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UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
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MEMORANDUM TO: All NMSS Staff Members

FROM: Carl J. Paperiello, Director  
Office of Nuclear Material Safety  
and Safeguards *Carl J. Paperiello*

SUBJECT: NMSS POLICY AND PROCEDURES LETTER 1-27 (REVISION 5)  
MANAGEMENT OF ALLEGATIONS

Purpose

This NMSS Policy and Procedures Letter (P&P Letter) and the accompanying procedure (Attachment 1) establish the policies and procedures for management of allegations in NMSS, including those concerning the Department of Energy (DOE) or its contractors with regard to the high-level waste program. This letter supersedes NMSS P&P Letter 1-27, Revision 4, dated July 11, 1990.

Background

NRC Management Directive 8.8 (MD 8.8), "Management of Allegations," approved May 1, 1996, defines the NRC policy and procedures for receipt and handling of allegations. MD 8.8 also sets forth the Commission policy on dealing with allegeders, including protecting their identity, granting and revoking confidentiality, and the referral of matters to the Office of Investigations (OI). This P&P Letter refers extensively to those policies and procedures in MD 8.8 and provides guidance on the implementation of MD 8.8 in NMSS. A copy of MD 8.8 is provided as Attachment 2.

Discussion

An allegation, as defined in MD 8.8, is "a declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established." As you can see, this definition is quite broad.

The definition includes "all concerns identified by sources such as individuals or organizations, and technical audit efforts from Federal, State, or local government offices regarding activities at a licensee's site. Excluded from this definition are inadequacies provided to the NRC staff by licensee managers acting in their official capacity, matters being handled by more formal processes such as 10 CFR 2.206 petitions, misconduct by NRC employees or NRC contractors, non-radiological occupational health and safety issues, and matters involving law enforcement and other Government agencies." Allegations that result from formal processes such as 10 CFR 2.206 proceedings but that are not resolved by those formal processes will be handled in accordance with MD 8.8 and this P&P Letter. Alleged improper actions by NRC staff members should be handled in accordance with NRC Management Directive 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."

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Staff members who receive or are involved in reviewing or resolving an allegation must remain mindful that the identity of the person providing the information ("allegor") must be protected at all times. Staff members must exert every effort to preclude the inadvertent or premature disclosure of the individual's identity outside the NRC. This protection of identity is automatically afforded to all allegors. It should not be confused with "confidentiality," which is a more formal process discussed in detail in Part III of MD 8.8.

Any NRC employee may be the recipient of an allegation. Accordingly, all employees must be aware of the procedures and systems in place for the management of allegations. When an allegation is received, you should refer to MD 8.8 and this guidance to determine how to proceed. However, since the guidance is not always readily at hand when an allegation is received, it is important for each staff member to keep in mind the following points, so that receipt of allegations can be handled properly:

1. Obtain as much information as possible about the allegation and about the identity of the allegor, for possible followup. (Ask: What? Where? When? Who? How? Why?) Attachment 4, "Allegation Receipt Form," provides a form that may be used as a guide.
2. Advise the allegor of NRC's identity protection policy and the limits of identity protection. Attachment 3, "Identity Protection," lists information that must be provided to the allegor.
3. Protect the identity of the allegor.
4. Contact the Office Allegation Coordinator (OAC) -- Bob O'Connell, IMNS, telephone 415-7877, MS T8F9 -- for further guidance before proceeding.  
**DO NOT CONTACT THE LICENSEE REGARDING THE ALLEGATION** until after consultation with management and the OAC or the Allegation Review Board, except in the case of an overriding safety concern.
5. Follow the procedures and guidance in MD 8.8 and Attachment 1 to this memorandum.

#### DOE High-Level Waste Program

The DOE high-level waste programs present special circumstances. During the preapplication stage, DOE and its contractors are not on the same legal footing as NRC licensees. Consequently, while allegations involving DOE and its contractors will be received, processed and controlled in accordance with MD 8.8 in the same manner as other allegations, additional guidance is provided in Attachment 1 regarding the resolution of such allegations.

Attachments: As stated

## NMSS POLICY & PROCEDURES LETTER 1-27 MANAGEMENT OF ALLEGATIONS

These procedures apply to allegations concerning NRC-regulated activities. Alleged improper actions by NRC staff members should be handled in accordance with NRC Management Directive 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."

### Terms

#### Office Allegation Coordinator (OAC)

Designated staff member that serves as the point of contact for administrative processing and control of all allegations received by NMSS.

#### Action Office

The NRC office that has lead responsibility for reviewing and taking action to resolve an allegation.

