

November 4, 1997

SECY-97-260

For: The Commissioners

From: L. Joseph Callan /s/
Executive Director for Operations

Subject: RESOLUTION OF PUBLIC COMMENTS IN RESPONSE TO REQUEST
FOR PUBLIC COMMENTS IN THE FEDERAL REGISTER NOTICE,
"SAFETY CONSCIOUS WORK ENVIRONMENT"

Purpose:

To provide the Commission with the staff's response to the public comments on the Federal Register notice "Safety Conscious Work Environment," (Notice) and to publish a Federal Register notice withdrawing the proposal outlined in that Notice.

Background:

Following approval of SECY-96-255 (December 17, 1996), the NRC published in the Federal Register, (62 FR 8785, February 26, 1997), a request for public comment on the implementation of a standardized approach to ensuring that licensees establish and maintain a safety-conscious work environment¹ with clearly defined attributes; the establishment of certain potential indicators that may be monitored and, when considered collectively, may provide evidence of an emerging adverse trend; and the establishment of certain remedial actions that the Commission may require when it determines that a particular licensee has failed to establish and maintain a safety-conscious work environment. Draft language was provided that could be used in a rulemaking, new policy statement, or amendment to the NRC's Enforcement Policy. The Notice sought public comments on various strategies for establishing and

¹ The Commission's May 1996 Policy Statement on the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," (61 FR 24336, May 14, 1996) defined a "safety-conscious work environment" as a work environment in which employees are encouraged to raise safety concerns and where concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to the originator of the concerns and to other employees.

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maintaining a safety-conscious work environment including where warranted the use of a holding period.² The Notice also sought comments on an alternate strategy in which all licensees would be required to institute a holding period policy and periodic site surveys, rather than only those licensees who performed poorly in this area. The Notice is attached as Attachment 1.

In its discussion of the feasibility of using a standardized approach to this issue, the Notice described the attributes of a safety-conscious work environment; criteria to be considered as possible indicators that a licensee's safety-conscious work environment may be deteriorating; and standard options for dealing with situations where these criteria are not met.

The attributes of a safety-conscious work environment, as described in the Notice, included:

1. a management attitude that promotes employee involvement and confidence in raising and resolving concerns;
2. a clearly communicated management policy that safety has the utmost importance, overriding, if necessary, the demands of production and project schedules;
3. a strong, independent quality assurance organization and program;
4. a training program that encourages a positive attitude toward safety; and
5. a safety ethic at all levels that is characterized by an inherently questioning attitude, attention to detail, prevention of complacency, a commitment to excellence, and personal accountability in safety matters.

Indicators that may be considered as possible evidence of an emerging adverse trend in a safety-conscious work environment, as described in the Notice, included:

1. adverse findings by the Department of Labor (DOL) or the NRC's Office of Investigations (OI) that discrimination has occurred against employees for engaging in protected activities;
2. a DOL or OI finding that a hostile work environment exists;
3. a significant increase in the rate (or a sustained high number) of complaints to the NRC that licensee employees are being subjected to harassment and intimidation;

² In general, a holding period as described in the Notice would provide that, when an employee asserts that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. The holding period would continue for an additional two weeks to permit the employee to file a complaint under Section 211 of the Energy Reorganization Act of 1974, as amended, (ERA) with the Department of Labor (DOL), and, should the employee file, the holding period would continue until the DOL has made a finding based upon its investigation.

4. a significant increase (or sustained high number) of technical allegations, particularly if accompanied by low usage or a decrease in use of the licensee's Employee Concerns Program (ECP) or other licensee channels for reporting concerns; and
5. other indications that the licensee's ECP or other programs for identifying and resolving problems are ineffective.³

As described in the Notice, standard options to address a deficient safety-conscious work environment might include (but are not limited to):

1. requiring the licensee to establish a formal ECP if one does not already exist;
2. ordering the licensee to conduct an independent survey of the environment for raising concerns, with periodic follow-up surveys to monitor the progress;
3. ordering the licensee to establish an independent group for oversight of maintaining a safety-conscious work environment; and
4. establishing a holding period.

The period for public comment expired on May 27, 1997. A total of 31 comments was received. Attachment 2 is a list of commenters.

