

~~OFFICIAL USE ONLY - OI INVESTIGATION INFORMATION~~
INVESTIGATION STATUS RECORD

Facility:	CALLAWAY	Case Agent:	(b)(7)(C)
Case Number:	4-2008-004	Date Opened:	10/19/2007
Docket Number(s):	05000483	ECD:	
		Priority:	High
Case Type:	Reactor Power	Status:	Case is Closed
Primary Alleg Source:	Alleger		
Allegation Number(s):	RIV-2007-A-0093		
Subject/Allegation:	DISCRIMINATION AGAINST CONTROL ROOM OPERATOR FOR RAISING SAFETY CONCERNS		

Monthly Status Report:

10/19/2007: On August 23, 2007, Harry FREEMAN, Senior Allegations Coordinator, Region IV (RIV), Nuclear Regulatory Commission, received an allegation from Lawrence CRISCIONE, Reactor Operator, Callaway Plant (Callaway). CRISCIONE reported he had been discriminated against for raising safety concerns at Callaway.

According to CRISCIONE, he wrote several corrective action reports (CARs) in 2005 related to safety issues and in February 2006, he wrote CAR (b)(7)(C) critical of the closure of a previous CAR that was never completed or scheduled for completion pertaining to the replacement of copper airlines and braided airlines to fix a vibration-induced wear problem. CRISCIONE reported he attended a CAR planning meeting and was told by the site vice president that he did not appreciate the CAR written by CRISCIONE pertaining to the airlines. CRISCIONE reported that after the meeting, Robert BARTEM, Operations Manager, Callaway, told him Ludwig THIBAUT, Plant Manager, Callaway, instructed him to assign CRISCIONE more work. CRISCIONE stated this was done to keep him from writing more CARs.

CRISCIONE disclosed he applied for an operations supervisor position in February 2006 and was not selected, although in his opinion he had more experience than the employee selected for the position. He reported that BARTEM maintained that he [CRISCIONE] needed more time in the control room and he could be placed in the control room as an interim operations supervisor so the operations management team could observe him. CRISCIONE noted he was never allowed to go on shift as the interim operations supervisor. He noted he had displayed several weaknesses while assigned as a turbine operator in 2005 and was placed on a remediation plan, which he successfully completed in August 2005. He claimed the 2005 CARs were the reason for his nonselection.

CRISCIONE reported his Senior Reactor Operator (SRO) license was removed in June 2006 and, according to the licensee, the removal occurred because his performance did not justify the SRO license. The licensee referred to a May 2005 simulator issue involving CRISCIONE and his 2005 remediation plan specifically. CRISCIONE maintained CAR (b)(7)(C) and his subsequent presence at the CAR planning meeting were the reasons for the license removal.

CRISCIONE identified that his 2007 performance review contained negative comments such as he was confrontational at a CAR meeting and needs improvement. He claimed that the comments were related to his protected activity, specifically CAR (b)(7)(C)

The alleger reported that on August 7, 2007, his supervisor, J. R. WEEKLY, Callaway, informed him that he would not be interviewed for a posting for an operations supervisor posting. CRISCIONE revealed that the reason he was given was because of his involvement in the May 2005 simulator scenario. He noted the incident did not prevent him from being interviewed for the January 2006 openings or prevent BARTEM from discussing an assignment possibility as an interim operations supervisor.

On August 10, 2007, a RIV Allegation Review Board (ARB) met to discuss CRISCIONE's allegation. The ARB decided to offer CRISCIONE Early Alternative Dispute Resolution (ADR).

On October 19, 2007, the Office Of Investigations (OI), RIV, was notified by FREEMAN that

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Facility: CALLAWAY Case Agent: (b)(7)(C)
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CRISCIONE had declined ADR in favor of an OI investigation related to his allegation of discrimination. FREEMAN requested OI:RIV initiate an investigation into CRISCIONE's concern. Potential violations: 10 CFR 50.7 (Employee protection) and 10 CFR 50.5 (Deliberate misconduct). Status: FWP ECD: 01/2008 (90-day) SOL: 01/2011

10/31/2007: Allegor's attorney was contacted in an attempt to schedule the allegor's interview. To date the attorney has not responded. Further attempts to schedule an interview in November 2007 will be pursued. Status: FWP ECD: 01/2008 (90-day)

11/30/2007: On November 1, 2007, OI:RIV scheduled an interview of the allegor for November 6, 2007. On November 2, 2007, the interview of the allegor was canceled per the request of the allegor's legal counsel. On November 26, 2007, a RIV ARB disclosed the allegor settled his discrimination case with the licensee outside of the NRC's early ADR process, which was accepted by the NRC. No further investigation is deemed appropriate and this case is being closed per this ISR.

