

January 7, 1997

FOR: The Commissioners

FROM: Hugh L. Thompson, Jr. /s/
Acting Executive Director for Operations

SUBJECT: FOLLOWUP TO THE ANNUAL REPORT ON ALLEGATIONS AND RESPONSES TO RECOMMENDATIONS OF THE MILLSTONE
INDEPENDENT REVIEW GROUP

PURPOSE:

To inform the Commission of the results of staff's review of allegations at selected facilities identified in the Agency Allegation Advisor's annual report on allegations, to provide responses to the recommendations of the Millstone Independent Review Group (MIRG) for improving agency management of allegations, and to seek Commission approval of staff recommendations to improve the monitoring of allegations as one of the indicators of whether licensee's have established and are maintaining a safety-conscious work environment.

SUMMARY:

The staff performed more detailed reviews of the allegations received concerning St. Lucie, San Onofre, Salem, and Watts Bar and reviewed recent actions taken by the licensees for these plants to assess and improve the environment for raising safety concerns. The results of this review are discussed below. As a result of this review, the staff plans to meet with Florida Power & Light in February 1997 to discuss the trend in allegations at St. Lucie and the licensee's plans to assess and improve the environment for raising safety concerns. The staff does not plan to take any additional actions concerning the other three facilities at this time, other than to continue monitoring the trends in allegations.

The staff proposes that an analysis of trends in allegations be performed twice a year prior to the screening meetings conducted as part of preparation for the Senior Management Meeting (SMM). The results of the analysis would be provided to the regional administrators and the directors of the Offices of Nuclear Reactor Regulation, Nuclear Materials Safety and Safeguards, Analysis and Evaluation of Operational Data and Enforcement for consideration during the SMM. If the Commission approves this approach to analyzing the impact of allegations, the staff will develop an action plan addressing how the analysis will be performed and by whom.

In addition, the staff proposes a number of actions in response to the recommendations of the MIRG, including developing standard material for allegation training, senior agency management participation in allegation training and counterpart meetings to reinforce expectations for handling allegations and interaction with alлегers, and standard formats for correspondence with alлегers to ensure clear communication on the agency's understanding of the alлегer's concerns and the agency's basis for closure.

BACKGROUND:

In January 1994, NUREG-1499 was issued. This NUREG reported the results of the Review Team for Reassessment of the NRC's Program for Protecting Alлегers Against Retaliation. The NUREG contained 47 recommendations for improving the handling of allegations of discrimination. The recommendations included changes to the NRC's enforcement and allegations programs, the NRC's investigative process, and the Department of Labor's process for investigating discrimination complaints and providing remedies to individuals who were the subject of discrimination. As of November 1, 1996, all of the recommendations that were approved by the Commission and within the control of the NRC staff have been completed.⁽¹⁾ The NRC staff did not recommend adoption of four of the 47 recommendations, and the Commission agreed.⁽²⁾

The MIRG conducted a retrospective review of the NRC's handling of allegations concerning the Millstone site that were received between 1985 and December 1, 1995. All of the allegations chosen for detailed review by the MIRG were received by the NRC prior to the implementation of actions to address the NUREG-1499 recommendations and therefore were not reflective of the improvements that have resulted from implementing those recommendations. The MIRG forwarded its results and eight recommendations for improvements in the NRC's handling of allegations to the Commission by memorandum dated October 31, 1996. As noted in the MIRG report, a number of the actions taken by the staff to implement NUREG-1499 recommendations may have prevented the problems that occurred in the agency's handling of allegations concerning Millstone had they been implemented earlier. This paper responds to the MIRG's recommendations.

In a memorandum dated October 7, 1996, the Executive Director for Operations (EDO) sent an annual report on the implementation of the allegation program to the Commission. In addition to providing the results of oversight activities and the status of ongoing activities, the annual report provided an analysis of industry-wide allegation data. In the memorandum, the EDO committed to have the staff perform additional reviews of the five plants with the highest number of allegations during the first eight months of fiscal year 1996. This paper provides the results of the additional reviews.

DISCUSSION:**REVIEWS OF IDENTIFIED PLANTS**

For this paper, the staff reviewed four of the five plants identified in the Agency Allegation Advisor's (AAA) annual report as having the highest numbers of allegations in the first eight months of fiscal year 1996, St. Lucie, San Onofre, Salem, and Watts Bar. Although Millstone had the highest number of allegations, additional analyses were not performed because of the considerable attention NRC is already focussing on Millstone's performance and the

environment for raising safety concerns at that site.

