



# BACKGROUND

Office of Public Affairs

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## Allegation Process

### Background

The NRC has responsibility for regulating the operation of over 100 nuclear power plants and more than 6,000 materials licensees. The magnitude of the licensed activities is so extensive that the NRC can inspect only a fraction of them. While the NRC's program for ensuring adequate protection is not dependent upon allegations of safety deficiencies, the knowledge of the thousands of employees working in NRC-regulated activities provides valuable insights into the day-to-day practice of licensees. The NRC, therefore, encourages employees working in regulated activities to raise safety concerns.

Recognizing that it is licensees, not the NRC, who have the first responsibility for safety, the NRC encourages employees to first raise safety concerns with their employer or the licensee. For this to happen, employees must feel free to raise potential safety issues to their management. Employees may also report concerns directly to the NRC.

Over the years the NRC, the nuclear industry, and the public have benefitted from issues raised by employees of licensees and their contractors. If employees are subjected to retaliation by their employers for reporting safety concerns, there is the potential of creating a "chilling effect" which would inhibit allegers and co-workers from reporting additional safety concerns. If this happens, a valuable source of information for improving safety is potentially lost. Members of the public or people working in NRC-regulated activities may report safety concerns directly to the NRC by discussing the issues with an NRC staff member, calling the **NRC's Safety Hotline 800-695-7403**, or writing a letter to the NRC.

Information on NRC's allegation program, including statistics on allegations is available on NRC's web site at: <http://www.nrc.gov/about-nrc/regulatory/allegations/what-is-allegation.html>.

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## **Discussion**

The NRC's guidance for tracking and resolving allegations is described in Management Directive 8.8, "Management of Allegations." Each region and the two licensing offices (Nuclear Reactor Regulation and Nuclear Materials Safety and Safeguards) have assigned an Allegation Coordinator to coordinate review and resolution of safety concerns reported to the NRC. If any NRC employee receives a safety concern, he or she is required to promptly forward the safety concern to the Allegation Coordinator.

The Allegation Coordinator assigns a tracking number to the safety concern, enters it in a computerized database, and schedules a meeting of an Allegation Review Board comprised of appropriate NRC managers and staff to determine a course of action. Such actions could include performing an inspection or investigation, referring the issue to another federal or state agency, referring the issue to the licensee to perform a review of the concern, or determining that no action is necessary. The NRC tries to send an initial response of concern and describes the NRC's understanding of the concern.

Actions to resolve concerns are prioritized based on their safety or regulatory significance. If the concern requires immediate action to protect health and safety of the public, the NRC immediately contacts the licensee and requests that they investigate the matter and take prompt corrective action. In March 2002, the NRC implemented new timeliness goals for closing technical, non-wrongdoing allegations that do not require immediate action. The new goals are to close:

- 70 percent of the allegations in 150 days;
- 90 percent of the allegations in 180 days;
- 100 percent of the allegations in 360 days.

Complex safety concerns may require more time to resolve.

Following completion of an inspection or receipt of a response to a referral, the NRC sends another letter to the individual who submitted the concern. The letter explains what action the NRC took to review the safety concern and whether the concern was substantiated. If the review takes longer than six months, the NRC sends an interim letter that provides the status of the NRC's review.

## **Special Topics**

### **Harassment, Intimidation, Retaliation or Discrimination**

The NRC's regulatory process seeks to prevent nuclear industry employees from being subjected to retaliation for raising potential safety concerns to a licensee or the NRC. Discrimination against an employee for raising safety concerns is prohibited by the Commission's regulations (Title 10 of the

Code of Federal Regulations, Parts 19.20, 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, 72.10, and 76.7). Discrimination includes discharge and other actions that relate to compensation or terms, conditions, and privileges of employment. A licensee is subject to enforcement action by the NRC for violations of these prohibitions by the licensee or its contractors and subcontractors.