Discussion:

The May 1996 Policy Statement, stated that a safety-conscious work environment is critical to a licensee's ability to safely carry out licensed activities. Generally stated, the Nuclear Energy Institute (NEI),⁴ as well as the Union of Concerned Scientists (UCS), while supporting the importance of establishing and maintaining a safety-conscious work environment at nuclear facilities, opposed proceeding with establishing a standardized approach for licensees who had failed to establish and maintain a safety-conscious work environment. Almost all commenters agreed that existing requirements and regulatory options available to the Commission are sufficient to meet expectations in this area and that new requirements and policies were not needed.

Briefly summarized, the NEI comments noted that: (1) the NRC's current processes effectively focus licensee attention on the need to maintain a safety-conscious work environment; (2) the standardized approach proposal is an "unjustified radical departure from existing policy and may result in adverse safety consequences";⁵ (3) the proposed indicators would result in a

³ Other indications might include delays in or absence of feedback for concerns raised to the ECP; breaches of confidentiality for concerns raised to the ECP, the lack of effective evaluation, follow-up, or corrective action for concerns raised to the ECP or findings made by the licensee's QA organization; overall licensee ineffectiveness in identifying safety issues; the occurrence of repetitive or willful violations; a licensee emphasis on cost-cutting measures at the expense of safety considerations; and/or poor communication mechanism within or among licensee groups.

⁴ The majority of the commenters supported the Nuclear Energy Institute's (NEI) comments.

⁵ NEI maintains that the NRC's implementation of a regulation as described in the Notice may have adverse safety consequences by actually detracting from licensee efforts to develop

subjective evaluation by the NRC; and (4) the standard options, especially mandating a holding period, constitute inappropriate regulatory action and are likely to be found legally insupportable. Among other things, NEI maintained that mandating such a holding period is an action outside the jurisdiction of the NRC and is an inappropriate regulatory action based upon its direct intrusion on management's ability to address its own workforce issues.⁶ NEI urged the Commission to let stand the May 1996 Policy Statement as an affirmation of its focus on a safety-conscious work environment without implementing the strategies outlined in the Notice. NEI's comment is attached as Attachment 3.

The Department of Nuclear Safety, State of Illinois, also did not support a formal rule. In its view less formal guidance or a policy directive seemed more appropriate.

UCS, in comments dated April 25, 1997, also opposed the NRC's proposed standardized approach for a safety-conscious work environment. UCS stated that it believes that the May 1996 Policy Statement, as well as rigorous and consistent enforcement of existing regulations is sufficient to achieve the NRC's objectives.⁷ USC's comment is attached as Attachment 4.⁸

One commenter (International Brotherhood of Electrical Workers, Local 97) supported the NRC's proposal as it had been set forth in the Notice, stating that it did not believe that the current regulations were adequate. In addition, one commenter (Cheney & Associates) indicated that, while the mechanisms prescribed might work to some extent, they were not fundamentally different from past strategies which failed because neither the government nor the responsible corporation respected the strategy. Cheney proposed its own solution to the

a safety-conscious work environment. According to NEI, an inaccurate assessment of a licensee's safety by the NRC, based on a subjective evaluation of such a culture, may result in morale problems and a perception by workers that management does not fairly address worker concerns. This could severely undermine actions taken by licensees to ensure a healthy workplace environment.

⁶ In this connection, NEI notes the potential for abuse of the holding period. NEI states that this approach may give employees an incentive to file baseless complaints, discourage employees from settling disputes early in the DOL process, and promote litigation.

⁷ UCS had no comment on the NRC's proposed "holding period" strategy.

⁸ UCS recommended that the NRC issue an Information Notice when it detects conditions adverse to a safety-conscious work environment so that licensees could factor the Information Notice into their training programs and administrative procedures as necessary to address the issues at their specific facilities. In that regard, UCS suggest that NRC issues Information Notices to highlight enforcement actions against individuals such as the order NRC issued barring a licensee's senior manager from licensed activities for five years because of involvement in intimidating an employee who raised a safety concern. The NRC issued a press release to the media on the order, but the NRC did not issue an Information Notice. UCS comments note that licensees train their staffs on Information Notices, not on press releases. The staff intends to better utilize Information Notices to highlight enforcement actions it has taken, including actions against individuals.

problem, which was to reinforce the strategy by such methods as certifying the competence of all workers in nuclear environments to identify safety problems in areas under their responsibilities; imposing sanctions for failure to identify a safety problem; and imposing criminal sanctions for failure to report an identified problem.

