

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.

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- 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:

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| - 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 |

Draft Report

NUCLEAR REGULATORY COMMISSION

Discrimination Task Group; Announcement and Meeting Notice

This Notice serves to announce the formation of an NRC Discrimination Task Group, which will evaluate the NRC processes used in the handling of discrimination allegations and violations of employee protection standards (Applicable regulations include 10 CFR 30.7, 10 CFR 40.7, 10 CFR 50.7, 10 CFR 60.9, 10 CFR 61.9, 10 CFR 70.7, 10 CFR 76.7, 10 CFR 72.10, 10 CFR 150.20). The group will function as a management-level review group to evaluate the Commission's handling of discrimination cases. The overall objective of the NRC employee protection regulations is to promote an atmosphere where employees feel comfortable raising safety concerns or engaging in other protected activity without fear of reprisal. Because the NRC has traditionally relied on the openness of employees to identify issues, an effective and consistent NRC approach for dealing with discrimination cases is an important feature of encouraging and ensuring a safety conscious work environment. Resulting 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 group's overall objective is to develop recommendations for revisions to the regulatory requirements, the enforcement policy or other agency guidelines as appropriate. A Commission Paper will be developed outlining the recommendations for NRC offices to consider in making changes to their processes.

The group's preliminary schedule is:

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| - Evaluation of current NRC processes. | July-Sept., 2000 |
| - Conduct 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 |

Task group activities being considered include:

1. Interaction 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, and Office of Special Counsel) to understand how they process these issues.
2. Conduct internal and external stakeholder meetings to solicit input on the Agency's handling of discrimination issues.
3. 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.
4. The review will also:
 - 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. 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.
 - g. Clarify how the NRC should use the decisions of other Agencies (e.g., DOL, MSPB).
 - h. Review the role of the complainant in the process.

The Task Group meeting participants are listed below along with their affiliation:

- Bill Borchardt; Director, Office of Enforcement, Nuclear Regulatory Commission.
- Dennis Dambly; Assistant General Counsel for Materials Litigation and Enforcement. OGC, Nuclear Regulatory Commission.
- Cynthia D. Pederson; Director, Division of Nuclear Materials Safety, Region III, Nuclear Regulatory Commission.
- Barry Letts; Field Office Director, Office of Investigations, Region I, Nuclear Regulatory Commission.
- Edward Baker; Agency Allegation Advisor, Nuclear Regulatory Commission.
- Brad Fewell; Regional Counsel, Region I, Nuclear Regulatory Commission .

Over the next several months the Task Group plans to hold several public stakeholder meetings in various areas of the country to solicit input on areas of improvement in the Agency's handling of discrimination issues.

 The following public meeting shave been scheduled:

The first public meeting will be held on September 5, 2000, at the USNRC offices in the TWFN Auditorium, located at 11555 Rockville Pike, Rockville Maryland. The meeting will start at 1 p.m.

A public meeting will be held in Chattanooga TN, on September 7, 2000, at the USNRC Technical Training Center, Osborne Office Center, 5746 Marlin Road, Chattanooga TN 37411 This will be an evening meeting beginning at 7:00 p.m.

A public meeting will be held in San Luis Obispo CA, on September 14, 2000, at the Embassy Suites Hotel, 333 Madonna Road. This will be an evening meeting beginning at 7:00 p.m.

Subsequent workshops in the vicinity of the Milestone Nuclear Power Plant, the Paducah Gaseous Diffusion Plant and in the Chicago area will be announced in the Federal Register, local newspapers and on the NRC web site as specific plans are made.

These public meetings are open to the members of the public. Oral or written views regarding the NRC's processes for handling employee protection issues may be presented by the members of the public, including members of the nuclear industry. Persons desiring to make prepared oral presentations or statements should notify Mr. Barry Westreich (Telephone 301/415-3456, e-mail BCW@nrc.gov) five days prior to the meeting date, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such a presentation or statements. Use of still, motion picture, and television cameras as well as audio recording devices will be permitted during this meeting.

