

MEMORANDUM TO: File

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

SUBJECT: SUMMARY OF OCTOBER 19, 2000, DISCRIMINATION TASK GROUP
PUBLIC MEETING IN PADUCAH, KENTUCKY

On October 19, 2000, a public meeting was held at the Paducah Community College in Paducah, KY 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.

Attachments: As stated

cc: FMiraglia, DEDR

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PADUCAH MEETING
OCTOBER 19, 2000

The meeting began at 7:00

Bill Borchardt, Director, Office of Enforcement
(Slide included as Attachment 1)

Mr. Borchardt summarized the Task Group activities and the NRC's process for handling discrimination complaints.

Janis Morris

When individuals bring forth allegations, they typically do it because they want to bring something up that is important to them, not put their lives on hold. The NRC should remove the political element of the OI investigation. Speak to all individuals involved in the allegations. Attempt to put practices in place that addresses the negative perception that the NRC shares all information with the licensee management.

Time element: Look at the extended time element when investigating these issues. If it is not handled expeditiously, the company may not take the complainant seriously and is continuously under a strained environment and can hinder his or her the health and well being. Cases that go on for two years or more lose the impact on the employees at the plant. It establishes an environment where others at the plant are prevented from bringing forth complaints. They see the negative professional, health and peer effects. If there is a situation where numerous complaints have been made at a licensee facility, the NRC should look at the breadth of the allegations and problem.

When dealing with OI investigators, there is a strong recommendation that when they come, they are educated and familiar with the programs being addressed. It should not be the complainants' responsibility to educate the investigator. If the complainant is made aware of rebuttal statements from the licensee, give the complainant an opportunity to rebut.

Does the NRC confiscate for review previous licensee allegations? If the previous complaints are substantiated, and the licensee did not take adequate corrective action, does the NRC take action?

Mr. Baker: All allegations or discrimination?

Ms. Morris: Discrimination in the case I am talking about.

Mr. Borchardt: In the enforcement policy, identification and corrective action credit weigh in the process. In the case you describe, if identification credit is given and corrective action is inadequate, this would probably result in a civil penalty.

Ms. Morris: If the case is complex, as is common with many allegations, many investigators are involved in the case. There can be up to seven people talking about allegations. It is redundant to continue to explain to investigators the same questions over and over. You need a database of

questions and have a requirement that each investigator be familiar with those previous questions. This would avoid frustration and make the process more efficient.

Mistakes made in the OI investigation: If the conclusion is not substantiated and you provide more information that is sent back which results in the allegation being substantiated, that makes people lose confidence in the process. After being mentally and physically exhausted, having to keep going to get the investigator to see the facts, is wrong. Someone should sit down with the complainant to inform them of the issues. If the company makes plans, the NRC should not override those decisions.

Complainants should not have to take leave or use their own funds if the allegation is sustained. Some funds should be set aside for the complainant to attend the meetings. Complainants have already suffered a great deal and should not have to suffer more.

Mr. Baker: Regarding your comment about the perception that the NRC is sharing information with the licensee. Can you explain this in more detail?

Ms. Morris: Many people have told me this is so and it is a perception that needs to be addressed. People have heard information from the licensee. Information that they just gave to the NRC.

Mr. Letts: You stated that the OI investigation is a political process. Can you explain that?

Ms. Morris: If a person at a high level is involved in an allegation and that person is not interviewed.

Ms. Harris: OI does share information. It is documented and OI still practices it today. OI is still doing it as recently as three weeks ago.

Ms. Morris: If the alleged does not feel there is confidentiality, they will be reluctant to give information.

Ms. Harris: As long AS there is an FOIA request the NRC will release everything. Does the NRC require a written agreement for confidentiality?

Mr. Baker summarized the process for written requests and confidentiality. If a FOIA is submitted, we have to follow the law to give them the information. There is very little you can remove from the FOIA request.

Question: If the NRC does an investigation in the security area, and the investigator can't understand the requirements, what is the point, we just look like an idiot. A timely and accurate investigation is the key.

Mr. Baker: We don't give any information when the case is ongoing.

Ms. Morris: The NRC is the good guy and we do look to you for help. So take these comments as constructive.

George Labarraque

In any case there are two individuals involved. The NRC needs to remember that.

Section 211 is a good law, but the NRC is implementing it in a way that is detrimental to safety. Regarding the pre decisional enforcement conference: Information is not given soon enough. There are a lot of fabricated facts that we don't get until after the enforcement conference.

The investigation: These guys don't know what you mean or what Nuclear Safety means. The investigator seems to be only looking for information to sustain a violation. There is a lack of evidence. Everything is based on opinions. Honesty takes second place in a politically charged area.

