



**Office of Nuclear Material Safety and Safeguards  
Procedure Approval**

***Management of Agreement State Program Performance Concerns***

**SA-400**

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Issue Date:

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Review Date:

Paul Michalak, Branch Chief  
*Agreement State Programs Branch*  
*Division of Material Safety, State, Tribal*  
*and Rulemaking Programs*  
Office of Nuclear Material Safety  
and Safeguards

*Date:*

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Daniel S. Collins, Director  
*Division of Material Safety, State, Tribal*  
*and Rulemaking Programs*  
Office of Nuclear Material Safety  
and Safeguards

*Date:*

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*Sarah Lopas, Procedure Contact*  
*Federal, State, and Tribal Liaison Branch*  
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Office of Nuclear Material Safety  
and Safeguards

*Date:*

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ML16203A470

<b>NOTE</b>
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**Any changes to the procedure will be the responsibility of the NMSS Procedure Contact. Copies of the NMSS procedures are available through the NRC website.**

## **I. INTRODUCTION**

- A. This document describes the process by which the U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) coordinates concerns regarding the performance of State/Commonwealth<sup>1</sup> regulatory bodies or their personnel, and concerns regarding potential wrongdoing committed by State regulatory personnel (i.e., Agreement State Program Performance Concerns).
- B. As used in this document, the term “Agreement State Program Performance Concern” (ASPPC) refers to a concern involving State regulatory bodies that oversee the activities of Agreement State licensees, and include concerns regarding the performance of such State regulatory personnel. An ASPPC can also include concerns regarding potential wrongdoing committed by State regulatory personnel. The term “wrongdoing” refers to a willful failure to adhere to State regulatory requirements.
- C. As used in this document, the term “concerned individual” refers to the person or organization that submits an ASPPC to the NRC. Anonymous concerns are accepted.
- D. Concerns involving Agreement State licensees were removed from this procedure and are discussed in NMSS procedure SA-401, *Management of Agreement State Licensee Concerns* (Agencywide Documents Access and Management System (ADAMS) Accession No. MLxxxxxxxxx).

## **II. OBJECTIVES**

- A. To provide guidance to NMSS staff on the receipt, review, and coordination of ASPPCs.
- B. To provide guidance for use by the Agreement States on the NRC’s process for managing ASPPCs.
- C. To ensure that ASPPCs are handled by an established process.

## **III. BACKGROUND**

Management Directive (MD) 8.8, *Management of Allegations* (ADAMS Accession No. ML15344A045), establishes the NRC’s policies and procedures for handling allegations concerning NRC-regulated activities. MD 8.8 defines an allegation as a declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. Excluded from this definition are: (1) performance or wrongdoing concerns regarding organizations or

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<sup>1</sup> As used in this procedure, the term “State” means a State or Commonwealth.

personnel from State regulatory bodies that oversee Agreement State licensee activities; and (2) concerns related to Agreement State licensee activities.

MD 8.8 directs NRC staff to refer concerns regarding the performance of State regulatory bodies or their personnel and concerns regarding potential wrongdoing committed by State regulatory personnel to NMSS.

On August 11, 1998, the NRC Executive Director for Operations issued a Commission Paper (SECY-98-192, ADAMS Accession No. MLxxxxxxx) "Resolution of Allegations Concerning the Performance of Agreement State Programs," which recommended that staff handle concerns about Agreement State performance or wrongdoing by transferring, through correspondence to the Agreement State, rather than treating the concerns as allegations. The Commission approved a modified version of the staff's recommendation as noted in a December 8, 1998, Staff Requirements Memorandum for SECY-98-192 (ADAMS Accession No. ML003755405). In the Staff Requirements Memorandum, the Commission stated that, absent a credible health and safety concern, Agreement State program performance concerns or wrongdoing concerns involving a Radiation Control Program Director (RCPD) would be referred to either the Agreement State Inspector General (IG), Attorney General (AG), or Senior Line Management above the RCPD level, as appropriate, based on a decision by staff using criteria to be developed, without convening an Allegation Review Board.

This document provides more specific guidance on handling these matters.

#### **IV. ROLES AND RESPONSIBILITIES**

##### **A. Director, Division of Material Safety, State, Tribal, and Rulemaking Programs (MSTR):**

1. Oversees the management of the ASPPC program in NMSS in accordance with this procedure.
2. Serves as chair (or designates an acting chair) of the State Concerns Review Board (hereon referred to as a "review board"), if convened, for complex concerns. As review board chair, ensures that safety significance, resolution plan, and review priority are considered.
3. Assigns a staff member to serve as the ASPPC coordinator.
4. Approves and signs all correspondence transferring ASPPCs to the States with concurrence by the cognizant Branch Chief and ASPPC coordinator.
5. Approves and concurs on all closure letters to the concerned individuals for ASPPCs.