Further information regarding topics of discussion; whether the meeting has been canceled, rescheduled, or relocated; may be obtained by contacting Mr. Barry Westreich between 8:00 a.m. and 4:30 p.m. EDT.

This meeting will not be transcribed but, if needed, a meeting report will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/NRC/ADAMS/index.html> (the Public Electronic Reading Room). The Task Group Charter and other pertinent documents related to Task Group Activities will also be periodically posted and updated on the Office of Enforcement Web site at <http://www.nrc.gov/OE>. For those unable to attend one of the public meetings on this issue, comments on the discrimination process will be solicited in the Federal Register in the future.

*JAW - Mar - 2000
Comments
Draft Report*

Dated this 27th day of July 2000.

R.W. Borchardt,
Director, Office of Enforcement.

[FR Doc. 00-19620 Filed 8-2-00; 8:45 am]
BILLING CODE 7590-01-P

(d) Delivery of communications

Written communications may be delivered to the Document Control Desk at 11555 Rockville Pike, Rockville, Maryland between the hours of 8:15 a.m. and 4:00 p.m. Eastern Time. If a submittal due date falls on Saturday, Sunday, or Federal holiday, the next Federal working day becomes the official due date.

53 FR 6137

(e) Regulation governing submission.

Licenses and applicants submitting correspondence, reports, and other written communications pursuant to the regulations of this part are requested but not required to cite whenever practical, in the upper right corner of the first page of the submittal, the specific regulation or other basis, requiring submission.

52 FR 31601

(f) Conflicting requirements.

The communications requirements contained in this section and §§ 50.12, 50.30, 50.36, 50.36a, 50.44, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.62, 50.71, 50.73, 50.82, 50.90, and 50.91 supersede and replace all existing requirements in any license conditions or technical specifications in effect on January 5, 1987. Exceptions to these requirements must be approved by the Information and Records Management Branch, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415-7230.

60 FR 24549

§ 50.5 Deliberate misconduct.

(a) Any licensee, applicant for a license, employee of a licensee or applicant, or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or applicant for a license, who knowingly provides to any licensee, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's or applicant's activities in this part, may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, an applicant, or a licensee's or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For the purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, applicant, contractor, or subcontractor.

63 FR 1890

§ 50.7 Employee protection.

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of the section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

58 FR 52406

PART 50 • DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the

Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415-7230.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential

§ 50.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150-0011.

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S to this part.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirement and the control numbers under which they are approved are as follows:

(1) In § 50.73, NRC Form 366 is approved under control number 3150-0104.

(2) In § 50.78, Form N-71 is approved under control number 3150-0056.

§ 50.9 Completeness and accuracy of information.

(a) Information provided to the Commission by an applicant for a license or by a licensee or information required by statute or by the Commission's regulations, orders, or license conditions to be maintained by the applicant or the licensee shall be complete and accurate in all material respects.

(b) Each applicant or licensee shall notify the Commission of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security. An applicant or licensee violates this paragraph only if the applicant or licensee fails to notify the Commission of information that the applicant or licensee has identified as having a significant implication for public health and safety or common defense and security. Notification shall be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

58 FR 52406

61 FR 6762

61 FR 6762

58 FR 52406

62 FR 52184

61 FR 65157

62 FR 52184

49 FR 19623

52 FR 49362

NUCLEAR REGULATORY COMMISSION

Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this policy statement to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors.

DATE: May 14, 1996

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741.

SUPPLEMENTARY INFORMATION:

Background

NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of potential safety concerns and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility.

In the past, employees have raised important issues and as a result, the public health and safety has benefited. Although the Commission recognizes that not every concern raised by employees is safety significant or, for that matter, is valid, the Commission concludes that it is important that licensees' management establish an environment in which safety issues are promptly identified and effectively resolved and in which employees feel free to raise concerns.

Although hundreds of concerns are raised and resolved daily in the nuclear industry, the Commission, on occasion, receives reports of individuals being retaliated against for raising concerns. This retaliation is unacceptable and unlawful. In addition to the hardship caused to the individual employee, the perception by fellow workers that raising concerns has resulted in retaliation can generate a chilling effect that may discourage other workers from raising concerns. A reluctance on the part of employees to raise concerns is detrimental to nuclear safety.

