February 2, 2010

MEMORANDUM TO: Samuel J. Collins, Regional Administrator, Region I
Luis A. Reyes, Regional Administrator, Region II
Mark A. Satorius, Regional Administrator, Region III
Elmo E. Collins, Regional Administrator, Region IV
Eric J. Leeds, Director, Office of Nuclear Reactor Regulation
Michael R. Johnson, Director, Office of New Reactors
James T. Wiggins, Director, Office of Nuclear Security and Incident Response
Michael F. Weber, Director, Office of Nuclear Material Safety and Safeguards
Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs
Guy P. Caputo, Director, Office of Investigations

FROM: R. W. Borchardt /RA/
Executive Director for Operations

SUBJECT: ALLEGATION GUIDANCE MEMORANDUM 2008-001, REVISION 1, "FINAL GUIDANCE IN RESPONSE TO LESSONS LEARNED FROM THE ALLEGATION ASSESSMENT OF INATTENTIVE SECURITY OFFICERS AT PEACH BOTTOM ATOMIC POWER STATION"

The purpose of this allegation guidance memorandum (AGM) is to provide final guidance to the U.S. Nuclear Regulatory Commission (NRC) staff responsible for handling allegations. This guidance was developed in response to lessons learned regarding the handling of allegations in March 2007 and September 2007 of inattentive security officers at the Peach Bottom Atomic Power Station (Peach Bottom). Lessons-learned reviews included an assessment made by the Agency Allegation Advisor, a Region I review team analysis, and a Senior Executive Review Panel (SERP) evaluation of the events related to the Peach Bottom allegations. The Commission approved recommendations for enhancing the Allegation Program resulting from these reviews and directed the staff to discuss pending changes with internal and external stakeholders. The NRC Office of the Inspector General (OIG) also conducted an event inquiry and issued a report (Event Inquiry OIG-07-65, "NRC's Response to Security-Related Concerns at Peach Bottom Atomic Power Station," dated August 22, 2008 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML082460838)) that identifies findings in four areas. A reconvened SERP determined that actions identified in its report, COMSECY-08-0009, "Report of the Senior Executive Review Panel—Peach Bottom Lessons Learned," dated March 5, 2008 (ADAMS Accession No. ML080640503), and approved by the Commission addressed the four areas of findings in OIG-07-65. The SERP also recommended that the staff take certain additional actions to clarify current practices in the policy documents guiding its implementation of the Allegation Program. On February 13, 2009, the staff conducted a public workshop to solicit external stakeholder input on AGM 2008-001, "Interim Guidance in Response to Lessons Learned from the Allegation Assessment of Inattentive Security Officers at Peach Bottom Atomic Power Station," dated December 29, 2008. Enclosure 9 to this document addresses comments received both during and after the

workshop. Where appropriate, this revision to AGM 2008-001 reflects enhancements that the staff made to the interim guidance based on the stakeholder comments. These enhancements are indicated by change bars in the margin.

BACKGROUND

In March 2007, the NRC received an allegation from a former contract security manager that security officers at Peach Bottom were sleeping on duty as a result of fatigue caused by excessive overtime. In addition to identifying one specific location where the officers were allegedly sleeping, the alleger indicated that the security officers were also using other nonspecified locations. The alleger requested that the NRC not contact him about the concerns, and the staff, respecting his request and following the then-existing common practice to honor an alleger's request for no further contact, did not contact him to ask about other potential locations or to discuss other aspects of the concerns and the agency's proposed handling of them.

As part of the staff's evaluation of an allegation, it is the agency's policy to request a written evaluation of allegation concerns from the licensee in all cases involving an overriding safety issue, and for other allegation concerns whenever possible and appropriate, after considering certain conditions.[1] When conditions do not inhibit the agency from requesting information on an allegation from the licensee, the NRC has considered this policy an effective approach to allegation evaluation because the licensees have primary responsibility for ensuring safe operation of the facility and can promptly address issues through ready access to site personnel, equipment, and documentation related to the concerns. Furthermore, engaging the licensee in the evaluation of an allegation provides the agency with unique insights into the licensee's handling of employee concerns, and provides the licensee with unique insights into their own safety culture. The staff is directed to review and independently verify the licensee's response and it is the staff's evaluation and conclusions that provide the basis for closure. Historically, the agency has made such requests for approximately 40 percent of allegations. Using the NRC's current policy, the staff requested that the licensee conduct an evaluation of the specific concerns that the alleger had raised in the March 2007 Peach Bottom allegation and provide a written response to the NRC for review, including documentation of any corrective actions that it had taken in response to the evaluation. The licensee did not substantiate the concerns. The NRC reviewed the licensee's response, gathered some additional information, and similarly was unable to substantiate the concerns.

Notwithstanding that assessment, the NRC received a second allegation in September 2007 from a reporter that included video evidence of a number of apparently inattentive security officers at Peach Bottom in the ready room (a room where security officers who are not on patrol are allowed to read, study, or eat, among other things, but must remain ready to respond). The agency promptly dispatched an augmented inspection team and initiated a range of inspection and investigative activities to determine the extent of the condition and the

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1 For allegation concerns that do not involve an overriding safety issue, the NRC will normally refrain from requesting a written evaluation from the licensee in instances which could compromise an alleger's identity or an NRC investigation, if it is unlikely that the licensee will be able to perform an independent evaluation, or if a State or Federal agency providing the allegation does not approve of the request. Other items considered by the NRC in deciding whether or not to request written information from the licensee include feedback from the alleger, allegation history and trends, the efficiency and effectiveness of an NRC inspection or technical review, and past licensee performance in responding to allegation concerns.

required corrective actions. The NRC assessed the safety significance of this concern and issued a “white” finding in February 2008 (see ADAMS Accession No. ML080440012) with cross-cutting aspects in both the safety conscious work environment and human performance areas and issued a civil penalty in January 2009 for the related violation following an NRC Office of Investigations (OI) investigation (see ADAMS Accession No. ML083530084). In addition, because the September 2007 video evidence demonstrated that the March 2007 allegation, although less specific, was valid, the agency subsequently conducted several internal reviews to determine what it could have done better in response to the March 2007 allegation and what clarifications or modifications should be made to the NRC allegation process to provide the staff with better opportunities to discover such inappropriate activity earlier.

FINAL GUIDANCE

For the purposes of this AGM, the term “licensee” refers to any licensee, certificate holder, license or certificate applicant, or vendor that may be the subject of an allegation. This memorandum provides new or enhanced guidance for the NRC staff responsible for handling allegations in the following program areas:

- allegation terminology
- contacting allegers
- licensee-initiated Alternative Dispute Resolution (ADR) processes
- allegation requests for information (RFIs)
- NRC assessment of licensee responses to RFIs
- resident and nonresident inspector knowledge of allegation activity
- allegation closure documentation involving a licensee response to an RFI
- public discussion of specific allegation-related information
- alleger responses after closure

Much of the information provided below was developed in coordination with, or as a result of, discussions among NRC allegation staff and supervisors from Headquarters and the regional offices during periodic teleconferences and during internal workshops held on February 26–27, 2008; September 17–18, 2008; and October 1–2, 2009, and with external stakeholders during and after a public workshop held on February 13, 2009, to explore and develop enhancements to the Allegation Program and process guidance.

Allegation Terminology

Management Directive (MD) 8.8, “Management of Allegations,” dated February 4, 1999, currently uses the term “referral” to describe any instance when an allegation concern (or a concern that is ultimately determined not to be an allegation) is assigned to an entity other than the NRC receiving office for initial review (e.g., to another NRC office, a State or local government, another Federal agency, a law enforcement agency, or the licensee). Used in this general context, the term “referral” is misleading and could be misinterpreted by individuals not familiar with the NRC allegation process to mean that an allegation concern is being turned over in its entirety to another entity with no additional NRC oversight or review of that entity’s evaluation and closure of the concern. To address this potential misconception, the agency has developed more definitive terms to describe how allegations are handled within the NRC and to more clearly reflect that the NRC maintains responsibility and authority to assess and respond to every allegation concern.

Two new terms, “transfer” and “request for information,” are described below. The term “referral” will continue to be used but in a more specific context, as described below.

Transfer – involves an NRC internal exchange from the NRC receiving office to the NRC program or regional office with responsibility for addressing the allegation (i.e., the action office).

Request for Information (RFI) – Used when the action office responsible for the allegation seeks additional information from the licensee regarding the validity of the allegation to enable a complete NRC assessment in response to the allegation.

Referral – An issue is “referred” when:

- The NRC receiving office retains the responsibility for the allegation-related issue in question (i.e., the receiving office is also the action office), but it must obtain input from another agency or entity in order to respond to the issue (e.g., the Federal Emergency Management Agency (for offsite emergency preparedness issues)).

- The concern is not under NRC purview (i.e., not an allegation) and is forwarded by the NRC receiving office to the appropriate external agency or entity (e.g., the Occupational Safety and Health Administration (for industrial safety issues), the U.S. Environmental Protection Agency (for issues related to Superfund sites), and the U.S. Department of Energy (for radioactive materials issues under its purview)).

- The issue in question is an NRC staff performance concern that the NRC receiving office forwards to OIG.

Enclosures 1 and 2 to this document provide sample allegation acknowledgment and status letters that incorporate the new terminology.

Note that the NRC has already established processes that address the circumstance when one program or regional office requests input from another program or regional office (specifically, task interface agreements for requested input from the Office of Nuclear Reactor Regulation or technical assistance requests for requested input from other program offices). These processes are also used when an allegation action office requires input from another program office to support allegation evaluation.

Contacting Allegers

Engaging the alleger throughout the allegation review process is beneficial because it helps ensure that the NRC and the alleger share a mutual understanding of the concerns raised; that the NRC obtains pertinent information from the alleger; that the alleger is informed of the NRC’s intention to consider an RFI to the licensee, if appropriate; and that the NRC provides the alleger with its conclusions on the concerns after it has completed its evaluation to afford an opportunity for alleger assessment and feedback. Although an alleger’s involvement is preferred, the agency recognizes that some individuals prefer to remain anonymous or, even when their identity is known, not to be contacted by NRC staff after initially raising a concern. This circumstance occurred when NRC received the March 2007 Peach Bottom allegation (i.e., the alleger provided identifying and contact information but requested no further contact with the NRC). It has been a common NRC practice to honor such a request for no further contact.

Historically, this practice was viewed as a matter of common courtesy to avoid alienating an alleger from raising his or her concerns to the NRC in the future, and it presumed that no further information related to the allegation was needed from the alleger in order to evaluate the concerns raised. If the NRC determined that an alleger had provided a concern involving an overriding safety issue and that additional information was needed to evaluate the issue effectively, the NRC would attempt to obtain the alleger's contact information if it was not initially provided. If contact information was already obtained, the NRC would contact the alleger, irrespective of the alleger's request for no further contact.

After reassessing past practice, the NRC has determined that when an alleger has requested no further contact, the agency should make a reasonable effort to communicate with the alleger to ensure that it has obtained all pertinent allegation-related information and to discuss the value of his or her continued involvement in the allegation process. Furthermore, in its communications with the alleger, the NRC should encourage him or her to, at a minimum, accept documentation of its evaluation efforts to facilitate effective communication of its conclusions and to obtain his or her feedback. In certain circumstances, such as those involving complex technical issues or high-profile events, responsible NRC staff should consider contacting the alleger to discuss its evaluation results before issuing the closure letter. The guidance described below should be followed in regard to contacting allegers.

Alleger Request for No Further Contact

If an alleger requests no further contact with the NRC, the responsible branch chief, the Office Allegation Coordinator (OAC), or other appropriate NRC staff will, as directed by an Allegation Review Board (ARB), contact or attempt to contact the alleger (1) to obtain additional information related to the allegation, if needed, (2) to inform the alleger that the NRC is considering an RFI from the licensee, if appropriate, and (3) to encourage the alleger's continued involvement in the allegation process (i.e., through receipt and review of an acknowledgement letter providing the NRC's understanding of the concerns raised and ultimately through receipt of a closure letter affording the alleger an opportunity to assess and provide feedback regarding the NRC's conclusions). Such communication should be made verbally, if possible. Even if the alleger continues to reject regular contact with the NRC during this communication, the contacting NRC staff member should encourage the alleger to, at a minimum, accept allegation closure documentation from the NRC regarding his or her concerns so that he or she can review its conclusions and provide feedback, if desired. If, as an outcome of this additional contact, the alleger reaffirms his or her desire not to participate in the allegation process, the agency should honor the request and not provide the alleger with an acknowledgment or closure letter. The agency should only consider re-contacting the alleger during the course of the evaluation if it needs additional information to evaluate the concerns raised. If the NRC employee who received the allegation explains to the alleger the advantages of his or her continued involvement in the allegation process during their initial discussion and if the alleger persists in requesting no further contact with the NRC, generally the agency will not make an additional attempt to contact the alleger, provided that no additional information is needed. All such communications with the alleger shall be documented in the allegation file. If an alleger cannot be contacted or if the NRC made a decision not to contact the alleger, the agency will document the basis for not contacting the alleger in the allegation file upon closure of the allegation.

Incoming Caller Identification

Since many NRC telephones are equipped with caller identification (ID), the NRC staff member who receives an allegation, in many circumstances, is able to see the phone number from which the alleger is calling or a name associated with that phone number or both. If the NRC staff member does not have caller ID, he or she may obtain the incoming phone number through switchboard records, if necessary. Any member of the NRC staff who takes an allegation should record the telephone number or name or both from caller ID if the alleger makes an anonymous call and provides no other contact information so that the NRC has some contact information if it subsequently determines that it needs additional information to assess the concern raised. If, after explaining the NRC's identity protection policy, the alleger still declines to provide contact information, the caller should be informed that the caller ID information has been noted. Specifically, the NRC staff member should pose a question similar to the following:

> I understand that you want to remain anonymous, but I should inform you that I have recorded/can obtain the phone number from which you're calling. Would it be appropriate for us to call this number if we should need to contact you for additional information to address your concern(s) and ensure adequate public health and safety?

