UNITED STATES
NUCLEAR REGULATORY COMMISSION
OFFICE OF NUCLEAR REACTOR REGULATION
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS
WASHINGTON, D.C. 20555-0001

August 25, 2005

NRC REGULATORY ISSUE SUMMARY 2005-18
GUIDANCE FOR ESTABLISHING AND MAINTAINING A SAFETY CONSCIOUS WORK ENVIRONMENT

ADDRESSEES

All U.S. Nuclear Regulatory Commission (NRC) licensees, applicants for licenses, holders of certificates of compliance, and their contractors subject to NRC authority.

INTENT

The NRC is issuing this regulatory issue summary (RIS) to give licensees, applicants for a license, holders of certificates of compliance, and their contractors guidance on establishing and maintaining a safety conscious work environment (SCWE, pronounced "skwee"). No specific action or written response is required.

BACKGROUND INFORMATION

In July 1993, the agency reassessed the NRC's program for protecting allegers against retaliation. Retaliation is prohibited by NRC regulations in 10 CFR Parts 19, 30, 40, 50, 60, 61, 63, 70, 71, 72, 76, and 150. The NRC staff recommended that an agency policy be developed to emphasize that licensees and their contractors are responsible for achieving and maintaining a work environment which is conducive to the reporting of concerns without fear of retaliation.[1] In May 1996, the NRC issued such a policy: "Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation" (61 FR 24336 or http://www.nrc.gov/what-we-do/regulatory/allegations/scwe-frn-5-14-96.pdf). A SCWE is defined by the NRC as an environment in which "employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation." The NRC also recognizes that an employee's willingness to identify safety concerns can also be affected by other factors such as the effectiveness of the licensee's processes for resolving concerns or senior management's ability to detect and prevent retaliatory actions. The NRC policy statement, therefore, addresses these attributes of a SCWE as well. However, the guidance provided by this policy is very broad.

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[1]The term "licensee" in the RIS refers to licensees, holders of certificates of compliance, and applicants for a license. "Contractor" refers to contractors, subcontractors, and other employers subject to NRC authority.

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In April 2000, the NRC's Executive Director for Operations formed the Discrimination Task Group (DTG) to evaluate issues associated with the NRC's employee protection standards, including SCWE. The DTG recommendations were provided to the Commission in September 2002 in SECY-02-0166. Because of continued NRC concerns in this area at both small and large facilities subject to NRC regulation, in a March 26, 2003, staff requirements memorandum (SRM) for SECY-02-0166, the Commission directed the staff to take certain actions in the area of SCWE and safety culture. One of the actions was to provide the guidance in this RIS.

Historically, there has been some confusion about SCWE and safety culture. The terms are often used interchangeably. They are, in fact, distinct but related concepts. In the Commission's January 24, 1989, "Policy Statement on the Conduct of Nuclear Power Operations," safety culture is described as "the necessary full attention to safety matters." A strong safety culture is also often described as having a "safety-first focus." Attributes include the safety-over-production principle, procedural adherence, and conservative decisionmaking. Employees' willingness to identify safety concerns, i.e., SCWE, is one important attribute of a strong safety culture and is expected of all NRC licensees and their contractors.

In SRM-SECY-02-0166, the Commission directed the staff, in consultation with stakeholders, to develop further guidance to identify "best practices" for encouraging a SCWE. The Commission stated that the proposed guidance should emphasize training of managers on their obligations under the employee protection regulations and should make recommendations about the content of the training in this important area. In the 1996 policy statement, the NRC acknowledged that although the statement and the principles described therein apply to all licensees and contractors, 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, such as an employee concerns program, to raise concerns outside of the normal management structure) may not be practical for every licensee or contractor, depending on factors such as the number of employees, complexity of operations, potential hazards, and history of allegations made to the NRC. Similar to the suggestions and principles in the 1996 policy statement, the practices described in this RIS may not be practical for every licensee, depending on the existing work environment and/or the size and complexity and hazards of the licensed activities.

SUMMARY OF ISSUE

All NRC licensees and contractors are expected, although not required by regulation, to establish and maintain a safety conscious work environment. Such a work environment contributes to safe operation of NRC-regulated facilities. The NRC is issuing this RIS to provide supplementary guidance on fulfilling this expectation, originally communicated in the NRC 1996 policy statement. NRC continues to note weakness in the SCWEs at all types of facilities subject to NRC regulation. The agency's expectation with regard to establishing and maintaining a SCWE applies to the wide range of organizations under NRC authority, including licensees, certificate holders, and applicants, and their contractors, subcontractors, vendors, and suppliers. The applicability of the NRC's policy statement is independent of the size of the entity, the type of activity, or the quantity of licensed material involved. Similarly, the supplementary guidance in this RIS may be useful to the same wide range of organizations.

The guidance in this RIS describes a number of practices that may facilitate the efforts of licensees and others to develop and maintain a SCWE. The NRC recognizes that some of these practices may not be practical for every licensee or contractor, depending on the existing work environment, the size, complexity, and hazards of the licensed activities, and/or other organizational factors, and that licensees and contractors have discretion regarding the manner in which a SCWE is maintained at a particular facility. For example, some of the practices in this RIS may not be applicable for licensees or contractors that have only a few employees or a very simple management structure. In such organizations, informal practices to establish and maintain a SCWE may be appropriate. Therefore, the guidance in this RIS is not a regulatory requirement; licensees and contractors should review the following information for practices that may best foster a SCWE given the particular management structure and organizational style at their facility. The supplementary guidance and the 1996 policy statement are provided as Attachment 1 and Attachment 2, respectively.