##### **B. Branch Chief, Agreement State Programs Branch, MSTR:**

1. Ensures that staff members are familiar with the policies and procedures outlined in this guidance.

2. Assigns a technical staff member as lead technical reviewer for ASPPCs.
3. Ensures that the lead technical reviewer is available to brief the review board, if convened, on the concerns.
4. Approves and concurs on all closure letters to concerned individuals for ASPPCs.

C. ASPPC Coordinator:

1. Administers the ASPPC review program in NMSS, in accordance with this guidance.
2. Serves as a member of the review board and assists the chair of the review board as necessary and if convened.
3. Maintains the official agency files on ASPPCs, including establishing a file record and assigning a control number. (Similar to allegations, and as specified in MD 8.8., ASPPC documentation shall not be processed or recorded in the ADAMS or any other electronic location with the potential for public access.)
4. Provides advice, guidance, and assistance to NMSS management, review board members, and NMSS staff in implementing the policies and procedures outlined in this guidance.
5. Serves as the central control point for ASPPCs.
6. Reviews and concurs on all NMSS correspondence involving ASPPCs. Ensures the letters do not compromise the identity of the concerned individual.
7. Prepares reports to MSTR and NMSS senior management on the status of ASPPCs, as needed.
8. Provides information to concerned individuals regarding ASPPC follow-up and resolution.
9. Approves and signs closure material for ASPPC with concurrence by the cognizant Branch Chief and MSTR Division Director.
10. When requested, provides data to the Integrated Materials Performance Evaluation Program (IMPEP) team leader on concerns involving Agreement State licensee(s) that were referred to the States for review under the Common Performance Indicator, *Technical Quality of Incident and Allegation Activities*.
11. Convenes the review board when necessary, including NMSS management

and the appropriate RSAO.

D. Lead Technical Staff:

1. Prepares the branch evaluation form, which will include the concerns list and proposed resolution plan.
2. Using the evaluation form, briefs the review board, if convened, on the concerns, the potential safety significance, the proposed resolution plan, and schedule.
3. Provides input to correspondence to concerned individuals.

E. All NMSS Employees:

1. Maintain a working knowledge of the policies and procedures in this guidance.
2. Record the receipt of any ASPPC in as much detail as possible. Provide all information about the concerns directly to the ASPPC coordinator within 5 days of receipt. Record and provide to the ASPPC coordinator all contacts with concerned individuals during and following resolution of the ASPPC.
3. Protect the identity of concerned individuals in accordance with policies and procedures outlined in this guidance. The identity of the concerned individual should only be provided to the ASPPC coordinator.
4. Ensure that ASPPC-related correspondence receives appropriate limited distribution (i.e., is not placed in ADAMS, branch files, or docket files). Copies of ASPPC documents should not be kept by anyone outside the ASPPC coordinator after an ASPPC is completed and the file is closed. All electronic files should then be deleted. Hard copies should be returned to the ASPPC coordinator for inclusion in the official file or disposal.
5. Consult the ASPPC coordinator to determine whether a matter involving Agreement States should be considered as a potential ASPPC.

F. Regional State Agreements Officers

1. Participates in a review board, when convened, to address various ASPCCs.
2. Contacts appropriate Agreement States, when follow-up information is necessary (including lead technical staff as appropriate), to determine the status of concerns forwarded to the Agreement State for review and action.

G. IMPEP Team Leader and Periodic Meeting Leader:

1. Coordinates with the ASPPC coordinator to provide relevant information received during the IMPEP review or periodic meeting that will assist in the update and/or closeout of ASPPC files.

**V. GUIDANCE**

A. Processing Concerns that Meet the NRC's Definition of an Allegation under NRC's Jurisdiction

Allegations involving areas of NRC's jurisdiction received by NMSS staff are outside the scope of this procedure and are processed in accordance with MD 8.8.