Allegations from the other four facilities were sorted by the source of the allegation (i.e., licensee employee, licensee contractor employee, private citizen, anonymous, or NRC staff), by whether harassment and intimidation was involved, and by the current status of the allegation case (i.e., open, substantiated, or not substantiated). This information was graphically displayed to chart trends over a 5-year period (Attachment 1). The findings were then discussed with the appropriate Office Allegation Coordinators (OACs), regional branch chiefs, and NRR project managers to obtain background information about the specific facilities, determine possible causes for any trends in allegations, and determine what, if any, actions licensees had recently taken to assess and improve the environment for reporting safety concerns at their plants.

The staff found that analyses of raw allegation data alone had significant limitations, which made it difficult to draw inferences regarding a given facility or to make comparisons between plants, for several reasons:

1. The number of allegations may be influenced by several factors, such as employee perception of the freedom to raise safety issues, employee experience and familiarity with the NRC's allegation process, employee concerns about job security, the number of safety issues employees are aware of, and the quality of worker-management relationships.
2. The number of personnel on site may influence the number of allegations, e.g., greater numbers of personnel may result in a proportionally greater number of allegations.

General Observations From the Plant Reviews:

While the staff could analyze the number of allegations it received, it did not have available similar information regarding the number of issues reported to and resolved by licensee programs such as employee concerns programs (ECPs). This information could have provided important insights into the overall environment at a site when compared to the number of allegations received by the NRC. For example, if the licensee is receiving few employee concerns and the NRC is receiving many allegations, it may be an indication that the employees regard the licensee's processes as ineffective or that the environment is not conducive to raising safety concerns. Conversely, if the licensee is receiving many concerns and the NRC is not receiving many allegations, it may be an indication that employees regard the licensee's processes as effective and that the environment is conducive to raising safety concerns. Because of the limited data available, it was not possible to determine the root causes for the numbers or adverse trends observed, or even discern clear indications of the environment at a particular facility. Further, from the available statistical data alone, it was not possible to determine if licensee programs were fully effective. However, the staff augmented the statistical information available by considering the subjective opinions of NRC resident inspectors, branch chiefs, and senior management in NRR and the regions in preparing its assessments. Additionally, if a licensee had recently instituted action to assess or improve the environment for raising safety concerns, this also was considered in the staff's review.

Watts Bar

During the 5-year period analyzed, FY92 through FY96, the staff received an average of 56 allegations per year concerning Watts Bar, rising from 64 in FY92 to a peak of 68 in FY94 and dropping to a low of 32 in FY96. The greatest change was in allegations received from licensee employees, which dropped from 43 in FY92 to 11 in FY96. The number of harassment and intimidation allegations received also declined from a high of 27 in FY92 to 7 in FY96.

Site population appears to have affected the number of allegations. As the facility was completing initial construction, a large number of licensee and contractor employees were on site, which corresponds to a potential for a higher number of allegations at the site. As the facility neared completion of initial construction and testing (Watts Bar received its full-power license in February 1996 and commenced commercial operation on May 27, 1996), contractor employees were released by the licensee. Although the number of allegations decreased overall, the number of allegations received from this affected group increased. Since FY94, although relatively high numbers of allegations were being received, both licensee and contractor employee concerns have been decreasing toward the industry norm. Similar trends are observed for harassment and intimidation cases. Some reduction in the number of allegations could be attributed to correction of deficiencies before issuance of the operating license, as well as to an improvement in employee morale observed on site resulting from a successful transition to commercial operation following the prolonged construction period.

The licensee, Tennessee Valley Authority (TVA), devoted a significant amount of resources to establishing a strong employee concerns program starting in the early 1990s. Review of TVA's employee concerns program was a specific part of a formal corrective action program (CAP) leading to issuance of the full power license, and monthly meetings were held with senior management from TVA and the NRC to discuss the CAP. TVA has a large ECP staff, and the TVA Inspector General performed a site wide survey for employee concerns over several years that was completed in 1995. In addition, TVA senior managers hold meetings with selected groups of employees to encourage feedback, and TVA has issued memorandums periodically to reinforce an open atmosphere for employee concerns.