#### Allegation

A declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established.

#### Allegation Management System (AMS)

A computerized information system that contains a summary of significant data pertinent to each allegation.

#### Alleger

An individual or organization who makes allegations. The individual or organization may be a concerned private citizen, a public interest group, news media, a licensee, vendor or contractor employee, or a representative of a local, State, or Federal agency.

#### Allegation Review Board (ARB)

A committee normally comprised of the Deputy Director of the division whose technical area encompasses the allegation, the cognizant branch chief and/or section leader, and the OAC. Other staff members who may be involved in following up the allegation may be asked to attend as appropriate. A designated representative of the Office of Investigations (OI) is normally present for all allegations in which there is a potential for wrongdoing or a suspicion of wrongdoing. Representatives of the Office of General Counsel (OGC), Office of State Programs (OSP), and other offices may attend when the needs of the case dictate.

Attach:

## Responsibilities and Authorities

### Director, NMSS

1. Approves all policies and procedures concerning the management of allegations in NMSS.
2. Approves all confidentiality agreements issued by NMSS.
3. Approves all OI referrals initiated by NMSS.
4. Approves all IG referrals initiated in the allegation review process.

### Division Directors

1. The Division Director having technical responsibility in the area in which the allegation lies is responsible for scheduling and conducting an Allegation Review Board, in coordination with the OAC, normally within 30 days of receipt of the allegation by NMSS.
2. The Division Director is responsible for ensuring that allegations that fall within the division's purview are reviewed prior to ARB meetings, and that appropriate personnel are in attendance (or tied in by telephone) at ARB meetings to discuss the plans for resolving such allegations, including:
  - a. Recommendations on a plan of action and a schedule for resolving the allegation;
  - b. Recommendations on the need for OI involvement;
  - c. Recommendations on referring the matter to the licensee or another organization; and
  - d. Recommendations on the priority that should be assigned to recommended actions.
3. The Division Director is responsible for ensuring that all allegations are resolved in a manner which is timely under the circumstances and professional in scope and depth. Allegations having relatively high safety significance should be addressed expeditiously. Less significant allegations should be addressed as priorities and resources permit, but normally within 180 days of receipt. The NMSS goal is to have allegations addressed within 90 days.
4. The Deputy Director of the cognizant division will normally chair ARB meetings for allegations within the division's purview. In the absence of the Deputy Division Director, the cognizant Branch Chief may serve as chairman.
5. The Division Director will, as necessary, brief the Office Director on assigned allegations that are open longer than 180 days.

#### Branch Chiefs, Section Leaders, Staff Members

All Branch Chiefs, Section Leaders, and staff members are responsible for:

1. Ensuring that the OAC is immediately informed of allegations that are received by staff members.
2. Assuring that allegations assigned to them for action are acted upon and resolved in a timely manner.
3. Providing status and/or closeout information for assigned allegations, including all relevant review documentation.

#### Office Allegation Coordinator

Serves as the administrative point of contact for the receipt and management of information received from allegers. In particular the OAC will:

1. Forward information related to allegations to the appropriate division(s) so that allegations can be reviewed prior to ARB meetings. Ensure that ARB members receive a summary of the allegations that will be discussed at the ARB meeting.
2. Record the results of the ARB discussions, including any assignments and guidance issued by the ARB, on a form that will be signed by the ARB chairman, maintained as a record of the ARB meeting, and distributed to cognizant staff members as appropriate.
3. Ensure that information related to allegations received within the office is entered into the AMS after the ARB has determined the appropriate assignment responsibility, and that current status of allegations is maintained in the AMS.
4. As necessary, coordinate with the Allegation Coordinators of other affected Offices or Regions for allegations that pertain to regional or other office responsibilities.
5. Establish, for each allegation received and entered in the AMS, the official allegation file containing: (a) original allegation, including an itemized list of concerns if the allegation contains more than one concern, (b) ARB documentation, (c) documentation of all contacts and correspondence with the allexer, (d) documentation for all contacts and correspondence with the licensee (if applicable), (e) documentation of the NMSS evaluation and resolution of the allegation, (f) documentation of OI referral (if applicable), (g) inspection reports, and (h) documentation of the disposition of each concern.
6. Serve as the interface and principal contact between the NMSS staff and the OI staff.

