

NORTHEAST UTILITIES



THE CONNECTICUT LIGHT AND POWER COMPANY
WESTERN MASSACHUSETTS ELECTRIC COMPANY
HOLYOKE WATER POWER COMPANY
NORTHEAST UTILITIES SERVICE COMPANY
NORTHEAST NUCLEAR ENERGY COMPANY

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July 19, 1985

Docket No. 50-423
A05046

Mr. R. W. Starostecki, Director
Division of Reactor Projects
Region I
U.S. Nuclear Regulatory Commission
631 Park Avenue
King of Prussia, PA 19406

- References: (1) R. W. Starostecki letter to J. F. Opeka, "Allegations at Millstone 3," dated May 17, 1985.
- (2) J. F. Opeka letter to R. W. Starostecki, " Millstone Nuclear Power Station, Unit No. 3, Schedule for Response to Allegations," dated June 19, 1985.

Gentlemen:

Millstone Nuclear Power Station, Unit No. 3
Response to Allegations

This letter is in response to Reference (1) and our schedule for response contained in Reference (2). On July 9, 1985 we met with you and your staff to discuss, among other items, our overall plans to modify and solidify our Allegation Program for Millstone Unit No. 3 to be responsive to the comments provided by your staff.

As you requested, we have reevaluated our system for receiving and responding to allegations regarding Millstone Unit No. 3. As a result of this, we have hired a full-time consultant to work with us in establishing an effective, visible, on-site facility designated the Quality Concern Office (QCO), where allegations regarding project safety can be expressed with an individual independent of Project management with a guarantee of anonymity. In addition, the process will track all allegations registered and provide that a response be given to the individual who raised the concern. The consultant we retained has been involved with worker allegations in the past and is familiar with procedures being used at other sites. The consultant will have direct access to our Vice President-Generation Engineering and Construction, who is also the Millstone Unit No. 3 Project Officer and is stationed full-time at the Millstone Unit No. 3 site. The Vice President - Generation Engineering and Construction is the company officer responsible for implementing our Allegation Program.

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In addition, an Allegation Review Team (Review Team) has been established to review safety concerns raised and to determine whether or not there is any basis for the allegation. The Review Team responsibilities are delineated in a specific project procedure (copy attached) as well as in a specific charter which has been established (copy attached). The Review Team is comprised of key management personnel who have a wide range of backgrounds and extensive experience in the nuclear industry. Four of the members have been or are currently involved with our Nuclear Review Boards.

As a result of recommendations made by the Review Team, a full-time administrator responsible for providing overall coordination for our allegation reviews has been appointed. This individual also has extensive experience in the nuclear industry. He will report directly to our Vice President-Generation Engineering and Construction and be located on site. Responsibilities will include coordinating the daily activities of the QCO and providing assistance to the Review Team.

We are also in the process of putting together an Independent Review Board (refer to attached Millstone Unit 3 Project Procedure) which will be responsible for conducting an independent and detailed investigation of any allegations which have been determined by the Review Team to potentially have substance. This Board will be comprised of one or more individuals who have expertise in the areas of labor relations, law, nuclear construction, and quality assurance/quality control.

One of the concerns that we share with your staff is the fact that the majority of the allegations on Millstone Unit No. 3 continue to be directed to NRC Region I and not to the Project or the Review Team. We believe that the availability of the QCO in a field trailer will provide a more effective, approachable method for workers who might be reluctant to register their concerns with management. As noted to you during our July 9, 1985 meeting, a letter to all Millstone Unit No. 3 employees will be sent in the near future which will again explain the extent of our program and highlight the establishment of the QCO.

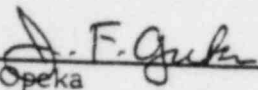
As you requested in Reference (1), we have evaluated the safety merits of the allegations forwarded to us. The results and conclusions of our evaluation for each allegation is provided in Enclosure I to this letter. Please note that we have broken one allegation into two components for completeness in evaluation.

As you can see, we have taken extensive actions on the subject of allegations over the past few months and will continue to pursue actions which will make our process more effective. We have reviewed the experiences of other sites which have responded to allegations and incorporated that insight into our program.

We consider our program, which will soon be fully implemented, to be an effective mechanism for responding to allegations raised on Millstone Unit No. 3. We remain available to further discuss our Allegation Program with you or your staff.

Very truly yours,

NORTHEAST NUCLEAR ENERGY COMPANY



J. F. Opeka
Senior Vice President

ENCLOSURE I

MILLSTONE NUCLEAR POWER STATION, UNIT NO. 3

RESPONSE TO ALLEGATIONS
MADE TO THE NRC
AND IDENTIFIED TO NNECO
IN NRC LETTER DATED MAY 17, 1985

MILLSTONE NUCLEAR POWER STATION, UNIT NO. 3
RESPONSE TO ALLEGATIONS

INTRODUCTION

An investigation of the allegations made to the NRC and reported to Northeast Nuclear Energy Company (NNECO) in a letter dated May 17, 1985 has been conducted. This report summarizes the results of this investigation.

An investigatory plan was prepared which identified seven issues related to the six allegations noted by the NRC. No objective evidence of the identities of the individual(s) making the allegations was available to the investigators, nor was any specific attempt made to identify them. Therefore, it was not possible to determine if the individual(s) making the allegations were among those interviewed during the course of the investigation.

The following is the list of items that were investigated.

1. Inadequate training of FQC weld inspectors in that they are not shown examples of welding problems but are only qualified "on paper." This issue relates primarily to the inspection of cable tray supports.
2. Because of inadequate FQC inspector training, cable tray support welds received inadequate QA inspection.
3. There was a strong emphasis on work quantity, with FQC inspectors being "pushed" to sign off on work items.
4. Due to item 3 above, safety concerns involved are not being given sufficient emphasis. A specific example of this is a thin layer of concrete was noted in several cases presumably crumbling from tray support bolt stress.
5. The HVAC ducting pop rivets are too short for full penetration.
6. The HVAC FQC supervisor adds to or deletes from inspection reports based on his opinion.
7. FQC personnel are not able to speak candidly with the NRC.

Throughout the course of the investigation, documentation was reviewed, personnel were interviewed and current work practices evaluated. Personnel in the following organizations were interviewed:

- o Stone and Webster Engineering Corporation (SWEC) Quality Assurance
- o SWEC Field Quality Control Management
- o SWEC Electrical and HVAC Inspection Supervision
- o SWEC Electrical and HVAC Inspectors
- o Contract Electrical and HVAC Inspectors
- o U.S. NRC Resident Inspector

DETAILED DISCUSSION OF ALLEGATIONS

Allegation No. 1 This allegation concerned the adequacy of training, in the visual inspection of welds. The allegation related primarily to cable tray support welds.

As part of this inspection, the programmatic and procedural requirements for welding inspector training were reviewed to determine their adequacy. The training records of a sample of the cable tray support inspectors were also reviewed. It was determined that the electrical inspector training program does not require that welding inspectors be shown examples of welding problems. As a result of this review, it was concluded that training requirements were met, and that the program is adequate for the purpose intended.

Allegation No. 2 This allegation concerns the adequacy of weld inspections performed on cable tray supports and is based on the presumption that Allegation No. 1 is factual and significant.

Weld inspection results for the past several months were reviewed to determine if the rejection rate for welding inspections performed by electrical inspectors might be indicative of inadequate inspection. If the premise of this allegation were true, then unsatisfactory welding conditions would be accepted and accordingly, the reject rate would be expected to be abnormally low. The rejection rate for this time period averaged 13.6% which is higher than the rejection rate for any other welding activity during the same time frame.

