

October 2, 2000

MEMORANDUM TO: File

FROM: Barry Westreich **/RA/**
Office of Enforcement

SUBJECT: SUMMARY OF SEPTEMBER 7, 2000, DISCRIMINATION TASK GROUP
PUBLIC MEETING IN CHATTANOOGA, TENNESSEE

On September 7, 2000, a public meeting was held at the NRC Technical Training Center in Chattanooga, TN to discuss the NRC enforcement program and practices in employee protection cases. The meeting was part of a series of meetings being held to solicit stakeholder input on the NRC's processes for handling discrimination cases. A summary of the meeting presentations, materials and statements submitted and an attendance list is attached.

cc: FMiraglia, DEDR

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MEETING SUMMARY FOR SEPTEMBER 7, 2000 DISCRIMINATION TASK GROUP
MEETING IN NRC TECHNICAL TRAINING CENTER, CHATTANOOGA, TN

The meeting began at 7:00 p.m.

Bill Borchardt, Director, NRC Office of Enforcement
(Presentation Slides are included as attachment 1)

Mr. Borchardt opened the meeting with a brief presentation outlining the formation of the Discrimination Task Group and the NRC processes for handling discrimination cases.

Art Dombay , Troutman Sanders, LLP.
(Statement included as attachment 2).

Mr. Dombay stated that it is appropriate and timely for the NRC to review the processes used in discrimination cases. The industry's own self-interest, combined with the NRC's attentiveness to alleged discrimination claims has resulted in substantial changes in the workplace environment that have added margin.

Allegation data have shown a significant decrease in the number of allegation being submitted to the NRC, FY1999 data shows a 41 percent drop since FY1997. The NRC should reevaluate whether allegations of discrimination should continue to receive the high priority. Current enforcement cases typically involve a lack of knowledge of the law. Therefore, most cases don't involve the type of deliberate wrongdoing that should involve the Office of Investigations (OI).

The NRC investigation approach for discrimination cases are markedly different from most NRC investigation techniques. OI investigates witnesses under oath, occasionally issues subpoenas to compel testimony, excludes third parties from interviews, proposes the use of polygraph or lie detector tests, and routinely refers findings to the Department of Justice for possible criminal prosecution. The OI process is closed, adversarial and disruptive. The process frequently polarizes the employee and employer, which does not help the work environment at licensed facilities. Serious consideration should be given to having OI investigations limited to civil administrative purposes or drastically revising OI's methods.

OSHA investigators are familiar with real work environments including supervisory relationships with employees. In contrast to OI, OSHA seeks out both the complainant and employer about compromise and settlement. The NRC should end the practice of inviting an employee to attend the enforcement conference which further creates tension between the employer and employee.

The NRC has changed enforcement practices in this area. The NRC should not reject evidence of lawful motivation in favor of reasonable inferences based only on temporal proximity. The Task Group should examine the changes made to OGC following MIRT to see the impact of changes that they have made.

The "in part" standard may conflict with the enforcement policy. Any action or even a letter against an employee has dire effects. The enforcement policy states that sanctions against individuals should be closely controlled and judiciously applied and taken only when the NRC is

satisfied that the individual fully understood the responsibilities, knew of the required actions and failed to take the required action.

Suggestions:

- Revise screening criteria for allegations of discrimination, referral to licensee, and investigations.
- Incorporate opportunities for resolution.
- Examine contributors to the recent increase in employee protection enforcement cases.

Ann Harris, Director, We the People of Tennessee,
(Statement and support documents attached as attachments 3,4,and 5).

Ms. Harris stated that We the People of Tennessee actively supports nuclear industry employees. The NRC should become the regulator and enforcer again rather than the patsy and supporter of criminal and illegal activities.

During his case, Mr. Overall was never advised of the progress of the investigation and the fact the case was pending a DOL decision. Region II OI took the TVA report and copied it onto NRC paper. TVA OIG is not independent as shown in the GAO report on TVA provided(Included as attachment 4).

At the Braidwood plant, the NRC came in at the request of the licensee and sided with the licensee when they fired operators who would not clean the washable tatoos off their hands. In Region II, the NRC will not respond when death threats are made at the work site The NRC hides the actions of utilities and delays actions until federal judges make their decisions.
(Attachment 5)

The Region III agenda is to support and cover up for the licensee.

Vera English, former General Electric Wilmington South Carolina,
(Statement included as Attachment 6)

Ms. English stated that she was a former General Electric Nuclear Fuel Plant employee. Although she pursued legal action and eventually won her complaint in court, she hasn't won a thing from GE after an 8-year battle. She did not prevail in her first DOL case because she filed too late, no one had told her about the time limits. Her home was repeatedly broken in to and damaged.

This was the first time she has spoken out in 10 years because of the corruption and betrayal in the NRC, especially in Region II. One day before the 5-year statue of limitations was up in her case, the NRC levied \$20,000 fine against GE. The NRC Office of Investigations betrayed her after she had told them about copies of GE internal documents that showed her allegation had substance. OI never did an investigation even though she brought a complaint that was later upheld. They trusted GE was telling the truth but they never trusted that she was telling the truth. The NRC knows what its responsibilities are. She did not have the money or power to hold the NRC accountable. The industry will only do what it knows it can get away with. GE is still performing the same illegal and unsafe activities as they were in 1984., when she filed her complaint.

Joyce Proffitt, Local Citizen

(Statement included as Attachment 7),

Ms. Proffitt stated that she attended the meeting to support the efforts of those that want the NRC to recognize the lack of enforcement in these cases. She stated that she has been surprised by lack of regulation, and enforcement in these cases. The NRC ignores workers that come forward to identify safety concerns. No one thinks more of the NRC for permitting violations of the law, and feels sorry that tax dollars that go to support the NRC's dishonesty and contempt for the law.

