

From: David Vito ^{RI}
To: Lisamarie Jarriel ^{OE}
Date: 1/19/05 9:06AM
Subject: Fwd: ****SENSITIVE ALLEG MATERIAL****

Lisa,

I spoke w/you earliler about our current efforts toward closing the Salem/HC SCWE alleger's H&I issue, but forgot to mention that we are having an ARB discussion on this today. The Bridge # info is attached. There are limited lines, so if you are intersted, if you would, please find the folks in NRR and OE who will be listening in and go to one of those offices.

As we discussed, one of the points I would like put forward is my wish to hold the release of our findings on the H&I issue. [REDACTED] My primary concern is FOIA. She FOIA'd right after the SCWE review was done, and we told her we could not give her anything at the time because the H&I case and [REDACTED] were in process. If we put out the H&I conclusion separately, she will FOIA immediately, and again we will have to tell her that we can't give her anything. If we wait until the [REDACTED] is done (it is relatively close), we can give her everything upon the FOIA request, which is obviously my preference.

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CC: Andrea Kock; Carl Mohrwinkel

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions 217C
FOIA- 2005-194

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From: Sharon Johnson *RI*
 To: A. Randolph Blough; Cynthia O'Daniell; Daniel Holody; David Vito; Ernest Wilson; Eugene Cobey; James Luehman; Jeffrey Teator; Jennifer Uhle; Joel Wiebe; John Lubinski; Karl Farrar; Kay Gallagher; Leanne Harrison; Rani Franovich; Russell Arrighi; Theodore Wingfield; Wayne Lanning
 Date: 1/18/05 10:45AM
 Subject: ****SENSITIVE ALLEG MATERIAL****

I am supplying the bridge number and pass code for the January 19, 2005 ARB meeting regarding the Salem/Hope Creek H&I case discussion.

The ARB is scheduled for 1:30 p.m.

I have obtained 4 lines - (1) for RI (1) for NRR (1) for OE (1) free

Call:

301-231-5539 or

1-800-638-8081

Pass Code is

 *642*

g:\ora\alleg\panel\20030110arb22.wpd **ALLEGATION REVIEW BOARD DISPOSITION RECORD**

Allegation No.: **RI-2003-A-0110**
 Site/Facility: Salem/Hope Creek
 ARB Date: 1/19/2005

Branch Chief (AOC): Cobey
 Acknowledged: **Yes**
 Confidentiality Granted: **No**

Issue discussed:

OI report for Case No. 1-2003-045 transmitted by RI OI letter dated December 28, 2004.

OI Conclusion

There is insufficient evidence to prove that the employment actions taken against the CI was in violation of the employee protection regulation.

Summary of Information from Report

1. There is substantial evidence to indicate that the employment actions were the result of other factors.

- [REDACTED] asked the CI to transfer to Nuclear in late 2001. This was after a spring 2001 staff meeting in which the CI said the leadership at the site was a nuclear safety issue.
- CI was treated more favorably than others with regard to temporary living expenses
- [REDACTED] first considered eliminating the CI's position in the middle of 2002 based on business reasons.
- [REDACTED] made the decision to eliminate the CI's position in early 2003 based to a large extent on feedback from his staff that the CI was no longer effective.
- Note that his staff's feedback could be based, in part, on the CI's statement in the spring 2001 staff meeting.
- Not withstanding the above, there is a plethora of other reasons why his staff would give negative feedback. The CI was a change facilitator. In general, change is perceived as negative to individuals. Individuals are more comfortable in a static environment. A group of individuals perceiving change as negative results in an organizational resistance to change. Other reasons are: the CI was considered [REDACTED] spy, the CI did not produce observable results, the CI's effectiveness appeared to be waning [REDACTED] was retiring and the CI was closely tied to him.

2. Management communications and inaction significantly contributed to the CI's perception that the employment actions were the result of raising safety issues.