As a result of questions raised about NRC's efforts to address retaliation against individuals who raise

health and safety concerns, the Commission established a review team in 1993 to reassess the NRC's program for protecting alleged against retaliation. In its report (NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," January 7, 1994) the review team made numerous recommendations, including several recommendations involving issuing a policy statement to address the need to encourage responsible licensee action with regard to fostering a quality-conscious environment in which employees are free to raise safety concerns without fear of retribution (recommendations II.A-1, II.A-2, and II.A-4). On February 8, 1995, the Commission after considering those recommendations and the bases for them published for comment a proposed policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," in the Federal Register (60 FR 7592, February 8, 1995).

The proposed policy statement generated comments from private citizens and representatives of the industry concerning both the policy statement and NRC and Department of Labor (DOL) performance. The more significant comments related to the contents of the policy statement included:

1. The policy statement would discourage employees from bringing their concerns to the NRC because it provided that employees should normally provide concerns to the licensee prior to or contemporaneously with coming to the NRC.
2. The use of a holding period should be at the discretion of the employer and not be considered by the NRC in evaluating the reasonableness of the licensee's action.
3. The policy statement is not needed to establish an environment to raise concerns if NRC uses its authority to enforce existing requirements by pursuing civil and criminal sanctions against those who discriminate.
4. The description of employee concerns programs and the oversight of contractors was too prescriptive; the expectations concerning oversight of contractors were perceived as the imposition of new requirements without adherence to the Administrative Procedure Act and the NRC's Backfit Rule, 10 CFR 50.109.
5. The need for employee concerns programs (ECPs) was questioned, including whether the ECPs fostered the development of a strong safety culture.
6. The suggestion for involvement of senior management in resolving discrimination complaints was too prescriptive and that decisions on senior management involvement should be decided by licensees.

In addition, two public meetings were held with representatives of the Nuclear Energy Institute (NEI) to discuss the proposed policy statement. Summaries of these meetings along with a revised policy statement proposed by NEI were included with the comments to the policy statement filed in the Public Document Room (PDR).

This policy statement is being issued after considering the public comments and coordination with the Department of Labor. The more significant changes included:

1. The policy statement was revised to clarify that senior management is expected to take responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved as opposed to being personally involved in the resolution of these matters.
2. References to maintenance of a "quality-conscious environment" have been changed to

"safety-conscious environment" to put the focus on safety.

3. The policy statement has been revised to emphasize that while alternative programs for raising concerns may be helpful for a safety-conscious environment, the establishment of alternative programs is not a requirement.
4. The policy statement continues to emphasize licensees' responsibility for their contractors. This is not a new requirement. However, the policy statement was revised to provide that enforcement decisions against licensees for discriminatory conduct of their contractors would consider such things as the relationship between the licensee and contractor, the reasonableness of the licensee's oversight of the contractor's actions and its attempts to investigate and resolve the matter.
5. To avoid the possibility suggested by some commenters that the policy statement might discourage employees from raising concerns to the NRC if the employee is concerned about retaliation by the employer, the statement that reporting concerns to the Commission "except in limited fact-specific situations" would not absolve employees of the duty to inform the employer of matters that could bear on public, including worker, health and safety has been deleted. However, the policy statement expresses the Commission's expectation that employees, when coming to the NRC, should normally have provided the concern to the employer prior to or contemporaneously with coming to the NRC.

Statement of Policy

The purpose of this Statement of Policy is to set forth the Nuclear Regulatory Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their own management and the NRC without fear of retaliation. A safety-conscious work environment is critical to a licensee's ability to safely carry out licensed activities.

This policy statement and the principles set forth in it are intended to apply to licensed activities of all NRC licensees and their contractors,² although it is recognized that some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of a method to raise concerns outside the normal management structure such as an employee concerns program) may not be practical for very small licensees that have only a few employees and a very simple management structure.

