



**State of Connecticut Department of Energy and Environmental Protection
Radioactive Materials Program**

RCP-902.1

Enforcement, Escalated Enforcement and Administrative Actions

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TABLE OF CONTENTS

SECTION	TITLE	PAGE
	<u>TABLE OF CONTENTS</u>	
1.0	<u>PURPOSE</u>	4
2.0	<u>SCOPE</u>	4
3.0	<u>REFERENCES</u>	4
4.0	<u>DEFINITIONS AND ABBREVIATIONS</u>	5
5.0	<u>GENERAL</u>	5
	5.1 Responsibilities.....	5
	5.2 Prerequisites.....	7
6.0	<u>PROCEDURE</u>	7
	6.1 Enforcement Process Overview.....	7
	Figure 1 – Connecticut Enforcement Process Flowchart.....	8
	6.2 Types of Violations (3-Tiered System).....	9
	6.3 RMP Enforcement Actions	12
	6.4 Escalated Enforcement Mechanisms (Enforcement Division).....	14
	6.5 Exercise of Discretion.....	15
	<u>ATTACHMENTS</u>	
	Attachment 1 – Interdepartmental Referral Form.....	16
	Attachment 2 – Examples of Minor and Non-Escalated Violations.....	17

1.0 PURPOSE

This procedure is utilized to support the overall safety mission of protecting the public health, safety, and environment through appropriate enforcement actions against non-compliant entities utilizing radioactive materials.

Enforcement actions should be used to:

- Deter noncompliance by emphasizing the importance of regulatory compliance.
- Encourage prompt identification and comprehensive action following the identification of violations.

Enforcement actions should be:

- Risk informed – based upon the potential for harm to public health and safety, the environment, or security.

2.0 SCOPE

Enforcement actions are dependent upon the circumstances of each individual case. The implementation of specific enforcement actions requires the exercise of discretion after consideration of all available alternatives. However, under no circumstances will licensees unable or unwilling to achieve and maintain adequate levels of safety be permitted to conduct licensed activities.

3.0 REFERENCES

- 3.1 Sections 22a-148 through 22a-165(h) of Chapter 446a – Radiation and Radioactive Materials of the Connecticut General Statutes
- 3.2 Sections 22a-153-1 to 22a-153-150, inclusive, of the Regulations of Connecticut State Agencies (RCSA)
- 3.3 Sections 22a-6b-1 to 22a-6b-15, inclusive, of RCSA, Assessment of Civil Penalties.
- 3.4 NRC Enforcement Manual, as revised.
- 3.5 NUREG-1600, General Statement of Policy and Procedures for NRC Enforcement Action.
- 3.6 Connecticut Department of Energy and Environmental Protection Enforcement Response Policy, as revised.

3.7 Connecticut Department of Energy and Environmental Protection Supplemental Environmental Project Policy, as revised.

4.0 DEFINITIONS AND ABBREVIATIONS

- 4.1 Department – CT Department of Energy and Environmental Protection (DEEP)
- 4.2 NOV - Notice of Violation
- 4.3 NOW - Notice of Warning
- 4.4 RCP – Radiation Control Physicist
- 4.5 RCPD – Radiation Control Program Director
- 4.6 RCSA – Regulations of Connecticut State Agencies
- 4.7 RMP – Radioactive Materials Program
- 4.8 SRCP – Supervising Radiation Control Physicist

5.0 GENERAL

5.1 RESPONSIBILITIES

5.1.1 Inspector

5.1.1.1 Immediately contact the SRCP if any potential escalated enforcement violations are identified during an inspection.

5.1.1.2 Document potential escalated enforcement violations as thoroughly as possible during an inspection.

5.1.2 Supervising Radiation Control Physicist (SRCP)

5.1.2.1 Determines if the threat to health and safety described in any NOVs warrants the prompt issuance of an order.

5.1.2.2 Makes recommendations pertaining to the exercise of discretion in any proposed enforcement action.

5.1.2.3 For the actual issuance of an escalated enforcement action, responds as necessary to a request for hearing by a licensee.

5.1.2.4 In the event of licensee's failure to pay an imposed penalty, coordinates with the Enforcement Division and legal counsel.