A sample of representative welds on cable tray supports utilizing power strut or tube steel was also examined. These included examples of strut welded to building steel, embedded plate, tube steel, steel channel, surface mounted plate, and end plates. Only a limited number of examples of tube steel used as a cable tray support could be found and were also examined. Of the two (2) cases found where tube steel was used, one had been inspected and found satisfactory and other had not yet been inspected. All welds examined which had received and passed final inspection met the appropriate acceptance criteria. A sample of inspection reports documenting the FQC inspection of these welds was also reviewed and found to be in order.

The investigation determined that some configurations of supports, primarily those which had been stiffened by the addition of tube steel, had not yet been inspected. These could be the basis for the allegation. We are aware of the need to inspect those supports and final inspections are currently scheduled.

Electrical support welds were also checked during the recent CAT inspection on site. (Reference: Construction Appraisal Team Inspection Report, 50-423/85-04, dated May 21, 1985, page IV-6, 7.) During the CAT review, approximately 434 electrical support welds were visually inspected and found to be acceptable.

The investigation concluded that there is no evidence that any safety issue exists.

Allegation No. 3

This allegation concerns the amount of time allocated for the performance of inspections.

While it is understood that inspectors must not be pressured to complete assignments in an unreasonably short period of time, prudent management dictates that personnel in any job category, including quality, control/quality assurance, cannot be permitted to practice poor work habits. Personnel must recognize that on-time delivery is one element of a quality job. The difference between allowing an individual adequate time to perform a task and requiring that a task be performed in an unreasonably short period of time is obviously judgmental. While none of the personnel interviewed claimed to have been subjected to pressure to perform inspections in an unreasonably short period of time, most felt that the heavy overtime schedule was a form of pressure to meet "schedule," i.e., emphasizing "quantity" of work.

Our investigation did not reveal any indication of pressure to not document unsatisfactory conditions or to accomplish an inspection in an unreasonably short period of time to meet scheduled commitments. Accordingly, the investigation concluded that there is no evidence that a safety concern exists.

Allegation No. 4

The allegation concerns a specific physical condition alleged to exist and implies that the condition was not fully investigated and evaluated because of allegation No. 3. The example given pertains to concrete crumbling from stress exerted by cable tray support bolts.

The potential for this condition was identified at another site and brought to the attention of FQC at Millstone Unit No. 3. The cable tray support inspectors were informed of the condition and directed to inspect for this condition. A small number of occurrences were noted by inspection personnel and all were documented as unsatisfactory inspection reports.

Two (2) Engineering and Design Coordination Reports (E&DCR) were later generated to clarify the acceptance criteria concerning attachments to struts embedded in concrete. Several instances of areas where this condition had been identified were examined and those requiring repair had been repaired.

Personnel in the electrical discipline, which is the discipline which identifies such conditions during electrical equipment installation inspections, are knowledgeable of the potential for this problem and were able to demonstrate that the situation had been handled properly.

The investigation concluded that there is no evidence that any safety issue exists.

Allegation No. 5

This allegation concerns a specific physical condition regarding HVAC pop rivets alleged to exist at a discrete identified location.

The investigation included a review of inspection acceptance criteria for pop rivets and inspection reports for the identified location. In addition, the installation at the identified location and numerous other examples of similar construction were examined. Prior to May 25, 1985, the acceptance criteria for pop rivet length was the manufacturer's recommended range for each size rivet. In most cases, this would result in a minimum of 1/4" projection of the rivet through the parts being joined. Nonconformance and Disposition (N&D) Report No. 12309, dispositioned May 25, 1985, provided more definitive criteria for acceptable pop rivet length. The disposition states: "A rivet shall be considered properly installed as long as the end of the mandrel is approximately flush or slightly sunk relative to the rivet sleeve and the rivet sleeve curls over end of mandrel to ensure its positive retention." Under this acceptance standard, no short rivets were in evidence in any of the duct work inspected. The basis for the allegation may have been the change in acceptance criteria effected by N&D No. 12309.

The investigation could find no evidence that quality or safety requirements were comprised.

Allegation No. 6

This allegation concerns the proper handling of inspection results and implies that inspectors' findings are not accurately reflected in the Inspection Reports (IR).

The investigation included a review of the system for review and approval of IRs by inspection supervision prior to issuance. Interviews were conducted with inspectors and

inspection supervisors in the HVAC discipline. The review of IRs by the inspection supervisor is required by current procedures. None of the personnel interviewed stated that they thought that their IRs had ever been inappropriately changed or altered. All stipulated that when changes or corrections were necessary, they had been contacted, the nature of the change or correction discussed with them and their concurrence obtained. We reviewed examples of the type of IR corrections that are made by inspection supervision. The majority of the corrections made were grammatical or editorial. There were a few instances of correction of numerical mistakes and one case of incorrect interpretation of acceptance criteria by the inspector. Documentation is on file dealing with several more cases of correction of IRs resulting from clarifications to specifications or inspection requirements.

The investigation concluded that the system is functioning properly and that there is no evidence that any safety issue exists.

Allegation No. 7

This allegation concerns the degree of freedom afforded inspectors in communicating with the NRC.

Interviews were conducted with SWEC inspectors as well as the NRC Resident Inspector and SWEC FQC management to determine if this perception was shared by any of the involved parties. None of the parties interviewed stated that they felt there was any basis for this allegation.

The allegation may have resulted from the way SWEC FQC organized for the recent CAT inspection. During the inspection, each NRC inspector had available a SWEC FQC individual (usually the discipline supervisor) to provide information, arrange for access to items selected for inspection, and to respond to questions. As a result, most of the SWEC FQC inspectors' contacts with NRC inspectors during the CAT were in the presence of a SWEC FQC supervisor. The NRC Resident Inspector has free access to any personnel he may wish to speak with. All SWEC personnel we interviewed were aware that they may speak with the NRC Resident candidly and without supervisory personnel present.


The investigation concluded that there is no evidence of management interference or constraints regarding FQC personnel discussions with the NRC.

MILLSTONE UNIT 3 PROJECT PROCEDURE

MP3 6.12

INTERNAL INVESTIGATION AND RESOLUTION OF
WORKER ALLEGATIONS

APPROVED


Vice President
Generation Engineering and
Construction Division

REVISION 0

DATE March 22, 1985

1.0 PURPOSE

The purpose of this procedure is to use the manpower resources of Northeast Utilities Service Company and Northeast Nuclear Energy Company (together, "Northeast") and impartial third parties efficiently and without interrupting the Millstone 3 project schedule to investigate and resolve worker allegations regarding nuclear safety issues at the Millstone 3 site.

Specifically, the objectives of this procedure are:

- 1.1. To determine whether an allegation is true;
- 1.2. To assess the significance of the allegation with respect to overall plant safety;
- 1.3. To determine any remedial actions required; and
- 1.4. To determine any actions needed to comply with reporting or other regulatory requirements.

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2.0 APPLICABILITY

2.1. This procedure will be implemented solely with respect to allegations regarding nuclear safety at Millstone 3. Concerns of workers regarding other matters (e.g., personnel issues) will be addressed through separate Northeast and/or Stone & Webster Engineering Corporation (S&W) procedures.

2.2. This procedure will apply regardless of the initial source of the allegation, i.e., whether it is received by telephone, in writing or in person by Northeast or S&W personnel and whether the individual is identified or not. Allegations made to the Nuclear Regulatory Commission (NRC) are beyond the scope of this procedure and are subject to NRC rules and procedures regarding worker allegations, unless the NRC advises Northeast of the allegation in sufficient detail (in the sole judgment of Northeast's Vice President - Generation Engineering and Construction (VP-GEC)) to permit an investigation by Northeast pursuant to this procedure.

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2.3. This procedure will not apply, in the first instance, to allegations made directly to the independent Nuclear Review Team which has been established by Northeast. However, upon receipt of the Nuclear Review Team's report on a particular allegation, this procedure will become applicable if the VP-GEC determines that further review pursuant to this procedure is warranted.

