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DOCUMEN NUMBER

PROPOSED RULE

PR-19 et al. (10)  
(45 FR 15184)

COMMENTS SUBMITTING ON THE ISSUE OF "PROTECTION OF EMPLOYEES WHO PROVIDE INFORMATION" 10CFR 19,30,40,50,70,71,50.(Proposed. )

This proposed rule change is a start but a very limited start. What this rule change purports to do and what it does are two very different things.

What this rule purports to do and what this rule does are two contradictory things.

This rule purports to "protect employees who provide information."

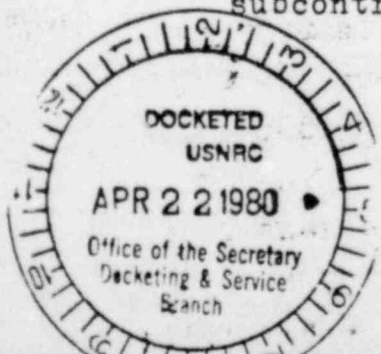
What this rule actually does is demonstrate ways for the employer to get back at employees who provide information without any repercussions. The rule also demonstrates ways for the NRC to ignore confidential information.

The way that an employer can get rid of an employee without running afoul of this rule is given in 10CFR 19.20:

"Discrimination by a licensee, or a contractor of a licensee against an employee for engaging in certain activities under this part or Parts 30,40,50,70, or 71 is prohibited."

All an employer need do to get around this part is fire the employee and say it was for some other reason than providing information.

Another means to get around this part appears in Para 30.7 (c). Only licensee and applicant for license are mentioned for penalties. Contractors and subcontractors can discriminate without penalty. All the licensee has to do to get around this rule is transfer the employee to the contractor or subcontractors' payroll, and then the subcontractor can fire the employee with impunity. Also, if the employee who provides information is already an employee of a subcontractor, it's all the simpler. The subcontractor can fire the employee immediately without penalty because no penalties to subcontractors appear in this proposed rule change.



THIS DOCUMENT CONTAINS POOR QUALITY PAGES

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This proposed rule change also provides ways for the NRC to ignore discrimination against employees who provide information. The first way to ignore discrimination is a very simple ploy. Form NRC 3 is mentioned in the Regulation, but it is not shown in the regulation. This means that Form NRC 3 may be rewritten as a way to dissuade people from petitioning for redress of grievance under this proposed rule. For instance, Form NRC 3 can be rewritten into a stilted bureaucratese, legalese form which would be both unintelligible to the average reader and confusing to the point that a lawyer could not hope to follow all the steps correctly.

Form NRC 3 must be written into clear, simple language with easy steps and made part of the regulations.

The proposed rule change makes no deadlines under which the NRC must act on a complaint of discrimination against an employee who provides information.

"Justice delayed is justice denied."

Many of these employees are itinerant construction workers. If they have been fired for providing info, they will be looking for work and will often have to leave the area to get it. The NRC has a habit of not acting promptly.

Davis Beese had the same problem a year before TMI#2 had an accident due to a Stuck Dresser Valve. I am enclosing a letter where Boyce Grier of the Executive Legal Director's office took 6 weeks to answer a letter from me about concrete problems at Limerick. Without hard and fast deadlines that the NRC must meet, this proposed rule change provides no protection to the employee and a means for the licensee to do as he wants without fear of NRC suspension.

Providing no deadlines and no penalties for those employees who miss those deadlines is one more way that NRC has to get out of enforcing this proposed rule change.

The main problem with this regulation is that it looks at the problem of employees providing information after the harm has already been done. What is needed is a confidential route for employees to use to get info to the NRC without fear of reprisal. The only way that the employee can be assured of no reprisal is the case where nobody knows who that employee is. This requires a means where a person can write or call to provide information without giving his name or job. A phone number and address should also be listed on Form NRC 3 for this purpose. This type of route is very important due to the poor attitude within the NRC.

I enclose a letter from Boyce Grier to me dated Sep 19, 1980. First, it took 6 weeks for Mr Grier to answer my letter stating that I wanted to get some info to the NRC on concrete problems at Limerick. I needed the info to be handled confidentially to protect my source.