In addition, practices not included in this guidance may be equally effective in establishing and maintaining a SCWE. The NRC emphasizes that licensees are responsible for establishing and maintaining a SCWE and that implementation of the guidance may not improve a SCWE without additional efforts by site management. Furthermore, advances beyond the practices described herein may be developed as industry practices in the area of SCWE mature and as licensees and their contractors strive for excellence and creativity. The NRC encourages such advances and provides the attached guidance not as a prescriptive definition of a SCWE but as a sample of practices which have been effective in some situations. Although this RIS requires no action nor written response, the NRC believes that the elements of this guidance may be helpful to NRC licensees and their contractors, and encourages all addressees to review this RIS for practices which may assist them in establishing and maintaining a SCWE at their facility.

The concepts in the RIS will not be used by the NRC inspection staff, beyond those currently applied, to assess the performance of facilities subject to NRC regulation. The guidance is intended to provide information to the industry, rather than the NRC inspection staff. The NRC staff currently assesses allegation program data for SCWE issues and determines whether inspection findings relate to the area of SCWE. The NRC staff will continue to assess SCWE using these methods and any future changes to the manner in which the NRC staff assesses work environments would involve stakeholder input in a public forum.

The current industry guidance on SCWE is given in Nuclear Energy Institute (NEI) 97-05, “Nuclear Power Plant Personnel-Employee Concerns Program-Process Tools in a Safety Conscious Work Environment” http://www.nei.org/documents/Nuclear_Employee_Concerns_Tools.pdf. However, NEI’s guidance focuses on nuclear power plants and establishing an effective employee concerns program (ECP), an alternative process for reporting safety concerns. The guidance in Attachment 1 applies to any licensee or contractor and to any problem identification and resolution process.

The practices summarized in Attachment 1 are based on reactive inspections of problematic licensee programs, reviews of successful progressive SCWE programs, and discussions with nuclear industry professionals in this area.

The attached document provides guidance on (1) encouraging employees to raise safety concerns, including recognition initiatives and communication tools, (2) SCWE training content, (3) ECP and ombudsman programs, (4) tools to assess the SCWE, including performance indicators, behavioral observations, and surveys, (5) contractor awareness of SCWE principles and expectations, and (6) processes to help detect and prevent discrimination and avoid the appearance of discrimination.

BACKFIT DISCUSSION

This RIS requires no action or written response and is, therefore, not a backfit under 10 CFR 50.109, 70.76, 72.62, or 76.76. Consequently, the staff did not perform a backfit analysis.

FEDERAL REGISTER NOTIFICATION

A notice of opportunity for public comment on this RIS was published in the *Federal Register* (69 FR 61049) on October 14, 2004. Comments were received from 15 licensees, 1 organization, and 2 individuals. The staff considered all comments received. The staff's evaluation of the comments is publicly available through the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML051100166.

SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT OF 1996

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs in the Office of Management and Budget.

PAPERWORK REDUCTION ACT STATEMENT

This RIS does not contain any information collections and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

CONTACT

This RIS requires no specific action nor written response. If you have any questions about this summary, please contact the technical contact listed below, the appropriate project manager, or the appropriate regional office.

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Attachments:
1. Establishing and Maintaining a Safety Conscious Work Environment
2. Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns without Fear of Retaliation," May 14, 1996
3. List of Recently Issued NMSS Generic Communications

Note: NRC generic communications may be found on the NRC public Web site, http://www.nrc.gov, under Electronic Reading Room/Document Collections.

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Establishing and Maintaining
a
Safety Conscious
Work Environment

BACKGROUND

In July 1993, the Nuclear Regulatory Commission's (NRC) Executive Director for Operations (EDO) directed that a team reassess the NRC's program for protecting allegers against retaliation. The team evaluated the process that was in place in 1993 and sought comments from other NRC offices, other Federal agencies, licensees, former allegers, and the public. One recommendation from the 1993 effort was that the agency develop a policy statement to emphasize that licensees[1] and their contractors are expected to achieve and maintain a work environment which is conducive to the reporting of concerns without fear of retaliation.[2]

On May 14, 1996, the NRC issued a policy statement to express the Commission's expectation that licensees and other employers subject to NRC authority 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. Licensees, contractors, subcontractors, and other employers in the nuclear industry are responsible for maintaining a safety conscious work environment (SCWE, pronounced "skwee"). This policy statement is applicable to the NRC-regulated activities of all NRC licensees and certificate holders and their contractors and subcontractors.

In April 2000, the NRC's EDO formed the Discrimination Task Group (DTG) to evaluate issues associated with the NRC's employee protection standards including SCWE and SCWE training for managers, the subject of a petition for rulemaking, PRM-30-62, submitted on August 13, 1999. The petition was denied on April 29, 2004, and published in the *Federal Register* at 69 FR 28849. The DTG recommendations[3] were provided to the Commission in September 2002. In a March 26, 2003, staff requirements memorandum,[4] the Commission, recognizing the continued challenges facing licensees and contractors in the area of SCWE, directed the staff, in consultation with stakeholders, to develop further guidance on best practices for encouraging a SCWE. On February 19, 2004, the staff met with stakeholders to discuss an expanded outline of best practices prepared by the staff based on the guidance in the 1996 policy statement. Comments on the outline and, subsequently, on the full guidance document were solicited in two *Federal Register* notices dated February 12, 2004, and October 14, 2004, respectively. The comments received during the meeting and in response to the *Federal Register* notices were considered in preparing this guide.

