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NUCLEAR REGULATORY COMMISSION RECEIVES REPORT
ON PROTECTING PERSONS WHO RAISE CONCERNS

The Nuclear Regulatory Commission has received a report from an internal Review Team which was charged with determining whether the NRC has taken sufficient steps, within its authority, to create an atmosphere within the regulated community where individuals feel free to raise safety concerns without fear of retaliation.

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that nuclear industry employees have been discriminated against for raising concerns and to take enforcement action if such discrimination is substantiated. Under the Energy Reorganization Act of 1974, the Department of Labor also has the authority to investigate such allegations and to provide a personal remedy to the employee when discrimination is found to have occurred.

The report concludes that the NRC has established the basic framework to achieve a proper workplace environment by having an allegation management system, doing inspections and investigations and taking enforcement action. However, the report identifies weaknesses in the existing program and makes a number of recommendations for improving its effectiveness.

The report concludes that, despite existing prohibitions against discrimination, the NRC and Department of Labor processes, as currently implemented, do not provide and are not structured to provide sufficient protection for these individuals.

The report points out that, while the current regulatory system encourages employees to raise concerns, it leaves them largely responsible for their own protection and, in order to obtain a personal remedy for alleged discrimination, frequently subjects them to a lengthy and expensive litigation period.

Recommendations for improving the effectiveness of the regulatory processes fall into five broad areas:

1. Encouraging Responsible Licensee Action: recommended actions include issuance of a Commission Policy Statement dealing with its expectations regarding the proactive approach licensees and contractors should take to assure that employees are free, and feel free, to raise concerns and the development of a survey instrument which would permit the NRC staff to independently and credibly assess a licensee's environment for raising concerns.

2. Improving NRC Allegation Management: specific actions are recommended to increase the overall agency sensitivity and priority given persons raising concerns, improve their treatment and improve allegation management consistency; in addition, steps are recommended for strengthening the quality of communications with these individuals.

3. NRC Harassment and Intimidation (H&I) Investigations and NRC's Involvement in the Department of Labor Process: the Review Team recommends that the Commission support current Department of Labor consideration of transferring responsibility for investigating H&I concerns raised by NRC licensee and contractor employees from the Wage and Hour Division to the Occupational Safety and Health Administration. In addition, the Commission should support legislation which would amend Section 211 of the Energy Reorganization Act to reflect time frames that would allow a thorough but timely Department of Labor process, provide earlier reinstatement of employees and support having the Department of Labor defend its investigation-based findings in the adjudicatory process, if contested. Finally, the group recommends that the current process for prioritizing investigations involving discrimination be revised.

4. NRC Enforcement Actions: recommendations include proposing legislation which would amend the Atomic Energy Act of 1954, as amended, to permit the NRC to levy fines of up to \$500,000 per day for each H&I violation.

5. Treating Allegations of Actual or Potential Discrimination Outside the NRC Investigation and Enforcement Process: the report recommends that, when the NRC receives credible reports of reasonable fear of retaliation, the agency should contact senior licensee management (providing the

individual is willing to be identified) to address the matter before discrimination actually occurs; further the proposed Policy Statement should advocate that power reactor and large fuel cycle licensees voluntarily adopt a holding period to preserve, at a minimum, the affected employee's pay and benefits pending either licensee resolution of the matter or completion of a Department of Labor investigation.

The Review Group is scheduled to brief the Commission on its findings during a public meeting scheduled for January 31 and the Commission is expected to act on the recommendations after receiving comments from the Executive Director for Operations.

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