### Allegation Review Board

The ARB is responsible for conducting an initial review of each allegation or suspicion of wrongdoing: 1) to ensure that the safety significance of each allegation is given appropriate consideration; 2) to ensure that allegations are assigned to the appropriate division and branch; 3) to ensure that appropriate guidance and direction is given to the responsible division/branch; 4) to ensure that generic issues are identified and acted on appropriately; 5) to ensure that alleged wrongdoing is discussed with OI and addressed appropriately; and 6) to screen discrimination complaints at various stages of the DOL process to determine whether an investigation should be conducted or enforcement action considered. For particularly sensitive or complex allegations, the ARB should consider providing guidance to the responsible staff on the development and review of inspection or other resolution plans. The ARB's routine responsibilities include:

1. Meeting as necessary to review all allegations received, normally within 30 days of receipt, to review significant new information related to allegations previously reviewed by the ARB, and, if requested by the responsible division director, to review closure plans for specific allegations (e.g., those that are particularly sensitive or complex);
2. Conducting special meetings to review allegations with high potential safety significance or those that require prompt review; and
3. Reviewing allegations that are approaching 180 days in processing to determine if additional efforts may be required to facilitate resolution within the timeliness goal of 180 days.

### Section Leader or Staff Member to Whom Allegation is Assigned

1. Review ARB guidance and develop action plan to resolve the allegation in a timely fashion, usually within 180 days. Care should be exercised to ensure that resolution, site visit, or inspection plans minimize the potential for identifying an allegor to licensee management and to ensure that each identified concern is specifically reviewed and resolved.
2. Maintain close coordination with the OAC to ensure appropriate followup on all assigned allegations, and to ensure that the OAC is informed of the status of all referred allegations. The OAC should be on concurrence for all NMSS inspection reports relating to the review or closure of allegations.

### Communicating With Allegers

Any member of the technical staff may receive an allegation. It is expected that the technical staff who receive calls from individuals or who are approached while conducting visits or inspections will document the pertinent information as appropriate to facilitate followup of the individual's concerns. The OAC does not need to participate in initial telephone conversations, and the staff should not postpone or unnecessarily delay the individual from providing concerns to NRC. Staff should avoid, to the extent possible, multiple transfers of an incoming call from a concerned individual.

Consistent with Handbook 8.8, Section I(A)(2), Disclosure of Allegor Identity, allegors should be informed by telephone and letter of the degree to which their identity can be protected. This is necessary since some allegors may incorrectly assume that the NRC can or will protect their identity under all circumstances. Therefore, allegors should be informed of: (1) NRC's intention to use all reasonable efforts to avoid disclosing their identity and (2) the circumstances under which their identity may be revealed (see MD 8.8, Part I(A)(2)). The information contained in Attachment 3 should be provided verbatim after obtaining as much information as possible.

It is the responsibility of each staff member who receives an allegation to document the information promptly and forward such documentation, within five working days of receipt of the information, through his or her supervisor to the OAC for processing and appropriate action.

Those who provide allegations to NRC must be treated in a professional manner, with respect, consideration, and tact. Under no circumstances should they be dealt with brusquely or abusively. No presumptions should be made with regard to the validity of their concerns or their motivation for raising a particular concern.

All followup contacts with allegors, whether orally or in writing, should be coordinated with the OAC. A written summary of all oral (e.g., telephone or in-person) contacts and a copy of all written contacts (correspondence) is to be provided to the OAC for the allegation file.

If the responsibility for handling of an allegation is transferred from one Action Office to another (e.g., NMSS to a Region or to NRR), the allegor will be notified by the OAC of the change in contact person (name and telephone number) to ensure continuity.

The OAC should be given the opportunity to concur in all NMSS inspection reports dealing with the review or closure of allegations and, if appropriate, will include a copy of completed inspection report(s) in closeout correspondence to the allegor(s).

### Receipt of Allegations

#### Allegations Received by Telephone or Personal Visit

Technical staff members who take a call from an allegor or are visited by an allegor should, to the extent possible, obtain the following essential information as identified in Attachment 4 (use of Attachment 4 is not a requirement, but is intended as a guide for any individual receiving an allegation and to emphasize that certain information is essential in resolving an allegation.):

- Nature of allegation (who, what, where, etc.)
- Facility name
- Position or relationship to facility or licensed activity involved
- Name
- Telephone number (day and evening number if possible)
- Employer (licensee or contractor)

The alleged should be told that the staff may contact the alleged to obtain additional information or to confirm the scope of the original allegation. If an alleged declines to provide the above information, attempt to establish the reason(s) using the following guidance:

Inform the individual that Section 211 of the Energy Reorganization Act prohibits an employer from discriminating against an employee for contacting the NRC.