B. Processing Concerns Involving Agreement State Oversight

1. Concerns involving State regulatory bodies and State employees that oversee the activities of Agreement State licensees (i.e., ASPPCs) received by NMSS staff should be forwarded to the ASPPC coordinator within 5 days of receipt and are not processed as NRC allegations. These include:
  - a. Concerns regarding the performance of such State regulatory bodies or their personnel.
  - b. Concerns regarding interpretation and implementation of the State's regulatory requirements.
  - c. Concerns regarding potential wrongdoing committed by State personnel.
2. An acknowledgement letter is normally sent to the concerned individual within 30 days of receipt (See Appendix C). The initial correspondence will either indicate that the State will be responding directly (with no further NRC action) or that the NRC will be responding at a later date with the State's response, depending on whether or not the concerned individual agrees to release his/her identity to the State. If it is anticipated that it will take longer than 30 days to respond to the concerned individual, an initial response (phone or e-mail is acceptable) should be provided to the concerned individual acknowledging the concern and indicating that additional NRC feedback is forthcoming.

3. The ASPB Branch Chief will assign a lead technical reviewer for the concern to determine safety significance and to review the concern against the referral criteria in Section F. If additional information is needed from the concerned individual, the lead technical reviewer will coordinate with the ASPPC coordinator to interview the individual.
  4. For non-complex concerns, the lead technical reviewer for the concern will document the proposed ASPPC resolution plan for approval (via e-mail) by the ASPB Branch Chief, the appropriate RSAO, and the ASPPC coordinator within 30 calendar days of receipt. Non-complex concerns include:
    - a. Concerns previously referred to the State that were determined be adequately responded to by the State.
    - b. Concerns regarding the independence and qualifications of Agreement State personnel when the safety significance is low.
    - c. Concerns regarding the timeliness of State inspections when the safety significance is low.
    - d. Any other concern related to the performance of the State when the safety significance is low. If there is a concern where the safety significance is unknown, a review board should be convened.
  5. For complex concerns, a review board can be convened normally within 30 days of receipt, at the discretion of the Director, MSTR (or designee):
    - a. A review board consists of a chairperson (Director, MSTR, or designee), ASPB Branch Chief, lead technical reviewer, an Office of the General Counsel representative, RSAO, and the ASPPC coordinator.
    - b. The review board will determine if a special evaluation or other actions, as deemed appropriate, should be initiated when significant, valid safety concerns have been identified and brought to the attention of the NRC through an external source. NOTE: In the case of an emergency that presents danger to public health and safety, if immediate action appears necessary, the NRC could implement SA-112, *Emergency Suspension of a 274b. Agreement* (ADAMS Accession No. ML110560531).
    - c. A review board does not have to be convened for ASPPCs that have been previously reviewed and no new information is provided, or for non-complex concerns. The appropriate staff should document the proposed resolution plan for approval, as in Section C.4.
    - d. If there is a concern where the safety significance is unknown, a review board should be convened.
- E. Concerned Individual's Identity Protection When Making Referrals to Agreement States

Before making any referrals to an Agreement State, the concerned individual should be informed of the referral. In addition, staff should determine the ability of the State to protect the identity of the concerned individual by referring to

Appendix A, *Ability of Agreement States to Protect Concerned Individual's Identity from Public Disclosure*. When contacting the concerned individual, staff should inform the concerned individual of the NRC's plans to refer the concern(s) to the State, inform the concerned individual of the State's ability to protect his or her identity from public release, and inquire whether the concerned individual wishes for his/her identity to be released to the State.

The staff should also encourage the concerned individual to contact the State directly regarding his/her concern(s). The staff should inform the concerned individual that the Agreement States prefer to be contacted directly, since it allows the State to obtain all the necessary information directly and facilitates its response. In addition, the staff should inform the concerned individual that while the NRC has Agreement State oversight responsibility, NRC has little authority to take independent action or to require action by an Agreement State as a result of performance or wrongdoing concerns in the absence of a credible health and safety concern.

If the concerned individual indicates that he/she would like to contact the State directly, the staff should provide the concerned individual with the State's contact person's name, e-mail, and telephone number. This information can be obtained from the NRC's Directory of Agreement State Directors at <https://scp.nrc.gov/asdirectory.html>. If the concerned individual indicates that he/she would not like to contact the State directly, and would like their identity protected, staff should take all reasonable efforts not to disclose the concerned individual's identity.

- F. Referral Criteria for Concerns involving Agreement State Oversight
1. Referrals to the Radiation Control Program Director (RCPD)
    - a. Performance concerns involving the Agreement State program should be initially referred to the RCPD.
    - b. Performance or wrongdoing concerns involving Agreement State employees reporting to the RCPD.
  2. Referrals to Senior Line Management above the RCPD
    - a. Performance or wrongdoing concerns involving the Agreement State RCPD should be referred to Senior Line Management above the RCPD.
    - b. Performance or wrongdoing concerns involving the Agreement State program or employees, that were previously referred to the RCPD, and which have not been appropriately addressed (as determined by the review board), should be referred to Senior Line Management above the RCPD. The NRC Regional State Liaison Officer (RSLO) and RSAO should also be notified .