The NRC has taken strong enforcement action in cases alleging discrimination at TVA and has issued significant civil penalties in these cases in recent years. This has reinforced the need for TVA to initiate strong internal management action to address allegations of harassment and intimidation. The staff also conducted inspections of the Watts Bar Employee Concerns Program in 1993 and 1995, although the staff believes that these inspections focused on construction and testing issues and therefore do not represent the current operational environment. The TVA Office of the Inspector General and the Watts Bar Employee Concerns staff have periodically briefed the NRC staff regarding the status of employee concerns. In FY96, the number of employee concerns fell to half the number raised the previous year.

With the continuing downward trend in allegations at Watts Bar, the staff proposes no additional action at this time other than to continue to monitor the trend in allegations.

Salem

During the 5-year period analyzed, Salem received an average of 17 allegations per year, with a low of 4 in FY92 and a high of 37 in FY96. The number of allegations received in FY96 was almost three times the 13 allegations received in FY95. The largest increase in allegations received was from licensee employees, which increased from 6 in FY95 to 16 in FY96, although proportional increases were seen from all sources. The number of harassment and intimidation allegations received by the staff has risen from 2 in FY92 to 6 in FY96.

The licensee, Public Service Electric & Gas Company (PSE&G), has been in the process of downsizing over the last two and a half years, and several groups that have been affected have been raising concerns to the NRC. In addition, PSE&G has initiated major management changes, starting at the top of the organization and working down to the middle management level, since the Fall of 1994. The staff believes that this new management team has higher performance standards that it has been trying to inculcate in the organization.

The new management initiated a more proactive approach to ensuring an environment conducive to raising issues exists within its organization. In early 1995 the licensee developed and implemented a formal ECP after extensively bench marking against ECPs at other utilities. The licensee briefed the staff on the effectiveness of the ECP in mid-November 1996, as part of a management meeting on several issues. They reported that the ECP program had substantiated about 51 percent of the 223 concerns received since its inception, and had met several self-imposed timeliness goals for providing feedback to individuals and resolving their concerns. The licensee also conducted a survey of its employees that indicated significant improvements from 1995 to 1996 in employee awareness of the ECP (to >95%), as well as significant improvements in confidence in licensee processes to resolve concerns (to >80%). Further, the licensee tasked an independent group that had nuclear industry experience in evaluating ECPs to assess the effectiveness of its ECP. PSE&G stated that the group reported a favorable organizational environment at the site.

PSE&G developed and implemented initiatives to ensure organizational sensitivity to harassment and intimidation at Salem in response to a confirmed case of discrimination that occurred in late 1993. One of these was periodic, recurring supervisory training on appropriately handling employee concerns. Other initiatives included a program for the conduct of line organization self-assessments, several corrective action program improvements, and various communication initiatives.

On December 11, 1996, the NRC issued a Severity Level II Violation and an \$80,000 civil penalty to PSE&G for discriminatory acts that occurred in 1993 and 1994. In the cover letter forwarding the enforcement action, the agency requested that PSE&G include in their response, corrective actions to improve and monitor the overall program for raising safety concerns at the Salem and Hope Creek facilities.

The staff will use the licensee's response, in part, to determine whether further enforcement action is necessary and as an indication of the licensee's commitment to improve the environment for raising safety concerns. Given the licensee's recent actions and the recent enforcement action, the staff does not intend to take any additional action at this time, other than to continue monitoring the number of allegations submitted to the licensee.

San Onofre

During the 5-year period analyzed, San Onofre received an average of 17 allegations per year. The number of allegations rose from 4 in FY92 to a peak of 28 in FY95, and decreased to 27 in FY96. The biggest increase in allegations came from licensee employees, which rose from 1 in FY92 to 20 in FY95, and declined to 13 in FY96. The number of harassment and intimidation cases rose from 2 in FY92 to 5 in FY93, and declined to 3 in FY96.

Historically, staffing at San Onofre has been high compared to similar facilities with two operating units. San Onofre has been reducing and consolidating staff at the site over the past two years. For example, the security force is being outsourced to contractors. Also, the engineering staff previously located in Irvine, California, was moved to the site, which resulted in reducing the number of employees. Involuntary severances have been given to 190 employees, and there were difficult union-management negotiations in 1995. The licensee reported that there are also unresolved labor-management issues in certain groups at the facility.