5.1.3 Radiation Control Program Director (RCPD)

5.1.3.1 Reviews recommendations forwarded from the SRCP and, as appropriate, approves, modifies, or denies the recommendation for assessment and issuance of forfeiture, issuance of an order, or both.

5.1.3.2 Forwards, as appropriate, any escalated enforcement recommendations to the Air Bureau Enforcement Division utilizing Attachment 1 – Intradepartmental Referral Form.

5.1.3.3 Coordinates as necessary with DEEP Legal Department to ensure proposed enforcement actions are conducted consistent with Connecticut General Statutes and the RCSAs.

5.1.4 The Enforcement Division within the Department Air Bureau is responsible for pursuing escalated enforcement actions in accordance with the Enforcement Response and Civil Penalty regulations.

5.2 Prerequisites

None

6.0 PROCEDURES

6.1 Enforcement Process Overview

6.1.1 This section describes the enforcement process of disposing of a violation in the Radioactive Materials Program.

6.1.2 Violations will be assessed into two levels of enforcement:

6.1.2.1 Minor and Non-Escalated Violations will be assessed and disposed utilizing regular enforcement actions by the RMP.

6.1.2.2 Escalated Enforcement Violations will be assessed and dispositioned by the Enforcement Division of the Air Bureau utilizing escalated enforcement directed by regulations.

6.1.3 The Air Bureau Enforcement Division utilizes 22a-6b 1 through 15, inclusive, to implement escalated enforcement actions.