The Commission believes that the most effective improvements to the environment for raising concerns will come from within a licensee's organization (or the organization of the licensee's contractor) as communicated and demonstrated by licensee and contractor management. Management should recognize the value of effective processes for problem identification and resolution, understand the negative effect produced by the perception that employee concerns are unwelcome, and appreciate the importance of ensuring that multiple channels exist for raising concerns. As the Commission noted in its 1989 Policy Statement on the Conduct of Nuclear Power Plant Operations (54 FR 3424, January 24, 1989), management must provide the leadership that nurtures and maintains the safety environment.

In developing this policy statement, the Commission considered the need for:

- (1) licensees and their contractors to establish work environments, with effective processes for problem identification and resolution, where employees feel free to raise concerns, both to their management and to the NRC, without fear of retaliation;

- (2) improving contractors' awareness of their responsibilities in this area;
- (3) senior management of licensees and contractors to take the responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved; and
- (4) employees in the regulated industry to recognize their responsibility to raise safety concerns to licensees and their right to raise concerns to the NRC.

This policy statement is directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. It is intended to reinforce the principle to all licensees and other employers subject to NRC authority that an act of retaliation or discrimination against an employee for raising a potential safety concern is not only unlawful but may adversely impact safety. The Commission emphasizes that employees who raise concerns serve an important role in addressing potential safety issues. Thus, the NRC cannot and will not tolerate retaliation against employees who attempt to carry out their responsibility to identify potential safety issues.³

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that employees of licensees or their contractors have been discriminated against for raising concerns and to take enforcement action if discrimination is substantiated. The Commission has promulgated regulations to prohibit discrimination (see, e.g., 10 CFR 30.7 and 50.7). Under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor also has the authority to investigate complaints of discrimination and to provide a personal remedy to the employee when discrimination is found to have occurred.

The NRC may initiate an investigation even though the matter is also being pursued within the DOL process. However, the NRC's determination of whether to do so is a function of the priority of the case which is based on its potential merits and its significance relative to other ongoing NRC investigations.⁴

Effective Processes for Problem Identification and Resolution

Licensees bear the primary responsibility for the safe use of nuclear materials in their various licensed activities. To carry out that responsibility, licensees need to receive prompt notification of concerns as effective problem identification and resolution processes are essential to ensuring safety. Thus, the Commission expects that each licensee will establish a safety-conscious environment where employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

A safety-conscious environment is reinforced by a management attitude that promotes employee confidence in raising and resolving concerns. Other attributes of a work place with this type of an environment may include well-developed systems or approaches for prioritizing problems and directing resources accordingly; effective communications among various departments or elements of the licensee's organization for openly sharing information and analyzing the root causes of identified problems; and employees and managers with an open and questioning attitude, a focus on safety, and a positive orientation toward admitting and correcting personnel errors.

Initial and periodic training (including contractor training) for both employees and supervisors may also be an important factor in achieving a work environment in which employees feel free to raise concerns. In addition to communicating management expectations, training can clarify for both supervisors and employees options for problem identification. This would include use of licensee's internal processes as well as providing concerns directly to the NRC.⁵ Training of supervisors may also minimize the potential

perception that efforts to reduce operating and maintenance costs may cause supervisors to be less receptive to employee concerns if identification and resolution of concerns involve significant costs or schedule delays.

Incentive programs may provide a highly visible method for demonstrating management's commitment to safety, by rewarding ideas not based solely on their cost savings but also on their contribution to safety. Credible self assessments of the environment for raising concerns can contribute to program effectiveness by evaluating the adequacy and timeliness of problem resolution. Self-assessments can also be used to determine whether employees believe their concerns have been adequately addressed and whether employees feel free to raise concerns. When problems are identified through self-assessment, prompt corrective action should be taken.

