

APPROVAL SHEET FOR MANAGEMENT & HUMAN PERFORMANCE ASSESSMENT
PHASE 3

Inspection Dates:

Phase 3: March 20 through May 9, 2003

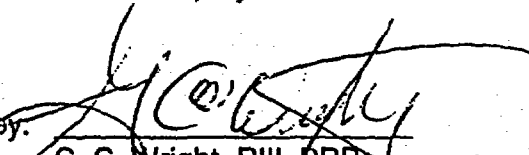
Exit: TBD

Applicable Inspection Procedures:

93812, "Emergency Response"
40001, "Resolution of Employee Concerns"

Inspection Procedure:

Prepared by:


G. C. Wright, III, DRP
Project Engineer/Team Lead

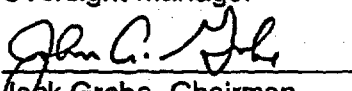
Reviewed by:


Christine Lipa
Chief, Projects Branch 4, DRP

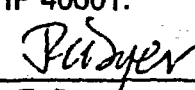
Reviewed by:


Brent Clayton,
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Approved by:


Jack Grobe, Chairman,
Davis-Besse 0350 Oversight Panel

Approval to use IP 40001:


J. E. Dyer,
Regional Administrator,
Region III

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Attachments

- 1. Inspection Procedure 40001, Resolution of Employee Concerns**
- 2. Assessment of Safety Conscious Work Environment, Extracted from IP 71152**
- 3. NRC: Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation**

Attachment 1

INSPECTION PROCEDURE 40001 RESOLUTION OF EMPLOYEE CONCERNS

40001-01 OBJECTIVE

To Evaluate the licensee's process for resolving safety-related¹ concerns reported by licensee or contractor employees while preventing any retaliatory action against those employees.

40001-02 INSPECTION REQUIREMENTS

NOTE: Implementation of this inspection procedure requires the approval of the appropriate Regional Administrator.

02.01 Inspection Preparation

1. **Allegation History.** Review the allegation history of the site before performing the inspection. Determine any positive or negative aspects of the licensee's handling of allegations. The inspection should include concerns that are the subject of allegations reviewed by the NRC as well as concerns that were not submitted to the NRC.
2. **Process for Resolving Concerns.** Review procedures that govern the licensee's Employee Concerns Program (ECP) and focus on the information flow process. Review the licensee's process for receiving, evaluating, dispositioning, tracking and documenting concerns. This review should be based on the licensee having an ECP in place and the pertinent procedures being available to the inspector. The inspector should conduct this review before the inspection.
3. **ECP Organization.** Review whether the licensee's process for resolving concerns ensures a suitable level of independence between the ECP and line organizations.

02.02 Evaluation of the Licensee's Process for Resolving Employee Concerns. On the basis of available documents and data, Evaluate the overall performance of the licensee by focusing on the licensee's effectiveness in (1) processing and resolving safety related concerns and (2) protecting from retaliation those employees who raise concerns.

1. **Documentation of Concerns.** Examine safety-related concerns reported by employees within the last 2 years. Evaluate pertinent documentation of the receipt, review, and closure of each safety-related concern selected for this examination. This review should Evaluate the technical adequacy of the licensee's review and closure of the concerns.

NOTE: Any allegations brought to inspectors by employees during the inspection should be forwarded to the regional office allegation coordinator (OAC) for processing through the NRC¹ allegation review process. At no time during the NRC review should the confidentiality of any

¹ For this inspection, we will not limit our review to safety related concerns

employee be jeopardized.²

2. **Corrective Actions.** Evaluate the adequacy of corrective actions associated with the closure of selected safety related concerns. Contact the appropriate employees to discuss their satisfaction with the adequacy of the corrective actions.

NOTE: Discussions with employees should be held only if employees voluntarily agree to discuss their concerns with the NRC. Inspectors should expend maximum effort to protect the identity of those employees contacted including contact by phone and/or offsite meetings.

3. **Prioritization of Concerns.** Evaluate whether concerns are prioritized on the basis of safety significance.
 4. **Feedback to Employees.** Evaluate the adequacy and timeliness of feedback to employees regarding the review and resolution of their concerns. Contact appropriate employees to discuss their satisfaction with the feedback process regarding their concerns.
 5. **Independent ECP Staff Review.** Evaluate the ability of the licensee's staff administering the ECP to impartially review, track, disposition, and record concerns independent of the employee's line organization.
 6. **Environment for Reporting Concerns.** Evaluate if and how the licensee publicizes the ECP as an avenue for employees to report concerns when they are reluctant to report them to their line organization. Evaluate how employees are assured that confidentiality will be preserved, if they wish to maintain confidentiality. Evaluate how all employees, including new employees, are made aware of procedures that govern accessibility to, reporting concerns to, and implementation of the ECP. Evaluate whether departing or dismissed employees are debriefed regarding any remaining concerns.
 7. **Protection Against Retaliation.** Determine whether sufficient controls are in place to protect those employees who identify concerns from any type of retaliatory action. Ascertain whether management supports measures to ensure achievement of that end. Contact appropriate employees to discuss their satisfaction with the protection against retaliation afforded to them by the ECP and licensee's management.
 8. **Expertise of ECP Staff.** If problems with the handling of concerns are identified, Evaluate whether the ECP staff can promptly respond to and correctly resolve a variety of concerns. Evaluate the extent of the ECP staff's reliance on line organizations and consultants. Determine whether training is provided for all personnel involved in the handling of concerns.
 1. **Self-Evaluation.** Evaluate the licensee's monitoring and auditing of the ECP by internal and external organizations, and determine whether lessons learned are provided as feedback to management.
-

