006, for a Severity Level III violation involving the licensee's failure to have a change to a safety significant control, i.e., the use of a new sponge blasting media, reviewed and approved by the licensee's Environmental Health and Safety Unit, prior to implementation.

APPENDIX B: SUMMARY OF PROPOSED CIVIL PENALTIES**

Bayou Inspection Services, Inc.
Amelia, LA

EA-05-137

On March 17, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,000 was issued for a Severity Level III violation. The violation involved two separate instances of the failure to secure or maintain constant surveillance of licensed material (radiographic exposure devices) in unrestricted areas. In addition, the NRC determined that willfulness was associated with one instance of this violation.

Epsilon Products Company
Marcus Hook, PA

EA-06-026

On May 3, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$16,250 was issued for a Severity Level III problem composed of six violations of NRC requirements involving the licensee's failure to conduct operations such that the dose in an unrestricted area from external sources exceeded regulatory limits. The most significant of these violations involved the radiation exposure of five employees and contractors, who were not radiation workers (and therefore considered members of the public), who received radiation doses in excess of the regulatory limit of 100 millirem in a year, i.e., they received estimated doses ranging from 103 millirem to 197 millirem.

GEO EXPLOR, Inc.
San Juan, PR

EA-06-017

On April 17, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem involving three violations. The violations occurred as a result of the authorized user's failure to: (1) control and maintain constant surveillance of a licensed gauge; (2) use two independent physical controls to form a tangible barrier to secure the gauge against unauthorized removal; and (3) properly block and brace the gauge during transport. Specifically, the authorized user failed to adequately lock a transport case onto the bed of his truck and close the tailgate. As a result, the case containing a licensed gauge fell off the truck and was in the public domain for approximately six days before it was recovered.

** Please note that cases involving security-related issues are not included.

**GeoMechanics, Inc.
Elizabeth, PA****EA-06-064**

On May 26, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III violation. The violation involved the failure to maintain a minimum of two independent physical controls that formed a tangible barrier to secure a portable gauge from unauthorized removal during a period when the gauge was not under direct control or surveillance. Specifically, the licensee used only one physical control (i.e., a single chain and lock) to secure the gauge to a vehicle while parked unattended overnight at the South Charleston, West Virginia location. The nuclear gauge was subsequently stolen and abandoned on a public highway.

**H&G Inspection Company, Inc.
Houston, TX****EA-06-021**

On October 24, 2006, a Confirmatory Order (Effective Immediately) was issued to confirm commitments made as part of a settlement agreement. The licensee requested Alternative Dispute Resolution following the NRC's May 1, 2006, Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,500 (EA-06-021). The violation involved the willful failure to block and brace a radiographic exposure device during transport. As part of the settlement agreement, H&G has agreed to implement a comprehensive management review and oversight program, and within one year, to write and submit an article for publication by both the American Society of Non-Destructive Testing and the Non-Destructive Testing Managers Association addressing the value that the new H&G management oversight program adds to overall safe and effective operations. In recognition of H&G's extensive corrective actions, the NRC agreed to reduce the civil penalty originally proposed to \$500.

**H&G Inspection Company, Inc.
Houston, TX****EA-06-021**

On May 1, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$6,500 was issued for a Severity Level III violation involving a willful failure to block and brace a radiographic exposure device during transport to and from a temporary jobsite. Two additional violations, that were not assessed a civil penalty, were identified. These involved failure to control and maintain constant surveillance of licensed material in an unrestricted area, and failure to have a second qualified individual observe radiographic operations. Because these violations were unrelated, each was separately categorized as Severity Level III.

**Indiana Michigan Power Company
D.C. Cook Nuclear Plant****EA-06-177**

On October 6, 2006, a Severity Level III Notice of Violation and Proposed Civil Penalty in the amount of \$60,000 was issued to the Indiana Michigan Power Company (I&M). The violation resulted from changes the licensee made to its D.C. Cook Emergency Plan in April 2003. In accordance with 10 CFR 50.54(q), a licensee may make changes to emergency plans without Commission approval only if the changes do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b). In April 2003, I&M made changes, without Commission approval, to the Fission Product Barrier Matrix Emergency Action Level (EAL) in the D.C. Cook Emergency Plan that decreased the effectiveness of the plan and resulted in use of a non-standard scheme of EALs.

