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January 8, 2010

Kathleen Schneider, Esq.
U. S. Nuclear Regulatory Commission
Office of Federal and State Materials
and Environmental Management
Washington, DC 20555-0001

Re: New Jersey's Readoption of Its
Radiation Rules and 10 C.F.R. 30.7

Dear Ms. Schneider:

I am the New Jersey Deputy Attorney General who is providing legal advice to the New Jersey Department of Environmental Protection ("NJDEP"), specifically the Radiation Protection Program, regarding its readoption of its radiation regulations. This readoption includes the Nuclear Regulatory Commission ("NRC") regulations incorporated by reference into New Jersey's Administrative Code as part of the process through which New Jersey became an Agreement State.

During this readoption process, NJDEP is reviewing the incorporated regulations to assess whether any may have a mistaken cross reference or other issue related to the incorporation. A question has arisen as to the current drafting of the incorporation of 10 C.F.R. 30.7, Employee Protection. NJDEP's current incorporated regulation is identical to the NRC regulation except for the global substitutions, previously approved, to reflect NJDEP's structure and its personnel titles.

NJDEP has requested advice as to the appropriateness of the NRC language in 10 C.F.R. 30.7, in light of New Jersey law. NJDEP has advised this office that you are the attorney that should be contacted about this issue. I have concluded that substantial



changes to the language of the regulation will have to be made. However, for the reasons set forth below, I do not expect these changes to in anyway lessen the scope of employee protections from retaliation or the remedies afforded to a "whistleblowing" employee in the case of employer retaliation in 10 C.F.R. 30.7.

As a prelude to our discussion of this regulation , I would like to first brief you on New Jersey law so that you can understand the necessity for changes and that the New Jersey regulation will be adequate and compatible when compared to 10 C.F.R. 30.7. In New Jersey, every industry and governmental employee is protected from employer retaliation for whistleblowing activities, pursuant to the Conscientious Employee Act, N.J.S.A. 34:19- et seq. ("CEPA"). CEPA offers at least as much protection to employees engaged in whistleblowing activities as the parallel federal law and a greater spectrum of remedies are available to the employee also. See, Fasano v. Federal Reserve Bank, 457 F.3d 274, 289 (3rd Cir. 2006), cert. denied 127 S.Ct. 477 (2007). The activities of the whistleblowing employee which are protected under CEPA encompass all of the listed activities in 10 C.F.R. 30.7. See, N.J.S.A. 34:19-3.

The main distinction between 10 C.F.R. 30.7 and CEPA is the forum in which the aggrieved employee or former employee must file a complaint, adjudicate the matter and seek a remedy. CEPA does not provide for any administrative involvement in the adjudicatory decision on the merit of the complaint. There is also no executive branch involvement in the remedies available to the aggrieved employee or former employee. An aggrieved employee or former employee alleging a violation of CEPA must file a complaint in the New Jersey Superior Court. Picagna v. Bd. of Education, 249 N.J. Super. 332, 335 (1991).

The remedies available to the employee, if the court finds that a violation of the CEPA has occurred, are primarily focused on what the employee should receive as compensation for the prohibited action both monetarily and in terms of employment status. The court may also punish an employer for a violation of CEPA by imposing a civil fine on the employer.

However, CEPA has no provision for the court to act on any government granted license that the employer may hold. DEP would not be prohibited from relying upon the decision of the Court, if the employee complaint is vindicated. DEP may use that judicial result as the grounds for NJDEP to take punitive action against the employer through its license. This may include


suspension or revocation of the license.

There are also a few smaller issues to discuss including the method used to notify employees of their protected rights. After you have had some time to consider this issue, I hope that you will contact me, at your convenience, to discuss it so that I may advise NJDEP on an acceptable redrafting of its current regulation.

Thank you for your consideration of this matter.

Very truly yours,

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: 
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Deputy Attorney General

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c: John Covino, DAG
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