The Bureau of Radiation Control derives its statutory authority to inspect and enforce its radiation control regulations from Chapter 404, Florida Statutes (F.S.). Section 404.161, F.S., states that violation of our agency’s rules, hindrance of our staff in the discharge of their duties, or failure to comply with our orders constitute a third degree felony.

An array of formal enforcement mechanisms are at our disposal: notices of violation, administrative penalties, license suspension and revocation orders, orders to cease and desist, and orders to show cause. Fines can range from $125 for a minor violation (Severity Level V) to $1,000 per violation, per day for major health and safety violations (Severity Level I).


The procedures allow use of bulletins, information notices, generic letters and confirmatory action letters to supplement our agency’s enforcement program. Bulletins, information notices, and generic letters are written notices to groups of licensees identifying specific problems and recommending specific actions. Confirmatory action letters are letters confirming a licensee’s agreement to take certain actions to remove significant concerns regarding health and safety, safeguards, or the environment. None of these mechanisms are used to replace the “fine and/or suspend/revoke” actions that comprise the core of our agency’s enforcement arsenal.

Thus, our standard approach is adversarial by design. When a licensee disputes a fine or suspension/revocation order, they submit written responses laying out their basis for denial of the alleged violations and/or the corrective actions they have proposed and/or implemented to prevent recurrence, and seek withdrawal of the fine and/or order. If such a request is denied, the licensee currently has only two options: accept the fine and/or abide by the order, or request an administrative hearing. There are numerous drawbacks for both parties when
resolution of disputes takes place in a formal administrative setting. Scheduled hearings must be published, which is likely to attract the attention of the media and the public. One side or even both sides may receive negative publicity. Direct communication between the parties is limited, and exchanges become controlled by the legal staffs of each side, who are more prone to locking into hard positions and blaming the other side than to seeking rational solutions that are acceptable to both. Costs are imposed on each side, and the process can degrade the agency-licensee relationship, possibly poisoning future dealings. High costs and adversarial relationships do not benefit anyone, and do nothing to improve the health and safety mission of our agency. The quality of the rendered decision will be impacted by (1) the administrative hearing officers’ lack of technical expertise (i.e., limited understanding of the issues at stake), and (2) the focus on procedural compliance, which limits the range of possible solutions. Decisions produce winners and losers (or maybe only losers). Ones that go against our agency may be contrary to our regulatory mission, and could establish precedents that limit future actions. Decisions against licensees may generate further hostility if they perceive that the system was skewed in our favor, and they may resist implementation of corrective actions needed to obtain compliance and safe working conditions.

What is lacking in our current enforcement procedures is a mechanism that allows for non-confrontational meetings between the regulators and the licensees. In addition to avoiding the negative aspects of adversarial administrative hearings, multiple benefits could be realized. Decisions that are produced jointly can be win-win outcomes and even generate previously unidentified solutions. The parties are more apt to come away with improved relationships that carry forward into the future; licensees are more inclined to be committed to compliance; and our agency’s reputation could be enhanced if we are shown to be good faith negotiators committed to reasonable oversight rather than heavy-handed, insensitive bureaucrats.

When I began researching this issue, I discovered that the previous edition of our enforcement policy/procedure was a 17 page document, while our current 1992 version is only seven pages in length (refer to attached copies). Whole sections were deleted during the last revision. When I reviewed the superseded procedure, I could understand why some portions were removed. The last two pages were flow charts describing the steps involved in the legal and enforcement process, and they were a convoluted, confusing mess. However, I was surprised to find that a section in the old procedure that actually addressed my topic. Section 5, titled “Settlement and Compromise,” read as follows:

“At any time after issuance of an order designating the time and place of hearing in a proceeding to modify, suspend, or revoke a license or for other action, the Office of Radiation Control staff and the licensee may enter into a stipulation for the settlement of the proceeding or the compromise of an administrative fine. In the event of a hearing, the presiding officer may order such adjudication of the issues as he may deem to be required in the public interest to dispose of the proceeding. If approved, the terms of the settlement or compromise shall be embodied in a decision or order settling and discontinuing the proceeding.”

I was informed that the deleted sections were removed as redundant language because the information is covered in Chapter 120, Florida Statutes (the Administrative Procedure Act), which addresses requirements for agency enforcement actions. However, my review of Chapter 120 found no equivalent language to compensate for our deletion of the old section 5. Section 120.573, F.S., provides for mediation of disputes involving agency actions, which are defined to include enforcement issues. However, the statutes only address formal mediation, not informal meetings where settlements can be obtained without legal proceedings.

Our federal counterpart, the U.S. Nuclear Regulatory Commission (NRC), has a three-inch thick enforcement manual that provides an inordinate amount of detail on every aspect of their
enforcement process. The NRC’s procedures include provisions for “Predecisional Enforcement Conferences” which allow closed meetings with their licensees to discuss alleged violations that appear to warrant enforcement action. Unfortunately, the meetings are not set up to discuss sanctions; they are merely fact-finding efforts. Despite its bulk, nowhere in the huge document is a means provided for informal compromise; all steps lead to formal proceedings. It is no wonder that the NRC has developed a reputation for being hard-line and uncooperative, and for maintaining adversarial relationships with its federal licensees.

Fortunately, Florida’s Department of Environmental Protection (DEP) has incorporated a broad set of options to adversarial hearings within their enforcement procedures that can provide some suggestions for our agency to consider. DEP’s enforcement manual, which is available on the internet at <http://www.dep.state.fl.us/ogc/documents/enfmanual/enfolist.>, describes the application of concepts such as problem solving, participation, and partnerships to achieve compliance with the department’s rules. While far less cumbersome than the NRC’s enforcement procedures, DEP’s version is still a very detailed process that includes multiple steps that go beyond what our bureau probably needs. Nonetheless, it can serve as a guide for revising our procedures to return settlement and compromise to our enforcement process.