The Nuclear Regulatory Commission revised its enforcement policy to include an interim policy regarding the voluntary use of wrongdoing (i.e., harassment, intimidation, retaliation or discrimination). The revisions aim to use ADR to resolve allegations where there is reasonable indication that the person was involved in a protected activity and the discriminatory act was the result of engaging in the protected activity. The NRC believes using ADR early in the process promotes a safety conscious work environment by facilitating timely and amicable resolution of such concerns. If both parties agree to participate, a neutral mediator will be appointed to help the parties reach resolution. The aim is to reach settlement within 90 days of agreeing to mediation. The process is completely voluntary and any party may withdraw from the negotiation at any time.

Should any party not wish to participate in ADR, the NRC's Office of Investigation will initiate an investigation of the allegation. An investigator normally interviews the alleged and reviews available documentation within 30 days of opening an investigatory case. Based on the results of the interview and review of the documentation, an NRC Allegation Review Board will assess the safety or regulatory significance and assign an priority to the investigation. Based on that priority, the NRC may or may not pursue the investigation to completion.

Even if it is substantiated that the discrimination occurred, the NRC does not have the authority to provide a personal remedy, such as reinstatement or back pay, to an employee. An employee who believes that discrimination has occurred may seek a personal remedy by filing a complaint within 180 days of the discriminatory act with the DOL. Remedies may also be available through state statutes. Enforcement actions available to the NRC against licensees, their employees, contractors, or contractor employees include denying, revoking, or suspending a license, imposing civil penalties, and criminal sanctions.

The DOL follows a three step process. The first step is an attempt to mediate a settlement between the employee and the employer. If that is not achievable, the circumstances surrounding the alleged discrimination are investigated by DOL after which the Area Director decides whether discrimination occurred. If either the employee or the employer disagrees with the Area Director's decision, they may file an appeal and request a hearing before an Administrative Law Judge. The hearing is a public process where each side presents evidence supporting their case to the Judge. The Judge rules on the merits of the case and issues a recommended decision that is reviewed by the DOL's Administrative Review Board. If the Judge finds discrimination has occurred, he or she may recommend that the employer reinstate the employee pay back wages, with back pay, based on the Judge's decision favorable to the employee. Compensatory damages, however, may not be ordered until after a formal review by the Administrative Review Board.

## **Protection of an Allegor's Identity**

The identity of an individual submitting a safety concern to the NRC is treated as a need-to-know information. That is, only those persons with an actual need have access to the information. Files containing an alleged's identity are under the control of the allegation Coordinator, who controls

access to the information. Additionally, the names of the individuals are generally not used during the Allegation Review Board meetings and NRC employees who receive the names of the allegeders are advised of the importance of protecting the identity.

Under certain circumstances, the identity of an individual providing safety concerns is released. The criteria for disclosing the identity are:

- the individual clearly indicates no objection to being identified;
- disclosure is necessary to ensue public health and safety;
- Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress, State, or Federal agencies in the furtherance of NRC responsibilities under law or public trust;
- Disclosure is necessary to support a hearing on an enforcement matter; or
- The individual takes an action that is inconsistent with the overrides the purpose of protecting their identity.

Additionally, for allegations involving wrongdoing, the individual's identity may be disclosed at the NRC's discretion in order to pursue the investigation. For allegations of harassment and intimidation, the NRC discloses the allegeder's identity during an NRC investigation if the allegeder asserts he or she is the victim of discrimination. Therefore, the NRC normally does not investigate these cases if the allegeder requests that his or her name be kept confidential, or the allegeder refuses to disclose his or her identity.

### **Waste, Fraud, or Abuse by NRC Employees**

If a member of the public or someone working in NRC-regulated activities believes an NRC employee is involved with waste, fraud, or abuse, they should report this to the Office of the Inspector General through its Hotline, **1-800-233-3497**. If a concern of waste, fraud, or abuse is reported to someone outside the Office of the Inspector General, it is referred to that office and is not tracked in the NRC's allegation tracking system. Only the Office of Inspector General can provide the status of a concern involving waste, fraud, or abuse.

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