

REQUEST REPLY BY: 12/13/06

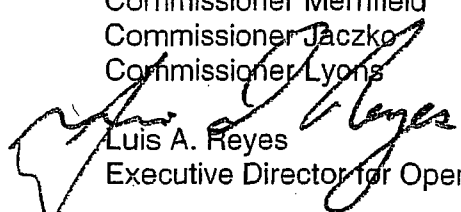
COMSECY-06-0060



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 28, 2006

MEMORANDUM TO: ✓ Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM:  Luis A. Reyes
Executive Director for Operations

Approved with comments and edits.



Dale E. Klein 12/12/06

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING CONDUCT IN THE WORKPLACE

Enclosed is the NRC's draft policy statement regarding workplace harassment (Enclosure 1) for Commission review and approval. The purpose of the statement is to reinforce and heighten awareness of the agency position that it will not tolerate harassing conduct in the workplace. This policy also aligns the agency with the Equal Employment Opportunity Commission guidance on the best practices that characterize a model Equal Employment Opportunity (EEO) program.

On April 17, 2006, I provided the Commission a draft of the policy and procedures to obtain your general views and feedback. Subsequently, the staff engaged the National Treasury Employees Union (NTEU) in discussions of the policy. NTEU provided particularly useful suggestions regarding usage of plain language in lieu of legalistic terminology and the importance of ensuring prompt feedback to individuals seeking relief and to those against whom an allegation has been made. Other NTEU proposals have not been adopted inasmuch as they compromise management's statutory right to make inquiry into allegations of misconduct and take subsequent, appropriate action when misconduct is revealed.

I also am including the draft Yellow Announcement to be transmitted to all employees after approval of the policy.

I look forward to your approval of this policy, as it provides an important benefit to the agency in its endeavor to remain one of the highest rated Federal workplaces.

Enclosures:

1. NRC Draft Policy for Preventing and Eliminating Harassing Conduct in the Workplace
2. Draft Yellow Announcement

cc: SECY
OGC
OCA
OPA
CFO

06 NOV 29 PM 3: 00
NIA/10/14/06 RRC

CHAIRMAN'S COMMENTS ON COMSECY- 06-0060

I approve the policy statement, with the enclosed edits, because I believe that harassing conduct has no place in the NRC work environment and that the Commission should be on record as opposing such conduct. Nevertheless, I am concerned that the statement as drafted, while clear in its intent, contains some ambiguities that may be troublesome from the standpoint of implementation:

1. On page 2 of the policy statement, one of the conditions included as part of the definition of harassing conduct is that the "behavior reasonably can be considered to adversely affect the work environment." This appears to be a different and less stringent standard than the "unlawful hostile work environment" defined by statute. The statement does not define what standard we are using for "adversely affecting" nor who determines the "reasonableness" of it; consequently, the uniform application of this condition does not appear to be assured. The staff needs to address this condition clearly in its planned briefing and training sessions for employees.

2. It is not clear if the intent of the policy is to require employees to report allegations of harassing conduct or encourage them to do so. If the former, then the target of the behavior in question could be considered in violation of the policy, and subject to its processes and penalties, if a third party witness reports the incident but the target does not, or vice versa. Page 2 of the policy statement indicates that the "NRC encourages all employees to report any incident of harassing conduct forbidden by this policy....," while the procedures in section VI on page 7 says employees "must report" such incidents. Since the intent of the policy is to curb alleged harassing conduct, the focus of the policy and its procedures should be on the conduct itself, not on individual perceptions of the conduct, which could differ in cases where the alleged conduct is less than blatant and obvious. Consequently, I believe the policy should "encourage" employees to report incidents and have attempted to edit the text to be more internally consistent with the language on page 2.

I have also proposed extensive revisions to the draft yellow announcement forwarded with the policy statement.

Enclosures: As stated.

Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace

I. Purpose

This Policy is intended to ensure that the Nuclear Regulatory Commission (NRC) takes appropriate action to accomplish the following:

Prevent sexual harassment and other forms of harassing conduct based on race, color, religion, sex, national origin, age, disability, sexual orientation, and retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace;

Ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct and the options available for reporting claims of harassing conduct;

Provide an expedited ^{fair and} impartial process for reviewing allegations of harassing conduct as defined in this Policy;

Correct harassing conduct, as defined in this Policy, before it becomes severe or pervasive; and

Administer corrective action, which may include disciplinary action, to an employee who violates this Policy.

This Policy updates the Agency's long-standing policies on the prevention of sexual harassment in the workplace. It is separate and apart from any collective bargaining agreement (CBA) or statutory complaint process, or other Agency policy involving harassment. [See Section X.] Furthermore, this Policy does not alter the right of an employee to report harassing conduct to the Office of the Inspector General (OIG) or to file a complaint with the Office of Small Business and Civil Rights (SBCR).

II. Authorities

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (Title VII); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a (ADEA); the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order (E.O.) 11478, as amended by Executive Order 13087, May 28, 1998; Equal Employment Opportunity Commission's (EEOC) Model EEO Programs Must Have An Effective Anti-Harassment Program (2005); EEOC's Manual Directive 715 (2003); EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (1999); Faragher v. Boca Raton, 514 U.S. 775 (1998); and Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998.)

III. The Definition of Harassing Conduct

For purposes of this Policy, harassing conduct is defined as any unwelcome verbal,

visual, physical or other conduct based on race, color, religion, gender (whether or not of a sexual nature), national origin, age, disability, sexual orientation or retaliation based on opposition to discrimination or participation in the EEO complaint process under either of the following conditions: *protected activities in the workplace*

- A. The behavior reasonably can be considered to adversely affect the work environment; or
- B. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of unwelcome prohibited conduct under part A of the definition include, but are not limited to: offensive remarks or comments; ridicule; offensive and derogatory words, phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, e-mails, or internet transmissions; touching; pinching; grabbing; gesturing; or stalking.

Examples of unwelcome prohibited conduct under Part B of the definition includes, but are not limited to: promoting or not promoting an employee; or taking or not taking a personnel action affecting the employee's conditions of employment based on the employee accepting a date or sexual favor.

IV. Policy

to the office It is the Policy of the NRC that harassing conduct by anyone in the workplace is unacceptable and will not be condoned. NRC will maintain a work environment free from the harassing conduct described above. The NRC has determined that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, treat the offense as misconduct even if it is not sufficiently severe or pervasive to constitute discriminatory harassment actionable under the civil rights laws.

The current EEO complaint process provides employees specific remedies for unlawful harassment that has already occurred. This NRC Policy, however, is focused on stopping harassing conduct at its earliest stage. A hostile environment that violates EEO law usually requires a showing of a pattern of offensive conduct. Under this Policy, however, the NRC will not wait, nor should the employee wait, for such a pattern to emerge. The NRC will, where possible, act to stop and correct harassing conduct before it becomes unlawful; that is, before it becomes so pervasive or severe as to create an unlawful hostile work environment. Accordingly, the NRC encourages all employees to report any incident of harassing conduct forbidden by this Policy immediately so that complaints can be resolved quickly and fairly. If the NRC is not made aware of harassing conduct, it cannot stop it.

