

SENSITIVE ALLEGATION MATERIAL

ALLEGATION ACTION PLAN

AMS NO. RIII-02-A-0114

Licensee: Kewaunee
 Docket/License No: 05000305
 Assigned Division/Branch: Security

Allegation Review Board Membership:

Chairman - Grant/ Pederson/ Grobe

Paul/ Berson/ Heller/ Kock/ Clayton

Dapas/ Cantano/ Reynolds

Creed, Madaeda

Kunowski

GENERIC CONCERNS: If Yes Explain:

DISCUSSION OF SAFETY SIGNIFICANCE: No immediate threat to public health and safety.

OI ACCEPTANCE: YES NO (Priority: HIGH NORMAL LOW)

Basis for OI Priority: see concern 4 & 3 see cm

OI has Accepted Concern(s) No(s). 4 & 3 Signature J. Uled

ARB MINUTES PROVIDED TO: Dyer/Paul/Creed/ [initials] 8/6/02

STATUS LETTER: PRINT IN FINAL X REVISE N/A PROVIDE THE CI THE STATUS OF CONCERN 3 AND 4

REFERRAL LETTER:
 A. Licensee YES X NO _____ Concern 2
 B. State of YES _____ NO _____
 C. DOE YES _____ NO _____

date received	July 3, 2002	due date of 1 st ARB	August 2, 2002
due date of ACK Ltr	August 2, 2002	date -90 days old	October 1, 2002
date -120 days old	October 31, 2002	date -150 day old	November 30, 2002
date -180 days old	December 30, 2002	date -365 days old	July 3, 2003
projected date for the 5 yr statue of limitation			July 2, 2007

COMMENTS:

[Signature]
 Allegation Review Board Chairman

8/5/02
 Date

D-11

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AMS No. RIII-02-A-0114

Concern No. 3

An individual is concerned that a supervisor lied to a licensee investigator about being told by you and several other employee about the smell of alcohol on an individual

Regulatory Basis:

Regulatory Basis: 10 CFR 26.24(a)(3) requires, in part, testing for-cause shall be initiated as soon as possible...after receiving credible information that an individual is abusing alcohol.
10 CFR 50.5 requires that a contract employee may not knowing engage in deliberate misconduct that is material to the NRC.

I. Action Evaluation: The following method of resolution is recommended (circle):

- A. Send to Licensee Requesting Response in _____ Days. (Describe the general areas we expect the licensee to address.)
- B. Priority RIII Follow up and Closure Memo to OAC
- C. Follow up During Routine Inspection Within _____ Days and Closure Memo to OAC
- D. Refer to OI. Recommended Priority: HIGH NORMAL LOW
Recommended Basis:
- E. Outside NRC's Jurisdiction. Describe Basis Below.
- F. Too General for Follow-up. Describe Basis Below.
- G. Other (specify) -

Responsible for Action - _____ EICS _____

II. Special Considerations/Instructions:

Proposed Violation: Contrary to the above, on xx/xx/xx, a named individual knowingly engaged in deliberate misconduct by lying to a licensee representative regarding his knowledge of the odor of alcohol on a plant employee. This action is material to the NRC because it demonstrates that a for-cause test was not conducted after receiving credible information that an individual was abusing alcohol. This action, if substantiated, is contrary to NRC regulatory requirements.

We recommend this issue, because of the alleged wrongdoing, be forwarded to OI for their review and disposition.

The content of this memorandum, alleged wrongdoing and discrimination, were reviewed with Ms. M. Fahey, OI, on July 22, 2002. During that review, it determined that the concerns noted above appeared to be related to previous allegation AMS 01-0176 that is currently under OI review.

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AMS No. RIII-02-A-0114

Concern No. 4

she was

An individual is concerned that ~~you~~ are the subject of discrimination by not being rehired after providing information to the licensee's investigator about the smell of alcohol on an individual.