Completion Date:	11/26/2007	Total Staff Hours:	13.0
Issue Date:		Months Open:	1.3
DOJ Action(s):		DOJ Referral Date:	
OI Violation(s):	Harassment and Intimidation - Other (Explain)	Statute of Limitations Date:	01/01/2011

CASE CHRONOLOGY			
CASE NO.:	4-2008-004	OPENED : 10/19/2007	AGENT : (b)(7)(C)
DATE	ITEM	ACTIVITY	
10/24/2007	1	Received case file. Case file read and understood.	
10/25/2007	1	Case review conducted with (b)(7)(C).	
10/25/2007	2	Requested and received allegor contact information from RIV technical staff.	
10/26/2007	1	Contacted attorney representing allegor in attempt to schedule interview. Left message with attorney.	
10/31/2007	1	Received message from SSA HOLLAND concerning allegor. Attorney representing allegor requests interview be conducted after November 23, 2007.	
11/01/2007	1	(b)(7)(C) left message with attorney representing CRISCIONE in attempt to schedule allegor interview at an earlier date IAW OI guidance.	
11/02/2007	1	Scheduled interview with allegor for November 6, 2007	
11/02/2007	2	Interview of allegor cancelled at the request of the allegor's legal counsel.	
11/19/2007	1	Case review close due to allegor not wanting to pursue after reaching settlement with licensee.	
11/26/2007	1	Region IV ARB convened. Allegor settled with licensee outside of the NRC early ADR process.	
11/26/2007	1	Case closed on ISR	

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According to CRISCIONE, he wrote several corrective action reports (CARs) in 2005 related to safety issues and in February 2006, he wrote CAR (b)(7)(C) critical of the closure of a previous CAR that was never completed or scheduled for completion pertaining to the replacement of copper airlines and braided airlines to fix a vibration-induced wear problem. CRISCIONE reported he attended a CAR planning meeting and was told by the site vice president that he did not appreciate the CAR written by CRISCIONE pertaining to the airlines. CRISCIONE reported that after the meeting, Robert BARTEM, Operations Manager, Callaway, told him Ludwig THIBAUT, Plant Manager, Callaway, instructed him to assign CRISCIONE more work. CRISCIONE stated this was done to keep him from writing more CARs.

CRISCIONE disclosed he applied for an operations supervisor position in February 2006 and was not selected, although in his opinion he had more experience than the employee selected for the position. He reported that BARTEM maintained that he [CRISCIONE] needed more time in the control room and he could be placed in the control room as an interim operations supervisor so the operations management team could observe him. CRISCIONE noted he was never allowed to go on shift as the interim operations supervisor. He noted he had displayed several weaknesses while assigned as a turbine operator in 2005 and was placed on a remediation plan, which he successfully completed in August 2005. He claimed the 2005 CARs were the reason for his nonselection.

CRISCIONE reported his Senior Reactor Operator (SRO) license was removed in June 2006 and, according to the licensee, the removal occurred because his performance did not justify the SRO license. The licensee referred to a May 2005 simulator issue involving CRISCIONE and his 2005 remediation plan specifically. CRISCIONE maintained CAR (b)(7)(C) and his subsequent presence at the CAR planning meeting were the reasons for the license removal.

CRISCIONE identified that his 2007 performance review contained negative comments such as he was confrontational at a CAR meeting and needs improvement. He claimed that the comments were related to his protected activity, specifically CAR (b)(7)(C)

The alleger reported that on August 7, 2007, his supervisor, J. R. WEEKLY, Callaway, informed him that he would not be interviewed for a posting for an operations supervisor posting. CRISCIONE revealed that the reason he was given was because of his involvement in the May 2005 simulator scenario. He noted the incident did not prevent him from being interviewed for the January 2006 openings or prevent BARTEM from discussing an assignment possibility as an interim operations supervisor.