It is unconstitutional to be thought of as guilty until proven innocent. The burden of proof is on the individual accused. The length of time is unreasonable. Two or Three years is too long. There is one way accountability. The complainant should also be held responsible, not just the alleged discriminator.

Another issue is the big difference between the effects on a company and that of an individual. NRC decisions are final and have disastrous effects on life and career. There is a high human cost and it should not be taken lightly. Reputations are ruined even if the case is not substantiated.

Right to Face the accuser: The process does not allow the individual to face the accuser. It relies on investigators that don't understand the facts or even what nuclear safety is. The accused should be allowed to cross examine the accuser which is not in the process.

Mr. Borchardt: Do you think we should we should release the OI reports?

Mr. Labarraque: It is imperative.

Mr. Borchardt: How would you investigate the allegation and provide more protection to the accused?

Mr. Labarraque: I want to stress the fairness of the process, not just the accused or the complainant. Chances are that there are too many lawyers involved. Both parties should present their points from either side. Facts not opinion. We don't differentiate that any opinion isn't an illegal action. There is a considerable fear about the process. The way you have adopted the process, there is nothing but fear.

Ms. Pedersen: Is that a common manager/supervisor problem?

Mr. Labarraque: Yes, everywhere I have been.

Question: Could the NRC have a site meeting between both parties to resolve the issues quickly?

Mr. Borchardt: We are separately evaluating an ADR process.

Question: The NRC process claims that at the PEC the final decision has been made. If the facts are hidden, how can we be expected to respond. The NRC should provide information to all sides so that it can be reviewed by all sides. The NRC has a profile that all managers are bad.

Mr. Dambly: Does the investigation damage your reputation right away?

Mr. Labarraque: If you don't have all the facts, don't point your finger at anybody.

Question: Timeliness; how long does it take to conclude an investigation.

Mr. Letts: The OI investigation starts, if a prima facie case is shown, within about two weeks. Then, 30 days to start interviews. Last year the average to complete was 6.5 months. This was

about the same period of time for the last two years. Following the investigation, the staff then looks at the case.

Question: Do you have adequate manpower?

Mr. Letts: We could always use more manpower.

Question: After the case gets to the staff how much longer does it take?

Mr. Borchardt: It can go much longer in some cases. Hopefully it can be down quickly but these aren't trivial matters. We take them very seriously. We also defer some cases to DOL which adds time to the process.

Mr. Labarraque : DOL and NRC have an agreement, how can DOL take action before the NRC is done with the investigation:

Mr. Borchardt: DOL does not wait on the NRC for its cases. They have a different objective in mind, which is to provide individual remedies. They do not defer to us before they do an investigation. We may hold up our process to see what DOL does.

Question: There does not seem to be any coordination to these investigations. Timely resolution, interaction with alleged in a professional manner. With the bulkiness of the investigation, the system actually is killing us and eating both sides of the case.

Mr. Baker: : What would be the perception of an option where the employee and company could go through a process of the employee and employer sitting down and working the issues out?

Answer: Assuming NRC is a mediator? Most of these cases should not get to this level. The ECP program is not working.

Ms. Harris: There is a total misconception about what the two Agencies do. DOL is charged by statute to do what they want. NRC is charged by internal rules and practices. As long as the NRC defers to the DOL it takes too long. Everybody is assuming it has to be adversarial, but it does because corporate lawyers are not bound by NRC rules and regulations.

Question: If I file a complaint, do I go to them or do they come to me.

Mr. Letts: You have the option of doing OI interviews wherever you feel most comfortable.

Mr. Labarraque: DOL fines the company, but the NRC takes action against the individual and that is something you should not take lightly.

Mr. Letts: We routinely share information with DOL. On the earlier resource issue question, as small as OI is, the resources have been successfully moved around to address areas that need more coverage.

Lynn Bower: How long does it take for you to find if a complaint is valid.

Mr. Borchardt: As we stated earlier, about 90 days.

Ms. Harris: There is correspondence with the complainant.

Nancy Pearce Involuntary Reduction in Force (IRIF): The ECP and the NRC. If people start at the ECP for non safety issues, and they get a negative response on that , why would they go to the ECP about a safety issue, and that has a chilling effect.

Mr. Borchardt: There is no NRC rule on SCWE. I think you are suggesting we should revisit that decision. Develop a rule that will have the NRC take action in this area. We have no authority now to inspect this area. We do have regulations for discrimination.

Ann Harris , Director We the People

We are safety advocates. Several times I have stood in front of the NRC, little has changed. It is nothing more than public relations. Not one word of apology has been uttered to the employees. These meetings are boilerplate and cost a lot of money and changes nothing. With my knowledge of the NRC, a lack of morals is your forte. Listing the NRC's lack of enforcement at nuke plants permits me to know that you aren't doing your job. The industry's abuse of workers is tough, painful, evil, unforgiving, arrogant and has a total lack of conscience.