**MISTRAS Holdings Group
Carol Stream, IL****EA-05-238; EA-06-065; and EA-06-066**

On April 6, 2006, a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$19,500, was issued for three Severity Level III problems associated with violations of NRC requirements. The 1st Severity Level III problem involved the licensee's failure, after performing radiographic operations, to: (1) survey the radiographic exposure device and guide tube to determine that the sealed source had been returned to its shielded position prior to dismantling the equipment; and (2) secure the sealed source in the shielded position after the source was returned to the shielded position. The 2nd Severity Level III problem involved the licensee's failure, at a field location, to: (1) have two qualified individuals present when a radiographic exposure was being performed; and (2) have a qualified individual directly observe the radiographic assistant perform radiographic operations. The 3rd Severity Level III problem involved the licensee's failure to: (1) control and maintain constant surveillance of licensed material that is in a controlled or unrestricted room and that is not in storage; and (2) immediately report to the NRC missing licensed material, iridium-2 in a radiographic exposure device (i.e., licensed material in an aggregate quantity greater than 1,000 times the quantity specified in 10 CFR Part 20, Appendix C), that could result in an exposure to persons in an unrestricted area. A base civil penalty in the amount of \$6,500 was imposed for each of the three problems, resulting in a civil penalty of \$19, 500.

**Pennoni Associates, Inc.
Bethlehem, PA****EA-06-252**

On December 21, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued for a Severity Level III problem composed of three violations. The violations involved the failure to: (1) use a minimum of two independent physical controls to secure a portable gauge from unauthorized removal when the gauge was not under the control and constant surveillance of the licensee; (2) control and maintain constant surveillance of licensed material in an unrestricted area; and (3) immediately report the loss of licensed material. Specifically, an authorized user loaned a vehicle containing NRC licensed material in a portable gauge to an unauthorized individual. Although the gauge was secured to the vehicle in its locked transport container in the rear seat of the vehicle (one barrier), the second barrier

(locked door) was compromised when the authorized user gave the vehicle keys to the unauthorized individual who drove off with the vehicle. As a result, only one independent physical barrier to secure the portable gauge and prevent its unauthorized removal remained. The gauge was then left unsupervised in the public domain for approximately four days. Additionally, the NRC was not notified of the missing gauge as required.

***Southern Nuclear Operating Company, Inc.
Edwin I. Hatch Nuclear Plant***

EA-06-013

On December 29, 2006, Notice of Violation and Proposed Imposition of a Civil Penalty (\$104,000) was issued for a Severity Level II violation involving the licensee's failure to implement the requirements contained in 10 CFR 74.19(a)(1), (b) and (c). Specifically, since November 1981, the licensee failed to: (1) keep records showing inventory, transfer, or control of special nuclear material (SNM); (2) implement procedures which included provisions for inventorying and accounting for approximately 233 inches of spent fuel rod fragments in their spent fuel pools; and (3) include spent fuel fragments in their annual physical inventories of SNM possessed.

***Sterigenics International, Inc.
Charlotte, NC***

EA-06-035

On September 18, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$9,600 was issued for a Severity Level II violation involving the failure to properly control and transmit safeguards information (SGI). Specifically, safeguards information was transmitted to persons who had not satisfied the need-to-know and background screening requirements to receive SGI and in addition, incomplete and inaccurate information was provided to the NRC during the course of an inspections and investigation.

***Triad Engineering, Inc.
Morgantown, WV***

EA-06-150

On September 12, 2006, a Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$3,250 was issued. The NOV cites two violations of NRC requirements. The first violation involved the failure of the authorized gauge user (AU) to properly block and brace the gauge in the open bed of his pick-up truck, to secure the gauge with two independent physical controls, and to close the tailgate prior to leaving the field office parking lot. The case containing the gauge fell off the truck onto a public street resulting in the second violation, i.e., the failure to control and maintain constant surveillance of licensed material in an unrestricted area. After bystanders notified the AU that his gauge had fallen off his truck, the AU driver retraced his route and retrieved the gauge. The container and the gauge were not damaged and there was no radiation dose to members of the public as a result of this event.