3. Referrals to State Inspector General (IG) or Attorney General (AG)
  - a. Alleged employee wrongdoing or performance concerns involving the Agreement State program or employees, that were previously referred to Senior Line Management above the RCPD, and which have not been appropriately addressed (as determined by the review board), should be referred to the State IG, State AG, or equivalent.
  - b. Alleged wrongdoing or performance concerns involving Senior Line Management above the RCPD should be referred to the State IG, State AG, or equivalent. The NRC RSLO and RSAO should also be notified.
  - c. Concerns regarding employee wrongdoing, or performance involving an Agreement State program that has demonstrated a disregard for investigating and handling referred concerns should be referred to the State IG, AG, or equivalent.

**G. Follow up and Closure of ASPPCs**

1. All referral letters to the State, including those in which the concerned individual's identity is released and agrees to be contacted directly by the State, should request a response. After the referral to the State is completed and the State has responded, the lead technical reviewer will review the response and provide documentation to the ASPPC coordinator for closure with a memorandum to file. Upon the discretion of the review board, the IMPEP coordinator, and IMPEP team lead, concerns transferred to the RCPD should be addressed at the time of the next periodic meeting or IMPEP review of the Agreement State.
2. All referrals to the State without the release of the concerned individual's identity should include a request for a response indicating the results or resolution of the matter within 60 days. After the State has responded, the lead technical staff reviewer will review the response and provide documentation to the ASPPC coordinator for closure.

If after 60 days no response is received from the State, periodic follow-up with the State regarding its response to the referral should be made by the RSAO. If after 90 days no response is received from the State, a letter should be sent to the State requesting a response within 30 days. If the response has not been received within 30 days, the original request that was made to the RCPD should then be forwarded to the Senior Line Management above the RCPD for action. Alternatively, if the original request was made to the Senior Line Management, it should then be forwarded to the State AG or IG, as appropriate. If the original request was made to the State AG or IG, and there is no response, then the concern

should be considered by NMSS management, either individually, or in consultation with the Management Review Board to determine: 1) whether a special IMPEP review of the State should be conducted; or 2) whether a letter to a higher Government official should be sent. The concerned individual should be informed of the status of the referral to the State when exceeding 180 days.

3. Upon the discretion of the review board, the IMPEP coordinator, and IMPEP team lead, the NRC evaluates the State's handling of these referrals during the IMPEP review of the State program under the Common Performance Indicator, *Technical Quality of Incident and Allegation Activities*. NMSS procedure SA-105, *Reviewing the Common Performance Indicator, Technical Quality of Incident and Allegation Activities* (draft procedure at ADAMS Accession No. ML16034A472), describes how the NRC evaluates whether Agreement States are properly handling licensee concerns referred to the State from the NRC.

#### H. Contact Information

The ASPPC program is administered by the ASPPC coordinator, located in the Division of Material Safety, State, Tribal, and Rulemaking Programs in NMSS. The ASPPC Coordinator can be contacted via e-mail at:  
[AgreementStateConcern.Resource@nrc.gov](mailto:AgreementStateConcern.Resource@nrc.gov).

## VI. APPENDICES

- Appendix A - Ability of Agreement States to Protect Concerned Individual's Identity from Public Disclosure
- Appendix B - Sample Correspondence Referring Concerns to an Agreement State
- Appendix C - Sample Correspondence to the Concerned Individual
- Appendix D - Sample Follow-up Correspondence for Referrals Exceeding 180 Days
- Appendix E - Sample ASPPC Resolution Plan

## VII. REFERENCES

1. Draft NMSS Procedure, SA-401, *Management of Agreement State Licensee Concerns* (ADAMS Accession No. MLXXXXXXXXXX)
2. Management Directive (MD) 8.8, *Management of Allegations*, and associated Handbook 8.8 (ADAMS Accession No. ML15344A045)
3. SECY-98-192 – Resolutions of Allegations Concerning the Performance of Agreement State Programs, dated August 11, 1998
4. Staff Requirements Memorandum - SECY-98-192 - Resolution of Allegations Concerning the Performance of Agreement State Programs, dated December 8, 1998

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5. FSME State Agreement Procedure<sup>2</sup> SA-105, *Reviewing the Common Performance Indicator, Technical Quality of Incident and Allegation Activities*
6. FSME State Agreement Procedure SA-112, *Emergency Suspension of a 274b. Agreement*

**VIII. ADAMS REFERENCE DOCUMENTS**

For knowledge management purposes, all previous revisions of this procedure, as well as associated correspondence with stakeholders, that have been entered into ADAMS are listed below.

