

**REGION I ANNUAL  
ENFORCEMENT  
REFRESHER TRAINING**

**ORA, DRP, DRS, AND DNMS  
TECHNICAL STAFF**

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## **LIST OF ACRONYMS**

<b>ADAMS</b>	<b>Agency-wide Documents Access and Management System</b>
<b>ADR</b>	<b>Alternate Dispute Resolution</b>
<b>DNMS</b>	<b>Division of Nuclear Materials Safety</b>
<b>DRA</b>	<b>Deputy Regional Administrator</b>
<b>DRP</b>	<b>Division of Reactor Projects</b>
<b>DRS</b>	<b>Division of Reactor Safety</b>
<b>EA</b>	<b>Enforcement Action</b>
<b>EAW</b>	<b>Enforcement Action Worksheet</b>
<b>FY</b>	<b>Fiscal Year</b>
<b>NCV</b>	<b>Non-cited Violation</b>
<b>NOV</b>	<b>Notice of Violation</b>
<b>NRC</b>	<b>Nuclear Regulatory Commission</b>
<b>OE</b>	<b>Office of Enforcement</b>
<b>OGC</b>	<b>Office of General Counsel</b>
<b>OI</b>	<b>Office of Investigations</b>
<b>PEC</b>	<b>Pre-decisional Enforcement Conference</b>
<b>PIM</b>	<b>Plant Issues Matrix</b>
<b>RA</b>	<b>Regional Administrator</b>
<b>RC</b>	<b>Regulatory Conference</b>
<b>RI</b>	<b>Region I</b>
<b>ROP</b>	<b>Reactor Oversight Process</b>
<b>SDP</b>	<b>Significance Determination Process</b>
<b>SERP</b>	<b>SDP &amp; Enforcement Review Panel</b>
<b>SL</b>	<b>Severity Level</b>
<b>TBD</b>	<b>To Be Determined</b>

# INTRODUCTION

Because enforcement is an important component of the NRC oversight program, and many Region I (RI) employees have responsibilities related to this area, refresher training on the enforcement program has been provided to RI staff annually. This training provides a brief summary of the detailed guidance that is found in the Enforcement Policy, the Enforcement Manual, and the applicable RI Instructions. This training also provides a big picture overview of the enforcement program, as well as some detail on what the typical staff member needed to know most to fulfill his/her responsibilities and expected actions related to this area.

The training, which is presented in a question/answer format, is revised every year to update the information, incorporate comments received from the staff either informally or via the ILearn survey, and integrate lessons learned within the past year from both RI and the rest of the NRC.

After you complete this training, we welcome any feedback and suggestions you have on how to improve this document in the future. Please provide any comments to Brice Bickett (brice.bickett@nrc.gov), Marjey McLaughlin (marjorie.mclaughlin@nrc.gov), or Cherie Crisden (Cherie.crisden@nrc.gov).

# ENFORCEMENT REFRESHER

## **A. What is enforcement, and why is it used?**

Enforcement is the issuance of sanctions to licensees, contractors, vendors, non-licensees, and/or individuals who violate NRC requirements. The NRC Enforcement Program is intended to deter noncompliance with NRC requirements and to encourage prompt identification, as well as prompt and comprehensive correction, of violations when they occur.

## **B. What are the components of the NRC Enforcement Program?**

The Enforcement Program consists of: 1) the Traditional Enforcement Process (applicable to all licensees, including their contractors and vendors, as well as to individuals and non-licensees); and, 2) the Reactor Oversight Process (ROP) using the Significance Determination Process (SDP) (applicable only to power reactor licensees; including reactor facilities under construction).

(NOTE: The NRC is also developing a risk-based oversight process for fuel cycle facilities, called the Fuel Cycle Oversight Process, to be implemented by the end of 2017).

The Traditional Enforcement Process evaluates noncompliance with NRC requirements, and assigns one of four Severity Levels (SLs), with SL I being the most significant and SL IV being the least significant.