- 02.03 Reporting. Identify any negative findings about the licensee's processing and reporting of concerns to NRC management before the final exit interview with the licensee. Determine whether more extensive follow up review should be performed or if more issues should be forwarded to the OAC. Keep NRC management informed of significant adverse findings.

40001-03 GUIDANCE

General Guidance

An ECP is an avenue independent of the line management process for licensee and contractor employees to report safety concerns to their employers without fear of retaliation. NRC regulations do not include specific guidance or requirements for the establishment of an ECP. The applicable regulatory requirement in Section 50.7 of Title 10 of the Code of Federal Regulations (10 CFR 50.7) and in the Energy Reorganization Act, Section 211, is not to impede or hinder the reporting of safety-related concerns by employees of licensees or contractors and subcontractors. To the extent that safety-related concerns are being dispositioned through the ECP, evaluation of the process falls under 10 CFR Part 50, Appendix B, Criterion XVI. Some licensees have well-established ECPs, while others have none at all. The ECPs in existence do not adhere to one universal format and range from those lacking formality to those that are very well defined. Increased NRC interest in this area resulted in the development of Temporary Instruction 2500/028, "Employee Concerns Program," in 1993 and the modification of Inspection Procedure 40500, "Effectiveness of Licensee Controls in Identifying, Resolving, and Preventing Problems," Section 03, to aid inspectors in reviewing licensee programs for the phenomenon known as the "chilling effect" (a term that refers to the negative effect a hostile environment may have on employees³ raising concerns to the NRC or on those who may want to raise concerns). This inspection procedure should be used to Evaluate whether a licensee has adequately resolved safety-related employee concerns without retaliation against those employees who raise concerns.

Inspectors are directed not to attempt to enforce the programmatic elements presented in this inspection procedure. Any problems identified concerning a licensee's processing of concerns are to be reported as observations. Inadequate resolution of concerns should be evaluated for impact on plant safety, if time permits. If time does not permit evaluation, the licensee and NRC management should be informed of the staff's concerns with the licensee's resolution. Allegations received by inspectors during the review should be forwarded to the regional OAC, as appropriate⁴.

Specific Guidance

- 03.01 Inspection Preparation. Determine whether the licensee is responsive and sensitive to those issues that employees believe could affect the safe operation or shutdown of a nuclear facility or endanger the health and safety of the public. These attributes can be

³ For this inspection revise wording to read "...have on employees willingness to raise concerns to the NRC or the licensee..."

⁴ For this inspection, revise to delete "...as appropriate."

determined in part by assessing whether a licensee's ECP comprises programmatic elements that ensure a responsive, effective operation. The inspector should review ECP procedures and data and submit pertinent questions to the licensee before the site inspection.

1. **Allegation History.** In reviewing the allegation history, determine the number of technical and wrongdoing (e.g., harassment, intimidation, discrimination) employee concerns reported to the ECP staff and allegations reported to the NRC over the last 2 years. Compare the number of technical and wrongdoing concerns or allegations received by the ECP⁵ staff with those received by the NRC for the last 2 years and note any parts of the organization that reported concerns to the NRC but not to the ECP staff.
2. **Process for Resolving Concerns.** In reviewing the licensee's ECP procedures, determine whether the following programmatic elements are present:
 - Corporate policy disseminated on employee concerns and protection of employees against retaliation.
 - Information on how licensee and contractor employees can access the ECP.
 - Methods for reporting concerns (e.g., in person, mail, fax, telephone).
 - Assurance of employee confidentiality.
 - Measures to protect employees from retaliation.
 - Assignment of staff independent from line organizations for fair and impartial evaluation of employees concerns.
 - Methods for prioritization, evaluation, tracking, resolution, documentation and feedback regarding employee concerns exist and are adhered to while concerns are being resolved.
3. **ECP Organization.** Ascertain whether the ECP organization is independent of line organizations and whether the ECP staff is competent. Determine the ECP manager reporting chain and whether:
 - The ECP staff is responsible for investigating, evaluating, tracking, and resolving each concern, and guidance is provided on when and how ECP staff can call on other sources of expertise.
 - Qualifications of ECP counselors and investigators are established.