After AEOD published statistics on allegations at selected facilities in April 1996, San Onofre sent a letter to the NRC outlining its approach to maintaining a safety-conscious work environment, which included issuing policy statements, use of surveys, training managers and contractors, engaging in partnerships with workers, and conducting training sessions for various groups to address employee concerns. Senior managers from San Onofre also met with Region IV staff to discuss the issues. Despite the downsizing, there has been a recent slight drop in the total number of allegations received from employees and contractors. There is also a recent drop in the number of harassment and intimidation allegations.

Given the recent licensee initiatives, the staff intends to continue to monitor the allegation trend at San Onofre as an indicator of the effectiveness of the licensee's efforts to improve the environment for raising safety concerns, but intends no other action at this time.

St. Lucie

During the 5-year period analyzed, St. Lucie received an average of 15 allegations per year, with 8 in FY92, a low of 3 in FY93, and a high of 44 in FY96. The number of allegations received in FY96 was almost three times the number received in FY95. The largest increase occurred in allegations from licensee employees. However, there has not been a similar rise in the number of allegations of harassment, intimidation, or discrimination.

The licensee, Florida Power and Light (FP&L), has downsized approximately 13 percent in the last year. The plant has not been a strong performer in recent years, and there have been several plant problems in the last year that included equipment problems, personnel errors, and emergency responses required during the recent hurricane season. The licensee has experienced significant plant management turnover since February 1996, and the new management appears to be trying to improve the performance of the facility. All of these activities appear to have increased demands on employees.

Although St. Lucie has a history of reliable operation and has operated with few regulatory problems, it has experienced decreasing SALP ratings in the

last two rating periods. Equipment problems and human performance errors have increased in the last two years, and there have been substantial management changes. As more contractors have been employed in response to plant problems, the number of contractor allegations has increased. FP&L has an ECP and increased its staffing in the last year. As part of a "Nuclear Speakout" program in place for several years, the vice-president Nuclear met with all site personnel at a stand-down meeting to discuss various employee issues. Also, in the last year FP&L has issued a policy memorandum describing its ECP.

Region II staff inspected the ECP in May 1996, at FP&L's St. Lucie, Turkey Point Nuclear Plant, and its Juno Beach Engineering offices. Although the inspection team recognized the limitations of inspections in assessing organizational climates, as discussed in NUREG-1499 and the MIRG report, the NRC inspection team used interviews with both workers and managers to assess the ECP, and judged the ECP to be effective overall at all three locations. However, the NRC inspection team noted a perceived lack of confidence among employees in FP&L in identity protection practices, and found that the licensee's investigative techniques may have the potential to inadvertently reveal the identities of individuals reporting concerns. Also, resolution and closure of technical concerns and feedback to the individuals concerned were not always timely. In spite of this, the NRC inspection team found that the FP&L employees had a strong level of confidence in line management's ability to deal with safety concerns. Employees were not afraid to raise safety issues to the ECP or even to the NRC, if necessary. Employees also exhibited confidence those safety issues reported to the ECP were being adequately resolved.

Recently, a local newspaper interviewed both an allogger, who had raised issues concerning emergency planning at St. Lucie to the licensee and the NRC, and the licensee about the allegation. The licensee stated that the employee followed the options available and that he did the right thing in bringing the concerns to the attention of the NRC. The licensee also held a meeting of all employees to discuss the issue, and reinforced the idea that employees should bring concerns to the attention of the NRC when not resolved by internal licensee processes. The licensee's actions reinforce the team's perception that the licensee is promoting an environment conducive to raising safety concerns. However, the fact that the employee felt he had to bring the concerns to the attention of the NRC to achieve timely resolution, somewhat contradicts the inspection team's impression that the ECP is resolving concerns in a timely manner.

To address this issue, Region II plans to discuss the level of allegations the NRC receives concerning St. Lucie, the performance of the ECP program, and any actions the licensee is taking to assess and/or improve the environment for raising safety concerns during the next bimonthly meeting to discuss performance at St. Lucie. The next meeting is scheduled for February 1997.

FUTURE ANALYSES OF ALLEGATION TRENDS

As stated in the Summary, the staff believes that trends in allegations should be considered as part of the assessment of licensee performance during the screening meetings that precede the SMM. Because the staff found that analyses of raw data on allegations alone had significant limitations, the staff proposes to improve the analysis by including, for selected licensees, a review of statistics on concerns submitted to licensee programs and by comparing those numbers to the number of allegations submitted to the NRC. Additionally the staff will review licensee actions to assess and/or improve the environment for raising safety concerns and determine if there is any correlation between licensee actions and changes in the level of allegations brought to the NRC or concerns provided to the licensee.