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Completion Date:	11/26/2007	Total Staff Hours:	12.0
Issue Date:		Months Open:	1.3
DOJ Action(s):		DOJ Referral Date:	
OI Violation(s):	Harassment and Intimidation - Administratively Closed	Statute of Limitations Date:	01/01/2011

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Case Number:	4-2008-004	Date Opened:	10/19/2007
Docket Number(s):	05000483	ECD:	01/2008
		Priority:	High
Case Type:	Reactor Power	Status:	Field Work In Progress
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Completion Date:	Total Staff Hours: 5.0
Issue Date:	Months Open: 0.4
DOJ Action(s):	DOJ Referral Date:
OI Violation(s): Harassment and Intimidation - No Result	Statute of Limitations Date: 01/01/2011

INVESTIGATION STATUS RECORD

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Completion Date:	Total Staff Hours: 5.0
Issue Date:	Months Open: 0.0
DOJ Action(s):	DOJ Referral Date:
OI Violation(s): Harassment and Intimidation - No Result	Statute of Limitations Date: 01/01/2011

ARB DISPOSITION RECORD		Allegation Number: RIV-2007 -A-0093	
Facility Name: Callaway	Docket Number: 50-483		
Functional Area: <u>Power Reactor</u>			
Responsible Division: <u>DRP</u>		ARB Date: <u>09/10/2007</u>	
Received Date	30 Days	150 Days	180 Days
<u>08/22/2007</u>	<u>09/21/2007</u>	<u>01/19/2008</u>	<u>02/18/2008</u>
Purpose of the ARB: <u>"Initial ARB".</u>			
Basis for Another ARB: <u></u>			
REFERRAL			
Does Allegor Object to Referral <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
If any of the following factors apply, an allegation shall not be referred to the licensee.			
<input type="checkbox"/> Information cannot be released in sufficient detail to the licensee without compromising the identity of the allegor of confidential source. <input type="checkbox"/> The licensee could compromise an investigation or inspection because of knowledge gained from the referral. <input type="checkbox"/> The allegation is made against the licensee's management or those parties who would normally receive and address the allegation. <input type="checkbox"/> The basis of the allegation is information received from a Federal or State agency that does not approve of the information being released in a referral.			
ARB PARTICIPANTS			
Chairman: <u></u>			

Concern: <u>1</u>	Discipline: <u>Discrimination</u>	Reactor Department Code: <u>Operations</u>
Responsible Branch: <u>ACES</u>	Oil Case Number: <u></u>	
Concern Description:		
<p>The CI is concerned that s/he was the subject of discrimination for raising safety issues as demonstrated by the following</p> <p>In January 2006 and August 2007 the CI was either passed over for a promotion to an operation supervisor in 2006 or not permitted to be interview in 2007 for the operation supervisor position. The CI stated that of the 6 personnel selected (5 in January 2006 and 1 in August 2007) for the operation supervisor position only one individual had more experience then the CI.</p> <p>When the CI was not selected for the January 2006 operation supervisor vacancy, the CI was offered the opportunity to serve as an interim operation supervisor; however, this activity was never completed. Basically in February 2006 the CI issued a condition report which identified that the licensee had failed to fix a previously identified air line deficiency. During the condition report screening meeting, the CI was told by the site vice president that he did not appreciate the condition report. The CI stated that the operation manager informed him that the plant manager directed him (operation manger) to give the CI more work so that the CI did not write condition reports that were critical of the plant personnel failure to correct</p>		

issues.

The CI stated that her/his SRO license was removed in June 2006. The CI stated that the reason given was deficiencies identified in a June 2005 simulator scenario. The CI stated that the deficiencies were successfully resolved in August 2005. The CI noted that the deficiencies were not a problem in January 2006 when the CI was offered the opportunity to serve as an interim operation supervisor.