03.02 Assessment of the Licensee's Process for Resolving Employee Concerns. Select a minimum of 10 and maximum of 20 safety-related employee concerns and evaluate the licensee's (1) processing and resolving safety-related concerns and (2) protecting from retaliation those employees who raise concerns.

NOTE: This assessment should be done by interviewing ECP staff, reviewing applicable ECP files, and, where necessary, conducting employee interviews.

1. **Documentation of Concerns.** Review ECP files (files containing records of employee concerns) for selected safetyrelated concerns, and determine whether:

⁵ For this inspection, revise to read "...received by the licensee staff..."

All safety concerns are formally documented (not resolved on the phone). Controls exist requiring records of pertinent conversations and meetings. Sufficient detail is documented to determine the safety impact of the concern, where possible.

Sufficient records exist on the processing of the concern, including records on receipt of concern, interviews, assignment to staff, summaries of telephone conversations, resolution, and feedback to the employee.

Records are maintained in an officially designated secure location accessible only to internal auditors, ECP staff, and authorized management.

2. Corrective Actions

Perform an independent review of the adequacy of corrective actions associated with the closure of selected safety-related concerns. Contact appropriate employees, particularly when a concern does not appear to have been adequately resolved, to discuss their satisfaction with the closure of their concerns. Focus on the following:

Review selected corrective actions to determine whether licensee actions committed to in response to employee concerns were adequate.

Determine whether employees voicing safety-related concerns believe the corrective actions addressed the identified concerns.

Perform an independent review of the adequacy of the licensee's resolution of a sample of the concerns selected for review. Focus on the following:

Did the licensee investigate and resolve each issue raised by the employee.

Was the scope and depth of the licensee's review adequate to address the questions raised.

Was the licensee's review timely given the safety significance of the issue and the operating status of the plant.

3. Prioritization of Concerns. Determine whether concerns are screened and assigned priorities on the basis of safety significance. Determine whether issues of the highest safety or organizational significance receive the highest priority.
4. Feedback to Employees. Determine whether adequate and timely feedback is provided to employees raising concerns to the ECP staff. Focus on the following:
formal acknowledgement of receipt and specific details of the concern
interim status of review of concern
results of review and resolution of concern
5. Independent ECP Staff Review. Determine whether the ECP staff provide an impartial and independent review the employees' concerns (independent of the employee's line organization) and whether ECP procedures provide formal guidance for accomplishing an independent review of employees' concerns. Lack of guidance could result in employees obtaining opinions or resolutions from individuals in the line organization that the employees did not agree with in the first place.
6. Environment for Reporting Concerns. During discussions with ECP staff and employees, determine:

Whether employees are encouraged to report concerns.
Whether information provided (e.g., purpose and function of the ECP, procedures governing its operation, and persons who have access to it) is consistent.
To whom and how to raise a concern.
Whether the ECP is independent.
Whether confidentiality of employees is maintained.
Whether first-line through senior management endorses and supports the ECP.
Whether employees understand the accessibility, confidentiality, and protection against retaliation provided by the ECP.
Why certain parts of the organization (on the basis of allegation history) choose to report concerns to the NRC but not the ECP staff.

CAUTION: If, during your review of the licensee's allegation history, you find that the licensee has pending harassment, intimidation, or discrimination case(s) before either the Department of Labor (DOL) or NRC's Office of Investigations, do not document a finding of "no chilling effect" as a result of your inspection. Similarly, if the licensee has recently been issued a Notice of Violation by the NRC, or been found liable by a final DOL adjudicative body for violations pertaining to harassment, intimidation, or discrimination, a finding of "no chilling effect" should not be issued. If you are unclear or not certain about the meaning of specific issues identified in the licensee's files, you should consult with the NRC Regional Office Allegation Coordinator (OAC) for guidance before reaching any inspection findings.

7. Protection Against Retaliation. Determine whether the licensee's or contractor's employees are encouraged to report safety-related concerns without fear of retaliation; also, whether:

No retaliation is permitted.
Employees are informed that the ECP is an acceptable alternative method for raising safety concerns and that its use by co-workers is not to be viewed negatively.
Control measures or policies are implemented.
Formal controls exist to inform senior management of instances of reported retaliation.
Management supports measures and becomes involved in the resolution of concerns.
Each concern is treated as legitimate unless proven otherwise.
How individual confidentiality is maintained, including confidentiality of those entering or leaving the ECP office.
Employees requesting confidentiality are alerted that despite the ECP's efforts to protect their identity, the narrow focus of their concern could potentially cause their identity to be revealed.
The ECP staff hours accommodate employees' schedules and flexibility for offsite interviews is considered.
An "appeal process" has been implemented to preserve the affected employee's protected activities and personal remedies.

8. Expertise of ECP staff. Examine the training of ECP and plant staff by reviewing training records and lesson materials. Determine whether:

The ECP staff receives training on how to conduct investigations and interviews of employees while protecting their confidentiality.