The analysis would begin with a review of the number of allegations received by each licensee and will identify those licensees that received more than some multiple of the mean number of allegations.⁽³⁾ For those licensees that exceed the target multiple of the mean, the staff will perform a more detailed review of the allegations received by the NRC to identify the proportion of allegations that originated from licensee and contractor employees and the functional areas that are of concern, e.g., operations, health physics, maintenance. This review will identify whether a significant number of allegations are originating from individuals who are not employed at the licensee's facility and therefore may not be indicative of the environment at the facility. This review will also provide information on whether the allegations and employee concerns are from licensee and contractor employees within a single department or more evenly distributed throughout the licensee's organization. As previously stated, the staff will also consider licensee actions to assess and improve the environment for raising safety concerns.

If the Commission approves the approach described above, the staff will develop an action plan for developing the methodology, determine the appropriate organization for performing the analysis of allegation and employee concerns data, and determine a schedule for implementing the analysis. To provide a perspective on the staff's proposal, based on data in the Agency Allegation Advisor's annual report, the mean for power reactor sites for fiscal year 1996 was 10 allegations per site and six sites exceeded twice the mean.⁽⁴⁾

This approach is consistent with the staff's recommendations in SECY 96-255, "Recommendation to Issue Request for Public Comment on Establishing and Maintaining a Safety-Conscious Work Environment." In SECY 96-255, the staff proposes a number of indicators that when considered collectively, may be viewed as providing evidence of an emerging adverse trend. SECY 96-255 then discusses a number of actions the Commission could take to address an adverse trend and requests public comment on the best way for NRC to standardize its approach to assuring licensees establish and maintain a safety-conscious work environment. The method discussed above for identifying licensees for additional analysis, could be used in conjunction with the actions that result from SECY 96-255. In the interim, the analysis discussed in this paper will provide NRC managers with additional insight into current licensee environments beyond what is currently available and the staff can take appropriate action on a case-by-case basis.

RESPONSE TO THE MILLSTONE INDEPENDENT REVIEW GROUP RECOMMENDATIONS

As discussed in the background section above, in a memorandum dated October 31, 1996, the EDO forwarded to the Commission eight recommendations the MIRG made for improving the NRC's processes for handling allegations. Attachment 2 to this paper provides the staff's responses to the specific recommendations. In addition to the responses to the specific recommendations in this paper, the staff has proposed broader programmatic changes to the agency's methods for encouraging licensees to establish and maintain an environment conducive to raising safety concerns. In SECY 96-255, the

staff is recommending that the Commission seek public comment on staff proposals for enhancing the agency's ability to recognize when licensees do not have a safety-conscious work environment and for achieving improvements in the licensee work environments, when necessary. The Commission's decision on the staff's recommendation to seek public comment will impact the approach the staff pursues in addressing several of the MIRG recommendations. Therefore, the staff may need to revisit several of the responses following a Commission decision on SECY 96-255.

RECOMMENDATION:

The staff recommends that the Commission approve the staff's approach to using allegations as one indicator of whether a licensee has established a safety-conscious work environment and its proposal to develop a methodology for analyzing the data.

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Attachments: 1. [Graphs of Allegations at 4 Sites](#)
2. [Responses to MIRG Recommendations](#)

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ATTACHMENT 2

STAFF RESPONSES TO MIRG RECOMMENDATIONS

On December 12, 1995, the EDO directed the Office of Nuclear Reactor Regulation to conduct an independent evaluation of Northeast Utilities' handling of employee concerns and the NRC staff's handling of allegations related to licensed activities at the Millstone Station for the period 1985 to December 1, 1995. The MIRG conducted an in-depth case study review of selected employee concerns and allegations to identify root causes, common patterns between cases, and lessons learned. The MIRG also conducted more than 40 interviews of involved NRC staff, licensee management, and current and former licensee employees. On the basis of its review of the records of employee concerns and allegations, and information obtained from the interview transcripts, the MIRG identified specific problems regarding how the NRC had handled allegations related to Millstone Station. After considering those findings, the MIRG proposed specific recommendations for improving the NRC allegation handling processes. The staff's responses to these recommendations appear below in bold type.

