

October 26, 2007

MEMORANDUM TO: Cynthia A. Carpenter, Director
Office of Enforcement

FROM: Lisamarie L. Jarriel, /RA/
Agency Allegation Advisor

SUBJECT: STATISTICS REGARDING ALLEGATIONS REFERRED TO
LICENSEES AND RELATED SUBSTANTIATION RATES FOR FY
2003 THROUGH FY 2007

In response to a recent request from senior management, allegation statistics were reviewed and tables were developed depicting, for the time period of FY 2003 through FY 2007, the percentage of allegations that are referred to licensees for review compared to the percentage of allegations that are solely evaluated by NRC staff. To represent the allegation substantiation rate, data was also provided relating the percentage of allegations with at least one substantiated concern, again comparing those allegations reviewed by the licensee to those reviewed by NRC staff. Additionally, the allegations reviewed by NRC staff were broken down into those involving only technical concerns, those involving wrongdoing concerns, and those involving discrimination concerns to more distinctly separate allegations containing only technical concerns from discrimination or wrongdoing matters, which are not referred to licensees. Separate tables were generated, providing data for the agency as a whole and for each regional office.

The tables were initially provided to affected staff for review, prompting questions about the derivation and meaning of the data. In response to staff comments and questions about the data, additional database review was performed to cross check the data and resolve any errors caused by the incorrect categorization of an allegation in the database or database input inconsistencies. As such, the data in the attached tables is slightly different than that provided earlier.

It is noted that there are a number of technical allegations raised in FY 2007 that remain open that, upon closure, will impact the substantiation rate for that time period. For those allegations indicated in the tables to have been open for longer than a year, all but one involve either a discrimination concern that is still under review by the Department of Labor, or an investigation by the NRC's Office of Investigations that is still in progress. The one technical allegation that has been open longer than a year involves a complex matter requiring extensive review by another federal agency.

CONTACT: Lisamarie Jarriel, OE
(301) 415-8529

From a process standpoint, it is agency policy for an Allegation Review Board (ARB) to consider referring technical allegations to the licensee for evaluation since the licensee has primary responsibility for ensuring safe operation of the facility and, in most cases, can promptly address issues through ready access to site personnel and documentation related to the referred issues. While an allegation concern involving an overriding safety issue may be referred to the licensee in any circumstance, if deemed necessary, an ARB must evaluate circumstances that could preclude allegation referral, such as alleged identity protection, the possibility of compromising an ongoing OI investigation, and whether or not the licensee will be able to provide an unbiased review. In addition, cognizant staff and the ARB will consider any objections raised by an alleged regarding referral to the licensee.

The letter referring an allegation to the licensee provides staff expectations regarding the quality and scope of the licensee's evaluation and the qualifications and independence of review personnel, and requests a response within a specific time frame (usually 30 days). The licensee is asked to include in its response, for any substantiated allegation concern, a description of root causes and generic implications, along with any corrective actions taken or planned. Responsible NRC staff review the licensee's response to a referred allegation for adequacy. The staff assesses the independence and competence of the evaluator(s), whether the evaluation was of adequate depth and scope to fully assess the concern(s), the completeness and accuracy of information provided, the adequacy of corrective actions, and often includes alternate verification of aspects of the information provided. If a thorough review is not conducted by the licensee, it may be necessary for NRC to request the licensee to perform a supplemental review or to independently inspect or investigate the referred allegation concern(s).

The data in the attached tables indicates that overall, about 40% of the allegations received by NRC are referred, at least in part, to the licensee for review. The allegation substantiation rate (30-40%) is similar for those allegations referred to the licensee for evaluation and those evaluated solely by the staff. It should be emphasized that the information in the attached tables is purely quantitative and should not be looked at as a reflection of the quality of the reviews performed or as a comparison of the quality of the reviews performed by the licensee to those performed by NRC. Such assessment can only be accomplished by review of the specific allegation files which is done on an ongoing basis by responsible technical staff and allegation coordination personnel, and during allegation program assessments and self-assessments conducted biennially.

Enclosure: Table: Total - Allegation Referrals vs. Staff Evaluated
 Table: Region I - Allegation Referrals vs. Staff Evaluated
 Table: Region II - Allegation Referrals vs. Staff Evaluated
 Table: Region III - Allegation Referrals vs. Staff Evaluated
 Table: Region IV - Allegation Referrals vs. Staff Evaluated

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CONTACT: Lisamarie Jarriel, OE
 (301) 415-8529

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OFC	OE/SAS	E	OE/AAA		OE	
NAME	DVito		LJarriel		CCarpenter	
DATE	10/25/07		10/25/07		10/26/07	

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MEMORANDUM DATED: October 26, 2007

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