

September 10, 1997

MEMORANDUM TO: L. Joseph Callan
Executive Director for Operations

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-97-147

- RE-

EVALUATION OF SECY-96-199 ISSUES; PLAN TO
BETTER FOCUS RESOURCES ON HIGH PRIORITY
DISCRIMINATION CASES

The Commission has approved the staff's proposal for focusing resources on high priority discrimination cases subject to the specific comments provided below and approved clarifying the Enforcement Policy as stated in Appendix D, Section 2(c) to add the word "normally" that OI reports involving discrimination will be made public.

The Commission has approved the proposal to modify the criteria for designating high priority OI investigations, except for the last element of the proposed new criterion on cases involving "degraded or non-conforming conditions that, if true, would impact the operability of a safety-related structure, system, or component, or safeguards equipment, or result in operation outside the design basis." The portion of this criterion that would "result in operation outside the design basis" should be deleted. With that deletion, the Commission approves this new criterion.

The staff should implement its revised process in a way that will minimize NRC duplication of DOL investigative activities. For each case in which the Allegation Review Board (ARB) determines that OI should conduct an independent investigation, the justification for that decision should be clearly documented. The current guidance in Appendix B, Step 4A of the subject paper is somewhat vague, and may unduly restrict deferring to the DOL process. For cases in which the DOL is already pursuing an investigation, the ARB should put the case on hold pending the DOL result unless the licensee has a recent history of adverse discrimination findings, or the case is particularly egregious, or the existence of related licensee performance issues indicating a deteriorating safety conscious work environment (e.g., the findings of other ongoing H&I investigations, or relevant licensee problems in identifying and resolving safety concerns) lends credibility and/or potential significance to the discrimination allegation under review and the ARB determines that an independent investigation is warranted.

The staff should consult the Commission prior to issuance of an order that a licensee obtain an independent evaluation and

establish independent third-party oversight of their environment for raising safety concerns, as was done in the case of Millstone.

The Commission recognizes the importance of prompt resolution of issues involving discrimination allegations; however, budgetary realities do not allow assignment of all the requested resources. In this regard, the Commission approves OI's request for 4 additional FTEs for direct investigation work but disapproves OI's request for 1 additional administrative FTE. The OE request for 4 additional FTEs to focus on harassment, intimidation and discrimination was considered in the context of its separate request (in the FY 1999 - 2001 budget submittal) for another 4 FTEs for non-escalated enforcement action consistency reviews, severity level supplement revisions, and enforcement training. The Commission approves an increase of 5, rather than 8, FTEs for OE with OE focussing those 5 FTEs, as needed, primarily on harassment, intimidation and discrimination enforcement actions and, secondarily, on non-escalated action consistency reviews, severity level supplement revisions and enforcement training. Given the limitation of resources, the Allegation Review Board, OI, and OE should all be prepared to utilize the factors discussed in the paper for designating high priority cases for making further decisions on which high priority cases will receive the attention of limited NRC resources.

The staff should provide additional information on the need for incorporating into the harassment and intimidation investigative process the development and use of expertise in Title VII of the Civil Rights Act of 1964. Consideration should be given to whether the need for Title VII investigative expertise can appropriately be determined on a case-by-case basis through the early involvement of the Office of the General Counsel. The staff should provide the Commission with a summary of specific staff intentions in this regard.

(EDO)(SECY Suspense:10/31/97)

The staff should note that this action does not predetermine Commission action in response to its recent request for public comment on establishing and maintaining a safety-conscious work environment.

In the proposal to modify Section V of the Enforcement Policy as described in the August 7, 1997 Memorandum from the Assistant for Operations, the word "complaint's" in the last sentence should be replaced with "complainant's."

cc: Chairman Jackson
Commissioner Dicus
Commissioner Diaz

Commissioner McGaffigan
OGC
CIO
CFO
OCA
OIG
Office Directors, Regions, ACRS,

ACNW, ASLBP

(via E-Mail)

PDR
DCS