1. Change the attitude that allegations are a necessary burden, and enhance sensitivity to the importance of the allegation process as a valuable tool for accomplishing the NRC's mission. (Process issue 8.1, 8.6)
 - Incorporate Millstone lessons into agency-wide allegation program training, counterpart meetings and seminars. Place emphasis on appreciation of the public visibility of the allegation process, and reenforce training with specific examples.

The MIRG team leader discussed the lessons learned during the 1996 Allegation Coordinator Counterparts Meeting and the allegation coordinators in each of the regions and in NRR and NMSS have included lessons learned from Millstone in their individual annual refresher training sessions. However, the AAA will develop a standard training presentation that includes the lessons from Millstone, including public visibility and specific examples of problems that occurred in the handling of allegations from Millstone employees. The training material will be completed and distributed for use in the second quarter of 1997.

- Ensure NRC management recognition of the potentially significant insights to be gained from allegations, and the adverse impacts on agency resources and credibility with the public if we fail to react appropriately.

The potential for discovering significant issues through allegations and the adverse effect on the agency if we fail to respond appropriately will be discussed during the January 1997 SMM. Additionally, senior agency management will attend staff counterpart meetings and training sessions during 1997 and discuss their expectations concerning the handling of allegations. NRR senior management provided their expectations during the 1996 annual refresher training and NRR also conducted mandatory seminars for managers on handling allegations. The materials are available to other offices and regions. Additionally, the EDO will issue an announcement in January 1997 describing his expectations concerning handling allegations.

2. Avoid under-reaction to claims of discrimination. (Process issue 8.1)
 - Recognize that the perception of discrimination can be just as significant and damaging as the reality of discrimination. A chilling effect can spread rapidly within a licensee facility, with immediate negative impact. Treat all discrimination claims as potentially safety significant issues, not just those paired with apparently significant technical problems.
 - Don't diffuse or rationalize indications of discrimination by averaging them away. If one employee is identified as having experienced or perceived discrimination, a problem exists that needs to be remedied. It should not be minimized by identifying numerous other employees who have not experienced a problem.

The Office of Investigations (OI) established the practice of interviewing individuals who allege wrongdoing, including discrimination, within 30 days of opening an OI case in its Investigative Procedures Manual in 1992. In an April 26, 1996, staff requirements memorandum regarding SECY 96-056, the Commission stated that OI should independently investigate high priority discrimination cases, and the staff will submit a plan to the Commission to accomplish this in the near future. In SECY-96-199, OI committed to open a case within 1 working day of an Allegation Review Board determining that the threshold for discrimination has been met, i.e., the alleged is/was involved in a protected activity and as a result either suffered an adverse action or was threatened with an adverse action. The interview is not dependent on the significance of the protected activity. Additionally, in SECY 96-225, the staff proposed seeking public comment on an escalating series of actions to require licensees to address work environments that are not conducive to raising safety and regulatory concerns, including chilling effect. The staff is not proposing any additional actions at this time.

3. Develop expert resources to help establish and monitor effective performance indicators for measuring licensee employee trust and confidence in management's ability to resolve employee concerns without fear of discrimination. (Process issue 8.4)
 - Avoid the usual "employee concern" type vehicles. Experience has demonstrated that employees will not meaningfully respond to direct types of questioning. More sophisticated methods appear to be needed to accurately measure the workplace environment.
 - Absent more effective survey vehicles, NRC inspections should not document findings of no apparent chilling effect at any licensee facility with pending discrimination claims, e.g., (1) we should not make broad conclusions absent probative evidence, and (2) we should not draw conclusions broader than evidence supports.

The staff will modify the guidance in Inspection Procedure 40001 to state that the staff should not document findings of no apparent chilling effect at any licensee facility with pending discrimination claims. However, the staff believes that although qualitative performance indicators may be developed for assessing the workplace environment and the staff can monitor quantitative changes in the use of licensees' employee concerns programs and NRC's allegation process, it does not believe it is possible to develop quantitative measures of employee trust and confidence in the licensee's ability to resolve employee concerns. However, in SECY 96-225, the staff has outlined a number of indicators that may provide insight into the licensee's work environment and proposed the Commission seek public comment on how best to assure that licensees establish and maintain a safety-conscious work environment, including requiring licensees to conduct surveys of their work environment. The staff will delay proposing additional recommendations, pending a Commission decision on SECY 96-225.

