

**FORM 1-III: Cover Letter (including "apparent" discrimination violation(s)) and
Confirming Predecisional Enforcement Conference ("Conference Letter")**

EA-YY-XXX

(Name of licensee)

(Address)

SUBJECT: APPARENT VIOLATION(S) OF EMPLOYEE DISCRIMINATION
REQUIREMENTS (U.S. DEPARTMENT OF LABOR CASE NO(S).
(XX-ERA-XXX))

Dear _____:

This is in reference to an apparent violation of NRC requirements prohibiting discrimination against employees who engage in protected activities, i.e., 10 CFR (applicable regulation). The apparent violation involves (name of licensee or contractor) discriminating against one of its employees at (name of facility). [If applicable, add the following sentence: "Although enforcement action is being considered against (name of contractor), or (name of licensee's contractor), the NRC holds (name of licensee) responsible for ensuring compliance with NRC requirements by contract personnel working at its facility."] This apparent violation was discussed with (name) of your staff on (date).

The apparent violation is based on findings from a U.S. Department of Labor (DOL) proceeding (XX-ERA-XXX). [Use either: "The presiding Administrative Law Judge (ALJ) in the DOL proceeding found, in a Recommended Decision and Order issued (date)," or alternatively, "The Secretary of Labor found, in a decision issued (date), that (name of individual) was the subject of employment discrimination in (year) when he (she) was [Briefly state the nature of the discrimination, e.g., dismissed, denied employment, reassigned, subjected to a hostile work environment, etc.] in retaliation for raising concerns about [Briefly describe the individual's concerns]. A copy of the [Use either "DOL ALJ's recommended decision and order is enclosed (Enclosure __)" or alternatively, "Secretary of Labor's decision is enclosed (Enclosure __)."]]

The NRC staff's review of the DOL findings indicate that the action taken against this individual was in apparent violation of 10 CFR (applicable regulation). Therefore, this apparent violation is being considered for escalated enforcement action in accordance with the NRC Enforcement Policy. The current Enforcement Policy is included on the NRC's Web site at www.nrc.gov; select **What We Do, Enforcement**, then **Enforcement Policy**." The NRC is not issuing a Notice of Violation at this time. You will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review.

An open (A closed) predecisional enforcement conference to discuss this apparent violation has been scheduled for (date). [If an open conference, add: "This conference will be open to public observation in accordance with Section V of the NRC Enforcement Policy ."] The NRC will also issue a press release to announce the conference.

The decision to hold a predecisional enforcement conference does not mean that the NRC has made a final determination on enforcement action in this case. However, the NRC normally relies on the DOL's findings in determining whether a violation occurred when such findings are

based on an adjudicatory proceeding. The predecisional enforcement conference is not a forum to relitigate the DOL adjudicatory decision. Therefore, we do not expect you to discuss in any detail the factual conclusions forming the basis for the DOL decision. Rather, our primary interest in conducting the conference will be to discuss actions (name of licensee) has taken or is taking to address the environment at the (name of the facility) for raising concerns. [If applicable, include, "In this regard, the NRC requests that (name of licensee) be prepared to address why its actions in response to previous discrimination matters were not effective in precluding the action taken against (name of individual)."]]

In addition, the conference is an opportunity for (name of licensee) to provide its perspectives on: 1) the severity level of the apparent violation; 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.C.2 of the Enforcement Policy; and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," a copy of this letter and its enclosure will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's document system (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>.

Sincerely,

Regional Administrator
(or designee)

Docket No. _____
License No. _____

Enclosures: Either "Department of Labor Administrative Law Judge's Recommended Decision and Order, dated _____" or (Secretary of Labor Decision, dated _____) (NRC Office of Investigation report synopsis)