The CI stated that his/her 2007 performance review contained negative comments such as the CI was confrontational at corrective action screening meetings and needs improvement. The message that the CI believes was provided by not being promoted to an operation supervisor, loss of SRO license, and degraded 2007 performance review is that writing corrective action documents has results in the action taken against the CI

Regulatory Requirement:

50.7

Safety Significance: High

Basis:

the CI was the subject of discrimination for raising safety issues

Check if question is applicable to the concern.

- Is it a declaration, statement, or assertion of impropriety or inadequacy?
- Is the impropriety or inadequacy associated with NRC regulated activities?
- Is the validity of the issue unknown?

If all of the above statements are checked, the issue is an allegation.

Action	Assigned Branch	Assigned Date	Planned Date
Offer Early ADR	ACES		
Comments:	if ADR fails then the investigation would be a high priority per MD 8.8 exhibit 3 (B)(a)(ii)(i)(b) - allegation by a mid level manager or above - consistent with a SL I or II violation		

Additional Comments

Note that blackened out content is in original record, not as a result of FOIA processing.



ARB DISPOSITION RECORD		Allegation Number: RIV-2007 -A- 0093	
Facility Name: Callaway		Docket Number: 50-483	
Functional Power Reactor Area:			
Responsible Division: DRP		ARB Date: 09/10/2007	
Received Date 08/22/2007	30 Days 09/21/2007	150 Days 01/19/2008	180 Days 02/18/2008
Purpose of the ARB: Followup ARB Discuss EB2's review of Concern 2.			
Basis for Another ARB:			
REFERRAL			
Does Allegor Object to Referral <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
If any of the following factors apply, an allegation shall not be referred to the licensee.			
<input type="checkbox"/> Information cannot be released in sufficient detail to the licensee without compromising the identity of the allegor of confidential source. <input type="checkbox"/> The licensee could compromise an investigation or inspection because of knowledge gained from the referral. <input type="checkbox"/> The allegation is made against the licensee's management or those parties who would normally receive and address the allegation. <input type="checkbox"/> The basis of the allegation is information received from a Federal or State agency that does not approve of the information being released in a referral.			
ARB PARTICIPANTS			
Chairman:			
TVegel	VGaddy	DWhite	JWalker
DChamberlain	MVasquez		

Concern 1	Discipline Discrimination	Reactor Department Code Operations
Responsible Branch: ACES	OI Case Number:	
Concern Description: The CI stated that s/he was the subject of discrimination for raising safety issues as demonstrated by the fact that: (1) s/he was passed over for a January 2006 promotion to Operating Supervisor while less experienced individuals were promoted however the CI was offered the opportunity to serve as an interim operation supervisor ; (2) his/her SRO license was removed in June 2006 for simulators problems that the CI stated were successfully resolved in August 2005; (3) her/his May 2007 performance review contained negative comments such as you were confrontational at corrective action screening meetings and needed improvement; and (4) s/he was not interviewed for an Operating Supervisor posting in August 2007.		
Regulatory Requirement: 50.7		
Safety Significance - High		
Basis: the CI was the subject of discrimination for raising safety issues		
Check if question is applicable to the concern.		

- Is it a declaration, statement, or assertion of impropriety or inadequacy?
- Is the impropriety or inadequacy associated with NRC regulated activities?
- Is the validity of the issue unknown?

If all of the above statements are checked, the issue is an allegation.

Action	Assigned Branch	Assigned Date	Planned Date
Offer Early ADR	ACES	09/10/2007	09/28/2007
Comments: if ADR fails then the investigation would be a high priority per MD 8.8 exhibit 3 (B)(a)(ii)(i)(b) - allegation by a mid level manager or above - consistent with a SL I or II violation			

Action	Assigned Branch	Assigned Date	Planned Date
Contact Allegor	ACES	09/10/2007	09/14/2007
Comments: the 9/17/07 arb assigned ACES to update the adr checklist and re arb			

Additional Comments

*Move
To
concern
AS
example*

Concern <u>2</u>	Discipline Chilling Effect	Reactor Department Code Operations
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Responsible Branch: RPBB	OI Case Number:
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Concern Description:
In June 2006, Callaway requested that the CI's SRO license be terminated. This was done to create a chilled work environment, to encourage the CI to cease employment at Callaway or at least in operations. The CI believes he is being discriminated against because of his past willingness to pursue safety concerns via the Corrective Action Process even when his supervisors believe such pursuits might reflect negatively on the operations Department.