3.0 REFERENCES

3.1. NEO Policy Statement No: 22 - Employee Protection.

3.2 NEO Policy Statement No. 23 - Investigations by Nuclear Regulatory Commission, Office of Investigations.

3.3 NEO 2.01 - Reporting of Defects and Noncompliances per Part 21 of Title 10, Code of Federal Regulations.

3.4 NEO 2.15 - Nuclear Complaints and Concerns.

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3.5 NUP 23 - Northeast Utilities System Personnel Policy
and Procedures - Employee Grievances and Complaints.

4.0 DEFINITIONS

As used in this procedure, "worker allegations" includes allegations made by any personnel involved in the Millstone 3 project in any discipline at any level, including craft, manual, non-manual, supervisory, engineering and other personnel. However, "allegations" includes only complaints, comments or inquiries which the VP-GEC determines are potentially substantive. "Allegations" do not include all differences of opinion or expressions of dissent voiced by workers on the Millstone 3 project, and it is recognized that some assertions by workers may be too preliminary, unfocused or lacking in potential substance to warrant investigation under this procedure.

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5.0 RESPONSIBILITY

The VP-GEC and the Northeast Senior Vice President - Nuclear Engineering and Operations (SVP-NEO) shall have primary responsibility to implement these procedures as outlined in Section 6.

6.0 INSTRUCTIONS

6.1. All allegations reported to Northeast or S&W personnel shall be referred to the VP-GEC. The VP-GEC shall make a determination at that time whether the NRC's resident inspector should be informed of the allegation and whether any reports should be filed with the NRC pursuant to 10 CFR §50.55(e) or 10 CFR Part 21. The VP-GEC should review Part B of Attachment 8.B to this procedure in making that determination.

6.2. The VP-GEC will determine whether information received about a possible deficiency is substantive enough to constitute an "allegation" to be investigated under this procedure.

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6.3. If the VP-GEC determines that the allegation warrants investigation, the VP-GEC shall establish a team (the "Team") to conduct an initial screening investigation of the allegation. The Team shall have the following responsibilities:

- 6.3.1. To conduct a preliminary examination, through interviews, document examination and/or physical tests, in order to substantiate the allegation, and specifically, to determine whether there is sufficient evidence in any form to indicate that the allegation has some basis in fact or, alternatively, whether the allegation is wholly lacking in factual basis.
- 6.3.2. To prepare a written report of the allegation, the investigation conducted by the Team to determine if there is any substance to the allegation, the results of the investigation and the recommendations of the Team.

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6.4. The VP-GEC shall have sole discretion and responsibility to choose Northeast, S&W or other contractor or subcontractor personnel to serve on a Team, considering the nature of the allegation, subject to the following conditions:

6.4.1. No Northeast, S&W, or other contractor or subcontractor employee may serve on a Team which is investigating an allegation implicating or otherwise involving such employee in any way;

6.4.2. Each Team shall be headed by a Northeast representative.

6.5. Before beginning the initial screening of an allegation, the Team shall determine the scope of the screening investigation and report to the VP-GEC regarding the proposed scope and how that scope was determined. Normally, the Team will provide such report to the VP-GEC, orally or in writing, within 5 calendar days of being appointed to conduct the investigation of the allegation. The VP-GEC shall have sole

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responsibility and discretion to modify the scope of the investigation in any manner.

6.6. The Team's report, which will normally be completed within 14 calendar days from the date the allegation is referred to the Team by the VP-GEC, will include at least the following information:

- 6.6.1. A description of the allegation;
- 6.6.2. A description of the scope of the initial screening;
- 6.6.3. How the Team determined what the scope of the initial screening should be (as to interviews conducted, documents examined and physical tests performed), including whether any changes to the Team's initial recommendations were made by the VP-GEC;

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- 6.6.4. Except where anonymity has been requested, the names of personnel interviewed, including names of all those present at each interview and the time and place of the interview;
- 6.6.5. A description of physical tests performed, including a description of the types of material and equipment examined, the reasons for the sampling selected, who performed the tests, the time and place of each test and the results of each test;
- 6.6.6. A description of documents examined, including the type of document, who prepared (and/or approved) the document, how the document relates to the worker allegation, who examined the document and the nature of the examination;

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6.6.7. The Team's conclusions regarding whether the allegation has some basis in fact or is wholly lacking in factual basis;

6.6.8. The Team's evaluation of the potential safety significance of the alleged deficiency in terms of whether, if it remained uncorrected, it could adversely affect the safety of plant operations;

NOTE: For purposes of this evaluation, the Team should assume that the allegation is true.

6.6.9. The Team's evaluation of whether any individual is guilty of wrongdoing in connection with the alleged deficiency and its recommendations regarding the need for disciplinary action, including its analysis of why such disciplinary action would not violate Section 210 of the Energy Reorganization Act of 1974 (the "Act") and 10 CFR §50.7 promulgated thereunder;

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NOTE: Section 210 and 10 CFR §50.7 prohibit retaliatory actions against employees who report or otherwise participate in investigations of violations of the Act or the Atomic Energy Act of 1954. The Team should consult Attachment 8.A, Part A of Attachment 8.B and Attachment 8.D to this procedure in connection with its analysis.

6.6.10. The Team's evaluation of whether the allegation represents a reportable event under NRC rules and regulations; and

6.6.11. The Team's recommendations regarding whether a further, more comprehensive investigation should be conducted, including further investigation of possible wrongdoing by any individual.

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6.7. In making any recommendation regarding additional investigation of an allegation, the Team should consider the following:

- 6.7.1. The potential safety significance of the alleged deficiency;
- 6.7.2. The scope of the initial screening; and
- 6.7.3. The potential benefit of further review by an independent board with respect to future implications of the allegation (e.g., possible NRC investigation or public relations).

6.8. Upon request of a Team or on the VP-GEC's initiative, Northeast may assign a Northeast staff attorney and/or an outside attorney as a consultant to the Team and the VP-GEC if the nature of the allegation indicates that legal advice may be

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necessary or advisable or to advise the Team regarding possible NRC regulatory compliance required in connection with the allegation.

6.9. The VP-GEC shall review all reports and recommendations of each Team. If the Team concludes, and the VP-GEC concurs, that the allegation is wholly lacking in factual basis, normally no further action will be taken. If the Team and/or the VP-GEC conclude that the allegation has some factual basis, the VP-GEC shall, after consultation with the SVP-NEO:

6.9.1. Require further review, analysis and/or re-evaluation by the Team conducting the initial screening;

6.9.2. Without further investigation, initiate remedial action by Northeast and/or S&W, including disciplinary action against individuals guilty of wrongdoing;

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6.9.3. After considering the factors set forth above in Sections 6.7.1-6.7.3, require that a further, more comprehensive investigation be conducted by an independent review board.

6. 0. With respect to recommendations of disciplinary action, the VP-GEC shall include an analysis, or may concur in the Team's analysis, of why such action would not violate Section 210 of the Act and 10 CFR §50.7 promulgated thereunder.

6.11. The VP-GEC, after consultation with the SVP-NEO, shall have the sole responsibility and discretion to decide upon the appropriate disposition of the allegation. The VP-GEC shall prepare a written report setting forth conclusions and the actions which he, after consultation with the SVP-NEO, has determined are appropriate for disposition of the allegation. Among other things, the VP-GEC, in consultation with the SVP-NEO, may order disciplinary action against any Northeast employee who is found to have been involved in wrongdoing. In addition, the VP-GEC, in consultation with the SVP-NEO, may

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recommend to S&W or any contractor that S&W or such contractor take disciplinary action against any of its employees who is found to have been involved in wrongdoing. S&W or such contractor shall have the final authority to decide upon any disciplinary action to be taken against its employees. The VP-GEC, after consultation with the SVP-NEO, shall also decide whether to inform the NRC's resident inspector of the allegation and the status of the investigation and shall decide whether any reports should be filed with the NRC pursuant to 10 CFR §50.55(e) or 10 CFR Part 21.

