

From: Luina, Scott
Sent: Monday, June 29, 2020 11:43 AM
To: Kirkwood, Sara
Subject: Emailing: Response to Requirement to Act Letter, EXECUTIVE SUMMARY Final
Attachments: Response to Requirement to Act Letter.pdf; EXECUTIVE SUMMARY Final.pdf

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Response to Requirement to Act Letter
EXECUTIVE SUMMARY Final

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Mail Envelope Properties (BL0PR0901MB298099907F6C01AA77EC7B62FB6E0)

Subject: Emailing: Response to Requirement to Act Letter, EXECUTIVE SUMMARY Final
Sent Date: 6/29/2020 11:43:25 AM
Received Date: 6/29/2020 11:43:27 AM
From: Luina, Scott

Created By: Scott.Luina@nrc.gov

Recipients:
"Kirkwood, Sara" <Sara.Kirkwood@nrc.gov>
Tracking Status: None

Post Office: BL0PR0901MB2980.namprd09.prod.outlook.com

Files	Size	Date & Time
MESSAGE	362	6/29/2020 11:43:27 AM
Response to Requirement to Act Letter.pdf		38171
EXECUTIVE SUMMARY Final.pdf		128090

Options
Priority: Normal
Return Notification: No
Reply Requested: No
Sensitivity: Normal
Expiration Date:

October 12, 2017

Gregory A. Boerschig

REQUIREMENT TO ACT Response - Concern Number NEC-17-00683

The Employee Concerns Program (ECP) staff recently concluded an investigation into a concern regarding retaliation against an individual at Sequoyah Nuclear Plant (SQN) by an individual in the Corporate Nuclear Licensing (CNL) Group. You provided a copy of the investigation report as well as a Requirement To Act (RTA) letter dated September 12, 2017.

To address the recommendations in the report, I have taken or will take the following actions:

- 1) I have consulted with HR and TVA executives to determine an appropriate correction. The action consisted of a targeted discussion on October 11, 2017 within the CNL leadership team to address the facts, circumstances and sensitivities to reduce the likelihood of recurrence.
- 2) On October 11, 2017 I met with the Concerned Individual (CI) at SQN and discussed the fact that they are still designated as a "Ready 1-2 Years" on the Succession Plan for the Director of Emergency Preparedness position. Additional discussion included advice on how to be proactive in managing self advocacy for one's career progression.
- 3) By October 26, 2017, I will reiterate to the members of the CNL leadership team who were present at the meeting in question that there is no tolerance for retaliation at TVA and that a high level of attention needs to be paid for threads of discussion in group settings and meetings that can negatively impact SCWE.
- 4) With regard to the recommendation that I (or anyone from CNL) engage with the CI to acknowledge responsibility for the statements that were made, as we discussed on the phone on October 11, 2017, I found that your investigatory report was insufficiently clear regarding what statements were made and the context in which they were made. The report depicts that between the four or five individuals present at the meeting in question, there are multiple points of view regarding what was stated and by whom. I believe that any attempt to acknowledge who may have been responsible for what statements to the CI would be only likely to result in further confusion on the matter.

I strongly support the development and support for a strong nuclear safety culture and safety conscious work environment. Insofar as your September 12, 2017 letter is one of a series of letters associated with the work environment within the TVA Fleet Regulatory team, I will continue to work with the Regulatory Team and with Nuclear Power Group senior leadership to ensure that expectations for professionalism are reinforced for all members of the Nuclear Regulatory Affairs and Support Service groups.