Regulatory Requirement:
SCWE

Safety Significance - Normal

Basis:
NRC's prior inspections has not identified that others in Operations are reluctant to raise questions.

Check if question is applicable to the concern.

- Is it a declaration, statement, or assertion of impropriety or inadequacy?
- Is the impropriety or inadequacy associated with NRC regulated activities?
- Is the validity of the issue unknown?

If all of the above statements are checked, the issue is an allegation.

Action	Assigned Branch	Assigned Date	Planned Date
Other (Describe)	EB2	09/10/2007	09/24/2007
Comments: the 9/17/07 assigned the EB2 to review this concern and to provide recommendation for next action.			

The OAC recommends that this item be considered a subset of concern 1 since the CI is only stating that the action taken was an attempted to stop the CI from writing CR. this item would be explored during ~~he ARB~~ or the investigation

ADR

Additional Comments

~~SENSITIVE ALLEGATION MATERIAL THAT MAY IDENTIFY A CONCERNED INDIVIDUAL - NOT TO BE PLACED IN ADAMS OR PROVIDED TO ANYONE WITHOUT A NEED TO KNOW~~

From: Jim Heller
To: Allegation File RIV-2007-A-0093
Subject: Phone call with the Concerned Individual (CI)¹ for Allegation File RIV-2007-A-0093

The CI, Judith Walker, and I discussed the CI's claim of discrimination during an August 31, 2007, phone call that started at approximately 0930 and lasted for approximately 100 minutes. The CI stated in January 06 s/he was passed over for a promotion to an operation supervisor. S/he was told by Bob Bartem, Assistant Operation Manager, that s/he needed more time in the control room and therefore Bob was willing to place the CI in the control room as an interim operation supervisor so that the operation management team could observe the CI. The CI stated that in the interim position that s/he would not be paid the same salary of an operation supervisor; I informed the CI that we do not regulate the salary for a job position

The CI stated that 5 individuals were promoted to (b)(7)(C). The CI stated this in his opinion with the exception of (b)(7)(C) the CI had more experience. *ASK WHY*

Who made selection?
When the CI interviewed for the operations supervisor position, the CI asked Bob for his support in recommending the CI for a promotion as work week manager. The CI stated that Bob indicated that he was not willing to support an individual who was seeking employment within the licensee's organization but outside of the operation department. The CI stated that s/he was never interviewed for the work week manger position because the CI did not meet the posted requirement to have an SRO license for more then two years

The CI provided the following background information that would be helpful to understand the CI claim of discrimination. The CI stated that at the time s/he applied for the operation supervisor position the CI was a shift technical advisor (STA) with an active SRO license. S/he obtained the license in 2004 and maintained her/his qualification as an SRO until June 2006. In June 2005 s/he was assigned to a simulator crew as the turbine operator and displayed several weaknesses at a position that s/he had not previously been assigned. The weaknesses prompted the CI to be removed form the crew and placed on a remediation plan that the CI prepared. The CI stated that s/he successfully completed the plan in August 2005. The CI stated that an attribute of the plan was to meet with the company psychiatrist, an activity that most company employee in potentially high stress job perform. The CI stated that the psychiatrist informed the CI's strength is her/his ability to quickly grasp concepts. However this is also a weakness in that the CI is not tolerant when communicating the issue too individual

¹ The CI is
Address
Telephone Number

~~SENSITIVE ALLEGATION MATERIAL THAT MAY IDENTIFY A CONCERNED INDIVIDUAL - NOT TO BE PLACED IN ADAMS OR PROVIDED TO ANYONE WITHOUT A NEED TO KNOW~~

Non Responsive Record

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who do not grasp the problem as quickly as the CI. The psychiatrist informed the CI that this weakness could result in trouble within the licensee organization since the licensee's staff may not be as quick to grasp an issue that will result in change or show a weakness.

