

November 28, 2003

The Honorable Bob Graham
United States Senator
2252 Killearn Center Boulevard, Suite 300
Tallahassee, FL 32309-3573

Dear Senator Graham:

On behalf of the Nuclear Regulatory Commission (NRC), I am responding to your letter dated October 8, 2003, in which you requested the NRC to review the concerns of one of your constituents, Mr. H. John Leifhelm, and provide you our comments. In his letter to you dated September 8, 2003, Mr. Leifhelm expressed a concern regarding recent requirements pertaining to nuclear power plant licensees, requirements that he believes may be unconstitutional. He was especially concerned about signing a waiver for a reinvestigation in order to maintain his unescorted access to the facility. He wants to know under what authority these requirements are being imposed and access decisions made.

The regulatory bases for the Access Authorization (AA) and fitness-for-duty (FFD) programs are found in 10 CFR 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 given to the NRC by the Atomic Energy Act of 1954, as amended, and other statutes. Under these regulations, the employers, not the NRC, make the access decisions, guided by general performance objectives in the regulations.

Following the terrorist attacks of September 11, 2001, the NRC began a comprehensive review of its safeguards and security programs to ensure that the requirements are reasonable and prudent in light of the current threat environment. When appropriate, the staff has issued Orders to impose additional measures to enhance existing requirements. On September 14, 2001, and on October 6, 2001, the NRC advised licensees to assume a heightened level of awareness with regard to access authorization at operating power reactors. On February 25, 2002, the NRC issued Orders to all operating nuclear power plant licensees requiring the formal implementation of certain enhancements that had been discussed in previous advisories. In light of the NRC staff's ongoing review and collaboration with other Federal agencies, the NRC issued an immediately effective Order on January 7, 2003, to all operating power reactor licensees, entitled "Compensatory Measures for Access Authorization in the Current Threat Environment." These compensatory measures were designed to enhance the AA and FFD programs of these licensees. At the same time, the NRC issued guidance for effectively implementing the requirements of the Order.

The NRC is aware that some individuals working in the nuclear industry have concerns regarding the enhancements to the AA and FFD programs ordered by the NRC. These concerns are prompted, in many cases, by licensee-developed waivers that personnel have been asked to sign. As part of the January 7, 2003 AA Order, licensees were, in part, directed to establish a program for conducting reinvestigations. In order to complete the required components of the reinvestigations, the licensee must obtain the consent of the person being reinvestigated. In so doing, the licensee serves notice to the person holding unescorted access to the facility of what types of information the licensee will access to perform the mandated reinvestigation. Each person is entitled to make an informed decision and, as a result, may choose to refuse to authorize consent to have the reinvestigation conducted. Should a person choose to withhold consent, the licensee would be unable to make a determination of trustworthiness and reliability as ordered by the Commission. In such a case, the licensee would be forced to revoke the unescorted access of that person, as the requirements of the Order cannot be met. Reinvestigations are among the actions the NRC requires that licensees take to mitigate against the potential threat that a utility employee might commit a terrorist act against a nuclear power plant.

Furthermore, the NRC has carefully considered the personal privacy issues associated with the requirements of the January 7, 2003 Order. The NRC has concluded that the reinvestigations required of licensees are reasonable and prudent to provide confidence in the trustworthiness and reliability of employees who have unescorted access to the plant or access to safeguards information. The NRC has also concluded that the reinvestigations are no more intrusive for persons seeking to retain their unescorted access than the background investigation conducted when access was initially granted. Utility employees seeking unescorted access to nuclear power plants, or access to certain sensitive information, have been subject to background investigations for over a decade.

I trust that this responds to your concerns and the concerns of your constituent. If you or your staff have any additional questions, please do not hesitate to contact me or Mr. Dennis K. Rathbun of the Office of Congressional Affairs.

Sincerely,

/RA Carl J. Paperiello Acting For/

William D. Travers
Executive Director
for Operations

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