6.12. If the VP-GEC, after consultation with the SVP-NEO, determines that a more comprehensive investigation is appropriate, the VP-GEC will assign the responsibility for conducting that investigation to an Independent Review Board (the "Board") comprised of individuals from the following groups:

- 6.12.1. An independent engineering consulting firm with expertise in the relevant engineering

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disciplines, as well as in quality assurance and quality control;

6.12.2. An independent engineering/construction firm with experience in nuclear construction;

6.12.3. A labor expert (e.g., a professor with labor background or a former government employee in the labor area); and

6.12.4. An outside attorney who has no prior relationship with Northeast or S&W.

6.13. The Board may be comprised of one or more individuals from each of the foregoing groups, depending on the nature of the allegation. The VP-GEC shall keep a list of individuals from each of the above groups who will be available to serve on the Board from time to time.

6.14. The VP-GEC and the members of the Team who performed the initial screening investigation shall be available to the

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Board at all times to provide additional background, information and advice.

6.15. Upon the request of the Board or on the VP-GEC's initiative, Northeast may assign a Northeast staff attorney and/or an outside attorney as a consultant to the Board, in addition to any attorney who may be sitting on the Board, if the nature of the allegation indicates that legal advice may be necessary or advisable or to advise the Board regarding possible NRC regulatory compliance required in connection with the allegation.

6.16. The responsibilities and duties of the Board will be substantially the same as those of the Team described in Sections 6.3, 6.5 and 6.6 above with respect to conducting an investigation and preparing a report, except that the scope of the investigation shall be much more extensive and the report shall be much more detailed. In addition, instead of determining whether an allegation has some basis in fact or is

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wholly lacking in factual basis, the Board will determine and report on whether and to what extent the allegation is true.

6.17. Prior to commencing its investigation, the Board will determine the scope of the investigation which it intends to conduct and will obtain the VP-GEC's approval of the estimated costs associated with that investigation. The cost of the Board's investigation may not exceed the amount approved by the VP-GEC without the VP-GEC's prior approval.

6.18. The Board's report will normally be completed within 45 calendar days from the date the allegation, including the Team's final report, was referred to it for further investigation.

6.19. The VP-GEC shall review all reports and recommendations of the Board. The VP-GEC shall act as liaison between the Board and the SVP-NEO and shall report all findings and recommendations of the Board to the SVP-NEO. Based on the findings and recommendations of the Board, the VP-GEC shall recommend the final disposition of the allegation to the SVP-

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NEO, including any remedial or disciplinary action which the VP-GEC considers appropriate. With respect to recommendations of disciplinary action, the VP-GEC shall include an analysis of why such action would not violate Section 210 of the Act and 10 CFR §50.7 promulgated thereunder.

6.20. The SVP-NEO shall have the ultimate responsibility and discretion to decide whether to inform the NRC's resident inspector of the allegation and the outcome of the Board's investigation and to decide whether any reports should be filed with the NRC pursuant to 10 CFR §50.55(e) or 10 CFR Part 21, if such acts have not already been performed.

6.21. The SVP-NEO shall have the ultimate responsibility and discretion to decide upon the final disposition of all allegations reviewed by the Board, including the remedial action, if any, to be taken based on the findings of the Board and the recommendations of the VP-GEC. Among other things, the SVP-NEO may order disciplinary action against any Northeast employee who is found by the Board to have been involved in

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wrongdoing. In addition, the SVP-NEO may recommend to S&W or any contractor that S&W or such contractor take disciplinary action against any of its employees who is found by the Board to have been involved in wrongdoing. S&W or such contractor shall have the final authority to decide upon any disciplinary action to be taken against its employees.

7.0 FIGURES

7.1. Flow Chart

8.0 ATTACHMENTS

<u>Attachment No.</u>	<u>Attachment Title</u>
8.A	Copies of Section 210 of the Energy Reorganization Act of 1974 and 10 CFR §50.7
8.B	Legal Considerations
8.C	Copy of Form NRC-3.

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8.D

Evaluation of Employee Discipline under
Section 210 of the Energy Reorganization
Act of 1974.

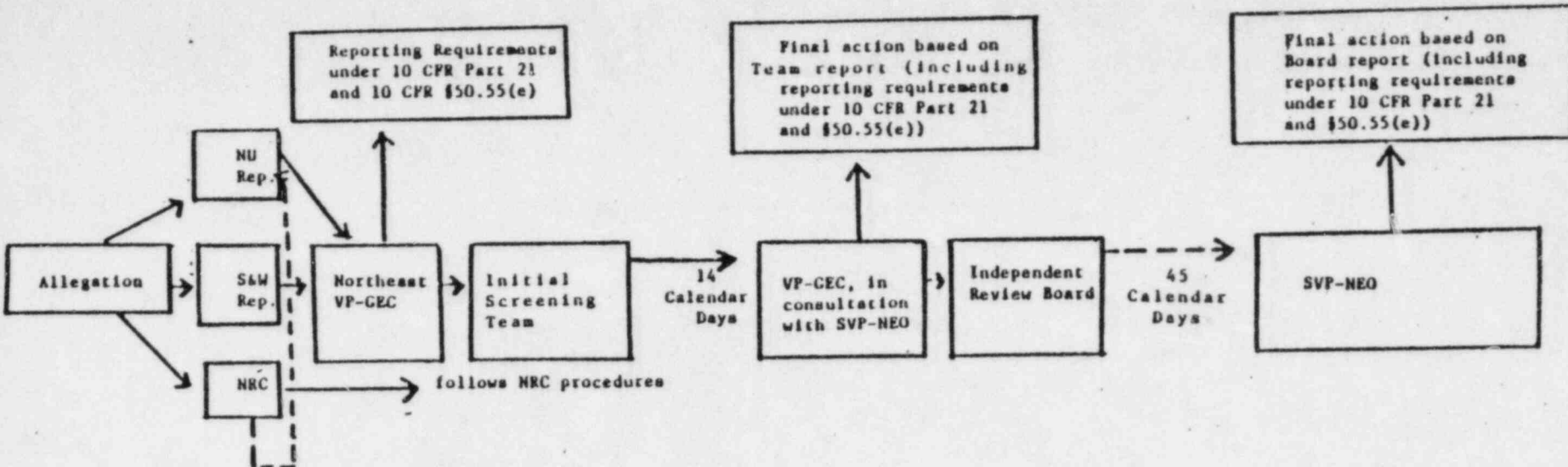
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FLOW CHART

Figure 7.1

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[§ 2321b]

EMPLOYEE PROTECTION

Sec. 210. (a) No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or the Atomic Energy Act of 1954, as amended, or a proceeding for the administration or enforcement of any requirement imposed under this Act or the Atomic Energy Act of 1954 as amended;

(2) testified or is about to testify in any such proceeding or;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this Act or the Atomic Energy Act of 1954, as amended.

(b)(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint and the Commission.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (1) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's and

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expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c)(1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Whenever a person has failed to comply with an order issued under subsection (b)(2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e)(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

(g) Subsection (a) shall not apply with respect to any employee who, acting without direction from his or her employer or the employer's agent, deliberately causes a violation of any requirement of this Act or of the Atomic Energy Act of 1954, as amended.

[Sec. 210 as added by Public Law 95-601, approved November 6, 1978.]

.01 Historical comment.
1978 Amendments: Public Law 95-601, approved November 6, 1978, amended Title 11

of the Act by adding at the end thereof a new section 210.