6.1.4 Figure 1 is a flowchart of the three levels of violations and potential enforcement mechanisms utilized.

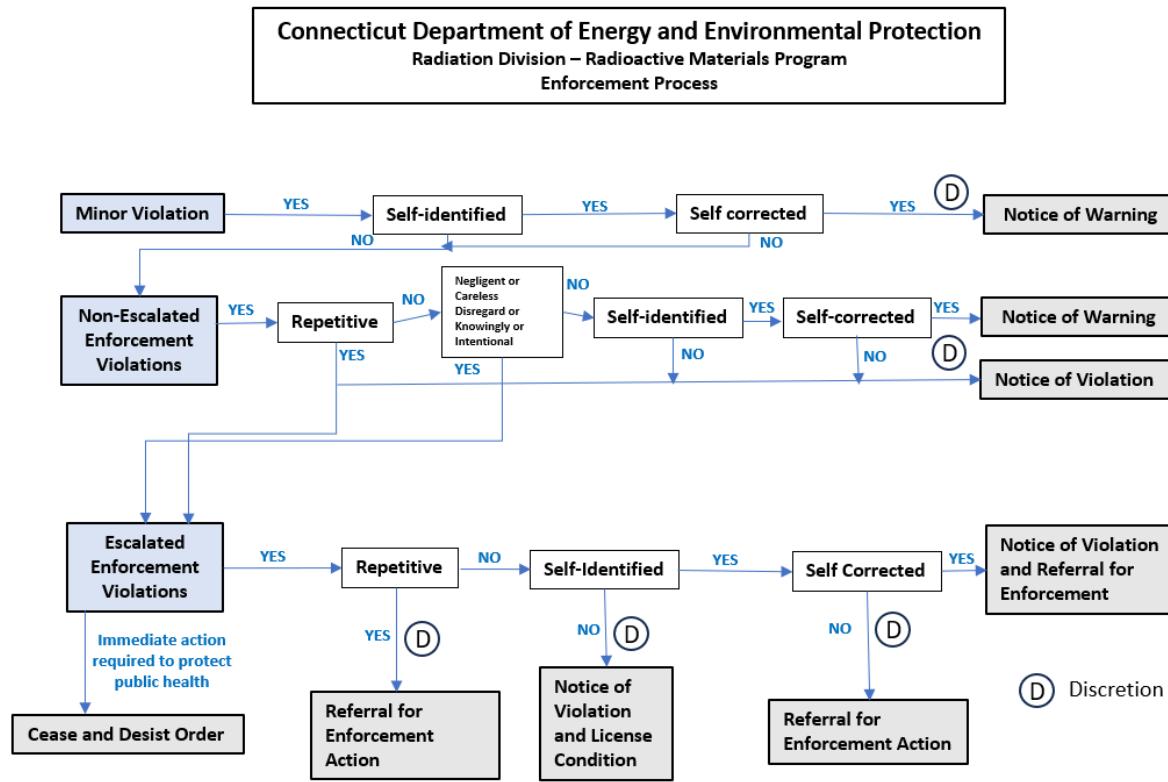


Figure 1 – Connecticut Enforcement Process Flowchart

6.2 Types of Violations (3-Tiered System)

6.2.1 Minor Violations: Notice of Warning

6.2.1.1 Minor violations that are below the significance of non-Escalated violations are typically non-cited (i.e. not the subject of enforcement action) and issued a Notice of Warning. Nevertheless, minor violations must be corrected.

6.2.1.2 To be considered minor, the violation must fit the definition of CGS Sec 22a-6s. Examples of non-cited minor violations are provided in Attachment 2. Minor violations can only be cited if they meet the following criteria:

- Non-repetitive;
- Not intentional or knowingly conducted;
- Not considered criminal negligence as defined by CGS 53a-3(14);
- Not conducted with careless disregard as defined by CGS 22a-b and;
- The licensee or registrant has self-implemented corrective actions.

6.2.2 Non-Escalated Enforcement Violations: Notice of Violation

6.2.2.1 A Notice of Violation (NOV) issued for non-escalated enforcement

violations is considered an enforcement action. Examples of violations that may be cited on a NOV can be found in Attachment

2. However, any violation that does not meet the criteria for escalated enforcement in RCSA 22a-6b-4 can be cited as a NOV.

The RMP follows the standard procedure for issuance of NOVs as described in RCP 904.3 Documentation of Inspection Results.

6.2.2.2 If the licensee/registrant failed to meet the criteria listed in Section

6.2.1.2 or the licensee/registrant failed to restore compliance in a reasonable amount of time after a violation was identified, then an NOV is issued. Restoring compliance includes actions taken to stop an ongoing violation from continuing and does not include those actions necessary to address root causes and prevent recurrence.

6.2.2.3 Non-escalated enforcement violations are those that represent a low

category of actual or potential harm to public health and safety, the environment or security. These are generally less serious, but are of more than minor concern, that resulted in low potential safety, environmental, or security consequences (e.g., violations that created the potential of more than minor safety or security consequences).

However, if left uncorrected, these violations could result in failure

of barriers that prevent more risk significant consequences.

6.2.3 Escalated Enforcement Violations:

6.2.3.1 An escalated enforcement violation is considered for referral to the Enforcement Division of the Air Bureau for enforcement action determinations. Escalated violations are normally issued after a pre-decisional enforcement conference or after a licensee has had an opportunity to respond to apparent violations issued within an NOV. Violations considered for escalated enforcement are listed in RCSA 22a-6b-8 Tables 4A and 4B which have been adapted from the NRC Enforcement Manual for severity level I, II, and III violations. The examples listed are not all inclusive. RMP inspectors may refer to the guidance in the NRC Enforcement Manual to assist in determining if a violation has occurred and the appropriate severity level/category of harm.

6.2.3.2 Escalated enforcement violations may result in the imposition of civil penalties as described RCSA 22a-6b-1 through 15, inclusive and administered through the Enforcement Division in coordination with the RMP.

6.2.3.3 Escalated Enforcement Violations include, but are not limited to Violations that resulted in or could have resulted in:

- Moderate Category of Harm (similar to NRC Severity Level

III) - moderate safety or security consequences (e.g., violations that created a potential for moderate safety or security consequences or violations that involved systems not being capable, for a relatively short period, of preventing or mitigating a serious safety or security event).

- High Category of Harm (similar to NRC Severity Level II)- significant safety or security consequences (e.g., violations that created the potential for substantial safety or security consequences or violations that involved systems not being capable, for an extended period, of preventing or mitigating a serious or security event).
- Very High Category of Harm (similar to NRC Severity Level I)
 - serious safety or security consequences (e.g., violations that created the substantial potential for serious safety or security consequences or violations that created the substantial potential for serious safety or violations that involved systems failing when actually called on to mitigate a serious safety or security event).

6.3 RMP Enforcement Actions

6.3.1 Notice of Warning (NOW)

6.3.1.1 A NOW is issued to a licensee or non-licensee for violations as

described in CT General Statutes § 22a-6s and Section 6.2.1 of this procedure.