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[1] The term "licensee" in the RIS refers to licensees, holders of certificates of compliance, and applicants for a license. "Contractor" refers to contractors, subcontractors, and other employers subject to NRC authority.

[2] "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," NUREG-1499, January 1994.

[3] SECY-02-0166, "Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues," September 12, 2002.

[4] Staff requirements memorandum on SECY-02-0166, " March 26, 2003.

INTRODUCTION

The guidance in this document is intended to reinforce the expectation in the 1996 policy statement that licensees maintain an environment in which safety issues are promptly identified and effectively resolved and employees feel free to raise safety concerns. The practices summarized in this document are based on information from reactive inspections of problematic licensee programs, reviews of successful progressive SCWE programs, and discussions with nuclear industry professionals, including individuals who provide training to the industry on the subject and attorneys who have represented licensees and whistleblowers in proceedings related to the NRC's employee protection standards.

The NRC recognizes that some of the practices discussed in this guidance may not be practicable or appropriate for every NRC licensee or contractor, depending on the existing work environment and/or the size, complexity, and hazards of the licensed activities. For example, some of the practices may not be applicable for licensees or contractors that have only a few employees or a very simple management structure. In such organizations, more informal practices to establish and maintain a SCWE may be appropriate. In addition, practices not included in this guidance may be effective in establishing and maintaining a SCWE. The NRC staff emphasizes that licensees are responsible for establishing and maintaining a SCWE and that implementation of this guidance may not improve a SCWE without additional efforts by site management. Therefore, the NRC recognizes that licensees have discretion in the way they establish and maintain a SCWE at a particular facility. Furthermore, advances beyond the practices described herein may be developed as industry practices in the area of SCWE mature and as licensees and their contractors strive for excellence and creativity. The NRC encourages such advances and provides the following guidance not as a prescriptive definition of a SCWE but as a sample of practices which have been effective in some situations. Nonetheless, the NRC believes that this guidance may be helpful to NRC licensees and their contractors when developing or enhancing existing SCWE programs, or when attempting to identify and correct potential problems in a program.

The information in this guidance on regulations, guidance documents, and rulings is for general information only. The reader should refer directly to the regulations, guidance documents, and rulings for a complete description and detailed discussion. This document does not impose these regulations or serve as the NRC's formal interpretation of the regulations.

PRACTICES THAT MAY CONTRIBUTE TO ESTABLISHING AND MAINTAINING A SCWE

Effective Processes for Problem Identification and Resolution

Effective processes for problem identification and resolution are essential to ensuring the safe use of nuclear materials and operation of facilities. The following guidance discusses attributes of the work environment that encourage individuals to look for and articulate safety concerns and effectively and efficiently address and resolve the concerns. The approach taken to develop a SCWE and to implement the appropriate processes described below will depend on several factors, including the size of the licensee or contractor.

A. Employees Are Encouraged To Raise Safety Concerns

SCWE Policy

A SCWE policy statement which (a) is applicable to employees and contractors, (b) asserts that it is everyone's responsibility to promptly raise concerns, and (c) makes clear that retaliation for doing so will not be tolerated, may help establish a SCWE and communicate senior management's expectations for maintaining it. In addition, the policy may include:

- a statement that, to the extent appropriate, employees are allowed and encouraged to use work hours to report concerns
- sanctions for retaliation by supervisors, managers, or peers
- expectations for management behavior that fosters employee confidence in raising concerns
- information on the various avenues available for raising concerns
- the right of employees to raise concerns externally
- a commitment to provide SCWE training

SCWE Training

SCWE training for managers, supervisors, and employees helps reinforce the principles in the licensee's SCWE policy. Some primary topics to consider including in this training are applicable laws, regulations, and policies underlying SCWE expectations. To effectively communicate SCWE concepts to the workforce, licensees and their contractors may consider including the following definitions in the training:

- Protected activity

  It is important that managers and employees know what "protected activities" are, besides raising safety concerns.

  The term "protected activity" has been broadly interpreted by the Department of Labor and the U.S. Courts. Protected activities, as defined by NRC regulation, are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act, and include but are not limited to:

  - providing the Commission or employer information about alleged or possible violations of the Atomic Energy Act or the Energy

Reorganization Act or possible violations of requirements imposed under either statute

- refusing to engage in any practice made unlawful under either statute or the requirements if the employee has identified the alleged illegality to the employer
- requesting the Commission to institute action against the employer for the administration or enforcement of these requirements
- testifying in any Commission proceeding or before Congress or at any Federal or State proceeding regarding a provision of either statute
- assisting or participating in, or being about to assist or participate in, these activities

- Adverse action

  Understanding what an “adverse action” is can also be important. An “adverse action” is an adverse change to the compensation, terms, conditions, or privileges of employment.

- Retaliation

  It may be appropriate to explore the meaning of “retaliation” under the NRC’s regulations so that management can continue to effectively manage employees while remaining cognizant of the NRC’s employee protection regulations. Actions taken by an employer, or others, which adversely affect an employee may be based on nondiscriminatory grounds. An adverse action is deemed retaliatory only if it is taken at least in part because the individual was engaged in a protected activity.

The training given may also include the consequences for deviations from applicable laws, regulations, and policies underlying SCWE expectations.

