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2

DOCKETED
USNRC

~~DOCKET NUMBER~~

PROPOSED RULE PR 30, 40, 50, 60, 61, 63,
(71FR05015) 70, 71, 72 + 76

March 28, 2006 (4:00pm)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

March 28, 2006

Secretary
Attn: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Via E-Mail: SECY@nrc.gov
Via Facsimile: (301) 415-1101

Re: RIN 3150-AH59 – Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities

Dear Rulemakings and Adjudications Staff:

Thank you for the opportunity to comment on the Nuclear Regulatory Commission's (NRC's) proposed rule for "Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities." 70 Fed. Reg. 5015 (January 31, 2006). Founded in 1981, the Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more accountable federal government. POGO supports the proposed rule, with the caveat that it apply to all "employee protection" regulations, including those involving a holder or applicant for a "Certificate of Compliance."

Although current employee protection regulations prohibit discrimination by a contractor or subcontractor, they do not explicitly provide for imposition of a civil penalty on them. The proposed rule will amend "employee protection" regulations throughout 10 CFR Chapter I, expressly stating that discrimination violations "by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for ... [i]mposition of a civil penalty on the licensee, applicant, or a contractor or subcontractor of the licensee or applicant."

POGO believes that the proposed rule allowing the imposition of civil penalties should apply to all licensees, applicants, contractors and subcontractors, including a holder or applicant for a "Certificate of Compliance" ("CoC") pursuant to parts 71.9 and 72.10. Although the NRC has struggled with the legality of imposing civil penalties on a holder or applicant for a CoC, the NRC must resolve the issue and hold all entities equally accountable for employee discrimination violations.

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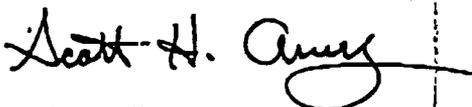
POGO hopes that the amended regulations will be accompanied with a greater degree of oversight involving employee discrimination claims and a proactive attempt to deter discriminatory actions by licensees, applicants, contractors, and subcontractors.

Finally, the NRC stated that the proposed amendments to 10 CFR 30.7, 40.7, 61.9, 70.7, and 71.9 are categorized as Compatibility "Category D," and therefore they do not need to be adopted by Agreement States. "Category D" allows many states to afford little or no whistleblower protections; instead, the NRC should require that those states raise their non-existent or inadequate employee protection programs. POGO recommends a "Category C" designation because employee protections spotlight essential objectives of NRC regulations that states should have in place to ensure that they impose civil penalties in an essentially identical manner.¹ In addition, POGO requests that the NRC issue a policy statement to Agreement States detailing obligations under "Category C." That statement should highlight the fact that the NRC has established the minimum standards allowed and the states retain the flexibility to keep their existing policies if they meet or exceed NRC regulations. The policy should also express that states must provide stronger employee protections if they fail to meet the NRC's minimum standards. Needless to say, genuine NRC monitoring of the Agreement States employee protection programs must follow to ensure full compliance with the regulations.

If the NRC decides that there are legal impediments to requiring employee protection compatibility from the states, it should pioneer a legislative solution to ensure that all states prohibit discrimination against employees engaging in protective activity.

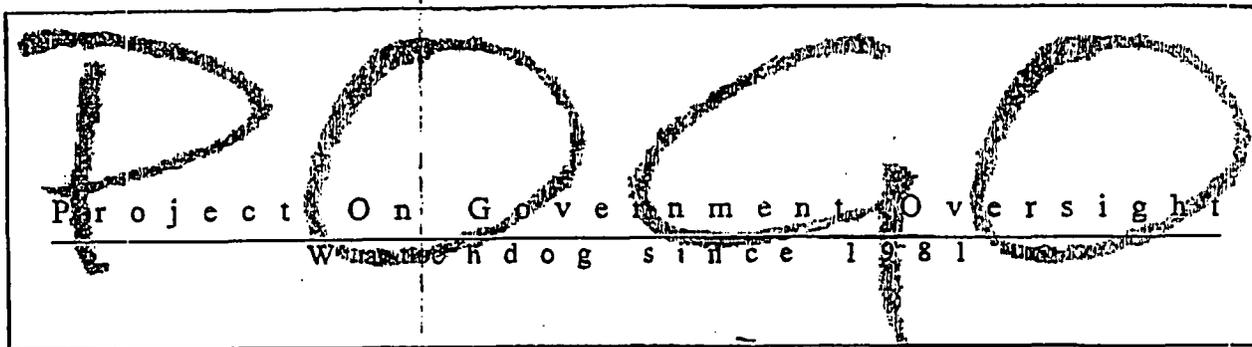
Thank you for your consideration of these comments. If you have any questions, you may contact me at (202) 347-1122.

Sincerely,



Scott H. Amey
General Counsel
scott@pogo.org

¹ See 62 Fed. Reg. 46517 (September 3, 1997) (stating that the compatibility of the NRC's Agreement State Program is to "avoid conflicts, duplications, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis").



FAX TRANSMITTAL SHEET

DATE: 3/28/2006

DELIVER TO: Secretary -- Rulemaking & Adjudications Staff
U.S. NRC

PHONE: _____

FAX: (301) 415-1101

FROM: PROJECT ON GOVERNMENT OVERSIGHT
Scott Amey

DESCRIPTION: RIN 3150-AH59

PAGES TO FOLLOW: 2

COMMENTS: POGO's public comment re: civil
penalties for violations of discrimination
prohibitions.

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