J. W. Shea

Digitally signed by J. W. Shea
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Date: 2017.10.12 16:04:45 -04'00'

Vice President, Nuclear Regulatory Affairs

cc: See Page 2

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Gregory A. Boerschig
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October 12, 2017

cc:

D. M. Czufin
I. E. Hagins-Dyer
D. L. Fults
D. F. Keil

BUSINESS SENSITIVE AND CONFIDENTIAL

EXECUTIVE SUMMARY

Employee Concerns Investigation

NEC-17 - 00683

Concern Statement

The Concerned Individual (CI) is the site Licensing Manager at Sequoyah Nuclear Plant (SQN). He asserts that he has been retaliated against for raising a concern with the Employee Concerns Program (ECP). The CI states that he was informed that in a July 21, 2017 staff meeting, the Senior Manager of Regulatory Operations (SM) stated to members of her staff that the CI had filed an ECP concern. He further asserts that he was told that the SM stated that she had been the subject of the investigation and that the concerns raised were unsubstantiated. He also asserts that the SM stated that the CI had been found to be the one creating a hostile work environment and had been coached by management at SQN.

It should be noted that the concern in question (NEC-17 -00410) alleged that the SM was creating a hostile work environment for the CI. This concern was not substantiated.

Investigation Methodology

Interviews

Document Review :

- NRC REGULATORY ISSUE SUMMARY 2005-18 GUIDANCE FOR ESTABLISHING AND MAINTAINING A SAFETY CONSCIOUS WORK ENVIRONMENT August 2005
- TVA SPP 11.8.4.

Interview Results

It was confirmed that there was a general discussion about the performance of the site Licensing staffs at all three nuclear sites. There was also discussion that the strongest performing Licensing office was SQN. One of the participants stated that there was a history of conflict between the SQN office and Corporate. As part of that discussion two individuals recalled hearing the SM state that she had been the subject of an ECP Concern filed by the CI. A third individual did not recall this discussion.

The SM acknowledged stating that she had mentioned that an ECP concern had been filed against her. However she states that she did not mention the name of the CI at that time. She states that the CI's name was mentioned later in the meeting in a context unrelated to the concern in question. The SM also stated that she discussed that SQN management had addressed the findings with the CI because the CI was in the chain of command at the site and not at Corporate.

One individual indicated telling the SM that the conversation about the ECP concern was inappropriate. However the SM had a different recollection that this individual stated the belief that the SM's comments were appropriate. One individual stated the belief that the SM was trying to demonstrate transparency by acknowledging the concern. The SM also stated that the intent was to demonstrate both transparency and vulnerability by discussing the concern that most of them had likely heard about

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anyway. The SM stated that she was relieved to be able to finally speak about the issue and assure the staff that she had not been guilty of any wrongdoing. The SM stated that this was a part of her attempt to ensure understanding that she had not been found to have created an unhealthy SCWE. The SM stated that she was motivated by recent participation in an Alternate Dispute Process where NPG's use of the Adverse Action Procedure was discussed at length as a tool to mitigate the perception of retaliation. The SM stated that these discussions heightened her sensitivity to ensuring a healthy SCWE within her organization.

Conclusion

Partial Substantiation - The Concern is Partially Substantiated based on the following reasons.

1. Did the CI engage in protected activity?

The CI raised a prior concern in the Employee Concerns Program related to harassment by the SM. The concern was not related to safety and was not substantiated.

"...In July 1993, the (NRC) agency reassessed the NRC's program for protecting allegers against retaliation. Retaliation is prohibited by NRC regulations in 10 CFR Parts 19, 30, 40, 50, 60, 61,63, 70, 71, 72, 76, and 150. In May 1996, the NRC issued such a policy: "Freedom of Employees in the Nuclear Industry To Raise Safety Concerns Without Fear of Retaliation" (61 FR 24336 or <http://www.nrc.gov/whatwe-do/regulatory/allegations/scwe-frn-5-14-96.pdf>). A SCWE is defined by the NRC as an environment in which "employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation."¹

