

February 14, 2006

## STATE LIAISON OFFICERS IN NON-AGREEMENT STATES

### **RESPONSE REQUESTED: STATE EMPLOYEE-PROTECTION LAWS FOR NUCLEAR WHISTLEBLOWERS**

**Purpose:** To request a response by March 15, 2006 to questions regarding State employee protection regulatory requirements.

The U.S. Nuclear Regulatory Commission (NRC) is surveying the 50 States to better understand the legal protections afforded by State law to State employees who are retaliated against for engaging in protected activities as established in Section 211 of the Energy Reorganization Act of 1974, as amended. This letter requests your assistance in identifying State laws protecting nuclear whistleblowers.

It is the view of the NRC that the enforcement of employee protection regulatory requirements and the investigation of retaliation for engaging in protected activities (e.g., as defined in 10 CFR 30.7) is necessary to ensure adequate protection of public health and safety. If a licensee retaliates against an employee for engaging in a protected activity, then safety concerns may go unmentioned, overlooked and unresolved because employees may become afraid to raise them.

The NRC does not involve itself in licensee labor or employment issues. Under the Atomic Energy Act, the NRC has authority to take enforcement action against Commission applicants and licensees and their contractors and subcontractors who violate Commission requirements. The NRC routinely investigates complaints of retaliation, if a *prima facie* case is articulated. If the investigation reveals that retaliation has occurred, then enforcement action against the licensee is considered. For more information regarding NRC's implementation of employee protection requirements see "*Sanctions for Discrimination Against Employees Who Raise Safety Concerns*" at: <http://www.nrc.gov/what-we-do/regulatory/enforcement.html>.

Under Section 211 of the Energy Reorganization Act of 1974, as amended, individuals employed by an NRC licensee can file a complaint with the U.S. Department of Labor (DOL) if they feel they have suffered an adverse action due to engaging in protected activities (which are defined in Section 211). The DOL then investigates the complaint, and has the authority to provide a personal remedy to the individual if retaliation (also referred to as discrimination) occurred. However, if the individual is an employee of a State agency, the DOL cannot award the individual a personal remedy under Section 211, because Federal claims for damages against a State government by a private individual are barred by the doctrine of sovereign immunity, unless a State specifically waives its immunity.

The Commission recognizes that some States provide a remedy to whistleblowers under State law, thus offsetting the lack of a Federal remedy. The Commission is conducting this survey to better understand the various State laws in this area. In addition, the December 23, 2005, *Staff Requirements-SECY-05-0212 -Proposed Rule: Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors who Discriminate Against Employees for Engaging in Protected Activities,* directed staff to solicit comments from stakeholders regarding employee protection rules. Please see All Agreement State letter STP-06- 011 for more information regarding this proposed rule.

February 14, 2006

1. Does your State have regulations providing whistleblower protections to State employees? State employees are those individuals who are employed by a State organization reasonably defined as the State government for purposes of sovereign immunity, e.g., State universities, State hospitals, etc. If yes, please indicate where these regulations can be located on your website or provide a copy as apart of your response to this question.
2. Does your State investigate complaints of whistleblower retaliation made by State employees or other individuals against State organizations (not necessarily limited to radiological workers) for engaging in protected activities? If so:
  - A. What State agency conducts these investigations?
  - B. What constitutes an adverse action against the employee?
  - C. What constitutes engaging in a protected activity?
3. If an investigation substantiates an allegation of discrimination, what action would your State take? What remedies would be available to the whistleblower under State law?

We would appreciate your response to this survey by March 15, 2006.\*

Thank you for your attention to this matter. If you have any questions regarding this correspondence, please contact me at (301) 415-2325 or the individual named below.

POINT OF CONTACT: Cardelia H. Maupin  
TELEPHONE: (301) 415-2312

INTERNET: CHM1@NRC.GOV  
FAX: (301) 415-3502

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Janet R. Schlueter, Director  
Office of State and Tribal Program

cc: State Radiation Control Program Directors  
in Non-Agreement States

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\* This information request has been approved by OMB 3150-0163, expiration 09/30/06. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to [infocollects@nrc.gov](mailto:infocollects@nrc.gov), and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0163), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

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Janet R. Schlueter, Director  
Office of State and Tribal Program

cc: State Radiation Control Program Directors  
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