

**U.S. NRC Enforcement Policy**  
**Where We Have Been and**  
**Where We Are Going**

**RIC 2011**

March 8, 2011




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**Panel Participants**

- Roy Zimmerman, Session Chair / Director, OE
- Nick Hilton, Chief, Enforcement Branch, OE
- Shahram Ghasemian, ADR Program Manager, OE
- Ellen Ginsberg, General Counsel, NEI

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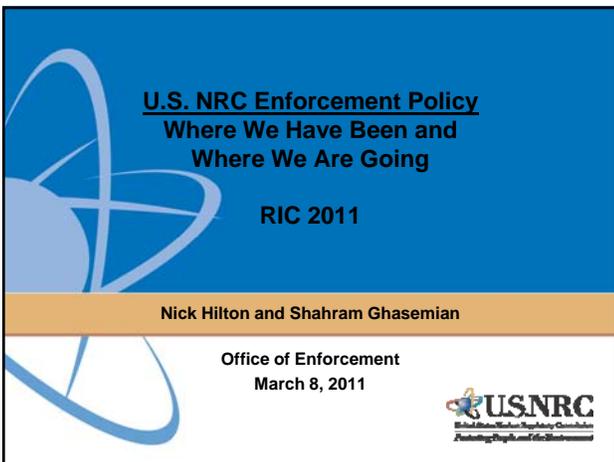
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**Where We Have Been and**  
**Where We Are Going**

**RIC 2011**

Nick Hilton and Shahram Ghasemian

Office of Enforcement  
 March 8, 2011




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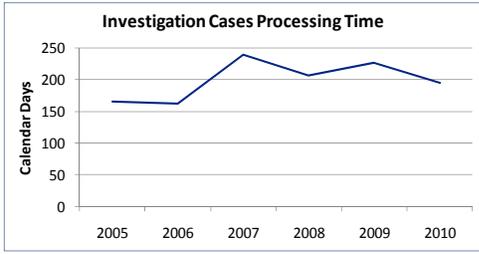
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### Escalated Enforcement Timeliness



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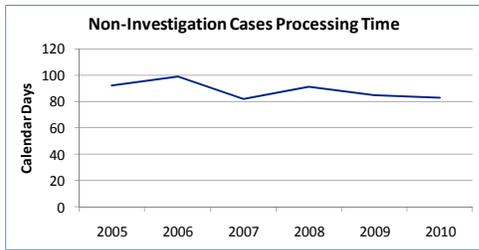
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### Escalated Enforcement Timeliness



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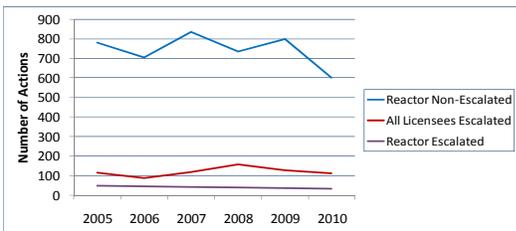
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### Enforcement Actions



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**Enforcement Policy**

Background

- June 30, 1995 (60 FR 34381)
  - Previous major revision of Enforcement Policy
- August 27, 2010 (SRM-SECY-09-0190)
  - Commission approved revised Enforcement Policy
- September 30, 2010 (75 FR 60485)
  - Effective date of revised Enforcement Policy

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**Enforcement Policy**

2010 Policy Revision

- Increased from 8 to 14 the violation examples activity areas
- Added base civil penalty for Uranium Enrichment Facilities and High Level Waste Repository
- Increased base civil penalty for Uranium Conversion Facilities
- Added new guidance based on changes in regulations

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**Enforcement Policy**

Document Enhancements (2010)

- Provided guidance on issues not directly addressed in previous Policy
- Clarified the use of terms
- Removed or revised outdated guidance
- Reorganized, reformatted, and edited document
- Added a Glossary

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**Enforcement Policy**

Looking Ahead – Commission Direction

- SRM-SECY-09-0190
  - SRM directed NRC staff to evaluate specific topics for inclusion in next Policy revision
  - In addition to SRM, NRC staff evaluating other topics for next Policy revision

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**Enforcement Policy**

Topics for Today's Discussion

- Daily Civil Penalties
- Fuel Cycle Corrective Action Programs
- Civil Penalties to Individuals Who Disclose SGI
- Construction Policy
- Alternative Dispute Resolution Program

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**Daily Civil Penalties**

Conceptual Guidance

- Used when there was awareness of a violation of at least moderate significance and a clear opportunity to prevent, identify, and/or correct, but a failure to do so
- Amount determined on a case-by-case basis up to the maximum statutory daily limit

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**Daily Civil Penalties**

Evaluation Factors

- Actual consequences to public health and safety or the common defense and security
- Safety significance of violation
- Repetitive violation because of inadequate corrective actions

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**Daily Civil Penalties**

Evaluation Factors

- Degree of management culpability in allowing the violation to continue or for not precluding it
- Licensee responsiveness once the violation and its significance were identified/understood
- Whether the continuing violation was deliberate
- Duration of the violation

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**Fuel Cycle Corrective Action Programs**

Background

- Generally, fuel cycle facilities are not required to have a corrective action program
- Should the enforcement program give credit to those that establish and maintain a program commensurate with power reactor programs?