The NRC's allegation receipt documentation should clearly document (1) that the alleger wished to remain anonymous, (2) that the NRC used caller ID to obtain contact information, and the alleger's response to the above question.

Considering Additional Alleger Contacts

The responsible branch chief, with support from the OAC, should continue the practice of considering, at various stages during the evaluation, whether he or she should make additional contact with the alleger to obtain more detail related to the concerns raised. Additionally, before completing closure documentation, responsible staff should continue the practice of considering whether it would be appropriate to verbally contact the alleger to facilitate an understanding of the actions taken to address his or her concerns. Specific consideration should be given to those concerns that the staff is unable to substantiate involving complex technical issues, high profile events, discrimination, or wrongdoing allegations.

Licensee-Initiated Alternative Dispute Resolution Processes

Occasionally allegers may raise concerns that they have been discriminated against for engaging in protected activity. The NRC has encouraged employers to develop dispute resolution processes internal to their companies, similar to the agency's Early ADR process described in NUREG/BR-0313, "The Nuclear Regulatory Commission's Early ADR Program: Alternative Dispute Resolution Administered by Cornell University's Institute on Conflict Resolution," issued September 2004, for use in conjunction with their own employee concerns programs (see Volume 69 of the *Federal Register*, page 50,219 (69 FR 50219), dated August 13, 2004). Although NRC policy recognizes licensee employment of such processes, the agency's correspondence with allegers has not specifically addressed their use. Therefore, Enclosure 1 adds the following new standard language for cases involving allegations of discrimination:

> If you resolve and settle your discrimination concern with your (employer OR your former employer), your (employer OR former employer) may voluntarily report the settlement to the NRC. If the NRC is notified of an internal settlement before an investigation by the NRC Office of Investigations (OI) is initiated, the NRC will request a copy of such a settlement agreement (when completed, if negotiations are ongoing) from the (employer OR former employer) and review it to determine if it contains any restrictive language in violation of NRC employee protection regulations. If no such restrictive language exists, in accordance with agency policy, the NRC will close the discrimination complaint and will not perform an investigation.

Allegation Request for Information Worksheet

MD 8.8 requires the staff to consider a number of issues when deciding whether an allegation concern will be inspected by the NRC technical staff, investigated by OI, or evaluated by a licensee in followup to an allegation-related RFI or whether a combination of these actions will be employed. To assist the staff in making this determination and in describing the basis for the ARB-assigned action, the agency has developed a worksheet delineating current guidance and has provided additional direction involving the consideration of trends in allegations, NRC inspection and investigation history, and other activities. In some cases, it may be appropriate for staff to conduct an NRC inspection even though an RFI was sent to the licensee.

> The responsible branch chief or designee can use Enclosure 3 to this document as guidance, if desired, to support discussions with the ARB when an RFI is being considered. The ARB meeting summary shall document the specific ARB decision on an RFI and the basis for that decision. If the RFI worksheet is used to document the ARB decision on an RFI, the completed worksheet shall be maintained in the allegation file.

Allegation Requests for Information Letters to the Licensee

The NRC's policy is to request a written evaluation of allegation concerns from the licensee (via an RFI) in all cases involving an overriding safety issue, and for other allegation concerns whenever possible and appropriate because licensees have primary responsibility for ensuring safe operation of the facility and can promptly address issues through ready access to site personnel, equipment, and documentation related to the concerns and because engaging the licensee in the evaluation of an allegation provides NRC with unique insights into the licensee's handling of employee concerns, and provides the licensee with unique insights into their own safety culture. The letter transmitting the RFI to the licensee should include as much specific information as possible about the allegation concern to enable the licensee to conduct a comprehensive evaluation. However, the NRC must be careful with the amount of detail that it provides to the licensee to avoid compromising the identity of the alleger.

MD 8.8 requires that the NRC convey in an RFI letter to the licensee its expectation that the licensee's evaluation of allegation concerns be thorough, objective, and sufficient in scope and depth to resolve the concerns. The letter requesting information from the licensee should inform the licensee of the concern(s) in a level of detail that will enable the licensee to effectively evaluate the concern while continuing to protect the alleger's identity. In this regard, the information provided to the licensee regarding the Peach Bottom allegation of inattentiveness was limited in nature to protect the alleger's identity. However, in so doing, the agency did not provide certain information that may have assisted the licensee in its evaluation. Furthermore, the NRC determined that the licensee's response did not clearly indicate how it met the NRC's

expectations on thoroughness and objectivity. In particular, it was not clear that the licensee's interviews with its workforce were of sufficient scope or appropriately representative of those employees who may have had knowledge of the inattentiveness. Therefore, the following guidance is provided to address these areas.

If the staff cannot include sufficient detail in the RFI letter without jeopardizing the alleger's identity, the NRC should either inspect the allegation in its entirety or conduct additional inspection activities to supplement information to be obtained from the licensee in its response to the RFI. This guidance has been incorporated into Enclosure 3, "Allegation Review Board Worksheet - Considering a Request for Information to the Licensee."

The staff should include the following in the letter transmitting the RFI to the licensee:

- The transmittal letter should request that the licensee specifically address (1) the NRC's expectations with regard to evaluator qualifications and independence, (2) the sufficiency of the evaluation's scope and depth, (3) the basis for determining the number and cross-section of individuals interviewed and the interview questions used if the licensee conducts interviews during the course of the evaluation, and (4) the adequacy of sample sizes if the licensee evaluates samples of documentation, systems, structures, or components during the course of the evaluation. The RFI should also request additional specific information that the NRC needs to address the concern thoroughly but in a manner that does not limit the licensee's evaluation.

- The transmittal letter should request that the licensee contact the responsible NRC branch chief or other appropriate staff to ensure a common understanding of the scope of the allegation and the NRC's expectations for followup and response and to discuss the licensee's plan for evaluating the allegation concerns that are the subject of the RFI. The licensee shall be requested to contact the NRC before the licensee's conduct of the evaluation or as early as possible. During this discussion, the staff should be mindful not to dictate specific requirements that may restrict or limit the licensee's response. Rather, the intent of this discussion is to ensure that the actions proposed by the licensee to evaluate the allegation concern(s) appear likely to result in a product that meets the NRC's stated expectations and thoroughly addresses the concern(s) raised. If upon completion of this or subsequent discussions, the staff determines that the licensee's plan of action is unlikely to be successful, the responsible branch chief will reconvene the ARB to consider a followup telephone call with senior licensee management or NRC inspection activity. A record of the conversation with the licensee shall be included in the allegation file.

- The transmittal letter should request that the licensee's response identify any violations of NRC requirements.

Enclosure 4 to this document incorporates the above guidance.

<u>Checklist for the NRC Assessment of Licensee Response to Requests for Information</u>

The NRC has historically conducted separate reviews and reached independent conclusions on allegation concerns for which information has been requested from a licensee via an RFI. However, guidance to the NRC staff for performing this review has been unstructured, and the amount of detail that the staff has provided in allegation closure documentation regarding its review and conclusions related to allegation concerns involving an RFI response has been

varied. The reviews of lessons learned in the March 2007 Peach Bottom allegation identified that a more structured review process is necessary to support the staff's determination as to whether a licensee's response to an RFI is sufficiently comprehensive and whether any additional NRC followup action is warranted.

The NRC developed Enclosure 5 to this document as a reference guide that staff can use, if desired, in performing its review of the licensee's response to an RFI. The checklist outlines areas that may be assessed by the staff and includes a number of questions to assist the staff reviewer in assessing the adequacy of the RFI response. Attributes that the staff reviewer should assess include the following:

- the independence and qualifications of the licensee's evaluators
- the evaluation's scope and depth (e.g., concerns addressed; questions answered; interviews conducted; sample selection; extent of the condition, the root cause, or the generic implications considered (as appropriate); and potential impact on the safety conscious work environment)
- the licensee's corrective actions to prevent, alleviate, or correct the deficiencies identified
- the licensee's recognition of apparent violations
- the involvement of potential wrongdoing

In addition to the above, the NRC should evaluate the adequacy of the licensee's RFI response by independently verifying aspects of the information provided by the licensee. The checklist in Enclosure 5 includes the following examples of how the NRC can accomplish this verification:

- the conduct of followup questions on the material provided
- an independent inspection or technical review of certain aspects of the issue
- a review of the results of recently conducted NRC inspections in the functional area related to the allegation concerns
- the verification of the existence and applicability of technical references, procedures, corrective action program documentation, or calculations noted in the licensee's response

The staff reviewer will inform the responsible branch chief and the OAC of the results of the evaluation. If the NRC determines that the licensee's RFI response is acceptable and, combined with any additional relevant information, provides the basis for closure, responsible NRC staff will proceed with the development of closure documentation for the allegation concern. If the NRC determines that the licensee's response is inadequate, inaccurate, or otherwise unacceptable, the staff should inform the licensee of the inadequacy of its response to the RFI. The staff may proceed to closure if other information is available that supports closure of the concern; however, the licensee should still be informed of the inadequacy of its response to the RFI. If additional information is needed after review of the

licensee's response to the RFI and if the NRC determines that it needs a substantively different evaluation plan than that previously approved by the ARB to obtain necessary information, the ARB should be reconvened to discuss the proposed alternate action. The staff may take the following alternate actions:

- prepare a supplemental RFI to submit to the licensee, highlighting areas that the licensee did not adequately respond to in its initial response
- conduct an independent NRC inspection
- open a separate allegation to initiate an OI investigation of an issue involving potential wrongdoing
- initiate OI assistance to obtain additional or clarifying information

If the staff can address clarifications on the licensee's response to an RFI by means of a brief conversation with the licensee, an ARB would not normally need to be reconvened.

The staff should document the actions that it took to address the inadequacy of a licensee's response to an RFI in the allegation file and in the Allegation Management System (AMS). The agency has added an action entry entitled "Inadequate Licensee RFI Response" to the AMS for this purpose. The AMS description field for this action should indicate the inadequacy and the specific additional actions taken by the staff to allow for a more informative data search on the adequacy of licensees' responses to prior RFIs when evaluating the appropriateness of using an RFI for future allegations. If, after discussion with the responsible branch chief and the OAC, it becomes apparent that there has been a recent history of inadequate RFI responses from a particular site or facility, the ARB should consider an appropriate means of notifying licensee senior management about the inadequacies in its RFI responses (e.g., a telephone call to, or a meeting with, licensee senior management) and obtaining information from the licensee regarding planned corrective actions to address the history of inadequate RFI responses. The ARB may also choose to stop issuing RFIs to the licensee on a temporary basis until the action office concludes that the licensee has taken the appropriate actions necessary to improve the quality of subsequent RFI responses. If the ARB determines that such a call to, or a meeting with, licensee senior management or a temporary suspension on sending RFIs or both are necessary and if the involved licensee operates a fleet of plants crossing NRC regional boundaries, the OAC will notify the OAC(s) in the other affected regional office(s), as appropriate.

Resident and Nonresident Inspector Knowledge of Allegation Activity

Resident inspectors communicate current plant conditions daily with responsible NRC management and promptly share significant safety and security issues that require immediate action or attention. When an immediate safety or security concern is raised through an allegation, responsible NRC management informs the resident inspector of the concern. The ARB also periodically assigns resident and other nonresident inspectors to evaluate specific allegation concerns as part of their inspection activity. However, to limit the dissemination of information that could identify an alleger, the NRC has not historically made the status of all open allegations known to all inspection staff.

Assessment of the March 2007 Peach Bottom allegation identified that improved information sharing with both resident and nonresident inspectors regarding allegations may have afforded additional opportunities to identify inattentiveness among security officers. Therefore, the following guidance is provided to increase the amount of allegation-related information that is shared with resident and other nonresident inspectors while still maintaining appropriate protection of allegation-related information and alleger identities.

The responsible NRC regional manager will, in coordination with the regional OAC, ensure that the resident inspectors are informed of all open allegations related to their assigned facility and of any ARB-assigned actions related to the concerns so that they maintain an awareness of asserted concerns as they accomplish daily inspection activities. Similarly, the responsible manager will ensure that other inspectors performing an inspection at the facility are informed of open allegations and past allegation trends pertaining to areas to be inspected. To support this effort, the responsible regional manager may request, for example, an AMS report from the OACs of all allegations opened in the previous 12 months that are associated with a particular facility or area of inspection.

Public Discussion of Specific Allegation-Related Information

Typically, communication of the NRC's allegation evaluation and conclusions is limited to the alleger who raised the concern and to a small number of NRC and licensee individuals who have a need to know and who participated in the evaluation. This is in keeping with an important objective of the NRC Allegation Program to protect an alleger's identity. If the allegation involves a security concern, the NRC may further limit the communication of information. However, in certain cases, dissemination of allegation-related information to a broader audience has been necessary and has proven beneficial in obtaining a more comprehensive response. Although rare, such an approach used in the appropriate circumstances can improve public confidence by more openly discussing program activities while continuing to protect the identity of the alleger. Therefore, the following guidance is provided to highlight the current practice of considering more public discussion of Allegation Program activities, when appropriate.

In certain circumstances, such as when allegations are broad based or programmatic, the ARB, after discussion with the alleger, should consider whether advertising that inspection and investigation efforts are related to allegations would improve the staff's evaluation by affording facility employees an opportunity to bring pertinent information to the NRC's attention. Examples of when this may prove beneficial include multiple allegations related to a "chilled" work environment or a broad programmatic issue, such as an ineffective behavioral observation program. The ARB should consider any objections raised by the alleger before proceeding.

Similarly, the ARB, in coordination with the Agency Allegation Advisor and after discussion with the alleger, should consider whether documenting the results of an allegation assessment publicly would improve public confidence in the Allegation Program or otherwise serve the agency's mission. Examples of when this may be beneficial include allegations raised in a highly public manner, concerns impacting many individuals, and significant safety issues. A record of the discussion with the alleger regarding more public dissemination of the allegation-related activities shall be documented in the allegation file. The ARB should consider any objections raised by the alleger and should coordinate with other program offices, as necessary, before proceeding.