<b>1N o.</b>	<b>Date</b>	<b>Document Title/Description</b>	<b>Accession Number</b>
1	06/21/99	SP-99-042: Draft OSP Procedure SA-400, "Management of Allegations"	ML072010241
2	01/22/01	STP Procedure SA-400, Management of Allegations	ML010720480
3	03/11/11	FSME-11-022 - Opportunity to Comment on Draft Revision to FSME Procedure SA-400 "Management of Agreement State Performance Concerns and Allegations."	ML102770172
4	03/11/11	Summary of Comments on SA-400, "Allegations"	ML14203A646
5	04/10/15	STC-15-026 – Opportunity to Comment on Draft Revision to Office of Nuclear Material Safety and Safeguards Procedure SA-400, "Management of Agreement State Program Performance Concerns."	ML14203A643

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<sup>2</sup> Note that the Office of Federal and State Materials and Environmental Management Programs (FSME) merged with NMSS on October 6, 2014. Not all State procedures have been updated to reflect the new office name of NMSS. In the interim, current procedures are still in effect and will be referenced as FSME State Procedures until such time as they are reviewed and revised to include the official name. All procedures may be found on the NMSS external website under "Resources and Tools," and then "NMSS Procedures."

## Appendix A

### Ability of Agreement States to Protect Concerned Individual's Identity from Public Disclosure

AGREEMENT STATE	IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?	COMMENTS
Alabama	YES	
Arizona	NO	
Arkansas	NO	
California	YES	
Colorado	NO	
Florida	NO	
Georgia	NO	
Iowa	YES	
Illinois	YES	
Kansas	YES	
Kentucky	NO	All information is subject to open records requests and can be released at the request and approval of the Attorney General.
Louisiana	NO	
Maine	YES	Identity can be protected in limited situations, such as where Federal law protects this information.
Maryland	YES	
Massachusetts	YES	
Minnesota	YES	Identity no longer protected in the case of a court hearing.

AGREEMENT STATE	IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?	COMMENTS
Mississippi	NO	
Nebraska	YES	
Nevada	YES	
New Hampshire	NO	The information must be labeled confidential.
New Jersey	YES	
New Mexico	NO	
New York	YES	
North Carolina	YES	
North Dakota	YES	
Ohio	NO	There is no confidentiality as to an alleged's identity unless the alleged is a whistleblower and meets the requirements of Ohio Administrative Code 3701:1-38-09.
Oklahoma	YES	
Oregon	YES	
Pennsylvania	YES	
Rhode Island	NO	
South Carolina	YES	
Tennessee	NO	Although the State has open records laws, the State takes precautions to prevent release of alleged's information. An individual can provide a code name and refer to that code name to receive information on allegation follow up actions. Allegation files are maintained as confidential.
Texas	NO	

AGREEMENT STATE	IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?	COMMENTS
Utah	NO	The information must be labeled confidential.
Virginia	YES	
Washington	YES	
Wisconsin	YES	

## Appendix B

### Sample Correspondence Referring Concerns to an Agreement State Radiation Control Program Director, Senior Line Management, State Inspector General or Attorney General

Agency Representative  
Agency Address

SUBJECT: REFERRAL OF MATTER RECEIVED BY THE U.S. NUCLEAR REGULATORY  
COMMISSION REGARDING (Name of Agreement State Program)

Dear Mr./Ms. (Last Name):

USE FOR ALL LETTERS

The U. S. Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) has received information regarding a potential (insert performance and/or wrongdoing) concern involving (insert name of State/Commonwealth<sup>3</sup> employee, or name of Agreement State Program). Details are described in the enclosure to this letter.

The State of (Insert name of State) has entered into an Agreement with the U.S. Nuclear Regulatory Commission (NRC) under which the NRC discontinues its authority to regulate Atomic Energy Act materials as specified in Section 274 of the Act, and the State of (insert name of State), as an Agreement State, assumes that authority. Under this Agreement, the State of [insert name of State] has jurisdiction over this concern(s). We ask that you review and address these concerns/this matter as you deem appropriate. We would appreciate your informing us of your resolution of this matter.