The ROP/SDP evaluates performance deficiencies, whether or not they constitute violations, and assigns a color (Red, Yellow, White, or Green) to performance deficiencies that are more than minor, with Red being the most significant and Green being the least significant.

## **C. What are the bases for enforcement actions?**

Enforcement actions are normally based on either: (1) technical violations of NRC requirements that are identified during an NRC inspection or reported to the NRC by the licensee; or (2) wrongdoing violations identified during an investigation by the Office of Investigations (OI).

## **D. What are examples of wrongdoing violations?**

- Any technical violation that was caused by an individual's willful actions. Willfulness includes both deliberate violations, as well as violations caused by careless disregard of requirements.
- Any inaccurate or incomplete required record caused by the willful actions of a licensee or contractor employee.

- Any submittal to the NRC of inaccurate or incomplete information that is material to the NRC and is caused by the willful actions of a licensee or contractor employee.
- Any discrimination by a licensee or licensee contractor against a licensee or contractor employee for engaging in a protected activity (such as raising nuclear safety concerns to the licensee or the NRC).

**E. What categories of enforcement actions are there?**

There are two categories of enforcement actions, namely, escalated actions for more significant issues and non-escalated actions for less significant issues.

**F. What are Escalated Enforcement Actions and what are the bases for such actions?**

Escalated enforcement actions under the Traditional Enforcement Process consist of Orders, civil penalties, or any Notice of Violation (NOV) where at least one of the violations is classified at SL I, II, or III. Escalated enforcement actions under the ROP consist of any NOVs issued for a violation associated with a performance deficiency classified as Red, Yellow, or White under the ROP's SDP.

(NOTE: White, Yellow, or Red findings associated with a performance deficiency that do not have a related violation are not considered enforcement actions, although the process for assessing the significance of these issues is essentially the same as that used for assessing potentially escalated SDP findings with a related violation.)

**G. What are Non-Escalated Enforcement Actions?**

Non-escalated enforcement actions include SL IV NOVs under the Traditional Enforcement Process and NOVs associated with Green findings under the ROP. They also include non-cited violations (NCVs). An NCV is a SLIV violation, or a violation associated with a Green finding, that is documented within the body of an inspection report or enforcement letter rather than in a separate, formal Notice. NCVs do not require a response from the licensee. Section 2.3.2 of the Enforcement Policy describes the criteria that must be met for a violation to be documented as an NCV.

**H. What are my responsibilities after identifying a potential escalated enforcement issue?**

- Consult with the RI enforcement staff to develop an enforcement proposal and to schedule an enforcement panel (for Traditional Enforcement issues) or an SDP & Enforcement Review Panel (SERP, for ROP issues). RI panels and SERPs are routinely held each Tuesday beginning at 1:00 pm.

- Document the enforcement proposal in a SERP worksheet or enforcement panel worksheet (also commonly referred to as an Enforcement Action Worksheet (EAW)) and obtain the appropriate branch/divisional management review. Ensure that the Regional Administrator (RA) or Deputy Regional Administrator (DRA) are offered a briefing for matters listed in Section J below.
- Email the worksheet to R1ENFORCEMENT.RESOURCE@nrc.gov by close of business two Fridays prior to the desired panel/SERP to facilitate enforcement staff review and preparation for distribution.

The Panel/SERP schedule and worksheets are normally distributed by email by the RI enforcement staff to headquarters and regional personnel by noon on Tuesdays for the following week. This allows 5 full business days for all offices involved in the panel/SERP to review the material.