Other things to consider discussing in the training include appropriate gateways for employees and contractors to identify concerns (manager, quality assurance programs, corrective action programs, appeal processes, alternative processes for raising concerns such as a licensee employee concerns program or an ombudsman program, NRC, and DOL), a description of the programs and processes, and the role of the manager in each program or process.

One factor that can significantly impact a SCWE is management behavior. Therefore, employers may consider including this topic in training. The following behaviors may be effective at establishing and maintaining a SCWE at licensee and contractor facilities:

- managers have an “open-door” policy in the office and make themselves available in the field
- managers are aware of employees’ potential reluctance to raise concerns
- managers understand the importance of identity protection
- managers have good basic listening skills, seek input and express appreciation of employees who raise concerns

Managers can use various media instruments to communicate their SCWE principles. Management should consider establishing timeliness goals for responding to concerns, commensurate with their safety significance, and should consider providing periodic updates to the individuals who identified the concerns. In some circumstances it may be necessary to evaluate the effectiveness of responses to individuals’ concerns to determine whether the response adequately addressed the concerns.

Another way to enhance the SCWE is to train managers to identify (1) situations that may make them less receptive to safety concerns, such as operational or maintenance goal pressures, and (2) signs of a chilled environment, that is, an environment in which employees are afraid to raise safety concerns for fear of retaliation.

Managers who exhibit the traits of availability, receptiveness, sensitivity, timeliness, and responsiveness may promote employee confidence in identifying and resolving concerns. Managers who have succeeded in this area may consider training or mentoring other managers in an effort to duplicate their success.

SCWE training should also include expectations for employees’ behavior. Consider emphasizing the following employee behaviors during training:

- taking individual responsibility for reporting concerns
- clearly communicating the concern and confirming that the person who receives the concern understands it
- being willing to suggest resolutions to concerns and participate in their resolution
- following up to ensure the concern is adequately addressed
- showing respect for other employees who identify concerns

The initial training of recently hired employees or recently promoted managers should be conducted as soon as practicable and refresher training for existing staff should be conducted periodically. Decisions regarding the timing and content of such training may need to consider the complexity of the organization, the status of the SCWE at the

facility, and the nature of the activities involved. Refresher training for employees and managers should review key points from the initial training and include lessons learned, as appropriate, from successes and/or problem areas.

Recognition for Employees Who Raise Concerns

Recognizing employees for identifying and working to resolve safety concerns can be an effective practice to encourage individuals to raise safety issues. However, some care should be taken to ensure that recognizing employees for raising concerns does not inadvertently discourage reporting concerns (some employees may not want recognition).

Employee errors can have a detrimental effect on safety and efforts should be made to reduce the frequency and significance of errors. An environment that is conducive to the self-reporting of errors will allow such errors to be identified more quickly and can reduce the potential significance of some errors. While it is important to hold employees accountable for their errors, actions against personnel who self-report errors can, in some circumstances, discourage employees from raising concerns, near-misses, etc. Management should consider treating self-identification and prompt, effective corrective actions as mitigating circumstances when addressing personnel matters involving self-identified errors.

B. Management Is Promptly Notified of Concerns

Other behaviors and processes may help employees promptly identify and notify management of concerns. Employees and managers who demonstrate an open and questioning attitude by asking “why” and “what if” questions help to ensure that concerns are promptly identified. Processes that are accessible and user-friendly may make it easier for employees to raise concerns. A corrective action program which uses paper forms and/or terminals conveniently placed throughout the facility may further ensure prompt notification of safety concerns. An accessible and approachable management team may also motivate employees to report concerns and may help ensure an understanding of the concerns before their evaluation and resolution. It may be advantageous to encourage employees to spend work hours reporting and documenting their concerns (without neglecting assigned work activities). This practice can reinforce the importance in management’s eyes of identifying and reporting concerns and can reduce employees’ reluctance to raise concerns.

C. Concerns Are Promptly Prioritized and Reviewed

Safety should be a primary factor in prioritizing concerns and in determining the breadth and depth of the evaluation. Effective communication plans ensure the sharing of information between affected departments so that the potential impact of the identified concerns on safety can be appropriately assessed. In addition, there should be clear

expectations about timeliness in evaluating and resolving issues. The process for screening issues may include a review for operability and reportability, depending on the types of issues raised at a particular facility. For safety-significant issues, the evaluation should be sufficient to identify the root and contributing causes of the issue. In addition, the root cause analysis should also address the extent of the condition.

D. Concerns Are Appropriately Resolved

The timeliness of the corrective actions should be commensurate with the safety significance of the issue. Processes should be in place to ensure that appropriate actions are taken in response to all safety concerns raised. For safety-significant issues, corrective actions should be taken to address the root causes, contributing causes, and the extent of the condition.

E. Timely Feedback Is Provided to the Concerned Individual

Timely feedback should be provided during the concern resolution process. The individual receiving the information may need to discuss the concern with the employee raising the concern in order to understand the issue and its safety significance. Additional feedback may be necessary during the evaluation when it is apparent that resolution may take longer than anticipated. When the evaluation is complete, it may be beneficial in some organizations to follow up with the concerned employee to share proposed actions to address the issue; however, privacy considerations or other organizational factors may make it inappropriate to share some or all of the information with the concerned employee. The most effective feedback process is one that is flexible enough to permit a concerned employee who wants anonymity to obtain feedback.