USE IF THE CONCERNED INDIVIDUAL AGREES TO THE RELEASE OF HIS/HER NAME TO  
THE STATE

This information was submitted to NMSS by (name of concerned individual(s), address, and telephone number). (Name of concerned individual(s)) has agreed to cooperate with the State and can be reached by your office. We have also provided your address and telephone number to the individual so that they may contact you in the future regarding this matter. When your actions are completed, please inform the concerned individual of the results of your action(s) or resolution of this matter. [Insert for performance concerns transmitted to the RCP Director: NMSS will review your response to this matter during the next periodic meeting or Integrated Materials Performance Evaluation Program (IMPEP) review, whichever comes first.]

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(NOTE: This should appear only on the first page and the official record copy.)

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<sup>3</sup> As used in this letter, State means a "State" or "Commonwealth." Staff should use the term that is correct for the State or Commonwealth being addressed.

USE IF THE CONCERNED INDIVIDUAL DOES NOT AGREE TO THE RELEASE OF HIS/HER NAME TO THE STATE

The individual who provided this information to the NRC requested that his/her identity not be provided to you. In the event the concerned individual changes his/her mind about contacting the State, we have provided your address and telephone number to the individual so that they may contact you in the future. However, we ask that you provide a response directly to me so that we may inform the individual of the resolution of these matters. We would appreciate a response within 60 days informing us of the details of your actions or resolution of this matter. We consider the concern closed upon receipt of your response.

USE FOR ALL LETTERS

We ask that your response only be sent to me at the following address. No other copies should be sent to the NRC.

MSTR Director (ADDRESSEE ONLY)  
Office of Nuclear Material Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Mail Stop XXXX  
Washington, DC 20555

If your response contains personal privacy, proprietary, or confidential information, such information shall be contained in a separate enclosure, appropriately marked, so that it will not be subject to public disclosure.

The response requested by this letter and the accompanying enclosure are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511.

We also request that you control and limit the distribution of this letter and its enclosures. These documents should be limited to State personnel with a "need to know." Your cooperation is appreciated. If you have any questions, please contact (name of ASPPC Coordinator) at (301) 415-XXXX or myself at (301) 415-XXXX.

Sincerely,

MSTR Director

Enclosure:  
Statement of Concerns

Distribution:  
Do Not Place in ADAMS  
ASPPC Files

OFFICE	NMSS:MSTR	NMSS:MSTR	OGC	NMSS:MSTR	NMSS:MSTR
NAME	Lead Tech Staff	ASPPC Coordinator	OGC for ASPPCs	ASPB BC	Director or Deputy
DATE	/ /16	/ /16	/ /16	/ /16	/ /16



NOT FOR PUBLIC DISCLOSURE  
(Use this header on each page of the enclosure)

**STATEMENT OF CONCERNS**

**Concern:**

The Office of Nuclear Material Safety and Safeguards has received information from a concerned individual that the XYZ Agreement State inspector who responded to the incident at ABC Facility did not (insert details). Additionally, the concerned individual stated that there is off-site contamination at the ABC Facility and the Agreement State is not enforcing their regulations.

**Enclosure**

## Appendix C

### Sample Correspondence to the Concerned Individual

Concerned Individual's Name and Address

Subject: THE CONCERN YOU RAISED TO THE U.S. NUCLEAR REGULATORY  
COMMISSION REGARDING (AGREEMENT STATE) – NMSS-20XX-AS-00XX

Dear Concerned Individual:

FOR ALL LETTERS

This refers to concerns you raised in your (telephone conversation, letter, etc.) with/to Mr./Ms. (Name) of the U.S. Nuclear Regulatory Commission, on Date, regarding (Agreement State).

COMBINED ACKNOWLEDGMENT AND CLOSURE LETTER FOR CONCERNS OUTSIDE  
MD 8.8, GUIDANCE AND AGREEMENT STATE JURISDICTION

As was discussed on (Date), the U.S. Nuclear Regulatory Commission does not have jurisdiction in the area in which you have raised concerns. In addition, your concerns did not raise any health and safety concerns related to the regulation of radioactive materials.

We plan no further action. Thank you for informing us of your concerns.

COMBINED ACKNOWLEDGMENT AND CLOSURE LETTER WHERE CI'S IDENTITY  
RELEASED TO STATE

Specifically, you indicated that (summarize concern).