APPENDIX C: SUMMARY OF ORDERS^{***}

IMPOSITION OF CIVIL PENALTY ORDERS

NONE

CONFIRMATORY, MODIFICATION, SUSPENSION, AND CEASE AND DESIST ORDERS***Alfred C. Burris, Senior, M.D.******EA-05-110***

On January 27, 2006, a Notice of Violation for a Severity Level III violation with no civil penalty and an immediately effective Confirmatory Order was issued to confirm commitments made as part of a settlement agreement concerning the submission of false and/or inaccurate information. The settlement agreement was reached as a result of an Alternative Dispute Resolution session, held at the request of the applicant. In addition to the NOV, the applicant has agreed to correct the inaccurate information, and to submit an article to a cardiology journal and speak at training sessions for similar cardiology groups describing his experience and emphasizing the need to provide complete and accurate information to the NRC.

***Digirad Imaging Solutions, Inc.
Bemus Point, NY******EA-05-136***

On January 27, 2006, a Notice of Violation for a Severity Level III violation with no civil penalty and an immediately effective Confirmatory Order was issued to confirm commitments made as part of a settlement agreement concerning submission of inaccurate information to the NRC. The settlement agreement was reached as a result of an Alternative Dispute Resolution session that was held at the request of the licensee. In addition to the NOV, the licensee has changed its procedures to ensure that any information it submits to NRC will be complete and accurate, and the Radiation Safety Officer will submit articles to various medical and health physics journals describing the incident to provide an opportunity for other licensees in the industry to learn from the incident.

***Entergy Nuclear Operation, Inc.
Indian Point Units 2 & 3******EA-05-190***

On January 31, 2006, an immediately effective Confirmatory Order Modifying License was issued to Entergy Nuclear Operations, Inc., Indian Point Units 2 & 3. The licensee consented to modifying its operating licenses for Indian Point Units 2 & 3 to meet the criteria in section 651(b) of the Energy Policy Act of 2005 that directs the Commission to require that backup power is to

^{***} Please note that cases involving security-related issues are not included.

be available for the emergency notification system of a power plant, including the emergency siren warning system, if the alternating current within the 10-mile emergency planning zone of the power plant is lost.

***FirstEnergy Nuclear Operating Company
Beaver Valley Power Station***

EA-06-152

On December 19, 2006, a Notice of Violation and an immediately effective Confirmatory Order was issued as a result of an investigation of deliberate wrongdoing by a former contract mechanical engineer. The NOV includes two violations of 10 CFR Part 50, Appendix B, Criterion III, "Design Control," and the licensee's procedures for engineering changes and design interface reviews and evaluations, which were categorized as one Severity Level III problem. The licensee requested Alternative Dispute Resolution. As a result, both parties agreed, among other things, that: (1) the former contract engineer deliberately failed to adhere to procedural requirements; (2) the licensee took multiple corrective actions to prevent recurrence; (3) there was a need for additional corrective actions at the licensee's facilities as well as an opportunity for other licensees in the industry to learn from this incident; (4) in light of the corrective actions the licensee has taken and has committed to take, the NRC would issue a Severity Level III violation with no civil penalty; and (5) the NRC would issue a Confirmatory Order confirming this agreement.

***H&G Inspection Company, Inc.
Houston, Texas***

EA-06-021

On October 24, 2006, an immediately effective Confirmatory Order was issued to confirm commitments made as part of a settlement agreement. The licensee requested Alternative Dispute Resolution following the NRC's May 1, 2006, Notice of Violation and proposed imposition of a civil penalty in the amount of \$6,500. The violation involved the willful failure to block and brace a radiographic exposure device during transport. As part of the agreement, H&G has agreed to implement a comprehensive management review and oversight program, and within one year, to write and submit an article for publication by both the American Society of Non-Destructive Testing and the Non-Destructive Testing Managers Association addressing the value that the new H&G management oversight program adds to overall safe and effective operations. In recognition of H&G's extensive corrective actions, the NRC agreed to reduce the civil penalty originally proposed to \$500.

***National Aeronautics and Space Administration
Greenbelt, MD***

EA 05-125

On February 10, 2006, an immediately effective Confirmatory Order was issued to confirm commitments made as part of a settlement agreement involving the failure by the National Aeronautics and Space Administration, to report missing licensed material, and to provide complete and accurate information to the NRC as required. The settlement agreement was reached as a result of an Alternative Dispute Resolution session, held at the request of the applicant.