- Discuss the issue and the enforcement proposal at the panel/SERP. For most cases, it is anticipated that all panel/SERP members will have read the EAW or SERP worksheet, and a formal presentation of the issue will not be required. The RI enforcement staff will facilitate the panel/SERP discussion and will ascertain if you need to provide a brief summary of the issue. Otherwise, you need only respond to questions about the issue from the other panel/SERP participants.
- Prepare the enforcement action if the panel/SERP decides that non-escalated action is warranted. Prepare a choice letter or pre-decisional enforcement conference (PEC) or regulatory conference (RC) letter (see Question N) if the panel/SERP decides that escalated action is warranted. If the issue involves a wrongdoing matter, attach a factual summary of the OI investigation (prepared by the regional enforcement staff) to the PEC or choice letter.
- Further information regarding processing enforcement issues can be found in the 1300 series of the Regional Instructions.

#### **I. Where can I find the enforcement panel and SERP worksheet forms?**

The most updated versions of the enforcement panel and SERP worksheet forms are located in Appendix D of the Enforcement Manual, which may be accessed through following link: <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html>

You may also request a copy of a recent EAW or SERP worksheet from the RI enforcement staff.

**J. What is a modified enforcement panel, and what does it mean for me?**

To increase efficiency and free up management resources, OE instituted a type of enforcement panel that is conducted at the staff level and, in some cases, requires less preparation. These modified panels may be conducted for either: (1) non-willful, escalated traditional enforcement violations for which neither an exercise of discretion nor a civil penalty are being proposed; or, (2) willful violations for which non-escalated enforcement to a licensee is being proposed with no individual enforcement actions (i.e., only individual closeout letters). Generally speaking, these types of cases are considered to be less complex and, therefore, not requiring management panel participation.

For non-willful, escalated traditional enforcement violations, the staff should follow many of the same steps described in Section G (i.e., prepare an EAW and brief management). The main difference with the modified panel for these types of cases is that the panel is conducted at the staff level and management personnel (branch chief and above) do not attend. Instead, these modified panels are attended by inspectors, enforcement specialists, and the regional counsel.

The process for handling willful, non-escalated violations is described separately below.

**K. What am I supposed to do with violations identified in reports from substantiated OI investigations?**

When OI issues its report for a substantiated concern, the report is addressed to the regional administrator, and is routed through the RI enforcement staff. The enforcement staff reviews the report and supporting exhibits and prepares a one-page summary of the issue and next steps. The one page summary is then distributed, with a copy of the OI report, to the impacted regional staff. The staff should review the one page summary and the attached OI report.

In preparing the summary, the RI enforcement staff will evaluate whether any violations will likely result in escalated enforcement. If so, in the Next Steps section of the summary, the RI enforcement staff will request contact from a representative from the responsible technical branch to coordinate development of the enforcement proposal and preparation of the EAW. In such a case, the chief of the responsible technical branch should identify who in the branch will work with the RI enforcement staff.

If the RI enforcement staff has determined that any violations will most likely result in non-escalated enforcement, the case will be evaluated through the modified panel process. For these types of cases, an EAW is not needed. Instead, the modified panel members will review draft versions of the proposed final enforcement action, and determine whether they agree or disagree with the proposed approach. The RI enforcement staff will prepare the draft licensee enforcement action (and any individual closeout letters), and will meet with the responsible technical branch to review the draft documents and the basis for the proposal. The branch is responsible for informing divisional management of the proposed approach, with support from the enforcement staff.



After obtaining branch and divisional alignment, the branch representative should inform the RI enforcement staff, so that the modified panel may be conducted. In some instance, the modified panels are conducted via email, and there is no need for the panel members to physically meet. However, if a physical panel is held, the branch representative should attend for information. After the modified panel, the RI enforcement staff will route the draft enforcement actions through the region for formal concurrence, and will issue the documents, in coordination with the responsible technical branch.