After considering all the submitted comments and further evaluating the proposal to standardize the NRC approach to a safety-conscious work environment, the NRC staff agrees with the commenters that the standardized approach set forth in the Notice is not warranted. There needs to be flexibility in considering appropriate regulatory action to address each situation on a case-by-case basis. Such regulatory actions include options such as Orders, Civil Penalties, Demands for Information, additional inspections and investigations, Chilling Effect Letters, and Management Meetings.

The staff also agrees with the commenters that the Commission has sufficient requirements and policies in place. The May 1996 Policy Statement clearly provides the Commission's expectations on achieving safety-conscious work environments. This Policy Statement and its basis in NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," provides insights and guidance on steps that can be taken by licensees. The Commission's regulations prohibiting discrimination, e.g., 10 CFR 50.7, provide the basis for enforcement action where discrimination occurs. The Commission has the necessary authority to issue orders to licensees and orders against individuals involved in discrimination to address regulatory issues associated with safety-conscious work environments. Therefore, the staff concludes that a rulemaking, initiation of an additional policy statement, or amendment of the NRC's Enforcement Policy to address the safety-conscious work environment is unwarranted at this time.⁹

Nonetheless, the staff still believes that the agency should consider the emergence of adverse trends in licensees' abilities to maintain a safety-conscious work environment. Appropriate early intervention may result in a significant contribution to safety as a reluctance on the part of nuclear employees to raise safety concerns is detrimental to nuclear safety. The staff does not believe that the Commission should adopt a strategy in which the NRC acts only upon receiving an allegation of an actual case of discrimination or where the safety-conscious work environment has failed.

Giving consideration to potential indicators of a deteriorating work environment may alert the NRC to emerging problems in a licensee's safety-conscious work environment that warrants

⁹ The staff appreciates that a safety-conscious work environment is not an enforceable requirement. What is enforceable is the results of a failure of such an environment as evidenced by failing to identify conditions adverse to quality in violation of 10 CFR Part 50, Appendix B, Criterion XVI, discrimination in violation of 10 CFR 50.7, or other violations of requirements related to raising and resolving concerns.

staff involvement to encourage licensee management to address the environment for raising concerns. The effort to identify emerging trends at a licensed facility, while difficult, would be less than the regulatory effort required in responding to a licensed facility where the safety-conscious work environment has already deteriorated.¹⁰

Therefore, the staff concludes that consideration of potential indicators to determine whether a safety-conscious work environment is deteriorating at a licensed facility is warranted in order to better focus NRC resources, and more importantly licensee's attention, where improvement in the safety-conscious work environment is necessary to reduce the potential chilling effect on employees at the facility. However, the staff is mindful that there are no singular indicators to judge that a safety-conscious work environment is deteriorating at a licensed facility.¹¹ Evaluating the safety consciousness of a licensee's work environment will require careful judgments by the staff.¹² In that regard, the Office of Research is examining the feasibility of using a survey instrument for gauging whether a safety-conscious work environment is deteriorating at licensed facilities.

¹⁰ As stated in the Notice, when the perception of retaliation for raising safety concerns is widespread, a licensee may find it exceedingly difficult to obtain cooperation from their employees in identifying and eliminating problems adversely affecting the safety-conscious work environment; to reverse this perception of this retaliation; and to regain the trust and confidence of their workforce.

¹¹ Many of the commenters appear to have interpreted the contemplated use of "indicators" to mean fixed indicators demonstrating a deteriorating safety-conscious work environment. This was not the staff's intent. It was recognized that any one piece of data can be ambiguously interpreted, and focusing on individual data to the exclusion of other information can be misleading. The Notice explained that these indicators in isolation may not be indicative of an actual overall deterioration of a safety-conscious work environment, particularly if not accompanied by overall problems in operational or safety performance. While each of the indicators described in the Notice may individually be ambiguous, an evaluation of the totality of indications may indicate a deteriorating safety-conscious work environment.

¹² In the Staff Requirements Memorandum (SRM), dated September 10, 1997, regarding SECY-97-147, "Re-evaluation of SECY-96-199 Issues; Plan to Better Focus Resources on High Priority Discrimination Cases," the Commission indicated the factors that the staff should consider in requesting an NRC investigation when DOL is already pursuing its own investigation. These factors include the licensee having a recent history of adverse discrimination findings, cases which are particularly egregious, and most important for this discussion, the existence of related licensee performance issues indicating a deteriorating safety-conscious work environment (e.g., the findings of other ongoing H&I investigations, or relevant licensee problems in identifying and resolving safety concerns). The staff intends to consider similar factors in evaluating whether a licensee's safety-conscious work environment is deteriorating and whether to implement regulatory actions to ameliorate the situation. In considering licensee performance problems, the indicators listed in the Notice, as well as inspection and investigation findings, may be relevant. The use of observations by NRC Resident Inspectors was also reflected in NEI comments. See NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," at II.B-3.