In the course of my investigation of this issue, I was advised that proposed revisions to the APA are currently under consideration by the Florida Legislature. The revisions to Chapter 120 could mandate major changes to our enforcement policy and procedures. If approved, the changes will likely constitute a substantial expansion of our procedures to distinguish between major and minor violations, to describe how each are handled, and to clarify the process. I have received no indication that the proposed changes will result in the addition of an informal dispute resolution step to our enforcement system, so this proposal still appears warranted. However, my recommendation has been strongly influenced by the uncertain nature of our procedures. I have limited my proposed revision to the inclusion of two steps in our enforcement process that provide the opportunity for our staff to meet with licensees cited for violations at informal settlement conferences to attempt an informal resolution of the compliance issues at stake.

Addressing costs associated with settlement conferences is an issue that requires discussion. Meetings held at the bureau’s headquarters in Tallahassee or at regional inspection offices would pose minimal facilities costs that could easily be absorbed. Meetings held in Tallahassee eliminate our travel costs, because headquarters staff would serve as the agency’s representatives. However, the majority of our licensees and registrants are located in the central and southern portions of the state, so they would incur travel expenses to come to the Capitol. Likewise, if we facilitate settlement opportunities by offering to hold meetings at our area offices, then our agency would face potentially high travel costs. Requiring licensees and registrants to cover those costs would create a disincentive to utilizing the settlement option. My solution is to try using just our Tallahassee headquarters and our Orlando office as conference locations. Orlando is close enough for both our headquarters staff and our licensees/registrants to reach by car. We can initially try to absorb the travels costs associated with getting Tallahassee staff to the Orlando meetings. Costs could be monitored, and if they escalate to unacceptable levels, we could train our Orlando staff to handle the conferences on their own. Training will be another component of this proposal that bears discussion. Our staff has excellent technical training and experience on regulatory and health and safety topics, but lack dispute resolution skills. In order for settlement conferences to succeed, some training will be needed. Fortunately, I have conflict resolution training materials from my graduate class, and our agency has access to formal training through the Florida Conflict Resolution Consortium both in Tallahassee and Orlando. Due to the added costs, my initial proposal is to attempt to conduct settlement conferences without third party mediators/facilitators. If our success rate is low, we can then reevaluate this approach and investigate cost-effective means of including third party assistance.
In summary, the addition of new stages in our enforcement process creates openings for settlement of disputes before being forced to go before a third party. By placing interests ahead of rights and power, we can facilitate accomplishment of the following objectives:

- Achieve resolution of enforcement-related disputes
- Produce quality resolutions
- Minimize transaction costs associated with enforcement actions
- Enhance relationships with licensees

Attached for your consideration is draft language for amending our procedure, along with a flow chart illustrating the inclusion of the two new steps. The flow chart terms “leap-forwards” and “loop-backs” refer to the procedure’s flexibility in allowing elements to be skipped or returned to as situations warrant. I encourage a thorough evaluation of this proposal to revise our agency’s enforcement process, and I welcome the opportunity to discuss it further.
Proposed Additions to the DOH Bureau of Radiation Control
Enforcement Policy and Procedure

1) Add the language provided below as a new introduction to the policy/procedure.

INTRODUCTION

The goal of the agency is to ensure that the possession and use of sources of radiation in Florida does not endanger workers, members of the public or the environment. An important step in achieving this goal is attaining and maintaining compliance with our laws and rules. Compliance is the primary objective of all responses to allegations of violations of statutes and rules pertaining to radiation. Our compliance objective is addressed through licensing, certification, outreach/education efforts, and our inspection program, which includes the enforcement procedures described herein. The agency is also interested in deterring future violations and, when possible, preventing them through voluntary efforts to implement corrective actions. Simply put, the aim is to apply the best method to resolve a violation and/or prevent further violations. Achieving compliance with the agency’s rules and statutes through amicable means is always preferred, so use of informal settlement conferences prior to proceeding to an administrative hearing is encouraged.

2) Add the language provided below as a new section within the policy/procedure.

SETTLEMENT AND COMPROMISE

At any time after issuance to a licensee or registrant of a notice of violation (NOV) or administrative complaint (AC), the Bureau of Radiation Control staff and the licensee/registrant may enter into a stipulation for the settlement of the action and/or compromise of the administrative fine. Each NOV letter and AC will include a notice explaining the option for requesting an informal settlement conference within 20 days of receipt of the correspondence. If requested, a meeting (or series of meetings) may be held at either the Bureau’s Orlando or Tallahassee office in an attempt to resolve the dispute. As a minimum, the bureau will be represented by the inspection coordinator (or a trained designee), the x-ray or radioactive materials section administrator as applicable (or a trained designee), and a support staffperson (for recording and reporting purposes). If the initial meeting fails to achieve consensus but advances the interests of each party, one or more additional meetings may be added by mutual consent to allow time for fact-finding and problem-solving. If a consensus is reached, the terms of the compromise/settlement shall be documented and the enforcement action will be concluded. If unable to achieve consensus, the enforcement process will proceed, and the parties retain their right to an administrative hearing in accordance with the provisions of Chapter 120, F.S.
Flow Chart for Revised Enforcement Procedure

Leap-Forwards

Notice of Violation

Informal Hearing(s)

Administrative Complaint

Informal Hearing(s)

Final Order

Final Decision

Loop-Backs