Regulatory Basis: 10 CFR 50.7 states that discrimination for engaging in a protected activity (raising a safety concern) is prohibited. The discriminatory action related to a condition and privilege of employment.

I. Action Evaluation: The following method of resolution is recommended (circle):

- A. Send to Licensee Requesting Response in ___ Days. (Describe the general areas we expect the licensee to address.)
- B. Priority RIII Follow up and Closure Memo to OAC
- C. Follow up During Routine Inspection Within ___ Days and Closure Memo to OAC
- D. Refer to OI. Recommended Priority **HIGH**; Recommended Basis: MD 8.8 part III (B) (5) (a) (i) (b) allegation of discrimination cause by a mid lever manager or above,
- E. Outside NRC's Jurisdiction. Describe Basis Below.
- F. Too General for Follow-up. Describe Basis Below.
- G. Other (specify) -

Responsible for Action - EICS

II. Special Considerations/Instructions:

- 1. What action was taken against the CI? When was the action taken? Why does the CI believe the action taken against her/him was the result of raising these safety issues? The CI stated that s/he had been interviewed by the company investigator (Hal Walker) who was looking at the alcohol ~~issue~~. The CI believes that because s/he had provided facts about the smell of alcohol ~~issue~~ was the reason s/he was not rehired. The CI stated that 2 other individual who were interviewed by the investigator were rehired because they stated to the licensee investigator that they did not remember anything.
- 2. What issues did the CI raise? When? Smell of alcohol on an individual ~~issue~~ in the Fall of 2001 and spring of 2002
- 3. Did the CI inform anyone from her/his management or the NRC of the concern? To her/his Supervisor; responded to the licensee investigator questions; and to the ECP manager
- 4. If the CI informed the NRC, was her/his management aware that s/he informed the NRC? No -- Conversations with the NRC were after the CI was informed that s/he would not be rehired

outside scope

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FOLLOWUP ARB: RIII-02-A-0114

August 1, 2002

MEMORANDUM TO: James Creed, Chief, Security Branch, DRS

FROM: J Heller RIII - OAC

SUBJECT: FOLLOWUP ARB FOR : RIII-02-A-0114 (KEWANUEE)

On July 11th and July 15th, Region III received additional concerns regarding individuals lying to the licensee and discrimination for raising a FFD issue to the licensee and participating in the licensee's investigation of the FFD issue.

Your staff has completed its evaluation of the conversation records and in a July 29th memo documented 2 additional concerns. The memo provided the regulatory bases and a recommended actions to evaluate each concern. I have reviewed this information and agree with your characterization of the concern and proposed actions.

I have scheduled an Allegation Review Board (ARB) for August 5, 2002. Please review the attached information to prepare for the ARB.

cc w/attachments:

ARB Copy

OI

RC

DRP Br Chief For Rx Cases-Lanksbury

DRS Division Director For Rx Cases-Grobe

Clayton for H&I or wrong doing

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From: James Heller
To: Allegations Region III, Allegations
Date: Mon, Jul 29, 2002 4:39 PM
Subject: Fwd: AMS 02-0114, KEWAUNEE

From: Terry Madeda
To: Andrea Kock; James Heller
Date: Mon, Jul 29, 2002 12:37 PM
Subject: AMS 02-0114, KEWAUNEE

In accordance with our discussion this morning, attached is my evaluation and recommended action in response to your memorandum of July 17, 2002 for the subject noted above.

July 29, 2002

MEMORANDUM TO: H. Brent Clayton
Enforcement/Investigation Officer

THRU: James R. Creed
Safeguards Program Manager
Division of Reactor Safety

FROM: Terry Madeda
Physical Security Inspector
Division of Reactor Safety

SUBJECT: REVIEW OF CONVERSATION WITH A CI; RIII-2002-A-0114
(KEWAUNEE) AITS NO. S02-2270

This responds to James Heller's memorandum dated July 17, 2002, which forwarded a copy of a conversation record with a concerned individual; (CI), and requested our review to identify any new safety or regulatory issues.