Finally as to the holding period, this concept was first introduced by the Allegation Review Team as a recommendation of NUREG-1499. In the May 1996 Policy Statement, the Commission stated that management may find it desirable to use a holding period pending reconsideration or resolution of discrimination issues or pending the outcome of a DOL investigation. Such a holding period may calm feelings on-site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. The Statement stressed that, for both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary. In light of the potential legal issues, the potential for abuse by employees, as well as the comments received on the establishment of a formal holding period as an option to address a deteriorated safety-conscious work environment, the staff concludes that use of a holding period should not be directed by the Commission.¹³ Nevertheless, a holding period is clearly an option that licensees should consider in addressing chilling effects on sites pending investigations. The staff, therefore, continues to support the voluntary use of holding period as described in the May 1996 Policy Statement.

Consistent with the above, the staff intends to make appropriate revisions to Management Directive 8.8 and the Enforcement Manual emphasizing the use of judgment in monitoring indicators and the importance of tailoring actions to the circumstances of each particular situation. The use of potential indicators of a deteriorating safety-conscious work environment is being considered in the development of improvements to the Plant Performance Evaluation and Senior Management Meeting assessment process. In addition, a draft Federal Register notice (Attachment 5) has been prepared to withdraw the proposals outlined in the February 1997 Notice.

Coordination:

The Office of the General Counsel has no legal objection to this paper. The Office of the Chief Financial Officer has reviewed this paper for resource impacts and has no objections. The Office of the Chief Information Officer has also reviewed this paper and has no comments.

¹³ The staff is still of the view that the expeditious provision of a remedy to individuals who file discrimination cases against their employers is an important step in reducing the potential chilling effect caused by the perception of discrimination at a licensed facility. A revision of Section 211 of the ERA to provide that reinstatement decisions be immediately effective following a DOL finding of discrimination based on an administrative investigation is an appropriate method for achieving this goal. Such legislation has been drafted by the staff and submitted for DOL's review and approval before submission to Congress. The staff continues to work with DOL on this legislative effort.

Recommendation:

The staff recommends that the Commission approve the publication of the draft Federal Register Notice withdrawing the proposal outlined in SECY-96-255 (December 17, 1996) which is attached as Attachment 5.

L. Joseph Callan
Executive Director
for Operations

Enclosures:

1. Federal Register Notice (2/26/97)
2. List of Commenters
3. NEI's comment
4. USC's comment
5. Draft Federal Register Notice

The Commissioners

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List of Commenters

Thirty One Comments were submitted to the NRC addressing this Federal Register Notice. The following is the list of Commenters by name and type, as well as the date of the submittal:

1. Cheney & Associates (Individual) - March 12, 1997
2. Joseph Carson (Individual) - March 22, 1997
3. Union Carbide (Materials) - April 15, 1997
4. Omaha Public Power District (Reactor) - April 17, 1997
5. James Overbeck (Individual) - April 24, 1997
6. UCS (Public Interest Group) - April 25, 1997
7. Department of Nuclear Safety (State) - May 5, 1997
State of Illinois
8. BGE (Reactor) - May 8, 1997
9. TVA (Reactor) - May 19, 1997
10. Entergy (Reactor) - May 21, 1997
11. HL&P (Reactor) - May 22, 1997
12. Virginia Power (Reactor) - May 22, 1997
13. WPPSS (Reactor) - May 22, 1997
14. FPL (Reactor) - May 23, 1997
15. Performance Technology (Contractor/Individual) - May 24, 1997
16. NEI (Utility Trade Association) - May 27, 1997
17. Winston & Strawn (Utility Law Firm) - May 27, 1997
18. SCE (Reactor) - May 28, 1997
19. Niagara Mohawk (Reactor) - May 27, 1997
20. SCE&G (Reactor) - May 27, 1997
21. Union Electric (Reactor) - May 27, 1997
22. PECO Nuclear (Reactor) - May 27, 1997