4. Recognize the potential chilling effect created by NRC enforcement that is publicly perceived as being soft on discrimination. Enforcement action for discrimination violations should err on the side of increased severity level if senior management involvement was apparent. (Process issue 8.3)⁽⁵⁾

The staff agrees that a public perception that the agency is "soft" on enforcement concerning discrimination issues has the potential to create a chilling effect on potential alleged. However, on the basis of the discussion of this issue in the MIRG report, the recommendation appears to be based on a single enforcement action concerning discrimination at Millstone. The discussion points out what appears to be an inconsistency between what is stated in the cover letter forwarding the enforcement action and the enforcement action itself.

In the case in question, the MIRG was informed that the enforcement action was based on the evidence standard of "preponderance of the evidence." Although the staff was of the opinion that "officers of the company were either directly participating in the discrimination or aware of it," the staff did not believe that a "preponderance of the evidence" existed to support issuing an order removing the officers. Therefore, the staff chose to express its opinion concerning the involvement of the officers in the cover letter, and issue a demand for further information on the subject, even though the officers were not specifically subject to an enforcement action. The staff perceived this approach to be an aggressive stance. Unfortunately, it did not have the desired effect on the licensee and it was not perceived that way by the subject of the discrimination.

In the future, in drafting cover letters forwarding enforcement actions, the staff will carefully assess the language used in the cover letters and the associated enforcement actions. However, the staff evaluates each enforcement case on the facts pertaining to each case, and the staff's views in any particular case may be different from those of the subject of the discrimination.

5. Recognize the potential chilling effect of inadequate licensee correction of discrimination problems, especially when a licensee has minimized or denied discrimination findings. (Process issues 8.2, 8.3)
 - Provide timely follow-up to verify and validate licensee corrective actions for all discrimination enforcement actions.
 - Ensure enhanced, periodic, follow-up for licensees that have minimized or denied discrimination findings (e.g., inspections, management meetings, SALP).
 - Ensure that NRC acknowledgment of enforcement action response letters appropriately addresses licensee rationalization or denial of discrimination findings. For example, it may be appropriate to require the licensee to utilize credible, independent resources to periodically assess the work environment for raising safety concerns.
 - Consider revising Management Directive 8.8 to specifically identify the NRC office with programmatic oversight for discrimination follow-up activities.

The staff's responses to the topics discussed under bullets two and three of this recommendation are currently before the Commission in SECY 96-225. The staff has recommended that the Commission seek public comment on the best way to assess whether a licensee has established a safety-conscious work environment and methods to achieve such an environment if it has not been established, including such actions as requiring surveys or independent oversight groups. The staff is not proposing any additional actions in this paper on these topics.

To address the issue of timely followup on corrective action for violations involving discrimination, the guidance on corrective action followup was recently revised.

The Chairman's recent announcement of a major reorganization and the establishment of a Deputy Executive Director of

Operations responsible for oversight presents some new options for establishing a single organization responsible for programmatic oversight for discrimination followup activities. The staff will delay action on this recommendation until the roles of the new organization are more clearly defined.

6. Appreciate allover unfamiliarity with NRC processes, and provide them more informative responses to help them put their concerns into better perspective. (Process issue 8.3)
 - Do not respond to allover challenges of NRC conclusions with terse generalizations. Provide specific additional information to fully explain the bases for NRC determinations.

The agency is providing allogers with copies of a brochure that explains the NRC's process for handling allegations. Additionally, the AAA is preparing guidance for preparing closure letters that will address explaining the basis for NRC resolution of allegations. The guidance is scheduled to be issued in the first quarter of 1997.

- Provide timely explanation to allogers about the NRC process for evaluating potentially generic safety concerns. Help them to understand the relative safety significance of their concern, and the basis for the timing and scope of NRC planned actions to address the concern.

For those allegations involving generic concerns, the staff will explain the process for evaluating and resolving generic safety issues in the acknowledgment letter to the allover. The AAA will issue guidance on this topic in the first quarter of 1997.