TITLE III—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

[§ 2322] TRANSITIONAL PROVISIONS

Sec. 301. (a) Except as otherwise provided in this Act, whenever all of the functions or programs of an agency, or other body, or any component thereof, affected by this Act, have been transferred from that agency, or other body, or any component thereof by this Act, the agency, or other body, or component thereof shall lapse. If an

§ 2322 § 301

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owned utilities, including generation or distribution subsidiaries, public utility districts, municipalities, rural electric cooperatives, and state and federal agencies, including associations of any of the foregoing, are included within the meaning of "electric utility."

(Sec. 181, as amended, Pub. L. 83-703, 88 Stat. 943 (42 U.S.C. 2201); sec. 301, as amended, Pub. L. 83-428, 88 Stat. 1343 (42 U.S.C. 5841))

(31 FR 255, Jan. 19, 1956, as amended at 25 FR 1072, Feb. 8, 1960, 36 FR 4990, June 8, 1961, 28 FR 3196, Apr. 3, 1963, 31 FR 15145, Dec. 2, 1966, 32 FR 18411, Dec. 17, 1968, 36 FR 11424, June 12, 1971, 39 FR 4871, Feb. 8, 1974, 40 FR 8784, Mar. 3, 1975, 43 FR 6824, Feb. 17, 1978, 43 FR 14700, Mar. 8, 1980, 45 FR 18905, Mar. 24, 1980, 47 FR 12784, Mar. 31, 1982)

§ 50.3 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 50.4 Communications.

(a) Except where otherwise specified or except as provided under a regional licensing program identified in paragraph (c) of this section, any communication or report concerning the regulations in this part and any application filed under these regulations may be submitted to the Commission as follows:

(1) By mail addressed to—Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(2) By delivery in person to the Commission offices at:

(i) 1717 H Street, NW., Washington, D.C.; or

(ii) 7920 Norfolk Avenue, Bethesda, Maryland.

(b) Before making any submittal in microform, the applicant or licensee shall contact the Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (202) 492-8585, to obtain specifications and copy requirements.

(c)(1) The Commission has delegated to the Regional Administrator of Region IV authority and responsibility for implementing selected parts of its nuclear reactor licensing program for the Fort St. Vrain Nuclear Generating Station.

(2) Any application filed under the regulations in this part and any inquiry, communication, information, or report relating to the Fort St. Vrain Nuclear Generating Station must be submitted to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 1000, Arlington, Texas 76011. Upon receipt, the Regional Administrator of Region IV or his designee will transmit to the Director of Nuclear Reactor Regulation any matter which is not within the scope of the Regional Administrator's delegated licensing authority.

(47 FR 35704, Dec. 8, 1982)

§ 50.7 Employee protection.

(a) Discrimination by a Commission licensee, permittee, an applicant for a Commission license or permit, or a contractor or subcontractor of a Commission licensee, permittee, or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment. The protected activities are established in section 210 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission information about possible violations of requirements imposed under either of the above statutes;

(ii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements; or

(iii) Testifying in any Commission proceeding.

(2) These activities are protected even if no formal proceeding is actual-

§ 50.8

ly initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in the protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 30 days after an alleged violation occurs by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a) of this section by a Commission licensee, permittee, an applicant for a Commission license or permit, or a contractor or subcontractor of a Commission licensee, permittee, or applicant may be grounds for:

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e) Each licensee, permittee and each applicant shall post Form NRC-2, "Notice to Employees," on its premises. Posting must be at locations suffi-

This 10—Energy

cient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

NOTE: Copies of Form NRC-2 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D, Part 30 of this chapter or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(47 FR 30434, July 14, 1982)

§ 50.9 Reporting, recordkeeping, and application requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (Pub. L. 96-511). OMB approved the information collection requirements on October 26, 1981.

(1) The OMB approval number is 3150-0011.

(2) OMB approval expires April 30, 1982.

(b) The approved information collection requirements include the application, recordkeeping, and reporting requirements contained in §§ 50.30, 50.33, 50.33a, 50.34 (b), (c), (d), (f), 50.34a, 50.35(b), 50.36, 50.36a, 50.48, 50.54 (f), (p), (q), (r), (s), (t), (u), 50.55(e), 50.55a, 50.59 (b), (c), 50.71 (a), (b), (c), (d), (e), 50.72 (a), (b), 50.80, 50.82, 50.90, and Appendices A, B, C, E, G, H, J, K, and R.

(46 FR 63033, Dec. 30, 1981)

REQUIREMENT OF LICENSE. EXCEPTIONS

§ 50.10 License required.

(a) Except as provided in § 50.11, no person within the United States shall transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use any production or utilization facility except as

LEGAL CONSIDERATIONS

A. NRC regulations - Employee Protection

With respect to any recommendations of employee discipline by a Team or the Board and any decisions in that regard by Northeast, S&W or any contractor, it should be noted that under Section 210 of the Act and 10 CFR §50.7 promulgated thereunder, an employee may not be discharged, nor may the compensation, terms, conditions or privileges of the employee's job be adversely affected, in retaliation for an employee's providing information to the NRC, Northeast, S&W or any contractor regarding possible violations of NRC requirements or for otherwise participating in investigations or proceedings relating to alleged violations of NRC requirements. Section 210 of the Act empowers the Secretary of Labor, if he finds that a violation has occurred, to order (1) an abatement of the violation, (2) reinstatement of the employee to his former position with back pay, and (3) the payment of compensatory

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damages and costs incurred by the employee in making the complaint, including attorneys' fees and expert witness fees. In addition, violations of this section by Northeast, S&W or any contractor can result in denial, revocation or suspension of the Millstone 3 construction permit or operating license and/or the imposition of civil penalties or other enforcement actions against Northeast.

If, however, actions by Northeast, S&W or a contractor with respect to a particular employee are based on nondiscriminatory grounds (e.g., documented evidence of poor work quality, insubordination or other unacceptable employee behavior unrelated to the fact that the employee has reported or participated in an investigation of alleged violations of NRC requirements), and the employer can demonstrate that such actions would have been taken even if the employee had not been engaged in protected activities, no violation of Section 210 or 10 CFR §50.7 will have occurred. As set forth in 10 CFR §50.7(d), "An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action

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dictated by nonprohibited considerations." (emphasis added). The burden of proving a nondiscriminatory basis for employee discipline in a case brought by an employee before the Department of Labor under Section 210 of the Act is on the employer, however.

Furthermore, an employee will not be protected from discharge or other action under Section 210 of the Act if the employee has deliberately violated NRC requirements without direction from the employer, even if that violation is subsequently reported by the employee. See 10 CFR §50.7(a)(3).

Under 10 CFR §50.7, Northeast must post a Form NRC-3 "Notice to Employees" advising employees of these rights in locations where employees can see it when they are coming to and leaving their place of work at the site. A copy of the Form is attached as Attachment 8.C.

B. NRC Regulations - Reporting Requirements

Pursuant to 10 CFR Part 21 promulgated under Section 206 of the Act, any individual director or "responsible officer" of a

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firm owning, constructing or supplying components of a licensed facility must report to the NRC within two days any information which "reasonably" indicates (1) that the facility fails to comply with the Atomic Energy Act of 1954 ("AEA") or the NRC's rules and regulations or (2) that the facility contains a defect which could create a "substantial safety hazard." A knowing and conscious failure to comply with this requirement can result in the imposition of civil penalties on such director or responsible officer.

Under this section, S&W, Northeast and certain other contractors are under a legal obligation to notify the NRC when the information obtained from an allegation "reasonably indicates" a violation of the AEA or the NRC's rules and regulations or a defect in certain parts of the facility which could create a "substantial safety hazard." With respect to worker allegations regarding nuclear safety, in many instances the obligation to report probably will not arise until after the Team's initial screening of the allegation to determine whether there is some factual basis for the allegation and to evaluate

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the safety significance of the alleged deficiency, since only then can it be determined whether information "reasonably" indicates the possibility of a violation or defect.