APPENDIX D: SUMMARY OF ACTIONS AGAINST INDIVIDUALS (LICENSED AND UNLICENSED)****

ORDERS

NRC-Licensed Individuals

Nicholas A Chaimov

IA-06-046

On September 12, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities for three years from the date of the Order was issued to the individual based on his deliberate misconduct while employed at the Reed College Reactor (facility). In violation of 10 CFR 50.5, "Deliberate Misconduct," Mr. Chaimov, a Senior Reactor Operator, made changes to the facility knowingly and deliberately causing the licensee to be in violation of 10 CFR 50.59, "Changes, tests, and experiments."

Andrew Siemaszko

IA-05-021

On October 17, 2006, Amendment of Order was issued which provides notice of additional examples further substantiating the violation of 10 CFR 50.5(a)(2) cited in the April 21, 2005, order with respect to deliberate submission of incomplete and inaccurate information to FENOC and the NRC. This Amendment of Order does not otherwise alter the statements or terms of the April 21, 2005, order which prohibits Mr. Siemaszko's involvement in NRC-licensed activities for five years.

Theodore D. Simmons II

IA-05-041

On February 10, 2006, a Notice of Violation for a Severity Level III violation with no civil penalty and an immediately effective Confirmatory Order was issued to confirm commitments made as part of a settlement agreement involving the failure by the contract Radiation Safety Officer for the National Aeronautics and Space Administration, to report missing licensed material, and to provide complete and accurate information, orally and in writing, to the NRC as required. The settlement agreement was reached as a result of an Alternative Dispute Resolution session, held at the request of the applicant.

**** Please note that cases involving security-related issues are not included.

Unlicensed Individuals***Gary Abel******IA-06-036***

On September 22, 2006, an immediately effective Confirmatory Order confirming commitments reached as part of an Alternative Dispute Resolution (ADR) mediation was issued. At issue was the NRC conclusion that the individual, a licensee official, deliberately transmitted (faxed) safeguards information over an unprotected telecommunications circuit to a person who did not have a need-to-know and had not been cleared to receive safeguards information. Additionally, the individual did not provide complete and accurate information to the NRC during the course of its investigation involving the transmittal of this information. The order stipulates, in part, that the individual will not engage in NRC-licensed activities for one year from the date of issuance of the Order.

David Geisen***IA-05-052***

On January 4, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities was issued based on the individual's deliberate misconduct while employed at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (licensee). As the Manager of Design Engineering, the individual provided incomplete and inaccurate information concerning the licensee's written and oral responses to NRC Bulletin 2001-001, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles." The Order is effective for five years from the date of issuance of the Order.

Prasoon Goyal***IA-05-055***

On January 4, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities was issued based on the individual's deliberate misconduct while employed at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (licensee). As a Senior Engineer, the individual provided incomplete and inaccurate information concerning the licensee's written and oral responses to NRC Bulletin 2001-001, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles." The Order is effective for one year from the date of issuance of the Order.

Dale Miller***IA-05-053***

On January 4, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed activities was issued based on the individual's deliberate misconduct while employed at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (licensee). On February 23, 2006, Mr. Miller answered the Order, denied the allegations in the Order, and requested an expedited hearing. During the hearing process before the Atomic Safety and Licensing Board, the NRC staff and Mr. Miller entered into settlement discussions using alternative dispute resolution. The Staff and Mr. Miller reached an agreement which was submitted to the Board for approval. Upon review of the Settlement Agreement, the Board was satisfied that its terms reflected a fair and reasonable settlement of this matter, in keeping with

the objectives of the NRC's Enforcement Policy, and that no further adjudication of any matter was required in the public interest. The Order issued on January 4, 2006, to Mr. Dale Miller was superceded by the Board's Order dated September 29, 2006, approving the settlement.