Inform the person that it is NRC policy to treat all alleged's identities as sensitive/need-to-know information. Advise the individual that his or her identity is needed because it may be necessary for the staff to recontact the individual to obtain additional information in order to follow up the allegation.

NOTE: If the alleged claims to be the victim of discrimination for raising safety concerns in spite of the prohibition, or the events described suggest that such a possibility exists, advise the alleged that a written complaint must be filed by the alleged with the U.S. Department of Labor within 180 days of the incident to ensure protection under the law.

Document the conversation and provide the information to the responsible division and to the OAC.

#### Allegations Received by Mail

All correspondence that appears to contain allegation material should be forwarded promptly to the OAC for handling and coordination. To avoid the distribution of material that may tend to identify individuals as alleged's, the complete contents of such correspondence and the envelopes should be forwarded to the OAC. A copy should be made and maintained in a secure location until you are sure the information has been received by the OAC, and then the copy should be destroyed.

#### Allegation Processing

Any employee receiving an allegation should immediately advise his or her supervisor and the OAC, if available, and document the allegation in a memorandum or written summary to the OAC within 5 working days of receipt. In all cases when the OAC is not present, the division and branch responsible for the licensed activity that is the subject of the allegation should be informed. If the alleged's name and other identifying information are included in the documentation, only one copy of any document with the identifying information should be made and sent to the OAC (identifying information on any other copies should be blocked out). This will help control the identity of the alleged and minimize inadvertent disclosure.

Following receipt of an allegation, the OAC will provide the allegation to the appropriate branch or division, which will prepare a Briefing Sheet summarizing the allegation(s) in written form for members of the ARB. The ARB meeting should normally be held within 30 days of receipt of the allegation by the action office. After the ARB determines appropriate assignment responsibility, the OAC will provide a copy of the signed ARB Minutes and other relevant information to the cognizant branch or division. The assigned branch will review and evaluate the relevant information and will coordinate further allegation reviews and briefings with the OAC.

The issues involved in an allegation normally fall into one of the following categories:

1. Allegations that involve purely technical matters, such as: inadequacies in procedures, qualifications, or training; inadequate implementation of procedures; inadequate corrective actions; or overexposure(s) to radiation.
2. Allegations that involve possible wrongdoing. The term "wrongdoing" denotes intentional violations (e.g., record falsification, willful or deliberate violations, false statements, discrimination or harassment & intimidation (H&I) under Section 211 of the Energy Reorganization Act), and violations or improprieties resulting from careless or reckless disregard for requirements.
3. Allegations that involve matters outside the jurisdiction of NRC.

Technical issues (Category 1) involving failure to meet requirements may have the potential for being willful or deliberate violations. The ARB, with OI participation, determines when to request OI expertise to resolve potential wrongdoing issues. OI may choose to self-initiate an investigation on any matter. However, in the absence of a "reasonable belief" that the act is willful or deliberate, the ARB will normally not refer such issues to OI.

Potential wrongdoing issues (Category 2) will be reviewed by OI and the ARB will be advised of OI's determination as to whether an investigation will be initiated.

Issues in Category 3 will normally be referred by the ARB to the cognizant agency or organization.

If the ARB determines that the available information related to an allegation is insufficient to perform an adequate review, the ARB may recommend that the staff contact and more fully debrief the alleged.

Within 30 days of receipt of the allegation, the OAC will respond to the alleged by letter acknowledging receipt of the allegation and confirming NRC's understanding of the specifics of the allegation.

#### **Allegation Referrals to Licensees**

Allegations may be referred to a licensee for action, provided that the criteria in Management Directive 8.8 are followed with regard to limitations on such referrals and the need in certain cases to independently review a licensee's conclusions.

Documents referring allegations to licensees or other organizations will be concurred in by the OAC and signed by the appropriate Division Director. In any case involving the referral of an allegation to a licensee, the OAC or other designated staff member will make every effort to contact the alleged, if known, and advise the alleged of the planned referral. Except in cases where the safety significance of an allegation warrants a prompt referral, allegation referrals will be delayed until a reasonable attempt has been made to contact the alleged.

Normally, if the alleged disagrees with the decision to refer the allegation and no significant safety issue exists, the allegation will not be referred. However, the ARB should be advised of the alleged's objection during the next regularly scheduled meeting.

Once a licensee has completed its review of a referred allegation and so informed NRC, the appropriate division will be responsible for evaluating the licensee's response and arranging site visits, inspections or other efforts as necessary to provide assurance that the licensee's followup of the referred allegation was sufficient in scope and depth, and that any safety issues identified during the followup were promptly resolved. After a licensee's response has been reviewed and after it has been determined that the allegation should be closed, the licensee will be notified that the allegation has been closed.