In addition, NRC will not tolerate retaliation against any employee who makes a good faith report of harassing conduct under this Policy or any other policy or procedure, or for assisting in any inquiry about such a report. Allegations of retaliation will be handled in accordance with the procedures outlined in this Policy.

Allegations of harassing conduct will be addressed as promptly as possible. Employees found to have violated this Policy will be held accountable for their actions and may be appropriately disciplined in accordance with 5 U.S.C. Chapter 75.

V. Roles and Responsibilities

A. Agency Employees

Each Agency employee is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Complying with the Policy;
2. Attending a briefing on this Policy and Procedures;
3. Refraining from exhibiting harassing conduct;
4. Promptly reporting any incident of harassing conduct in accordance with the Procedures in Section VI.; and
5. Cooperating with any inquiry conducted under this Policy.

B. Managers and Supervisors

In addition to the requirements in A above, each Agency manager and supervisor is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Handling allegations of harassing conduct promptly and appropriately in accordance with the procedures Section VII.;
2. Providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further misconduct does not occur;
3. Administering appropriate corrective, including disciplinary action to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
4. Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassing conduct or participate in any inquiry into an allegation of harassing conduct; and
5. Consulting with the agency Designated Official (DO) with respect to all appropriate actions under numbers 1 through 4, above.

C. Director, Office of Human Resources

The Director, Office of Human Resources (OHR) is responsible for:

1. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct by disseminating this Policy statement periodically to all employees and posting it on the NRC intranet website;
2. Ensuring that managers, supervisors, and employees are provided appropriate training on this Policy;
3. Identifying the Designated Official (DO); and
4. Ensuring that the identity of the DO is prominently displayed throughout the agency and on the NRC intranet and the identities of the Regional Personnel Officers are prominently displayed in the Regions.

D. Agency Designated Official

The Agency Designated Official (DO) is responsible for

the following activities:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII., below;
3. Determining whether an allegation falls within the jurisdiction of this Policy or otherwise interpreting and implementing this Policy;
4. Referring allegations received under this Policy to the Office of the Inspector General (OIG) for possible investigation;
5. Conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct. If the OIG decides not to make an inquiry on a referral received under this Policy, the DO has the authority to determine who will conduct the inquiry into any allegation of harassing conduct, including him/herself;
6. Advising managers and supervisors on providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further harassing conduct does not occur;
7. Advising managers and supervisors on administering appropriate corrective ^{measures}, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
8. Advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry into an allegation of harassing conduct;

9. Deciding whether to arrange for mediation services to resolve a dispute arising under this Policy. Mediation services may be offered from a variety of sources including the DO, the Federal Mediation and Conciliation Service, Office of Small Business and Civil Rights (SBCR), a contract mediator, and the HHS Sharing Neutrals Program;
10. Making the Director, SBCR aware of all allegations of harassing conduct under this Policy and actions taken to address such allegations;
11. Providing technical assistance and support, to ~~ensure~~ ^{ensure} compliance with this Policy;
12. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act 5 U.S.C. 552a; and
13. Informing all persons reporting allegations that filing a report of harassing conduct under this Policy does not satisfy the requirements to initiate an EEO complaint, a Merit Systems Protection Board (MSPB) appeal or a grievance; nor does it delay the time limits for initiating those procedures.

E. Regional Personnel Officer

The Regional Personnel Officer (RPO) is responsible for ^{the following actions:}

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII.;
3. Promptly advising the DO and the Regional Administrator of any allegations reported under this Policy;
4. In coordination with the DO, conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct;
5. In coordination with the DO, advising managers and supervisors on providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further harassing conduct does not occur;
6. In coordination with the DO, advising managers and supervisors on administering appropriate corrective ^{measures} including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
7. In coordination with the DO, advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged

harassing conduct or participate in any inquiry in an allegation of harassing conduct; and

8. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act, 5 U.S.C. 552a.

F. Director, Office of Small Business and Civil Rights (SBCR)

The Director, SBCR is responsible for

the following activities:

1. Processing any EEO complaint of discrimination filed under 29 CFR 1614;
2. Providing technical assistance and support, to assure compliance with this Policy;
3. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
4. Assisting the Director, OHR and DO in providing training under this Policy; and
5. Informing the DO of allegations of harassing conduct, to the extent permitted by law and EEO regulation.

G. Office of the Inspector General (OIG)

The OIG is responsible for:

1. *with Outline form* Cases referred from the DO: for allegations that it decides to investigate, OIG will conduct an appropriate inquiry; if substantiated, OIG will refer the findings of the inquiry to NRC management for appropriate action;
2. Cases not referred from the DO:
 - A. For allegations that it decides to investigate, the OIG will conduct an appropriate inquiry; if substantiated, the OIG will refer the findings of the inquiry to NRC management for appropriate action;
 - B. For cases it decides not to investigate, the OIG will refer the matter to the DO for action, if any; and
 - C. For record keeping purposes, at the end of any investigation, the OIG will report allegations of harassing conduct to the DO.
3. For all cases in which the OIG conducts an inquiry into harassment allegations or misconduct, the OIG will report situations which it determines warrant prompt NRC management action to the DO.

VI. Reporting Harassing Conduct

The procedures for reporting harassing conduct are as follows:

- A. A headquarters employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy ~~must~~ report this matter to anyone in his/her management chain or to the DO; *should*
- B. A regional employee who believes that he or she ~~has~~ ^{should} been the subject of an incident of harassing conduct or who has ~~witnessed~~ harassing conduct and/or retaliation in violation of this Policy ~~must~~ report this matter to anyone in his or her chain of command, to the DO, or to the Regional Personnel Officer (RPO). The RPO ~~is~~ ^{will} be responsible for reporting this matter to the DO;
- C. The employee reporting such conduct will be asked to provide details of the incident(s), including but not limited to: what occurred, when the incident(s) occurred; names of the alleged harasser and names of any witnesses. Once a report of harassing conduct is made under this Policy, the ~~Agency~~ Agency has a duty to conduct an appropriate inquiry, stop harassing conduct if found, and to take appropriate action, including disciplinary action;
- D. Nothing in this Policy is intended to discourage an employee from confronting the alleged harasser and telling him/her to stop the harassing conduct;
- E. Nothing in this Policy is intended to require that an employee confront the alleged harasser;
- F. Nothing in this Policy affects the right of an individual to contact the OIG regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the EEO complaint process, file an appeal with the MSPB, an ~~Agency~~ Agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-NTEU CBA. Filing a report of harassing conduct under this Policy does not satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, nor does it delay the time limits for initiating those procedures. Section X. provides further information on statutory and collective bargaining claims; and
- G. All information will be maintained in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VII. Conducting an Inquiry

- A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:
 - 1. Inform the DO of the allegation;
 - 2. In consultation with the DO, take appropriate action to stop any ^{potentially} harassing

conduct and prevent further ^{incidents} misconduct while the allegations are being investigated, (i.e., providing appropriate interim measures), and

(No misconduct has been established until investigation is completed)

3. Document the allegation received or witnesses and his/her efforts to address it.

B. If the RPO receives an allegation of harassing conduct, s/he will promptly notify the DO and the Regional Administrator and provide further assistance as requested by the DO.