23. Siemens (Vendor) - May 27, 1997
24. TU Electric (Reactor) - May 27, 1997
25. Southern Company (Reactor) - May 27, 1997
26. NEI (Utility Trade Association) - May 28, 1997
27. BEW Local 97 (Union) - Undated
28. APS (Reactor) - May 30, 1997
29. Florida Power Corp. (Reactor) - June 9, 1997
30. Westinghouse Energy Systems (Vendor) - June 17, 1997
31. Vermont Yankee (Reactor) - June 26, 1997

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

Safety-Conscious Work Environment; Withdrawal of Proposal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) has considered several strategies in addressing the need for its licensees to establish and maintain a safety-conscious work environment. The NRC described these strategies and requested public comment in a document published on February 26, 1997 (62 FR 8785). The Commission evaluated the public comments submitted in response to its request and is withdrawing the proposal outlined in the February 26, 1997, document.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415-2741.

SUPPLEMENTARY INFORMATION:

The NRC published in the Federal Register, (62 FR 8785; February 26, 1997), a request for public comment on the implementation of a standardized approach to ensuring that licensees establish and maintain a safety-conscious work environment¹⁴ with clearly defined

¹⁴ The Commission's May 1996 Policy Statement on the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" (61 FR 24336;

attributes; the establishment of certain potential indicators that may be monitored and, when considered collectively, may provide evidence of an emerging adverse trend; and the establishment of certain remedial actions that the Commission may require when it determines that a particular licensee has failed to establish and maintain a safety-conscious work environment. In its discussion of the feasibility of using a standardized approach to this issue, the NRC described the attributes of a safety-conscious work environment; criteria to be considered as possible indicators that a licensee's safety-conscious work environment may be deteriorating; and standard options for dealing with situations where these criteria are not met. The NRC included draft language that could be used in a future rulemaking, new policy statement, or amendment to the NRC's Enforcement Policy.

The Notice requested public comments on various strategies for establishing and maintaining a safety-conscious work environment including where warranted the use of a holding period.¹⁵ The NRC also sought comments on an alternate strategy in which all licensees would be required to institute a holding period policy and periodic site surveys, rather than only those licensees who performed poorly in this area. The NRC received a total of 31 comments in response to its request.

May 14, 1996), defined a "safety-conscious work environment" as a work environment in which employees are encouraged to raise safety concerns and where concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to the originator of the concerns and to other employees.

¹⁵ In general, a holding period as described in the February 26, 1997, document would provide that, when an employee asserts that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. The holding period would continue for an additional two weeks to permit the employee to file a complaint under Section 211 of the Energy Reorganization Act of 1974, as amended (ERA), with the Department of Labor (DOL), and, should the employee file, the holding period would continue until the DOL has made a finding based upon its investigation.

Generally stated, the Nuclear Energy Institute (NEI),¹⁶ as well as the Union of Concerned Scientists (UCS), while supporting the importance of establishing and maintaining a safety-conscious work environment at nuclear facilities, opposed proceeding with establishing a standardized approach for licensees who had failed to establish and maintain a safety-conscious work environment. Almost all commenters agreed that existing requirements and regulatory options available to the Commission are sufficient to meet expectations in this area and that new requirements and policies were not needed.

Briefly summarized, the NEI comments noted that: (1) the NRC's current processes effectively focus licensee attention on the need to maintain a safety-conscious work environment; (2) the standardized approach proposal is an "unjustified radical departure from existing policy and may result in adverse safety consequences"; (3) the proposed indicators would result in a subjective evaluation by the NRC; and (4) the standard options, especially mandating a holding period, constitute inappropriate regulatory action and are likely to be found legally insupportable. Among other things, NEI maintained that mandating such a holding period is an action outside the jurisdiction of the NRC and is an inappropriate regulatory action based upon its direct intrusion on management's ability to address its own workforce issues. NEI urged the Commission to let stand the May 1996 Policy Statement as an affirmation of its focus on a safety-conscious work environment without implementing the strategies outlined in the February 26 request for comment.

The Department of Nuclear Safety, State of Illinois, did not support a formal rule. In its

¹⁶ The majority of the commenters supported the Nuclear Energy Institute's (NEI) comments.

view, less formal guidance or a policy directive seemed more appropriate.

UCS, in comments dated April 25, 1997, also opposed the NRC's proposed standardized approach for a safety-conscious work environment. UCS stated that it believes that the May 1996 Policy Statement, as well as rigorous and consistent enforcement of existing regulations, is sufficient to achieve the NRC's objectives.

