

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 30

[Docket No. PRM-30-62]

Employee Protection Training; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated August 13, 1999, that was filed with the Commission by the Union of Concerned Scientists. The petition was docketed by the NRC on August 18, 1999, and has been assigned Docket No. PRM-30-62. The petitioner requests that the NRC amend its regulations concerning deliberate misconduct to require licensees to provide specific training to management, i.e., first line supervisors, managers, directors, and officers, on their obligations under the employee protection regulations. The petitioner believes that the amendment would prevent nuclear energy management from using "ignorance of the law" as an excuse for a violation and allow the NRC to take enforcement actions against individuals who violate the employee protection regulations.

DATE: Submit comments by (75 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

You may also provide comments via the NRC's interactive rulemaking website at <http://ruleforum.inl.gov>. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415-5905 (e-mail: cag@nrc.gov).

The Petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-7162 or Toll Free: 1-800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Petitioner

The Union of Concerned Scientists (UCS) has had a nuclear safety program for over two decades and continue to work with nuclear workers - including employees of the Nuclear

Regulatory Commission - who raise safety concerns. The UCS notes examples of anonymous concerns received by its organization that have led to significant improvements in safety levels, e.g., concerns that UCS forwarded to the State of Maine in December 1996 that led to the identification of faults in the safety analyses for the Maine Yankee plant. Other concerns received by UCS and presented to the NRC in January 1998 led to the discovery of serious defects in the ice condenser containment at the Donald C. Cook nuclear plant.

Grounds for Interest

The petitioner states that on May 14, 1996 (61 FR 24336) the NRC issued a policy statement that set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious environment in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors.

The petitioner also notes that Title 10 of the Code of Federal Regulations contains regulations to protect such conscientious workers from discrimination. The petitioner asserts that these regulations are frequently violated, yet the individuals determined by the NRC staff as being responsible for these illegal activities are seldom held accountable.

Fitness-for-Duty Rule

The petitioner states that 10 CFR Part 26 that contains the "Fitness-For-Duty" regulations requires nuclear workers to be free from impairment by drugs and alcohol. The

petitioner states that of the 111 individual enforcement actions listed in Attachment 1 to the petition, 17 involved violation of the fitness-for-duty rule. The petitioner stated that the NRC did not take actions against the licensees for these cases, but limited its sanctions to those individuals responsible for the violations.

To the contrary, the petitioner states that NRC treats violations of employee protection regulations differently. As an example, in Attachment 2 to the petition, the petitioner states that when the NRC establishes that a violation of an employee protection regulation has occurred such as the May 20, 1999, enforcement action that the NRC imposed against FirstEnergy, the NRC seldom takes enforcement action against the individuals responsible for the violations, but limits its enforcement actions to the licensees.

The petitioner believes that nuclear safety demands that workers not be impaired by drug and alcohol and that when any worker violates the fitness-for-duty rule, that individual should be held accountable. The petitioner believes it is equally important that nuclear workers feel free to raise safety issues without fear of discrimination and believes that when a nuclear worker violates the employee protection regulations, that individual should be held accountable.

The petitioner offers that the NRC holds individuals who violate the fitness-for-duty rule accountable. However, the agency is not holding individuals who violate the employee protection regulations accountable. The petitioner is attempting to remedy this inequity by this petition for rulemaking. The petitioner believes that by requiring licensees to train management on their obligations under the employee protection regulations, the NRC staff would no longer be able to claim that individuals were unaware that their actions were illegal.

Supporting Information

The petitioner states that “10 CFR Parts 30, 32, 40, 50, 52, 60, 61, 70, 71, 72, 110, and 150 each contain a regulation against deliberate misconduct by employees and/or contractors of NRC licensees.” The petitioner specifically set out in the petition the text from 10 CFR 50.5 to reflect the scope and content of the deliberate misconduct regulations.

The petitioner included three attachments to the petition that summarize the enforcement actions that NRC imposed against individuals, nuclear power plant owners, and non-nuclear power plant licensees between March 1996 and August 5, 1999. The enforcement data contained in the attachments were obtained from the website of the NRC Office of Enforcement, <http://nrc.gov.OE/>.

Sanctions Against Individuals

Attachment 1 to the petition indicates that NRC took enforcement action against individuals 111 times between March 1996 and August 5, 1999. The petitioner notes that only four cases involved enforcement actions taken by the NRC because the individual discriminated against nuclear workers raising safety concerns. The petitioner states that Federal regulations protect nuclear workers from being discriminated against for raising safety concerns and cites as an example the text of 10 CFR 50.7, Employee Protection, that applies to workers at nuclear power plants. The petitioner further states that 10 CFR contains equivalent regulations that apply to workers at non-power nuclear facilities.

The petitioner specifies that the four cases listed in Attachment 1 to the petition where NRC imposed enforcement action against individuals for their discriminatory actions against nuclear workers clearly demonstrate that the NRC can take such actions. However, according to the petitioner, the evidence is just as clear that the NRC seldom imposes enforcement

actions against individuals even when it concludes that individuals were responsible for illegal discriminatory actions.

