

ALLEGATION DISPOSITION RECORD

Rev. 6/6/97

Allegation No.: RI-98-A-0102
Site: Salem
Panel Date: 11/18/98

Branch Chief (AOC): Linville
Acknowledged: Yes
Confidentiality Granted: No

Issue discussed (if other than original allegation): **Per AGM 98-02, OI requested a repanel to discuss possible deferral. Allegor filed complaint with DOL and issue is before ALJ.**

ALLEGATION PANEL DECISIONS (Previous Allegation Panels on issue: Yes)
Attendees: Chair - Crlenjak Branch Chief(AOC) - Linville SAC - Vito/Modes
OI Rep. - Letts RI Counsel - Fewell Others - _____

DISPOSITION ACTIONS:

- 1) **Panel decision to close OI (Case No. 1-98-023) and await DOL decision.**

Responsible Person: Panel ECD: 11/18/98
Closure Documentation: _____ Completed: _____

- 2) **SAC to provide panel disposition record to AAA for HQ review.**

Responsible Person: SAC ECD: 11/20/98
Closure Documentation: _____ Completed: _____

- 3) **Status letter to allegor informing him of deferral in writing.**

Responsible Person: SAC ECD: 12/15/98
Closure Documentation: _____ Completed: _____

Rationale used to defer OI:

- ✓ Over two years since event involving discrimination finding by OI/DOL (RI-96-A-0202).
- ✓ Alleged discriminatory act not egregious.
- ✓ Despite recent Modified Chill Effect Letter (RI-98-A-0016), during 40001 inspection the NRC (Unit 2 RATI) concluded that the licensee's ECP was effective.
- ✓ Normal Priority Case

Safety Significance Assessment:

Priority of OI Investigation:

If potential discrimination or wrongdoing and OI is not opening a case, rationale is: _____

ARB MINUTES ARE REVIEWED AND APPROVED AT THE ARB

AAA says 2 years since finding (OD/DOL) => do 1 yr since decision

AAA wants history

365

F-

NOTES: (Include rationale for any referral to licensee, and identify any potentially generic allegations)

Issue not to be referred to licensee

A. Region 1 should refer as many allegations as possible to the licensee for action and response unless any of the following factors apply:

- Information cannot be released in sufficient detail to the licensee without compromising the identity of the alleged or confidential source (unless the alleged has no objection to his or her name being released).
- The licensee could compromise an investigation or inspection because of knowledge gained from the referral.
- The allegation is made against the licensee's management or those parties who would normally receive and address the allegation.
- The basis of the allegation is information received from a Federal agency that does not approve of the information being released in a referral.

Even if the above conditions exist, Region 1 shall refer the substance of the allegation to the licensee regardless of any factor if the allegation raises an overriding safety issue, using the guidance in Management Directive 8.8.

Factors to Consider Prior to Referral to a Licensee

In determining whether to refer eligible allegations to a licensee, The Region 1 Allegation Panel shall consider the following:

- Could the release of information bring harm to the alleged or confidential source?
- Has the alleged or confidential source voiced objections to the release of the allegation to the licensee?
- What is the licensee's history of allegations against it and past record in dealing with allegations, including the likelihood that the licensee will effectively investigate, document, and resolve the allegation?
- Has the alleged or confidential source already taken this concern to the licensee with unsatisfactory results? If the answer is "yes," the concern is within NRC's jurisdiction, and the alleged objects to the referral, the concerns should normally not be referred to the licensee.
- Are resources to investigate available within the region?

Prior to referring an allegation to a licensee, all reasonable efforts should be made to inform alleged or confidential sources of the planned referral. This notification may be given orally and subsequently documented in an acknowledgment letter. If the alleged or confidential source objects to the referral, or does not respond within 30 calendar days, and the NRC has considered the factors described above, a referral can be made despite the alleged's or confidential source's objection or lack of

response. In all such cases, an attempt will be made to contact the alleged by phone just prior to making the referral.