The NRC's oversight responsibility, by law, is limited to only those areas we have jurisdiction over and have not relinquished under the Agreement with the State/Commonwealth<sup>4</sup> of (Agreement State). The NRC does not have jurisdiction over the activities that are discussed in your concerns; we are referring your concerns to (Agreement State). You agreed with this referral and to the release of your identity. Your concerns were referred to:

*INSERT: NAME; ADDRESS; AND PHONE NUMBER FOR PERSON IN STATE TO WHICH  
CONCERNS WERE REFERRED*

We have asked that the State inform you of the actions they take to address your concerns and have requested that they also provide a copy to us. We plan no further action on the concerns referred to the State, at this time. We implement our oversight by periodically reviewing the State's radiation control program through the Integrated Materials Performance Evaluation Program

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<sup>4</sup> As used in this letter, State means a "State" or "Commonwealth." Staff should use the term that is correct for the state or commonwealth being addressed.

(IMPEP). (Agreement State's) most recent IMPEP review was in (Date). The result of the State IMPEP review is available on the NRC website ([www.nrc.gov](http://www.nrc.gov) > About NRC > Organization and Functions > Office of Nuclear Material Safety and Safeguards. In the "Related Information" box, select Agreement State Program. Under "Resources and Tools," select "Reviews.").

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(NOTE: This should appear only on the first page and the official record copy.)

## FOR ACKNOWLEDGMENT LETTERS WHERE CI'S IDENTITY NOT RELEASED TO STATE

The enclosure to this letter documents your concern as we understand it. If the description of your concern is not accurate, please contact me so that we can assure that your concern is appropriately described.

The NRC's oversight responsibility, by law, is limited to only those areas we have jurisdiction over and have not relinquished under the Agreement with the State of (Agreement State). The NRC does not have jurisdiction over the activities that are discussed in your concerns; we are referring your concerns to (Agreement State). You agreed with this referral and indicated that you did not want your identity released to the State. Your concerns were referred to:

*INSERT: NAME; ADDRESS; AND PHONE NUMBER FOR PERSON IN STATE TO WHICH CONCERNS WERE REFERRED*

We have asked that the State inform us of its actions to address your concerns. We will provide you a copy of its response upon receipt. In addition, we implement our oversight by periodically reviewing the State's radiation control program through the Integrated Materials Performance Evaluation Program (IMPEP). (Agreement State's) most recent IMPEP review was on (Date). The result of the State IMPEP review is available on the NRC website: [www.nrc.gov](http://www.nrc.gov) > About NRC > Organization and Functions > Office of Nuclear Material Safety and Safeguards. In the "Related Information" box, select Agreement State Program. Under "Resources and Tools," select "Reviews."

The NRC intends to take all reasonable efforts not to disclose your identity to any organization or individual outside the NRC, or the public, unless you clearly indicate no objection to being identified. However, you should be aware that your identity could be disclosed if disclosure is necessary to ensure public health and safety, to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust, to support a hearing on an NRC enforcement matter, or if you have taken actions that are inconsistent with and override the purpose of protecting a concerned individual's identity.

## FOR STATUS LETTERS (CI'S IDENTITY NOT RELEASED TO STATE)

This letter is a follow-up to our letter dated (Date) and telephone conversations of (Insert if appropriate). In the letter dated (Date), we indicated that we would be referring your concerns to (Agreement State) for action. We asked the State to inform us of its actions to address your concerns. We also indicated that we would provide you a copy of its response upon receipt. To date, we have not received a response. We will correspond with you further upon receipt of the State's response.

## FOR CLOSURE LETTERS (CI'S IDENTITY NOT RELEASED TO STATE)

This refers to concerns you raised in your (telephone conversation, letter, etc.) with/to Mr./Ms. (Name) of the U.S. Nuclear Regulatory Commission, on Date, regarding (Agreement State). In the letter dated (Date), we indicated that we would be referring your concerns to (Agreement State) for action. The concerns you raised and the response developed from information provided by the (Agreement State) are provided in the enclosure.

We trust these actions have been responsive to your concerns, and we plan no further action. Thank you for informing us of your concerns.

USE FOR ALL LETTERS

If a request is filed under the Freedom of Information Act (FOIA) related to your area(s) of concern, the information provided will, to the extent consistent with that Act, be purged of names and other potential identifiers. Further, you should be aware that you are not considered a confidential source unless confidentiality has been formally granted in writing.