Mr Grier pointed out that if the information did get out as to the identity of my source, he would 'cop a plea' that somebody else let it slip. He also threatened that "persons responsible for defects" would not be protected. My source and I both read Mr Grier's letter to be a veiled threat that Mr Grier would try to show that the defects were caused on purpose by my source and failing that he would release my source's identity and say he did not know how the name of my source got out.

Hearing Boards also show great disdain for confidential information from employees of NRC Licensee's.

"Interrogatory NRC 30 inquires of the staff if some means has been promoted to obtain anonymous tips from informants as to practices on the construction and maintenance of the TMI#1 facility. Mr Lewis goes on to explain that he believes that the interrogatory can relate to the maintenance of the filters referred to in his contention. The Interrogatory, although theoretically having some connection to Mr. Lewis' contention, is not reasonably calculated to lead to the discovery of admissible evidence. We do not require the staff to respond."

Requested actions from the NRC:

1. Rewrite these proposed rule changes so that it truly protects the employee who provides information.
2. Take out the means by which the NRC can delay action until the problems goes away.
3. Provide confidential routes for licensee employees to give NRC information.
4. Provide penalties to contractor , subcontractors, and NRC employees who do not provide fair treatment of employees who provide information.

*Marion I. Lewis*  
4.18.80.

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NUCLEAR REGULATORY COMMISSION  
REGION I  
631 PARK AVENUE  
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SEP 19 1979

read

20 Sep

Mr. Marvin J. Lewis  
6504 Bradford Terrace  
Philadelphia, Pennsylvania 19149

Dear Mr. Lewis:

Your letter of August 7, 1979 to Victor Stello has been referred to this office for reply. Your letter stated that you and your acquaintances have uncovered concrete problems at Limerick and Susquehanna equivalent or similar to those at Marble Hill. You stated that if we want this information, we should contact you. You stated that some of this information is confidential and you must have it in writing that disclosure of this information will not cost anybody their job.

We assume that your statement about not costing anybody their job refers to your acquaintances who are employed in some capacity at reactor construction sites and who have information to provide to NRC, rather than to persons who may be responsible for defects of which you allegedly are aware. We have procedures to safeguard the identity of confidential sources of information and can assure you that we will to the best of our ability protect the identity of persons who provide information to us and who request confidentiality. We do not, of course, have knowledge of or control over others to whom the information may have been given and therefore we cannot comment concerning the possibility of an informant's identity being revealed through someone other than NRC.

Enclosed with this letter is a copy of Public Law 95-601. Section 10 of that law describes protection afforded to employees of Commission licensees, their contractors or subcontractors who provide information to the NRC.

We desire to meet with you as soon as practical to obtain all details which you and your acquaintances may have regarding concrete problems at Limerick and Susquehanna. We request that you contact Mr. R. W. McGaughy or Mr. J. C. Mattia of this office at 215-337-5000 to arrange a mutually acceptable time.

Your letter of April 30, 1979 to Mr. Harold D. Thornburg requested information regarding Wolf Creek. We understand that all of the information you requested is not yet available, but that it will be provided when it becomes available.

Sincerely,

Boyce H. Grier  
Director

Enclosure: As stated

Sir:

You have to be kidding. I send in a letter on Aug 7 stating that I have information on safety related concrete problems and do not receive your reply for 6 weeks. That demonstrates your and the NRC lack of interest.

Then, you "cop a plea" over some very minimal and reasonable assurances which I require. First, you intonate that my sources may be saboteurs "rather than 4 persons who may be responsible for defects."

OK, why don't you just say that if there are defects, you are going to try to accuse and discredit the informants by saying they caused them!

Then, you protect yourself further. "control over others." In other words, when word gets out, you're already saying beforehand somebody else did it.

PL 95-601 is a farce as far as the construction industry goes. There are regular lay-offs for lack of properly scheduled work. Proving a bias in lay off priority is close to impossible.

I shall see that the info is presented to the proper authorities: I shall not, however, send my informants to the NRC because of your attitude.  
M. L. W.

in dated letter sent to Barry Greier NRC  
in answer to his letter of Sep 19, 79.