First-line management receives training on handling concerns and are required to meet an established training grade.

All levels of management receive training on "lessons learned."

All plant staff receive initial indoctrination and periodic refresher training on the basic concepts and purpose of the ECP.

Management receives training on how to foster an atmosphere that encourages employees to readily express their concerns.

- i. Self-Assessment. In determining how effectively management and the ECP staff oversee the ECP, review the following:

Monitoring and auditing of the effectiveness of the ECP by internal and independent review organizations.

Encouragement and evaluation of employee feedback.

Dissemination of the results to management and the staff.

ASSESSMENT of employee satisfaction with reporting safety concerns to the ECP.

- 03.03 Reporting. Safety-significant inspection findings should be promptly identified to the appropriate regional management and, if appropriate, the OAC, for consideration of follow up action. Significantly adverse findings should also be discussed with appropriate NRR management.

40001-05 REFERENCES

10 CFR 50.7, "Employee Protection"

Energy Reorganization Act of 1974, Section 211, "Employee Protection"

END

Attachment 2

Assessment of Safety Conscious Work Environment Extracted from IP 71152.

d. **Assessment of Safety Conscious Work Environment.** In conducting interviews with or observing other activities involving licensee personnel during the inspection, be sensitive to areas where employees may be reluctant to raise concerns. Although the licensee may be implementing an employee concerns program regarding the identification of safety issues, the possibility of existing underlying factors that would produce a "chilling" effect or reluctance to report such issues could exist and the inspector should be alert for such indications.

Below is a list of questions that can be used when discussing PI & R issues with licensee individuals to help Evaluate whether there are impediments to the establishment of a safety conscious work environment. It is not intended that inspectors conduct formal interviews solely for the purpose of evaluating the work environment, but rather, that the inspectors make use of the questions listed below during discussions with licensee individuals concerning other attributes of the inspection. It is expected that during this inspection, discussions/interviews will be held with both licensee management and staff. If, as a result of the interviews or observations, the inspector becomes aware of specific examples of employees being discouraged from raising safety or regulatory issues within the licensee's or contractor's organization or to the NRC, the inspector should get as complete a set of facts as possible. If the inspector becomes aware of a reluctance of employees to raise safety or regulatory issues unrelated to a specific event or incident, continue pursuing the issue during the remaining interviews and try to determine the reason employees are reluctant to raise issues. However, if any indication of a "chilling" effect is suspected, inform regional management for further review and follow-up. Inspectors should be sensitive to the need to appropriately capture and forward any allegations that may be received during the inspection.

SUGGESTED QUESTIONS FOR USE IN DISCUSSIONS WITH LICENSEE INDIVIDUALS CONCERNING PI & R ISSUES

The following are suggested questions that may be used when discussing PI & R issues with licensee individuals. It is not intended that these questions be asked verbatim, but rather, that they form the basis for gathering insights regarding whether there are impediments to the formation of a safety conscious work environment.

Suggested Questions

1. How would the individual raise a safety or regulatory issue (e.g. inform supervisor, corrective action program, employee concern program (ECP), NRC)?
2. Why would they pick that approach (e.g. supervisor's preference, trying to keep numbers down, system difficult to use)?
3. Has the person ever submitted an issue to the corrective action program or the ECP? Was the issue adequately addressed? If not, did he or she pursue the issue? If not, why not?
4. Does the individual know whether employee concerns are tracked to completion and whether employees are informed of the result?
5. Does the individual believe the licensee's corrective action programs are successful in addressing issues submitted?
6. Is the individual aware of any specific instances in which another employee submitted an

issue to the corrective action program or ECP and considered the licensee's response incomplete or unacceptable or was retaliated against for pursuing the issue? (Try to get enough specific information to follow up with the other employee.)

7. Does the individual believe there has been a change in the amount of time necessary to resolve corrective action issues or employee concerns?
8. Is the individual aware of or have there been interactions with NRC personnel that suggest that some employees may be hesitant to raise concerns or present information to the NRC?
9. Is the individual aware of any events that would discourage employees from raising concerns (e.g. chastisement for submitting issues to corrective action program, ECP, or NRC; supervisors holding up submittal of concerns). Has there been an unexplainable change in the number or nature of concerns raised by employees to the licensee's corrective action program or employee concern program or the NRC?
10. Are there any unofficial corrective actions or tracking systems that exist because the existing formal systems are thought to be ineffective? (Unofficial corrective actions that bypass the recognized corrective action program have been previously in engineering and health physics areas.)

Attachment 3

NRC: Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation - Federal Register Notice

U.S. Nuclear Regulatory Commission

Policy Statement for Nuclear Employees Raising Safety Concerns Without Fear of Retaliation - Federal Register Notice

[Federal Register: May 14, 1996 (Volume 61, Number 94)]

[Notices]

[Page 24336-24340]

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NUCLEAR REGULATORY COMMISSION

Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Statement of Policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this policy statement to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments 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.

