

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

August 28, 1998

**NRC INFORMATION NOTICE 98-33: NRC REGULATIONS PROHIBIT AGREEMENTS
THAT RESTRICT OR DISCOURAGE AN EMPLOYEE
FROM PARTICIPATING IN PROTECTED ACTIVITIES**

Addressees

All holders of a U.S. Nuclear Regulatory Commission (NRC) license.

Purpose

The NRC is issuing this information notice to remind addressees that 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, 72.10, 76.7, and 150.20(b) specify that any agreement with an employee that affects compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor (DOL) pursuant to Section 211 of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851, may not prohibit, restrict, or otherwise discourage an employee from participating in protected activities, as defined in the statute. It is expected that recipients will review the information for applicability and consider actions, as appropriate, to ensure compliance with NRC requirements. No specific action or written response is required.

Description of Circumstances

Employees in the nuclear industry who believe that they have suffered an adverse action by their employer because they engaged in protected activities may file a complaint of discrimination with the DOL. The DOL may investigate the complaint and may award personal relief to the employee if a finding of unlawful discrimination is made. Concomitantly with the DOL process, the NRC may take enforcement action against the employer for unlawful discrimination.

Over the years, the DOL has required several NRC licensees and contractors to amend agreements proffered to an employee, or to a former employee, to settle complaints filed with the DOL pursuant to Section 211 of the ERA, as amended, because the agreements contained provisions that would prohibit, restrict, or otherwise discourage the settling employee from participating in protected activities. The protected activities are defined in Section 211 of the ERA and include but are not limited to (1) notifying an employer of an alleged violation of the ERA or the Atomic Energy Act of 1954 (AEA), as amended; (2) refusing to engage in any practice made unlawful by the ERA or the AEA if the employee has identified the alleged illegality to the employer; (3) testifying before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of the ERA or the AEA; (4) commencing,

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causing to be commenced, or being about to commence or cause to be commenced a proceeding under the ERA or the AEA, or a proceeding for the administration or enforcement of any requirements imposed under the ERA or the AEA; (5) testifying or being about to testify in any such proceeding; and (6) assisting or participating, or being about to assist or participate, in any matter in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of the ERA or the AEA. Courts and the DOL have broadly interpreted the term "protected activity" to cover a wide spectrum of conduct. In addition, certain licensees may have entered into agreements with employees or proffered agreements to employees that prohibited, restricted, or otherwise discouraged the employee from participating in protected activities. The NRC emphasizes that such agreements violate the NRC employee protection regulations previously cited.


Discussion

On March 21, 1990, the Commission published its final rule on the issue "Preserving the Free Flow of Information to the Commission," in the Federal Register (55 FR 10397). This rule, which has been incorporated into the employee protection regulations, requires, in part, that--


No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity . . . including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

Licensees have achieved compliance with this requirement by including a provision in agreements with employees that explicitly provides that nothing in the agreement shall be construed to restrict an employee's ability to engage in protected activities.

This information notice establishes no new requirements; therefore, no specific action or written response is required by this notice. However, recipients are reminded that they are required to comply with the requirements of NRC employee protection regulations, including the provisions relating to agreements with employees of licensees, applicants for licenses, and contractors and subcontractors. The DOL's Occupational Safety and Health Administration has reviewed this information notice and concurs in its contents. If you have any questions about this matter, please call the contact listed below or the appropriate NRC regional office.



