

NUCLEAR REGULATORY COMMISSION

Imposition of Civil Penalty on Contractors and Subcontractors
Who Discriminate Against Employees for Engaging in Protected Activities

AGENCY: Nuclear Regulatory Commission

ACTION: Policy Statement: Revision

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Enforcement Policy to include contractors and subcontractors of a licensee against whom the Commission may impose a civil penalty for discriminating against employees for engaging in protected activities.

EFFECTIVE DATES: This action is effective **[insert 30 days from date of publication in the *Federal Register*]** publication in the *Federal Register*. Comments on this revision should be submitted by **[insert 30 days from effective date]** . The Commission will apply the modified Policy to violations that occur after the effective date.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD 20852. You may also e-mail comments to nrcprep@nrc.gov.

The NRC maintains the current Enforcement Policy on its Web site at <http://www.nrc.gov>, select "What We Do," then "Enforcement Policy."

FOR FURTHER INFORMATION CONTACT: Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington DC 20555-0001; Telephone (301) 415-3456; e-mail drs@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Commission amended 10 CFR 30.7, 40.7, 50.7, 52.5, 60.7, 61.9, 63.9, 70.7, 71.9, 72.10 and 76.7 to clarify the Commission’s authority to impose civil penalties on contractors and subcontractors for violations of Commission employee protection requirements. The changes to the Enforcement Policy hereunder incorporate the recent clarifying revisions set forth in the referenced employee protection regulations.

Paperwork Reduction Act

This final change to the NRC Enforcement Policy does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

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.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a “major” rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended to read as follows:

GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

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I. INTRODUCTION AND PURPOSE

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Footnote 1

This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. However, this policy provides for taking enforcement action against non-licensees and individuals in certain cases. These non-licensees include contractors and subcontractors, holders of, or applicants for, NRC approvals, e.g., certificates of compliance, early site permits, or standard design certificates, and the employees of these non-licensees. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VII, VIII and X.

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VI. ENFORCEMENT ACTIONS

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C. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee, contractor, subcontractor or other person and other licensees, contractors, subcontractors or other persons, conducting similar activities. Civil penalties also emphasize the need for licensees, contractors, subcontractors and other persons to identify violations and take prompt comprehensive corrective action.

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VII. EXERCISE OF DISCRETION

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B. Mitigation of Enforcement Sanctions

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5. Violations Involving Certain Discrimination Issues

Enforcement discretion may be exercised for discrimination cases when a licensee (including a contractor or subcontractor) who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL, that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II

violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

Generally, the NRC holds licensees responsible for maintaining control and oversight of their contractor and subcontractor activities. As such, in cases involving licensee contractors and subcontractors, the NRC will typically take enforcement action against a licensee for violations arising out of the acts of its contractor or subcontractor. In addition, enforcement action (including a civil penalty) may be taken against the licensee contractor or subcontractor. On occasion, however, circumstances may arise where the NRC may refrain from taking enforcement action or imposing a civil penalty against a licensee even though it takes enforcement action or issues a civil penalty, against the licensee contractor or subcontractor.

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Dated at Rockville, Maryland, this _____ day of _____, 2007.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,
Secretary of the Commission