Thank you for notifying us of your concerns. If you have any additional questions, or if the NRC can be of further assistance in this matter, please call me at (301) 415-XXXX

Sincerely,

ASPPC Coordinator

Enclosure:  
Statement of Concern

Distribution:  
Do Not Place in ADAMS  
ASPPC Files

<b>OFFICE</b>	NMSS:MSTR	NMSS:MSTR	OGC	NMSS:MSTR	NMSS:MSTR
<b>NAME</b>	Lead Tech Staff	ASPPC Coordinator	OGC for ASPPCs	ASPB BC	Director or Deputy
<b>DATE</b>	/ /16	/ /16	/ /16	/ /16	/ /16

## Appendix D

### Sample Follow-up Correspondence for Referrals Exceeding 180 Days

Agency Representative  
And Agency's Address

SUBJECT: REFERRAL OF MATTER RECEIVED BY THE U.S. NUCLEAR REGULATORY COMMISSION REGARDING (Name of Agreement State Program), Dated (Insert Date of Transmittal Letter)

Dear Mr./Ms. (Last Name):

USE FOR ALL LETTERS

The U. S. Nuclear Regulatory Commission's (NRC) Office of Nuclear Material Safety and Safeguards (NMSS), in letter dated (insert date), from (insert name of individual) to [(insert name of individual), referred information regarding a potential (insert performance and/or wrongdoing) concern involving (insert name of State/Commonwealth<sup>5</sup> employee, or name of Agreement State Program). A copy of that letter is enclosed.

To date, we have not received a response. We realize that these matters can require considerable time to address and resolve. However, the NRC has a responsibility to respond to the individual who initially referred this matter to us. Without a response from you, we are unable to adequately address the individual's concern. We would appreciate a response within 30 days informing us of the status of your actions or the details of your actions to resolve this matter. We ask that your response only be sent to me at the following address. No other copies should be sent to the NRC.

MSTR Director (ADDRESSEE ONLY)  
Office of Nuclear Material Safety  
and Safeguards  
U.S. Nuclear Regulatory Commission  
Mail Stop XXXX  
Washington, DC 20555

If your response contains personal, privacy, proprietary, or confidential information, such information shall be contained in a separate enclosure, appropriately marked, so that it will not be subject to public disclosure. This letter and its enclosure should be controlled and distribution limited to personnel with a "need to know."

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

(NOTE: This should appear only on the first page and the official record copy.)

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<sup>5</sup> As used in this letter, State means a "State" or "Commonwealth." Staff should use the term that is correct for the State or Commonwealth being addressed.

The response requested by this letter and the accompanying enclosure are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511.

We also request that you control and limit the distribution of this letter and its enclosures. These documents should be limited to State personnel with a "need to know." Your cooperation with us is appreciated. If you have any questions, please contact (name of ASPPC Coordinator) at (301) 415-XXXX or myself at (301) 415-XXXX.

Sincerely,

MSTR Director

Enclosure:  
Letter dated (insert date)  
from (insert name of individual)

Distribution:  
Do Not Place in ADAMS  
ASPPC Files

<b>OFFICE</b>	NMSS:MSTR	NMSS:MSTR	OGC	NMSS:MSTR	NMSS:MSTR
<b>NAME</b>	Lead Tech Staff	ASPPC Coordinator	OGC for ASPPCs	ASPB BC	Director or Deputy
<b>DATE</b>	/ /16	/ /16	/ /16	/ /16	/ /16

## Appendix E Sample ASPPC Resolution Plan

ASPPC Resolution Plan			
Agreement State Program Performance Concern: NMSS-20XX-AS-XXXX			
<b>AGREEMENT STATE:</b>	<b>TECHNICAL STAFF:</b>		
<b>NEXT IMPEP OR PERIODIC MEETING DATE:</b>	<b>RECEIVED DATE:</b>		
<b>Concern:</b>	(A concern is one or two sentences.)		
<p>Check each question as applicable to this concern.</p> <p style="margin-left: 40px;">Concern involving the performance of State personnel?</p> <p style="margin-left: 40px;">Concern regarding potential wrongdoing committed by State personnel?</p> <p style="margin-left: 40px;">Does the concerned individual object to the NRC releasing his/her identity to the State?</p>			
<b>Concern Background, Supporting Information, and Comments:</b>			
*Safety Significance:	HIGH	Normal	N/A
<b>Basis:</b> (Describe the safety significance of the concern.)			
Technical Staff Recommendation(s)			
Check each recommendation as applicable to this concern.			
*Recommended Action	Assigned Branch	Planned Date	
Referral to the Radiation Control Program Director (RCPD)			
Referral to Senior Line Management above the RCPD			
Referrals to State Inspector General, Attorney General, or Equivalent.			