

April 29, 2004

Mr. David A. Lochbaum  
Nuclear Safety Engineer  
Union of Concerned Scientists  
1616 P Street NW., Suite 400  
Washington, DC 20036-1495

Dear Mr. Lochbaum:

I am responding to the petition you submitted to the U.S. Nuclear Regulatory Commission (NRC), dated August 13, 1999. Your petition, docketed as PRM-30-62, requested that NRC amend its regulations to require licensees to provide training to their management (i.e., first-line supervisors, managers, directors, and officers) to make certain that they are aware of their obligations under these regulations, and that individual managers be held accountable for their actions under the deliberate misconduct regulations, (e.g., 10 CFR 50.5). You believe this change would prevent licensee management from using "ignorance of the law" as an excuse for violating the employee protection regulations and allow the NRC to take enforcement action against individual licensee managers for those violations.

The notice of receipt of this petition was published in the Federal Register on October 27, 1999 (64 FR 57785). The comment period closed on January 10, 2000, and NRC received 153 comment letters. However, subsequent to submission of your petition, an event occurred that altered the processing and schedule for disposition of PRM-30-62. On August 3, 2000, a notice was published in the Federal Register (65 FR 47806) announcing the formation of an NRC Discrimination Task Group (DTG) to evaluate the NRC processes used for handling discrimination allegations and violations of employee protection standards and to propose recommendations for improvement of the Agency's process for handling such matters. A Senior Management Review Team (SMRT) was established to review the final recommendations of the DTG. Because the nature and concerns of PRM-30-62 fell within the objectives of the DTG charter, the NRC, with your agreement, decided to incorporate consideration of the issues raised in the petition into the activities of the DTG.

The DTG submitted a report to the Commission with its findings and recommendations on December 12, 2002. The report was provided as an attachment to a paper sent to the Commission, SECY-02-0166, and was entitled, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues."

On March 26, 2003, the Commission issued a Staff Requirements Memorandum (SRM) on SECY-02-0166 approving the recommendations of the DTG, as revised by the SMRT and subject to the specific comments provided in the SRM. The SRM also stated that proposed guidance to licensees should be developed and should emphasize training of licensee management as to its obligations under the employee protection regulations and provide information as to the recommended content of such training. Although the NRC believes the current employee protection regulations are adequate, clear, and sufficiently flexible to accommodate the concerns in PRM-30-62, the Commission believes that such guidance would further the NRC policy statement related to a Safety Conscious Work Environment (SCWE).

The DTG concluded that the petition would not correct the problem that was the basis for the petition. The fact that a licensee manager may have received training on the discrimination regulations does not constitute enough evidence to conclude that an adverse action taken was deliberate. Consistent with the Commission's direction in the SRM of March 26, 2003, regulatory guidance will be developed and made available for licensees' use that will consider those attributes that constitute an effective SCWE program. Developing such guidance is consistent with NRC's performance-based approach, which allows licensees flexibility to develop programs that are best suited for them.

Therefore, the NRC has considered your petition and supporting rationale, the DTG findings in SECY-02-0166, and for the reasons provided in the enclosed Federal Register notice, your petition is denied.

The Federal Register notice denying the petition is being transmitted to the Office of the Federal Register for publication.

Sincerely,

*/RA/*

William D. Travers  
Executive Director  
for Operations

Enclosure: Federal Register Notice  
Denying Petition

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