

FORM 28: Letter Requesting Information from the Licensee in Response to a Finding of Discrimination

EA-YY-XXX

(Name of Licensee)

(Address)

SUBJECT: REQUEST FOR INFORMATION REGARDING FINDING OF DISCRIMINATION

Dear _____:

On (date), the U.S. Department of Labor's Occupational Safety & Health Administration (OSHA) in (Name of City), (or other legal authority) received a complaint from an (a former) employee of (Name of employer) [If necessary, include: a (Name of licensee) contractor at the (Name of site) site]. The (former) employee alleged that [Briefly state the nature of the discrimination, e.g., dismissal, denial of employment, reassignment, etc.] because he (she) had raised safety concerns while performing his (her) duties at (Name of site). In response to that complaint, OSHA (or other legal authority) conducted an investigation, and in a letter dated (date), the Area Director of OSHA (or other legal authority) found that the evidence obtained during OSHA's (or other legal authority) investigation indicated that the employee was engaged in a protected activity within the scope of the Energy Reorganization Act. Additionally, the evidence indicated that discrimination as defined and prohibited by the statute was a factor in the actions included in the employee's complaint. [Alternatively use, In response to that complaint, OSHA (or other legal authority) secured an employee/employer conciliation.]

[Include only one of the following three paragraphs:

The following paragraph should be used when the NRC has collected some evidence to conclude that discrimination may have occurred.]

The NRC is concerned that a violation of the employee protection provisions set forth in 10 CFR ___ may have occurred and that the actions taken against the (former) employee may have had a chilling effect on other licensee or contractor personnel.

[The following paragraph should be used when it appears that differences have been settled but still might have a chilling effect on other personnel.]

While we recognize that (Name of licensee) appears to have settled its differences with this individual, the NRC must review this matter to determine whether a violation of 10 CFR ___ may have occurred. Such a violation, if it occurred, could have a chilling effect on other licensee or contractor personnel because it might deter them from identifying any nuclear safety related concerns they may have.

[The following paragraph should be used if information provided by the licensee/contractor along with NRC's knowledge of the environment for raising concerns at the site/facility demonstrates that the licensee/contractor is appropriately addressing the potential chilling effect that may have been imparted by the publicly noted finding of discrimination. If this paragraph is used, do not include Item 2 noted below requesting a response from the licensee/contractor about the environment for raising concerns.]

Regarding the noted finding of discrimination, the NRC will be reviewing this matter to determine whether a violation of 10 CFR ____ may have occurred. During our conversation with _____ on (date), you informed us about actions you have taken and planned to take to assess and mitigate the potential chilling effect of this discrimination finding on other personnel at (Site/Facility) and positive results achieved thus far. Based on the information you provided (and other pertinent input, e.g., recent inspection observations, recent survey results), we feel that you (have taken/are taking) appropriate actions to mitigate the potential chilling effect that may have resulted from the publication of finding of discrimination.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR (e.g., 50.54(f), 30.32(b), 40.31(b), 70.22(d), 110.52(b)), in order for the Commission to determine whether your license should be modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, you are required to provide this office, within 30 days of the date of this letter, a response in writing and under oath or affirmation that describes:

1. Your position regarding whether the actions affecting this individual violated 10 CFR 50.7 (or applicable requirement) and the basis for your position, including the results of any investigations you may have conducted to determine whether a violation occurred; and
2. Actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization and, as discussed in NRC Form 3, to the NRC.

We recognize that you may not believe that unlawful discrimination has occurred. Regardless of your answer to item 1 above, we request that you consider the need to address the *possible* chilling effect that an ongoing issue of this type may have on other employees.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and your response will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the Public without redaction. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the personal privacy-related information and a redacted copy of your response that deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy, identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

After reviewing your response, the NRC will determine whether enforcement action is necessary at this time to ensure compliance with regulatory requirements.

Sincerely,

Regional Administrator
(or designee)

Docket No(s).

License No(s).

cc: (TO BE DETERMINED BY THE REGION)

bcc: Director, OE

Assistant General Counsel for Materials Litigation and Enforcement, OGC

Associate Director for Inspection & Programs, NRR [For NRR matters]

Director, NMSS [For NMSS matters]

Name of OSHA Area Director