In addition, under 10 CFR §50.55(e), deficiencies in design or construction must be reported to the NRC within 24 hours if they could adversely affect the safety of plant operations and if they represent (1) a significant breakdown in quality assurance; (2) a significant deficiency in final design such that the design as built does not conform to the safety analysis report or the construction permit; (3) a significant deficiency in construction or significant damage to a structure, system or component which requires extensive evaluation, redesign or repair; or (4) a significant deviation from performance specifications which requires extensive evaluation, redesign or repair. With respect to worker allegations, in those instances in which it is not immediately apparent that a reportable deficiency exists, Northeast may look to the results of the Team's screening to determine if there is a reportable deficiency and may coordinate its present §50.55(e) review with the Team's investigation.

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In those cases where a §50.55(e) report is made, there is no requirement to make an additional report under 10 CFR Part 21 since 10 CFR Part 21 provides an exception where the individual has actual knowledge that the NRC has already been informed of a violation of the AEA or the NRC's rules and regulations or of a defect in the facility.

C. Labor law considerations

It should be noted that while labor law considerations are generally outside the scope of this procedure, Northeast should consider whether and when to advise and/or involve union representatives in investigations of worker allegations. In conducting interviews of Northeast and S&W personnel, there is no legal obligation to include union representatives. However, if in the course of the investigation employees should refuse to be interviewed without a union representative present, and if the employee has reasonable grounds to believe the matters to be discussed in the interview may lead to disciplinary action against such employee, a union representative should be permitted to be present or the employee should not be interviewed at all.

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UNITED STATES NUCLEAR REGULATORY COMMISSION
Washington, D. C. 20555

NOTICE TO EMPLOYEES

STANDARDS FOR PROTECTION AGAINST RADIATION (PART 20); NOTICES, INSTRUCTIONS AND
REPORTS TO WORKERS; INSPECTIONS (PART 19); EMPLOYEE PROTECTION

WHAT IS THE NUCLEAR REGULATORY COMMISSION?

The Nuclear Regulatory Commission is an independent Federal regulatory agency responsible for licensing and inspecting nuclear power plants and other sources of ionizing radiation to protect the public health and the environment.

WHAT DOES THE NRC DO?

The NRC's primary responsibility is to protect the public and the environment from the hazards of radiation and to ensure that nuclear power is produced safely and efficiently. The NRC also regulates the use of radioactive materials in industry, medicine, and research.

WHAT RESPONSIBILITY DOES MY EMPLOYER HAVE?

Any company that conducts activities involving radiation must comply with the NRC's requirements. It is the employer's responsibility to ensure that all workers are properly trained and protected from radiation hazards.

WHAT IS MY RESPONSIBILITY?

For your own protection and the protection of your co-workers, you should know the NRC's requirements for radiation safety and follow them carefully. If you observe violations of the regulations, you should report them.

HOW DO I REPORT VIOLATIONS?

If you believe that violations of NRC rules are occurring, you should report them immediately to your supervisor. If you believe that your supervisor is not taking appropriate action, you should report the violations to the nearest NRC Regional Office.

WHAT IF I WORK IN A RADIATION AREA?

If you work with radioactive materials or in a radiation control area, you may be required to wear a radiation badge. You should follow all safety procedures and report any violations of the regulations to your supervisor or the nearest NRC Regional Office.

MAY I GET A RECORD OF MY RADIATION EXPOSURE?

Yes. Your employer is required to tell you, in writing, if you receive any radiation exposure above the limits set in the NRC regulations. If you have a radiation badge, you may request from your employer a record of your annual radiation exposure and a written report of your total exposure when you leave your job.

HOW ARE VIOLATIONS OF NRC REQUIREMENTS IDENTIFIED?

NRC conducts regular inspections of licensed facilities to ensure compliance with NRC requirements. In addition, your employer and site contractors conduct their own inspections to ensure compliance. All inspections are conducted by Federal inspectors who are trained and certified by the NRC.

MAY I TALK WITH AN NRC INSPECTOR?

Yes. Your employer may not prevent you from talking with an NRC inspector, and you may talk privately with an inspector and request that your identity remain confidential.

MAY I REQUEST AN INSPECTION?

If you believe that your employer has not corrected violations involving radioactive working conditions, you may request an inspection from the nearest NRC Regional Office.

WHAT FORMS OF DISCRIMINATION ARE PROHIBITED?

No employer may fire you or discriminate against you with respect to pay, benefits, or working conditions because you have reported a violation to the NRC.

HOW CAN I PROTECTED FROM DISCRIMINATION?

If you believe you have been discriminated against for reporting a violation to the NRC, you may file a complaint with the U.S. Department of Labor. Your complaint must describe the facts of discrimination and must be filed within 30 days of the occurrence.

CAN I BE FINED FOR TALKING TO THE NRC?

No. Federal law prohibits an employer from firing or otherwise discriminating against a worker for bringing a safety concern to the attention of the NRC. You may not be fined or disciplined for reporting a violation to the NRC.

WHAT CAN THE LABOR DEPARTMENT DO?

The Department of Labor will notify the employer that a complaint has been filed and will investigate the case. If the Department of Labor finds that your employer has unlawfully discriminated against you, it may order you to be reinstated, receive back pay, or be compensated for any injury suffered as a result of the discrimination.

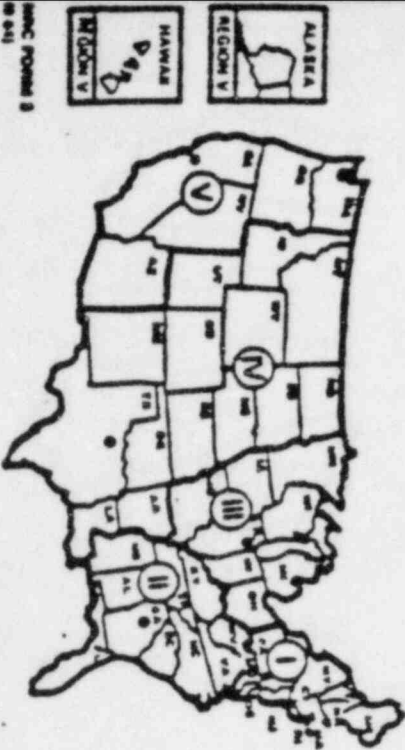
WHAT WILL THE NRC DO?

The NRC may ask the Department of Labor to investigate. The NRC may also conduct its own investigation. If the NRC finds that your employer has violated the regulations, it may issue a notice of violation, impose a fine, or suspend, modify, or revoke your employer's NRC license.

UNITED STATES NUCLEAR REGULATORY COMMISSION REGIONAL OFFICE LOCATIONS

Regional Offices

REGION	ADDRESS	TELEPHONE
I	U.S. Nuclear Regulatory Commission 831 First Avenue King of Prussia, PA 19406	215 327 8000
II	U.S. Nuclear Regulatory Commission 1811 University Dr., N.W., Suite 2000 Atlanta, GA 30337	404 221 4003
III	U.S. Nuclear Regulatory Commission Room 110 704 Pennsylvania Road New Haven, CT 06517	203 790 8000
IV	U.S. Nuclear Regulatory Commission Region IV 811 First Avenue, Suite 1000 Albuquerque, NM 87102	505 800 8100
V	U.S. Nuclear Regulatory Commission Region V 1666 North Lane, Suite 210 Berkeley, CA 94704	415 843 3700



EVALUATION OF
EMPLOYEE DISCIPLINE UNDER
SECTION 210 OF THE ENERGY
REORGANIZATION ACT OF 1974

The following elements should be considered before any disciplinary action is taken with respect to employees of Northeast Utilities Service Company and Northeast Nuclear Energy Company (together, "Northeast") who are involved with Millstone 3. This discussion is intended to supplement the procedures regarding worker allegations and assumes that, in the case of such allegations, (1) the investigation conducted by the Team and, if applicable, the Independent Review Board has resulted in a recommendation of employee discipline, and (2) the Vice President - Generation Engineering and Construction and the Senior Vice President - Nuclear Engineering and Operations have concurred in that recommendation.

