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FROM: DUE: 03/14/05 EDO CONTROL: G20050154
DOC DT: 02/25/05
FINAL REPLY:

David Lochbaum
Union of Concerned Scientist

TO:

Commission

FOR SIGNATURE OF : ** PRI **

CRC NO: 05-0112

Chairman Diaz

DESC:

ROUTING:

Ineffective Regulatory Oversight

Reyes
Virgilio
Kane
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Caputo, OI
Miller, RI
Dyer, NRR
Cyr, OGC

DATE: 03/04/05

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SPECIAL INSTRUCTIONS OR REMARKS:

Note: This is not an allegation, but involves an
allegation. NOT TO BE MADE PUBLIC.

Template: SEC4-017

E-RIDS: SEC4-01

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Mar 03, 2005 12:35

PAPER NUMBER: LTR-05-0112 LOGGING DATE: 03/02/2005
ACTION OFFICE: EDO

AUTHOR: David Lochbaum
AFFILIATION: UCS
ADDRESSEE: Nils Diaz
SUBJECT: Ineffective regulatory oversight

ACTION: Signature of Chairman
DISTRIBUTION: RF, SECY to Ack

LETTER DATE: 02/25/2005

ACKNOWLEDGED No
SPECIAL HANDLING: Comr. Correspondence

NOTES:

FILE LOCATION: ADAMS - *Not to be made public.*

DATE DUE: 03/16/2005 DATE SIGNED:

EDO --G20050154



Union of Concerned Scientists

Citizens and Scientists for Environmental Solutions

February 25, 2005

Dr. Nils J. Diaz, Chairman
Mr. Edward McGaffigan, Jr., Commissioner
Mr. Jeffrey S. Merrifield, Commissioner
Dr. Gregory B. Jaczko, Commissioner
Dr. Peter B. Lyons, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: INEFFECTIVE REGULATORY OVERSIGHT

Dear Mr. Chairman and Commissioners:

Dr. Nancy Kymn Harvin went to NRC Region I in September 2003 with numerous well-documented allegations concerning the Salem and Hope Creek nuclear plants. Dr. Harvin had worked at the site for five years as a direct report to the President and Chief Nuclear Officer of PSEG Nuclear. The allegations ranged from nuclear safety concerns expressed to her by NRC-licensed operators and PSEG senior managers to long-standing safety-related equipment problems to safety conscious work environment (SCWE) issues to the retaliatory nature of her own termination in March 2003. NRC Region I launched multiple investigations into Dr. Harvin's allegations.

It is nearly 18 months later and the NRC has yet to reach a conclusion on Dr. Harvin's discrimination allegations. I was told nearly a year ago that this case was the top priority for Region I's Office of Investigations. Obviously, the NRC is not abiding by the goals in its internal policies and procedures for addressing allegations within 180 days and for completing Office of Investigations (OI) field investigations within ten months.

Quite frankly, no matter what that decision the NRC eventually makes, it cannot be right for the simple reason that timeliness is an essential component of a right decision. Even if the NRC reaches the right answer on the merits of Dr. Harvin's allegation, it will arrive far too late for the agency's overall decision to be right. "Justice delayed is justice denied" was coined for situations like this one.

The glacier pace of this NRC inquiry is distressing on many levels. First, its duration is implicitly accepted by the agency itself as being too long; hence the aforementioned goals and the fact that the NRC would likely sanction any licensee taking so long to investigate such serious SCWE allegations. Second, this is by no means an isolated case. NRC inquiries into allegations of discrimination and/or retaliation often take far longer than the agency's stated goals and routinely take longer than the NRC's parallel inquiry into technical concerns associated with harassment and intimidation allegations. Third, the pace is unfair to all parties involved. When the NRC does not substantiate an allegation, the cloud of suspicion hanging over the site is detrimental to the maintenance of a good SCWE. When the NRC substantiates an allegation, the delay in correcting its causes and consequences is unjustified. And fourth among this abridged list, the pace dissuades other plant workers from coming to NRC with their concerns.

Dr. Harvin has told me that, in retrospect, she would not have gone to NRC Region I in September 2003 had she known its inquiry process would take this long. She told me she went to the NRC with full faith in the agency's concern about public safety. She believed that was posted on the NRC's website about the right of workers to engage in protected activities without fear of discrimination and retaliation. Although Dr. Harvin knew that going to the NRC would likely be perceived as "whistleblowing" and blackball her from industry employment, she believed the safety issues at Salem and Hope Creek warranted her action. Dr. Harvin feels betrayed by the NRC, believing that her action only yielded NRC inaction.

I must note that Dr. Harvin did not initially contact me until about two weeks *after* she had gone to NRC Region I. Had she contacted me in advance, I would have very strongly advised her against making the trip. Going to the NRC with allegations of discrimination and/or intimidation is just not a viable option. The NRC does not take such allegations seriously. Some of the NRC's past inquiries into worker's retaliation allegations have taken so long that the five-year statute of limitations expired along the way. Even if the NRC is able to wrap things up under the five-year wire, it is unreasonable to ask any person to sacrifice so much for so long just because the NRC won't complete investigations in a timely manner. Instead, I steer workers like Dr. Harvin to Members of Congress and media representatives or advise them to let the issue go.

I do not know why the NRC is so often unable to meet its established goals for OI field investigations into allegations of discrimination and/or intimidation. I note that the NRC has never, ever missed its established goal for license renewal approvals and very, very seldom misses its established goals for other licensing actions. The NRC has demonstrated its ability to meet schedule goals it deems important. Whatever its cause, the lethargic approach to investigations of harassment and intimidation must be corrected. The *status quo* impedes the NRC's ability to meet its strategic goals of (a) maintaining safety, (b) improving efficiency and effectiveness, (c) improving public confidence, and (d) reducing unnecessary burden. We urge you to compel the NRC staff to correct this problem and to also develop the metrics needed to monitor backsliding from that corrected state.

Sincerely,



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