The CI took this advice as not to be so critical when documenting issue in the corrective action program. The CI acknowledged that when s/he implemented this advise the staff was more responsible to her/his issues and was willing to look deeper into an issue. However, in November 05 the CI prepared a condition report pertaining to a test switch in the feedwater circuits. The condition report was closed to the action already implemented by the CI. The CI wrote a very critical followup condition report and received a comment from Bob Bartem that the old xxxx is back.

The CI stated that s/he never went onshift as an interim operation supervisor. Basically in February 06 the CI wrote a corrective action document that was critical of the closure of a condition report to an action request that was never done or scheduled to be completed. In this case the issue was the replacement of copper airlines with braided airlines to fix a vibration induced wear problem. The CI stated that s/he attended the condition report planning meeting and was told by the site VP (name not provided) during the meeting that he did not appreciate the condition report. After the planning meeting the CI attempted to meet with the VP who refused to meet with him. After the CI returned to his desk he was informed by Bob Barten that the plant manager (Ludwig Thibault) had instructed him (Bob Barten) to assign the CI more work. The CI indicated that this was done to ensure that the CI did not have time to more condition reports.

Who?
w/ my work

2) who removed license?

The CI stated that her/his SRO license was removed in June 2006. At the time s/he was informed that her/his performance did not justify a SRO license and then was informed that the May 2005 simulator issue and the need for the remediation plan was the reason her/his SRO license was cancelled. The CI stated that if this was true then why was s/he offered the interim operation supervisor position. The CI stated that the only reason that her/his SRO license was removed was because of the condition reports that s/he has issued and his presence at the screening meeting.

Others also lost SRO license!!

NOT issue?

The CI stated that the loss of an SRO bonus was a loss of a \$13,000 over 2-years. The CI stated that when other individuals were informed that they were no longer required to keep their SRO licencee (hobby license) there was a buy out plan offered. The buy out plan offered the CI was not comparable with the individual who maintained a hobby license. When the SRO license was removed the CI went to the ECP manager and was eventually able to obtain an acceptable buy out plan.

3) who wrote 07 Review

The CI stated that his/her 2007 performance review contained negative comments such as the CI was confrontational at corrective action screening meetings and needs improvement. The message that the CI believes was provided is the CI writing corrective action documents has results in a decline in the CI's performance.

is this SCWI or adverse action?

did he get a poor evaluation or just comments?

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who H) decided

NOT allowed to intervene for performance

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The CI stated that most of her/his information has been provided to an attorney who the CI is trying to retain to handle this case. The CI stated the attorney is Billie Garde. I discussed the options that are available to handle claims of discrimination and addressed the CI statement that s/he want the NRC to investigate. I told the CI that, if the case meets our threshold for an investigation then we first offer the CI the option of ADR to address the claim of investigation and then if ADR does not work then we proceed with an investigation. I suggested that we stay within the processes and not jump to an OI investigation until after the CI has completed his negotiations with the attorney. The CI agreed with this approach

End

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Non Responsive Record

From: Harry Freeman
To: R4ALLEGATION
Date: 10/18/2007 4:13:30 PM
Subject: RIV-2007-A-0093 Phone Record 101707

On October 17, 2007, I left a voice message with Ms. Debra Katz, the attorney representing the alleged. Later that afternoon, Ms. Lisa Banks, the law partner of Ms. Katz, returned my call and left a message that the alleged was not interested in participating in Early ADR and that we could go ahead and initiate an investigation into the discrimination issue.

Harry Freeman
Senior Allegation Coordinator
817-860-8239 (phone)
haf@nrc.gov

CC: Darrell White

From: Harry Freeman
To: R4ALLEGATION
Date: 11/06/2007 7:37:12 AM
Subject: RIV-2007-A-0093 - RESENT TO CORRECT ALLEGATION NUMBER

Darrell White and I spoke to the alleged's attorney who agreed that OI would delay initiating any actions until after their outside mediation efforts are completed next Friday (11/09/07).

Harry Freeman
Senior Allegation Coordinator
817-860-8239 (phone)
haf@nrc.gov

CC: Darrell White