- Perception is reality to the perceiver unless direct and consistent action is taken to change the perception. As time goes by, the required action to change the perception takes more effort until the perception can no longer be changed.
- The CI's role in the organization was not clear to [REDACTED] staff.
- The CI's status in the organization was not clear - permanent, consultant, rotational, temporary.
- [REDACTED] procrastinated in making the decision as to when the CI's separation would be effective. He had never downsized anyone before.
- The VP of HR made the decision to move up the CI's last work day without ensuring the reasons were adequately communicated.

- The HR individual, assigned responsibility to inform the CI that the separation date was to be moved up, delayed the discussion. When it occurred he was nervous and admittedly stumbled in his discussion. The separation date move was inconsistent with the information the CI received from [REDACTED]
- The HR individual left the incorrect impression that the direction for the date change came from [REDACTED]

3. Are management's inadequate communication and inaction subject to NRC enforcement or regulatory action?

- The failures that led to the perception of a violation of the employee protection act were not willful. Perception is reality to the individual doing the perceiving. This perception is not limited to the CI and adversely affects the SCWE. Enforcement or regulatory action is not withheld for equipment issues just because it is not willful.
- 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 willingness of employees to identify safety concerns, i.e., SCWE, is an attribute of Safety Culture. Safety Culture in SECY 04-0111 refers to, "the necessary full attention to safety matters," and, "the personal dedication and accountability of all individuals engaged in any activity which has a bearing on the safety of nuclear power plants."
- Using the above connection to the safety of nuclear power plants, in the case covered by the OI report, management failures had a negative effect on the SCWE, which has a potential negative effect on the safety/risk of nuclear power plants. In fact, because of the difficulty of causing a change in perception, this negative effect is ongoing until the perception change is successful.
- This increase in risk resulting from the management failures is not quantifiable, but there is sufficient risk and basis for our concern or we would not be concerned about SCWE.

Enforcement/Regulatory Action Options

- Order? - Not appropriate.
- Violation? - Not appropriate, because there are no requirements.
- CAL? - Not appropriate, because the damage to SCWE as a result of this issue is done. What is left is actions to improve SCWE and that is already occurring by licensee commitments under NRC scrutiny.
- Inspection Report? - Probably the best vehicle. This could be covered under the SCWE crosscutting issue. Possibly, this could be a finding concerning management inadequate communication and inaction that resulted in a negative effect on SCWE. This will be sensitive since we need to tell PSEG enough so that they understand our rationale and can take actions to prevent recurrence, but we need to be concerned about keeping personal and proprietary information out of the public.

Allegor contacted prior to referral to licensee (if applicable)?

ALLEGATION REVIEW BOARD DECISIONS

Attendees: Chair - Uhle Branch Chief (AOC) - Cobey SAC - Vito, Harrison
 OI Rep. - Mullen, Teator RI Counsel - Farrar Others - Wiebe

DISPOSITION ACTIONS:

- 1) ARB to determine if PSEG should be subject to additional NRC regulatory action.

Responsible Person: ____

ECD: _____

Closure Documentation: ____

Completed: _____

SAFETY SIGNIFICANCE ASSESSMENT: Safety significance is low because no direct link to plant safety can be established.

PRIORITY OF OI INVESTIGATION:

If potential discrimination or wrongdoing and OI is not opening a case, provide rationale here (e.g., no prima facie, lack of specific indication of wrongdoing): NA

Rationale used to defer OI discrimination case (DOL case in progress): NA

ENFORCEMENT STATUTE OF LIMITATIONS CONSIDERATION (only applies to wrongdoing matters (including discrimination issues) that are under investigation by OI, DOL, or DOJ):

What is the potential violation and regulatory requirement? _____

When did the potential violation occur? _____

(Assign action to determine date, if unknown)

Once date of potential violation is established, SAC will assign AMS action to have another ARB at four (4) years from that date, to discuss enforcement statute of limitations issues.

Distribution: Panel Attendees, Regional Counsel, OI, Responsible Individuals (original to SAC)

ARB MINUTES ARE REVIEWED AND APPROVED AT THE ARB

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