DATE: May 14, 1996

SUPPLEMENTARY INFORMATION:

Background

NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of potential safety concerns¹ and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility.

In the past, employees have raised important issues and as a result, the public health and safety has benefitted. Although the Commission recognizes that not every concern raised by employees is safety significant or, for that matter, is valid, the Commission concludes that it is important that licensees' management establish an environment in which safety issues are promptly identified and effectively resolved and in which employees feel free to raise concerns.

Although hundreds of concerns are raised and resolved daily in the nuclear industry, the Commission, on occasion, receives reports of individuals being retaliated against for raising concerns. This retaliation is unacceptable and unlawful. In addition to the hardship caused to the individual employee, the perception by fellow workers that raising concerns has resulted in

retaliation can generate a chilling effect that may discourage other workers from raising concerns. A reluctance on the part of employees to raise concerns is detrimental to nuclear safety.

As a result of questions raised about NRC's efforts to address retaliation against individuals who raise health and safety concerns, the Commission established a review team in 1993 to reassess the NRC's program for protecting alleged against retaliation. In its report (NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," January 7, 1994) the review team made numerous recommendations, including several recommendations involving issuing a policy statement to address the need to encourage responsible licensee action with regard to fostering a quality-conscious environment in which employees are free to raise safety concerns without fear of retribution (recommendations I.A.-1, I.A.-2, and I.A.-4). On February 8, 1995, the Commission after considering those recommendations and the bases for them published for comment a proposed policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," in the Federal Register (60 FR 7592, February 8, 1995).

The proposed policy statement generated comments from private citizens and representatives of the industry concerning both the policy statement and NRC and Department of Labor (DOL) performance. The more significant comments related to the contents of the policy statement included:

The policy statement would discourage employees from bringing their concerns to the NRC because it provided that employees should normally provide concerns to the licensee prior to or contemporaneously with coming to the NRC.

The use of a holding period should be at the discretion of the employer and not be considered by the NRC in evaluating the reasonableness of the licensee's action.

The policy statement is not needed to establish an environment to raise concerns if NRC uses its authority to enforce existing requirements by pursuing civil and criminal sanctions against those who discriminate.

The description of employee concerns programs and the oversight of contractors was too prescriptive; the expectations concerning oversight of contractors were received as the imposition of new requirements without adherence to the Administrative Procedure Act and the NRC's Backfit Rule, 10 CFR 50.109.

The need for employee concerns programs (ECPs) was questioned, including whether the ECPs fostered the development of a strong safety culture.

The suggestion for involvement of senior management in resolving discrimination complaints was too prescriptive and that decisions on senior management involvement should be decided by licensees.

In addition, two public meetings were held with representatives of the Nuclear Energy Institute (NEI) to discuss the proposed policy statement. Summaries of these meetings along with a revised policy statement proposed by NEI were included with the comments to the policy statement filed in the Public Document Room (PDR).

This policy statement is being issued after considering the public comments and coordination with the Department of Labor. The more significant changes included:

The policy statement was revised to clarify that senior management is expected to take responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved as opposed to being personally involved in the resolution of these matters.

References to maintenance of a "quality-conscious environment" have been changed to "safety-conscious environment" to put the focus on safety.

The policy statement has been revised to emphasize that while alternative programs for raising concerns may be helpful for a safety-conscious environment, the establishment of alternative programs is not a requirement.

The policy statement continues to emphasize licensees' responsibility for their contractors. This is not a new requirement. However, the policy statement was revised to provide that enforcement decisions against licensees for discriminatory conduct of their contractors would consider such things as the relationship between the licensee and contractor, the reasonableness of the licensee's oversight of the contractor's actions and its attempts to investigate and resolve the matter.

To avoid the possibility suggested by some cementers that the policy statement might discourage employees from raising concerns to the NRC if the employee is concerned about retaliation by the employer, the statement that reporting concerns to the Commission "except in limited fact-specific situations" would not absolve employees of the duty to inform the employer of matters that could bear on public, including worker, health and safety has been deleted. However, the policy statement expresses the Commission's expectation that employees, when coming to the NRC, should normally have provided the concern to the employer prior to or contemporaneously with coming to the NRC.

Statement of Policy

The purpose of this Statement of Policy is to set forth the Nuclear Regulatory Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their own management and the NRC without fear of retaliation. A safety-conscious work environment is critical to a licensee's ability to safely carry out licensed activities.

This policy statement and the principles set forth in it are intended to apply to licensed activities of all NRC licensees and their contractors², although it is recognized that some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of a method to raise concerns outside the normal management structure such as an employee concerns program) may not be practical for very small licensees that have only a few employees and a very simple management structure.