Steven Moffitt**IA-05-054**

On January 4, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities was issued based on the individual's deliberate misconduct while employed at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (licensee). As the Technical Services Director, the individual provided incomplete and inaccurate information concerning the licensee's written and oral responses to NRC Bulletin 2001-001, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles." The Order is effective for five years from the date of issuance of the Order. During the hearing process before the Atomic Safety and Licensing Board, the NRC staff and Mr. Moffitt entered into settlement discussions using Alternative Dispute Resolution. The Staff and Mr. Moffitt reached an agreement which was submitted to the Board for approval. Upon review of the Settlement Agreement, the Board was satisfied that its terms reflected a fair and reasonable settlement of this matter, in keeping with the objectives of the NRC's Enforcement Policy, and that no further adjudication of any matter was required in the public interest. The Order issued on January 4, 2006, to Mr. Moffitt was superceded by the Board's Order dated December 13, 2006, approving the settlement.

Foster Zeh**IA-05-051**

On June 20, 2006, an Order was issued confirming certain commitments reached as a result of an Alternative Dispute Resolution session between Mr. Zeh and the NRC. These commitments included Mr. Zeh's statement that he has no intention of working or seeking employment in any activities or at any facility that is subject to NRC regulations, and that he is willing to not engage in future NRC licensed activities for a period of three years from the date of this Order. In addition, Mr. Zeh agreed to not disclose Safeguards Information regarding the Indian Point security program to any unauthorized individuals, consistent with the Wackenhut non-disclosure agreement that Mr. Zeh signed in 1997. In consideration of the obligations and commitments as set forth in the Order, the NRC agreed to not take any further enforcement action.

NOTICES OF VIOLATION (NOVs)**NRC-Licensed Individuals****Mr. Michael C. Heins****IA-06-037**

On August 2, 2006, a Notice of Violation was issued for a Severity Level III violation based on the individual's failure to comply with NRC requirements governing fitness-for-duty as a senior reactor operator working at the River Bend Station for Entergy Operations, Inc.

Stephen W. Humphries

IA-06-007

On May 15, 2006, a Notice of Violation was issued for a Severity Level III violation involving an individual licensed operator who did not participate in the Part 50 licensee drug and alcohol testing program (i.e., fitness for duty program), in that he refused to provide a specimen for testing when randomly selected to do so.

Unlicensed Individuals

James Hesler Jr.

IA-06-045

On December 19, 2006, a Notice of Violation was issued for a Severity Level III violation involving deliberate wrongdoing by a former contract mechanical engineer working at the Beaver Valley Power Station. The violation was cited against 10 CFR 50.5, "Deliberate Misconduct;" 10 CFR Part 50, Appendix B, Criterion III, "Design Control;" and the licensee's procedures for engineering changes and design interface reviews and evaluations. Specifically, the former contract engineer, who was responsible for preparation of the replacement reactor vessel closure head engineering change package (ECP), deliberately failed to adhere to a procedural requirement when he signed the ECP even though the majority of design interface evaluations were neither performed nor included in the ECP.

Michael Tepley

IA-04-013

On May 1, 2006, a Notice of Violation was issued for a Severity Level III violation involving failure to complete a Pre Fuel Move Checklist prior to relocating three irradiated fuel bundles in the Duane Arnold Spent Fuel/Cask Pool. Specifically, Mr. Tepley, a designated fuel handling supervisor, failed to complete the checklist, as required by a Duane Arnold fuel handling procedure, before moving the irradiated fuel bundles.

DEMANDS FOR INFORMATION (DFIs)

NRC-Licensed Individuals

NONE

Unlicensed Individuals

NONE

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

***Hunt Valve Company, Inc.
Salem, OH***

EA-05-233

On December 7, 2006, a Notice of Violation containing six violations categorized collectively as a Severity Level III problem was issued as a result of investigations that determined that Hunt Valve engaged in deliberate misconduct with respect to applicable quality assurance (QA) requirements and deliberately failed to provide notifications required by 10 CFR 21.21, "Notification of the Failure to Comply or Existence of a Defect and its Evaluation," with regard to the manufacture and distribution of uranium hexafluoride (UF₆) cylinder valves and components procured by U.S. Enrichment Corporation (USEC). The NRC Office of Investigation substantiated that Hunt Valve deliberately violated 10 CFR 21.21 and applicable QA requirements, i.e., Hunt Valve ultimately delivered UF₆ cylinder valves that were not properly QA tested to a USEC facility (Paducah) and caused USEC to violate its NRC certificate and to violate 10 CFR 76.93, "Quality Assurance." The NRC is not proposing a civil penalty in this case because the Department of Justice settled a civil suit against Hunt Valve which included a sizeable monetary penalty of over \$600,000 which significantly exceeds the civil penalty the NRC would consider for this case. The NRC is not taking additional enforcement action against Hunt Valve's former Quality Manager and Hunt Valve's former Vice President and General Manager, Military Division, who deliberately committed the violations, based on the results of their criminal prosecutions and subsequent convictions.

