

NRC INSPECTION MANUAL

PIPB

INSPECTION PROCEDURE 40001

RESOLUTION OF EMPLOYEE CONCERNS

PROGRAM APPLICABILITY: IMC 2515

SALP FUNCTIONAL AREA: OTHER

40001-01 OBJECTIVE

To assess the licensee's process for resolving safety-related 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

- a. 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.
- b. 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.
- c. 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 Assessment of the Licensee's Process for Resolving Employee Concerns. On the basis of available documents and data, assess 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.

- a. Documentation of Concerns. Examine safety-related concerns reported by employees within the last 2 years. Assess pertinent documentation of the receipt, review, and closure of each safety-related concern selected for this examination. This review should assess 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 NRC allegation review process. At no time during the NRC review should the confidentiality of any employee be jeopardized.

- b. Corrective Actions. Assess 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.

- c. Prioritization of Concerns. Assess whether concerns are prioritized on the basis of safety significance.
- d. Feedback to Employees. Assess 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.
- e. Independent ECP Staff Review. Assess 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.
- f. Environment for Reporting Concerns. Assess 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. Assess 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. Assess whether departing or dismissed employees are debriefed regarding any remaining concerns.
- g. 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.

- h. Expertise of ECP Staff. If problems with the handling of concerns are identified, assess 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.
- i. Self-Assessment. 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 followup 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 employees raising concerns to the NRC or on those who may want to raise concerns).

This inspection procedure should be used to assess 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 appropriate.

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 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.

- a. 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 ECP 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.
- b. 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.
- c. 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.

a. Documentation of Concerns. Review ECP files (files containing records of employee concerns) for selected safety-related concerns, and determine whether:

- 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.

b. 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.
- c. 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.
- d. 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
- e. 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.
- f. 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.

g. 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.

h. 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 followup action. Significantly adverse findings should also be discussed with appropriate NRR management.

40001-04 RESOURCE ESTIMATE

Approximately 60-80 hours of direct inspection effort (preparation and site effort) will be necessary to complete this inspection procedure. Actual inspection at a specific plant may require more or less time depending on plant-specific issues.

40001-05 REFERENCES

10 CFR 50.7, "Employee Protection"

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

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