Ms. Harris summarized a number of unplanned events from the NRC records. The NRC doesn't care if a problem is fixed but only cares about whether we get that is fixed in writing. All these events happened because employees are working in fear. I am concerned that the NRC is supporting the industry in the abuse of employees and not changing anything in the way they treat us. This occurs in all regions. All the investigations are conducted totally different.

The public is not invited to the meetings with NEI. We can't trust you. The NRC has all of the programs in the world. The plants have the best programs that they don't implement. The agreement between the NRC and DOL. People don't know about it. You are only doing things that are expedient for you. I have not seen one time in my six cases that OI or the NRC has ever investigated the intimidation or harassment that took place against me. The NRC should take some simple steps, not these long drawn out processes.

When you can't go to a manager without human resources and an attorney it is a problem. I had to find it all out by myself. The process was never intended to be fair. I want some way for the industry to stop making a public spectacle of the employees. Most employees only want to go to the NRC and DOL after everything has been exhausted which may be more than 180 days.

Question: I don't understand why the NRC is not responsible for industrial safety.

Mr. Baker: The NRC is responsible for nuclear safety. If we are aware of safety issues the NRC will notify OSHA.

Comment: I know the inspector has not notified OSHA as you have just said for industrial safety issues at the site. I can't comprehend that someone cannot look at an area without enough lighting and say that it doesn't involve nuclear safety.

Mr. Borchardt: Please talk to one our representatives after the meeting about this concern.

Question: Once I have filed a complaint, what is the time period before the company knows I have filed a complaint?

Mr. Borchardt: It is very difficult to investigate an allegation of discrimination without fingerprinting a person. At some point they will figure it out.

Mr. Letts: You will be the first one contacted, but you should have no illusion that the company will not be able to identify you. In order to do the investigation, we will have to ask questions about you. Also if you went to the DOL, that is not private.

Question: We need to streamline this process. If we are going to regulate the industry like we do,

with the NRC only looking at one area. The NRC should go back and do something fast to streamline and bring forward issues quickly.

Ms. Harris: The NRC should move the DOL process back to wage and hour division.

Mr. Borchardt: As had been proposed, should the NRC get out of discrimination cases and let DOL do it?

Answer: It needs to be done on a broad basis. We should look at who should be doing what, and I don't know that the NRC is the one to do it. GAO should look at it. Our country is in need of new reactors and we need a clear regulatory structure.

Comment: If a person makes an allegation to the NRC. Do they ever get the information that the company furnishes?

Mr. Borchardt: There are a couple of opportunities for the allegor to see this information: At a PEC the allegor may attend. After an enforcement action is issued. An OI report is provided to any party that asks for it.

Comment: In the information provided prior to this meeting, the charter addresses the safety conscious work environment. But you said there are no regulations to enforce that.

If an employee goes to ECP and get no results and other employees see that, it makes a chilling effect. What is the NRC policy to address that?

Mr. Borchardt: If there is a concern with the SCWE, we will issue a chilling effect letter. What are you doing to address the environment? But there is no regulation in this area. There is no fine or violation we can issue.

Ms. Harris: Why do you issue a letter?

Mr. Baker: Although there is no regulation, if the environment is such that it is affecting the safety of the site we can issue an order, like what we did at Millstone. That Order required independent third party reviews of the program.

Question: Did you have a meeting yesterday on this subject.

Ms. Pederson: Yes we had a meeting open to public observation with USEC at the Region III office where USEC described the results of their SCWE survey.

Comment: When we changed from DOE to NRC there were many issues that were brought up which were not resolved.

Question: Can you summarize what came out of the meeting yesterday?

Ms. Pederson: We have previously issued a chilling effect letter at USEC. The general report is that things are good and have improved. There will be a meeting summary of that meeting. This activity was not part of the task group activities.

Question: If you look at the slide of issues from previous meetings, it looks like you are getting out of the business.

Mr. Borchardt: That slide only identifies comments we have received, they do not reflect our responses or even feelings about them.

Question: Previous meetings were loaded with NEI type people?

Mr. Borchardt: It is fair to say that there was a lot industry comment.

Question: If you do what you say on that slide you are letting the fox guard the hen house.

Mr. Dambly: If a violation is issued to an individual should he have the right to a hearing?

George Labarraque: Yes he should, since at the conference you don't know what issues the concerns are about. Just because something happened doesn't mean that it was willful.

Courtney Blanchard: With regard to OSHA issues. When we find these issues, we bring them to licensee management. We are not experts in identifying industrial safety issues. But we give them to the licensee and if they are addressed we are satisfied. There are issues that have been referred to OSHA.

Although unable to attend the meeting, Ellen Ginsberg, NEI, submitted information to be included in the record. The information is included as Attachments 5 and 6.