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To: <NRCREP@nrc.gov>
Date: Fri, Mar 19, 2004 3:21 PM
Subject: Best Practices to Establish and Maintain a SCWE

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The views of Winston & Strawn LLP regarding the above subject matter are contained in the attached correspondence addressed to Mr. Lesar. The original of this document will follow via first class mail.

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March 19, 2004

Mr. Michael T. Lesar
Chief, Rules and Directives Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Best Practices to Establish and Maintain a Safety-Conscious Work
Environment (69 Fed. Reg. 7025; February 12, 2004)

Dear Mr. Lesar:

In response to the NRC's above-referenced request for comments, Winston & Strawn LLP submits the following views concerning development by the Staff of guidance on best practices for fostering Safety Conscious Work Environments (SCWE). Our comments are brief, for two reasons: First, we concur with the comments of the Nuclear Energy Institute (NEI) and do not repeat the valid concerns that NEI has identified regarding agency adoption of best practices guidance. Second, our comments focus on a few main points and do not attempt to address the wisdom of any of the particular items listed in the draft guidance that the Staff has already circulated.

Winston & Strawn LLP has represented clients for many years on legal, regulatory and business matters relating to the concept of SCWE. For as long as the firm has been representing clients in the commercial nuclear power industry, we have been advising on safe operating practices and compliance with the NRC's extensive regulatory scheme for assuring adequate protection of public health and safety. In practice, being safety-conscious is not a new concept at all. With regard to the more precise topic encapsulated in current, common definitions of SCWE, we have advised our clients on constructive measures for encouraging employees to raise safety issues for over 15 years. Our involvement in this topic has included development of some of the industry's earliest employee concerns programs and leading some of the earliest management training sessions on discrimination avoidance and SCWE principles. In addition, the firm manages a long-standing client group, known as the SCWE Group, which is dedicated to monitoring and advising on developments that may impact licensee interests concerning SCWE expectations.

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Our extensive experience with the SCWE topic informs our views of some key points for the Staff's consideration. First, and unquestionably, each licensee must have the leeway to develop a set of programs and policies that that licensee concludes may best foster a work environment at its facilities that encourages the identification by employees of safety issues. (These programs and policies are in addition to core programs mandated by NRC regulations that also are intrinsic to a SCWE, such as Quality Assurance programs and corrective action programs.) Indeed, the Commission has twice now rejected proposed "SCWE Rules" that might define generic SCWE measures and measurements. The Commission has also acknowledged that effective SCWE programs are those that are developed from within the licensee's organization and that have the full backing of the organization's management. We are concerned that development of SCWE best practices guidance will pressure sites to adopt "cookie cutter" programs for the mere reason that the agency has said that those programs promote a SCWE, regardless of whether those programs in fact will benefit a particular facility or workforce. This result would undercut the agency's own prior emphasis that SCWE programs must come from within, not be imposed. It could also stifle innovation and change in this important area.

Second, development of a positive work environment at any given site depends to a significant extent on intangibles that cannot be reduced to a best practice. In our experience, an environment that promotes employee confidence in raising concerns is largely dependent on the people and personalities that make the particular workplace run. It is also dependent on the duration of relationships; for example, it is understandable that a group of subordinates who have enjoyed a long-standing, open relationship with a manager — and who have come to trust the manager and predict how he or she may respond to issues — will not have that same level of trust and confidence in a new manager the first day that the manager is on the job. How workers, supervisors, and managers interface, and how long they have done so, are in our estimation key to developing a workplace characterized by openness and questioning attitudes. Positive workforce relationships may well be a reason that some plants rarely experience challenges to their SCWE even if the plant lacks the bells and whistles of SCWE best practices. Listing "trust," minimization of management turnover, and "good working relationships" on a best practices guidance document will achieve nothing; omitting them will miss what may be the heart of a SCWE.

Finally, we caution against agency development and publication of SCWE best practices guidance that identifies measures that have not been objectively validated as having a high probability to enhance a SCWE for any given licensee. The draft best practices guidance circulated by the Staff — which we acknowledge was for discussion purposes rather than a foretaste of actual guidance — essentially compiles wide-ranging ideas that appear to have been developed via brainstorming rather than through analysis of data or specific experience. Should the agency choose to publish guidance — and we agree with NEI that it should not — that guidance will become the NRC's official view of "SCWE tools that work." The industry deserves assurance that any agency work product rests on a reliable foundation of data proving

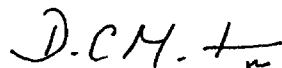
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that the practices, if adopted, will promote a SCWE regardless of a licensee's particular circumstances.

Thank you for your attention to these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "D.C.M. + m".

Donn C. Meindertsma