F. Appeal Process for Concerns

An appeal process to ensure that issues have been thoroughly addressed (e.g., differing professional opinion or alternative dispute resolution processes) can provide added assurance that concerns are appropriately resolved.

G. Self-Assessments of Problem Identification and Resolution (PI&R) Processes

It is a good practice to periodically evaluate the adequacy and timeliness of responses, as well as the satisfaction of the concerned individual with the response and process. In addition, self-assessments can address whether employees feel free to raise issues using the various processes employed by the licensee, whether these processes are viewed as effective, and why or why not. An assessment can also include an appraisal of the effectiveness of the root cause analyses for significant issues and the effectiveness of associated corrective actions. The most effective self-assessments include a management plan to promptly review the findings of such self-assessments and implement appropriate corrective actions.

H. An Alternative Process to Line Management

For employees who wish to raise a concern to someone other than their managers or through the corrective action program, an alternative process, such as an employee concerns program, can be useful for organizations that are large enough to support such a process. Given the nature of many of the issues an employee may wish to raise outside of line management, such a process should ensure identity protection and/or anonymity to the extent appropriate. Depending on the size of the organization, the accessibility of such an alternative process (the ability to accommodate walk-ins, hot lines, drop boxes, etc.) can influence the effectiveness of the program. In considering the physical location of the office that administers the alternative process, both accessibility to the workforce and visibility are important factors. An overly visible location may not allow discreet visits. Personnel training programs, advertising posters, and facility news articles help publicize the process. Like concerns brought to the corrective action program, concerns brought to the alternative program must receive appropriate operability and reportability reviews and be properly prioritized using safety as a primary factor for determining the breadth, depth, and timeliness of the evaluation. Processes that provide timely feedback on the status and resolution of concerns to senior management with analyses of program data and pertinent observations can ensure appropriate management support and review of the alternative process.

Tools To Assess the SCWE

Information gathered with the following tools can be considered for program enhancements, training enhancements, coaching and counseling opportunities, organizational changes, and survey topic suggestions. As with processes for problem identification and resolution, the choice of tools and their usefulness will depend on several factors, including the size of the licensee, applicant, or contractor and the complexity and hazards of the licensed activities.

A. Lessons Learned Evaluations

It may be useful to periodically evaluate information from pertinent organizations and processes to identify enhancements or adjustments that could improve the SCWE. Such organizations and processes may include the primary process for raising concerns (e.g., the corrective action program), an alternative process for raising concerns (e.g., employee concerns program, ombudsman), human resources (for work environment concerns, etc.), legal counsel (for Department of Labor cases, etc.), and/or regulatory affairs (regarding NRC findings or observations). Discussions about specific documentation or events should consider privacy and attorney-client restrictions. Lessons learned from external organizations can also be useful.

B. Benchmarking

Valuable insights can be obtained from participation in applicable industry forums or peer group assessments of other SCWE programs where ideas and practices are exchanged and various SCWE elements are compared.

C. Performance Indicators

It may be useful to identify and monitor parameters that help indicate the effectiveness of SCWE training and the problem identification and resolution processes. For example, the number and trend of NRC allegations[5] (available only for large licensees) compared to the number and trend of internally raised concerns may be an indication of employee willingness to raise concerns internally. Similarly, the percent of anonymous concerns raised may indicate employee willingness to raise concerns without fear of retaliation.

Licensee effectiveness in preventing retaliation or the perception of retaliation may be indicated by the number and trend of NRC retaliation allegations compared to the number and trend of internally raised retaliation concerns.

The percent of employees with a questioning attitude and a willingness and ability to raise safety concerns may be indicated by comparing the number of risk-significant concerns that are self-revealed, self-identified, or externally identified by the Institute of Nuclear Power Operations (INPO), NRC, the Occupational Safety and Health Administration (OSHA), etc., to the total number of concerns.

Finally, the backlog and age of concerns may indicate the effectiveness of processes for resolving concerns.

No single indicator is sufficient in itself to identify weaknesses in the SCWE, nor are there absolute measurements that indicate an unhealthy environment. Nonetheless, monitoring the trends in various characteristics of the SCWE with performance indicators like those mentioned above may provide insights into the strengths and weaknesses of the SCWE at a site. The complexity and number of useful performance indicators may depend on the size and organizational structure of the licensee or contractor.

D. Survey and Interview Tools

Surveys and interviews done by organizations independent of the groups being surveyed or interviewed can be useful tools and complement other tools used to assess the SCWE. The extent of such surveys will vary depending on the size and organizational structure of the licensee or contractor.

Pre-survey or pre-interview communications can be a very important feature of such tools. Although the extent of such communications will vary among facilities, communications with the workforce before the survey or interview may include a request for participation, a statement of the need for input, a statement regarding protecting

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[5] Although the NRC makes some statistical information on allegations publicly available, this information does not include information that could be used to identify concerned individuals who have raised concerns to the NRC.

participants' identity, the intended use of the gathered information, and a statement regarding the intent to share the results with the workforce.

One way in which licensee management can demonstrate support for a SCWE is to let employees participate in surveys or interviews during regular business hours.

The following are potential topics for SCWE surveys:

- awareness of company policies and practices on raising safety concerns and avenues available for raising concerns
- management behaviors encouraging the workforce to raise safety concerns
- workers' willingness to raise safety concerns
- effectiveness of the processes available (normal and alternative) for raising concerns
- management's ability to detect and prevent retaliation for raising safety concerns

A space for written comments on the survey may permit individuals to make useful comments that would not otherwise be available from the survey results.