One commenter (International Brotherhood of Electrical Workers, Local 97) supported the NRC's proposal was presented in the February 26, 1997, document, stating that it did not believe that the current regulations were adequate. In addition, one commenter (Cheney & Associates) indicated that, while the mechanisms prescribed might work to some extent, they were not fundamentally different from past strategies which failed because neither the government nor the responsible corporation respected the strategy. Cheney proposed its own solution to the problem, which was to reinforce the strategy by such methods as certifying the competence of all workers in nuclear environments to identify safety problems in areas under their responsibilities; imposing sanctions for failure to identify a safety problem; and imposing criminal sanctions for failure to report an identified problem.

After considering all the submitted comments and further evaluating the proposal to standardize the NRC approach to a safety-conscious work environment, the Commission agrees with the commenters that the standardized approach set forth in the request for comment is not warranted. There needs to be flexibility in considering appropriate regulatory action to address each situation on a case by case basis. These appropriate actions include options such as Orders, Civil Penalties, Demands for Information, additional inspections and

investigations, Chilling Effect Letters, and Management Meetings.

The Commission also agrees that sufficient requirements and policies are in place. The May 1996 Policy Statement clearly provides the Commission's expectations on achieving safety-conscious work environments. This Policy Statement and its basis in NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," provides insights and guidance on steps that can be taken by licensees. The Commission's regulations prohibiting discrimination, e.g., 10 CFR 50.7, provide the basis for enforcement action where discrimination occurs. When a licensee fails to achieve a safety-conscious environment, there may be violations of other NRC requirements such as 10 CFR Part 50, Appendix B, Criterion XVI. The Commission also has the necessary authority to issue orders to licensees and orders against individuals involved in discrimination to address regulatory issues associated with safety-conscious work environments. Therefore, a rulemaking, initiation of an additional policy statement, or an amendment of the NRC's Enforcement Policy to address the safety-conscious work environment is unwarranted at this time.

However, the Commission concludes that NRC should consider the emergence of adverse trends in licensees' abilities to maintain a safety-conscious work environment. Appropriate early intervention may result in a significant contribution to safety as a reluctance on the part of nuclear employees to raise safety concerns is detrimental to nuclear safety. Giving consideration to potential indicators of a deteriorating work environment may alert the NRC of emerging problems in a licensee's safety-conscious work environment that warrants NRC involvement to encourage licensee management to address the environment for raising concerns. The Commission recognizes that there are no singular indicators to judge that a

safety-conscious work environment is deteriorating at a licensed facility.¹⁷ Evaluating the safety consciousness of a licensee's work environment will require careful judgments. The effort to identify emerging trends at a licensed facility, while difficult, would be less than the regulatory effort required in responding to a licensed facility where the safety-conscious work environment has already deteriorated.¹⁸

As to the holding period concept, in light of the potential legal issues, the potential for abuse by employees, as well as the comments received on the establishment of a formal holding period as an option to address a deteriorated safety-conscious work environment, the Commission believes that the holding period option should not be required by the NRC. Nevertheless, a holding period is clearly an option that licensees should consider to reduce chilling effects arising out of issues of discrimination pending investigations. Thus, the Commission continues to support the voluntary use of a holding period as described in the May 1996 Policy Statement.

Consistent with this discussion, the February 26, 1997, document is being withdrawn.

¹⁷ Many of the commenters appear to have interpreted the contemplated use of "indicators" to mean fixed indicators demonstrating a deteriorating safety-conscious work environment. This was not NRC's intent. It was recognized that any one piece of data can be ambiguously interpreted, and focusing on individual data to the exclusion of other information can be misleading. The request for comment explained that these indicators in isolation may not be indicative of an actual overall deterioration of a safety-conscious work environment, particularly if not accompanied by overall problems in operational or safety performance. While each of the indicators described in the request for comment may individually be ambiguous, an evaluation of the totality of indications may indicate a deteriorating safety-conscious work environment.

¹⁸ As stated in the request for comment, when the perception of retaliation for raising safety concerns is widespread, a licensee may find it exceedingly difficult to obtain cooperation from their employees in identifying and eliminating problems adversely affecting the safety-conscious work environment; to reverse this perception of this retaliation; and to regain the trust and confidence of their workforce.

Dated at Rockville, Maryland, this day of 1997.

FOR THE NUCLEAR REGULATORY COMMISSION

John C. Hoyle,
Secretary of the Commission.