**L. When should the RA or DRA be offered a briefing regarding an enforcement action?**

- The RA and/or DRA should be offered a briefing prior to an enforcement panel or SERP regarding any proposed enforcement actions involving:
  - Potential White, Yellow, or Red findings, and/or SL I or II violations;
  - Potential SL III violations for which a civil penalty and/or PEC is being proposed or there is knowledge that the licensee may contest the violation;
  - Any willful issues for which an escalated action is being proposed, or any willful case involving licensed operators, even if escalated action is not being proposed;
  - Violations or findings involving new precedents;
  - Cases in which difficulty is encountered in achieving staff agreement because of differing views, either internal or external to the region, including cases where the staff does not adopt the conclusions of the OI investigation;
  - Violations describing the inattentiveness of a member of the licensee's security staff or a licensed operator; or,
  - The first application of enforcement discretion for a specific issue that would otherwise result in escalated enforcement.
- Also ensure that the RA and/or DRA are offered a briefing prior to:
  - Responding to any disputed violation;
  - Conducting an Alternative Dispute Resolution (ADR) Strategy Session, if the RA/DRA are not planning to attend the ADR or strategy session;
  - Conducting a RC, if the RA/DRA were not previously briefed on the case, and are not planning to attend the pre-brief for the RC; or,
  - Conducting any PEC with an individual, if the RA/DRA were not previously briefed on the case, and are not planning to attend the PEC.

**M. What is Alternative Dispute Resolution (ADR)?**

ADR is a program that provides licensees or individuals an opportunity to use a mediator to reach an agreement with the NRC regarding certain types of enforcement actions. Currently, ADR is offered to licensees and individuals for cases involving wrongdoing and is also offered to licensees for cases for which the NRC is considering imposing a civil penalty.

The NRC lead negotiator for an ADR mediation session is normally the RA or DRA, but the role may be delegated by the RA to a Division Director. The RA or DRA may sign and issue Confirmatory Orders associated with agreements reached through ADR.

**N. What is a PEC letter, Regulatory Conference (RC) letter, and choice letter?**

A PEC letter is a letter to a licensee or individual that transmits apparent violations that are being considered for escalated enforcement action, and requests that the licensee or individual attend a PEC to discuss the apparent violations, the cause and significance of the apparent violation, and the actions taken and/or planned to correct the apparent violations. PEC letters are typically issued for apparent SL I and II violations, and for apparent SL III violations when the NRC needs additional information about the licensee's corrective actions.

A RC letter is similar to a PEC letter, except that it is used for certain performance deficiencies in the ROP area, with or without apparent violations, and the letter transmits to the licensee the results of the preliminary SDP determination. RC letters are typically issued for apparent "greater-than Green" findings (i.e., White, Yellow, or Red findings) in which we seek additional information to make a final SDP determination.

A choice letter in a Traditional Enforcement case, is a letter that transmits apparent violations to the licensee or individual and informs the licensee/individual that the NRC has sufficient information to make an enforcement decision, but provides the licensee or individual the opportunity to either attend a PEC or provide a response in writing prior to the NRC making its enforcement decision.

A choice letter in an SDP reactor case also transmits the Preliminary Significance Determination and provides the licensee the opportunity to attend an RC (rather than a PEC) or submit a written response. In those reactor cases, the choice letter, which is also referred to as the "Preliminary Determination Letter," also normally forwards the related inspection report.

Licensees are required to respond to choice letters with their choice decision within 10 days of the date of the letter. For Traditional Enforcement cases, licensees requesting a PEC are instructed that the PEC should be scheduled and conducted within 30 days of the date of the letter. An April 2015 revision to Inspection Manual Chapter 0609, Attachment 1, "Significance and Enforcement Review Panel Process," now provides licensees 40 days to schedule and conduct regulatory conferences, for SDP cases.

If a case involves a wrongdoing violation or if a civil penalty is being considered, the PEC letter/choice letter will also provide the licensee/individual the opportunity to request ADR to resolve the matter. For wrongdoing cases, such letters will also include a summary of the OI investigation.

Boilerplate versions or examples of such letters can be obtained from the RI enforcement staff.

**O. Can I issue my inspection report prior to an enforcement panel?**

Yes. Depending upon the needs of the branch, an inspection report may be issued either prior to or after an enforcement panel/SERP.