6.3.1.2 Pursuant to CT General Statutes § 22a-6s, the notice of warning shall: describe the violation and specify the date such violation occurred, specify alternatives the violator may consider to correct the violation, provide a projected time frame for correcting the violation, and advise the violator of its responsibilities.

6.3.1.3 Within 30 days of receipt, the violator must provide written certification of the following (1) the minor violation has been corrected, (2) measures to assure that such violation will not recur have been implemented to the extent action cannot be taken to correct the specific violation identified in the notice, (3) action to correct the violation will be taken according to a specified schedule to the extent action has not been taken to correct the violation, or (4) evidence that no such violation occurred or that the notice is inaccurate.

6.3.2 Notice of Violation (NOV)

6.3.2.1 A NOV is issued to a license, registrant, or other persons (e.g., contractors) when items of noncompliance with regulations have been determined or suspected. A NOV is a formal written notice setting forth one or more apparent violations of a requirement,

following an inspection. The NOV formally documents regulatory violations and is typically the only enforcement action taken unless the criteria for escalated enforcement are met.

6.3.2.2 The recipient of an NOV is normally required to provide a written response describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken by the licensee and the results achieved; (3) the corrective steps planned to prevent reoccurrence; and (4) the date when full compliance will be achieved.

6.3.2.3 All or portions of the written response may be waived to the extent that relevant information has already been provided in writing or documented in the inspection report or inspection record.

6.3.2.4 A civil penalty may be issued by the Enforcement Division in conjunction with a NOV as deemed appropriate for violations of escalated enforcement identified.

6.3.2.5 A follow-up inspection should be conducted within six months of receipt of a licensee's corrective action following an escalated enforcement action and be based upon the severity of the violation(s). The RCPD may approve an inspection beyond six months if necessary to ensure corrective actions have been completed and sufficient time has passed to evaluate effectiveness.

6.4 Escalated Enforcement Mechanisms (Enforcement Division)

6.4.1 The Enforcement Division of the Air Bureau coordinates with the RMP to determine and implement escalated enforcement actions in accordance with the requirements of RCSA 22a-6b.

6.4.2 The Department may provide an opportunity for a settlement conference for a person to address apparent violations before proceeding to hearing per RCSA 22a-6b-10.

6.4.3 If a violation requires immediate action to protect public health and safety or the environment, the RCPD, in consultation with DEEP Office of Legal Counsel, may process and issue a cease-and-desist order in accordance with CGS section 22a-7.

6.4.4 The RCPD may authorize the use of other types of escalated enforcement actions that may be taken as defined in the CT DEEP Enforcement Response Policy including, but not limited to:

- Enforcement Discretion
- Cease and Desist Order
- Unilateral Order
- Consent Order
- Referral to the Attorney General or Chief State's Attorney.

6.4.3 Other potential escalated enforcement actions include: license suspension / revocation or denial of permits / registration.

6.5 Exercise of Discretion

6.5.1 Notwithstanding the normal guidance contained in this policy, the Department may choose to exercise discretion and either escalate or mitigate enforcement actions within the Department's statutory authority to ensure that the resulting enforcement action takes into consideration the relevant circumstances of the case.

6.5.2 The Department shall ensure gravity-based adjustments made to mitigate the penalty will not adversely affect health and safety or the environment.

Attachment 1 - Interdepartmental Referral Form

Confidential -- Enforcement Strategy-Case Sensitive¹

Bureau of Air Management
Intradepartmental Referral Form

To: Jake Felton, Director
Enforcement Division

From: Jeffrey Semancik, Director
Radiation Division

Date:

Site Name:

Site Address:

License No.:

Applicable Regulation:

***Please acknowledge, via email, the receipt of this referral: Within 14 calendar days.

(Administrative Enforcement will need the following) Please provide:

- Responsible Party name, address, email, phone #?
- Date of inspection and/or Date of discovery of the violation(s)?
- How was the violation(s) discovered: (i.e. was it self-reported; citizen complaint; routine inspection, etc.)?
- Describe the violation(s) in detail.
- Classify the severity level of the violation(s)
- Past compliance history (if any). What previous enforcement actions have been taken in the last 5 years?
- How long has the violation been occurring?
- Corrective action(s) needed or taken.
- Was an NOV issued? Please attach a copy
- Any other pertinent information?
- Please contact _____ in the Radiation Division for further information.

