

July 19, 2001

ALL AGREEMENT STATES  
MINNESOTA, PENNSYLVANIA, WISCONSIN

**PROGRAM INFORMATION: ESSENTIAL OBJECTIVE OF THE RULE ON DELIBERATE MISCONDUCT (STP-01-058)**

Recently several questions were identified relating to adoption of the deliberate misconduct rule in 10 CFR 30.10, 40.10, 61.9b and 70.10. We are providing information to clarify the essential objective of this rule.

NRC enacted this rule to be able to remove an unlicensed person, such as an employee, contractor, or consultant, or take other administrative, noncriminal action directly against a person, such as issuance of a notice of violation, who deliberately:

- a) causes a licensee to be in violation of a requirement;
- b) provides material inaccurate information to a licensee; and
- c) provides material inaccurate information to the regulator.

Prior to the rule, there was no obligation placed on employees, contractors or consultants by the NRC. Thus, NRC enforcement actions were restricted to either issuing an order to remove the person from the license or referring the case to the U.S. Department of Justice for consideration of criminal prosecution. The rule on deliberate misconduct was enacted to be able to take action directly against unlicensed persons including, licensee employees, contractors, subcontractors, and employees of contractors and subcontractors for certain deliberate misconduct. It also allows the NRC to prevent the person from engaging in licensed activity for any licensee not just for the licensee that the person was involved with at the time of the deliberate action.

In SECY-98-068, the staff requested Commission review regarding adoption of the deliberate misconduct rule by Agreement States. The staff recommended, and the Commission approved, a Category C compatibility designation; an Agreement State should adopt a rule which meets the essential objective of the NRC rule. To satisfy the category C designation, the paper indicated that Agreement States could address this area either in statutes, regulations or another form of legally binding requirement. The paper also indicated that Agreement States would have a large degree of flexibility in incorporating the deliberate misconduct rule into their programs. The paper stated:

“...the staff plans to find an Agreement State's approach to this issue compatible with that of NRC as long as the State indicates it has a legal mechanism in place to take enforcement action against unlicensed persons engaged in deliberate misconduct. For example, the approaches described by Agreement States in their comments would be acceptable under these criteria...” These approaches included “... the issuance of notices of violation, orders requiring affirmative

action or suspension or revocation of the right to possess and use of materials, the impounding of materials, injunctive relief, and the imposition of civil or criminal penalties...” In the paper, the staff also strongly recommended that “... Agreement States have the authority to prohibit unlicensed persons engaged in deliberate misconduct from future involvement in licensed activities within their jurisdiction...”

Based upon the information presented in SECY-98-068, the essential objective of this rule, which should be adopted by Agreement States, is:

An Agreement State should have a legal mechanism in place to take enforcement action against unlicensed persons engaged in deliberate misconduct. The essential objective would be met if the enforcement action can be taken directly against the unlicensed person or taken indirectly through enforcement action against a licensee that impacts the unlicensed person provided that the unlicensed person is afforded the opportunity to challenge the enforcement action.

When submitting regulations for NRC review, if you do not plan to adopt language equivalent to that NRC has used in its regulations, we ask that you describe in your transmittal letter: (1) how the State is imposing requirements on the unlicensed person that deliberately causes the licensee to violate State requirements; (2) the types of enforcement actions the State can take against unlicensed persons for deliberate misconduct; (3) provide information identifying the specific State statute or rule where authority is provided to take enforcement action against unlicensed persons for deliberate misconduct; or (4) explain and provide supporting documentation of any legal impediments in the State, which prevent the adoption of a deliberate misconduct rule for unlicensed persons.

If you have any questions on this correspondence, please contact me or the individuals named below.

POINT OF CONTACT:	Cardelia Maupin, STP	INTERNET:	CHM1@NRC.GOV
TELEPHONE:	(301) 415-2312	FAX:	(301) 415-3502

POINT OF CONTACT:	Jim Lieberman , OGC	INTERNET:	JXL@NRC.GOV
TELEPHONE:	(301) 415-2746	FAX:	(301) 415-2036

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Paul H. Lohaus, Director  
Office of State and Tribal Programs

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