**P. How do I handle a licensee's response to an NOV describing corrective actions, but not disputing the violation?**

In accordance with the Enforcement Manual, the relevant technical branch is responsible for reviewing responses to NOVs submitted by licensees to determine whether corrective actions are adequate (see Inspection Procedure 92702 for guidance on how to follow-up on enforcement action corrective actions). The staff should: (a) review the licensee's response for the adequacy of the corrective action, including whether the licensee has properly identified the root cause(s); and/or (b) request additional information from the licensee, if necessary. In acknowledging the licensee's response, the letter should be sent to the same person and mailing address to which the NOV was sent.

**Q. How do I handle a licensee or individual dispute of a violation?**

- Review a licensee's or individual's response to an enforcement action promptly to determine any dispute as to whether a violation occurred, the violation's significance, or the enforcement action taken. If a licensee or an individual disputes any of the above, notify your divisional management and the RI enforcement staff.
- Obtain an Enforcement Action (EA) tracking number from the enforcement staff (if the original violation did not have an EA number), and ensure the licensee's/individual's response is entered into ADAMS. Request that the administrative assistant associate the EA number with the ADAMS entry.
- Review the licensee's/individual's response to determine if the original violation(s) or action should be upheld or if the violation(s) or action should be revised or withdrawn. Keep the regional enforcement staff apprised of the review.
- Brief (with the support of the regional enforcement staff) divisional management and the RA/DRA on the dispute and the proposed disposition.

- Ensure, for a dispute of a non-escalated enforcement action, that the response to the licensee or individual is issued within **90** days of receipt of the dispute. The branch should also prepare an acknowledgement letter informing the licensee/individual that the dispute is under review, and issue that acknowledgement letter within 30 days unless the final response can be issued within 30 days.
- Ensure, for a dispute of an escalated enforcement action, that the response to the licensee/individual is issued within **30** days of the date of the dispute.
- Ensure, in all cases, that **10** days are allotted for a review of the region's final response by the appropriate program office(s) and OE.

(NOTE: Additional guidance for the staff on handling these situations, as well as disputes of findings and cross-cutting aspects, can be found in RI Instruction 1330.2, "Handling Licensee Disputes of Violations, Enforcement Actions Not Involving Civil Penalties, Findings, and Cross-Cutting Issues.")

**R. How are reactor violations entered into the Plant Issues Matrix (PIM) when they are issued separately from an inspection report (such as those involving willfulness as substantiated by OI)?**

Inspection Manual Chapter 0306 provides the appropriate guidance for assigning report numbers and entering issues into the PIM for such cases. Section 05.03 states that every inspection report, final significance determination letter, traditional enforcement letter, and NOV letter, should also be given a report number. The numbers should be the next available number for the given site.

**S. What are some of the lessons learned from the past several years?**

- Inspection reports did not contain sufficient details to support and describe an NCV.
  - Lesson Learned - Ensure that NCVs: (1) discuss the requirement that was not met and how it was violated; (2) contain the dates and duration of the violation; and (3) have parallel construction between the "requirement" statement and the "contrary to" statement for each violation.
- Violations that had been discussed at a SERP or Enforcement Panel were ultimately dispositioned as non-escalated enforcement actions, but, although EA numbers were assigned for the actions, the EA number was not included on the enforcement action, and/or a regional enforcement staff person was not included on the concurrence list for the action.
  - Lesson Learned - Whenever an EA number is assigned for a particular case, ensure that the EA number is included on the document and that a regional enforcement staff member is included on the concurrence list.
- A PEC letter or choice letter was sent to the licensee without receiving the concurrence of the enforcement staff.

