

FORM 3-I: Cover Letter for Escalated NOVs Without Civil Penalty (without SDP)

EA-YY-XXX

NMED No. (if applicable)

(Name of licensee)

(Address)

SUBJECT: [Include FACILITY NAME for reactor cases] - NOTICE OF VIOLATION
NRC [Include type of inspection, e.g., "Integrated, Special"] Inspection Report
No(s). (XXXXXXXX/YYYNNN) [If applicable, add "and Investigation Report
No(s). (X-XXXX-XXX)"]

Dear _____:

This refers to the inspection (investigation) conducted on (date(s)) at [Use (plant name) for reactor licensee; use (City, State) for materials licensee] facility. [This section should address (1) the purpose of the inspection, (2) the date when the licensee was notified that corrective action was needed¹, (3) if and how it was reported, e.g., 50.72, LER etc., and (4) when the inspection report(s) related to this action were issued.]

[Add one of the following three paragraphs, as applicable:

"On (date), a predecisional enforcement conference was conducted (location, e.g., in the Region III office) with members of your staff to discuss the apparent violations, their significance, their root causes, and your corrective actions."

or

"In the letter transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by either attending a predecisional enforcement conference or by providing a written response before we made our final enforcement decision. In a letter dated (date), you provided a response to the apparent violations."

or

"In a telephone conversation on (date), (name of NRC person) of my staff informed (name and title of licensee representative), that the NRC was considering escalated enforcement for apparent violations involving _____. (name of NRC person) also informed (name of licensee representative) that we had sufficient information regarding the apparent violations and your corrective actions to make an enforcement decision without the need for a predecisional enforcement conference or a written response from you. (name of licensee representative)

¹This date is necessary to establish a starting point for purposes of determining whether the licensee has had a previous escalated action during the past 2 years or previous 2 inspections. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

indicated that (facility name) did not believe that a predecisional enforcement conference or written response was needed.”]

Based on the information developed during the inspection (investigation) and [Add either, as appropriate: “the information that you provided during the conference” or “the information that you provided in your response to the inspection report dated, (date)”], the NRC has determined that a violation of NRC requirements occurred. The(se) violation(s) is (are) cited in the enclosed Notice of Violation (Notice) and the circumstances surrounding it (them) are described in detail in the subject inspection report. [This section should include a summary of the event or circumstances that resulted in the violation including such issues as: (1) the length of time the violation lasted; (2) the apparent root cause of the violation; (3) the operational mode of the plant at the time of the violation (for operating reactors); (4) whether reporting requirements were involved; and (5) any other major attributes of the violation necessary for supporting the safety significance of the violation. The summary does not need to be as detailed as the discussion in the inspection report. However, it should be sufficiently detailed to permit licensee management (and others who may review the action) to understand the safety significance.]

[This section should include a discussion of the safety significance of the violation(s). It should discuss how this safety significance relates to severity level categorization, and MUST indicate whether the issue was safety significant because it represented an actual consequence, a potential consequence, a potential for impacting the NRC’s ability to perform its regulatory function, or it was willful.] Therefore, this (these) violation(s) has (have) been categorized in accordance with the NRC Enforcement Policy at Severity Level__ .” [Alternatively, use “Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level__ problem.”]

In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$ (amount) is considered for a Severity Level__ violation (problem).

[Use either of the following discussions:

Discussion 1: “Because your facility has been the subject of escalated enforcement actions within the last 2 years [Alternatively, use “last two inspections”], [Insert a footnote here to briefly describe the previous escalated action(s), e.g., “A Severity Level III violation was issued on January 22, 2001 (EA-01-127) and a \$100,000 civil penalty was issued on March 16, 2001 (EA-YY-XXX).” NOTE: Although it is not necessary to describe the circumstances of the previous action, it may be appropriate to indicate if the circumstances surrounding the previous action are related or are repetitive e.g., “A Severity Level III violation was issued on January 22, 2001 (EA-01-127) and a \$100,000 civil penalty was issued on March 16, 2001 (EA-01-175) for a similar violation of procedural requirements.”] the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy.” [This section should include a discussion of whether credit was given for the *Identification* factor and whether credit was given for the *Corrective Action* factor and should include a brief description of corrective actions.]

or

Discussion 2: "Because your facility has not been the subject of escalated enforcement actions within the last 2 years, [Alternatively, use "last two inspections"] the NRC considered whether credit was warranted for *Corrective Action* in accordance with the civil penalty assessment process in Section VI.C.2 of the Enforcement Policy." [This section should include a discussion of whether credit was given for the *Corrective Action* factor and should include a brief description of corrective actions. In addition, if discretion was exercised, an additional explanation of that fact as well as a reference to the particular section of the Enforcement Policy, should be included.]]

Therefore, to encourage prompt [If applicable, include "identification"] and comprehensive correction of violations, [If applicable, include "and in recognition of the absence of previous escalated enforcement action,"] I have been authorized, [For actions reviewed by headquarters prior to issuance include: "after consultation with the Director, Office of Enforcement," or, if applicable, use: "the Deputy Executive Director for __," ; however, for all cases involving a Commission paper, use: "the Commission,"] not to propose a civil penalty in this case. However, significant violations in the future could result in a civil penalty. [Add the following sentence for materials licensees: "In addition, issuance of this Severity Level __ violation constitutes escalated enforcement action, that may subject you to increased inspection effort."]

[Use one of the following paragraphs, as appropriate.

Where a response is required, use:

"You are required to respond to this letter and should follow the instructions specified in the enclosed Notice when preparing your response. [Other specific responses required should be addressed as appropriate.] The NRC will use your response, in part, to determine whether further enforcement action is necessary to ensure compliance with regulatory requirements."

Where the region has determined that a response is not required, you may use:

"The NRC has concluded that information regarding the reason for the violation, [If more than one violation, specify which violation or violations] the corrective actions taken and planned to correct the violation and prevent recurrence and the date when full compliance will be (was) achieved is already adequately addressed on the docket in [Indicate correspondence, e.g., "Inspection Report No. (XXXXXXXX/YYYNNN, LER YY-NN) ", or "letter from Licensee dated (date).] Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice. [NOTE: The last paragraph of the letter should also be modified by deleting the reference to "your response" directed by the letter and Notice.]]

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter, its enclosure(s), and your response will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information

so that it can be made available to the Public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information) The NRC also includes significant enforcement actions on its Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Significant Enforcement Actions**.

[For those packages containing Safeguards Information, replace the preceding paragraph with: The material enclosed herewith contains Safeguards Information as defined by 10 CFR Part 73.21 and its disclosure to unauthorized individuals is prohibited by Section 147 of the Atomic Energy Act of 1954, as amended. Therefore, the material will not be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

Regional Administrator
(or designee)

Docket No. _____
License No. _____

Enclosure: Notice of Violation