Survey or interview followup action plans should be developed to address findings that are specific to work groups or generic to the facility. In addition, telling the workforce about the results of such surveys and action plans to address findings may have a positive impact on the SCWE and encourage participation in future surveys. The results of surveys or interviews may indicate employee beliefs, attitudes, and satisfaction with key SCWE attributes and suggest ways to improve the SCWE.

E. Direct Observations

Direct observations of workers' behavior may provide information regarding the effectiveness of SCWE training. Management behaviors observed may indicate whether a supervisor is receptive to concerns and supports and rewards employees for raising concerns. Direct observation of employees in the work environment can provide valuable insights into the employees' questioning attitude and willingness to challenge perceived unsafe behavior.

F. Exit Interviews and Surveys

Interviews and surveys of exiting employees to identify safety issues can capture concerns employees may not have been comfortable raising while working at the facility. These activities may include mechanisms for following up with exiting employees who want to be informed of the resolution of their concerns.

G. 360-Degree Appraisals

So-called 360-degree appraisal programs, where employees are asked to provide feedback on manager SCWE behavior, may be an effective tool for establishing and maintaining a SCWE at some facilities because they may help managers identify perceptions or behaviors that impact the SCWE.

Improving Licensee Contractor Awareness of SCWE Principles

The Commission's longstanding policy is to hold licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to NRC-regulated activities. Thus, licensees are responsible for ensuring that their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation. In considering the type of enforcement action that should be taken against licensees for violations of the NRC's employee protection regulations involving contractors, the NRC considers, among other things, the extent and effectiveness of the licensee's involvement with and oversight of the contractor's environment for raising concerns.

A. Communicating Licensee SCWE Expectations to Contractors

Licensee expectations about creating and maintaining a SCWE should be communicated to contractors providing components, equipment, materials, or other goods and services related to NRC-regulated activities. Furthermore, a licensee may want to communicate to its contractors and subcontractors that the licensee expects them to either maintain an effective program that prohibits discrimination against contractor employees for engaging in protected activity and fosters a SCWE or else adopt and comply with the licensee's SCWE program for its employees.

B. Licensee Oversight of Contractor SCWE Activities

Aside from communicating its SCWE-related expectations to contractors, licensees may consider overseeing contractor SCWE-related activities when necessary. Such oversight could take the form of:

- reviewing contractor programs and processes to prohibit discrimination and foster a SCWE
- assessing the contractor management's commitment to SCWE principles through document review or behavioral observations
- reviewing contractor training for content and for effectiveness
- monitoring the contractor's actions to address concerns (e.g., reviewing contractor investigations to determine the need to conduct independent licensee investigations)

- evaluating the contractor's actions to mitigate the potential impact of employment decisions and organizational changes on the SCWE

C. Licensee Management Involvement in Contractor Cases of Alleged Discrimination

Since the SCWE is most challenged when changes are made to the employment conditions of the workforce, it can be very beneficial in some cases for licensees to monitor such changes when proposed or executed by the contractor. Licensee oversight in this area might include evaluating contractor processes for making changes to employment conditions (e.g., disciplinary policies, reduction-in-force plans) to ensure the processes are well-defined, defensible, and communicated to the workforce in advance of their implementation.

In some cases, such as when there is a history of claims of discrimination or problems with the SCWE, licensee management may find it beneficial to evaluate contractor-proposed changes to employment conditions to ensure that the proposed changes follow defined processes and are nonretaliatory. The licensee can also assess whether the contractor has considered the potential effect that its actions might have on the SCWE and, if appropriate, whether the contractor has taken actions to mitigate any impact.

Finally, in some cases, contractor employment condition changes that are alleged to be or are likely to be perceived as retaliatory may need to be reviewed to ensure the changes are not retaliatory and do not otherwise adversely affect the SCWE.

D. Contractor SCWE Training

Contractor SCWE training can be done either by the contractor or by the licensee. As with the training given to licensee employees, some items to consider including in the contractor training are the laws, regulations, and policies underlying the licensee's SCWE expectations; the licensee's governing SCWE policy; the avenues available to contractor staff for raising concerns; and the licensee's expectations for contractor management and employee behavior regarding raising safety concerns. The contractor training may also include an explanation of licensee contractual rights to oversee the contractor's SCWE. Conducting training during business hours is one way the licensee can emphasize the importance of the SCWE.

<u>Involvement of Senior Management in Employment Actions</u>

An effective way for licensee management to prevent actual or perceived retaliatory actions by their staff is to review proposed employment actions on an as-needed basis before the actions are taken to determine whether any of the factors of retaliation are known to be present. In addition, licensees senior management may positively impact the SCWE by ensuring that programs and processes involving changes to employment conditions (e.g., disciplinary

policies, reductions-in-force plans) are well-defined, defensible, and communicated to the workforce before implementation.

Retaliation involves the following factors:

- Has the individual against whom the action is being taken engaged in a *protected activity*?
- Is an adverse employment action being proposed?
- Does the licensee or contractor know about the protected activity? Such knowledge can be attributed to someone other than the individual's director supervisor.
- Is there evidence that the adverse action is being proposed because of the protected activity? That is, is there a relationship between the adverse action and the protected activity?