The Commission believes that the most effective improvements to the environment for raising concerns will come from within a licensee's organization (or the organization of the licensee's

contractor) as communicated and demonstrated by licensee and contractor management. Management should recognize the value of effective processes for problem identification and resolution, understand the negative effect produced by the perception that employee concerns are unwelcome, and appreciate the importance of ensuring that multiple channels exist for raising concerns. As the Commission noted in its 1989 Policy Statement on the Conduct of Nuclear Power Plant Operations (54 FR 3424, January 24, 1989), management must provide the leadership that nurtures and maintains the safety environment.

In developing this policy statement, the Commission considered the need for:

- (1) licensees and their contractors to establish work environments, with effective processes for problem identification and resolution, where employees feel free to raise concerns, both to their management and to the NRC, without fear of retaliation;
- (2) improving contractors' awareness of their responsibilities in this area;
- (3) senior management of licensees and contractors to take the responsibility for assuring that cases of alleged discrimination are investigated and resolved; and
- (4) employees in the regulated industry to recognize their responsibility to raise safety concerns to licensees and their right to raise concerns to the NRC.

This policy statement is directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. It is intended to reinforce the principle to all licensees and other employers subject to NRC authority that an act of retaliation or discrimination against an employee for raising a potential safety concern is not only unlawful but may adversely impact safety. The Commission emphasizes that employees who raise concerns serve an important role in addressing potential safety issues. Thus, the NRC cannot and will not tolerate retaliation against employees who attempt to carry out their responsibility to identify potential safety issues.³

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that employees of licensees or their contractors have been discriminated against for raising concerns and to take enforcement action if discrimination is substantiated. The Commission has promulgated regulations to prohibit discrimination (see, e.g., 10 CFR 30.7 and 50.7). Under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor also has the authority to investigate complaints of discrimination and to provide a personal remedy to the employee when discrimination is found to have occurred.

The NRC may initiate an investigation even though the matter is also being pursued within the DOL process. However, the NRC's determination of whether to do so is a function of the priority of the case which is based on its potential merits and its significance relative to other ongoing NRC investigations⁴.

Effective Processes for Problem Identification and Resolution

Licensees bear the primary responsibility for the safe use of nuclear materials in their various licensed activities. To carry out that responsibility, licensees need to receive prompt notification of concerns as effective problem identification and resolution processes are essential to

ensuring safety. Thus, the Commission expects that each licensee will establish a safety-conscious environment where employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

A safety-conscious environment is reinforced by a management attitude that promotes employee confidence in raising and resolving concerns. Other attributes of a work place with this type of an environment may include well-developed systems or approaches for prioritizing problems and directing resources accordingly; effective communications among various departments or elements of the licensee's organization for openly sharing information and analyzing the root causes of identified problems; and employees and managers with an open and questioning attitude, a focus on safety, and a positive orientation toward admitting and correcting personnel errors.

Initial and periodic training (including contractor training) for both employees and supervisors may also be an important factor in achieving a work environment in which employees feel free to raise concerns. In addition to communicating management expectations, training can clarify for both supervisors and employees options for problem identification. This would include use of licensee's internal processes as well as providing concerns directly to the NRC. Training of supervisors may also minimize the potential perception that efforts to reduce operating and maintenance costs may cause supervisors to be less receptive to employee concerns if identification and resolution of concerns involve significant costs or schedule delays.

Incentive programs may provide a highly visible method for demonstrating management's commitment to safety, by rewarding ideas not based solely on their cost savings but also on their contribution to safety. Credible self assessments of the environment for raising concerns can contribute to program effectiveness by evaluating the adequacy and timeliness of problem resolution. Self-assessments can also be used to determine whether employees believe their concerns have been adequately addressed and whether employees feel free to raise concerns. When problems are identified through self-assessments, prompt corrective action should be taken.

Licensees and their contractors should clearly identify the processes that employees may use to raise concerns and employees should be encouraged to use them. The NRC appreciates the value of employees using normal processes (e.g., raising issues to the employee supervisors or managers or filing deficiency reports) for problem identification and resolution. However, it is important to recognize that the fact that some employees do not desire to use the normal line management processes does not mean that these employees do not have legitimate concerns that should be captured by the licensee's resolution processes. Nor does it mean that the normal processes are not effective. Even in a generally good environment, some employees may not always be comfortable in raising concerns through the normal channels. From a safety perspective, no method of raising potential safety concerns should be discouraged. Thus, in the interest of having concerns raised, the Commission encourages each licensee to have a dual focus: (1) on achieving and maintaining an environment where employees feel free to raise their concerns directly to their supervisors and to licensee management, and (2) on ensuring that alternate means of raising and addressing concerns are accessible, credible, and effective.

NUREG-1499 may provide some helpful insights on various alternative approaches. The Commission recognizes that what works for one licensee may not be appropriate for another.

