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J. Lieberman

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U. S. Nuclear Regulatory Commission
Attn: David Meyer, Chief, Rules Review and Directives Branch,
Division of Freedom of Information and Publication Services
Mail Station: T6D59
Washington, DC 20555

- References: 1. Docket No. 50-285
2. Federal Register Volume 62, No. 38 dated February 26, 1997
(62 FR 8785)

Subject: Comments on Proposed Safety-Conscious Work Environment Strategies

Dear Mr. Meyer:

The Omaha Public Power District (OPPD) has reviewed the strategies proposed by the NRC in Reference 2 to address the need for licensees to establish and maintain a safety-conscious work environment. OPPD's comments are attached.

Please contact me if you have any questions.

Sincerely,

S. K. Gambhir
Division Manager -
Engineering & Operations Support

SKG/mle

Attachment

- c: Winston & Strawn
E. W. Merschoff, NRC Regional Administrator, Region IV
L. R. Wharton, NRC Project Manager
W. C. Walker, NRC Senior Resident Inspector
Document Control Desk

RD-25 Nuclear Safety

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(1) Federal Register Question:

Should the Commission Proceed with Establishing a Standardized Approach to Ensuring That Licensees Establish and Maintain a Safety-Conscious Work Environment?

OPPD Response:

No. The NRC approach to ensuring that licensees establish and maintain a safety-conscious work environment is subjective, does not adequately define a "chilling effect" and places the licensee in the position of having to defend itself against any conduct deemed by the NRC to constitute a "chilling effect" on a safety-conscious work environment.

The approach proposed by the NRC, based on a standard set of criteria for ensuring that licensees establish and maintain a safety conscious work environment, may not adequately address all of the variables which truly reflect whether a safety-conscious work environment exists, or whether evidence of a "deteriorating work environment exists."

(2) Federal Register Question:

If Such an Approach Were Adopted, Would it Be Most Effective as (a) A Proposed Rulemaking that would Amend Part 50, (b) a revision to the NRC Enforcement Policy: or (c) a separately issued Commission Policy statement?

OPPD Response:

A separately issued Commission Policy Statement would be the most effective means of stating the NRC expectations and suggestions.

(3) Federal Register Question:

What Additions or Deletions to the Draft Language of Such a Regulation or Policy, as presented in Section IX below, would Increase its Effectiveness?

OPPD Response:

The effectiveness of Section IX could be enhanced by clarifying the following:

Under Section IX.(a) the attributes of a safety conscious work environment are defined. Five attributes are identified which depict a safety-conscious work environment.

The five attributes of a safety-conscious work environment as defined are very subjective. The measurements of the attributes need to be defined. (Example: A management attitude that promotes employee involvement and confidence in raising and resolving concerns. How do you measure "management attitude?"

Section IX.(b), provides indicators the NRC has identified which may be considered as possible evidence of an emerging adverse trend. Number (4) states in part: "Other indications that the licensee's ECP or other programs for identifying and resolving safety and regulatory concerns are ineffective." It is also stated, "Such indicators might include: (Seven indicators are identified)." There is nothing else to indicate that any other indicator deemed to be appropriate at the time may be identified as an emerging adverse trend which in turn could be a contributor to a less than safety-conscious work environment.

Section IX.(c) states in part: "The presence of one or more of the indicators discussed in paragraph (b) of this section may or may not, in isolation, be considered evidence of deterioration in the licensee's safety conscious work environment." This statement combined with Section IX. (4) which reads in part: "Other indications that the licensee's ECP or other programs for identifying and resolving safety and regulatory concerns are ineffective," leaves the door open for the NRC to be able to use any findings identified as evidence of a deterioration in the licensee's safety conscious work environment.

Both the sections on attributes of a safety-conscious work environment, and indicators that may be considered as possible evidence of an emerging adverse trend, need to be clarified and subjectivity eliminated.

One individual (Executive Director for Operations) making the determination that the licensee has failed to establish and maintain a safety-conscious work environment is an important reason for assuring that the attributes of a safety-conscious work environment are not subjective and that the criteria for their measurement are well defined.

For the same reason, the indicators which are used to indicate the licensee's employee concern program (ECP) or other programs for identifying and resolving safety and regulatory concerns are ineffective, must not be subjective, and the measurements must be well defined.

Section IX.(d)(4) discusses the establishment of a "Holding Period" policy which is one of the actions a licensee may be required to take as the result of the Executive Director for Operations determining that the licensee has failed to establish and maintain a safety-conscious work environment.

The establishment of a "Holding Period" policy should be applied by the licensee and not directed by the NRC. The decision to implement the policy should be based on the set of circumstances surrounding the registration of the complaint of discrimination for engaging in protected activities.

(4) Federal Register Question:

What are the Advantages or Disadvantages of Implementing Such a Standardized Approach? (Comments are specifically requested as to whether the use of a holding period would achieve the objective of reducing the potential for a chilling effect in the work environment).

OPPD Response:

ADVANTAGES

The advantages of implementing a standardized approach to NRC's expectations for a safety-conscious work environment are varied.