C. When the DO receives an allegation of harassing conduct, either directly ^{from} the complainant ^{or} through a supervisor, manager, RPO ^{or} from other sources, the DO will

submit the following actions

1. Ensure that the OIG is immediately provided all pertinent information regarding the allegation;

2. In the event that the OIG elects not to investigate the matter, the DO shall ensure that a prompt, vigorous, impartial and appropriate inquiry is conducted and designate the person(s) who will conduct such an inquiry. (This inquiry may be conducted by the DO, the supervisor, the RPO, an outside contractor; or any other impartial individual delegated this responsibility by the DO); and

3. Contact appropriate ^{agency} officials in the alleged harasser's chain of command who are not involved in the allegations of harassment and recommend appropriate action to stop any harassing conduct and prevent further harassing conduct while the allegations are being addressed (i.e., providing appropriate interim measures)

D. The inquiry will consist of appropriate fact-finding in order to obtain the information relevant to the allegation. As part of the inquiry, the complaining employee may be interviewed regarding the basis of the allegations. Additionally, the alleged offender(s) as well as other witnesses who may have knowledge of the circumstances of the allegations may also be interviewed. The determination as to the appropriate steps to be followed during the inquiry will be determined by the person conducting the inquiry with oversight by the DO. All individuals contacted in the course of an inquiry will be advised that any retaliation or reprisal against an individual who is an alleged target of harassing conduct, who has made a complaint under this Policy, or who has provided information in connection with a complaint, constitutes a separate violation of this Policy. The inquiry will be completed promptly absent extenuating circumstances.

E. An inquiry is a neutral fact finding process needed to determine whether harassing conduct has occurred. An inquiry shall not, in and of itself, be construed as evidence that the allegations of harassing conduct are true.

- F. When an inquiry by management discloses new, significant information regarding allegations of misconduct by management or employees, the OIG will be notified of these additional facts and provided an opportunity to assume jurisdiction over the matter. However, this is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace or to otherwise protect Agency interests associated with this Policy.
- G. Upon completion of the inquiry, the individual conducting the inquiry will prepare a written summary of the inquiry. (The summary may be brief, depending on the complexity and seriousness of the case. The DO shall determine whether sworn declarations will be taken). The summary will be prepared promptly after completion of the inquiry. The summary, along with all of the documentation compiled during the inquiry, will be provided to the DO (if he/she did not conduct the inquiry) and generally the first level supervisor of the alleged harasser, unless such supervisor is involved in the allegation. In this situation, the summary and documentation will be provided to the lowest level supervisor/manager in the alleged harasser's chain of command who is not a subject of the inquiry.
- H. All information will be maintained on a confidential basis to the greatest extent possible and in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VIII. Action To Be Taken Upon Completion Of The Inquiry

- A. Upon receipt of the report of inquiry, including summary and supporting documentation, the appropriate supervisor/manager will promptly evaluate all of the documentation and determine the appropriate action. This responsibility normally will rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor is involved in the allegation. The supervisor/manager should consult with the OHR, including the DO, the servicing Labor and Employee Relations Specialist, and the Office of General Counsel as needed to determine the appropriate action.
- B. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, s/he will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- C. Where the inquiry establishes that a supervisor or manager did not properly carry out the responsibilities under this Policy, s/he will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- D. The DO should notify SBCR and the OIG of the outcome of the agency inquiry, including whether the allegation was substantiated, what corrective action was taken, and any other action taken to address the matter.

IX. Confidentiality

The maintenance of record and disclosures of information from records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. All information obtained under this Policy, including but not limited to, reports of harassing conduct, will be maintained confidentially to the greatest extent possible. Such information, however, may be required to be disclosed in connection with proceedings resulting from the harassing conduct (e.g., disciplinary action). Further, information may need to be disclosed to those officials and employees within the Agency with a need to know in order to carry out the purpose and intent of this Policy.

X. Statutory and Collective Bargaining Claims

This Policy is in addition to statutory and collective bargaining prohibitions [NRC-NTEU CBA, Article 2] against harassment and the procedures and remedies they provide for addressing unlawful harassment. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements to initiate any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. An employee who chooses to pursue statutory or collective bargaining remedies for unlawful harassment must:

1. Initiate the EEO complaint process pursuant to 29 C.F.R. 1614.105 (available for all claims of unlawful harassment other than those based on sexual orientation) by contacting an EEO counselor in the SBCR within 45 calendar days from the date of the alleged harassment (or personnel action if one is involved); or
2. File a grievance under the CBA, Article 51 or Agency grievance procedure; or
3. File an appeal to the MSPB within 30 days of an appealable action as defined in 5 C.F.R. Section 1201.3.;
4. If an employee pursues a claim of harassment through the formal EEO process (including EEO counseling), an MSPB appeal, a union grievance, or an administrative grievance, the Agency official who receives the information about such a claim will promptly notify the DO, unless inconsistent with applicable requirements. Because the Agency has an obligation to comply with the terms of this Policy regardless of whether a statutory or collective bargaining procedure has been invoked, the DO will promptly initiate an inquiry into the matter if an appropriate management official has not already done so. Similarly, the DO will provide the Office handling the statutory or collective bargaining claim the record of actions taken under this Policy.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

ANNOUNCEMENT NO.

DATE:

Substitute^{new} text

To: All NRC Employees

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING CONDUCT
IN THE WORKPLACE

It is the policy of the NRC to maintain a work environment free from harassing conduct. The NRC has determined that the most effective way to maintain such a work environment is to promptly inquire into allegations of harassing conduct and, if proven true, take necessary and appropriate action.

All employees play a vital role in maintaining a harassment free workplace. Employees must refrain from engaging in harassing conduct and promptly report such conduct if exhibited by others. NRC is committed to providing an avenue for reporting harassing conduct, in an atmosphere free of the fear of retaliation. The agency will take reports of harassing conduct seriously, conduct inquiries and take necessary actions to stop the harassing conduct. To that end, I am pleased to issue NRC's Policy for Preventing and Eliminating Harassing Conduct in the Workplace.

The policy reinforces and heightens awareness of the position that the NRC does not tolerate harassing conduct in the workplace. It also focuses on stopping the harassing conduct at its earliest stage, before a pattern of offensive conduct emerges. Under this policy employees are encouraged to immediately report incidents of harassing conduct so that complaints may be quickly and fairly resolved. The policy does not affect the right of an individual to contact the Office of the Inspector General regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the Equal Employment Opportunity complaint process, file an appeal with the Merit Systems Protection Board, an Agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-National Treasury Employees Union (NTEU) Collective Bargaining Unit. Filing a report of harassing conduct under this Policy does not satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, nor does it delay the time limits for initiating those procedures.

The policy is available on the Office of Human Resources (HR) website at [\[link\]](#). The HR staff will offer employee briefings in the near future. The handling of harassing conduct will be incorporated in manager, supervisor, and employee training so that all employees will know how to respond to harassing conduct.

Allegations of harassing conduct will be dealt with promptly. Employees found to have violated this Policy will be held accountable for their actions and will be appropriately disciplined.