Licensees have in the past used a variety of different approaches, such as:

- (1) an "open-door" policy that allows the employee to bring the concern to a higher-level manager;
- (2) a policy that permits employees to raise concerns to the licensee's quality assurance group;
- (3) an ombudsman program; or
- (4) some form of an employee concerns program.

The success of a licensee alternative program for concerns may be influenced by how accessible the program is to employees, prioritization processes, independence, provisions to protect the identity of employees including the ability to allow for reporting issues with anonymity, and resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees may be a necessary element of these programs.

This Policy Statement should not be interpreted as a requirement that every licensee establish alternative programs for raising and addressing concerns. Licensees should determine the need for providing alternative methods for raising concerns that can serve as internal "escape valves" or safety nets.⁶ Considerations might include the number of employees, the complexity of operations, potential hazards, and the history of allegations made to the NRC or licensee. While effective alternative programs for identifying and resolving concerns may assist licensees in maintaining a safety-conscious environment, the Commission, by making the suggestion for establishing alternative programs, is not requiring licensees to have such programs. In the absence of a requirement imposed by the Commission, the establishment and framework of alternative programs are discretionary.

Improving Contractors' Awareness of Their Responsibilities

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10 and 50.5 and the rules on reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7).

Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against both the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee. In considering whether

enforcement actions should be taken against licensees for contractor actions, and the nature of such actions, the NRC intends to consider, among other things, the relationship of the contractor to the particular licensee and its licensed activities; the reasonableness of the licensee's oversight of the contractor environment for raising concerns by methods such as licensee's reviews of contractor policies for raising and resolving concerns and audits of the effectiveness of contractor efforts in carrying out these policies, including procedures and training of employees and supervisors; the licensee's involvement in or opportunity to prevent the discrimination; and the licensee's efforts in responding to the particular allegation of discrimination, including whether the licensee reviewed the contractor's investigation, conducted its own investigation, or took reasonable action to achieve a remedy for any discriminatory action and to reduce potential chilling effects. Contractors of licensees have been involved in a number of discrimination complaints that are made by employees. In the interest of ensuring that their contractors establish safety-conscious environments, licensees should consider taking action so that:

- (1) each contractor involved in licensed activities is aware of the applicable regulations that prohibit discrimination;
- (2) each contractor is aware of its responsibilities in fostering an environment in which employees feel free to raise concerns related to licensed activities;
- (3) the licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and
- (4) contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation.

Involvement of Senior Management in Cases of Alleged Discrimination

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees, including personnel actions by contractors, who have raised concerns have a well-founded, non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate, non-discriminatory reasons. If employees allege retaliation for engaging in protected activities, senior licensee management should be advised of the matter and assure that the appropriate level of management is involved, reviewing the particular facts and evaluating or reconsidering the action.

The intent of this policy statement is to emphasize the importance of licensee management taking an active role to promptly resolve situations involving alleged discrimination. Because of the complex nature of labor-management relations, any externally-imposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the

licensee's responsibility, and that early resolution without government involvement is less likely to disrupt the work place and is in the best interests of both the licensee and the employee. For these reasons, the Commission's enforcement policy provides for consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. (59 FR 60697; November 28, 1994).

In some cases, management may find it desirable to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending reconsideration or resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on-site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the action is being reconsidered or the dispute is being resolved. However, inclusion of the holding period approach in this policy statement is not intended to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary.

A licensee may conclude, after a full review, that an adverse action against an employee is warranted⁷. The Commission recognizes the need for licensees to take action when justified. Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from non-prohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

Responsibilities of Employers and Employees

As emphasized above, the responsibility for maintaining a safety-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission normally expects employees in the nuclear industry to raise safety and compliance concerns directly to licensees, or indirectly to licensees through contractors, because licensees, and not the Commission, bear the primary responsibility for safe operation of nuclear facilities and safe use of nuclear materials⁸. The licensee, and not the NRC, is usually in the best position and has the detailed knowledge of the specific operations and the resources to deal promptly and effectively with concerns raised by employees. This is another reason why the Commission expects licensees to establish an environment in which employees feel free to raise concerns to the licensees themselves.

Employers have a variety of means to express their expectations that employees raise concerns to them, such as employment contracts, employers' policies and procedures, and certain NRC requirements. In fact, many employees in the nuclear industry have been specifically hired to fulfill NRC requirements that licensees identify deficiencies, violations and safety issues. Examples of these include many employees who conduct surveillance, quality assurance, radiation protection, and security activities. In addition to individuals who specifically

perform functions to meet monitoring requirements, the Commission encourages all employees to raise concerns to licensees if they identify safety issues⁹ so that licensees can address them before an event with safety consequences occurs.

The Commission's expectation that employees will normally raise safety concerns to their employers does not mean that employees may not come directly to the NRC. The Commission encourages employees to come to the NRC at any time they believe that the Commission should be aware of their concerns¹⁰. But, while not required, the Commission does expect that employees normally will have raised the issue with the licensee either prior to or contemporaneously with coming to the NRC. The Commission cautions licensees that complaints that adverse action was taken against an employee for not bringing a concern to his or her employer, when the employee brought the concern to the NRC, will be closely scrutinized by the NRC to determine if enforcement action is warranted for discrimination.

