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From: David Vito  
To: Daniel Holody; Ernest Wilson; Jeffrey Teator; Richard Urban  
Date: 4/6/05 8:25AM  
Subject: Fwd: Don't blame the liars, blame the NRC

More from UCS.

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From: "Dave Lochbaum" <dlochbaum@ucsusa.org>  
To: [REDACTED]  
Date: 4/6/05 8:08AM  
Subject: Don't blame the liars, blame the NRC

Hello Kymn:

I thought some more about what you told me yesterday, about feeling betrayed by your former co-workers because they lied to the NRC when interviewed under oath about your case.

It is not their fault -- self-preservation is an innate human trait.

Blame the NRC. It's solely their fault.

Suppose your former co-workers had spoken the truth. Would that have changed the NRC's outcome? Probably not. It merely would have been volunteering for PSEG's next "business" decision. They saw what happened to you and many others like you and knew that lying to the NRC was the only way to guarantee their career security. Under the NRC's perverse system, telling the truth is more likely to damage one's career than lying.

Examine the NRC's stupid system. You have zero formal opportunities to appeal the NRC's decision in your case. None. But what appeal options are available to PSEG in the remote chance that NRC had decided in your favor? First, they get invited to a closed-door pre-decisional enforcement conference (Court TV broadcasts American justice trials all over the globe, but NRC "trials" are conducted in top secret) where they can offer "evidence" to counter the NRC's charges. But if that formal appeal fails and the NRC still imposes some sanction, PSEG can formally appeal that imposition under 10 CFR Part 2. Because that formal appeal process wasn't always successful in overturning the NRC's attempted sanctions, the industry made the NRC modify this process to add another appeal process - the Alternate Dispute Resolution process. So, PSEG had plenty of opportunities to formally appeal should the NRC have decided in your favor but you have zero chance to appeal when they don't.

And this isn't just perverted on paper, it is in practice too. A few years ago, a supervisor at the Perry nuclear plant discriminated against a worker. That worker had been subpoenaed to testify in a wrongful termination suit filed by a former worker at Perry. The supervisor informed the worker that the company could fire employees who violated its conflict-of-interest clause and he viewed telling the truth at this trial to conflict with the company's interests.

The NRC investigated and, lo and behold, decided in favor of the whistleblower. The company fought it at a pre-decisional enforcement conference, and lost. The NRC imposed a \$110,000 fine on the company. No action whatsoever - not even a slap on the wrist - was imposed on the supervisor who violated federal regulations. The company appealed the fine, and lost. So the company then sought ADR. Months and months and months later, the NRC settled for \$80,000.

The supervisor remains employed in the nuclear industry. The worker who did the right thing has been removed from the nuclear industry and will

likely never work in it again.

The company involved in this fiasco was FirstEnergy, which also owns the Davis-Besse plant. As this mess was transpiring, FirstEnergy conducted a training program at Davis-Besse for dealing with employee concerns. We have a DVD of that training session. The worker at Perry who dared blow the whistle was mentioned many, many times during the training session, never in a positive light. This was necessary because while the worker's head was on a pole outside the Perry plant to silence those workers, the Davis-Besse workers might have been missing the message. So the training session helped remind them to keep their mouths shut. It worked – a few years later, the NRC was "surprised" to learn that conditions at Davis-Besse were bad.

The NRC allows a perverse risk/reward system to dominate. Workers who tell the truth risk their careers. Workers who violate federal regulations by discriminating against those raising safety concerns are essentially immune from sanctions.

Hence, you really shouldn't blame your colleagues for protecting their interests by lying to the NRC. Telling the truth would not have helped your cause and simply added their names to the long list of those butchered by industry while the NRC watched.

The entire blame belongs with the NRC. They allow plant owners to massacre whistleblowers without fear of any sanction larger than a ticket smaller than these companies spend on the annual Christmas party (and bonuses).

TVA, Millstone, Davis-Besse, Salem and Hope Creek -- all having the same safety culture problems despite having different owners. The common denominator is economic pressure to keep the plants running and a regulator that would have to improve a bit to be labeled ineffective.

As long as the NRC plays this game, "stepping forward" in the nuclear industry will equate to exposing oneself to unfriendly fire. It will not stop until the NRC takes whistleblowers seriously and imposes real sanctions on those who violate federal regulations intended to protect workers raising safety concerns.

I have no expectation that this Commission will let that happen.

Sorry,  
Dave

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