Any employee may report harassing conduct through his/her supervisory chain or to the Designated Official. A regional employee also has the option of reporting harassing conduct to the Regional Personnel Officer. The Designated Official is Cecilia Rajnic of the HR staff; employees may contact her on 301-415-6091 or via e-mail, ckr1@nrc.gov.

Dale E. Klein
Chairman

CONFIDENTIAL

NEW TEXT

TO: ALL NRC EMPLOYEES

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING CONDUCT
IN THE WORKPLACE

I am pleased to inform you that the Commission has approved an updated and expanded version of its policy statement on harassment in the workplace. The new policy supercedes the NRC Sexual Harassment Prevention Program Policy, which was originally approved by the Commission in the late 1980s and last updated in 1998. Under the new policy, the definition of harassing conduct has been broadened to include harassment based on race, color, religion, national origin, age, disability, sexual orientation, and reprisal for engaging in protected EEO activities in the workplace as well as sexual harassment. The policy also provides more explicit procedures for reporting, investigating, and resolving allegations of harassment.

Although the policy statement has been updated and expanded, its purpose remains the same -- to maintain an NRC work environment that is free from harassing conduct. The Commission believes that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, take necessary and appropriate disciplinary action.

The text of the policy statement, which describes in detail the procedures that will be followed to report and investigate alleged harassment incidents and the appropriate roles and responsibilities of all NRC employees in carrying out the policy, is available on the Office of Human Resources (HR) Web site at [\[link\]](#). HR staff will offer employee briefings on the policy statement in the near future, and the handling of harassing conduct will be incorporated in manager, supervisor, and employee training.

Maintaining a work environment that is positive; promotes professional and cooperative working relationships; protects personal privacy; and fosters confidence, mutual trust, and respect is in everyone's interest. To that end, I strongly encourage all NRC employees to become thoroughly familiar with the new policy statement. My Commission colleagues and I are counting on you to help us eliminate harassing conduct and make the NRC an even better place to work.

Dale E. Klein
Chairman

REQUEST REPLY BY: 12/13/06UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001



November 28, 2006

*Approved, subject to
attached edits*

E. McInerney Jr.
12/12/06

MEMORANDUM TO: Chairman Klein
 Commissioner McGaffigan
 Commissioner Merrifield
 Commissioner Jaczko
 Commissioner Lyons

FROM: *Luis A. Reyes*
 Luis A. Reyes
 Executive Director for Operations

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING
 CONDUCT IN THE WORKPLACE

Enclosed is the NRC's draft policy statement regarding workplace harassment (Enclosure 1) for Commission review and approval. The purpose of the statement is to reinforce and heighten awareness of the agency position that it will not tolerate harassing conduct in the workplace. This policy also aligns the agency with the Equal Employment Opportunity Commission guidance on the best practices that characterize a model Equal Employment Opportunity (EEO) program.

On April 17, 2006, I provided the Commission a draft of the policy and procedures to obtain your general views and feedback. Subsequently, the staff engaged the National Treasury Employees Union (NTEU) in discussions of the policy. NTEU provided particularly useful suggestions regarding usage of plain language in lieu of legalistic terminology and the importance of ensuring prompt feedback to individuals seeking relief and to those against whom an allegation has been made. Other NTEU proposals have not been adopted inasmuch as they compromise management's statutory right to make inquiry into allegations of misconduct and take subsequent, appropriate action when misconduct is revealed.

I also am including the draft Yellow Announcement to be transmitted to all employees after approval of the policy.

I look forward to your approval of this policy, as it provides an important benefit to the agency in its endeavor to remain one of the highest rated Federal workplaces.

Enclosures:

1. NRC Draft Policy for Preventing and Eliminating Harassing Conduct in the Workplace
2. Draft Yellow Announcement

cc: SECY
 OGC
 OCA
 OPA
 CFO

Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace

I. Purpose

This Policy is intended to ensure that the Nuclear Regulatory Commission (NRC) takes appropriate action to accomplish the following:

Prevent sexual harassment and other forms of harassing conduct based on race, color, religion, sex, national origin, age, disability, sexual orientation, and retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace;

Ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct and the options available for reporting claims of harassing conduct;

Provide an expedited impartial process for reviewing allegations of harassing conduct as defined in this Policy;

Correct harassing conduct, as defined in this Policy, before it becomes severe or pervasive; and

Administer corrective action, which may include ~~disciplinary~~ disciplinary action, to an employee who violates this Policy.

This Policy updates the Agency's long-standing policies on the prevention of sexual harassment in the workplace. It is separate and apart from any collective bargaining agreement (CBA) or statutory complaint process, or other Agency policy involving harassment. [See Section X.] Furthermore, this Policy does not alter the right of an employee to report harassing conduct to the Office of the Inspector General (OIG) or to file a complaint with the Office of Small Business and Civil Rights (SBCR).

II. Authorities

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (Title VII); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a (ADEA); the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order (E.O.) 11478, as amended by Executive Order 13087, May 28, 1998; Equal Employment Opportunity Commission's (EEOC) Model EEO Programs Must Have An Effective Anti-Harassment Program (2005); EEOC's Manual Directive 715 (2003); EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (1999); Faragher v. Boca Raton, 514 U.S. 775 (1998); and Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998.)

III. The Definition of Harassing Conduct

For purposes of this Policy, harassing conduct is defined as any unwelcome verbal,

visual, physical or other conduct based on race, color, religion, gender (whether or not of a sexual nature), national origin, age, disability, sexual orientation or retaliation based on opposition to discrimination or participation in the EEO complaint process under either of the following conditions:

- A. The behavior reasonably can be considered to adversely affect the work environment; or
- B. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of unwelcome prohibited conduct under part A of the definition include, but are not limited to: offensive remarks or comments; ridicule; offensive and derogatory words, phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, e-mails, or internet transmissions; touching; pinching; grabbing; gesturing; or stalking.

Examples of unwelcome prohibited conduct under Part B of the definition includes, but are not limited to: promoting or not promoting an employee; or taking or not taking a personnel action affecting the employee's conditions of employment based on the employee accepting a date or sexual favor.

IV. Policy

extra space

It is the Policy of the NRC that harassing conduct by anyone in the workplace is unacceptable and will not be condoned. NRC will maintain a work environment free from the harassing conduct described above. The NRC has determined that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, treat the offense as misconduct, even if it is not sufficiently severe or pervasive to constitute discriminatory harassment actionable under the civil rights laws.

The current EEO complaint process provides employees specific remedies for unlawful harassment that has already occurred. This NRC Policy, however, is focused on stopping harassing conduct at its earliest stage. A hostile environment that violates EEO law usually requires a showing of a pattern of offensive conduct. Under this Policy, however, the NRC will not wait, nor should the employee wait, for such a pattern to emerge. The NRC will, where possible, act to stop and correct harassing conduct before it becomes unlawful, that is, before it becomes so pervasive or severe as to create an unlawful hostile work environment. Accordingly, the NRC encourages all employees to report any incident of harassing conduct forbidden by this Policy immediately so that complaints can be resolved quickly and fairly. If the NRC is not made aware of harassing conduct, it cannot stop it.