### **Resolution and Documentation of Allegations**

Documentation of allegation resolution can be accomplished in a variety of formats. For example, internal memorandums, investigation reports, inspection reports, technical papers, and SER supplements have all been used successfully. Allegation closure documentation must specifically address each concern identified on the itemized list of concerns that is maintained in the allegation file.

The OAC or other designated staff will advise the alleged by letter of the results of followup action, usually within 30 days of completion. A copy of the pertinent inspection or technical report normally will also be provided to the alleged.

All documents that are provided to the licensee and are placed in the Public Document Room should normally refrain from discussing the fact that an inspection or investigation was prompted by allegations and should contain no information that would tend to identify a particular alleged to a licensee.

1. An inspection report should be prepared in such a manner that the resolution of the allegation is supported by inspection findings, without referring to the fact that an allegation was involved or referencing material incident to the allegation, in order to avoid the possibility of compromising the identity of the alleged.
2. If the nature of the allegation is so specific that documentation of inspection findings would compromise the identity of an alleged, then resolution documentation should be provided to the OAC in a separate memorandum.
3. Any documentation should be written in a style that does not belittle or disparage the alleged, or the significance of the concerns identified to the NRC.

### **DOE High-Level Waste Program**

#### **Background**

Sections 202(3) and (4) of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5842, and the Nuclear Waste Policy Act (NWPA), as amended, 42 U.S.C. §10101, give the NRC certain authority and responsibility with regard to DOE high-level waste programs. In the course of carrying out its responsibilities, NRC may receive allegations concerning DOE or its contractors.

During the period before a license application is received, the NRC does not exercise licensing jurisdiction or independent investigation authority over DOE or its contractors. However, under the NHPA, NRC has certain responsibilities for preclicensing consultation, with DOE and other parties, that involve review of DOE's site characterization activities, technical meetings, site visits, quality assurance audits, and review of DOE documents. During the preclicensing period, the following procedures will be used to deal with technical or wrongdoing issues raised by allegations.

#### Procedures

1. All allegations concerning DOE and its contractors with regard to the repository program will be received, processed and controlled in conformance with MD 8.8 as supplemented by these procedures. An ARB will review allegations involving DOE and its contractors. OI will normally attend ARB meetings involving allegations of potential wrongdoing, including H&I.
2. If technical concerns are involved, those will be identified, assigned by the ARB, reviewed and resolved by the appropriate NRC staff. HLW repository matters will be handled in the preclicensing review process by DWM. Such allegations may be referred to the DOE program office for investigation and response to NRC if appropriate.
3. Potential wrongdoing issues will be referred to the DOE Inspector General (DOE IG) for appropriate action. The ARB will review investigation reports on allegations about DOE and its contractors. OI will assist NMSS in evaluating the results of DOE IG investigations.
4. Resolution of allegations, at least in the pre-license phase, will necessarily involve referral of some matters to the DOE IG. Decisions on referral to DOE should follow the guidance in MD 8.8 for referral of allegations to licensees, as supplemented by these procedures. In general, the allegation referral process will be as follows:
  - a. Based on a review of available information, the ARB will determine:
    - (1) whether the allegation involves wrongdoing including H&I; and
    - (2) whether unique factors exist such as an alleged who is both a government employee and a subcontractor to DOE. For allegations of wrongdoing without unique extenuating circumstances, the ARB will recommend to the Director, NMSS, that investigation of the allegations be referred to the DOE IG. For allegations of wrongdoing involving unique circumstances, referral to the DOE IG may be inappropriate. The ARB will review these allegations and recommend an investigative course of action to the Director, NMSS, on a case-by-case basis.
  - b. The Director, NMSS, or designee, will refer allegations of wrongdoing including H&I to the DOE IG for appropriate action or, in the case of unique circumstances, take other action as necessary.
  - c. The Director, DWM, will consult periodically with the DOE IG regarding the status of referred allegations which remain open.

5. It is important to emphasize the need to protect the identity of the alleged. The Division Director will ensure that the name and other information that could reveal the identity of the alleged are deleted from documents before they are sent to DOE. If the identity of the alleged is essential to permit followup of an allegation, the provisions of MD 8.8 must be followed in providing the identity to DOE, and assurance should be obtained from DOE that appropriate protective measures will be taken.
5. Resolution of allegations will be documented in the allegation files and entered in the AMS, and the alleged will be notified of the resolution, in conformance with MD 8.8.