Retaliation against employees engaged in protected activities, whether they have raised concerns to their employers or to the NRC, will not be tolerated. If adverse action is found to have occurred because the employee raised a concern to either the NRC or the licensee, civil and criminal enforcement action may be taken against the licensee and the person responsible for the discrimination.

Summary

The Commission expects that NRC licensees will establish safety-conscious environments in which employees of licensees and licensee contractors are free, and feel free, to raise concerns to their management and to the NRC without fear of retaliation.

Licensees must ensure that employment actions against employees who have raised concerns have a well-founded, non-discriminatory basis. When allegations of discrimination arise in licensee, contractor, or subcontractor organizations, the Commission expects that senior licensee management will assure that the appropriate level of management is involved to review the particular facts, evaluate or reconsider the action, and, where warranted, remedy the matter.

Employees also have a role in contributing to a safety-conscious environment. Although employees are free to come to the NRC at any time, the Commission expects that employees will normally raise concerns with the involved licensee because the licensee has the primary responsibility for safety and is normally in the best position to promptly and effectively address the matter. The NRC should normally be viewed as a safety valve and not as a substitute forum for raising safety concerns.

This policy statement has been issued to highlight licensees' existing obligation to maintain an environment in which employees are free to raise concerns without retaliation. The expectations and suggestions contained in this policy statement do not establish new requirements. However, if a licensee has not established a safety-conscious environment, as evidenced by retaliation against an individual for engaging in a protected activity, whether the activity involves providing information to the licensee or the NRC, appropriate enforcement action may be taken against the licensee, its contractors, and the involved individual supervisors, for violations of NRC requirements.

The Commission recognizes that the actions discussed in this policy statement will not necessarily insulate an employee from retaliation, nor will they remove all personal cost should the employee seek a personal remedy. However, these measures, if adopted by licensees, should improve the environment for raising concerns.

Dated at Rockville, Maryland, this 8th day of May, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

Throughout this Policy Statement the terms "concerns," "safety concerns" and "safety problem" refer to potential or actual issues within the Commission's jurisdiction involving operations, radiological releases, safeguards, radiation protection, and other matters relating to NRC-regulated activities.

Throughout this Notice, the term "licensee" includes licensees and applicants for licenses. It also refers to holders of certificates of compliance under 10 CFR Part 76. The term "contractor" includes contractors and subcontractors of NRC licensees and applicants defined as employers by section 211(a)(2) of the Energy Reorganization Act of 1974, as amended.

An employee who believes he or she has been discriminated against for raising concerns may file a complaint with the Department of Labor if the employee seeks a personal remedy for the discrimination. The person may also file an allegation of discrimination with the NRC. The NRC will focus on licensee actions and does not obtain personal remedies for the individual. Instructions for filing complaints with the DOL and submitting allegations can be found on NRC Form 3 which licensees are required to post. The NRC and DOL have entered into a Memorandum of Understanding to facilitate cooperation between the agencies. (47 FR 54585; December 3, 1982).

Training of supervisors in the value of raising concerns and the use of alternative internal processes may minimize the conflict that can be created when supervisors, especially first line supervisors, perceive employees as "problem employees" if the employees, in raising concerns, bypass the "chain of command."

In developing these programs, it is important for reactor licensees to be able to capture all potential safety concerns, not just concerns related to "safety-related" activities covered by 10 CFR Part 50, Appendix B. For example, concerns relating to environmental, safeguards, and radiation protection issues should also be captured.

When other employees know that the individual who was the recipient of an adverse action may have engaged in protected activities, it may be appropriate for the licensee to let the other employees know, consistent with privacy and legal considerations, that (1) management reviewed the matter and determined that its action was warranted, (2) the action was not in retaliation for engaging in protected activity and the reason why, and (3) licensee management continues to encourage them to raise issues. This may reduce any perception that retaliation occurred. The expectation that employees provide safety and compliance concerns to licensees is not applicable to concerns of possible wrongdoing by NRC employees or NRC contractors. Such concerns are subject to investigation by the NRC Office of Inspector General. Concerns related to fraud, waste or abuse in NRC operations or NRC programs including

retaliation against a person for raising such issues should be reported directly to the NRC Office of the Inspector General. The Inspector General's toll-free hotline is 800-233-3497.

Except for the reporting of defects under 10 CFR Part 21 and in the area of radiological working conditions, the Commission has not codified this expectation. Licensees are required by 10 CFR 19.12 to train certain employees in their responsibility to raise issues related to radiation safety.

The Commission intends to protect the identity of individuals who come to the NRC to the greatest extent possible. See "Statement of Policy on Protection, the Identity of Allegers and Confidential Sources."

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