Donald A. Cool, Director
Division of Industrial and
Medical Nuclear Safety
Office of Nuclear Material Safety
and Safeguards



Jack W. Roe, Acting Director
Division of Reactor Program Management
Office of Nuclear Reactor Regulation

Contact: James Lieberman, OE
301-415-2741
E-mail: jxl@nrc.gov

Attachment:

1. List of Recently Issued NMSS Information Notices
2. List of Recently Issued NRR Information Notices

**LIST OF RECENTLY ISSUED
NRC INFORMATION NOTICES**

Information Notice No.	Subject	Date of Issuance	Issued to
98-32	Problems Associated with Post-Fire Safe-Shutdown Circuit Analyses	8/26/98	All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor
98-31	Fire Protection System Design Deficiencies and Common-Mode Flooding of Emergency Core Cooling System Rooms at Washington Nuclear Project Unit 2	8/26/98	All holders of operating licenses for nuclear power reactors, except those licensees that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.
98-29	Predicted increase in Fuel Rod Cladding Oxidation	8/3/98	All holders of operating licenses for nuclear power reactors, except those licensees who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel.
98-28	Development of Systematic Sample Plan for Operator Licensing Examinations	8/3/98	All holders of operating licenses for nuclear power plants
98-27	Steam Generator Tube End Cracking	7/24/98	All holders of operating licenses for pressurized-water reactors except those who have permanently ceased operation and have certified that fuel has been permanently removed for the reactor vessel

OL = Operating License
CP = Construction Permit

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 NMSS INFORMATION NOTICES**

Information Notice No.	Subject	Date of Issuance	Issued to
98-30	Effect of the Year 2000 Computer Problem on NRC Licensees and Certificate Holders	8/12/98	All material and fuel cycle licensees and certificate holders
97-91 Supp. 1	Recent Failure of Control Cables Used on Amersham Model 660 Posilock Radiography Systems	8/10/98	All industrial radiography licensees.
98-20	Problems With Emergency Preparedness Respiratory Protection Programs	6/3/98	All holders of operating licenses for nuclear power reactors; non-power reactors; all fuel cycle and material licensees required to have an NRC-approved emergency plan.
98-18	Recent Contamination Incidences Resulting from Failure to Perform Adequate Surveys	5/13/98	Part 35 Medical Licensees
98-17	Federal Bureau of Investigations (FBI) Awareness of National Security Issues and Responses (ANSIR) Program	5/7/98	All U.S. Nuclear Regulatory Commission fuel cycle and power and non-power reactor licensees
98-16	Inadequate Operational Checks of Alarm Ratemeters	4/30/98	All Industrial Radiography Licensees
98-12	Licensees' Responsibilities Regarding Reporting and Follow-up Requirements for Nuclear-Powered Pacemakers	4/3/1998	All U.S. Nuclear Regulatory Commission nuclear pacemaker licensees
98-10	Probable Misadministrations Occurring During Intravascular Brachytherapy With The Novoste Beta-Cath System	4/3/98	All Medical Licensees
98-09	Collapse of an Isocam II, Dual-Headed Nuclear Medicine Gamma Camera	3/5/98	All medical licensees

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[original signed by]
 Donald A. Cool, Director
 Division of Industrial and
 Medical Nuclear Safety
 Office of Nuclear Material Safety
 and Safeguards

[Original signed by]
 Jack W. Roe, Acting Director
 Division of Reactor Program Management
 Office of Nuclear Reactor Regulation

Contact: James Lieberman, OE
 301-415-2741
 E-mail: jxl@nrc.gov

- Attachment:
 1. List of Recently Issued NMSS Information Notices
 2. List of Recently Issued NRR Information Notices

Document Name: S:\DRPM_SEC\98-33.IN

*See previous concurrence

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OFFICE	D:OE	OGC	PECB	D:FCSS	D:IMSS	(A)D:DRPM
NAME	JLieberman*	JGoldberg*	JStolz*	ETenEyck*	DCool*	JRoe*
DATE	08/07/98	08/17/98	08/21/98	08/19/98	08/19/98	08/24/98

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DATE	08/07/98	08/17/98	08/17/98	08/17/98	08/17/98	08/24/98

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8/18/98

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NAME	Lieberman	JGoldberg	JStolz	ETenEyck	DCool	JRoe
DATE	08/7/98	08/7/98	08/ /98	08/ /98	08/ /98	08/ /98

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