If such reviews of employment actions are implemented, management can use them to determine whether actions are well-founded and nonretaliatory. Other factors to consider in such a review include (1) whether the proposed action comports with normal practice within the limits allowed by the defined process and is consistent with previous actions, (2) whether the supervisor requesting the action exhibits any sign of unnecessary urgency; and (3) whether the employee's prior performance assessments and the proposed action are consistent and, if not, whether any inconsistencies are justified and documented.

If such reviews are implemented, an assessment should be done to determine what, if any, effect the employment action may have on the SCWE. If management determines that the action, despite its legitimacy, could be perceived as retaliatory by the workforce, mitigating actions should be considered to minimize potential chilling effects on raising safety issues.

Such mitigating actions may include (1) using holding periods during which the proposed employment action is held in abeyance while further evaluations are completed; (2) communicating with the workforce about the action being taken, with appropriate consideration of privacy rights; (3) reiterating the SCWE policy; and (4) explaining the action to the affected employee or employees and clearly articulating the nonretaliatory basis for the action. After an employment action is taken, management can initiate a review of the facts and, if warranted, reconsider the action that was taken. If retaliation is alleged, the licensee should assure that the appropriate level of management is involved in efforts to minimize a potential chilling effect on the workforce's willingness to raise safety issues.

Definitions

Adverse action - An employer-initiated action that detrimentally affects an employee's compensation terms, conditions, or privileges of employment. Such actions include but are not limited to termination, demotion, denial of a promotion, an unfavorable performance appraisal, transfer to a less desirable job, and denial of access.

Alternative dispute resolution (ADR) - Various processes, such as mediation and facilitated dialogues, that can be used to help parties resolve disputes.

Corrective action program (CAP) - A formal system for handling issues raised by employees. Issues may require remedial action. Issues are tracked from their identification through evaluation and resolution. The issues are usually prioritized according to relative safety significance.

Differing professional opinion (DPO) - A conscientious expression of a professional judgement that differs from the prevailing view, disagrees with a management decision or policy position, or takes issue with a proposed or an established practice involving technical, legal, or policy issues.

Employee concerns program (ECP) - An alternative process to line management and the corrective action program for employees to seek an impartial review of safety concerns. Many ECPs handle a variety of concerns and help resolve concerns on behalf of employees.

Hostile work environment - A discriminatory work environment that is either pervasive and regular, or acute but severe, detrimentally affects the employee, and is created because the employee engaged in protected activity.

Memorandum of understanding (MOU) - A written agreement which describes how organizations, offices, or agencies will cooperate on matters of mutual interest and responsibility.

Performance indicators (PIs) - A series of predetermined measured items which show what may be occurring in an organization and give an early sign of problems.

Protected activity - As defined by NRC regulations, activities related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act, which include but are not limited to: providing the Commission or the employer with information about alleged violations of either statute or any requirements imposed under either statute; refusing to engage in any practice made unlawful under either statute if the employee identifies the alleged illegality to the employer; requesting the Commission to institute action against the employer for administration or enforcement of these requirements; testifying before the Commission, Congress, or in any Federal or State proceeding regarding any provision of the statutes; and assisting or participating in, or is about to assist or participate in these activities.

Retaliation - The act of taking an adverse action against an individual, at least in part, because they engaged in a protected activity.

Safety conscious work environment (SCWE) - An environment in which employees are encouraged to raise safety concerns, are free to raise concerns both to their own management and to the NRC without fear of retaliation, where concerns are promptly reviewed, given the

proper priority, and appropriately resolved, and timely feedback is provided to those raising concerns.

Safety Culture - Is defined by the International Nuclear Safety Advisory Group (INSAG) as, “That assembly of characteristics and attitudes in organizations and individuals which establishes that, as an overriding priority, nuclear plant safety issues receive the attention warranted by their significance.”

[Federal Register: May 14, 1996 (Volume 61, Number 94)]
[Notices]
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From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr14my96-136]

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.

DATES: 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[1] and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility.

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[1]Throughout this Policy Statement the terms “concerns,” “safety concerns” and “safety problem” refer to potential or actual issues within the Commission's jurisdiction involving operations, radiological releases, safeguards, radiation protection, and other matters relating to NRC-regulated activities.

In the past, employees have raised important issues and as a result, the public health and safety has benefitted. 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 allegers 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

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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

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[2]Throughout this Notice, the term “licensee” includes licensees and applicants for licenses. It also refers to holders of certificates of compliance under 10 CFR Part 76. The term “contractor” includes contractors and subcontractors of NRC licensees and applicants defined as employers by section 211(a)(2) of the Energy Reorganization Act of 1974, as amended.

(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

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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.

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[3]An employee who believes he or she has been discriminated against for raising concerns may file a complaint with the Department of Labor if the employee seeks a personal remedy for the discrimination. The person may also file an allegation of discrimination with the NRC. The NRC will focus on licensee actions and does not obtain personal remedies for the individual. Instructions for filing complaints with the DOL and submitting allegations can be found on NRC Form 3 which licensees are required to post.

[4]The NRC and DOL have entered into a Memorandum of Understanding to facilitate cooperation between the agencies. (47 FR 54585; December 3, 1982)

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

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[5]Training of supervisors in the value of raising concerns and the use of alternative internal processes may minimize the conflict that can be created when supervisors, especially first line supervisors, perceive employees as “problem employees” if the employees, in raising concerns, bypass the “chain of command.”

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.

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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

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[6]In developing these programs, it is important for reactor licensees to be able to capture all potential safety concerns, not just concerns related to “safety-related” activities covered by 10 CFR Part 50, Appendix B. For example, concerns relating to environmental, safeguards, and radiation protection issues should also be captured.