Our review focused on the Fitness-For-Duty concern and resulted in the identification of two new issues.

Concern No. 1: The CI expressed that a named Nuclear Power System (NPS) foreman had lied to a licensee investigator (Hal Walker) about being told by several named personnel that a [REDACTED] smelled of alcohol while working at the Kewaunee site. (NOTE: the CI and several other named individuals had reported the smell of alcohol on [REDACTED] to the named NPS foreman).

Regulatory Basis: 10 CFR 26.24(a)(3) requires, in part, testing for-cause shall be initiated as soon as possible...after receiving credible information that an individual is abusing alcohol.
10 CFR 50.5 requires that a contract employee may not knowingly engage in deliberate misconduct that is material to the NRC.

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Proposed Violation: Contrary to the above, on xx/xx/xx, a named individual knowingly engaged in deliberate misconduct by lying to a licensee representative regarding his knowledge of the odor of alcohol on a plant employee. This action is material to the NRC because it demonstrates that a for-cause test was not conducted after receiving credible information that an individual was abusing alcohol. This action, if substantiated, is contrary to NRC regulatory requirements.

We recommend this issue, because of the alleged wrongdoing, be forwarded to OI for their review and disposition.

Concern No. 2: The CI alleged discrimination against the licensee because he/she had not been rehired after providing information to the licensee that a contractor foreman had smelled of alcohol while employed at the Kewaunee site.

Regulatory Basis: 10 CFR 50.7 states that discrimination for engaging in a protected activity (raising a safety concern) is prohibited. The discriminatory action related to a condition and privilege of employment.

We recommend that the issue of alleged discrimination be forwarded to OI for their review and disposition.

The content of this memorandum, alleged wrongdoing and discrimination, were reviewed with Ms. M. Fahey, OI, on July 22, 2002. During that review, it determined that the concerns noted above appeared to be related to previous allegation AMS 01-0176 that is currently under OI review.

From: Paul Krohn, SRI, Point Beach
To: James Heller; OaC3
Date: Wed, Jul 11, 2002
Subject: KEWAUNEE/POINT BEACH ISSUE. Follow-up Conversation with CI by Paul Krohn on 7/11/02 Following Voice Mail Messages Left on 7/9/02 and 7/10/02 on Point Beach RIO Internal Phone Line

Jim,

Following our conversation on 7/11 at ~1400, I called the CI to respond to his voice mail messages to the PB RIO which had been left on 7/9 and 7/10. In the voice mail messages of 7/9/02 and 7/10/02, the CI expressed the following concerns;

- The CI stated that s/he wanted to know which persons were being investigated.
- The CI stated that s/he wanted to know why all the people involved in his concern had not been interviewed.
- The CI stated that it was hard to pursue the issue with [redacted] still on-site.

When I talked to the CI on 7/11/02, I provided the following information concerning the allegations process and his concerns;

- the NRC received his concern relating to personnel being untrustworthy, [redacted] on 7/2/02. I explained to the CI portions of our Allegations Process and told the CI

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scope

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that the NRC would have an internal review board on his call to us on 7/2/02 within 30 days, no later than 8/2/02.

- I told the CI that s/he would receive formal acknowledgment of the NRCs receipt of his concern reported on 7/2/02.
- I told the CI that an investigation was still ongoing concerning interviews with his co-workers and previous concerns.
- I provided the CI with the 1-800-522-3025 RIII number and direct dial numbers for yourself, Jim Heller, and Andrea Kock if further information on the status of investigations or questions on the Allegations process were required.