****Attach relevant documents and correspondence.***

¹ This document contains tentative conclusions and recommendations and does not create any defenses or rights, substantive or procedural.

Attachment 2 - Examples of Minor and Non-Escalated Violations

Example violations have been adapted from the NRC Enforcement Manual. The examples listed in this attachment are not all inclusive. RMP inspectors may refer to the NRC Enforcement Manual for further examples of violation classification and enforcement actions, if needed. Escalated Enforcement violations subject to potential civil penalties are contained within RCSA 22a-6b-8 Tables 4A and 4B, as required.

Examples of Violations That May Be Cited on a Notice of Warning (Minor Violations)

1. Inventories not performed at the required frequency on one or two occasions that did not result in any consequences (e.g. lost material).
2. Licensee observed eating, drinking, etc. in laboratories where less than or equal to megabecquerel (microcurie) quantities of unsealed radioactive materials are stored, but not being used (a survey should be performed to confirm the absence of contamination).
3. Failure to calibrate survey instruments, alarm rate meters, or pocket dosimeters at the required frequency on one or two occasions.
4. Failure to use a dedicated check source before each use of a survey instrument, on one or two occasions.
5. Failure to perform routine surveys (e.g. radiation, contamination, airflow checks, or fume hood monitoring) at the required frequency on a few occasions.
6. Failures of the radiation safety committee to meet at the required frequency on one or two occasions.
7. Failure to have required attendees at all radiation safety committee meetings.
8. Infrequent failures to exchange personnel dosimetry at the required frequency, but with no loss of dosimetry data.
9. Failure to have properly prepared shipping papers.
10. Failure to include the emergency phone number, reportable quantity (RQ) designation, or SI units on shipping papers.
11. Occasional failure to meet all transportation requirements of 49 CFR.
12. Users of radioactive materials are adequately trained, but not as stated in the license tie-down conditions.
13. On infrequent occasions, dose calibrator tests are not performed as required.
14. Isolated cases of missed or late leak tests.
15. Failure to appropriately post areas where radioactive materials are stored or used.

Examples of Non-Escalated Enforcement Violations That May Be Cited on a Notice of Violation

1. A licensee fails to use a properly prepared written directive as required by 10 CFR 35.40, or fails to develop, implement, or maintain procedures for administrations requiring a written directive as required by 10 CFR 35.41, whether or not a medical event occurs, provided that the failures are characterized by all of the following: are isolated, do not demonstrate programmatic weaknesses in implementation, and have limited consequences if a medical event is involved.
2. A licensee fails to keep the records required by 10 CFR 35.2040, "Records of Written Directives," and 10 CFR 35.2041, "Records for Procedures for Administrations Requiring a Written Directive."
3. A licensee fails to implement procedures including, but not limited to, recordkeeping, surveys, and inventories.
4. A licensee fails to comply with the U.S. Department of Transportation requirement to provide hazardous material (HAZMAT) employee training as required by 10 CFR 71.5(a).
5. There is an isolated failure to have and to follow written operating procedures as required by 10 CFR 36.53.
6. A licensee fails to document the required certification or training for positions such as radiographer, authorized user under 10 CFR Part 35, or irradiator operator under 10 CFR 36.51.
7. A licensee fails to seek required Department approval before the implementation of a change in ownership that results in little or no adverse impact on radiological or programmatic activities or on the Department's ability to inspect licensed activities, such that the locations and types of activities are unaffected by the unauthorized license transfer.
8. A licensee fails to seek required Department approval prior to replacement of the RSO, where the RSO was evaluated as qualified.
9. A licensee fails to seek Department approval, when required, before changing the location where licensed activities are being conducted or where licensed material is being stored that has little or no radiological or programmatic significance, and all other safety and security requirements have been met.
10. A licensee fails to secure a portable gauge as required by 10 CFR 30.34(i), whenever the gauge is not under the control and constant surveillance of the licensee, where one level of physical control existed and there was no actual loss of material, and that failure is not repetitive.