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TITLE: Transportation Enforcement Guidance

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

still on

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EGM-81-14

MEMORANDUM FOR: R. Carlson, Region I
C. Upright, Region II
J. Streeter, Region III
J. Gagliardo, Region IV
A. Johnson, Region V

FROM: Dudley Thompson, Director
Enforcement and Investigations, IE

SUBJECT: TRANSPORTATION ENFORCEMENT GUIDANCE

This Enforcement Guidance Memorandum is designed to provide you with guidance in handling enforcement actions against licensees who violate NRC transportation requirements. The guidance set forth here applies only in the context of transportation violations involving the transport of low specific activity (LSA) radioactive waste to a commercial disposal site.

With respect to violations that occur in this context, the region should first determine whether the appropriate state has taken any enforcement action (be it the imposition of a civil penalty or suspension or revocation of the licensee's burial permit) against the licensee as a result of the violation. If the state has taken action, the only further enforcement action the NRC will take initially is the issuance of a Notice of Violation.

If the Severity Level of the violation, as determined by the Region, is IV, V, or VI, the Notice of Violation is to be issued by the Region. If the Severity Level of the violation, as determined by the Region, is I, II, or III, the package should be forwarded to IE Headquarters for issuance of a Headquarters Notice of Violation. In either case, the Notice of Violation and accompanying documents will continue to require the licensee to submit to the sending office a description of the corrective action the licensee proposes to take or has taken in order to insure against future violations of a similar nature. This corrective action will be reviewed by the Region and if the Region deems the corrective action unsatisfactory, further enforcement action to ensure compliance with NRC regulations will be considered.


The above guidance applies to those cases where the state has taken some enforcement action for violations that are discovered either at the commercial burial site or while the vehicle is in transit from the licensee's facility to the burial site. Processing of violations that are discovered by the NRC at the licensee's facility or in other cases where the state has not taken action will continue to be in the same manner that was in effect prior to the issuance of this EGM. That is, for violations that are categorized at Severity Levels I, II, or III, the Region should forward to Headquarters the standard enforcement package with the recommendation for the appropriate

enforcement action (civil penalty, etc.).

In those situations where the violation that occurs is "similar" to a previous violation committed by the licensee, enforcement action beyond the issuance of a Regional or Headquarters Notice of Violation will normally be taken, even when the state itself has taken enforcement action for the violation. In order to determine when a "similar" violation has occurred, it will be necessary to look at the corrective actions undertaken by the licensee in response to previous violations the licensee committed. If the previous corrective action could reasonably have been expected to prevent the later violation from occurring, then the later violation is considered to be a "similar" violation and further enforcement action is appropriate.

For those cases where it is appropriate for enforcement action to be taken beyond the level of a Notice of Violation (e.g., where the state has not taken any enforcement action or where "similar" violations have occurred) and the enforcement action chosen is a civil penalty, the amount of base civil penalty is to be calculated as follows. For violations that occur for the first time, penalties are to be assessed at 25% of the values described in Table 1 of the Interim Enforcement Policy (45 Fed. Reg. 66756). If the violation is "similar" to one that has occurred before, penalties should be assessed at 50% of the values described in Table 1 of the Interim Enforcement Policy. For violations that have occurred more than twice, the appropriate level of civil penalty or other enforcement action will be determined on a case-by-case basis.

Enclosed for your use is a "boiler plate" paragraph that should be used in the cover letter that accompanies Notices of Violations.


Dudley Thompson, Director
Enforcement and Investigations
Office of Inspection and Enforcement

Enclosure: as stated

cc: R. Wessman
T. Brockett
J. Riesland
G. Barber
J. Metzger
J. Lieberman, ELD

Enclosure

STANDARD LANGUAGE TO BE USED IN COVER LETTERS ACCOMPANYING
REGIONAL OR HEADQUARTERS NOTICES OF VIOLATION

The violation for which you have been cited has already been the subject of enforcement action by the State of _____. On (date), the State of _____ (describe the action the State took) _____. In view of the circumstances surrounding this matter, we have exercised our discretion under the Interim Enforcement Policy (45 FR 66754) October 7, 1980, and have chosen to issue at this time the enclosed Notice of Violation. After reviewing your response to this Notice of Violation and your proposed corrective actions, the NRC will determine whether further NRC enforcement action is necessary in order to ensure compliance with NRC regulatory requirements.