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

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[7] In developing these programs, it is important for reactor licensees to be able to capture all potential safety concerns, not just concerns related to “safety-related” activities covered by 10 CFR Part 50, Appendix B. For example, concerns relating to environmental, safeguards, and radiation protection issues should also be captured.

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

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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

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[8]The expectation that employees provide safety and compliance concerns to licensees is not applicable to concerns of possible wrongdoing by NRC employees or NRC contractors. Such concerns are subject to investigation by the NRC Office of Inspector General. Concerns related to fraud, waste or abuse in NRC operations or NRC programs including retaliation against a person for raising such issues should be reported directly to the NRC Office of the Inspector General. The Inspector General's toll-free hotline is 800-233-3497.

[9]Except for the reporting of defects under 10 CFR Part 21 and in the area of radiological working conditions, the Commission has not codified this expectation. Licensees are required by 10 CFR 19.12 to train certain employees in their responsibility to raise issues related to radiation safety.

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.

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[10] The Commission intends to protect the identity of individuals who come to the NRC to the greatest extent possible. See “Statement of Policy on Protecting the Identity of Allegers and Confidential Sources.”

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.
[FR Doc. 96-12028 Filed 5-13-96; 8:45 am]
BILLING CODE 7590-01-P

Recently Issued NMSS Generic Communications

Date	GC No.	Subject	Addressees
2/11/05	BL-05-01	Material Control and Accounting at Reactors and Wet Spent Fuel Storage Facilities	All holders of operating licenses for nuclear power reactors, decommissioning nuclear power reactor sites storing spent fuel in a pool, and wet spent fuel storage sites.
8/10/05	RIS-05-16	Issuance of NRC Management Directive 8.17, "Licensee Complaints Against NRC Employees"	All licensees and certificate holders.
8/3/05	RIS-05-15	Reporting Requirements for Damaged Industrial Radiographic Equipment	All material licensees possessing industrial radiographic equipment, regulated under 10 CFR Part 34.
7/13/05	RIS-05-13	NRC Incident Response and the National Response Plan	All licensees and certificate holders.
7/11/05	RIS-05-12	Transportation of Radioactive Material Quantities of Concern NRC Threat Advisory and Protective Measures System	Licensees authorized to possess radioactive material that equals or exceeds the threshold values in the Additional Security Measures (ASM) for transportation of Radioactive Material Quantities of Concern (RAMQC) under their 10 CFR Part 30, 32, 50, 70, and 71 licenses and Agreement State licensees similarly authorized to possess such material in such quantities under their Agreement State licenses.
7/11/05	RIS-05-11	Requirements for Power Reactor Licensees in Possession of Devices Subject to the General License Requirements of 10 CFR 31.5	All holders of operating licenses for nuclear power reactors and generally licensed device vendors.
6/10/05	RIS-05-10	Performance-Based Approach for Associated Equipment in 10 CFR 34.20	All industrial radiography licensees and manufacturers and distributors of industrial radiography equipment.

Date	GC No.	Subject	Addressees
4/18/05	RIS-05-06	Reporting Requirements for Gauges Damaged at Temporary Job Sites	All material licensees possessing portable gauges, regulated under 10 CFR Part 30.
4/14/05	RIS-05-04	Guidance on the Protection of Unattended Openings that Intersect a Security Boundary or Area	All holders of operating licenses or construction permits for nuclear power reactors, research and test reactors, decommissioning reactors with fuel on site, Category 1 fuel cycle facilities, critical mass facilities, uranium conversion facility, independent spent fuel storage installations, gaseous diffusion plants, and certain other material licensees.
2/28/05	RIS-05-03	10 CFR Part 40 Exemptions for Uranium Contained in Aircraft Counterweights - Storage and Repair	All persons possessing aircraft counterweights containing uranium under the exemption in 10 CFR 40.13(c)(5).
7/29/05	IN-05-22	Inadequate Criticality Safety Analysis of Ventilation Systems at Fuel Cycle Facilities	All licensees authorized to possess a critical mass of special nuclear material.
6/23/05	IN-05-17	Manual Brachytherapy Source Jamming	All medical licensees authorized to possess a Mick applicator.
5/17/05	IN-05-13	Potential Non-conservative Error in Modeling Geometric Regions in the Keno-v.a Criticality Code	All licensees using the Keno-V.a criticality code module in Standardized Computer Analyses for Licensing Evaluation (SCALE) software developed by Oak Ridge National Laboratory (ORNL)
5/17/05	IN-05-12	Excessively Large Criticality Safety Limits Fail to Provide Double Contingency at Fuel Cycle Facility	All licensees authorized to possess a critical mass of special nuclear material.
4/7/05	IN-05-10	Changes to 10 CFR Part 71 Packages	All 10 CFR Part 71 licensees and certificate holders.

Date	GC No.	Subject	Addressees
4/1/05	IN-05-07	Results of HEMYC Electrical Raceway Fire Barrier System Full Scale Fire Testing	All holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, and fuel facilities licensees.
3/10/05	IN-05-05	Improving Material Control and Accountability Interface with Criticality Safety Activities at Fuel Cycle Facilities	All licensees authorized to possess a critical mass of special nuclear material.

Note: NRC generic communications may be found on the NRC public website at http://www.nrc.gov, under Electronic Reading Room/Document Collections.