In addition, NRC will not tolerate retaliation against any employee who makes a good faith report of harassing conduct under this Policy or any other policy or procedure, or for assisting in any inquiry about such a report. Allegations of retaliation will be handled in accordance with the procedures outlined in this Policy.

Allegations of harassing conduct will be addressed as promptly as possible. Employees found to have violated this Policy will be held accountable for their actions and may be appropriately disciplined in accordance with 5 U.S.C. Chapter 75.

V. Roles and Responsibilities

A. Agency Employees

Each Agency employee is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Complying with the Policy;
2. Attending a briefing on this Policy and Procedures;
3. Refraining from exhibiting harassing conduct;
4. Promptly reporting any incident of harassing conduct in accordance with the Procedures in Section VI.; and
5. Cooperating with any inquiry conducted under this Policy.

B. Managers and Supervisors

In addition to the requirements in A. above, each Agency manager and supervisor is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Handling allegations of harassing conduct promptly and appropriately in accordance with the procedures Section VII.;
2. ^{Implementing} Providing interim measures to ^{protect} alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further misconduct does not occur; ^{and} ^{action} ^{alleged}
3. Administering appropriate corrective, including disciplinary action to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
4. Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassing conduct or participate in any inquiry into an allegation of harassing conduct; and
5. Consulting with the agency Designated Official (DO) with respect to all appropriate actions under numbers 1. through 4., above.

C. Director, Office of Human Resources

The Director, Office of Human Resources (OHR) is responsible for:

1. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct by disseminating this Policy statement periodically to all employees and posting it on the NRC intranet website;
2. Ensuring that managers, supervisors, and employees are provided appropriate training on this Policy;
3. Identifying the Designated Official (DO); and
4. Ensuring that the identity of the DO is prominently displayed throughout the agency and on the NRC intranet and the identities of the Regional Personnel Officers are prominently displayed in the Regions.

D. Agency Designated Official

The Agency Designated Official (DO) is responsible for:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII., below;
3. Determining whether an allegation falls within the jurisdiction of this Policy or otherwise interpreting and implementing this Policy;
4. Referring allegations received under this Policy to the Office of the Inspector General (OIG) for possible investigation;
5. Conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct. If the OIG decides not to make an inquiry on a referral received under this Policy, the DO has the authority to determine who will conduct the inquiry into any allegation of harassing conduct, including him/herself;
6. Advising managers and supervisors on ^{implementing} providing interim measures to ^{protect} alleged victims of harassing conduct pending the outcome of the inquiry ^{and} to ensure that further harassing conduct does not occur;
7. Advising ^{action} managers and supervisors on administering appropriate corrective, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
8. Advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry into an allegation of harassing conduct;

9. Deciding whether to arrange for mediation services to resolve a dispute arising under this Policy. Mediation services may be offered from a variety of sources including the DO, the Federal Mediation and Conciliation Service, Office of Small Business and Civil Rights (SBCR), a contract mediator, and the HHS Sharing Neutrals Program;
10. Making the Director, SBCR aware of all allegations of harassing conduct under this Policy and actions taken to address such allegations;
11. Providing technical assistance and support, to assure compliance with this Policy;
12. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act 5 U.S.C. 552a; and
13. Informing all persons reporting allegations that filing a report of harassing conduct under this Policy does not satisfy the requirements to initiate an EEO complaint, a Merit Systems Protection Board (MSPB) appeal, ^{a union grievance} ~~or~~ a grievance; nor does it delay the time limits for initiating those procedures.

E. Regional Personnel Officer

The Regional Personnel Officer (RPO) is responsible for:

1. Assisting the Director, OHR in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII.;
3. Promptly advising the DO and the Regional Administrator of any allegations reported under this Policy;
4. In coordination with the DO, conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct;
5. In coordination with the DO, ^{protect} ~~providing~~ ^{and} interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further harassing conduct does not occur;
6. In coordination with the DO, advising managers and supervisors on administering appropriate corrective, ^{and} including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy; ^{action}
7. In coordination with the DO, advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged

VI. Reporting Harassing Conduct

The procedures for reporting harassing conduct are as follows:

- A. A headquarters employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his/her management chain or to the DO;
- B. A regional employee who believes that he or she has been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy must report this matter to anyone in his/her chain of command, to the DO, or to the Regional Personnel Officer (RPO). The RPO is then be responsible for reporting this matter to the DO; (consistent)
- C. The employee reporting such conduct will be asked to provide details of the incident(s), including but not limited to: what occurred, when the incident(s) occurred; names of the alleged harasser and names of any witnesses. Once a report of harassing conduct is made under this Policy, the Agency has a duty to conduct an appropriate inquiry, stop harassing conduct if found, and to take appropriate action, including disciplinary action;
- D. Nothing in this Policy is intended to discourage an employee from ~~confronting~~ the alleged harasser and telling him/her to stop the harassing conduct;
- E. Nothing in this Policy is intended to require that an employee ~~confront~~ the alleged harasser; contact
- F. Nothing in this Policy affects the right of an individual to contact the OIG regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the EEO complaint process, file an appeal with the MSPB, an Agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-NTEU CBA. Filing a report of harassing conduct under this Policy does not satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, nor does it delay the time limits for initiating those procedures. Section X. provides further information on statutory and collective bargaining claims; and
- G. All information will be maintained in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VII. Conducting an Inquiry

- A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:
 - 1. Inform the DO of the allegation;
 - 2. In consultation with the DO, take appropriate action to stop any harassing

alleged

conduct and prevent further misconduct while the allegations are being investigated, i.e., providing appropriate interim measures; and

3. Document the allegation received or witnesses and his/her efforts to address it. *be consistent*

- B. If the RPO receives an allegation of harassing conduct, ~~she~~ *he/she* will promptly notify the DO and the Regional Administrator and provide further assistance as requested by the DO.

- C. When the DO receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager, RPO, or from other sources, the DO will:
 1. Ensure that the OIG is immediately provided all pertinent information regarding the allegation;
 2. In the event that the OIG elects not to investigate the matter, the DO shall ensure that a prompt, vigorous, impartial and appropriate inquiry is conducted and designate the person(s) who will conduct such an inquiry. (This inquiry may be conducted by the DO, the supervisor, the RPO, an outside contractor, or any other impartial individual delegated this responsibility by the DO); and
 3. Contact appropriate Agency officials in the alleged harasser's chain of command who are not involved in the allegations of harassment and recommend appropriate action to stop any harassing conduct and prevent further harassing conduct while the allegations are being addressed, i.e., providing appropriate interim measures.

- D. The inquiry will consist of appropriate fact-finding in order to obtain the information relevant to the *harasser* allegation. As part of the inquiry, the complaining employee may be interviewed regarding the basis of the allegations. Additionally, the alleged ~~offender~~ *harasser*(s) as well as other witnesses who may have knowledge of the circumstances of the allegations may also be interviewed. The determination as to the appropriate steps to be followed during the inquiry will be determined by the person conducting the inquiry with oversight by the DO. All individuals contacted in the course of an inquiry will be advised that any retaliation or reprisal against an individual who is an alleged target of harassing conduct, who has made a complaint under this Policy, or who has provided information in connection with a complaint, constitutes a separate violation of this Policy. The inquiry will be completed promptly absent extenuating circumstances.