To ensure that more public dissemination of specific allegation-related information does not lead the public to assume that all concerns are or will be discussed publicly, all such communications must clearly indicate the reason for discussing the allegation publicly, including allowances made by the alleger, and must highlight that this course of action is not standard.

Possible avenues for such communications include, but are not limited to, NRC generic communications (e.g., regulatory information summaries and information notices), the NRC's public Web site (e.g., "For the Record," Allegation Program Web page, and press releases), inspection reports, or other regulatory documents.

Allegation Closure Documentation Involving a Licensee Response to a Request for Information

When the staff has completed its evaluation and has determined that sufficient information is available to determine the validity of the allegation concerns, the assigned technical branch will develop allegation closure documentation for ultimate incorporation into a closure letter to the alleger or into a closure memorandum to the allegation file, as appropriate.

The closure documentation should summarize pertinent information from the licensee's response and should specifically describe the staff's evaluation and conclusions on the allegation concerns based on all pertinent information, including the licensee's response to the RFI. In particular, the closure documentation should clearly:

- identify each concern as stated in the acknowledgment letter or as modified in more recent allegation-process correspondence
- describe the licensee's evaluation and response
- document the NRC's evaluation of the licensee's response and overall conclusions based on the validity of the concern

The description of the NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response. Specific details should be included, as necessary, to convey the extent of the NRC's evaluation. In addition, the description should describe the safety and security and the regulatory significance of a substantiated concern.

Enclosures 6, 7, and 8 to this document provide sample closure documents for use when the allegation involves (1) concerns other than those related to security, (2) security-related concerns, and (3) an anonymous alleger, NRC staff-suspected or licensee-identified wrongdoing, or an alleger who specifically requests no correspondence from the NRC.

Alleger Responses after Closure

A "response after closure (RAC)" is defined as a verbal or written communication from the alleger to the NRC staff indicating that the NRC's closure of the allegation was, in some way, insufficient, inaccurate, or otherwise unacceptable to the alleger. A letter or telephone call that merely thanks the staff for its efforts or a followup action that the staff assigns itself, such as informing the alleger of a publicly available inspection report related to concerns that he or she raised, should not be captured in the AMS as a RAC.

Since each RAC indicates that the alleger believes that the NRC response is inadequate in some aspect, the staff should engage NRC senior management in a discussion regarding the agency's response to each alleger who provides a RAC. Henceforth, the following guidance should be followed with respect to such correspondence.

> An ARB will be convened in each case involving an alleger RAC to discuss with senior management (namely, the ARB Chairperson) the appropriate followup to the information provided by the alleger. The NRC should normally issue responses to RACs within 30 days.

NRC Contacts for Obtaining Guidance and Providing Feedback Concerning Implementation of the Allegation Guidance Memorandum

Any questions about this guidance and feedback regarding the impact of these enhancements on the effectiveness of the Allegation Program should be directed to David Vito in the NRC Office of Enforcement. Mr. Vito can be reached by telephone at (301) 415-2319 or by e-mail at David.Vito@nrc.gov.

Enclosures:
1. Sample Allegation Acknowledgement Letter
2. Sample Allegation Status Letter
3. Allegation Review Board Worksheet—Considering a Request for Information to the Licensee
4. Sample Allegation Request for Information Letter to the Licensee
5. Checklist for NRC Staff Review of Licensee Response to an Allegation Request for Information
6. Sample Closure Letter to Alleger (for Other Than Security Concerns)
7. Sample Closure Letter to Alleger (for Security-Related Concerns)
8. Sample Closure Memorandum to File (for Anonymous Allegations, NRC Staff-Suspected or Licensee-Identified Wrongdoing, or When an Alleger Specifically Requests No Correspondence from NRC)
9. NRC Response to Public Comments on Interim Guidance

Since each RAC indicates that the alleger believes that the NRC response is inadequate in some aspect, the staff should engage NRC senior management in a discussion regarding the agency's response to each alleger who provides a RAC. Henceforth, the following guidance should be followed with respect to such correspondence.

> An ARB will be convened in each case involving an alleger RAC to discuss with senior management (namely, the ARB Chairperson) the appropriate followup to the information provided by the alleger. The NRC should normally issue responses to RACs within 30 days.

NRC Contacts for Obtaining Guidance and Providing Feedback Concerning Implementation of the Allegation Guidance Memorandum

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Distribution:OE r/f L. Jarriel D. Vito R. Zimmerman
☐ Publicly Available ☐ Non-Sensitive ML100431576

OFFICE	RI	RII	RIII	RIV	NRR
NAME	S. Collins	L. Reyes	M. Satorius	E. Collins	E. Leeds
DATE	11/24/09 e-mail	11/23/09 memo	11/23/09 e-mail	11/30/09 e-mail	11/12/09 memo
OFFICE	NRO	NSIR	NMSS	FSME	OI
NAME	M. Johnson	J. Wiggins	M. Weber	C. Miller	C. McCrary
DATE	11/23/09 e-mail	12/22/09 e-mail	11/18/09 e-mail	11/19/09 e-mail	11/19/09 e-mail
OFFICE	OGC	OE	OE	OE	Tech Editor
NAME	C. Scott	D. Vito	L. Jarriel	R. Zimmerman	
DATE	12/22/09	12/22/09 e-mail	12/23/09	12/23/09	12/17/09 e-mail
OFFICE	EDO				
NAME	R.W. Borchardt				
DATE	02/02/2010				

OFFICIAL RECORD COPY

SAMPLE ALLEGATION ACKNOWLEDGMENT LETTER

XXXX-20XX-A-XXXX

(Alleger's Name and Address)

SUBJECT: Concern(s) You Raised to the NRC Regarding (facility name)

Dear Mr./Mrs./Ms. (Alleger's last name):

USE FOR ALL CONCERNS EXCEPT THOSE RECEIVED VIA DOL/OSHA DISCRIMINATION COMPLAINT

This letter refers to your (letter to, telephone conversation with, electronic mail message to, meeting with, interview with, etc.) (NRC staff member(s)) on/dated (date) in/during which you expressed concerns related to (general concern reference, e.g., maintenance issues, operations issues and alleged discrimination, etc.) at (facility name).

USE IN PLACE OF THE ABOVE SENTENCE IF ALLEGATION WAS RECEIVED VIA A DOL/OSHA DISCRIMINATION COMPLAINT

We are in receipt of the discrimination complaint that you filed with the U.S. Department of Labor (DOL) against _____ (licensee/certificate holder/applicant/contractor/vendor) at (site/facility). While your pursuit of a personal remedy in the matter of your (discrimination issue) is being evaluated by DOL, the NRC is tasked with regulating safety at facilities licensed by the NRC or using materials licensed by the NRC. In this role, it is our responsibility to evaluate any safety concerns that you may have raised in this matter. [INCLUDE IF DOL COMPLAINT DOES NOT ARTICULATE SPECIFIC SAFETY ISSUES] In order to determine whether or not you have specific safety concerns warranting NRC review, apart from the employment discrimination issues that are currently before DOL, it is requested that you contact (me/Allegation Coordinator name) at the toll free telephone number noted below so that the details of your technical concerns may be discussed. If you choose, you may provide details regarding your technical concerns in writing to (me/Allegation Coordinator name) at (Allegation Office P. O. Box address).

USE FOR ALL LETTERS

Enclosure 1 to this letter documents your concern(s) as we understand (it/them). We have initiated actions to evaluate your concern(s) and will inform you of our findings. The NRC normally conducts an evaluation of a technical concern within six months, although complex issues may take longer. If the description of (your concern/any of your concerns) as noted in Enclosure 1 is not accurate, please contact me so that we can assure that your concern(s) (is/are) appropriately described and adequately addressed prior to the completion of our review.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(NOTE: This statement should appear only on the first page and the official record copy.)

Enclosure 1

USE THE FOLLOWING SENTENCE IF TECHNICAL CONCERNS RELATED TO A DISCRIMINATION MATTER ARE BEING REVIEWED BY NRC

Please understand that your technical concern(s) will be evaluated separately from your discrimination concern, and you will receive a separate response to it/each technical concern. [INCLUDE IF SECURITY-RELATED CONCERNS ARE PART OF THE ALLEGATION] Regarding your security-related concerns, please be aware that the information NRC will provide you regarding our assessment of this issue may be limited, as appropriate, to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerabilities.

USE FOR GENERIC CONCERNS

After review of the information you provided, we have determined that (the concern(s) you raised OR some of the concerns you raised) may impact a number of facilities. Because the resolution of this/these concern(s) will require a review of multiple facilities and may require a review of and/or changes to NRC policy, the time necessary to resolve this/these concern(s) may be extended. Due to the potential general applicability of your concern(s), we have transferred (it/them) to the (affected program office), the NRC office responsible for resolving issues in this area. Your contact at (affected program office) is: (provide name, title, address phone number and e-mail of affected program office allegation coordinator)

USE WHEN A REQUEST FOR INFORMATION (RFI) FROM THE LICENSEE IS PLANNED OR IS AN OPTION

As part of our response to your concern(s), we (may/intend to) request (licensee name) to perform an evaluation and provide a written response to the NRC. In that case [NOTE: Do not use qualifying phrase “In that case” if first sentence of paragraph indicates that NRC intends to issue an RFI to the licensee], your name and any other identifying information will be excluded from the information that is provided to (licensee name) in the request for information. We (have requested/will request) that (licensee name’s) evaluation be thorough, objective, and that the evaluator be independent of (licensee name) management responsible for oversight of the functional area related to your concern(s). We will evaluate (licensee name’s) response, and consider it in developing our conclusions regarding your concern(s). We will inform you of our disposition once we have evaluated (licensee name’s) response and taken any additional actions, if necessary, to address your concern(s). [USE IF APPLICABLE] In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC requesting information from the licensee with regard to your concern(s).

USE IF RFI IS PLANNED OR IS AN OPTION AND ALLEGATION RECEIPT DOCUMENTATION DOES NOT INDICATE WHETHER THE ALLEGER OBJECTS TO NRC ISSUING AN RFI TO THE LICENSEE

Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections to NRC issuing such a request for information. We will consider any objections that you may have before deciding to request a written response regarding your concern(s) from (licensee name), and make every attempt to contact you before a request for information is actually provided to (licensee name). If you do not contact us within [ten] days of the date you receive this letter, it is our intent to proceed with issuance of the request for information to (licensee name).

USE IF, AFTER PRIOR DISCUSSION WITH THE ALLEGER, THE ARB DETERMINES THAT PUBLIC DISCUSSION OF THE ALLEGATION-RELATED INSPECTION OR INVESTIGATION IS PLANNED

As part of our response to your concern(s) and as discussed with you on (date), we plan to publicly discuss that our (inspection/investigation) is related to an allegation to afford others an opportunity to bring pertinent information to our attention. Your name and any other identifying information will be excluded from the information that is discussed. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing that the (inspection/investigation) is related to concerns raised through the NRC allegation program. Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the fact that our (inspection/investigation) activities are related to an allegation assessment. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss that our (inspection/investigation) is related to an allegation.

USE IF ADDITIONAL INFORMATION IS NEEDED FROM THE ALLEGER

After evaluating the information you provided, we have determined that we will need additional information from you in order for the NRC to perform an effective review of your concern(s). For example, if you can provide...(provide examples of specific types of information that would support NRC review OR refer to a list of questions provided elsewhere, e.g., in Enclosure 1), such information would help us focus our review effort. [USE IF APPLICABLE] We have attempted to contact you by telephone without success. If you have any additional information to provide, please call (me/Allegation Coordinator name) at the toll free telephone number noted below, or contact (me/Allegation Coordinator name) in writing at (Allegation Office P. O. Box address), within [ten] days of the date you receive this letter. If no additional information is received, (we will take no further action regarding this matter at this time OR we will proceed with our review based on available information).

USE IF ADDITIONAL INFORMATION WAS PROMISED BUT NOT RECEIVED

Based on your (conversation, telephone conversation, interview, etc.) with (NRC staff member(s)) on (date), it was understood that you would provide additional information to facilitate our review of your concern(s). To date, we have received no additional information from you. Please call (me/Allegation Coordinator name) at the toll free telephone number noted below, or contact (me/Allegation Coordinator name) in writing at (Allegation Office P. O. Box address), within [ten] days of the date you receive this letter, to arrange for provision of the information. If no additional information is received, (we will take no further action regarding this matter at this time OR we will proceed with our review based on available information).

USE FOR REFERRALS TO STATES/AGREEMENT STATES

Because the NRC does not have jurisdiction over the activity(ies) in the State (Commonwealth) of _____ that are discussed in your concern(s), we are providing your concern(s) to the State (Commonwealth) of _____ for review and resolution. [USE IF ALLEGER WILL PERMIT RELEASE OF THEIR IDENTITY TO THE STATE/AGREEMENT STATE] Based on your willingness to contact and be contacted by the state, as indicated in your (discussion/phone conversation) with (NRC staff member(s)) on (date), we have provided your name and address to the State (Commonwealth) so that the State (Commonwealth) may provide feedback to you directly regarding this matter. Please note that the State (Commonwealth) may not be able to

protect your identity to the same extent as the NRC. Your contact at the State (Commonwealth) of _____ is (provide address/phone number/e-mail address of state agency contact). [USE IF ALLEGER WILL NOT PERMIT HIS OR HER IDENTITY TO BE PROVIDED TO THE STATE/AGREEMENT STATE] Because you have requested that your name and address not be provided to the State (Commonwealth), we will request the State (Commonwealth) to respond directly to the NRC regarding your concerns. We will inform you of the State's (Commonwealth's) response after we receive it. [USE IF UNABLE TO ASCERTAIN IF ALLEGER WILL PERMIT HIS OR HER IDENTITY TO BE PROVIDED TO THE STATE/AGREEMENT STATE] We have attempted but have been unsuccessful in contacting you by telephone to determine if it would be acceptable to provide your name and contact information to the State (Commonwealth). As such, we have not provided your name and address to the State (Commonwealth) of _____ regarding this matter and we have requested the State (Commonwealth) to respond directly to the NRC regarding your concerns. We will inform you of the State's (Commonwealth's) response after we receive it. If after receiving this letter, you conclude that you would like to contact the State (Commonwealth) directly, you may contact the State (Commonwealth) at: (provide State (Commonwealth) contact information).