When I spoke to the CI on 7/11/02, the CI provided the following additional information;

- The CI stated that 5 people had made the same comment on one individual. The names surrounding the CI's issue were;

5 people in Same Work Group	General Foreman in Question
CI	
[REDACTED]	
[REDACTED] (the CI stated that [REDACTED])	[REDACTED]
[REDACTED]	
[REDACTED]	
[REDACTED]	

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- The CI stated that s/he had not heard about the status of his concern relative to [REDACTED] for over 8 months and was wondering if the investigation was still ongoing.
- The CI stated that 3 of the 5 people in his work group had been denied access to nuclear sites across the country when seeking further contract work. The 3 were [REDACTED] and the CI.

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This is all the information provided to me by the CI. My conversation with the CI lasted 20 minutes. Please call if you have any questions.

Paul Krohn, SRI
Point beach
7/11/02

To Allegation file: RIII-2002-A-0114

From: Jim Heller

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Subject: Contact with the CI

On July 15, 2002, I talked to the CI for approximately 45 minutes. The CI confirmed that s/he had talked to Jim Guvula and that s/he would fax the [REDACTED] The CI stated that s/he is working as a welder for at a non-nuclear facility and that they would not object to his/her use of the fax machine. outside scope

The CI discussed two examples of discrimination. The CI stated that when s/he was employed by NPS at the facility s/he and other had raised the smell of alcohol on [REDACTED] and the [REDACTED] without a procedure to his/her [REDACTED] The CI stated that s/he never pursued the alcohol issue and [REDACTED] as instructed. However the CI stated that s/he did not like way activities were managed at the site and quit. The CI stated that s/he and four other individuals quit. The CI stated that the foreman has lied to the licensee's investigator and denied that he was ever informed of the smell of alcohol. The CI stated that [REDACTED] boss has stated many times that the CI had informed [REDACTED] about the smell of alcohol on an individuals breath. 70

I asked the CI if it was normal too quit before the work assignment was complete. The CI stated that s/he had worked for several contractors at the facility during the last 20 years and had quit several times to go to non-nuclear other jobs. The CI stated that s/he had been rehired each time. I asked the CI if the union was including his/her name on the rehire list. I told the CI that I had heard that some unions would not include people on the next rehire list if the individual quit before the job was complete. The CI stated that the union had included this name. When the union included his/her name on the rehire list it was informed that s/he was red flagged which prevented re-employment.

The CI stated that s/he had been interviewed by the company investigator (Hal Walker) who was looking at the alcohol [REDACTED] issue. The CI rambled on for approximately 5 minutes about inconsistencies in his/her statements to the licensee's investigator. I am speculating that the reason for the red flagging was the inconsistencies. The CI stated that 2 of the 5 individuals who had quit at the same time have been rehired. The CI stated that these individuals were rehired because they stated to the licensee investigator that they did not remember anything. The CI believes that because s/he had provided facts about the smell of alcohol [REDACTED] issue was the reason s/he was not rehired. outside scope

The CI stated that s/he had raised the [REDACTED] alcohol issue in 11/01 and was interviewed by the licensee's investigator in 12/01.

I informed the CI that we investigation that we may investigate claims of discrimination. However if we investigate a claim of discrimination we will need to release his/her name to the licensee and contractor during the investigation. The CI did not object to the release of his/her name for the alcohol issue but objected to the release of his/her name for [REDACTED] The CI stated that s/he was working with the licensee and believed that [REDACTED] would be resolved soon.

I told the CI that since s/he believed s/he was the subject of employment discrimination, s/he has 180 days from the date of the alleged discriminatory act to file a written complaint with the DOL under Section 211 of the Energy Reorganization Act. On July 17, 2002, I recontacted the CI and provided him/her the address and telephone number to the DOL.

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**U.S. Department of Labor
Occupational Safety and Health Administration
230 South Dearborn Street, Rm. 3244
Chicago, Illinois 60604
Telephone: (312) 353-2220**

I informed the Ci that the NRC and DOL have differing responsibilities when evaluating employment discrimination. While the DOL can order personal remedies such as reinstatement of your job, back pay, and reverse disciplinary action, the NRC does not have that authority.