Additionally TVA's SPP 11.8.4 Section 1.0 "...TVA encourages the voluntary expression of concerns and differing views. Employees, contractors, and others who support TVA functions are encouraged to express concerns and differing views, cooperate, and participate in the investigation of concerns and in the development of concern resolution, without fear of reprisal. The ability to freely express differing views and opinions will enhance employee productivity, observance of standards and promote a safety conscious work environment (SCWE)." In addition Section 2.0. states "It is also the company's obligation to ensure that any such concerns will be appropriately considered, investigated and resolved, without retaliation."²

Though it does not appear that the CI's prior concern was related to nuclear safety as noted in the NRC's definition of SCWE, it does appear that the CI engaged in protected activity within the scope of TVA's SPP 11.8.4

2. Was the SM aware of the CI's protected activity?

Yes - The CI waived confidentiality and the SM was informed of the CI's participation in the ECP process related to the prior concern.

¹ NRC REGULATORY ISSUE SUMMARY 2005-18 GUIDANCE FOR ESTABLISHING AND MAINTAINING A SAFETY CONSCIOUS WORK ENVIRONMENT August 2005

² TVA SPP 11.8.4

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3. Did the CI receive adverse action because of participation in the protected activity?

The CI is not within the chain of command of the SM. According to the VP of Licensing, the CI has been identified for consideration for promotion to a director level position as part of TVA's succession planning process. The VP of Licensing has made the CI aware of this fact and has discussed promotional opportunities with him in recent weeks.

Though the CI states that the SM's actions were humiliating and could have a negative impact on his professional reputation, there does not appear to be evidence of any attempt by management to adversely affect the terms and conditions of the CI's employment by making these statements. Feedback from the VP of Licensing indicates that the CI is well respected for his knowledge of regulatory matters and that his professional contributions are well received. Despite these assertions this investigation finds that the CI's concerns about the impact on his reputation are understandable.

A secondary issue is whether the SM's actions could have an impact on the SCWE as it relates to others in the Licensing group. Interviews reveal that some employees were concerned that the SM spoke openly of the ECP concern and felt that this information should have been handled with more sensitivity to the need for confidentiality. At least one interviewee felt that the SM was demonstrating transparency and attempting to assure workers that she had been absolved of any claims of creating an unhealthy work environment. Regardless of the intent, this investigation concludes that it is reasonable to assume that some employees could feel that the SM's discussion of the prior concern could result in reluctance to raise future issues for fear of similar actions by the SM. This was evident by interviews which revealed discomfort with the SM's statements.

4. Were the SM's actions based on the SM's knowledge of his participation in the ECP process?

As is sometimes the case, the interviews reveal different perspectives on what the SM stated during the meeting and how the comments were received. However it is clear that the SM did mention that a concern had been filed and that some time during the meeting the CI's name was mentioned. Though the SM was aware that the CI waived confidentiality in the prior concern, this waiver allows ECP to reveal the CI's identity during the course of the investigation. There are no procedures or guidelines that govern revelation of the CI's participation in the ECP process in settings outside of that process. However participation in the process should be considered as protected activity and should be handled with a heightened sensitivity. This sensitivity includes awareness of possible repercussions to the CI and to the potential for others to feel reluctant to raise concerns confidentially.

This investigation could find no intent on the part of the SM to retaliate against the CI, but finds that the SM's actions could create a perception of retaliation. Based on the CI's perception of the SM's statements as humiliating and as having a potential impact on his professional reputation, as well as belief by some interviewees that the SM's statements were inappropriate, the concern is partially substantiated.

Options to Consider

A Requirement to Act Letter will be issued to include the following:

1. Consult with HR, TVA Ethics, or others as necessary to determine and implement an appropriate correction up to and including administrative action to address the SM's behavior in this instance.
2. Engage in discussions with CI to acknowledge responsibility for the statements that were made.
3. Engage in discussions with the CI about promotability as documented in the Succession Plan.
4. Implement actions targeting those who were present in the meeting in question to mitigate any impact on willingness to express concerns. This should include talking points to address expectation for heightened sensitivity to employee participation in the ECP or other similar processes and strong support for an environment conducive to raising concerns,

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