I. Elements of Section 210 Violation

In order for the employee to prevail in a legal action brought under Section 210 of the Energy Reorganization Act of 1974 (the "Act"), the following elements must be present:

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1. The employee has engaged in protected "whistleblowing" activities;
2. Certain types of disciplinary action have been taken against the employee, which the employee can prove were motivated at least in part by the employee's whistleblowing activity; and
3. The employer has no defense to the employee's claim that Section 210 has been violated.

If any one of these elements is missing, the employee will not prevail in a Section 210 action. The following steps should be taken, therefore, to establish whether each of these elements exists.

II. Nature of Disciplinary Action

Section 210 of the Act prohibits an employer from discharging or "otherwise discriminating" against an employee with respect to compensation, terms, conditions or privileges of

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employment in retaliation for the employee's engaging in certain protected activities. Section 210 will apply, therefore, only if the disciplinary action proposed is a discharge, pay cut, transfer, demotion or similar action. If only a warning, notice, or similar action is proposed, no further evaluation of the applicability of Section 210 need be performed.

III. Protected "Whistleblowing" Activities

When any disciplinary actions described above are proposed against an employee of Northeast, it should be determined whether such employee, during the term of his or her employment, has engaged in any protected activities under Section 210 of the Act; i.e., whether the employee made any reports of possible violations of NRC requirements to Northeast, S&W or the NRC or whether the employee participated in any investigation or proceeding regarding such possible violations.^{1,2}

¹ If the employee's job is quality assurance or quality control, this element will automatically be satisfied. See Part V below.

² There is presently a split of authority among the U.S. Circuit Courts of Appeal on the issue of whether reports made by employees to their own employers, as distinguished from reports
(CONTINUED)

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To make this determination, an initial determination should be made regarding whether the individual, considering the nature of his employment, is likely to have made a report or participated in an investigation of possible violations of NRC requirements. For example, if the individual is involved in personnel or administrative duties, as compared with construction, quality assurance, quality control or other nuclear safety-related work, it is less likely that the employee engaged in protected activities. In that case, a less intensive review would be warranted.

If, however, it is concluded that there is a possibility the employee at some period during his employment engaged in protected activities, then the employee's past and present supervisors, if available, should be interviewed to determine whether the employee has, to their knowledge, engaged in

² (FOOTNOTE CONTINUED)

made to the NRC, are entitled to protection under Section 210. The majority view at present is that such reports are protected by the statute. In evaluating whether an employee has engaged in protected whistleblowing activity, therefore, it should be assumed that reports made to Northeast or S&W are the equivalent of reports made to the NRC.

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protected activities. In addition, to the extent feasible, all reports of possible violations made to Northeast, S&W and the NRC during the period of the employee's employment, within the employee's area of responsibility, should be reviewed and all reports of investigations by Northeast, S&W and the NRC during that period, within the employee's area of responsibility, should be reviewed to determine who participated in such investigations. It is recognized that for a project the magnitude of Millstone 3, the relevant documentation might be so voluminous that it would be impractical to attempt to determine in this manner whether the employee ever engaged in protected activities. In that case, it may be necessary to rely on interviews with the employee's past and present supervisors.

Another approach, which must be utilized with caution, is to conduct an interview with the employee to inquire whether he has engaged in protected activities. This approach involves the risk that the employee, recognizing the reason for the inquiry, may be encouraged to state that he has engaged in protected activities in order to invoke the protection of the Act.

Regardless of the method used to determine whether the employee has engaged in protected activities, it should be

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recognized that the Secretary of Labor, the NRC and the courts are all unsympathetic to the argument that the employer was unaware of the fact that the employee was engaged in such activities. Therefore, whenever it is unclear whether the employee has engaged in protected activities, the conservative approach would be to assume that he has done so and proceed with the next step of the evaluation.³

IV. Defenses

If the first two elements of a possible Section 210 action have been met, the employee will have established a prima facie case that Section 210 has been violated and the burden of proof will shift to the employer to demonstrate that it has a defense which will defeat the claim. There are two defenses set forth in 10 CFR §50.7 promulgated by the NRC under Section 210.

³ In conducting these reviews, the employer need not consider reports made by anonymous informants. In order to sustain a Section 210 action, the employee would have to establish that the employer knew he or she was the anonymous informant. If the company has procedures to protect anonymity, and if such procedures were utilized, it is unlikely the employee could meet this burden of proof.

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A. Employee Violations of the Act or the Atomic Energy Act
Without Employer Direction

Regardless of whether an employee has engaged in protected activities and is subsequently discharged or otherwise disciplined, no Section 210 action may be maintained if disciplinary action is taken against the employee for violations by the employee of NRC rules or regulations, provided the employee was not acting pursuant to the direction of his or her employer in violating NRC requirements.

In order to establish this defense, a determination may be made on the basis of the investigation and conclusions of the Team or the Independent Review Board regarding employee wrongdoing and whether the employee was acting at the direction of his employer. With respect to an employee who becomes subject to disciplinary action but has not been the subject of such investigations, a separate investigation would have to be conducted to establish whether such employee violated NRC requirements without the direction of his employer. To avoid conducting a separate investigation, if it is not immediately apparent that the reason for discharging the employee is his or her violation of NRC requirements, the employer should look to the second Section 210 defense described below.

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B. Independent Grounds for Disciplinary Action

No Section 210 violation will occur if the employer can demonstrate that the disciplinary action would have been taken even if the employee had not engaged in protected activities. To determine whether this defense is available, the employee's past and present supervisors should be interviewed and, if appropriate, a report should be prepared indicating the following:

1. The reasons for disciplinary action, e.g., poor work quality, absenteeism, insubordination, tardiness or other unacceptable employee behavior;
2. The dates such behavior was reported; and
3. The person making the complaint.

Furthermore, to support the claim that the employer's action is non-retaliatory and would have occurred even if the employee had not engaged in protected activities, consideration should be given to the following factors:

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1. The date of the employee's whistleblowing report or participation in a Northeast, S&W or NRC investigation (the more time elapsed between the whistleblowing activity and the disciplinary action, the less likely a Section 210 violation will be found); and
2. The nature of the employee's activities (i.e., was the employee the whistleblower or did the employee participate in an investigation, and if so, what role did the employee play in the investigation?)

V. Special Considerations - Disciplinary Action with Respect to Employees Involved in QA/QC

Because the nature of a QA/QC employee's job is inherently the type of activity which is protected under Section 210, the Department of Labor and the NRC have taken the position that the first of the three elements of the Section 210 violation (i.e., a finding that the employee was engaged in protected activities) will always be present with respect to such employees. Consequently, disciplinary action may be taken against such employees without potential Section 210 liability only in the following instances:

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1. The disciplinary action involves only a warning or notice, not discharge or change in compensation, privileges, etc; or
2. The employer has evidence to show that the employee violated NRC requirements without the direction of his employer; or
3. The disciplinary action is being taken for reasons completely unrelated to his QA/QC responsibilities; e.g., absenteeism, tardiness, insubordination (which does not include reporting superiors for QA/QC violations), etc.

VI. Protection of "Whistleblowers"

There is some evidence at other facilities that employees who have been identified as "whistleblowers" or who have otherwise cooperated in connection with NRC or utility investigations of safety allegations have been subjected to threats and other forms of intimidation, including physical violence, from supervisors or other personnel. In each instance

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in which an evaluation is performed under this procedure, Northeast and S&W should consider whether special measures to provide protection to such employees may be warranted, including involving Northeast or S&W security personnel or the state or local police.