ADVANTAGES (Continued)

- (1) A standardized approach by the NRC satisfies a recommendation identified in the Reassessment of NRC's Program for Protecting Allegers.
- (2) The standardized approach provides the NRC with a fixed starting point from which to guarantee there is a focused effort on the part of the licensee to assure a safety-conscious work environment and a defined process for addressing the licensees who fail to maintain a safety-conscious work environment.
- (3) The standardized approach focuses the NRC to an established set of attributes which are indicative of a safety-conscious work environment, plus an established set of indicators, which when identified, indicate evidence of a adverse trend or a deterioration of the safety-conscious work environment.
- (4) The standardized approach provides the NRC with a document which they feel is all inclusive for addressing issues related to maintaining a safety-conscious work environment, harassment, intimidation, discrimination, and a chilling effect.

DISADVANTAGES

- (1) The standardized approach being taken with respect to the proposed language for a safety-conscious work environment is such that the licensees would be in a position of having to defend themselves every time there was an indication some act or behavior had a deteriorating effect on maintaining a safety-conscious work environment.
- (2) The use of a holding period would achieve the objective of reducing the potential for a chilling effect in the work environment. The use of the holding period should be at the discretion of licensee management and not the NRC. It should be based on an assessment of the impact the holding period will have on the situation.

(5) Federal Register Question:

What other means or indicators might the NRC use to evaluate licensee performance in this area other than the indicators mentioned in the language of Section IX. below?

OPPD Response:

Section IX.(4) states in part "other indications that the licensee's ECP or other programs for identifying and resolving safety and regulatory concerns are ineffective." Because indicators identified are so subjective, other means or indicators the NRC might conceivably use should be included.

(6) Federal Register Question:

What would be the Advantages or Disadvantages of implementing the Alternative Approach to Requiring the Holding Period, as described in Section VI, Above?

OPPD Response:

ADVANTAGES

The advantages would be as follows:

- (1) Having a holding policy and conducting periodic surveys would be of benefit in offsetting the potential for a chilling effect.
- (2) Having a holding policy in place would allow, if needed, an immediate response to a given discrimination allegation situation.
- (3) The periodic surveys would provide a gauge for determining what is going on within the work environment which may impact the reporting of safety concerns.

DISADVANTAGES

The disadvantages would be as follows:

- (1) The alternate strategy does not define what constitutes "periodic assessments." A definition for what constitutes periodic site surveys needs to be established. What the licensee feels is periodic and what the NRC feels is periodic may be the difference between a safety-conscious work environment and an indicator that the licensee's ECP for resolving safety and regulatory concerns are ineffective as identified in Section IX.(b) (4).
- (2) The resolution of discrimination allegations can be very difficult and time consuming. For this reason, the alternate strategy of requiring a licensee to institute a holding period policy carries with it the possibility of the licensee paying wages and benefits for lengthy periods of time while cases are being litigated.
- (3) Because of the number of variables involved, use of a holding period must be decided on a case-by-case basis by licensee management. The alternate strategy, as written, would dictate that when a discrimination allegation is raised the holding policy would be implemented. Without licensee review and determination as to whether to implement the policy or not, there is an opportunity for individuals to misuse the system by raising allegations of discrimination so as to fall under the holding period policy.

(7) Federal Register Question:

What other approaches not considered here would be more effective in ensuring that licensees establish and maintain a safety conscious work environment?

OPPD Response:

The current regulatory environment for the nuclear industry is changing. Because of Millstone and events at other nuclear facilities, both the NRC and licensees have come under intense criticism and scrutiny. Both the NRC and licensees are feeling the pressure and both are entwined in an effort to develop and implement strategies designed to assure a safety-conscious work environment where individuals feel free to raise safety concerns.

As a result of the intense criticism and scrutiny the Nuclear Regulatory Commission is under pressure to revise their process for providing adequate protection for allegers, they developed the Policy Statement on the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation." The Policy Statement was issued to clearly state the NRC's expectation that licensees would ensure the freedom for all employees to raise concerns both to their management and to the NRC without fear of retaliation.

The approach outlined for maintaining a safety-conscious work environment appears to be an addendum to the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation."

There are currently studies being conducted by the GAO to look at the process for handling whistle blower claims, how the nuclear industry is affected by whistle blower claims, and the cost of handling those claims. There is also a study looking into the management of the NRC itself.

An approach might be to continue to strive to improve our efforts to provide a safety-conscious work environment within the existing regulatory framework, and at the same time review the data coming out of the studies being conducted by the GAO, other agencies and data being collected by licensees. Then, based on the findings, develop both a qualitative and quantative approach to a new safety-conscious workplace standard, that embraces the law, has merit, and addresses the needs of the nuclear industry.

LIC-97-0052

Attachment

Page 8

Federal Register Request for Regulatory Analysis Information Costs and Benefits, Normal Business Practices, New Trends, and Other Information:

OPPD Response:

The standardized approach the NRC has developed requiring the licensees to establish a safety-conscious work environment with the established indicators and specific remedial actions identified for failure to establish or maintain a safety-conscious work environment are such that the NRC could cite a licensee for creating a "chilling effect" for any conduct it felt detracted from a safety-conscious work environment. The remedial actions (Develop an ECP, Develop a Holding Period Policy, Perform periodic assessments, Establish an independent group to oversee licensee performance, and additional enforcement actions) resulting from the NRC determination could have a major impact on cost.

The benefit from the standardized approach appears to be in the favor of the NRC. The approach would allow the NRC a level playing field with respect to enforcement of cases involving alleged harassment and intimidation. The determination that a "Chilling Effect" exists within a nuclear facility would be based on a generic and largely subjective set of indicators and attributes.