USE IF A RESPONSE FROM ANOTHER AGENCY IS NEEDED TO RESPOND TO AN ALLEGER'S CONCERN

We have determined that input is needed from (Agency Name) in order for the NRC to provide a complete response to your concern(s) related to (subject area). Therefore, we (are providing/have provided) these concerns to (Agency Name) for review and response. Your name and any other identifying information (will be/has been) excluded from the information that (is/was) provided to (Agency Name). We will review (Agency Name's) response to (this/these) concerns as part of our evaluation, and provide you with the results of that evaluation.

USE IF CONCERNS FALL WITHIN THE JURISDICTION OF ANOTHER AGENCY

We have reviewed your concern(s) and determined that the associated activity(ies) (is/are) not under NRC regulatory jurisdiction. The agency with jurisdiction in this matter is (Agency Name) and we have provided your concern to that agency. For any further information on this matter, you may contact (Agency Contact) at (Agency Address).

USE THIS FOR ALL LETTERS [NOTE: Do not include NRC standard identity protection wording indicated in the paragraph below in the acknowledgment letter if the alleger's identity is being provided to a State or other agency/entity or if the alleger is considered a "widely known alleger" with regard to all of his/her concerns that are being acknowledged.]

In evaluating your technical† concern(s), the NRC intends to take all reasonable efforts not to disclose your identity to any organization, individual outside the NRC, or the public. It is important to note, particularly if you have raised this issue internally, that individuals can and sometimes do surmise the identity of a person who provides information to the NRC because of the nature of the information or other factors beyond our control. In such cases, our policy is to neither confirm nor deny the individual's assumption. [INCLUDE THE FOLLOWING SENTENCE IF AN RFI IS TO BE ISSUED TO THE LICENSEE] As indicated above, if a written request for information is provided to (licensee name) regarding (your technical* concern(s) OR some or all of your technical* concerns), your name and other identifying information will be

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† Note: If the alleger has also raised discrimination and/or other wrongdoing concerns, it may be clearer to refer to the concerns being forwarded by RFI in this sentence as "technical concerns" vs. "concerns."

excluded from the information that is provided to (licensee name). [Do not use qualifying phrase "if a request for information is provided to (licensee name)" in the previous sentence if the letter has earlier indicated NRC's intent to send an RFI vs. an option.] Enclosed with this letter is a brochure entitled "Reporting Safety Concerns to the NRC," which includes an important discussion of the identity protection provided by the NRC regarding these matters as well as those circumstances that limit the NRC's ability to protect an alleger's identity. Please read that section of the brochure. [ALTERNATE LANGUAGE FOR REPEAT ALLEGERS - OAC DISCRETION] In an earlier letter to you dated (date), pertaining to a concern/concerns your raised regarding (subject), you were provided an NRC brochure entitled, "Reporting Safety Concerns to the NRC." The brochure includes information regarding the NRC allegation process, identity protection, and the processing of claims of discrimination for raising safety concerns. If you need another copy of the brochure, please contact me. [ALTERNATE WORDING TO ABOVE SENTENCES REFERENCING BROCHURE AVAILABILITY] However, you should be aware that your identity could be disclosed regarding this matter if the NRC determines that disclosure is necessary to ensure public health and safety, to respond to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust, to support a hearing on an NRC enforcement matter, per requirements of the Freedom of Information Act (FOIA), or if you have taken actions that are inconsistent with and override the purpose of protecting an alleger's identity.

USE IN PLACE OF ABOVE PARAGRAPH IF ALLEGER IS WIDELY KNOWN WITH RESPECT TO ALL CONCERNS OR IN ADDITION TO ABOVE PARAGRAPH IF ALLEGER IS WIDELY KNOWN WITH RESPECT TO ONE OR SOME CONCERNS

(We are aware that <u>OR</u> It is our understanding) that you have (notified the media/discussed at a press conference on (date), identified at a public meeting on (date)) that you provided your concern(s) related to (subject area(s)) to the NRC. As a result, the NRC will be unable to protect your identity with regard to this/these concerns.

USE IF A CONCERN OR CONCERNS INVOLVE A WRONGDOING MATTER OTHER THAN ALLEGED DISCRIMINATION

Also, your identity may be disclosed at the NRC's discretion in order to pursue an investigation of issue(s) involving potential wrongdoing, such as the (subject: e.g., records falsification, deliberate misconduct) issue you brought to our attention.

USE IF A DISCRIMINATION COMPLAINT WAS PROVIDED BUT WAS DETERMINED NOT TO INVOLVE A PRIMA-FACIE SHOWING OF POTENTIAL DISCRIMINATION

We are not initiating an investigation into your assertion of discrimination at this time as explained in Enclosure 1 to this letter [NOTE: provide reasons that a prima-facie showing was not articulated in Enclosure 1 discussion of discrimination concern]. However, please understand that if the NRC initiates an investigation into your discrimination concern in the future based on additional clarifying information, your identity would be disclosed as part of that investigation since the evaluation of a matter of alleged discrimination without identifying you would be extremely difficult.

USE IF THE ALLEGER HAS ESTABLISHED A PRIMA-FACIE SHOWING OF POTENTIAL DISCRIMINATION

The NRC staff has reviewed your complaint of discrimination and has determined that an

evaluation of your complaint is warranted. The NRC will consider enforcement action against NRC-regulated facilities that are found to have discriminated against individuals for raising safety concerns. However, please understand that the NRC cannot require that a personal remedy be provided to you (e.g., back pay, reinstatement). Means by which you can pursue a personal remedy are described later in this letter.

If you wish, your discrimination concern may be investigated by the NRC Office of Investigations (OI). During an investigation, OI gathers testimonial and documentary evidence related to your discrimination concern. Since performing such an investigation without identifying you would be extremely difficult, please be aware that your name will be disclosed during the course of an NRC investigation into your discrimination concern. If, on the basis of the OI investigation results, the NRC determines that your discrimination concern is substantiated, the NRC will consider enforcement action against (licensee name), as appropriate.

As an alternative to an investigation of your discrimination concern by OI, you may choose to participate in the NRC's alternative dispute resolution (ADR) program, which offers mediation in the handling of a complaint of discrimination. Mediation is a voluntary process where two parties, (you and your employer OR you and your former employer), use an unbiased, neutral individual, or mediator, in an attempt to resolve and settle your complaint. If such an agreement is reached, the NRC will close your discrimination complaint upon settlement and will not perform an investigation. If a settlement is not reached with (your employer OR your former employer), the NRC (OI) may initiate an investigation into your complaint of discrimination. As mentioned above, the NRC's ADR program is voluntary, and any participant may end the mediation at any time. Additional information on this program is included in the attached brochure, "NRC's Early ADR Program" and more detailed information on the program can be found on our website at http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html.

The NRC has asked Cornell University's Institute on Conflict Resolution (ICR) to aid you and (your employer OR your former employer) in resolving your discrimination concern through ADR. If you choose to participate in the NRC's ADR program, you must contact ICR directly at 1-877-733-9415 (toll free). We request that you make a decision regarding your interest in attempting mediation via the ADR program as soon as possible or at least within [ten] days of the date you receive this letter. You may contact ICR to discuss ADR in general, the NRC's ADR program, and any other information you are interested in related to resolving your discrimination concern. If you and (your employer OR your former employer) choose to participate in the ADR program, ICR will assist you in the selection of a mediator who would meet with you and (your employer OR your former employer) in an attempt to settle your complaint. If you select a mediator through ICR, there will be no charge to you (or your employer OR your former employer) for the mediator's services. If you participate in the ADR program, we ask that you complete the program evaluation form (supplied by ICR) at the completion of your participation so that we can evaluate the effectiveness of the program.

The NRC notes that employers are encouraged to develop similar dispute resolution processes internal to their company for use in conjunction with their own employee concerns programs. If you resolve and settle your discrimination concern with your (employer OR your former employer) your (employer OR former employer) may voluntarily report the settlement to the NRC. If NRC is notified of an internal settlement before an NRC OI investigation is initiated, the NRC will request a copy of such a settlement agreement (when completed, if negotiations are ongoing) from the (employer OR former employer) and review it to determine if it contains any restrictive language in violation of NRC employee protection regulations. If no such restrictive language exists, in accordance with agency policy, NRC will close the discrimination complaint

and will not perform an investigation.

Additionally, please note that, while participation in the NRC's ADR program may result in negotiation of the issues which form the basis of your discrimination complaint with (your employer OR your former employer) under Section 211 of the Energy Reorganization Act of 1974, the timeliness requirement for filing a claim of discrimination with the U.S. Department of Labor (DOL) (180 days) is in no way altered by the NRC's ADR Program. In this aspect, we note that DOL has the authority to order personal remedies in these matters. For this reason, the filing of a discrimination complaint with DOL should be considered at the same time you are considering use of the NRC ADR program. While there is a likelihood that DOL may choose to await the completion of an attempted ADR mediation given the prospect that a mutually agreeable settlement may be reached, timely filing of a discrimination complaint with DOL assures that DOL will review your discrimination claim in the event that ADR is unsuccessful. In order to protect your right to file a discrimination claim with DOL under 29 CFR Part 24, DOL's "Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes" (copy enclosed), you must file a written complaint with DOL within 180 days of the date of the alleged discriminatory action or the date you received any notice, in writing or otherwise, of an adverse personnel action, whichever occurred first. Any such complaint can be filed with DOL Regional Offices for the Occupational Safety and Health Administration (OSHA). Your complaint must describe the safety issues(s) you raised, the resulting adverse personnel action taken against you, and the causal relationship between them. If you choose to file a complaint, it should be filed with: (INSERT ADDRESS OF APPROPRIATE OSHA REGIONAL OFFICE).

USE WHEN ALLEGER HAS BEEN GRANTED CONFIDENTIALITY

(With respect to your request for confidentiality OR With respect to the Confidentiality Agreement you signed), please be assured that the NRC will make every effort to maintain your confidentiality while resolving this matter. [INCLUDE THE FOLLOWING SENTENCE IF THE CONFIDENTIALITY AGREEMENT HAS YET TO BE EXECUTED] Please read the attached Confidentiality Agreement, sign and date it, and return it in the self-addressed, stamped envelope provided. It is important to note that individuals can and sometimes do surmise the identity of a person who provides information to the NRC because of the nature of the information or other factors beyond our control. In such cases, our policy is to neither confirm nor deny the individual's assumption. [INCLUDE THE FOLLOWING SENTENCES FOR ALLEGED DISCRIMINATION MATTERS] You should be aware that the NRC normally will not investigate a case of potential discrimination against an alleger for raising safety issues if the alleger is a confidential source. A matter of alleged discrimination cannot be investigated if an alleger's name is kept confidential.

USE IF AN ALLEGER HAS ALSO PROVIDED ISSUES RELATED TO THE PERFORMANCE OF NRC STAFF

With respect to your concern(s) regarding the performance of the NRC staff, these matters have been referred to the NRC Office of Inspector General (OIG). If you have any questions or other comments on this matter/these matters, you should contact the OIG directly at 1-800-233-3497. [NOTE: If the issue has not been formally referred to the OIG after review by appropriate personnel within the affected regional or program office, the acknowledgment letter should simply acknowledge the alleger's comments and provide OIG contact information as an option.]

USE FOR ALL LETTERS

If a request is filed under the Freedom of Information Act (FOIA) related to your area(s) of concern, the information provided will, to the extent consistent with that act, be purged of names and other potential identifiers. [FOR ALLEGERS WITHOUT CONFIDENTIALITY] Further, you should be aware you are not considered a confidential source unless confidentiality has been formally granted in writing.

[INCLUDE IF NRC BROCHURE WAS NOT REFERENCED EARLIER IN THE ACKNOWLEDGMENT LETTER] Enclosed with this letter is a brochure entitled "Reporting Safety Concerns to the NRC," which contains information that you may find helpful in understanding our process for review of safety concerns. The brochure contains an important discussion of the identity protection provided by the NRC regarding these matters as well as those circumstances that limit the NRC's ability to protect an alleger's identity. [ADD IF THE ALLEGATION INCLUDES A DISCRIMINATION CONCERN] The brochure also includes a discussion of the right of an individual to file a complaint with the DOL if the individual believes she or he has been discriminated against for raising safety concerns and the individual desires a personal remedy. [ALTERNATE LANGUAGE FOR REPEAT ALLEGERS - OAC DISCRETION] In an earlier letter to you dated (date), pertaining to a concern/concerns you raised regarding (subject), you were provided an NRC brochure entitled, "Reporting Safety Concerns to the NRC." The brochure includes information regarding the NRC allegation process, identity protection, and the processing of claims of discrimination for raising safety concerns. If you need another copy of the brochure, please contact me.

Thank you for notifying us of your concern(s). We will advise you when we have completed our review. Should you have any additional questions, or if the NRC can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-695-7403 (if the alleger resides in the geographical area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the alleger does not reside in the geographical area of the action office) or you may provide information to me in writing at (Allegation Office P.O. Box address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

FORMAT FOR ENCLOSURE 1 TO ACKNOWLEDGMENT LETTER

STATEMENT OF CONCERNS
ALLEGATION NO. XXX-200X-A-XXXX

Concern 1:

Describe the alleger's first concern.

Concern 2:

Describe the alleger's second concern.

