



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

July 27, 2000

MEMORANDUM TO: Hubert J. Miller, Regional Administrator, Region I  
Luis A. Reyes, Regional Administrator, Region II  
James Dyer, Regional Administrator, Region III  
Ellis W. Merschoff, Regional Administrator, Region IV  
Samuel Collins, Director, Office of Nuclear Reactor Regulation  
William Kane, Director, Office of Nuclear Material Safety and Safeguards

FROM: R. W. Borchardt, Director /RA/  
Office of Enforcement

SUBJECT: CHARTER FOR THE DISCRIMINATION TASK GROUP

By memorandum dated April 14, 2000, the Executive Director for Operations approved the establishment of a working group to evaluate the NRC processes for handling discrimination cases. Attached is the group's charter, which includes a listing of the areas initially considered for review and an overall schedule of the group activities.

The group plans on holding several meetings throughout the country soliciting input from both internal and external stakeholders regarding the process for dispositioning discrimination matters. A Federal Register Notice is attached announcing the first three of six planned initial public meetings. The remaining meetings are being planned in the areas near the Millstone Nuclear Power Plant, Paducah Gaseous Diffusion Plant, and in the Chicago area. The group also plans on holding meetings in the regional offices to solicit internal stakeholder feedback on the process. The OE staff will be coordinating the meeting schedule with the Regional Enforcement Coordinators.

Following this initial phase of meetings and review of the information gathered, the Task Group intends to conduct another phase of meeting to discuss the information gathered and likely recommendations for changes and improvements to the discrimination process.

If you have any questions, contact Barry Westreich at 301-415-3456 or e-mail (BCW).

Attachments: As stated

cc: The Chairman  
 Commissioner Dicus  
 Commissioner Diaz  
 Commissioner McGaffigan  
 Commissioner Merrifield  
 W. Travers, EDO  
 F. Miraglia, DEDR  
 C. Paperiello, DEDMRS  
 J. Craig, OEDO  
 Jon R. Johnson, NRR  
 Brian W. Sheron, NRR  
 Michael F. Weber, NMSS  
 Donald A. Cool, NMSS  
 John T. Greeves, NMSS  
 E. William Brach, NMSS  
 SECY

DISTRIBUTION:

RWBorchardt, OE  
 JLuehman, OE  
 OE Staff  
 Enforcement Coordinators  
 RI, RII, RIII, RIV, NRR, NMSS (Also by e-mail)  
 EGM File  
 Day File  
 WEB (3 days after issuance)  
 PUBLIC (3 days after issuance)

OE	
BWestreich	BBorchardt
7/26 /00	7/26 /00

G:\Barry\Discrimination memo and charter.wpd

## DISCRIMINATION TASK GROUP CHARTER

### WORKING GROUP FOR REVIEW OF AGENCY PROCESSES RELATED TO CHARGES OF DISCRIMINATION AT LICENSED OR CONTRACTOR FACILITIES

**Purpose:** To establish a working group to; (1) evaluate the Agency's handling of matters covered by its employee protection standards, (2) propose recommendations for improvements to the Agency's process for handling such matters, including revisions to guidance documents and regulations as appropriate, (3) to ensure that the application of the NRC enforcement process is consistent with the objective of providing an environment where workers are free to raise safety concerns in accordance with the Agency's employee protection standards, and (4) to promote active and frequent involvement of internal and external stakeholders in the development of recommendations for changes to the process.

**Group Composition:** Bill Borchardt, Director, Office of Enforcement, Group Leader  
Barry Letts, Office of Investigations Field Office Director, Region I  
Dennis Dambly, Assistant General Counsel for Materials Litigation and Enforcement, Office of General Counsel  
Ed Baker, Agency Allegation Adviser  
Cynthia D. Pederson, Director, Division of Nuclear Materials Safety, Region III  
Brad Fewell, Regional Counsel, Region I

#### BACKGROUND:

The NRC has traditionally relied on the openness of employees to identify issues. As a result, an effective and consistent NRC approach for dealing with discrimination cases is an important feature of encouraging and ensuring a safety conscious work environment. Enforcement actions need to be predictable, fair and able to withstand scrutiny, since they could result in civil penalties, orders, or actions to individuals and are viewed by stakeholders as an indicator of the seriousness with which the NRC views discrimination issues. The overall objective of the NRC employee protection regulations is to promote an atmosphere where employees feel comfortable raising safety concerns.