VII. Conclusion

Employee disciplinary action may be taken without potential Section 210 liability if:

1. The nature of the disciplinary action does not involve discharge or changes in the compensation, terms, conditions or privileges of the employee's job;
2. The nature of the employee's job is not QA/QC or the employee has never made any reports to the NRC, Northeast, S&W or a contractor regarding possible violations of NRC requirements, participated in an investigation of such violations, or otherwise engaged in activities protected under Section 210;
3. The employee is disciplined for violating NRC requirements not at the direction of his employer; or

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4. The employee is disciplined on the basis of documented evidence of poor work quality, insubordination, absenteeism, tardiness or other unacceptable employee behavior unrelated to whistleblowing, and the employer can demonstrate that he would have taken such disciplinary action even if the whistleblowing activities had not taken place.

In all other cases there is potential Section 210 liability which must be weighed against the desirability of taking disciplinary action.

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NORTHEAST UTILITIES

ALLEGATION REVIEW TEAM

CHARTER

Approved:



R. P. Werner
Vice President - Generation
Engineering & Construction

5-3-75 / 0
Date Rev.

CHARTER FOR ALLEGATION REVIEW TEAM

1.0 PURPOSE

This Charter outlines the functions of the Allegation Review Team (ART) as required by Millstone Unit 3 procedure 6.12.

2.0 INTRODUCTION

In order to efficiently investigate and resolve worker allegations regarding nuclear safety issues at the Millstone Unit 3 site, the ART will respond to specific requests of the Vice President - Generation Engineering and Construction (GE&C), and conduct an initial screening investigation of the allegation. The ART will not investigate allegations made directly to the independent Nuclear Review Team or the Nuclear Regulatory Commission unless deemed appropriate by the Vice President - GE&C.

For the purposes of this charter, "worker allegations" include allegations made by any person involved in the Millstone Unit 3 project in any discipline at any level, including craft, manual, non-manual, supervisory, engineering and other personnel. However, "allegations" include only complaints, comments or inquiries which the Vice President - GE&C determines are potentially substantive.

"Allegations" do not include all differences of opinion or expressions of dissent voiced by workers on the Millstone Unit 3 project, and it is recognized that some assertions by workers may be too preliminary, unfocused or lacking in potential substance to warrant investigation under this procedure.

3.0 MEMBERSHIP

As required by MP-3 procedure 6.12, an Allegation Review Team has been established, consisting of the following:

Chairman: Director - Generation Construction

Member: Director - Generation Engineering
and Design

Member: Manager - Generation Facilities
Licensing

Member: Manager - Quality Assurance

Member: Generation Construction Consultant

In cases where a regular member is unavailable to participate in an investigation, the Chairman may appoint an alternate. In cases where the Chairman is unavailable to participate in an investigation, the Vice President - GE&C will appoint an alternate Chairman. The ART membership may be supplemented with other Northeast Utilities (NU) personnel as dictated by the nature of the allegation under review. Under no circumstances shall a person involved with an allegation serve as a member of the ART.

4.0 SCOPE OF ART FUNCTIONS

Upon notification by the Vice President - GE&C of an allegation warranting an investigation, the Team will exercise the following:

- 4.1 Conduct a preliminary examination through interviews, document examination, or physical tests in order to substantiate the allegation, and determine whether there is sufficient evidence in any form to indicate that the allegation has some basis in fact.

- 4.2 Prepare a written report of the allegation, the investigation conducted by the Team, the results of the investigation, and the recommendations of the Team.

5.0 CONDUCT OF BUSINESS

- 5.1 Upon notification by the Vice President - GE&C that an allegation warrants an investigation, the Chairman shall assemble the ART to receive information and develop a scope. Based on information received, a plan of action will be developed, including identification of individual task assignments.
- 5.2 The scope of the investigation shall be reported to the Vice President - GE&C prior to the start of the investigation. The report shall include the methodology used to determine the scope, and shall be transmitted by the Chairman, in writing, within five (5) calendar days of being appointed to conduct the investigation.
- 5.3 The Vice President - GE&C shall have responsibility to review, modify and approve the scope of the investigation. Upon acceptance of the scope by the Vice President - GE&C, the investigation will begin.
- 5.4 During the course of the investigation, the Team members will maintain accurate documentation of all conversations, documents examined, or physical tests performed.
- 5.5 If, during the course of the investigation, it is deemed necessary to supplement the Team with additional technical expertise or legal advice, the Chairman will arrange for the required assistance.
- 5.6 Upon completion of the investigation, the Team will prepare a report for submission to the Vice President - GE&C. The Team

report will be completed within fourteen (14) calendar days from the date of the allegation referral. The Team will agree on the report content prior to submission to the Vice President - GE&C. Any disagreements will be so noted in the report. The report will include at least the following information:

- 5.6.1 A description of the allegation;
- 5.6.2 A description of the initial screening;
- 5.6.3 How the Team determined what the scope of the initial screening should be (as to interviews conducted, documents examined and physical tests performed), including whether any changes to the Team's initial recommendations were made by the Vice President - GE&C;
- 5.6.4 Except where anonymity has been requested, the names of personnel interviewed, including names of all those present at each interview and the time and place of the interview;
- 5.6.5 A description of physical tests performed, including a description of the types of material and equipment examined, the reasons for the sampling selected, who performed the tests, the time and place of each test and the results of each test;
- 5.6.6 A description of documents examined, including the type of document, who prepared and approved the document, how the document relates to the worker allegation, who examined the document and the nature of the examination;
- 5.6.7 The Team's conclusions regarding whether the allegation has some basis in fact;

- 5.6.8 The Team's evaluation of the potential safety significance of the alleged deficiency;
- 5.6.9 The Team's evaluation of whether any individual is guilty of wrongdoing in connection with the alleged deficiency and its recommendations regarding the need for disciplinary action, including its analysis of why such disciplinary action would not violate Section 210 of the Energy Reorganization Act of 1974 (the "Act") and 10 CFR §50.7 promulgated thereunder (See Note);

NOTE: Section 210 and 10 CFR §50.7 prohibit retaliatory actions against employees who report, or otherwise participate in, investigations of violations of the Act or the Atomic Energy Act of 1954. The Team should consult Attachment 8.A, Part A of Attachment 8.B and Attachment 8.D of Procedure 6.12.

- 5.6.10 The Team's evaluation of whether the allegation represents a reportable event under NRC rules and regulations;
- 5.6.11 The Team's recommendations regarding whether a further, more comprehensive investigation should be conducted.
- 5.7 Upon acceptance of the report by the Vice President - GE&C, the following actions may occur:
 - 5.7.1 The allegation is accepted as being wholly lacking in factual basis and no further action is required.
 - 5.7.2 If the allegation is deemed to have factual basis, the Vice President - GE&C may:

- a). Require additional review, analysis or reevaluation by the Team, or
- b). Initiate remedial action by NU and/or Stone & Webster (S&W), including disciplinary action against individuals guilty of wrongdoing, or
- c). Require a more comprehensive investigation be conducted by an independent review board.

5.7.3 Should an independent review board be assigned to conduct a more comprehensive review, the ART will remain available to provide additional background, information and advice.

6.0 ADMINISTRATIVE REQUIREMENTS

6.1 All correspondence, reports, documents, etc. relating to an allegation and/or investigation shall be tracked with an independent serial number. The Chairman shall ensure that a number is assigned, and Team members shall utilize the designated number on all documents.

All seralized documents shall be handled as confidential documents, and shall be properly filed in the Corporate confidential file.

6.2 All meetings associated with an investigation shall be documented. The Chairman shall designate a Secretary to document Team meetings.

6.3 Meetings held for the purpose of formulating a final report and/or recommendations shall be attended by a quorum. The Chairman or Alternate Chairman plus two (2) regular or alternate members shall constitute a quorum.