[Repeat for additional concerns]

Enclosure

SAMPLE ALLEGATION STATUS LETTER

XXXX-200X-A-XXXX

(Alleger's Name and Address)

SUBJECT: Concerns You Raised to the NRC Regarding (facility name)

Dear Mr./Mrs./Ms. (alleger's last name):

USE FOR ALL LETTERS

This letter pertains to the concern(s) you raised to the NRC in your (letter of, electronic mail message dated, conversation with (NRC staff member) on, interview with (NRC staff member) on, meeting with the resident inspector on, etc.) (date), regarding (general concern reference, e.g., maintenance issues, operations issues and alleged discrimination, etc.) at (facility name). (Use the following sentences, as appropriate, if the alleger provided information in addition to that provided in the initial correspondence or contact.) In addition to the information you provided on (initial allegation receipt date), you also (called (NRC staff member(s)), wrote to the NRC, met with (NRC staff member(s))) on (date). In/During this/these subsequent (letter(s), conversation(s), meeting(s)), you provided additional information regarding (general additional concern reference).

USE IF ALL CONCERNS ARE STILL OPEN

Your concern(s) ((is/are) being reviewed by NRC) OR ((Licensee name) was requested to provide a written response to your concern(s) for NRC evaluation). We are reviewing (licensee name's) response to determine if any additional action by NRC is appropriate. When we have completed our review, we will notify you of our findings, actions, and the final evaluation of your concern(s).

USE IF, AFTER PRIOR DISCUSSION WITH THE ALLEGER, THE ARB DETERMINES THAT PUBLIC DISCUSSION OF THE ALLEGATION-RELATED INSPECTION OR INVESTIGATION IS PLANNED (AND THIS WAS NOT DISCUSSED IN THE ACKNOWLEDGEMENT LETTER OR A PREVIOUS STATUS LETTER)

As part of our response to your concern(s) and as discussed with you on (date), we plan to publicly discuss that our (inspection/investigation) is related to an allegation to afford others an opportunity to bring pertinent information to our attention. Your name and any other identifying information will be excluded from the information that is discussed. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing that the (inspection/investigation) is related to concerns raised through the NRC allegation program. Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the fact that our (inspection/investigation) activities are related to an allegation assessment. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss that our (inspection/investigation) is related to an allegation.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED (Note: Use only on the first page)

Enclosure 2

USE IF SOME CONCERNS ARE CLOSED WHILE OTHERS ARE STILL OPEN

We have completed our review of (some, XX number) of your concerns, as indicated on Enclosure (X) to this letter. (On a separate enclosure (see sample Enclosure), restate each concern and describe the NRC evaluation and conclusions for every issue for which NRC efforts have been completed since the last correspondence with the alleger.) (Use the following sentence if concern results are documented in an inspection report.) We note that detailed results of NRC inspection efforts regarding this/these concern(s) are further documented in NRC Inspection Report (XX-XXX/200X-XXX) which has been enclosed for your information. The NRC staff (is continuing with its review of your other concern(s) OR has requested a written a response from (licensee) regarding your other concern(s) OR is reviewing (licensee name's) response to your concern(s), etc.). When we have completed our review, we will notify you of our findings, actions, and the final evaluation of your concern(s).

FOR ALLEGATION CONCERNS INVOLVING SECURITY-RELATED INFORMATION

[If any of the concerns being closed in the status letter are security-related, refer to Enclosure 7, "Sample Closure Letter to Alleger (For Security-Related Concerns)," for appropriate cover letter wording depending on the security concern category.]

USE FOR ALL LETTERS

Thank you for notifying us of your concerns. We will advise you when we have completed our review. If I can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-695-7403 (if the alleger resides in the geographical area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the alleger does not reside in the geographical area of the action office). You may also provide information to me in writing at (Allegation Office P.O. Box address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

IF CONCERNS WERE CLOSED SINCE THE LAST LETTER TO THE ALLEGER, PROVIDE THE CLOSURE INFORMATION FOR THOSE CONCERNS IN AN ENCLOSURE TO THE STATUS LETTER AS DESCRIBED BELOW

FORMAT FOR STATUS LETTER ENCLOSURE DESCRIBING NRC EVALUATION OF ALLEGATION CONCERNS

RESPONSE TO CONCERNS
ALLEGATION NO. XXXX-YYYY-A-XXXX

Concern 1:

Restate the alleger's concern as provided in the acknowledgment letter, as modified by the alleger, or as clarified by the alleger (if the alleger provided clarifying information to better describe his or her concern during the course of NRC's review).

Response to Concern 1:

[Provide a direct answer to each of the closed concerns, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion will be confusing to the alleger (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as… "while NRC was able to substantiate that certain (facts/statements/conditions regarding _____) were true, NRC was unable to confirm or validate an impropriety or inadequacy associated with NRC-regulated activity." (If appropriate add: We have documented our findings in (inspection report number, or other document citation) dated _____. A copy of the relevant section(s) of the report/document is/are enclosed.]

FOR A CLOSED CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, the documentation of allegation concern closure should reference the feedback provided by the licensee but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the alleger's concern, the concern response should separately describe (1) the licensee's evaluation and response and (2) NRC's evaluation of the licensee's response and overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response.]

FOR CLOSED ALLEGATION CONCERNS INVOLVING SECURITY-RELATED INFORMATION

[If any of the concerns being closed in the status letter are security-related, refer to Enclosure 7, "Sample Closure Letter to Alleger (For Security-Related Concerns)," for appropriate response wording depending on the security concern category.]

[Repeat for Additional Concerns]

Enclosure

ALLEGATION REVIEW BOARD WORKSHEET

Considering a Request for Information to the Licensee

The purpose of this worksheet is to assist the staff in determining whether it should issue a request for information (RFI) to a licensee and to support the development of the proposed basis for the Allegation Review Board (ARB) assignment of this action. Circumstances may exist, as indicated below, that support the use of an RFI in conjunction with an NRC inspection, technical review, or investigation activity. The ARB meeting summary shall document the specific ARB decision regarding an RFI and the basis for that decision. If the RFI worksheet is used to document the ARB decision regarding an RFI, the completed worksheet shall be maintained in the allegation file.

Note: For the purposes of this worksheet, the term "licensee" refers to any NRC licensee, certificate holder, license or certificate applicant, or vendor that may be the subject of an allegation concern, and the term "inspection" refers to any NRC inspection or technical review activity.

Allegation Number: _____ Affected Concern(s): _____

A. Overriding Safety Issue

Yes ☐ No ☐ Does the allegation concern represent an overriding safety issue (OSI)?

Note: An RFI will normally be issued to the licensee (verbally first, then in writing) if an OSI exists regardless of any other factor noted on this worksheet. In this instance, the consideration of a waiting period for alleger feedback on a proposed RFI is waived. Other factors discussed below should be considered to determine if conducting an NRC inspection in conjunction with the RFI is preferable.

Comment: _____

B. RFI Inhibiting Conditions

If the concern does not involve an OSI, consider the validity of the following statements related to conditions that would normally inhibit the issuance of an RFI:

True ☐ False ☐ The alleger objects to the NRC issuing an RFI, and information cannot be released in sufficient detail to the licensee without compromising the alleger's identity.

True ☐ False ☐ The licensee could compromise an NRC investigation or inspection because of knowledge gained from the RFI.

True ☐ False ☐ The concern is against senior licensee management such that an independent and effective evaluation is unlikely through the use of an RFI.

True ☐ False ☐ A Federal or State agency providing the information does not approve of the RFI.

☐ **RFI** (i.e., either all of the above statements are "False" or see "Comment" below)

☐ **Inspection or Investigation** (i.e., either one or more of the above statements is "True" or see "Comment" below)

Comment: _____

Note: If it is ultimately determined that an RFI will be issued but the above conditions may limit the effectiveness of the RFI, the ARB should consider NRC inspection or investigation activities to supplement information to be obtained from the RFI response.

Enclosure 3

C. Allegation and Inspection History Consideration

Consider the validity of the following statements related to the history of, or trends in, allegations, NRC inspections, and investigations that may indicate that an NRC inspection or investigation is preferable to an RFI or that it should be considered in conjunction with an RFI. As needed, the program offices should request assistance from the regional offices in obtaining this information.

True ☐ False ☐ The action office is aware of problems with the site's responses to RFIs in the last 2 years that could impact the quality of the licensee's response to an RFI related to this concern.

True ☐ False ☐ The facility is one of a fleet of plants to which another NRC regional office has engaged licensee senior management or has stopped issuing RFIs on a temporary basis because of a recent history of inadequate RFI responses from the corporate organization.

True ☐ False ☐ The action office is aware of allegation trends at the site in the past 2 years, whether substantiated or not, that indicate that the NRC should independently evaluate the concern(s) (e.g., multiple or repeated allegations of a similar nature).

True ☐ False ☐ The mid-cycle or end-of-cycle review (reactor licensees) or other assessment results indicate problems with the site's ability to identify and resolve problems, which could impact the quality of the licensee's response to an RFI related to this concern.

☐ **RFI** (i.e., either all of the above statements are "False" or see "Comment" below)

☐ **Inspection or Investigation** (i.e., either one of more of the above statements is "True" or see "Comment" below)

Comment: _____

D. Inspection Consideration

Consider the validity of the following statements that might indicate that an NRC inspection or investigation of the concern(s) is preferable to an RFI or that it should be considered in conjunction with an RFI.

True ☐ False ☐ The alleger objects to the NRC issuing an RFI to the licensee (e.g., the alleger is concerned that there could be negative repercussions).

True ☐ False ☐ The alleger has taken the concern to the licensee with unsatisfactory results.

True ☐ False ☐ The NRC evaluation can be as, or more, timely and efficient than the licensee's evaluation.

True ☐ False ☐ The allegation concern can be evaluated during an ongoing inspection or one that the NRC expects to conduct in the near future.

True ☐ False ☐ The NRC is already evaluating other aspects of the same or similar issues, and an evaluation of the allegation concern can be included.

True ☐ False ☐ Significant public and Commission interest warrants an independent assessment of concern(s).

True ☐ False ☐ Other reasons to consider in conducting an inspection.
Describe: _____

☐ **RFI** (i.e., either the statements marked “False” collectively suggest an RFI is preferable or see “Comment” below)

☐ **Inspection or Investigation** (i.e., either the statements marked “True” collectively suggest an NRC inspection or investigation is preferable or see “Comment” below)

Comment: _____

E. <u>Proposal for an ARB-Assigned Action and Basis</u>

RFI ☐ Inspection or Investigation ☐ Both ☐

Basis: _____

SAMPLE ALLEGATION REQUEST FOR INFORMATION (RFI) LETTER TO THE LICENSEE

Licensee management representative XXXX-YYYY-A-XXXX
Licensee address

Dear _____:

The U.S. Nuclear Regulatory Commission recently received information concerning activities at (site/facility). We request that (licensee name) evaluate the information described in the Enclosure to this letter and submit the results of that evaluation to (regional or program office). Within 30 days of the date of this letter, we ask that you inform (regional or program office contact) in writing the details of your evaluation and your findings related to the validity of the information provided. If (licensee name) determines a concern to be substantiated, please discuss (licensee name's) consideration of appropriate root or apparent causes and generic implications of the substantiated concern, and the appropriateness of corrective actions taken or planned commensurate with the significance of the issue. Additionally, if your evaluation identifies any compliance issue with regard to NRC regulatory requirements or NRC commitments, please inform us regarding the requirement or commitment that was violated, the corrective actions taken or planned, and the corrective action documentation that addressed the issue. We ask that you reference our tracking number (XXXX-YYYY-A-XXXX) in your written response and also that you make any records of your evaluation available for possible NRC inspection.

The NRC will review your response to determine whether: (a) the individual conducting the investigation was independent of the organization with responsibility for the related functional area; (b) the evaluator has sufficient knowledge and experience to conduct a review in the related functional area; and (c) the evaluation was of sufficient depth and scope. Your response should describe how each of these attributes was satisfied. If individuals were interviewed as part of your review, your response should include the basis for determining that the number and cross section of individuals interviewed was appropriate to obtain the information necessary to fully evaluate the concern(s), and the interview questions used. If your evaluation included a sample review of related documentation and/or potentially affected structures, systems, and components, your response should include the basis for determining that the selected sample size was appropriately representative and adequate to obtain the information necessary to fully evaluate the concern(s). The NRC will consider these factors in reviewing the adequacy of your evaluation of this/these issue(s) and in developing our conclusions with regard to the concerns provided in the Enclosure.

We request that your response only be sent to (regional or program office contact) at the following address: [Name and address of regional or program office contact]. No other copies should be sent to the NRC, i.e., your response should not be docketed or otherwise submitted to the NRC Document Control Desk. We also request that your response contain no personal

privacy, proprietary, or safeguards information. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, 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., explain why the disclosure of information will create an unwarranted invasion of personal privacy or 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.

[FOR RFI THAT CONTAINS SECURITY-RELATED SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI), INCLUDE THIS PARAGRAPH] The information in the Enclosure to this letter contains SUNSI Security-Related Information in accordance with 10 CFR 2.390(d)(1) and its disclosure to unauthorized individuals could present a security vulnerability. Please mark the top of each page of your response with "Security-Related Information – Withhold Under 10 CFR 2.390," and follow the instructions for withholding information contained in 10 CFR 2.390 (b)(1). In accordance with 10 CFR 2.390 (b)(1)(ii), NRC is waiving the requirement for your response to be accompanied by an affidavit.

This letter and its enclosure should be controlled and distribution limited to personnel with a "need to know." The response requested by this letter and the accompanying enclosure are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Lastly, we ask that you contact the NRC as your review effort begins, to assure a common understanding of the issues discussed in the Enclosure, and the NRC's expectations for follow-up and response and to discuss your plan to evaluate the issues. Please contact (regional or program office contact) at (telephone No.) with this information and with any additional questions you may have at this time concerning this request.

Sincerely,

[NRC manager as designated by region/program office management]

Enclosure: As stated

bcc w/encl: Allegation File No. XXX-YYYY-A-XXXX

SAMPLE ENCLOSURE TO RFI LETTER TO THE LICENSEE REGARDING AN ALLEGATION

OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION
(Use this header on each page if the RFI contains SUNSI Security-Related Information)

NOT FOR PUBLIC DISCLOSURE
(Use this header on each page of the RFI enclosure if RFI DOES NOT contain SUNSI Security-Related Information)

XXXX-YYYY-A-XXXX

Issue 1:

The NRC has received information that … (for each concern, provide as much information as possible to enable the licensee to perform an effective review. The information is to be provided in a manner that does not include the identity of the alleger or information that could permit the licensee to identify the alleger, and that does not compromise an ongoing NRC investigation or inspection.)

