

January 13, 2012

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Victor McCree, Regional Administrator, Region II
Cynthia D. Pederson, Acting Regional Administrator, Region III
Elmo E. Collins, Regional Administrator, Region IV

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Office of Nuclear Reactor Regulation

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FROM: Roy P. Zimmerman, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT TIMELINESS - FOURTH QUARTER, FISCAL YEAR 2011

This timeliness report provides a synopsis of the escalated enforcement actions issued in the fourth quarter of fiscal year (FY) 2011 as well as the entire fiscal year. The enclosures contain a numerical as well as a graphical representation of the data that is categorized by lead office, license type, and investigation status. The timeliness data and case specifics have been coordinated with the regional enforcement staff to ensure accuracy.

Escalated enforcement actions are issued in cases involving violations assessed at Severity Level I, II, or III as dispositioned under the traditional enforcement process; violations associated with white, yellow, or red findings for facilities participating in the Reactor Oversight Program; as well as orders that impose sanctions. The timeliness associated with issuing escalated enforcement actions to reactor and materials licensees is an output measure (external goal) reported annually to Congress within the NRC's Performance Budget. The external goals are: (1) 100 percent of non-investigation (non-OI) cases are completed with an NRC processing time of less than or equal to 180 days and (2) 100 percent of investigation (OI) cases are completed with an NRC processing time of less than or equal to 360 days. All cases issued during this quarter and fiscal year met the external goal.

However, we wanted to remind you of an important change involving the external goals.

Since there have been several successful initiatives that have contributed to an overall improvement in the timeliness of enforcement actions, the goals have been modified to stress the importance of timely escalated enforcement actions, effective FY 2012. Specifically, non-

investigation cases that have an NRC processing time exceeding 160 days (as opposed to the 180-day goal) will be reported as an out-of-standard performance measure to Congress as part of the NRC's Performance Budget. In addition, investigation cases that have an NRC processing time exceeding 330 days (as opposed to the 360-day goal) will be reported as an out-of-standard performance measure.

In addition to the external goals, the NRC staff continues to use the original Operating Plan measures (internal goals) for trending purposes. The internal goals are: (1) completing non-investigation cases in an average NRC processing time of less than or equal to 120 days; and (2) completing investigation cases in an average NRC processing time of less than or equal to 180 days. Since the number of cases in each category (license type, lead office, and investigation status) is often small, the average processing time may be significantly influenced by a single case. Therefore, the Office of Enforcement also provides average processing times using a rolling, four quarter average.

The NRC processing time starts on the latest of the following dates: (1) the inspection exit for non-investigation cases; (2) the date of the Office of Investigation memorandum forwarding the report to staff for investigation related cases; (3) the date that the Department of Justice (DOJ) indicates NRC may proceed for cases either prosecuted or reviewed for an extended period of time by DOJ; or (4) the date of the Department of Labor decision that is the basis for the action. The cases are grouped together and treated as a single case whenever two or more enforcement action (EA) numbers are associated with one action.

There was only one case issued during this quarter that exceeded the internal goal. The specific details of that OI-related materials case is provided in Enclosure 4. The lengthiest NRC processing time for a non-OI case was 119 days (a reactor and a materials case met this criteria), and the OI related case which had the longest NRC processing time was a materials case that was processed by the staff in 183 days.

The following general trends were observed for cases issued during this quarter when compared to the previous quarters: (1) the average processing time of reactor cases increased slightly; (2) the average processing time of materials non-OI cases ranged from well within the internal goal to approaching the internal goal which is consistent with previous quarters; and (3) the average processing time of materials OI cases decreased slightly and is in close proximity to the internal goal. Although the average processing time of fuel facility cases is usually beyond the internal goal, we noted a significant decrease in the processing time for the case issued during this quarter.

Should you have questions or comments on this memorandum or its enclosures, please contact Kerstun J. Day at (301) 415-1252 or via e-mail at kerstun.day@nrc.gov.

Enclosures:

1. Fourth Quarter, FY2011 - Timeliness Performance
2. FY 2011 Timeliness Goals by Office
3. Enforcement Timeliness for Reactor Cases
4. Enforcement Timeliness for Materials Cases
5. Enforcement Timeliness for Fuel Facility Cases

cc: M. Weber, DEDMRT

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Catherine L. Scott, Assistant General Counsel, Materials Litigation and Enforcement
Office of General Counsel

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