Licensees and their contractors should clearly identify the processes that employees may use to raise concerns and employees should be encouraged to use them. The NRC appreciates the value of employees using normal processes (e.g., raising issues to the employee supervisors or managers or filing deficiency reports) for problem identification and resolution. However, it is important to recognize that the fact that some employees do not desire to use the normal line management processes does not mean that these employees do not have legitimate concerns that should be captured by the licensee's resolution processes. Nor does it mean that the normal processes are not effective. Even in a generally good environment, some employees may not always be comfortable in raising concerns through the normal channels. From a safety perspective, no method of raising potential safety concerns should be discouraged. Thus, in the interest of having concerns raised, the Commission encourages each licensee to have a dual focus: (1) on achieving and maintaining an environment where employees feel free to raise their concerns directly to their supervisors and to licensee management, and (2) on ensuring that alternate means of raising and addressing concerns are accessible, credible, and effective.

NUREG-1499 may provide some helpful insights on various alternative approaches. The Commission recognizes that what works for one licensee may not be appropriate for another. Licensees have in the past used a variety of different approaches, such as:

- (1) an "open-door" policy that allows the employee to bring the concern to a higher-level manager;
- (2) a policy that permits employees to raise concerns to the licensee's quality assurance group;
- (3) an ombudsman program; or
- (4) some form of an employee concerns program.

The success of a licensee alternative program for concerns may be influenced by how accessible the program is to employees, prioritization processes, independence, provisions to protect the identity of employees including the ability to allow for reporting issues with anonymity, and resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees may be a necessary element of these programs.

This Policy Statement should not be interpreted as a requirement that every licensee establish alternative programs for raising and addressing concerns. Licensees should determine the need for providing alternative methods for raising concerns that can serve as internal "escape valves" or "safety nets." 6 Considerations might include the number of employees, the complexity of operations, potential hazards, and the history of allegations made to the NRC or licensee. While effective alternative programs for

identifying and resolving concerns may assist licensees in maintaining a safety-conscious environment. The Commission, by making the suggestion for establishing alternative programs, is not requiring licensees to have such programs. In the absence of a requirement imposed by the Commission, the establishment and framework of alternative programs are discretionary.

Improving Contractors' Awareness of Their Responsibilities

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10 and 50.5 and the rules on reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7).

Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against both the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee. In considering whether enforcement actions should be taken against licensees for contractor actions, and the nature of such actions, the NRC intends to consider, among other things, the relationship of the contractor to the particular licensee and its licensed activities; the reasonableness of the licensee's oversight of the contractor environment for raising concerns by methods such as licensee's reviews of contractor policies for raising and resolving concerns and audits of the effectiveness of contractor efforts in carrying out these policies, including procedures and training of employees and supervisors; the licensee's involvement in or opportunity to prevent the discrimination; and the licensee's efforts in responding to the particular allegation of discrimination, including whether the licensee reviewed the contractor's investigation, conducted its own investigation, or took reasonable action to achieve a remedy for any discriminatory action and to reduce potential chilling effects.

Contractors of licensees have been involved in a number of discrimination complaints that are made by employees. In the interest of ensuring that their contractors establish safety-conscious environments, licensees should consider taking action so that:

- (1) each contractor involved in licensed activities is aware of the applicable regulations that prohibit discrimination;
- (2) each contractor is aware of its responsibilities in fostering an environment in which employees feel free to raise concerns related to licensed activities;
- (3) the licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and
- (4) contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the

NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation.

Involvement of Senior Management in Cases of Alleged Discrimination

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees, including personnel actions by contractors, who have raised concerns have a well-founded, non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate, non-discriminatory reasons. If employees allege retaliation for engaging in protected activities, senior licensee management should be advised of the matter and assure that the appropriate level of management is involved, reviewing the particular facts and evaluating or reconsidering the action.

The intent of this policy statement is to emphasize the importance of licensee management taking an active role to promptly resolve situations involving alleged discrimination. Because of the complex nature of labor-management relations, any externally-imposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the licensee's responsibility, and that early resolution without government involvement is less likely to disrupt the work place and is in the best interests of both the licensee and the employee. For these reasons, the Commission's enforcement policy provides for consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. (59 FR 60697; November 28, 1994).

