

NUCLEAR REGULATORY COMMISSION

[NUREG - 1600]

Base Civil Penalties for Loss, Abandonment, or Improper

Transfer or Disposal of Sources; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement.

SUMMARY: The Nuclear Regulatory Commission is amending its "General Statement of Policy and Procedure for NRC Enforcement Actions," (NUREG-1600) (Enforcement Policy or Policy) to establish separate base civil penalty amounts for loss, abandonment, or improper transfer or disposal of sealed sources and devices containing NRC-licensed material.

DATES: This action is effective (insert date 60 days from date of publication in the *Federal Register*). Comments on this revision should be submitted by (insert date 30 days from date of publication in the *Federal Register*), and will be considered by the NRC before the next revision of the Enforcement Policy.

ADDRESSES: Submit written comments to: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S.

Nuclear Regulatory Commission, Washington, D.C. 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, D.C.

The NRC's Office of Enforcement maintains the current policy statement on its homepage on the Internet at www.nrc.gov/OE/.

FOR FURTHER INFORMATION CONTACT: Bill Borchardt, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Telephone (301) 415-2741, e-mail rwb1@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

In a companion final rule published in today's *Federal Register*, the NRC is amending its regulations in 10 CFR Parts 30, 31, and 32, governing certain industrial devices containing byproduct material that are licensed pursuant to the general license provisions of 10 CFR 31.5. A proposed rule was published in the *Federal Register* on July 26, 1999 (64 FR 40295), which indicated that the NRC planned to increase the civil penalty amounts specified in its Enforcement Policy for violations involving sources or devices that are lost or improperly disposed of. The stated intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

In the notice of proposed rulemaking, the Commission stated that it was considering three levels of base civil penalty for loss or improper disposal, with the higher tiers for sources that are relatively costly to dispose of. The three levels of base civil penalty were to be \$5,500, \$15,000, and \$45,000. The three tiers were to be based approximately on three times the average cost of proper transfer or disposal of the source or device. The intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

In this Enforcement Policy, the change to the base civil penalty structure considers both the cost of proper disposal and the relative risk to the public from sources that are lost, abandoned, or improperly transferred or disposed of. The Commission believes that a base civil penalty amount roughly equivalent to three times the cost of proper disposal will provide for sufficient deterrence and an economic incentive for licensees to expend the necessary resources to ensure compliance. If the civil penalty were less than the cost of proper disposal, the licensee would receive an economic benefit from an improper disposal, whether intentional or not. A civil penalty roughly equivalent to the cost of disposal may not provide a sufficient deterrent because the violation could go undetected, which would still allow an economic benefit. Additionally, the civil penalty amount should be sufficient to assure that the cost of proper disposal of sealed sources and devices does not cause licensees to purposefully violate applicable disposal requirements.

Sources and devices containing small amounts of radioactive material, such as gas chromatographs, and devices containing hydrogen-3 (tritium) can be disposed of for less than one third of the lowest base civil penalty amount under the current Enforcement Policy, which is now \$6,000. The proposed rule notice of July 26, 1999, suggested that the lowest tier amount would be \$5,500. However, in another recent revision to the Enforcement Policy (October 4,

2000; 65 FR 59274), which adjusted civil monetary penalties for inflation in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, the base civil penalty that would otherwise have been applicable was raised from \$5,500 to \$6,000. It would be illogical to establish a *lower* base civil penalty amount specifically for loss, abandonment, or improper transfer or disposal. Therefore, this action establishes \$6,000 as the lowest base civil penalty amount for these violations.

The companion final rule to this Enforcement Policy incorporates criteria for registration of devices containing material of the types and quantities listed in 10 CFR 31.5(c)(13)(i). These are devices containing at least 370 MBq (10 mCi) of cesium-137, 3.7 MBq (0.1 mCi) of strontium-90, 37 MBq (1 mCi) of cobalt-60, and 37 MBq (1 mCi) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)). Annual registration is being required for these devices because they are considered to present a higher risk for potential exposure to the public and for loss of property (due to contamination) if the device is lost, abandoned, or improperly transferred or disposed of. Based on the higher risk, violations involving loss, abandonment, or improper transfer or disposal of sources and devices in this category have been assigned a base civil penalty amount of \$15,000.

With the exception of sources and devices containing hydrogen-3 (tritium), the highest activity sources and devices (i.e., those with activities greater than 3.7×10^4 MBq (1 Curie)), have an approximate average cost of disposal of \$15,000. The base civil penalty amount for loss or improper disposal of these sources and devices has been set at \$45,000, which is three times the average cost of disposal.

The Commission believes that normally a civil penalty at least in the amount of the base civil penalty is appropriate in the case of loss, abandonment, or improper transfer or disposal of a sealed source or device. This is to ensure that the associated enforcement action properly

reflects the significance of such violations. This change has been implemented in Section VII.A.1(g) of the Enforcement Policy. However, NRC may mitigate or escalate a civil penalty amount, as provided in the Enforcement Policy, based on the merits of a specific case. In doing so, NRC may consider information concerning the actual expected cost of authorized disposal and the actual consequences of the loss, abandonment, or improper transfer or disposal.

Scope

The base civil penalties established in this change to the Enforcement Policy apply to violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or the type of licensee.

Paperwork Reduction Act

This final change to the NRC Enforcement Policy does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

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

Accordingly, the NRC Enforcement Policy is amended to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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VI. ENFORCEMENT ACTIONS

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C. Civil Penalty

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1. Base Civil Penalty

The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, contractors, and other persons. Violations that involve loss, abandonment, or improper transfer or disposal of a sealed source or device are treated separately, regardless of the use or the type of licensee. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs, and for loss, abandonment or improper transfer or disposal of a sealed source or device. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil

penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider necessary increases or decreases on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

Table 1A.--Base Civil Penalties

	*	*	*	*	*
f.	Loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or type of licensee ³ :				
1.	Sources or devices with a total activity greater than 3.7×10^4 MBq (1 Curie), excluding hydrogen-3 (tritium).....				
	\$45,000				
2.	Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i).....				
	\$15,000				

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

3. Sources and devices not otherwise described above..... \$6,000

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VII. Exercise of Discretion

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A. Escalation of Enforcement Sanctions

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1. Civil Penalties

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(g) Cases Involving the loss, abandonment, or improper transfer or disposal of a sealed source or device. Notwithstanding the outcome of the normal civil penalty assessment process, these cases normally should result in a civil penalty of at least the base amount; or

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Dated at Rockville, Maryland, this _____ day of _____, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission.