



FSME Procedure Approval

MANAGEMENT OF AGREEMENT STATE PROGRAM PERFORMANCE CONCERNS AND ALLEGATIONS SA-400

Issue Date:

Review Date:

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Date:

NOTE

*Any changes to the procedure will be the responsibility of the FSME Procedure Contact.
Copies of the FSME procedures are available through the NRC website.*



SA-400 Procedure Title: *Management of Agreement State Program Performance Concerns and Allegations*
Procedure Number: SA-400

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Issue Date:
xx/xx/~~2010~~2014

I. INTRODUCTION

- A. This ~~procedure document~~ describes the process ~~to be followed~~ by which the Office of Federal and State Materials and Environmental Management Programs (FSME) ~~is~~ managing/manages: (1) allegations/concerns involving an Agreement State licensee; and (2) concerns involving Agreement State Oversight.
- B. As used in this document, the term "Agreement State Program Performance Concern" (ASPPC) refers to a concern involving State regulatory bodies that oversee the activities of Agreement State licensees; ~~(2) and include~~ concerns regarding the performance of such State regulatory bodies or their personnel; ~~and (3)~~. An ASPPC can also include concerns regarding potential wrongdoing committed by State regulatory bodies or their personnel. The term "wrongdoing" refers to a willful failure to adhere to State regulatory requirements.
- C. As used in this document, the term "concerned individual" refers to the person or organization that submits an ASPPC to the Nuclear Regulatory Commission (NRC). Anonymous concerns are accepted.

II. OBJECTIVES

- A. ~~To ensure that allegations involving~~ To provide guidance to FSME staff on the receipt, review and coordination of Agreement State ~~licensees, and alleged~~ Program Performance Concerns.
- B. To provide guidance for use by the Agreement States on NRC's process for managing Agreement State Program Performance Concerns.
- C. To ensure that concerns involving Agreement State ~~programs and employees~~ licensees ~~that are properly and expeditiously handled~~ not under NRC jurisdiction are provided to the appropriate Agreement State through the Regional State Agreement Officer.
- D. To ensure that Agreement State Program Performance Concerns are processed by an established process.

III. BACKGROUND

Management Directive (MD) 8.8, *Management of Allegations*, establishes the ~~Nuclear Regulatory Commission's (NRC)~~ NRC's policies and procedures for handling allegations concerning NRC-regulated activities. MD 8.8 defines an allegation as a declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. Excluded from this definition are (1) concerns related to Agreement State licensee activities when the concerned individual agrees to have his or her concerns and identity provided to the Agreement State and (2) performance or

wrongdoing concerns regarding organizations or personnel from State regulatory bodies that oversee Agreement State licensee activities. MD 8.8 directs NRC staff to refer concerns regarding the performance of State regulatory bodies or their personnel and concerns regarding potential wrongdoing committed by State regulatory bodies or their personnel to FSME. ~~Further guidance to staff in handling allegations and concerns about Agreement States is provided in the Staff Requirements Memorandum (SRM)—SECY-98-192—Resolution of Allegations Concerning the Performance of Agreement State Programs, dated December 8, 1998.~~

On August 11, 1998, the NRC Executive Director for Operations issued a Commission Paper (SECY-98-192) which recommended that staff handle concerns about Agreement State performance or wrongdoing by transferring, through correspondence to the Agreement State, rather than treating the concerns as allegations. The Commission approved a modified version of the staff's recommendation as noted in a December 8, 1998, Staff Requirements Memorandum (SRM). In the SRM, the Commission stated that, absent a credible health and safety concern, Agreement State program performance concerns or wrongdoing concerns involving a Radiation Control Program Director (RCPD) would be referred to either the Agreement State Inspector General, Attorney General, or senior line management above the RCPD level, as appropriate, based on a decision by staff using criteria to be developed, without convening an Allegation Review Board (ARB).

This document provides more specific guidance on handling these matters.

IV. ROLES AND RESPONSIBILITIES

A. The Director, ~~Division of Intergovernmental~~ Materials Safety and State Agreements (DMSSA Liaison and Rulemaking (DILR)):

- ~~1.~~ 4. Oversees the management of the ~~allegation and~~ Agreement State program performance concerns (ASPC) Program Performance Concern program in FSME in accordance with ~~MD 8-8~~ this procedure.
2. Serves as Chair (or designates an acting chair) of the ~~Allegation~~ State Concerns Review Board (~~ARB~~) for all ASPCs.
- ~~3.~~ 3. ~~SCRB~~, if convened, for complex concerns. As ~~ARB~~ SCRB Chair, ensures that safety significance, resolution plan, and review priority, ~~and wrongdoing matters~~ are considered ~~for each ASPC.~~
- ~~4.~~ 3. Assigns a staff member to serve as the FSME ~~Office Allegation~~ Agreement State Program Performance Concerns Coordinator (~~OAG~~).
- ~~5.~~ 5. ~~Places calls to appropriate Agreement States when follow up calls are necessary to determine the status of concerns forwarded to the States for review and appropriate action.~~
4. Approves and signs all correspondence transferring ~~ASPC~~ ASPPCs to the States with concurrence by the cognizant Branch Chief and ~~OAG~~ ASPPC Coordinator.
- ~~7.~~ 5. Approves and ~~signs~~ concurs on all closure ~~material~~ letters to the concerned individuals for ASPPCs.

B. ASPC with concurrence by the cognizant ~~The~~ Branch Chief and ~~OAG~~, Agreement State Programs Branch, DMSSA:

~~B. The Directors, Division of Materials Safety and State Agreements (MSSA) and Division of Waste Management and Environmental Protection (DWMEP):~~

- ~~1. Ensure that the policies and procedures outlined in MD 8.8 and in this guidance are implemented by division staff.~~
- ~~2. Participate, as required, as members of the ARB for ASPC.~~
- ~~3. Ensure that cognizant technical and management staff attend meetings of the ARB when ASPCs within their purview are discussed. Attending staff must have the authority to agree to actions and schedules approved by the ARB.~~

~~C. The Branch Chiefs, FSME:~~

- ~~1. Ensure that staff members are familiar with the policies and procedures outlined in MD 8.8 and in this guidance.~~
- ~~2. Participate in the ARB process within their purview for allegations and ASPC.~~
- ~~3. Assign a technical staff membersmember as Lead Staff Technical Reviewer for allegations and ASPC under their purview ASPPCs.~~

~~4. Ensure~~ 3. Ensures that the Lead Staff Technical Reviewer is available to brief the ARBSCRB, if convened, on the concerns ~~during the meeting.~~

~~5. For allegations and ASPC assigned to their branches, propose resolution plans for consideration by the ARB and ensure that the resolution plan approved by the ARB is followed and the schedule for resolution is met. Promptly notify the OAC of changes to the above.~~

~~6.~~ 4. Approve and concur on all closure letters to allegers concerned individuals for ASPCs ASPPCs.

~~7. Ensure that the OAC is notified on a timely basis about all suspected or potential wrongdoing issues that surface outside the allegation process (e.g., through inspection findings).~~

~~8. Ensure branch staff completes annual allegation training.~~

~~DC. The FSME OAC Agreement State Program Performance Concerns Coordinator:~~

- ~~1. Administers the allegation and ASPC ASPPC review program in FSME, in accordance with MD 8.8 and this guidance.~~
- ~~2. Serves as a member of the ARBSCRB and assists the Chair of the ARBSCRB as necessary and if convened.~~
- ~~3. Maintains the official agency files on allegations and ASPC assigned to FSME ASPPCs, including establishing a file record, and assigning a control number.~~

4. Provides advice, guidance, and assistance to FSME management, ARBS members, and FSME staff in implementing the policies and procedures outlined in MD 8.8 and in this guidance. ~~As ARB advisor, ensures that safety significance, resolution plan, review priority, and wrongdoing matters are considered for each allegation or ASPC during the ARB.~~
5. Serves as the central control point for ~~allegations and ASPC assigned to~~ FSMEASPPCs.
6. Reviews and concurs in all FSME correspondence involving ~~allegations or ASPC that leaves the office, including letters to allegeders, other federal agencies, Agreement States, licensees, and industry groups.~~ ASPPCs. Ensures the letters do not compromise the identity of the alleged concerned individual.
7. Prepares monthly reports to FSME senior management on the status of ~~allegations and ASPC~~ ASPPCs.
8. Provides information to alleged concerned individuals regarding ~~allegation or ASPC~~ ASPPC follow-up and resolution ~~in accordance~~.
9. ~~Approves and signs closure material for ASPC with MD 8.8 concurrence by the cognizant Branch Chief and DMSSA Division Director.~~
9. Promptly informs the appropriate Regional ~~OAC or Regional~~ State Agreements Officer (RSAO) and Regional Office Allegation Coordinator (OAC) of the receipt and ~~transfer/referral~~ of a concern involving an allegation or ASPC. Agreement State licensee.
10. ~~Ensures Provides data to the proper transfer to the appropriate Regional OAC and RSAO of allegations regarding~~ IMPEP team leader on concerns involving Agreement State ~~licensees received by FSME.~~
11. ~~Provides input to the Integrated Materials Performance Evaluation Program (IMPEP) team members when reviewing~~ licensee that were referred to the States for review under the common performance indicator, *Technical Quality of Incident and Allegation Activities*.
12. ~~Consults and coordinates with the Agency Allegation Advisor (AAA), Assistant AAA, OI staff and other OACs on allegations or ASPCs, as appropriate.~~

E D. Lead Technical Staff:

1. ~~Considering the requirement to hold the ARB within 30 days of receipt of the allegation or ASPC, coordinates with the OAC the best date for holding the ARB.~~
2. Prepares the Branch Evaluation, Plan and Recommendation Form, (BEPR) which will include the concerns list and ~~provides it to the OAC no later than 2 days prior to the scheduled ARB~~ proposed resolution plan.

~~32.~~ Briefs the ARB/SCRB, if convened, from the BEPR on the concerns, the potential safety significance, the proposed resolution plan and schedule, ~~and provides a recommendation on the need for Office of Investigation (OI) involvement or request for information from the licensee, vendor, or another agency.~~

~~FE.~~ All FSME Employees:

- ~~1.~~ Maintain a working knowledge of the policies and procedures in ~~MD 8.8 and~~ this guidance.
- ~~2.~~ Record the receipt of any allegation and ASPCASPPC in as much detail as possible. Provide all information about the concerns directly to the OAGASPPC Coordinator within 5 days of receipt of the allegation or ASPCASPPC. Record and provide to the OAGASPPC Coordinator all contacts with allegers concerned individuals during and following resolution of the allegation or ASPCASPPC.
- ~~3.~~ ~~Provide information regarding suspected wrongdoing to the OAG promptly following receipt.~~
- ~~4.~~ Protect the identity of allegers concerned individuals in accordance with policies and procedures outlined in ~~MD 8.8 and~~ this guidance. The identity of the allegers concerned individual should only be provided to the OAGASPPC Coordinator.
- ~~54.~~ Ensure that allegations or ASPCASPPC-related correspondence receives appropriate limited distribution (i.e., is not placed in ADAMS, branch files, or docket files). ~~In accordance with MD 8.8, all allegation documents, including hard copies and electronic media, should be given to the OAG for review. Copies of allegation or ASPCASPPC documents should not be kept by anyone outside the OAGASPPC Coordinator after an allegation or ASPCASPPC is completed and the file is closed. All electronic files should then be deleted from both computers and e-mail "in" boxes and trash. Hard copies should be disposed of in a sensitive unclassified waste receptacle or returned to the OAGASPPC Coordinator for inclusion in the official file or disposal.~~
- ~~65.~~ Consult the OAGASPPC Coordinator to determine whether a matter involving Agreement States should be considered as a potential allegation(s) or ASPCASPPC.
- ~~7.~~ ~~Document any release of information that may compromise an investigation including the preparation of notices to the Executive Director for Operations (EDO) and the OI Director, for the signature of the FSME Director.~~
- ~~8.~~ ~~Completes annual allegation training.~~

~~GE.~~ Regional State Agreements Officers (RSAOs) and Regional OACs:

- ~~1.~~ Handle allegations Process concerns involving Agreement State licensees in accordance with ~~MD 8.8~~ this guidance and Regional procedures, as appropriate.

2. 2. Upon request by FSME, participate in ARB meetings SCRB, when convened, to address various Agreement State concerns.

3. As appropriate, places calls to Agreement States, when follow-up calls are necessary to determine the status of concerns forwarded to the States for review and action. Includes lead technical staff if necessary.

G. IMPEP Team Leader and Periodic Meeting Leader

1. Coordinates with the Region or the ASPPC Coordinator any information received during the IMPEP review or periodic meeting which will assist in the update and/or closeout of NRC allegation or ASPPC files.

2. Transmits documentation of information gathered through the periodic meeting or IMPEP review on performance concerns to the ASPPC Coordinator.

V. GUIDANCE

A. Processing Allegations Under Concerns that Meet the NRC's Definition of An Allegation under NRC's Jurisdiction

Allegations involving areas of NRC's jurisdiction received by FSME staff are outside the scope of this procedure and should be forwarded to the OAC within five days of receipt following MD 8.8, Handbook, Part I, General Information on the NRC Allegation Management Program. are processed in accordance with MD 8.8.

B. Processing Allegations Concerns Involving Agreement State Licensees

1. ——— Allegations Concerns which involve an Agreement State licensee received by FSME staff should be forwarded to the OAC ASPPC Coordinator within five days of receipt following and are processed in accordance with MD 8.8, Handbook, Part I, General Information on the Section II.D.

2. If the concerned individual is willing to contact and be contacted directly by Agreement State personnel about the evaluation of their concern, then such matters will be provided to the appropriate RSAO for referral to the Agreement State and are not processed as NRC allegations.

3. If the concerned individual does not want to be directly contacted by the Agreement State or have his or her identity disclosed to the Agreement State, the NRC will still refer the concern to the Agreement State through the RSAO. However, the individual's identity will not be disclosed and the NRC will request a response. If requested by the concerned individual, the NRC will provide him or her with the State's response. Such matters are entered into the NRC allegation process and tracked until closure.

4. The NRC evaluates the State's handling of these referrals during the Integrated Materials Performance Evaluation Program (IMPEP) review of the State program under the Common Performance Indicator, Technical Quality of Incident and

Allegation Management Program Activities.

C. Processing Concerns Involving Agreement State Oversight

1. Concerns involving State regulatory bodies and State employees that oversee the activities of Agreement State licensees received by FSME staff should be forwarded to the ASPPC Coordinator within five days of receipt and are not processed as NRC allegations. These include:
 - a. Concerns regarding the performance of such State regulatory bodies or their personnel
 - b. Concerns regarding interpretation and implementation of the State's regulatory requirements
 - c. Concerns regarding potential wrongdoing committed by State regulatory bodies or their personnel
 - d. Further guidance regarding the IMPEP Review is provided in MD 5.6, Integrated Materials Performance Evaluation Program (IMPEP).
2. An acknowledgement letter is normally sent to the concerned individual within 30 days of receipt (See Appendix C). The initial correspondence will either indicate that the State will be responding directly (with no further NRC action) or that the NRC will be responding at a later date with the State's response, depending on whether or not the concerned individual agrees to release their identity to the State. If it is anticipated that it will take longer than 30 days to respond to the concerned individual, an initial response (phone or email is acceptable) should be provided to the concerned individual acknowledging the concern, and indicating that additional NRC feedback is forthcoming.
3. The ASPB Branch Chief will assign a lead technical reviewer for the concern to determine safety significance, and to review the concern against the referral criteria in Section F. If additional information is needed from the concerned individual, the lead technical reviewer will coordinate with the ASPPC Coordinator to interview the individual.
4. For non-complex concerns, the lead technical reviewer for the concern will document the proposed ASPPC resolution plan for approval (via email) by the ASPB Branch Chief, the appropriate RSAO and the ASPPC Coordinator within 30 calendar days of receipt.
 - a. Non-Complex concerns include:
 - i. Concerns previously referred to the State that were determined to be adequately responded to by the State
 - ii. Concerns regarding the independence and qualifications of Agreement State personnel when the safety significance is low
 - iii. Concerns regarding the timeliness of state inspections when the safety significance is low
 - iv. Any other concern related to the performance of the state when the safety significance is low
5. For C. —Alleger's complex concerns, a State Concerns Review Board (SCRB) can be

convened normally within 30 days of receipt, at the discretion of the Director, MSSA (or designee):

- a. A SCRB consists of a chairperson (Director, MSSA or designee), ASPB Branch Chief, lead technical reviewer, an Office of the General Counsel (OGC) representative, and the ASPPC Coordinator.
- b. The SCRB will determine if a special evaluation of the adequacy and compatibility of an Agreement State program should be initiated or other actions, as deemed appropriate, should be initiated when significant, valid safety concerns have been identified and brought to the attention of the NRC through an external source.
 - i. In the case of an emergency that presents danger to public health and safety, if immediate action appears necessary, the NRC could implement SA-112, *Emergency Suspension of a 274b Agreement*.
- c. A SCRB does not have to be convened for ASPPCs that have been previously reviewed or for non-complex concerns. The appropriate staff should document the proposed resolution plan for approval, as in Section C.4.

D. Concerned Individual's Identity Protection When Making Referrals To Agreement States

Before making any referrals to an Agreement State, ~~all reasonable efforts~~ the concerned individual should be ~~made to inform the allegor(s)~~ informed of the referral ~~in accordance with MD 8.8~~. In addition, staff should determine the ability of the State to protect the identity of the allegor concerned individual by referring to Appendix A, *Ability of Agreement States to Protect Allegor's Concerned Individual's Identity from Public Disclosure*. When contacting the allegor concerned individual, staff should inform the allegor concerned individual of the NRC's plans to ~~transfer~~ refer the ~~allegation or~~ concern to the State, inform the allegor concerned individual of the State's ability to protect his/ or her identity from public release, and inquire whether the allegor concerned individual wishes for his/her identity to be released to the State. The staff should also encourage the allegor concerned individual to contact the State directly regarding their concern(s). The staff should inform the allegor concerned individual that the Agreement States prefer to be contacted directly since it allows the State to obtain all the necessary information directly and facilitates their response. In addition, the staff should inform the ~~allegor that direct contact with the Agreement State provides the advantage of a more timely response in most cases.~~ If the allegor concerned individual that while the NRC has agreement state oversight responsibility, NRC has little authority to take independent action or require action by an agreement state as a result of performance or wrongdoing concerns in the absence of a credible health and safety concern. If the concerned individual indicates that he/she would like to contact the State directly, the staff should provide the allegor concerned individual with the contact person's name and telephone number, if available. If the allegor concerned individual indicates that he/she would not like to contact the State directly, staff should follow the guidance in MD 8.8, concerning referrals to Agreement States and the protection of the allegor's identity. take all reasonable efforts not to disclose the concerned individual's identity.

~~D. Processing Concerns Involving Agreement State Performance Concerns or Wrongdoing~~

- ~~1. Allegations which involve an Agreement State Performance concern or wrongdoing and received by FSME staff should be forwarded to the OAC within five days of~~

~~receipt following MD 8.8, Handbook, Part I, *General Information on the NRC Allegation Management Program.*~~

~~2. E. Referral Criteria ~~for Concerns involving Agreement State Oversight~~~~

~~1. (a) Referrals to the Radiation Control Program Director (RCPD).~~

~~a. (i) Alleged performance Performance concerns involving the Agreement State program should be initially referred to the RCPD.~~

~~b. Performance or wrongdoing concerns involving Agreement State employees below the RCPD ~~should be referred to the RCPD.~~~~

~~(ii) Alleged performance concerns involving the Agreement State program, should be initially referred to the RCPD.~~

~~2. (b) Referrals to Senior Line Management above the RCPD.~~

~~a. (i) Alleged Performance or wrongdoing ~~or performance~~ concerns involving the Agreement State RCPD should be referred to Senior Line Management above the RCPD.~~

~~b. (ii) Alleged employee Performance or wrongdoing ~~or performance~~ concerns involving the Agreement State program or employees, that were previously referred to the RCPD, and which have not been appropriately addressed, should be referred to Senior Line Management above the RCPD. The State's NRC Liaison officer should also be notified.~~

~~3. (c) Referrals to State Inspector General (IG) or Attorney General (AG).~~

~~(i)a. Alleged employee wrongdoing or performance concerns involving the Agreement State program or employees, that were previously referred to Senior Line Management above the RCPD, and which have not been appropriately addressed, should be referred to the State IG, State AG, or AG equivalent.~~

~~(ii)b. Alleged wrongdoing or performance concerns involving Senior Line Management above the RCPD should be referred to the State IG ~~or AG,~~ State AG, or equivalent. The State's NRC Liaison officer should also be notified.~~

~~E. Processing Allegations Concerns regarding employee wrongdoing or performance involving an Agreement State program performance which has demonstrated a disregard for investigating and handling referred concerns ~~Involving Intimidation and Harassment and Other Alleged Violations Under the Energy Reorganization Act of 1974 (ERA), Section 211.~~~~

~~c. —Staff should inform the allegor of his/her rights under Section 211 of the ERA. However, if the Allegations also address Agreement State performance or wrongdoing concerns, after coordination with the appropriate Regional Office, FSME should transfer the concerns should be referred to the State IG, AG, or equivalent.~~

F. Follow up and Closure of ~~Allegations~~ ASPPCs

- ~~1. —All concerns concerning matters outside of the guidance in MD 8.8 and outside Agreement State jurisdiction should be closed in accordance with guidance obtained during an ARB meeting.~~
- ~~1. 2. —All transferreferral~~ letters to the State, including those in which the ~~allegor's concerned individual's~~ identity is released ~~and agrees to be contacted directly by the State~~, should request a response. ~~An acknowledgment letter is sent to the allegor.~~ After the ~~transferreferral~~ to the State is completed and the State has responded, the ~~ARB lead technical reviewer~~ will ~~reconvene~~ review the response and provide documentation to determine the next steps including the ASPPC Coordinator for closure of the concern with a memorandum to file. Concerns transferred to the RCPD should be addressed at the time of the next periodic meeting or IMPEP review of the Agreement State.
- ~~2. 3. —All transfersreferrals~~ to the State without the release of the ~~allegor's concerned individual's~~ identity should include a request for a response indicating the results or resolution of the matter within 60 days. After the State has responded, the ~~ARB lead staff reviewer~~ will ~~reconvene to determine~~ review the next steps including response and provide documentation to the ASPPC Coordinator for closure of the concern. If after 60 days no response is received from the State, periodic follow-up with the State regarding its response to the ~~transferreferral~~ should be made by the ~~Director, DILRRSAO~~. If after 90 days no response is received from the State, a letter should be sent to the State requesting a response within 30 days. If the response has not been received within 30 days, the original ~~transferrequest~~ that was made to the RCPD should then be ~~re-~~ transferredforwarded to the Senior Line Management above the RCPD for action. Alternatively, if the original ~~transferrequest~~ was made to the Senior Line Management, it should then be ~~re-~~ transferredforwarded to the State AG or IG, as appropriate. If the original ~~transferrequest~~ was made to the State AG or IG, and there is no response, then the concern should be considered by FSME management, either individually, or in consultation with the Management Review Board to determine: 1) whether a special IMPEP review of the State ~~or of~~ investigation (after Commission approval) should be conducted; or 2) whether a letter to a higher Government official should be sent. The ~~allegor concerned individual~~ should be informed of the status of the ~~transferreferral~~ to the State when exceeding 180 days.
- ~~4. —All Agreement State licensee allegations transferred without the release of the allegor's identity, and all performance concerns transferred to the RCPD should be addressed at the time of the~~

~~next periodic meeting or IMPEP review of the Agreement State,
whichever comes first.~~

- ~~5. The IMPEP team leader or periodic meeting leader should coordinate with the Region or the FSME OAC any information received during the IMPEP review or periodic meeting which will assist in the update and/or closeout of the allegation files. Information regarding allegations involving Agreement State licensees should be coordinated with the Regional OAC and the NRC Regional State Agreements Officer (RSAO) for referral to the Agreement State. Information regarding alleged concerns involving Agreement State performance should be coordinated with the FSME OAC.~~

G. Contact Information

The FSME ~~allegation and~~ Agreement State ~~performance concern~~
~~program~~Program Performance Concern Program is administered by
the FSME ~~OAC.~~

Office Allegation Coordinator and

~~For~~ ~~allegations the OAC~~ can be ~~reached~~contacted via email at:
FSME_Allegation.Resource@nrc.gov.
FSMEAllegation.Resource@nrc.gov

~~For~~ ~~Agreement State performance concerns,~~ via email at:
FSMEConcerns.Resource@nrc.gov.

VI. APPENDICES

Appendix A ~~_____~~ - Ability of Agreement States to Protect ~~Allegor's~~Concerned Individual's
Identity from Public
Disclosure

Appendix B - Sample Correspondence Referring Concerns to an Agreement State

Appendix C - Sample Correspondence to the Concerned Individual

Appendix D - Sample Follow-up Correspondence for Referrals Exceeding 180 Days

Appendix E - Sample ASPPC Resolution Plan

VII. _____ REFERENCES

1. 1.—MD 8.8, *Management of Allegations*, and associated Handbook 8.8

2. 2.—Staff Requirements Memorandum - SECY-98-192 - Resolution of Allegations
Concerning the Performance of Agreement State Programs, dated December 8, 1998.

3. FSME Procedure SA-105, *Reviewing the Common Performance Indicator, Technical
Quality of Incident Allegation Activities*

4. FSME Procedure SA 112, *Emergency Suspension of a 274b. Agreement*

VIII. ADAMS REFERENCE DOCUMENTS

For

**APPENDIX A
ABILITY OF AGREEMENT STATES TO PROTECT ALLEGER'S
IDENTITY FROM PUBLIC DISCLOSURE**

knowledge management purposes, all previous revisions of this procedure, as well as associated correspondence with stakeholders, that have been entered into ADAMS are listed below.

<u>ST AT EN o.</u>	<u>IS THE STATE ABLE TO PROTEC T ALLEGE R'S IDENTIT Y?Date</u>	<u>COMMENTS Document Title/Description</u>	<u>Accession Number</u>
<u>1</u>	<u>01/22/01</u>	<u>STP Procedure SA-400, Management of Allegations</u>	<u>ML010720480</u>
<u>2</u>	<u>03/11/11</u>	<u>FSME-11-022 - Opportunity to Comment on Draft Revision to FSME Procedure SA-400 "Management of Agreement State Performance Concerns and Allegations."</u>	<u>ML102770172</u>

Appendix A

Ability of Agreement States to Protect Concerned Individual's Identity from Public Disclosure

<u>AGREEMENT STATE</u>	<u>IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?</u>	<u>COMMENTS</u>
Alabama	YES	
Arizona	NO	
Arkansas	NO	
California	YES	
Colorado	NO	
Florida	NO	
Georgia	NO	
Iowa	YES	
Illinois	YES	
Kansas	YES	
Kentucky 	NO	No response received from State. Without a clear indication from the State that they can protect the <u>allegor's concerned individual's</u> identity, this information should not be released to the State.
Louisiana	NO	
Maine 	NO	No response received from State. Without a clear indication from the State that they can protect the <u>allegor's concerned individual's</u> identity, this information should not be released to the State.
Maryland 	NO	No response received from State. Without a clear indication from the State that they can protect the <u>allegor's concerned individual's</u> identity, this information should not be released to the State.
Massachusetts	YES	
Minnesota	<u>YES</u>	<u>Identity no longer protected in the case of a court hearing.</u>
Mississippi	NO	
Nebraska	YES	

<u>AGREEMENT STATE</u>	<u>IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?</u>	<u>COMMENTS</u>
Nevada	YES	
New Hampshire	NO	The information must be labeled confidential.
New Jersey	<u>YES</u>	
New Mexico	NO	
New York	NO	
North Carolina	YES	
North Dakota	YES	
Ohio	YES	
Oklahoma	YES	
Oregon	YES	
Pennsylvania	<u>YES</u>	
Rhode Island	NO	
South Carolina	YES	
Tennessee	NO	
Texas	NO	No response received from State. Without a clear indication from the State that they can protect the alleged's identity, this information should not be released to the State. Conflicts may exist between two laws.
Utah	No	The information must be labeled confidential.
Virginia	<u>YES</u>	
Washington	Yes <u>YES</u>	
Wisconsin	<u>YES</u>	

Appendix B

Sample Correspondence Referring Concerns to an Agreement State Radiation Control Program Director, Senior Line Management, State IG or AG

Agency Representative

Agency Address

SUBJECT: REFERRAL OF MATTER RECEIVED BY THE U.S. NUCLEAR REGULATORY
COMMISSION REGARDING (Name of Agreement State Program)

Dear Mr. /Ms. (Last Name):

USE FOR ALL LETTERS

The U. S. Nuclear Regulatory Commission's (NRC) Office of Federal and State Materials and
Environmental Management Programs (FSME) has received information regarding a potential
(insert performance and/or wrongdoing) concern involving (insert name of State employee, or
name of Agreement State Program). Details are described in the enclosure to this letter.

The State of (Insert name of State) has entered into an Agreement with the U.S. Nuclear
Regulatory Commission (NRC) under which the NRC discontinues its authority to regulate Atomic
Energy Act materials as specified in Section 274 of the Act, and the State of (insert name of State),
as an Agreement State, assumes that authority. Under this Agreement, the State of [insert name
of State] has jurisdiction over this concern(s). We ask that you review and address these
concerns/this matter as you deem appropriate. We would appreciate your informing us of your
resolution of this matter.

USE IF THE CONCERNED INDIVIDUAL AGREES TO THE RELEASE OF HIS/HER NAME TO
THE STATE

This information was submitted to FSME by (name of concerned individual(s), address, and
telephone number). (Name of concerned individual(s)) has agreed to cooperate with the State and
can be reached by your office. We have also provided your address and telephone number to the
individual so that they may contact you in the future regarding this matter. When your actions are
completed, please inform concerned individual of the results of your action(s) or resolution of this
matter. [Insert for performance concerns transmitted to the RCP Director: FSME will review your
response to this matter during the next periodic meeting, or Integrated Materials Performance
Evaluation Program (IMPEP) review, whichever comes first.]

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(NOTE: This should appear only on the first page and the official record copy.)

USE IF THE CONCERNED INDIVIDUAL DOES NOT AGREE TO THE RELEASE OF HIS/HER NAME TO THE STATE

The individual who provided this information to the NRC requested that his/her identity not be provided to you. In the event the concerned individual changes his/her mind about contacting the State, we have provided your address and telephone number to the individual so that they may contact you in the future. However, we ask that you provide a response directly to me so that we may inform the individual of the resolution of these matters. We would appreciate a response within 60 days informing us of the details of your actions or resolution of this matter. We consider the concern closed upon receipt of your response.

USE FOR ALL LETTERS

We ask that your response only be sent to me at the following address. No other copies should be sent to the NRC.

DMSSA Director (ADDRESSEE ONLY)
Office of Federal and State Materials
and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Mail Stop XXXX
Washington, DC 20555

If your response contains personal privacy, proprietary, or confidential information, such information shall be contained in a separate enclosure, appropriately marked, so that it will not be subject to public disclosure.

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.

We also request that you control and limit the distribution of this letter and its enclosures. These documents should be limited to State personnel with a "need to know." Your cooperation is appreciated. If you have any questions, please contact (name of ASPPC Coordinator) at 415-XXXX or myself at 415-XXXX.

Sincerely,

DMSSA Director

Enclosure: _____
Statement of Concerns

Distribution:
Do Not Place in ADAMS
ASPPC Files

OFC:	FSME: DMSSA	FSME: DMSSA	FSME	FSME: DMSSA	
NAME:	Lead Tech Staff	ASPB BC	ASPPC Coordinator	Director or Deputy	
DATE:					

NOT FOR PUBLIC DISCLOSURE
(Use this header on each page of the enclosure)

STATEMENT OF CONCERNS

Concern:

The Office of Federal and State Materials and Environmental Management Programs has received information from a concerned individual that the XYZ Agreement State inspector who responded to the incident at ABC Facility did not (insert details). Additionally, the concerned individual stated that there is off-site contamination at the ABC Facility and the Agreement State is not enforcing their regulations.

Enclosure

Appendix C

Sample Correspondence to the Concerned Individual

CI's Name and Address

Subject: THE CONCERN YOU RAISED TO THE U.S. NUCLEAR REGULATORY
COMMISSION REGARDING (AGREEMENT STATE) – FSME-20XX-AS-00XX

Dear CI:

FOR ALL LETTERS

This refers to concerns you raised in your (telephone conversation, letter, etc.) with/to Mr./Ms.
(Name) of the U.S. Nuclear Regulatory Commission, on Date, regarding (Agreement State).

COMBINED ACKNOWLEDGMENT AND CLOSURE LETTER FOR CONCERNS OUTSIDE MD
8.8, GUIDANCE AND AGREEMENT STATE JURISDICTION

As was discussed on (Date), the U.S. Nuclear Regulatory Commission does not have jurisdiction in
the area in which you have raised concerns. In addition, your concerns did not raise any health
and safety concerns related to the regulation of radioactive materials.

We plan no further action. Thank you for informing us of your concerns.

COMBINED ACKNOWLEDGMENT AND CLOSURE LETTER WHERE CI'S IDENTITY
RELEASED TO STATE

Specifically, you indicated that (summarize concern).

The NRC's oversight responsibility, by law, is limited to only those areas we have jurisdiction over
and relinquished under the Agreement with the State of (Agreement State). The NRC does not
have jurisdiction over the activities that are discussed in your concerns; we are referring you
concerns to (Agreement State). You agreed with this referral and to the release of your identity.
Your concerns were referred to:

INSERT: NAME; ADDRESS; AND PHONE NUMBER FOR PERSON IN STATE TO WHICH
CONCERNS WERE REFERRED

We have asked that the State inform you of the actions they take to address your concerns and
have requested that they also provide a copy to us. We plan no further action on the concerns
referred to the State, at this time. We implement our oversight by periodically reviewing the State's
radiation control program through the Integrated Materials Performance Evaluation Program
(IMPEP). (Agreement State's) most recent IMPEP review was in (Date). The result of the State
IMPEP review is available on the NRC website (<http://nrc-stp.ornl.gov/reviews.html>).

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(NOTE: This should appear only on the first page and the official record copy.)

FOR ACKNOWLEDGMENT LETTERS WHERE CI'S IDENTITY NOT RELEASED TO STATE

The enclosure to this letter documents your concern as we understand it. If the description of your concern is not accurate, please contact me so that we can assure that your concern is appropriately described.

The NRC's oversight responsibility, by law, is limited to only those areas we have jurisdiction over and relinquished under the Agreement with the State of (Agreement State). The NRC does not have jurisdiction over the activities that are discussed in your concerns; we are referring you concerns to (Agreement State). You agreed with this referral and indicated that you did not want your identity released to the State. Your concerns were referred to:

INSERT: NAME; ADDRESS; AND PHONE NUMBER FOR PERSON IN STATE TO WHICH CONCERNS WERE REFERRED

We have asked that the State inform us of their actions to address your concerns. We will provide you a copy of their response upon receipt. In addition, we implement our oversight by periodically reviewing the State's radiation control program through the Integrated Materials Performance Evaluation Program (IMPEP). (Agreement State's) most recent IMPEP review was in (Date). The result of the State IMPEP review is available on the NRC website (<http://nrc-stp.ornl.gov/reviews.html>).

The NRC intends to take all reasonable efforts not to disclose your identity to any organization, or individual outside the NRC, or the public unless you clearly indicate no objection to being identified. However, you should be aware that your identity could be disclosed if disclosure is necessary to ensure public health and safety, 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, or if you have taken actions that are inconsistent with and override the purpose of protecting a CI's identity.

FOR STATUS LETTERS (CI'S IDENTITY NOT RELEASED TO STATE)

This letter is a follow-up to our letter of (Date) and telephone conversations of (Insert if appropriate). In the letter of (Date) we indicated that we would be referring your concerns to (Agreement State) for action. We asked the State to inform us of their actions to address your concerns. We also indicated that we would provide you a copy of their response upon receipt. To date, we have not received a response. We will correspond with you further upon receipt of the State's response.