Historically, discrimination matters have been some of the most difficult cases for the staff to evaluate and process. These cases, unlike most based on technical inspection findings, typically involve conflicting statements and documentation. It is frequently difficult to determine whether a violation occurred and what the appropriate enforcement action should be. Because these cases are of great interest to the NRC, a review of the processes used in these matters is appropriate.

#### GROUP OBJECTIVES:

- To clearly articulate the current NRC Process for handling discrimination cases.
- To identify potential improvements in the processes through interaction with internal and external stakeholders.

- To develop a Commission Paper which outlines the findings of the group and any recommendations for improvements in the process.

The Review will include:

1. Interacting with other agencies (such as Federal Aviation Administration, Department of Labor, Food and Drug Administration, Department of Agriculture, National Institutes of Health, Center for Disease Control, Department of Energy, Office of Special Counsel) to understand how they process these issues.
2. Conducting external stakeholder meetings to solicit input.
3. The review should:
  - a) Evaluate the current NRC processes for dealing with discrimination matters.
  - b) Determine whether the Enforcement Policy supplements need to consider a more graded approach regarding the appropriate enforcement sanction given the specific facts of the case, rather than the current supplement guidance which largely relies on the individual's position. Examples of guidance to consider revising include consideration of the severity of the adverse action, and better defining thresholds for taking individual action.
  - c) Consider changes to the current enforcement process in discrimination cases, such as the usefulness of pre-decisional Enforcement Conferences and settlement discussions.
  - d) Evaluate the process used for DOL deferrals.
  - e) Evaluate the release of documents prior to final action being taken.
  - f) Consider the issues raised in the Petition for Rulemaking "Employee Protection Training", Docket PRM-30-62, 64 Fed. Reg. 57785 (Oct. 27, 1999), regarding requiring training of first line and above supervisors of their responsibilities in implementing the employee protection regulations.
  - g) Evaluate the reliance on regulations such as 10 CFR 50.5 for Individual Actions and evaluate revising 10 CFR 50.7 to include individual actions.
  - h) Clarify how the NRC should use the decisions of other Agencies(e.g DOL, MSPB).
  - i) Review the role of the complainant in the process.

## REVIEW OF INTERNAL NRC PROCESSES

- 1) Evaluate action signature authority
- 2) Consider the standards for when an investigation is initiated.
- 3) Better define the roles and responsibilities of participants in the process.

## GROUP OUTPUT

- 1) Develop recommendations for revisions to the enforcement policy or other agency guidelines as appropriate.
- 2) Produce a Commission Paper outlining possible recommendations for NRC offices (OI, OE, OGC, NRR and NMSS and the Regions) to consider in making changes to their processes. The Commission Paper is to be issued by June 30, 2001.

## GROUP TIME-LINE

The group's proposed schedule is:

- |   |                          |
|---|--------------------------|
| - Identification of working group membership.       | June, 2000               |
| - Evaluation of current NRC processes.              | July- Sept., 2000        |
| - Stakeholder meetings.                             | August, 2000-April, 2001 |
| - Review of other federal agency processes.         | Oct.-Dec., 2000          |
| - Develop recommendations for process improvements. | Jan.- March, 2001.       |
| - Provide Commission draft recommendation.          | April, 2001              |
| - Draft recommendations issued for comment.         | May- June, 2001          |
| - Issue Report with recommendations.                | June 30, 2001            |

Distribution

FMiraglia, DEDR  
BBorchardt, OE  
DDambly, OGC  
CPedersen, RIII  
EBaker, NRR  
BFewell, RI  
BLetts, OI  
BWestreich, OE  
BSmith, NMSS  
VOrdaz, NRR  
Day File

OE	NRR	OGC	OI	D:OE	DEDR
BWestreich	EBaker	DDambly	BLetts	RBorchardt	FMiraglia
7/19 /00	7/20 /00	7/ /00	7/20 /00	7/20 /00	7/24 /00

Region I	Region III
BFewell	CPederson
7/20/00	7/24 /00

**Document Name: G:\BARRY\DISCRIMINATION WORKING GROUP CHARTER REV1.WPD**