Also, referrals are not to be made if it could compromise the identity of the alleged, or if it could compromise an inspection or investigation. Note: Document the basis for referring allegations to a licensee in those cases where the criteria listed above indicate that it is questionable whether a referral is appropriate.

Factors to Consider at Second ARB of a Discrimination Case:

- History of discrimination cases (DOL settlements, DOL findings of discrimination, or related to NRC enforcement actions).
- DOL is investigating (or adjudicating) this case.
- Statistical information available concerning allegations, investigations, and enforcement.
- Generic or unique legal implications.
- Generic or programmatic weaknesses identified by OI in the course of investigation(s).
- Determine if any new technical or regulatory issues were raised by the alleged during the interview and, if so, disposition them appropriately.

Factors to Consider Prior to Deferment of OI Discrimination Case (provided DOL is pursuing an investigation into the same or similar matter):

Defer unless:

- (1) there has been a finding by NRC or DOL in the previous 24 months that the licensee discriminated against an employee,
- (2) the alleged discriminatory act is particularly egregious, or
- (3) the existence of related licensee performance issues indicating a deteriorating safety conscious work environment (e.g., the findings of other ongoing discrimination investigations, or relevant licensee problems in identifying and resolving safety concerns) lends credibility and/or potential significance to the discrimination allegation under investigation.

Factors to Consider When There Appears to be a Deteriorating Safety Conscious Work Environment (SCWE):

Indicators of a deteriorating SCWE include:

- (1) a lack of effective evaluation, follow up, or corrective action for findings made by the licensee's Quality Assurance or oversight organization or concerns raised to the Employee Concerns Program (ECP),
- (2) licensee ineffectiveness in identifying safety issues,
- (3) delays in or absence of feedback for concerns raised in the ECP,
- (4) breaches of confidentiality for concerns raised in the ECP,
- (5) multiple open discrimination allegations involving a licensee with a history of adverse OI or DOL discrimination findings, or
- (6) other relevant performance characteristics which would indicate an environment not conducive to raising safety concerns,

Possible actions to address SCWE:

- meeting with licensee management,
- review of the licensee's employee concerns program (Inspection Procedure 40501), or
- request or order that the licensee obtain an independent evaluation of its environment for raising concerns; an order to establish independent third-party oversight of the environment for raising concerns; or other actions as appropriate

Distribution: Panel Attendees, Regional Counsel, OI, Responsible Persons (original to SAC)

Options for Resolution:

Licensee Referral (Div. Dir. Concurrence Required (First Consider Factors Prior to Referral) / Document NRC Review of Response - Resp. - AOC)

Referral to Another Agency (OSHA, etc. - Resp. - SAC)

Referral to an Agreement State (MD, ME, NH, NY, RI - Resp. - SAC)

Referral to Another NRC Office (OIG, NRR, Other Regions - Resp. - SAC)

Request for Additional Info.(From allegor, licensee, others - Resp. - AOC)

Closeout Letter/Memo (If no further action planned - Resp. - AOC)

Inspection (Resident/Specialist routine or reactive)

IF H&ID INVOLVED:

- | | | |
|--|-----|----|
| 1) has the individual been informed of the DOL process and the need to file a complaint within 180 days (has DOL information package been provided?) | Yes | No |
| 2) has the individual filed a complaint with DOL | Yes | No |
| 3) if the complainant filed directly with DOL, have they been contacted to obtain their technical concerns (Resp. - SAC) | Yes | No |
| 4) is a chilling effect letter warranted: (DOL finding in favor of allegor) (conciliation w/licensee prior to DOL decision) | Yes | No |

Possible reasons OI will not open a case:

1. Based on legal review, information provided is insufficient - not a clear nexus between the adverse action and protected activity (30.7 or 50.7). (not a prima facie case)
2. Lacking specific evidence of wrongdoing. More information needed before OI will consider opening a case.
3. Clear evidence of wrongdoing. Staff can proceed through the enforcement process.