Sanctions Against Nuclear and Non-Nuclear Licensees

Attachment 2 to the petition lists eighteen enforcement actions imposed against nuclear power plant owners for discrimination against nuclear power plant workers. The petitioner states that in 12 of the 18 enforcement actions against the owners, the NRC also imposed a civil penalty. The penalties ranged between \$55,000 and \$200,000 with the average being \$104,417.

Attachment 3 to the petition lists five enforcement actions imposed against non-nuclear power plant licensees for discrimination against workers. The petitioner states that in four of the five enforcement actions against non-nuclear plant licensees, the NRC also imposed a civil penalty. The penalties ranged between \$4,400 and \$10,000 with the average being \$7,800.

The petitioner states that from March 1996 to August 5, 1999, the NRC took 23 enforcement actions against licensees for discriminating against nuclear workers. The petitioner notes that before taking the enforcement actions and imposing the fines, the NRC staff's investigations determined who did what to whom. According to the petitioner, the NRC concluded that the "what" violated the employee protection regulations of 10 CFR.

The petitioner states that despite identifying "who" was responsible for violating Federal regulations in the 23 cases, the NRC staff only took enforcement action against individuals on four occasions. The petitioner further adds that the fact that the NRC took actions against four individuals demonstrates that it has the statutory authority to do so and in fact revised its regulations on January 13, 1998 (63 FR 1890) to extend the Deliberate Misconduct Rule to six categories of persons. These categories included applicants for NRC licenses; applicants for,

or holders of, certificates of compliance; applicants for, or holders of, early site permits, standard design certifications, or combined licenses for nuclear power plants; applicants for, or holders of, certificates of registration; applicants for, or holders of, quality assurance program approvals; and the employees, contractors, subcontractors and consultants of the above five categories of persons.

10 CFR 2.206 Petition

On May 25, 1999, the petitioner filed a petition with the NRC under 10 CFR 2.206. The petition requested that the individual who was the Radiation Protection Manager at the Perry Nuclear Power Plant be banned by the NRC from participation in licensed activities at and for any nuclear power plant for a period of at least five years.

An NRC News Announcement RIII-99-31 dated May 24, 1999, stated that an NRC investigation found that the Radiation Protection Manager at the Perry Nuclear Power Plant discriminated against a supervisor in 1997 for testifying in a United States Department of Labor hearing involving possible discrimination against another plant worker. The Announcement stated that the NRC has banned individuals in the recent past for five years for retaliation.

By letter dated June 23, 1999, the NRC denied the petition. According to the letter, the NRC stated that while consideration was given to taking enforcement action against the manager, it determined that the manager was not familiar with the requirements of 10 CFR 50.7. The NRC issued the manager a letter stating that the manager's actions contributed to the enforcement action against FirstEnergy. Additionally, the letter informed the manager that involvement in a future discrimination violation could result in enforcement action against the manager. The NRC proposed a \$110,000 fine against FirstEnergy Nuclear Operating Company, for violation of the employee protection requirements of 10 CFR 50.7.

Conclusion

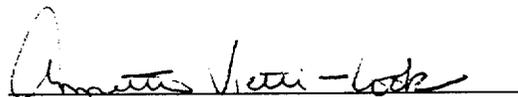
The petitioner states NRC's decision regarding its 2.206 petition makes little sense. The petitioner asserts that NRC inaction endorses the view that ignorance of the law is an excuse - at least when it comes to violating regulations promulgated to protect nuclear workers from discrimination. The petitioner noted that when the NRC revised the Deliberate Misconduct rule in January, 1998, it stated--

The objective of the rule is to explicitly put those persons encompassed by this modification of the Deliberate Misconduct Rule on notice that enforcement action may be taken against them for deliberate misconduct or deliberate submission of incomplete or inaccurate information, in relation to NRC licensed activities. Under Section 234 of the Atomic Energy Act, the Commission may impose civil penalties on any person who violates any rule, regulation, or order issued under any one of the enumerated provisions of the Act, or who commits a violation for which a license may be revoked. The enforcement actions that may be taken, including orders limiting activities of wrongdoers in the future and civil penalties, will serve as a deterrent to others throughout the industry. [emphasis added by Petitioner]

The petitioner states that the NRC staff believes that people will be aware that the deliberate misconduct regulation was expanded to apply to them, but that these same people will be oblivious to all of the other regulations that define proper conduct. Further, the petitioner believes that rather than debating whether the NRC staff can really excuse illegal activities of nuclear industry management based on their ignorance of Federal regulations, UCS, the petitioner, is opting for this petition for rulemaking change to disallow the ignorance excuse.

Dated at Rockville, Maryland, this 21 day of October, 1999.

For the Nuclear Regulatory Commission.



Annette L. Vietti-Cook,
Secretary of the Commission.