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**Fuel Cycle Corrective Action Programs**  
Background

- Non-Cited Violation (NCV) criteria for Fuel Cycle Licensees contained in Policy Section 2.3.2.b
- Presently, NCV criteria in Section 2.3.2.b does not provide credit for corrective action programs

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**Fuel Cycle Corrective Action Programs**  
Policy Modifications

- Section 2.3.2.a could be entitled: "Power Reactor and Certain Fuel Cycle Licensees"
- Footnote 2 could include Fuel Cycle Facilities with an approved Corrective Action Program
  - Corrective Action Programs will be approved through licensing actions
- Section 2.3.2.a.3 could reference 10 CFR 40 and 70

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**Civil Penalties to Individuals**  
Unauthorized SGI Disclosure

- Background
  - Isolated examples
  - Policy is not explicit regarding sanctions

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**Civil Penalties to Individuals**

Unauthorized SGI Disclosure

- Legal Basis
  - Any person violating regulations adopted under Section 147, "SGI," of the Atomic Energy Act (AEA) is subject to a full range of sanctions, including CPs
  - 10 CFR 73.21 requires any person who produces, receives, or acquires SGI shall ensure protection against unauthorized disclosure

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**Civil Penalties to Individuals**

Unauthorized SGI Disclosure

- Staff's Initial Concept for Consideration:
  - Base CP for SL I violation: \$3500.00
    - 50% lower than the lowest Base CP in Table 'A'
    - Actual amount based on significance, severity, and willfulness

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**Civil Penalties to Individuals**

Unauthorized SGI Disclosure

- Severity level example
  - SL III - Any person who discloses or releases SGI to the public contrary to 10 CFR 73.22 and 10 CFR 73.23

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**Construction Policy**  
Background

- Commission directed the staff to re-evaluate enforcement policy related to construction activities including where discretion may be appropriate
- Draft options paper to solicit comments

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**Construction Policy**  
Process

- Staff intends to resolve comments received and provide the Commission a final options paper with a recommended approach by May 2011
- Commission will then determine if the Enforcement Policy should be revised

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**Construction Policy**  
Potential Options

- No change to existing Policy
- Add new section to Policy – discretion to raise or lower the severity level of cited violations, to non-cite violations, or to not cite violations during construction
- Add new Notice of Enforcement Discretion (NOED) process to address discretion during construction

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### Enforcement Policy

#### Next Steps

- Spring 2011 - FRN soliciting comments on proposed Policy revisions
- Fall 2011 – FRN soliciting comments on 2010 Enforcement Policy
- March 2012 – next proposed revisions due to Commission

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### Alternative Dispute Resolution Program

#### Background

- 1992 ADR policy statement encourages the use of ADR where appropriate (57FR36678)
- 2004 interim enforcement policy issued regarding the use of ADR in the enforcement program (69FR50219)
- 2006 evaluation (SECY-06-0102) recommended continuation of program
- 2010 revision of enforcement policy incorporated the ADR Program (ML093480037)

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### Alternative Dispute Resolution Program

#### Recent Program Initiatives

- Enhance transparency and effectiveness of the program by:
  - Redesigning the public and internal ADR program web pages
  - Revising pre-investigation ADR program brochure
  - Publishing more information
  - Strengthening program infrastructure

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**Alternative Dispute Resolution Program**  
CY 2011/2012 Program Initiatives

- By September 30, 2011, issue FRN to solicit public comment on various policy issues re: the ADR program
- By September 30, 2011, award new contract for ADR neutral administrator
- By December 2011, hold public meeting to discuss various policy issues re: the ADR program
- By July 31, 2012, propose revisions, if any, to the ADR program policy

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**Acronyms**

- ADR – Alternative Dispute Resolution
- CP – Civil Penalty
- FRN – Federal Register Notice
- IMC – NRC Inspection Manual Chapter
- NEI – Nuclear Energy Institute
- OE – NRC Office of Enforcement
- SGI – Safeguards Information
- SRM – Staff Requirements Memorandum

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