

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

March 2, 1990

MEMORANDUM FOR: William C. Parler, General Counsel

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION
AND VOTE, 11:30 A.M., THURSDAY, FEBRUARY
15, 1990, COMMISSIONERS' CONFERENCE ROOM,
ONE WHITE FLINT NORTH, ROCKVILLE, MARYLAND
(OPEN TO PUBLIC ATTENDANCE)

I. SECY-90-013 - Final Rule to Prohibit Agreements Related to
Employment That Would Restrict the Free Flow of Information
to the Commission

The Commission, by a 4-1 vote, approved a final rule which prohibits agreements related to employment that would prohibit, restrict or discourage employees who have performed or are performing work related to licensed activities from bringing safety information to the Commission.

Commissioners Roberts disapproved the rule. Commissioner Curtiss provided additional comments to be published with the rule (copy attached).

The final rule should be revised to include commissioner Curtiss' comments prior to the Environmental Impact Section on page 25, reviewed by the Regulatory Publication Branch, ADM, for consistency with Federal Register requirements, and forwarded for signature and publication.

(OGC) (SECY Suspense: 3/23/90)

Attachment:
As stated

cc: Chairman Carr
Commissioner Roberts
Commissioner Rogers
Commissioner Curtiss

Commissioner Remick
EDO
GPA
ACRS
PDR - Advance
DC - P1-24

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Additional comments of Commissioner Curtiss

While I am reluctantly supporting the approach adopted in this rule, particularly in view of the fact that the Department of Labor has adopted the argument that the NRC championed in our letter of May 3, 1989, I nevertheless remain concerned about the potential precedential scope of this approach and of the rationale that underpins the final rule. Specifically, I am not persuaded that a logical case has been -- or can be -- made to support the distinction between settlement agreements arising out of an employer-employee relationship and settlement agreement where no employer-employee relationship exists. If we are troubled by the imposition of any restriction on an individuals right to communicate with the Commission -- even where the individual nevertheless retains the right to communicate in some manner with the Commission -- the fact that those restrictions arise out of the settlement of an employer-employee dispute seems to me to be irrelevant to the ultimate objective that we are seeking to accomplish in this rule -- preserving the Commission's ability, unencumbered, to obtain information on health and safety matters.^{1/} Indeed, in view of the decision that the Commission has reached here, I find it most improbable that the Commission would -- or could -- accept a settlement agreement that restricted in any way an individual's ability to communicate with the Commission, on the ground that the settlement agreement did not involve an employer-employee relationship. In short, the logic of this rule appears to compel the conclusion that any restriction on an individual's right to communicate with the Commission contained in a settlement agreement -- whether or not an employer-employee relationships exists -- is unacceptable. While this rule, by its terms, does not address this situation, we nevertheless should recognize that our action here moves us in that direction.

1/ If the commission is seeking to ensure that the channels of communication for health and safety information remain unencumbered, the fact that one individual is an employee and

another is not should have no bearing on whether we would countenance any restrictions on the communication of such information to the Commission, even though it may ultimately turn out that the employee's information is more accurate or valuable because of the special access that such an individual might have.