regulatory requirements of new and revised facilities, equipment and processes involving special nuclear material and ensures appropriate safety controls are considered. Contrary to the above, pertinent process conditions and known modes of failure were not adequately considered in establishing operating safety controls or limits in that:

2. From March 1989 through November 1990, the CRB reviewed drum counter evaluations that revealed measurement problems associated with material type and container fill level, but failed to establish requirements for remeasurement of materials previously measured by the drum counter and stored at the facility.

Summary of Licensee's Response to Violation I.B.2

In its reply to the Notice, the Licensee does not agree that this violation relates to the stated requirements. The Licensee further states that the need for remeasurement of materials in 1990 was neither a part of equipment design or the establishment of safety limits nor a part of the consideration of safety controls for low-level dissolution. The Licensee further states that the NLB is chartered to review and approve new or modified facilities, equipment, and processes and that it is not chartered to investigate safety problems or require actions to resolve safety problems. The Licensee maintains that the review and approval of changes to the low-level dissolution process did not impact the safety of material storage and, therefore, the need for remeasurement of material was not within the charter of the NLB.

The Licensee states that no information was presented to the NLB which indicated a need for remeasurement of scrap materials in storage. The Licensee states that the materials which were in storage and had not been acceptably measured were never identified during the evaluation, review, and approval process, and, therefore, there appeared to be no need for remeasurement.

The Licensee acknowledges that there were deficiencies related to the problems discussed, including the inaccurate measurements. However, the Licensee indicates that these deficiencies did not constitute the violation as stated.

NRC Evaluation of Licensee's Response to Violation I.B.2

The Licensee appears to take the wording of the violation out of context in that the Licensee has argued that the NLB is only responsible for considering information contained in LERs. The NLB, or another body of the Licensee's organization, should have established requirements for remeasurement of materials previously measured by the drum counter and stored at the facility. The Licensee's argument further heightens the NRC's concern as to whether the Licensee has an oversight organization that is charged with this responsibility. In addition, the argument points out that such narrow views are, in part, the reason for the Licensee's continued NCS problems (i.e., exceeding NCS limits). The license requires the Licensee to review the effect on NCS of new and revised processes involving special nuclear material (SNM) and to ensure that appropriate safety controls are considered.

During a review of revised drum counting processes, the NLB was presented with evidence that demonstrated problems existed which were associated with drum counter measurement accuracy. The NLB was, therefore, required to review the effect on NCS of items or processes that were using drum counter measurement results to deomonstrate compliance with NCS limits. Such a review should have included drum counter measurement results or materials stored in 55-gallon drums used to demonstrate compliance with the NCS limit of 350 grams of U-235 per drum.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

II. Evaluation of Violation not assessed a Civil Penalty, Restatement of Violation II.C

License Condition No. S–1 of SNM–42 requires that licensed material be used in accordance with statements, representations, and conditions contained in Sections I through IV of the application dated February 22, 1982 and supplements thereto.

Section II, Paragraph 10.4 of the application requires the retention of records of Change Review Board (CRB) actions for the longer of either two years or six months after termination of the operation.

Contrary to the above, as of June 29, 1994, records associated with License Evaluation Request (LER) 89–124, which provided the basis for a CRB action on LER 89–155, approving the counting of partially-filled bottles on the drum counter (an operation that was currently being performed), were not retained and the operation had not been terminated.

Summary of Licensee's Response to Violation II.C

In its reply, the Licensee denies that the violation occurred as stated. The Licensee states that the NLB (now CRB) took no action with regard to LER 89–124 because it was withdrawn and no information associated with LER 89–124 formed a basis for any NLB action on LER 89–155.

NRC Evaluation of Licensee's Response to Violation II.C

The Licensee's license requires the retention of records of NLB actions. The LER 89-155 file contains a document which reads: "Subject: Low-Level Dissolving of Partial Containers, Reference: LER 89-124." This document states that the subject LER contained a description of all types of material normally processed in the low-level dissolvers and the means used to ensure nuclear safety while processing the various types of material. The document also states: 'After a thorough review of all the material presented in the LER [89-124] it was concluded [emphasis added] by the Nuclear Licensing Board that processing of partial containers was not the main area of concern." Therefore, the NLB did consider information from LER 89-124 in its review of LER 89-155. However, the LER 89-155 file does not contain any of the material that was thoroughly reviewed and used as the basis for the NLB to conclude that processing of partial bottles was not the main area of concern in the approval of LER 89-155.

The NRC concludes that the Licensee did not provide bases to withdraw the violation; therefore, the violation occurred as stated.

III. Summary of Licensee's Request for Mitigation

In its answer to the Notice, the Licensee states that a civil penalty was proposed based on Violations I.A and I.B constituting, in the aggregate, a Severity Level III problem. The Licensee argues that since Violation I.B is not a violation, only Violation I.A. remains and no aggregation can occur; therefore, there is no basis for a civil penalty. The Licensee maintains that even if Violation I.B were a violation, sufficient basis does not exist for a civil penalty and that the statements in Violation I.B, if accurate, would be causes of Violation I.A and should be written as part of Violation I.A. In addition, the Licensee believes aggregating a violation which may have occurred in 1990 with one which occurred in 1994 is inappropriate.

As to certain statements made in the Notice, the Licensee disagrees that there have been many examples of inadequate evaluations relating to known modes of failure, that it has had continued poor performance in the area of NCS, and that extensive management attention has not been directed toward identifying and correcting NCS problems. The Licensee indicates that the issues for which the civil penalty is being proposed were primarily caused by problems which predate most of its efforts and that it is applying significant attention and resources to strengthen its NCS program.

With respect to the application of escalation and mitigation factors the Licensee states that Violation I.A was not a selfdisclosing event because if the operators had not compared the output values from the dissolvers to the mass limit and reported the limit violation, Violation I.A. would not have been known since there was no requirement to make such comparison. Further, the Licensee requests full mitigation because it showed enormous initiative in identifying the root causes, contrary to the NRC's Notice, which stated that the Licensee did not demonstrate initiative in identifying the root causes of the Violations I.A. and I.B, and because it developed long-term corrective actions in a timely manner. The Licensee also states that it suspended or severely restricted activities involving scrap and waste to prevent recurrence. The Licensee states that the September 23, 1994 report to the NRC addressed in detail why procedures, controls, and implementation were inadequate and did address corrective actions for the underlying problems revealed by the event. Additional information regarding other causes and corrective actions was provided to the NRC on November 16, 1994. Thus, based on all of its corrective actions, the Licensee indicates that a civil penalty is unwarranted. The Licensee also states that escalation of 100 percent for prior opportunity to identify is not warranted since it demonstrated that the February 1994 event did not provide opportunities for identification and that the March 1989 problem provided limited opportunities for this identification.