- E. An inquiry is a neutral fact finding process needed to determine whether harassing conduct has occurred. An inquiry shall not, in and of itself, be construed as evidence that the allegations of harassing conduct are true.

- F. When an inquiry by management discloses new, significant information regarding allegations of misconduct, by management or employees, the OIG will be notified of these additional facts and provided an opportunity to assume jurisdiction over the matter. However, this is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace or to otherwise protect Agency interests associated with this Policy.
- G. Upon completion of the inquiry, the individual conducting the inquiry will prepare a written summary of the inquiry. (~~The summary may be brief, depending on the complexity and seriousness of the case.~~ The DO shall determine whether sworn declarations will be taken). The summary will be prepared promptly after completion of the inquiry. The summary, along with all of the documentation compiled during the inquiry, will be provided to the DO (if he/she did not conduct the inquiry) and generally the first level supervisor of the alleged harasser, unless such supervisor is involved in the allegation. In this situation, the summary and documentation will be provided to the lowest level supervisor/manager in the alleged harasser's chain of command who is not a subject of the inquiry.
- H. All information will be maintained on a confidential basis to the greatest extent possible and in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VIII. Action To Be Taken Upon Completion Of The Inquiry

- A. Upon receipt of the report of inquiry, including summary and supporting documentation, the appropriate supervisor/manager will promptly evaluate all of the documentation and determine the appropriate action. This responsibility normally will rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor is involved in the allegation. The supervisor/manager should consult with the OHR, including the DO, the servicing Labor and Employee Relations Specialist, and the Office of General Counsel as needed to determine the appropriate action.
- B. Where the inquiry ^{he/she} establishes that an employee did engage in harassing conduct under this Policy, ~~she~~ will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- C. Where the inquiry establishes that a supervisor or manager did not properly carry out the responsibilities under this Policy, ^{he/she} ~~she~~ will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- D. The DO should notify SBCR and the OIG of the outcome of the agency inquiry, including whether the allegation was substantiated; what corrective action was taken; and any other action taken to address the matter.

Note: the Policy will provide for interim protective measures before any findings have been made.



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**

ANNOUNCEMENT NO.

DATE:

To: All NRC Employees

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING CONDUCT IN THE WORKPLACE

It is the policy of the NRC to maintain a work environment free from harassing conduct. The NRC has determined that the most effective way to maintain such a work environment is to promptly inquire into allegations of harassing conduct and, if proven true, take necessary and appropriate action.

All employees play a vital role in maintaining a harassment free workplace. Employees must refrain from engaging in harassing conduct and promptly report such conduct if exhibited by others. NRC is committed to providing an avenue for reporting harassing conduct, in an atmosphere free of the fear of retaliation. The agency will take reports of harassing conduct seriously, conduct inquiries and take necessary actions to stop the harassing conduct. To that end, I am pleased to issue NRC's Policy for Preventing and Eliminating Harassing Conduct in the Workplace.

The policy reinforces and heightens awareness of the position that the NRC does not tolerate harassing conduct in the workplace. It also focuses on stopping the harassing conduct at its earliest stage, before a pattern of offensive conduct emerges. Under this policy employees are encouraged to immediately report incidents of harassing conduct so that complaints may be quickly and fairly resolved. The policy does not affect the right of an individual to contact the Office of the Inspector General regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the Equal Employment Opportunity complaint process, file an appeal with the Merit Systems Protection Board, an Agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-National Treasury Employees Union (NTEU) Collective Bargaining Unit. Filing a report of harassing conduct under this Policy does not satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, nor does it delay the time limits for initiating those procedures.

The policy is available on the Office of Human Resources (HR) website at [link]. The HR staff will offer employee briefings in the near future. The handling of harassing conduct will be incorporated in manager, supervisor, and employee training so that all employees will know how to respond to harassing conduct.

Allegations of harassing conduct will be dealt with promptly. Employees found to have violated this Policy will be held accountable for their actions and will be appropriately disciplined.

REQUEST REPLY BY: 12/13/06

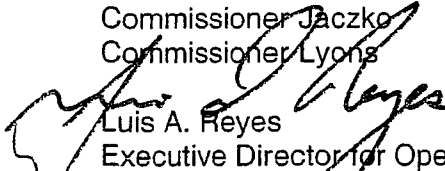
COMSECY-06-0060

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

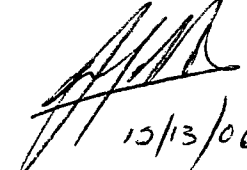


November 28, 2006

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: 
Luis A. Reyes
Executive Director for Operations

*I approve, subject to
the attached comment.*


12/13/06

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING
CONDUCT IN THE WORKPLACE

Enclosed is the NRC's draft policy statement regarding workplace harassment (Enclosure 1) for Commission review and approval. The purpose of the statement is to reinforce and heighten awareness of the agency position that it will not tolerate harassing conduct in the workplace. This policy also aligns the agency with the Equal Employment Opportunity Commission guidance on the best practices that characterize a model Equal Employment Opportunity (EEO) program.

On April 17, 2006, I provided the Commission a draft of the policy and procedures to obtain your general views and feedback. Subsequently, the staff engaged the National Treasury Employees Union (NTEU) in discussions of the policy. NTEU provided particularly useful suggestions regarding usage of plain language in lieu of legalistic terminology and the importance of ensuring prompt feedback to individuals seeking relief and to those against whom an allegation has been made. Other NTEU proposals have not been adopted inasmuch as they compromise management's statutory right to make inquiry into allegations of misconduct and take subsequent, appropriate action when misconduct is revealed.

I also am including the draft Yellow Announcement to be transmitted to all employees after approval of the policy.

I look forward to your approval of this policy, as it provides an important benefit to the agency in its endeavor to remain one of the highest rated Federal workplaces.

Enclosures:

1. NRC Draft Policy for Preventing and Eliminating Harassing Conduct in the Workplace
2. Draft Yellow Announcement

cc: SECY
OGC
OCA
OPA
CFO

Commissioner Merrifield's Comments on COMSECY-06-0060

I approve the draft NRC Policy for Preventing and Eliminating Harassing Conduct in the Workplace. I view this policy as an important step in ensuring that the NRC fulfills its strategic planning objective of operational excellence. I would like to commend the Staff for presenting this high quality policy to the Commission.

REQUEST REPLY BY: 12/13/06

COMSECY-06-0060



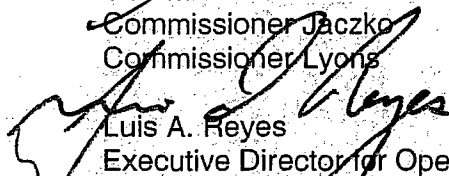
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 28, 2006

Approved.

Gregory B. Jaczko 12/13/06

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: 
Luis A. Reyes
Executive Director for Operations

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING CONDUCT IN THE WORKPLACE

Enclosed is the NRC's draft policy statement regarding workplace harassment (Enclosure 1) for Commission review and approval. The purpose of the statement is to reinforce and heighten awareness of the agency position that it will not tolerate harassing conduct in the workplace. This policy also aligns the agency with the Equal Employment Opportunity Commission guidance on the best practices that characterize a model Equal Employment Opportunity (EEO) program.