FOR CLOSURE LETTERS (CI'S IDENTITY NOT RELEASED TO STATE)

This refers to concerns you raised in your (telephone conversation, letter, etc.) with/to Mr.Ms. (Name) of the U.S. Nuclear Regulatory Commission, on Date, regarding (Agreement State). In the letter of (Date) we indicated that we would be referring your concerns to (Agreement State) for action. The concerns you raised and the response developed from information provided by the (Agreement State) are provided in the enclosure.

We trust these actions have been responsive to your concerns and we plan no further action. Thank you for informing us of your concerns.

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. Further, you should be aware you are not considered a confidential source unless confidentiality has been formally granted in writing.

Thank you for notifying us of your concerns. If you have any additional questions, or if the NRC can be of further assistance in this matter, please call me at 415-XXXX

Sincerely,

FSME ASPPC Coordinator

Enclosure:
Statement of Concern

Distribution:
Do Not Place in ADAMS
ASPPC Files

<u>OFC:</u>	<u>FSME: DMSSA</u>	<u>FSME: DMSSA</u>	<u>FSME</u>	<u>FSME: DMSSA</u>	
<u>NAME:</u>	<u>Lead Tech</u> <u>Staff</u>	<u>ASPB BC</u>	<u>ASPPC</u> <u>Coordinator</u>	<u>Director or</u> <u>Deputy</u>	
<u>DATE:</u>					

Appendix D

Sample Follow-up Correspondence for Referrals Exceeding 180 Days

Agency Representative

And Agency's Address

SUBJECT: REFERRAL OF MATTER RECEIVED BY THE U.S. NUCLEAR REGULATORY COMMISSION REGARDING (Name of Agreement State Program), Dated (Insert Date of Transmittal Letter)

Dear Mr. /Ms. (Last Name):

USE FOR ALL LETTERS

The U. S. Nuclear Regulatory Commission's (NRC) Office of Federal and State Materials and Environmental Management Programs (FSME) in letter dated (insert date) from (insert name of individual) to [(insert name of individual) referred information regarding a potential (insert performance and/or wrongdoing) concern involving (insert name of State employee, or name of Agreement State Program). A copy of that letter is enclosed.

To date, we have not received a response. We realize that these matters can require considerable time to address and resolve. However, the NRC has a responsibility to respond to the individual who initially referred this matter to us. Without a response from you, we are unable to adequately address the individual's concern. We would appreciate a response within 30 days informing us of the status of your actions or the details of your actions to resolve this matter. We ask that your response only be sent to me at the following address. No other copies should be sent to the NRC.

DMSSA Director (ADDRESSEE ONLY)
Office of Federal and State Materials
and Environmental Management Programs
U.S. Nuclear Regulatory Commission
Mail Stop XXXX
Washington, DC 20555

If your response contains personal privacy, proprietary, or confidential information, such information shall be contained in a separate enclosure, appropriately marked, so that it will not be subject to public disclosure. This letter and its enclosure should be controlled and distribution limited to personnel with a "need to know."

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(NOTE: This should appear only on the first page and the official record copy.)

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.

We also request that you control and limit the distribution of this letter and its enclosures. These documents should be limited to State personnel with a "need to know." Your cooperation with us is appreciated. If you have any questions, please contact (name of ASPPC Coordinator) at 415-XXXX or myself at 415-XXXX.

Sincerely,

DMSSA Director

Enclosure:

Letter dated (insert date) from (insert name of individual)

Distribution:

Do Not Place in ADAMS

ASPPC Files

<u>OFC:</u>	<u>FSME: DMSSA</u>	<u>FSME: DMSSA</u>	<u>FSME</u>	<u>FSME: DMSSA</u>	
<u>NAME:</u>	<u>Lead Tech Staff</u>	<u>ASPB BC</u>	<u>ASPPC Coordinator</u>	<u>Director or Deputy</u>	
<u>DATE:</u>					

Appendix E Sample ASPPC Resolution Plan

ASPPC Resolution Plan			
Agreement State Program Performance Concern: FSME-20XX-AS-XXXX			
<u>AGREEMENT STATE:</u>	<u>TECHNICAL STAFF:</u>		
<u>NEXT IMPEP OR PERIODIC MEETING DATE:</u>	<u>RECEIVED DATE:</u>		
Concern: <u>1.</u>			
<u>Concern:</u> (A concern is one or two sentences.)			
<u>Check each question as applicable to this concern.</u>			
	<u>Concern involving regarding the performance of State regulatory bodies or their personnel?</u>		
	<u>Concern regarding potential wrongdoing committed by State regulatory bodies or their personnel?</u>		
	<u>Does the concerned individual object to the NRC releasing his/her identity to the State?</u>		
<u>Concern Background, Supporting Information, & Comments:</u>			
<u>*Safety Significance:</u>	HIGH	Normal	N/A
<u>Basis:</u> Describe the concern's safety significance below			
<u>Technical Staff Recommendation(s)</u>			
<u>Check each recommendation as applicable to this concern.</u>			
	<u>*Recommended Action</u>	<u>Assigned Branch</u>	<u>Planned Date</u>
	<u>Referral to the Radiation Control Program Director (RCPD)</u>		
	<u>Referral to Senior Line Management above the RCPD</u>		
	<u>Referrals to State Inspector General, Attorney General, or Equivalent.</u>		