[Note: If the allegation is received in writing, the alleger's incoming correspondence normally should not be forwarded with the RFI. Rather, the alleger's concerns are summarized in this enclosure, including being rewritten so as not to use the alleger's exact wording. If the ARB determines that the safety implications of an allegation concern warrant providing a copy of the original information supplied by the alleger with the RFI rather than an NRC summary, every effort should be made to notify the alleger of the NRC's proposed action and obtain agreement from the alleger, in writing, if possible. If the alleger objects to the inclusion of his/her original correspondence in the RFI, NRC should acknowledge the alleger's feedback and, if possible, come to an agreement with the alleger as to the content of the information that will be transmitted. If the alleger objects to the inclusion of his/her original correspondence in the RFI and NRC does not agree with the alleger's objection because the matter represents an overriding safety issue, the NRC may include the alleger's incoming correspondence in the RFI over the alleger's objection. The results of any such interface with the alleger should be documented in the allegation file.]

In addition to the response information requested in the cover letter, we ask that your response address or include the following:

Examples of additional detail that may be requested:
…answers to the following questions related to this issue
…a description of the process that monitors this issue
…a description of or a copy of the procedure that governs this activity
…a diagram that shows how the equipment interfaces with other systems

[Note: If the alleger has previously raised the issue internally to the licensee and was not satisfied with the licensee's feedback, and does not object to NRC providing a written RFI to the licensee regarding the concern, the letter to the licensee should, in addition to describing the concern, describe the asserted inadequacy in the licensee's internal response efforts.]

Enclosure

NOT FOR PUBLIC DISCLOSURE
(Use this footer on each page of the RFI enclosure if RFI DOES NOT contain SUNSI Security-Related Information)

OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION
(Use this footer on each page if the RFI contains SUNSI Security-Related Information)

CHECKLIST FOR NRC STAFF REVIEW
OF LICENSEE RESPONSE TO AN ALLEGATION REQUEST FOR INFORMATION

The purpose of this checklist is to assist the staff in evaluating the adequacy of a licensee's response to an allegation request for information (RFI) and in independently verifying aspects of the information provided by the licensee and to support the development of the proposed basis for additional staff actions if the NRC determines that the licensee's response is inadequate, inaccurate, or otherwise unacceptable.

> Note: The term "licensee" in the worksheet refers to any NRC licensee, certificate holder, license or certificate applicant, or vendor that may be the subject of an allegation concern.

Allegation Number: _____ Affected Concern(s): _____

A. Determining the Adequacy of the Licensee's Response to an Allegation RFI

> Note: "Yes" answers normally indicate that the licensee's response to an RFI is adequate, whereas "No" answers indicate that additional action may be necessary.

Evaluator Independence

Yes ☐ No ☐ Does the relationship between the individual(s) chosen by the licensee to evaluate the concern(s) and the concern(s) being evaluated allow for appropriate objectivity (e.g., a third party or internal evaluator but not in the same management chain as those involved in the concern(s))?

> Note: Use best judgment for smaller organizations when clear management chain independence may not be possible.

Comments: _____

Evaluator Competence

Yes ☐ No ☐ Based on the information provided, does it appear that the evaluator has a sufficient level of knowledge and experience to conduct a review of the related functional area? Comments: _____

Depth and Scope of Evaluation

Yes ☐ No ☐ Are all RFI-related concerns addressed?

Yes ☐ No ☐ Is the evaluation rigor commensurate with the level of concern detail provided? For example, if appropriate, did the evaluation include a review of the extent of condition, an assessment of the root or apparent cause, or generic considerations?

Yes ☐ No ☐ Does the evaluation support the conclusions provided by the licensee?

Yes ☐ No ☐ Does the evaluation consider all affected personnel, groups, and departments? For example, if interviews were conducted, did the licensee describe the basis for the number and cross-section of individuals interviewed and is the basis adequate? Were the interview questions appropriate?

Yes ☐ No ☐ N/A ☐ If the NRC asked additional specific questions, are they answered satisfactorily?

Enclosure 5

Yes ☐ No ☐ N/A ☐ If the RFI referenced the names of specific individuals, did the licensee contact those individuals or appropriately consider their involvement in the allegation concern?

Yes ☐ No ☐ N/A ☐ If the RFI referenced the specific documentation, did the licensee evaluate that documentation or appropriately consider it in the evaluation of the allegation concern?

Yes ☐ No ☐ N/A ☐ If the licensee reviewed a sample of related documentation or a sample of potentially affected structures, systems, and components, did the licensee describe the sample and provide the basis for determining that the sample size was appropriately representative?

Comments: _____

Effectiveness of Corrective Actions

Yes ☐ No ☐ N/A ☐ If applicable, did the licensee take appropriate immediate corrective actions?

Yes ☐ No ☐ N/A ☐ If applicable, were operability and reportability determinations appropriate?

Yes ☐ No ☐ N/A ☐ If applicable, were appropriate corrective actions proposed?

Yes ☐ No ☐ N/A ☐ If applicable, were issues entered into the corrective action program?

Comments: _____

NRC Violations (substantiated concerns only)

Yes ☐ No ☐ N/A ☐ If the substantiated concern represents a violation, did the licensee appropriately acknowledge and articulate the violation in response to the RFI? Comments: _____

B. NRC Independent Review Effort

The NRC staff that evaluates the licensee RFI response should attempt to independently validate aspects of the information provided by the licensee. Indicate any of the following that apply:

☐ Additional questions posed to the licensee.

☐ Performed or coordinated an independent inspection or technical review activity to verify a condition indicated in the response.

☐ Reviewed the results of recently conducted NRC inspections in the functional area related to the allegation concerns.

☐ Verified the existence and applicability of technical references noted in the response.

☐ Verified the existence and applicability of procedures referenced in the response. Ensured that the revision number referenced is appropriate.

☐ Verified the existence and content of corrective action program documentation referenced in the response.

☐ Checked calculations noted in the response.

☐ Other. Describe: _____

Comments: _____

C. CONCLUSION

☐ Adequate RFI Response ☐ Inadequate RFI Response

Basis: _____

Note: Notify the responsible branch chief and the Office Allegation Coordinator of the results of this review.

SAMPLE CLOSURE LETTER TO ALLEGER
(FOR OTHER THAN SECURITY CONCERNS)

Alleger's Name and Address XXXX-YYYY-A-XXXX

SUBJECT: Concern(s) You Raised to the NRC Regarding (Site/Facility)

Dear (Alleger's Name):

USE FOR ALL LETTERS

The NRC has completed its follow up in response to the concern(s) you brought to our attention on (date) regarding (site/facility). You were concerned about (brief summary of concerns) OR Your concerns were related to (brief reference to functional area(s), e.g., operations, operator qualification, health physics program implementation, maintenance backlog, plant configuration control, etc.). Enclosure 1 to this letter restates your concern(s) and describes the NRC's review and conclusions with regard to (that/each) concern.

SUBSTITUTE THE FOLLOWING FOR THE ABOVE PARAGRAPH IF THE ALLEGER FAILED TO PROVIDE ADDITIONAL INFORMATION, AS NEEDED OR REQUESTED

This letter refers to our letter to you dated _____, in which we requested that you contact us to provide additional information regarding your concern(s) related to (general description of concern(s)) at (site/facility). You discussed (this/these) concern(s) (in your letter dated (date)) (during your conversation with _____ on (date)). (If additional telephone or personal contacts occurred, refer to them here.) Since you have not contacted us to provide the additional information we requested, the NRC plans no further action regarding this/these matter(s). (Add the following sentence, if appropriate.) (We have, however, alerted our inspectors to your general concerns so that they can pay particular attention to those areas during their routine inspections.)

USE IF, AFTER DISCUSSION WITH THE ALLEGER, IT WAS AGREED THAT NRC WILL DISCUSS THE ALLEGATION EVALUATION AND RESULTS IN A PUBLIC FORUM

As part of our response to your concern(s) we plan to publicly discuss the results of our evaluation by (communication vehicle). The NRC believes this will further the agency's mission by (state reason for public dissemination). Your name and any other identifying information will be excluded from the information that is released. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing the results of our evaluation of this (these) concern(s). Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the results of our assessment and the fact that they were raised in the allegation program. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss the NRC's allegation evaluation and results.

USE FOR ALL LETTERS

Thank you for informing us of your concerns. Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. We believe that our actions have been responsive to your concerns. (USE NEXT SENTENCE IN CASES WHERE WE

HAVE NOT SUPPORTED THE ALLEGER'S CONCERNS - otherwise, remove it.) If, however, you can provide new information or the NRC receives additional information from another source that suggests that our conclusions should be altered, we will reevaluate that information to determine if additional evaluation is indicated. Should you have any additional questions, or if the NRC can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-695-7403 (if the alleger resides in the geographical area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the alleger does not reside in the geographical area of the action office) or you may provide information to me in writing at (Allegation Office P.O. Box address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

CERTIFIED MAIL or Other Appropriate Carrier
RETURN RECEIPT REQUESTED (Note: This statement should appear on the first page and the official record copy.)

FORMAT FOR ENCLOSURE DESCRIBING NRC EVALUATION OF ALLEGER'S CONCERNS

RESPONSE TO CONCERNS
ALLEGATION NO. XXXX-YYYY-A-XXXX

Concern 1:

Restate the alleger's concern as provided in the acknowledgment letter, as modified by the alleger, or as clarified by the alleger (if the alleger provided clarifying information to better describe his or her concern during the course of NRC's review).

Response to Concern 1:

(Provide a direct answer to each of the alleger's concerns, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion will be confusing to the alleger (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as… "while NRC was able to substantiate that certain (facts/statements/conditions regarding _____) were true, NRC was unable to confirm or validate an impropriety or inadequacy associated with NRC-regulated activity." (If appropriate add: We have documented our findings in (inspection report number, or other document citation) dated _____. A copy of the relevant section(s) of the report/document is/are enclosed.)

FOR ANY CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, the documentation of allegation concern closure should reference the feedback provided by the licensee but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the alleger's concern, the concern response should separately describe (1) the licensee's evaluation and response and (2) NRC's evaluation of the licensee's response and overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response.]

[Repeat for Additional Concerns]

<u>Suggested Wording for Closure Letter Responses to Certain Types of Concerns</u>

If NRC Action Is Complete and the Concern Involved 10 CFR 2.390 Information, in Whole or in Part, Include the Following in the Concern Response:

"Your concern dealt with (proprietary information, personal privacy matters about another individual, medical records, etc.) and the details are exempt from disclosure to you or the public in general, so we are unable to provide you with specific details related to our evaluation." (Add a brief statement as to whether or not the concern was substantiated, unsubstantiated, or

partially substantiated without providing specific details of the findings.) (If the concern involved security-related information, refer to Enclosure 7, "Sample Closure Letter to Alleger (For Security-Related Concerns)," for appropriate response wording depending on the security concern).]

If OI Returns a Potential Wrongdoing Issue to the Staff for Lack of Resources or Based on Priority, Including Employee Discrimination, Include the Following in the Concern Response:

"On the basis of our review of your concern of (describe wrongdoing concern) and other cases needing investigation by the NRC, the NRC will not be expending further investigatory efforts on the potential wrongdoing aspects of your concern. This is not a finding that your wrongdoing concern does not have merit. Rather it is recognition that the NRC must focus its limited investigatory resources on cases of higher priority. (Explain what was done with the technical aspect of the wrongdoing concern (e.g., "The staff reviewed the impact on safety of the alleged falsified record and determined...," etc.). (For discrimination cases only). Accordingly, absent a finding of discrimination by DOL (if applicable), or any additional substantial information and/or evidence from you that would support your discrimination concern(s), the staff plans no further follow up on the concern you have provided to the NRC."

Discussion of Enforcement/Assessment Process Outcomes

While it is appropriate to indicate in response to an alleger's concern whether the NRC's evaluation of the concern identified a violation of NRC requirements or an ROP finding, it is not imperative that the alleger be informed of the specific enforcement action taken or finding categorization via the ROP. In other words, it is sufficient, in most instances, to indicate that a violation or finding was identified and that the categorization of the violation or finding and the licensee's follow up activities will be determined by the Enforcement Process or the Reactor Oversight Process. However, if the violation or finding has already been determined or categorized, and responsible staff believe that providing specific information about the NRC violation or finding will improve the concern response, this information may be discussed in the closure letter. With regard to a substantiated discrimination concern in particular, it is logical that the alleger would have an interest in any specific NRC regulatory action taken against the licensee. The following examples of closure letter wording apply to different types of violations and findings:

1. Concern Resulting in a Minor Violation Not Being Documented in an Inspection Report

   The safety significance of the violation of [briefly discuss identified violation] was evaluated by the NRC and found to be minor. The licensee has been informed of this matter and has (entered this matter into the corrective action program, initiated/taken corrective actions, etc.). Minor violations represent items of low safety significance and are not subject to formal enforcement action or documentation by the NRC. Therefore, this minor violation will not be documented in an inspection report, and no further regulatory action is planned.

2. Concern Resulting in the Issuance of a Non-Cited Violation

   During the NRC (inspection/investigation) of this matter, a violation of NRC requirements was identified. The NRC categorized the issue as a Non-Cited Violation (NCV) because the issue had limited safety significance, was not repetitive, and was entered into the licensee's Corrective Action Program. (Licensee name) is required to correct the NCV.

3. Concern Resulting in the Issuance of a Notice of Violation (and/or a Civil Penalty)

During the NRC (inspection/investigation) of this matter, a violation of NRC requirements was identified. The NRC issued a Notice of Violation (and Proposed Imposition of Civil Penalty in the amount of ($_____)) to the licensee (attached). (Licensee name) is required to inform us of the corrective actions it has taken or plans to take regarding the identified violation. Our inspectors will continue to monitor (licensee name's) activities to ensure proper resolution of this matter.