On April 17, 2006, I provided the Commission a draft of the policy and procedures to obtain your general views and feedback. Subsequently, the staff engaged the National Treasury Employees Union (NTEU) in discussions of the policy. NTEU provided particularly useful suggestions regarding usage of plain language in lieu of legalistic terminology and the importance of ensuring prompt feedback to individuals seeking relief and to those against whom an allegation has been made. Other NTEU proposals have not been adopted inasmuch as they compromise management's statutory right to make inquiry into allegations of misconduct and take subsequent, appropriate action when misconduct is revealed.

I also am including the draft Yellow Announcement to be transmitted to all employees after approval of the policy.

I look forward to your approval of this policy, as it provides an important benefit to the agency in its endeavor to remain one of the highest rated Federal workplaces.

Enclosures:

- 1. NRC Draft Policy for Preventing and Eliminating Harassing Conduct in the Workplace
- 2. Draft Yellow Announcement

cc: SECY
OGC
OCA
OPA
CFO

REQUEST REPLY BY: 12/13/06

COMSECY-06-0060



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 28, 2006

Approved w/ edits
[Signature]
12/12/06

MEMORANDUM TO: Chairman Klein
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Jaczko
Commissioner Lyons

FROM: *[Signature]*
Luis A. Reyes
Executive Director for Operations

SUBJECT: NRC POLICY FOR PREVENTING AND ELIMINATING HARASSING
CONDUCT IN THE WORKPLACE

Enclosed is the NRC's draft policy statement regarding workplace harassment (Enclosure 1) for Commission review and approval. The purpose of the statement is to reinforce and heighten awareness of the agency position that it will not tolerate harassing conduct in the workplace. This policy also aligns the agency with the Equal Employment Opportunity Commission guidance on the best practices that characterize a model Equal Employment Opportunity (EEO) program.

On April 17, 2006, I provided the Commission a draft of the policy and procedures to obtain your general views and feedback. Subsequently, the staff engaged the National Treasury Employees Union (NTEU) in discussions of the policy. NTEU provided particularly useful suggestions regarding usage of plain language in lieu of legalistic terminology and the importance of ensuring prompt feedback to individuals seeking relief and to those against whom an allegation has been made. Other NTEU proposals have not been adopted inasmuch as they compromise management's statutory right to make inquiry into allegations of misconduct and take subsequent, appropriate action when misconduct is revealed.

I also am including the draft Yellow Announcement to be transmitted to all employees after approval of the policy.

I look forward to your approval of this policy, as it provides an important benefit to the agency in its endeavor to remain one of the highest rated Federal workplaces.

Enclosures:

1. NRC Draft Policy for Preventing and Eliminating Harassing Conduct in the Workplace
2. Draft Yellow Announcement

cc: SECY
OGC
OCA
OPA
CFO

Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace

I. Purpose

This Policy is intended to ensure that the Nuclear Regulatory Commission (NRC) takes appropriate action to accomplish the following:

Prevent sexual harassment and other forms of harassing conduct based on race, color, religion, sex, national origin, age, disability, sexual orientation, and retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace;

Ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct and the options available for reporting claims of harassing conduct;

Provide an expedited impartial process for reviewing allegations of harassing conduct as defined in this Policy;

Correct harassing conduct, as defined in this Policy, before it becomes severe or pervasive; and

Administer corrective action, which may include disciplinary action, to an employee who violates this Policy.

This Policy updates the Agency's long-standing policies on the prevention of sexual harassment in the workplace. It is separate and apart from any collective bargaining agreement (CBA) or statutory complaint process, or other Agency policy involving harassment. [See Section X.] Furthermore, this Policy does not alter the right of an employee to report harassing conduct to the Office of the Inspector General (OIG) or to file a complaint with the Office of Small Business and Civil Rights (SBCR).

II. Authorities

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (Title VII); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a (ADEA); the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order (E.O.) 11478, as amended by Executive Order 13087, May 28, 1998; Equal Employment Opportunity Commission's (EEOC) Model EEO Programs Must Have An Effective Anti-Harassment Program (2005); EEOC's Manual Directive 715 (2003); EEOC's Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (1999); Faragher v. Boca Raton, 514 U.S. 775 (1998); and Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998.)

III. The Definition of Harassing Conduct

For purposes of this Policy, harassing conduct is defined as any unwelcome verbal,

visual, physical or other conduct based on race, color, religion, gender (whether or not of a sexual nature), national origin, age, disability, sexual orientation or retaliation based on opposition to discrimination or participation in the EEO complaint process under

either of the following conditions:

- to constitute harassing conduct under this Policy one of these two conditions must be present:
- A. The behavior reasonably can be considered to adversely affect the work environment; or
 - B. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of unwelcome prohibited conduct under part A of the definition include, but are not limited to: offensive remarks or comments; ridicule; offensive and derogatory words, phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, e-mails, or internet transmissions; touching; pinching; grabbing; gesturing; or stalking.

Examples of unwelcome prohibited conduct under Part B of the definition include) but are not limited to: promoting or not promoting an employee; or taking or not taking a personnel action affecting the employee's conditions of employment, based on the employee accepting a date or sexual favor

IV. Policy

It is the Policy of the NRC that harassing conduct by anyone in the workplace is unacceptable and will not be condoned. NRC will maintain a work environment free from the harassing conduct described above. The NRC has determined that the most effective way to maintain such a work environment is to inquire promptly into allegations of harassing conduct and, if proven true, treat the offense as misconduct, even if it is not sufficiently severe or pervasive to constitute discriminatory harassment actionable under the civil rights laws.

The current EEO complaint process provides employees specific remedies for unlawful harassment that has already occurred. This NRC Policy, however, is focused on stopping harassing conduct at its earliest stage. A hostile environment that violates EEO law usually requires a showing of a pattern of offensive conduct. Under this Policy, however, the NRC will not wait, nor should the employee wait, for such a pattern to emerge. The NRC will, where possible, act to stop and correct harassing conduct before it becomes unlawful, that is, before it becomes so pervasive or severe as to create an unlawful hostile work environment. Accordingly, the NRC encourages all employees to report any incident of harassing conduct forbidden by this Policy immediately so that complaints can be resolved quickly and fairly. If the NRC is not made aware of harassing conduct, it cannot stop it.

In addition, NRC will not tolerate retaliation against any employee who makes a good faith report of harassing conduct under this Policy or any other policy or procedure, or for assisting in any inquiry about such a report. Allegations of retaliation will be handled in accordance with the procedures outlined in this Policy.

Allegations of harassing conduct will be addressed as promptly as possible. Employees found to have violated this Policy will be held accountable for their actions and may be appropriately disciplined in accordance with 5 U.S.C. Chapter 75.

V. Roles and Responsibilities

A. Agency Employees

Each Agency employee is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Complying with the Policy;
2. Attending a briefing on this Policy and Procedures;
3. Refraining from exhibiting harassing conduct;
4. Promptly reporting any incident of harassing conduct in accordance with the Procedures in Section VI.; and
5. Cooperating with any inquiry conducted under this Policy.