- Lesson Learned - Obtain the concurrence of a RI enforcement staff member for any PEC letter, RC letter, or choice letter.
- A choice letter was sent to the licensee for a wrongdoing violation, without providing the licensee a factual summary of the OI investigation.
  - Lesson Learned - Obtain a copy of the factual summary of the OI investigation prepared by a RI enforcement staff member prior to issuing the PEC or choice letter for wrongdoing cases. The factual summary provides the wrongdoing conclusion, as well as the NRC basis for this conclusion. The factual summary must also be reviewed by the Office of the General Counsel (OGC) prior to its issuance.
- A Green NCV was issued to a reactor licensee for a particular violation, at the same time that OI was investigating that specific violation to determine whether it was willful or not, and OI had not been consulted prior to issuance of the NCV.
  - Lesson Learned - If an apparent violation is being investigated by OI, do not disposition the finding or underlying technical issue until OI completes its review and the OI results are evaluated at an allegation review board (for unsubstantiated cases) or at an enforcement panel (for substantiated cases), unless OI approval is obtained. If OI determines that dispositioning a finding or underlying technical violation will not impact an open investigation, describe the apparent violation in the inspection report and state that the apparent violation is still under review by the NRC and enforcement action for the apparent violation will be handled by separate correspondence at a later date.
- Pre-decisional information from an Enforcement Notification (EN) regarding a pending US Department of Justice settlement agreement with an individual (that also included NRC enforcement sanctions) was discussed with licensee representatives since the action committed by the individual impacted the NRC licensee.
  - Lesson Learned – ENs and Regulatory Notifications (RNs) are internal documents prepared by the staff to inform the Commission of the pending issuance of NRC enforcement actions and greater-than Green findings. ENs and RNs are typically provided to the Commission 3 days in advance of issuance of such actions, so that the Commission may request further information about and/or intervene in the proposed action being taken, if desired. The information contained in ENs and RNs is pre-decisional and should not be discussed with licensees, the media, or other members of the public.

**T. What are the Region's operating plan goals for handling enforcement?**

- Issuance of Escalated Enforcement Actions that do not involve OI:
  - 100% are issued within 160 days of the inspection exit
  - Average of all are issued within 120 days of the inspection exit

- Issuance of Escalated Enforcement Actions that involve OI:
  - 100% are issued within 330 days of the end of the investigation
  - Average of all are issued within 180 days of the end of the investigation
- Issuance of Final SDP Letters for greater-than Green findings:
  - 90% are issued within 90 days of the first official NRC notification describing a finding

(NOTE: The first official NRC notification describing a greater-than Green finding is normally the preliminary significance determination letter that transmits the related inspection report. However, in cases where the inspection report is issued and the significance is still to be determined (TBD), issuance of the TBD starts the 90-day clock.)

- Disputed Violations:
  - No more than 3 successful disputes/year by licensee or individual

**U. How have we been doing in meeting the Region's operating plan goals for handling enforcement?**

Currently, in fiscal year (FY) 2015, the region is meeting the goals to issue all OI-based escalated enforcement within an average of 180 days after the completion of the investigation and all non-OI-based escalated enforcement within 120 days of the inspection exit. As of July 1, 2015, the region's averages for issuing these types of enforcement actions are 135 days for OI-based cases and 94 days for non-OI based cases. While the region is meeting the goal to issue all OI-based escalated cases within 330 days, the region issued one non-OI based case after 210 days and, therefore will not meet the goal to issue all such cases within 160 days.

**V. How do I charge time spent on enforcement issues?**

DNMS staff:

For non-escalated enforcement actions, charge to JI + Program Code

For escalated enforcement actions, charge to JE0002

DRP/DRS staff:

Refer to the guidance in Table 2 of the Joint DRP-DRS Policy on Human Resources Management System (HRMS) Time and Attendance (T&A) Entry Guidance.

You may find the policy at the following link: [http://r1.nrc.gov/\\_drp/policy/index.aspx](http://r1.nrc.gov/_drp/policy/index.aspx)

**W. Where can I find more information regarding the NRC Enforcement Program?**

- NRC Enforcement Policy
- NRC Enforcement Manual
- RI Instructions 1300 Series
- RI Webpage for Enforcement Guidance
- RI Enforcement Staff