4. Concern Resulting in the Identification of an Apparent Violation that the NRC Is Considering for Escalated Enforcement Action

During the NRC (inspection/investigation), an apparent violation of NRC requirements was identified. The NRC has notified (licensee name) of this issue (attached) and has given (licensee name) the opportunity to respond to the apparent violation in writing or to participate in a pre-decisional enforcement conference before NRC makes its enforcement decision. If NRC subsequently concludes that significant enforcement action is warranted, the action will be made publicly available at a later time. We will continue our oversight of this matter to ensure proper resolution.

Sample Closure Letter Wording Related to an Offsite Emergency Preparedness Concern that has been Referred to FEMA

As indicated in our previous correspondence to you dated (date), we contacted the Federal Emergency Management Agency (FEMA) to assist in reviewing the issue. In a letter dated (date of FEMA referral response), FEMA provided the results of their review and evaluation of the issue. Based on the information you provided to us and additional information provided by FEMA, the NRC staff (has substantiated/was unable to substantiate) your concern. (If concern(s) are substantiated, add the following) Specifically, the staff substantiated (give description of substantiation).

The NRC will pursue the substantiated concern(s) with the licensee. Any actions deemed necessary will be conducted outside the allegation process.

SAMPLE CLOSURE LETTER TO ALLEGER (FOR SECURITY-RELATED CONCERNS)

Alleger's Name XXXX-200X-A-XXXX
and Address

Subject: Concerns You Raised to the NRC Regarding (Facility Name)

Dear (Alleger's Name):

[FOR ALL LETTERS] The NRC has completed its follow-up in response to the concern(s) you brought to our attention on (date) regarding security issues at (facility name). [FOR CATEGORY III CONCERNS] Enclosure 1 to this letter restates your concern(s) and describes the NRC's review and conclusions regarding (that concern/each concern) [Add the following to this sentence FOR CATEGORY III CONCERNS WHICH RESULT IN A MINOR FINDING OR VIOLATION REQUIRING COMPENSATORY ACTIONS, WHEN THE ALLEGER IS A SECURITY FORCE MEMBER AT THE FACILITY] and makes note of a discussion that [was OR is to be] held with you to discuss compensatory actions taken in relation to your concern(s).

[FOR CATEGORY I AND II CONCERNS] While we are fully committed to our goal of ensuring openness in our regulatory process, we must balance that goal with ensuring the continued safety and secure operation of nuclear facilities in our country. Normally, when we have completed our review of an allegation, we provide the concerned individual with information as to whether their concern was substantiated and details on the actions taken by the NRC to evaluate the concern. However, due to the nature of the security-related issue(s) associated with your concern(s) and to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerabilities, [FOR CATEGORY I CONCERNS] we are unable to provide you with specific details regarding the NRC's evaluation of your concerns. [FOR CATEGORY II CONCERNS] we can provide only limited information regarding the NRC's evaluation of your concern(s). [FOR CATEGORY I CONCERNS] A restatement of your concerns is provided in Enclosure 1. [FOR CATEGORY II CONCERNS] Enclosure 1 to this letter restates your concern(s) and provides indication as to whether our evaluation resulted in a finding [Add the following to this sentence FOR CATEGORY II CONCERNS WHICH RESULT IN A MINOR FINDING OR VIOLATION REQUIRING COMPENSATORY ACTIONS, WHEN THE ALLEGER IS A SECURITY FORCE MEMBER AT THE FACILITY] and makes note of a discussion that [was OR is to be] held with you to discuss the NRC's actions and conclusions regarding your concern(s).

[FOR CATEGORY II AND III CONCERNS. USE IF, AFTER CONSULTATION WITH THE ALLEGER, IT WAS AGREED THAT NRC WILL DISCUSS ALLEGATION EVALUATION AND RESULTS IN A PUBLIC FORUM]

As part of our response to your concern(s) we plan to publicly discuss the results of our evaluation by (indicate communication vehicle). The NRC believes this will further the agency's mission by (state reason for public dissemination). Your name and any other identifying information will be excluded from the information that is released. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing the results of our evaluation of this (these) concern(s). Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the results of our assessment and the fact that they were raised in the allegation program. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss the NRC'S allegation evaluation and results.

Enclosure 7

[FOR ALL LETTERS] Thank you for informing us of your concerns. Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. We believe that our actions have been responsive to your concerns. (FOR CATEGORY II AND III CONCERNS, USE NEXT SENTENCE IN CASES WHERE WE HAVE NOT SUPPORTED THE ALLEGER'S CONCERNS - otherwise, remove it.) If, however, you can provide new information or the NRC receives additional information from another source that suggests that our conclusions should be altered, we will reevaluate that information to determine if additional evaluation is indicated. Should you have any additional questions, or if the NRC can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-695-7403 (if the alleger resides in the geographic area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the alleger does not reside in the geographical area of the action office) or you may provide information to me in writing at (Allegation Office P.O. Box address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

CERTIFIED MAIL (or Other Appropriate Carrier)
RETURN RECEIPT REQUESTED (NOTE: This statement should appear on the first page and the official record copy.)

FORMAT FOR ENCLOSURE TO CLOSURE LETTER TO ALLEGER FOR SECURITY-RELATED CONCERNS

RESPONSE TO CONCERNS
ALLEGATION NO. XXXX-YYYY-A-XXXX

Concern 1:

Restate the alleger's concern as provided in the acknowledgment letter, as modified by the alleger, or as clarified by the alleger (if the alleger provided clarifying information to better describe his or her concern during the course of NRC's review).

Response to Concern 1:

FOR CATEGORY III CONCERNS

[Provide a direct answer to the alleger's concern, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. For Category III concerns involving a minor finding or violation and requiring compensatory actions, it may be indicated that corrective/compensatory actions were taken, but do not provide the specifics of the corrective/compensatory actions. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion will be confusing to the alleger (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as… "While NRC was able to substantiate that certain (facts/statements/conditions regarding _____) were true, NRC was unable to confirm or validate an impropriety or inadequacy associated with NRC-regulated activity."]

FOR ANY CATEGORY III CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, and the security concern is determined to be Category III, the documentation of allegation concern closure should reference the feedback provided by the licensee [NOTE: Do not discuss specifics of corrective/compensatory actions taken] but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the alleger's concern, the concern response should separately describe (1) the licensee's evaluation and response (without describing corrective/compensatory actions) and (2) NRC's evaluation of the licensee's response and overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted (do not discuss any efforts to independently verify corrective/compensatory actions) to validate aspects of the licensee's response.]

FOR CATEGORY III CONCERNS INVOLVING A MINOR FINDING OR VIOLATION AND REQUIRING COMPENSATORY ACTIONS

The safety significance of the violation of [briefly discuss identified violation] was evaluated by the NRC and found to be minor. (Licensee name) has been informed of this matter and has

Enclosure

promptly corrected the identified deficiency/deficiencies or taken prompt compensatory action, thereby establishing licensee compliance with applicable physical protection and security requirements). [NOTE: Do not discuss specifics of corrective/compensatory actions taken.] Minor violations represent items of low safety significance and are not subject to formal enforcement action or documentation by the NRC. Therefore, this minor finding/violation will not be documented in an inspection report, and no further regulatory action is planned.

FOR CATEGORY II CONCERNS, USE THE FOLLOWING LANGUAGE

While we cannot provide the specific details regarding our evaluation of your concern, we note that (an NRC inspection was recently conducted in the security area OR [IF THE CONCERN INVOLVED AN RFI TO THE LICENSEE] we note that NRC staff recently requested that (licensee name) evaluate this/these and other matter(s) in the security area). NRC staff reviewed the (licensee name's) response to ensure that it was of adequate scope and depth. (Based on the NRC assessment no findings were identified OR the NRC assessment resulted in at least one finding). Identified deficiencies were promptly corrected or addressed by compensatory action, thereby establishing licensee compliance with applicable physical protection and security requirements. To ensure that we do not unnecessarily release information that would reveal potential security-related vulnerabilities, we are unable to inform you if any finding is specifically associated with the concern(s) you raised.

FOR CATEGORY II CONCERNS AND III CONCERNS WHICH RESULT IN A MINOR FINDING OR VIOLATION REQUIRING COMPENSATORY ACTIONS, WHEN THE ALLEGER IS A SECURITY FORCE MEMBER AT THE FACILITY

Since you are a member of the security force and are permitted access to information related to physical security matters at (facility name), (NRC staff member name(s)) discussed with you on (date) OR scheduled a telephone conference with you and with (NRC staff member name(s)) on (date) to discuss [FOR CATEGORY III CONCERNS REQUIRING COMPENSATORY ACTIONS] the compensatory actions taken in relation to your concern(s) OR [FOR CATEGORY II CONCERNS] the NRC's actions and conclusions regarding your concern(s).

FOR CATEGORY I CONCERNS, USE THE FOLLOWING LANGUAGE

As indicated in the cover letter, normally, when we have completed our review of an allegation, we provide the concerned individual with information as to whether their concern was substantiated and details on the actions taken by the NRC to evaluate the concern. However, due to the nature of the security-related issue(s) associated with your concern(s) and to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerability, we are unable to provide you with specific details regarding the NRC's evaluation of your concern.

[Repeat for additional concerns]

SAMPLE CLOSURE MEMORANDUM TO FILE
(FOR ANONYMOUS ALLEGATIONS, NRC STAFF-SUSPECTED OR LICENSEE-IDENTIFIED WRONGDOING, OR WHEN AN ALLEGER SPECIFICALLY REQUESTS NO CORRESPONDENCE FROM NRC)

MEMORANDUM TO: Allegation File XXXX-200Y-A-XXXX or OAC

FROM: (responsible staff member or OAC)

SUBJECT: CLOSURE OF ALLEGATION XXXX-200Y-A-XXXX REGARDING (site/facility)

USE FOR AN ANONYMOUS ALLEGATION OR NRC STAFF-SUSPECTED/LICENSEE-IDENTIFIED WRONGDOING

On _____, the NRC received an anonymous allegation [or opened an allegation file based on an NRC staff-suspected or licensee-identified wrongdoing matter] that/regarding (subject of allegation) at (facility).

USE WHEN ALLEGER HAS SPECIFICALLY REQUESTED NO CORRESPONDENCE

On _____, the NRC received an allegation that/regarding (subject of allegation) at (facility). During the course of the staff's review, the alleger specifically requested not to receive correspondence from NRC related to this matter. [An attempt was made to re-contact the alleger to explain the advantages of continued involvement in the allegation process. However, the staff was unsuccessful in re-contacting the alleger.] OR [Although the advantages of continued involvement in the allegation process were explained to the alleger during a telephone call on _____ / in a letter dated _____, the alleger insisted that no further contact be provided by the NRC.] NRC follow up action is described in this memorandum.

USE FOR ALL CLOSURE MEMORANDUMS

An allegation review board(s) (ARB(s)) was/were convened on (date(s)). The ARB(s) concluded that (describe actions prescribed) to evaluate the allegation (or staff suspected/ licensee-identified wrongdoing matter). Enclosure 1 to this letter lists the concern(s) and describes the staff's review and conclusions regarding that/each concern.

Based on the anonymous nature of the allegation OR since the alleger specifically requested not to receive correspondence from NRC OR Since this is an NRC staff-suspected wrongdoing OR a licensee-identified wrongdoing matter, no response to the alleger is appropriate. (USE IF APPROPRIATE) Remaining NRC actions in this matter will be processed and tracked through the enforcement process.

This allegation is closed.

Enclosure(s): As stated

FORMAT FOR ENCLOSURE TO CLOSURE MEMORANDUM

Concern 1:

Describe each concern as provided or as modified by the alleger (if the alleger provided clarifying information to better describe his or her concern during the course of NRC's review).

Response to Concern 1:

(Provide a direct answer to each concern, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion would be confusing (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as… "While NRC was able to substantiate that certain (facts/statements/conditions regarding _____) were true, NRC was unable to confirm or validate an impropriety or inadequacy associated with NRC-regulated activity." (If appropriate add: NRC findings regarding this concern are documented in (inspection report number, or other document citation) dated _____. A copy of the relevant section(s) of the report/document is/are enclosed.)

FOR ANY CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, the documentation of allegation concern closure should reference the feedback provided by the licensee but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the alleger's concern, the concern response should separately describe (1) the licensee's evaluation and response and (2) NRC's evaluation of the licensee's response and overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response.]

[Repeat for Additional Concerns]

[See Enclosure 6, "Sample Closure Letter to Alleger (For Other than Security Concerns)," for Suggested Wording in Response to Certain Types of Concerns (e.g., if concern involved 10 CFR 2.390 information, If OI returns potential wrongdoing issue to staff without completing the investigation, if concern involves enforcement/assessment process outcomes.]

Enclosure

NRC RESPONSE TO PUBLIC COMMENTS ON INTERIM GUIDANCE

1. Appropriate Balance between Public Safety and Identity Protection

Comments were made that the U.S. Nuclear Regulatory Commission (NRC) should be careful to communicate that alleger identity protection will never compromise the agency's primary mission of protecting public health and safety and, furthermore, that the agency should not protect an alleger's identity if he or she has not specifically made such a request.

> The staff agrees that the agency's mission of protecting public health and safety takes precedence over protecting an alleger's identity. In fact, the agency's guiding management directive clearly indicates that an alleger's identity will be disclosed if "necessary because of an overriding health or safety issue," and the NRC has revised the Allegation Guidance Memorandum (AGM) to include a similar message. However, identity protection plays a significant role in the viability of the Allegation Program. If releasing the identity of an alleger is not necessary to effectively evaluate the concerns raised, the staff will take all reasonable efforts to not disclose his or her identity regardless of whether the individual has specifically requested such protection.

2. Caller Identification

Commenters agreed that if the NRC policy was to capture caller identification information on the intake form for anonymous allegers, the NRC should inform the caller.

> The staff agrees and has incorporated suggested language in the revised AGM.

3. Contacting Allegers

Comments were received regarding increasing the NRC's interface with allegers during the agency's assessment of their concerns.