Ralph Beedle, Vice President and Chief Nuclear Officer, NEI

(Slides included as Attachment 8)

Mr. Beedle discussed the industry perspective on the problems with the NRC's discrimination process. Mr. Beedle agreed that the discrimination area is very complicated.

Mr. Beedle asked what is the objective of 10 CFR 50.7? If the licensee is doing the right thing, such as identifying and correcting the conditions that may lead to discrimination, what more does giving a licensee a fine solve. The environment is not going to change because the licensee's are already doing the right thing.

The implementation of employee protection regulations should ensure consistency with the purposes of good regulation. To ensure safety, managers need to be able to take appropriate personnel actions to maintain a highly competent workforce. The process should ensure fairness for all participants and promote the appropriate allocation of resources.

The NRC should focus its attention on the underlying safety issue and the potential chilling effects. The practice of automatically referring allegations to OI should be discontinued and the NRC should defer to DOL individual discrimination claims. The NRC should modify its evidentiary standard from the "preponderance of evidence for a reasonable inference" to the "preponderance of evidence "regarding a retaliatory motive". The NRC should also revise the Enforcement Policy to allow for consideration of additional factors in the severity level determination.

Kevin Doody, Perry Ohio

Mr. Doody stated that he had 20 years experience as a radiation protection engineer. In August 1996 he contacted the NRC with a concern of discrimination for raising a safety concern. He was shortly thereafter terminated in March 1997.

OI investigators interrogated him instead of performing an interview of him. Once his employer said he was fired, the NRC said that they did not get involved in personnel decisions. He believes that the NRC was in a league with the licensee in covering up his termination.

The NRC should approve the Petition received on training of managers on the employee protection laws the NRC needs to fix the OI, OE, OGC malaise that prevents taking action on whistle blowing complaints.

NRC supports the nuclear industry, gives them special consideration. The NRC is not responsible for the economic health of the utilities.

Licensee corporate policies are not bad, but they don't have the right to discriminate against an employee, in violation of the regulations. NRC Form 3 lets the manager know what his responsibilities are unless he doesn't understand what the regulations say.

The NRC should require training for everybody that works at the plant because the employees don't understand what their rights are and don't understand what the terms mean as well as understanding what the process requires and when. The NRC should develop and distribute to everybody a brochure with more information on employee protection regulations and the discrimination process. The NRC should start a web site to explain the discrimination issues.

OSHA is supposed to mediate, but prior to even talking the complainant, the OSHA investigator was already at the plant. The investigator did not mediate, and he just took the licensee's side.

Records of training were forged and provided to the NRC and we let them off. He received lies from the NRC about the issues and there is no one watching the NRC. The severity level fines should be raised to a million dollars. The rationale for this amount is because during the outage if something stops for an hour it is worth \$20,000. So that the decision to discriminate is really a business decision. With a fine of \$100,000, it is really cost effective to discriminate.

Following the formal presentations, a Discussion of pertinent topic was held:
(See attachment 9 for "Significant Themes from previous meetings" slide)

Question from Mr. Borchardt: Is it appropriate to refer allegations to the licensee?

Answers from participants include:

It quickly fingerprints the person that identified the concern.

Since the NRC can't be trusted, the less identification possible is better.

Investigators pre-announce their visits which allow the licensee to fabricate as much evidence as possible to cover themselves.

The NRC should be able to take action to stop or at least suspend any personnel action the licensee can take while an investigation continues.

Question from Mr. Borchardt:

Should all pre-decisional enforcement conferences related to discrimination be open to the public?

Answers from participants include:

Things related to safety issues should be open. The safety issue should be stripped out of the issue and be open. The personnel issue could be closed.

The NRC should have regulations to allow for physical personnel protection of an alleged.

There should be an inspection of the safety conscious work environment.

GE is still doing illegal activities to bring themselves profit but people are afraid to make complaints. (Individual was asked to give details of this concern to the region II personnel present)

Question from Mr. Borchardt : Should OI reports (and transcripts) be in the public domain prior to the enforcement decision?

Answers from participants include:

They shouldn't be. Since they have access to the same individuals, they don't need the report. They should discuss the issue without benefit of the O investigation.

They should be released to the interested parties, not in the public record

The OI investigation is a fearsome process to go through and affected parties should be party to the reports.

Question from Mr. Borchardt: With regard to severity level factors; should other factors such as the significance of the adverse action, be considered?

Answers from participants include:

Certainly the significance of the adverse action should impact the severity level.

The level of the individual affects the outlook at the plant, so the level of the individual should be a factor. But it need not be the sole factor.

Question from Mr. Borchardt: The NRC process has ties to the completion of the DOL process. Should the NRC conduct its own investigation and enforcement separate from the DOL?

Answers from participants include:

OI is not independent of the licensee. In many cases the OI report is a copy of the licensee investigation report. The OI investigation is not independent.

Question from Mr. Baker: NEI's position in the past has been that the NRC should not initiate rule making on requiring a safety conscious work environment. Based on the NEI proposal that the NRC look at the underlying chilling effect and safety issues of discrimination and not on the individual claim of discrimination, has NEI changed its position?

Answer: Ralph Beedle, NEI: Mr. Beedle stated that he thought so. If the issue isn't a safety concern issue or based on a chilled environment, then it shouldn't be cited. The question is, can the NRC regulate it or even figure out what it is. The safety conscious work environment is important because we are standing on dangerous ground if we don't have people raising concerns.