

October 9, 2003

The Honorable Russell D. Feingold  
United States Senator  
517 E. Wisconsin Avenue, Room 408  
Milwaukee, Wisconsin 53202

Dear Senator Feingold:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter to Mr. Dennis Rathbun, Director of the NRC's Office of Congressional Affairs, dated July 23, 2003. In that letter, you expressed the concern of your constituent, Mr. Dave Mehrer, regarding the NRC's position on background checks, credit checks, and fingerprinting at the nation's nuclear power plants.

The bases for the Access Authorization and Fitness-for-Duty programs are found in Title 10 of the *Code of Federal Regulations* (10 CFR) Section 73.56, "Personnel access authorization requirements for nuclear power plants;" 10 CFR 73.57, "Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees;" and 10 CFR Part 26, "Fitness For Duty Programs." These regulations are issued under authority conveyed to the NRC by the Atomic Energy Act of 1954, as amended, and other statutes. Under these regulations, licensees have for many years been conducting criminal background, fingerprint and credit checks.

Based on the September 11, 2001, terrorists attacks, the NRC staff's ongoing review, and NRC's collaboration with other Federal agencies, the NRC staff has been further sensitized to the potential threat posed by insiders at our licensed facilities. Based on this information, the Commission issued an Order EA-02-261, entitled "Compensatory Measures for Access Authorization in the Current Threat Environment," to all operating power reactor licensees who maintain a license under 10 CFR Part 50. That Order, which took effect on the date of issuance (January 7, 2003), required licensees to implement a variety of compensatory measures designed to enhance licensees' existing Access Authorization and Fitness-for-Duty programs. The NRC also issued guidance for effectively implementing the requirements of the Order.

Both the compensatory measures imposed by the Order and portions of the associated guidance document were determined to be "Safeguards Information" in accordance with 10 CFR 73.21, "Requirements for the Protection of Safeguards Information." This determination imposes restrictions on the dissemination and storage of sensitive information, which precludes the disclosure of such information to the public. The reason for this determination is to prevent a terrorist from obtaining information that could possibly assist in becoming an insider threat at our licensed facilities. The Nuclear Management Company, LLC (NMC) can release the Safeguards Information contained in Enclosures 3 and 4 of NRC Order EA-02-261 only to people with authorized access to Safeguards Information in accordance with 10 CFR 73.21.

Senator Feingold

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Enclosure 1 to this letter contains the publicly available portion of NRC Order EA-02-261. This portion of the Order is also available electronically on the NRC's public Web site (<http://www.nrc.gov/reading-rm>) in the Agencywide Documents Access Management System (ADAMS) under Accession No. ML030060360.

Enclosure 2 to this letter contains NMC's response to NRC Order EA-02-261, dated January 24, 2003 (ADAMS Accession No. ML030310107).

I trust that this letter and its enclosures effectively respond to your concerns and those of your constituent, Mr. Mehrer. If you have any further questions, please contact me at 301-415-1700 or via e-mail [WDT@nrc.gov](mailto:WDT@nrc.gov).

Sincerely,

*/RA/*

William D. Travers  
Executive Director  
for Operations

Enclosures: 1. Publicly available portion of NRC Order EA-02-261  
2. NMC's response to NRC Order EA-02-261, dated January 24, 2003

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\*Via E-Mail

\*\*See previous concurrence

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