In some cases, management may find it desirable to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending reconsideration or resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on-site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the action is being reconsidered or the dispute is being resolved. However, inclusion of the holding period approach in this policy statement is not intended to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary.

A licensee may conclude, after a full review, that an adverse action against an employee is warranted.⁷ The Commission recognizes the need for licensees to take action when justified. Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from non-prohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

Responsibilities of Employers and Employees

As emphasized above, the responsibility for maintaining a safety-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission normally expects employees in the nuclear industry to raise safety

and compliance concerns directly to licensees, or indirectly to licensees through contractors, because licensees, and not the Commission, bear the primary responsibility for safe operation of nuclear facilities and safe use of nuclear materials.⁸ The licensee, and not the NRC, is usually in the best position and has the detailed knowledge of the specific operations and the resources to deal promptly and effectively with concerns raised by employees. This is another reason why the Commission expects licensees to establish an environment in which employees feel free to raise concerns to the licensees themselves.

Employers have a variety of means to express their expectations that employees raise concerns to them, such as employment contracts, employers' policies and procedures, and certain NRC requirements. In fact, many employees in the nuclear industry have been specifically hired to fulfill NRC requirements that licensees identify deficiencies, violations and safety issues. Examples of these include many employees who conduct surveillance, quality assurance, radiation protection, and security activities. In addition to individuals who specifically perform functions to meet monitoring requirements, the Commission encourages all employees to raise concerns to licensees if they identify safety issues ⁹ so that licensees can address them before an event with safety consequences occurs.

The Commission's expectation that employees will normally raise safety concerns to their employers does not mean that employees may not come directly to the NRC. The Commission encourages employees to come to the NRC at any time they believe that the Commission should be aware of their concerns.¹⁰ But, while not required, the Commission does expect that employees normally will have raised the issue with the licensee either prior to or contemporaneously with coming to the NRC. The Commission cautions licensees that complaints that adverse action was taken against an employee for not bringing a concern to his or her employer, when the employee brought the concern to the NRC, will be closely scrutinized by the NRC to determine if enforcement action is warranted for discrimination.

Retaliation against employees engaged in protected activities, whether they have raised concerns to their employers or to the NRC, will not be tolerated. If adverse action is found to have occurred because the employee raised a concern to either the NRC or the licensee, civil and criminal enforcement action may be taken against the licensee and the person responsible for the discrimination.

Summary

The Commission expects that NRC licensees will establish safety-conscious environments in which employees of licensees and licensee contractors are free, and feel free, to raise concerns to their management and to the NRC without fear of retaliation.

Licensees must ensure that employment actions against employees who have raised concerns have a well-founded, non-discriminatory basis. When allegations of discrimination arise in licensee, contractor, or subcontractor organizations, the Commission expects that senior licensee management will assure that the appropriate level of management is involved to review the particular facts, evaluate or reconsider the action, and, where warranted, remedy the matter.

Employees also have a role in contributing to a safety-conscious environment. Although employees are free to come to the NRC at any time, the Commission expects that employees will normally raise concerns with the involved licensee because the licensee has the primary responsibility for safety and is normally in the best position to promptly and effectively address the matter. The NRC should normally be viewed as a safety valve and not as a substitute forum for raising safety concerns.

This policy statement has been issued to highlight licensees' existing obligation to maintain an environment in which employees are free to raise concerns without retaliation. The expectations and suggestions

contained in this policy statement do not establish new requirements. However, if a licensee has not established a safety-conscious environment, as evidenced by retaliation against an individual for engaging in a protected activity, whether the activity involves providing information to the licensee or the NRC, appropriate enforcement action may be taken against the licensee, its contractors, and the involved individual supervisors, for violations of NRC requirements.

The Commission recognizes that the actions discussed in this policy statement will not necessarily insulate an employee from retaliation, nor will they remove all personal cost should the employee seek a personal remedy. However, these measures, if adopted by licensees, should improve the environment for raising concerns.

Dated at Rockville, Maryland, this 8th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.

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