> The NRC agrees that involving allegers in the assessment of their concerns is important. The process currently includes making contact with the allegers at multiple intervals (1) to validate the understanding of the concerns raised, (2) to inform the alleger of the NRC's intention to consider a request for information (RFI) to the licensee, if appropriate, (3) to ask for additional information when needed, (4) to provide evaluation status for those issues taking longer than is typical, and (5) to provide closure information when the NRC has concluded its assessment. The majority of these contacts are made through correspondence because it provides written documentation of the NRC's actions and confirmation that the alleger received this documentation. However, the NRC also uses verbal contact at various stages of the assessment process in many cases, particularly when complex technical issues, high profile cases, or discrimination concerns are involved. Furthermore, the staff provides the alleger with a toll-free number and contact name should he or she wish to provide additional input to the NRC at any time during the process. Nonetheless, the staff will continue to look for opportunities to engage allegers in discussions regarding the assessments of their concerns, as appropriate, and the NRC has modified the AGM guidance to address this issue.

One commenter suggested that the NRC provide, at a minimum, closure information to allegers who request no further contact.

> The staff agrees that, although continued contact with the NRC shouldn't be mandated, providing allegation closure information to the alleger helps to ensure that the NRC has appropriately addressed his or her concerns. Therefore, staff guidance now emphasizes that the staff should encourage an alleger that wishes no further contact to, at a minimum, accept documentation of the NRC's evaluation.

Commenters suggested that the NRC establish a secure Web site interface where an anonymous alleger who provides no contact information could obtain allegation closure information through an assigned code.

> Because the number of anonymous allegers and allegers who refuse to provide contact information is relatively small, there has not been a demand for this type of feedback mechanism. On occasion, an alleger will ask if the NRC has a means by which he or she can remain anonymous but still obtain feedback on the NRC's evaluation of his or her concern. In this circumstance, the alleger can be put in contact with the Allegation Coordinator, who will establish an arrangement whereby the NRC's feedback can be obtained by asking, for example, the alleger to suggest a unique number or phrase that the he or she would have to provide in subsequent telephone calls to identify himself or herself as the provider of the concern. Once the Allegation Coordinator establishes that the caller is the same individual who provided the concern, the NRC can provide the feedback to that individual. The NRC believes that, at this time, this approach provides an acceptable mechanism for providing allegation feedback to anonymous allegers and allegers who refuse to provide contact information who request such feedback.

4. <u>Engaging the Licensee with an Allegation-Related Request for Information</u>

When conditions do not inhibit the NRC from requesting information on an allegation from the licensee, the agency considers this approach an appropriate and effective means of obtaining input to submitted allegation concerns. Commenters had varying views on this policy. Some commented that the current process of engaging the licensee in allegation evaluations should be continued, whereas others stated that the NRC should revise the policy to refer as few allegations as possible to the licensee.

> The NRC believes its current approach is appropriate and effective for the following reasons:

- The licensee has primary responsibility for ensuring the safe operation of the facility, and withholding a potential nuclear safety concern from the operator of the plant is inappropriate in all but a few circumstances, which are articulated in the Allegation Program guidance documents and the Allegation Review Board (ARB) worksheet (Enclosure 3 to AGM 2008-001, Revision 1).

- The operator of the facility can, in most cases, more promptly address issues because they likely have historical knowledge of the issue and ready access to site personnel, equipment, and documentation related to the concern.

- Engaging the licensee in the evaluation provides the agency with unique insights into the licensee's handling of employee concerns and affords the licensee unique insights into its safety culture.

> The NRC takes into consideration the alleger's reasons for bringing the concern to its attention, including the safety significance of the concern raised, fears of retaliation, and the alleger's past attempts to have his or her concerns addressed internally. The NRC staff considers the unique circumstances surrounding each allegation on a case-by-case basis before deciding how to proceed.
>
> Historically, the NRC engages the licensee with an RFI in approximately 40 percent of the allegations received. The request for a written response is made to senior licensee management and is subject to the NRC's completeness and accuracy regulations.

Commenters also requested clarification on the NRC's expectations involving the independence and competency of the individual(s) tasked by the licensee with evaluating RFI allegation concerns.

> Regarding evaluator independence, the NRC expects an individual or organization entity independent of the specific organization in which the alleged event took place to conduct the evaluation. For example, if the concern involves an operational event or previous decisions made by operations department management, the evaluator should not be someone within the reporting chain of the operations department. Regarding evaluator competency, the NRC does not expect the evaluator to have specific expertise in the functional area in which the alleged event occurred. Rather, general technical knowledge and experience in event analysis should be sufficient in most cases. Enclosure 5 to AGM 2008-001, Revision 1, incorporates clarifying language.

A meeting participant questioned why the NRC did not announce inspections that involved the same issues in which the agency engaged the licensee with an allegation-related RFI.

> There are several reasons why the NRC may inspect an allegation concern that also involves an RFI. More specifically, the NRC may find it is more effective and efficient to evaluate aspects of an allegation concern as part of an ongoing or imminent inspection. As another example, the allegation concern may involve an assertion of wrongdoing for which the staff is seeking additional information or is investigating. In some cases, the NRC cannot share sufficient information with the licensee without jeopardizing the identity of the alleger or compromising an investigation; therefore, the NRC must conduct an independent inspection or investigation. Finally, the NRC may inspect aspects of an allegation involving an RFI to verify or validate licensee efforts or conclusions. In each of these cases, it would not be appropriate to involve the licensee. However, there are certain, rare circumstances where advertising an allegation-related inspection could prove beneficial by affording workers an opportunity to bring pertinent information to the NRC inspectors' attention. This topic is discussed further in Section 6 below.

One commenter stated that, for allegations not sent to the licensee for evaluation, the NRC should forward the results of its evaluation to the licensee under the same confidential controls that it applies to the information when an allegation is forwarded.

> Because the vast majority of allegers approaching the NRC have concerns about their identity being divulged to the licensee, alleger identity protection remains a very important aspect of the NRC Allegation Program. Although the NRC understands that the licensee can gain insights into its safety culture through knowledge about NRC Allegation Program activity, the agency also believes that providing too much information

about allegations received would jeopardize the integrity of the program. Reactor and fuel facility licensees gain knowledge about NRC Allegation Program activities through the following four primary means:

(1) the receipt of an allegation-related RFI

(2) participation in an investigation conducted by the NRC Office of Investigations (OI) (the Allegation Program tracks all concerns that prompt an OI investigation regardless of whether the concern was identified by the alleger, the licensee, or the NRC staff)

(3) information on trends that the staff believes should be brought to the licensee's attention

(4) allegation statistics posted on the NRC public Web site

From this information, reactor and fuel facility licensees have knowledge of the following:

- the total number of allegations received during the calendar year
- of that total, the number of allegations received from "onsite sources" (licensee and former licensee employees, contractor and former contractor employees, and anonymous sources)
- the number of allegations currently open
- the number of discrimination allegations received
- concerns involving allegation-related RFIs
- issues being investigated by OI

(Discrimination allegations and allegations of wrongdoing are not matters that would be the subject of an allegation-related RFI. Additionally, licensees are usually informed of the results of OI investigations. The staff informs licensees of the results of an unsubstantiated OI investigation through a docketed letter if the licensee was aware of the OI investigation either by the onsite presence of an OI investigator or through OI interviews of licensee management. The staff informs licensees of the results of substantiated OI investigations through NRC inspection or enforcement program documentation.)

The NRC believes that in the aggregate, this information provides reactor and fuel facility licensees with a sufficient perspective on NRC Allegation Program activity as it may relate to the facility safety culture without jeopardizing the integrity of the program.

5. Response Quality of Requests for Information

Enclosure 5 to AGM 2008-001, Revision 1, includes a checklist to assist the staff in reviewing the licensee's response to an RFI. Commenters requested that, if the NRC finds a response to be inadequate, inaccurate, or otherwise unacceptable, the staff should ensure that feedback is provided to the licensee so that the licensee can address the staff's concerns in the subject RFI response or in future engagements.

The NRC agrees and has clarified the guidance.

One commenter asked what criteria the NRC uses to determine the adequacy of a licensee's response and how it uses such determinations.

The agency directive governing the Allegation Program requires the staff to ensure that the licensee's response is adequate. The AGM includes a checklist (Enclosure 5) to assist the staff in this review. The checklist outlines areas for assessment and instructs the staff to independently verify aspects of the response to help judge its adequacy. If the NRC finds that the licensee did not provide the information requested or finds that its independent verification efforts resulted in conclusions that were different from those provided by the licensee, the staff will inform the licensee and take steps necessary to adequately address the allegation.

If a recent history of inadequate RFI responses from a particular site or facility becomes apparent, the staff will consider an appropriate means of notifying licensee senior management of this issue and obtaining information from the licensee regarding planned corrective actions to address the history of inadequate responses.

6. Public Discussion of Specific Allegation-Related Information

Public meeting participants discussed whether it was prudent for the NRC to disseminate information related to specific allegation concerns more broadly in some cases. Commenters reasoned that publicizing some concern closure information more widely could provide the industry with important lessons learned and the public with greater confidence in the agency's oversight. Similarly, commenters noted that advertising allegation-related inspection or investigation efforts at a licensed facility would afford facility employees an opportunity to bring pertinent information to the NRC's attention.

The NRC agrees that, in certain circumstances, wider dissemination of allegation-related information is appropriate. In fact, the staff has used this approach in the past. Historically, the NRC has publicly documented substantiated allegations that have resulted in inspection findings, enforcement actions, or other NRC regulatory action (e.g., in inspection reports and in chilling effect letters). In such cases, the staff considers whether the benefit of disclosing the fact that an allegation prompted the NRC's evaluation or communication outweighs inherent potential negative consequences related to alleger identity protection and Allegation Program integrity.

The staff has also, on multiple occasions, publicly documented the results of an allegation-related evaluation even when it did not substantiate the concerns. This action was taken when the concerns were raised in a highly public manner and the NRC felt that public confidence dictated a public response. Issues brought to the agency's attention through allegations are also sometimes the subject of generic communications issued by the staff (e.g., regulatory issue summaries and information notices).

Finally, the staff has, in some cases, broadened the audience that it engages in discussions about the concern and planned evaluation to include all members of a discipline (e.g., security) or multiple disciplines at a licensee's site if doing so allows for a more thorough evaluation.

Note that the identity of the alleger that initiated the concern is protected in such cases

as dictated by the program, and the NRC consults with the alleger whenever possible to ensure that it considers any objection to a more public discussion of the issues.

The staff has incorporated new guidance in the revised AGM and language in the sample acknowledgement, status, and closure letters.

7. Closure Letters

Commenters indicated that even though the NRC's letters to allegers providing the agency's allegation evaluation results offer the alleger the opportunity to contact the NRC again if he or she finds issue with the staff's response, the staff's practice of stating that the issue is "closed" is potentially intimidating and may discourage an alleger from expressing a difference of opinion or providing additional information.

The staff agrees and has revised the standard correspondence language in the AGM.

8. NRC Responses to Allegations

One commenter remarked that the agency takes too long to respond to concerns raised, rarely asks for additional information, and does not accept every concern raised in the program.

The NRC typically receives between 500 and 600 allegations a year and acknowledges those submitted by a known alleger within 30 days. An allegation is defined as a "declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established." Any concern received that meets this definition is entered into the process. Even if a submitted concern is not entered into the allegation process, the NRC staff attempts to provide feedback, including directing the concerned individual to an appropriate contact either within or external to the NRC.

The allegation process involves the conduct of an ARB that a senior executive chairs and that members of the NRC technical, legal, and investigative staff participate in to determine the appropriate staff actions for evaluation. In each case, the NRC requests additional information if the ARB believes that such information is needed. If not, the staff's acknowledgement letter to the alleger reiterates his or her concern as the staff understands it. The acknowledgement letter requests the alleger to clarify any misunderstanding so that NRC may conduct a focused review. If the alleger does not provide any feedback, the NRC's evaluation proceeds.

Over the years, the NRC has introduced more accountability and rigor to the Allegation Program, improving its process response time. The NRC has received very few complaints from process participants in this regard. Timely response to all allegation concerns, even those that do not represent significant safety issues, is important to the viability of the program. However, the staff remains constantly mindful not to compromise the quality of its evaluation by overemphasizing timeliness.

Should the submitted concern fall outside of its jurisdiction and expertise, the agency will typically provide information to the concerned individual on other available avenues for resolution. Lastly, if the validity of the submitted issue is already known, the agency shares information on the resolution of the issue with the concerned individual and does not process the issue as an allegation.

On occasion, a concerned individual will express dissatisfaction that the NRC is not processing his or her submitted concern as an “allegation.” The NRC reiterates that it processes only those concerns that meet the definition of an allegation within the Allegation Program. On a daily basis, the NRC receives concerns from many individuals about various subjects. The agency’s goal is to be responsive to each concern, but the initial task is to ensure that the concern is forwarded to the appropriate process for feedback. As examples, the NRC processes public petitions to suspend, revoke, or modify a license in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, “Requests for Action under This Subpart”; responds to contentions filed in adjudicatory proceedings in a different process; and processes concerns that are not filed publicly that meet the NRC definition of an allegation as NRC allegations. The NRC responds to other concerns and questions from external sources that do not meet the criteria specified by other formal NRC response processes under its general public responsiveness guidelines.

9. Alternative Dispute Resolution Policy

Commenters stated that, although the program is beneficial, the NRC needs to do a better job of explaining the agency’s Alternative Dispute Resolution (ADR) policy to allegers, particularly in regard to settlement agreements between the alleger and the licensee.

The NRC has recently initiated a comprehensive review of the means by which it communicates elements of the ADR policy to the public and to allegers. Meanwhile, the NRC has taken certain interim steps to update the frequently asked questions related to early ADR on its public Web site to reiterate the Commission’s policy on instances in which the NRC will not investigate a discrimination allegation. In addition, the NRC has revised standard language in allegation-related acknowledgement letters related to settlement agreements in Enclosure 1 to AGM 2008-001, Revision 1.