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APPENDIX F: SUMMARY OF HEARING ACTIVITY

Andrew Siemaszko**IA-05-021**

On April 21, 2005, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities (for five years) from the effective date of the Order was issued to Mr. Siemaszko based on his deliberate activities while employed at the Davis-Besse nuclear power plant. As a former system engineer, Mr. Siemaszko deliberately provided inaccurate and incomplete information concerning the description of the efforts and results associated with removal of boric acid deposits from the reactor pressure vessel head.

On April 22, 2005, Mr. Siemaszko requested a hearing on the Order. The NRC staff requested a stay of the hearing. As of December 31, 2006, the hearing was pending due to stays granted by the ASLB.

On October 17, 2006, Amendment of Order was issued which provides notice of additional examples further substantiating the violation of 10 CFR 50.5(a)(2) cited in the April 21, 2005, Order with respect to deliberate submission of incomplete and inaccurate information to FENOC and the NRC. This Amendment of Order did not otherwise alter the statements or terms of the April 21, 2005, Order.

David Geisen**IA-05-052**

On January 4, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities was issued based on the individual's deliberate misconduct while employed at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (licensee). As the Manager of Design Engineering, the individual provided incomplete and inaccurate information concerning the licensees written and oral responses to NRC Bulletin 2001-001, Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles. The Order is effective for 5 years from the date of issuance of the Order. On February 23, 2006, Mr. Geisen filed an answer to the Order and requested an expedited hearing. On March 20, 2006, the NRC staff filed a motion requesting a stay of the hearing. The Atomic Safety and Licensing Board denied the Staff's request for stay. The Commission accepted interlocutory review and affirmed the Board's decision. As of December 31, 2006, the parties were moving forward with a hearing schedule.

Dale Miller**IA-05-053**

On January 4, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities was issued based on the individual's deliberate misconduct while employed at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (licensee). On February 23, 2006, Mr. Miller answered the Order, denied the allegations in the Order, and requested an expedited hearing. During the hearing process before the Atomic

Safety and Licensing Board, the NRC staff and Mr. Miller entered into settlement discussions using alternative dispute resolution. The Staff and Mr. Miller reached an agreement which was submitted to the Board for approval. Upon review of the Settlement Agreement, the Board was satisfied that its terms reflected a fair and reasonable settlement of this matter, in keeping with the objectives of the NRC's Enforcement Policy, and that no further adjudication of any matter was required in the public interest. The Order issued on January 4, 2006 to Mr. Dale Miller was superceded by the Board's Order dated September 29, 2006, approving the settlement.

Steven Moffitt***IA-05-054***

On January 4, 2006, an Order (Effective Immediately) Prohibiting Involvement in NRC-Licensed Activities was issued based on the individual's deliberate misconduct while employed at the Davis-Besse Nuclear Power Station operated by FirstEnergy Nuclear Operating Company (licensee). As the Technical Services Director, the individual provided incomplete and inaccurate information concerning the licensee's written and oral responses to NRC Bulletin 2001-001, Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles. The Order is effective for 5 years from the date of issuance of the Order. During the hearing process before the Atomic Safety and Licensing Board, the NRC staff and Mr. Moffitt entered into settlement discussions using alternative dispute resolution. The Staff and Mr. Moffitt reached an agreement which was submitted to the Board for approval. Upon review of the Settlement Agreement, the Board was satisfied that its terms reflected a fair and reasonable settlement of this matter, in keeping with the objectives of the NRC's Enforcement Policy, and that no further adjudication of any matter was required in the public interest. The Order issued on January 4, 2006 to Mr. Moffitt was superceded by the Board's Order dated December 13, 2006, approving the settlement.