B. Managers and Supervisors

In addition to the requirements in A. above, each Agency manager and supervisor is responsible for creating and maintaining a work environment that is free from harassing conduct by:

1. Handling allegations of harassing conduct promptly and appropriately in accordance with the procedures Section VII.;
2. Providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further misconduct does not occur;
3. Administering appropriate corrective, including disciplinary action to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
4. Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassing conduct or participate in any inquiry into an allegation of harassing conduct; and
5. Consulting with the agency Designated Official (DO) with respect to all appropriate actions under numbers 1. through 4., above.

C. Director, Office of Human Resources

The Director, Office of Human Resources (OHR) is responsible for:

1. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct by disseminating this Policy statement periodically to all employees and posting it on the NRC intranet website;
2. Ensuring that managers, supervisors, and employees are provided appropriate training on this Policy;
3. Identifying the Designated Official (DO); and
4. Ensuring that the identity of the DO is prominently displayed throughout the agency and on the NRC intranet and the identities of the Regional Personnel Officers are prominently displayed in the Regions.

D. Agency Designated Official

The Agency Designated Official (DO) is responsible for:

1. Assisting the Director, OHR, in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII., below;
3. Determining whether an allegation falls within the jurisdiction of this Policy or otherwise interpreting and implementing this Policy;
4. Referring allegations received under this Policy to the Office of the Inspector General (OIG) for possible investigation;
5. Conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct. If the OIG decides not to make an inquiry on a referral received under this Policy, the DO has the authority to determine who will conduct the inquiry into any allegation of harassing conduct, including him/herself;
6. Advising managers and supervisors on providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further harassing conduct does not occur;
7. Advising managers and supervisors on administering appropriate corrective, including disciplinary *action*, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
8. Advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry into an allegation of harassing conduct;

9. Deciding whether to arrange for mediation services to resolve a dispute arising under this Policy. Mediation services may be offered from a variety of sources including the DO, the Federal Mediation and Conciliation Service, Office of Small Business and Civil Rights (SBCR), a contract mediator, and the HHS Sharing Neutrals Program;
10. Making the Director, SBCR aware of all allegations of harassing conduct under this Policy and actions taken to address such allegations;
11. Providing technical assistance and support, to assure compliance with this Policy;
12. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act 5 U.S.C. 552a; and
13. Informing all persons reporting allegations that filing a report of harassing conduct under this Policy does not satisfy the requirements to initiate an EEO complaint, a Merit Systems Protection Board (MSPB) appeal or a grievance; nor does it delay the time limits for initiating those procedures.

E. Regional Personnel Officer

The Regional Personnel Officer (RPO) is responsible for:

1. Assisting the Director, OHR in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII.;
3. Promptly advising the DO and the Regional Administrator of any allegations reported under this Policy;
4. In coordination with the DO, conducting or overseeing prompt, fair and impartial inquiries into any allegation of harassing conduct;
5. In coordination with the DO, advising managers and supervisors on providing interim measures to alleged victims of harassing conduct pending the outcome of the inquiry to ensure that further harassing conduct does not occur;
6. In coordination with the DO, advising managers and supervisors on administering appropriate corrective, including disciplinary *action*, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
7. In coordination with the DO, advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged

conduct and prevent further misconduct while the allegations are being investigated, i.e., providing appropriate interim measures; and

3. Document the allegation received or witnessed and his/her efforts to address it. ✓
- B. If the RPO receives an allegation of harassing conduct, s/he will promptly notify the DO and the Regional Administrator and provide further assistance as requested by the DO.
- C. When the DO receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager, RPO, or from other sources, the DO will:
1. Ensure that the OIG is immediately provided all pertinent information regarding the allegation;
 2. In the event that the OIG elects not to investigate the matter, the DO shall ensure that a prompt, vigorous, impartial and appropriate inquiry is conducted and designate the person(s) who will conduct such an inquiry. (This inquiry may be conducted by the DO, the supervisor, the RPO, an outside contractor, or any other impartial individual delegated this responsibility by the DO); and
 3. Contact appropriate Agency officials in the alleged harasser's chain of command who are not involved in the allegations of harassment and recommend appropriate action to stop any harassing conduct and prevent further harassing conduct while the allegations are being addressed, i.e., providing appropriate interim measures.
- D. The inquiry will consist of appropriate fact-finding in order to obtain the information relevant to the allegation. As part of the inquiry, the complaining employee may be interviewed regarding the basis of the allegations. Additionally, the alleged offender(s) as well as other witnesses who may have knowledge of the circumstances of the allegations may also be interviewed. The determination as to the appropriate steps to be followed during the inquiry will be determined by the person conducting the inquiry with oversight by the DO. All individuals contacted in the course of an inquiry will be advised that any retaliation or reprisal against an individual who is an alleged target of harassing conduct, who has made a complaint under this Policy, or who has provided information in connection with a complaint, constitutes a separate violation of this Policy. The inquiry will be completed promptly absent extenuating circumstances.
- E. An inquiry is a neutral fact finding process needed to determine whether harassing conduct has occurred. An inquiry shall not, in and of itself, be construed as evidence that the allegations of harassing conduct are true.

- F. When an inquiry by management discloses new, significant information regarding allegations of misconduct, by management or employees, the OIG will be notified of these additional facts and provided an opportunity to assume jurisdiction over the matter. However, this is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace or to otherwise protect Agency interests associated with this Policy.
- G. Upon completion of the inquiry, the individual conducting the inquiry will prepare a written summary of the inquiry. (The summary may be brief, depending on the complexity and seriousness of the case. The DO shall determine whether sworn declarations will be taken). The summary will be prepared promptly after completion of the inquiry. The summary, along with all of the documentation compiled during the inquiry, will be provided to the DO (if he/she did not conduct the inquiry) and generally the first level supervisor of the alleged harasser, unless such supervisor is involved in the allegation. In this situation, the summary and documentation will be provided to the lowest level supervisor/manager in the alleged harasser's chain of command who is not a subject of the inquiry.
- H. All information will be maintained on a confidential basis to the greatest extent possible and in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section IX. of this Policy.

VIII. Action To Be Taken Upon Completion Of The Inquiry

- A. Upon receipt of the report of inquiry, including summary and supporting documentation, the appropriate supervisor/manager will promptly evaluate all of the documentation and determine the appropriate action. This responsibility normally will rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor is involved in the allegation. The supervisor/manager should consult with the OHR, including the DO, the servicing Labor and Employee Relations Specialist, and the Office of General Counsel as needed to determine the appropriate action.
- B. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, s/he will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- C. Where the inquiry establishes that a supervisor or manager did not properly carry out the responsibilities under this Policy, s/he will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.
- D. The DO should notify SBCR and the OIG of the outcome of the agency inquiry, including whether the allegation was substantiated; what corrective action was taken; and any other action taken to address the matter.

E. The DO should notify the employee who reported harassing conduct and the employee alleged to have engaged in harassing conduct of the outcome of the agency inquiry, including whether the allegation was substantiated.