7. Expedite completion of current Agency Allegation Advisor initiatives and NUREG-1499 recommendations to improve the allegation process. Reconsider any NUREG-1499 recommendations that were not adopted. For example, recommendation II.B.3 regarding development of a survey instrument. (Process issues 8.1, 8.2, 8.4, 8.5, 8.6)

With the delivery of the new allegation management system software to the allegation coordinators on November 1, 1996, completion of training on the new software, and distribution of the brochure describing the NRC's allegation process to allogers, the initiatives implementing NUREG-1499 recommendations that were approved by the Commission and within the control of the AAA are completed. Two initiatives remain to be completed, developing a shared database with DOL and submitting legislation to revise the schedule for completing the DOL review of discrimination cases. Discussions of a shared database with DOL are on hold pending the transfer of responsibility for investigating discrimination cases from Wage and Hour to OSHA. The transfer is currently scheduled for February 1997. The legislation is currently scheduled to be submitted early in the next session of Congress.

Four of the recommendations from NUREG-1499 were not adopted: II.B-3, developing a survey instrument to assess the organizational climate at licensee facilities; II.D-3, seeking legislation to increase civil penalty authority to \$500,000 per day per violation; II.D-4, revising the Enforcement Policy to provide that the base penalty for willful violations involving discrimination, regardless of severity level, would be the amount currently specified for a Severity Level I violation; and II.E-4, requesting that licensees place employees claiming discrimination for raising safety or regulatory concerns in a "holding period" pending an initial ruling by the DOL. Reconsideration of Recommendations II.B-3 and II.E-4 is currently before the Commission in SECY 96-225. The staff is recommending seeking public comment on requiring licensees to conduct surveys and institute holding periods.

In a staff requirements memorandum dated June 16, 1995, the Commission agreed with staff recommendations that the civil penalties for discrimination cases not be revised. Therefore, these issues are not being reconsidered at this time.

8. Reevaluate participation of both licensee and allover attorneys during NRC discrimination investigations. (Process issue 8.5)

The issue raised in the body of the MIRG report is that licensee attorneys were allowed to be present when the OI interviewed licensee employees and that this gave the licensee an advantage in defending itself against discrimination complaints. In addition, the MIRG claimed that this practice placed the complainant's attorney at a disadvantage in that complainant's attorney is not privy to the information gathered by the licensee's attorney.

OI interviews are generally voluntary as OI does not routinely subpoena an individual to compel participation in an interview. Given that the interviews are voluntary, if an interviewee wishes to be represented by counsel, OI does not usually object. Otherwise, the interviewee may simply decline to be interviewed. If the interviewee declined and OI still wants any information the interviewee may have, OI would need to issue a subpoena to compel an interview. This, in turn, would trigger the interviewee's right to counsel.

If a licensee offers to have the corporate attorney represent an employee during an OI interview at no cost to the employee, it is within each employee's discretion to accept or reject the offer. Frequently licensee employees, both management and non-management, choose the licensee attorney for their personal counsel. Recent Federal appellate case law supports such dual representation, provided that the clients are aware of and consent to it, absent any clear conflict of interest. Once an employee states that it is his or her choice to have the corporate attorney provide representation, the NRC has only two choices, conduct the interview with the corporate attorney present, or proceed without the interviewee's statement. Consequently, OI will usually conduct the interview with the attorney present.

An approach that may avoid participation by the corporate attorney is to contact potential interviewees directly, before they state their desire to have an attorney present. To the extent it is practical and depending upon the circumstances of each case, OI can and does contact the interviewee directly to make arrangements to conduct the interview. This same argument applies to the presence of the allover's attorney during the interview. Because the interviews are voluntary, interviewees may request to have any attorney they choose present as their personal counsel.

Absent a clear conflict of interest, the NRC has no control over the interviewee's choice of counsel. Therefore, the only recommendation resulting from this review is that OI continue to remind its personnel to make direct contact with potential interviewees whenever practicable.

1. One of the recommendations was to distribute a brochure describing the NRC's allegation process to industry workers. Although the brochure has

been printed and is being provided to individuals bringing concerns to the NRC, the brochure has not been distributed to industry workers or licensees pending the transfer of investigative authority within DOL from Wage and Hour to the Occupational Safety and Health Administration.

2. The four recommendations not implemented are discussed in Item 7 of Attachment 2.

3. Contractors and materials and reactor licensees would be analyzed separately. Additionally, to treat multiple unit reactor sites fairly, a separate analysis may have to be performed for single and multiple unit sites or the mean could be normalized in some manner.

4. This data was not normalized for multiple unit reactor sites.

5. In a note accompanying the recommendation, the MIRG recognized that Revision 1 to the Enforcement Manual, issued November 1995, incorporated many of the recommendations of NUREG-1499, which addressed many of the concerns the MIRG had with enforcement.