

March 26, 2003

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary */RA/*

SUBJECT: STAFF REQUIREMENTS - SECY-02-0166 - POLICY OPTIONS
AND RECOMMENDATIONS FOR REVISING THE NRC'S
PROCESS FOR HANDLING DISCRIMINATION ISSUES

The Commission has disapproved the staff recommendation to pursue rulemaking for oversight of a Safety Conscious Work Environment (SCWE).

The Commission approved the recommendations of the Discrimination Task Group (DTG), as revised by the Senior Management Review Team (SMRT), subject to the comments provided below. In addition, the staff should develop guidance, in consultation with stakeholders, that would identify best practices to encourage a safety conscious work environment, consistent with these comments. Such an effort would further the NRC policy statement related to SCWE.

1. The Commission generally agrees that the threshold for independent investigation of discrimination complaints may be raised so that only those allegations that raise concerns of Severity Level III or above are investigated, with other allegations of lesser significance being referred to the licensee for action with the whistleblowers' consent. This may be an appropriate path only in circumstances in which the licensee has established an appropriate employee concerns program consistent with the 1996 policy. The opportunity for deferral would establish the incentives for a licensee to follow the SCWE policy and any guidance.
2. The proposed guidance to licensees associated with encouragement of a SCWE should emphasize training of management as to its obligations under the employee protection regulations and should provide information as to the recommended content of the training.
3. The staff should perform an assessment of the investigative techniques used by the Office of Investigations (OI). In this connection, the Commission understands that DOL generally undertakes its investigations using informal interviews and does not commonly resort to criminal investigative techniques. Although such an evaluation of OI practices might start with a self-assessment, advice from an independent group should also be sought. The independent review group should report its recommendations to the Commission through the EDO.
4. Alternative Dispute Resolution (ADR) is an important tool that should be employed in the resolution of discrimination cases. The DTG's recommendation for continued evaluation

of ADR is acceptable, but the effort should be aimed at ensuring that ADR is a real and meaningful option, in lieu of an investigation by OI, in cases where all parties agree.

5. The Commission has approved centralizing the enforcement process for discrimination cases in headquarters with a core group of staff members familiar with both the legal and factual issues involved in discrimination cases. The headquarters group should consult closely with the relevant Region. This group should reside in the Office of Enforcement.
6. The staff should fully explore the policy and resource implications of providing hearing rights (either formal or informal) to individuals subject to a NOV in connection with violations of the employee protection regulations. This direction is not intended to discourage NOVs against individuals where warranted.
7. The Commission has disapproved the DTG's recommendation to resequence the enforcement conference so as to hold such a conference after the issuance of a proposed enforcement action. The staff should explore other options to facilitate the timely scheduling of predecisional enforcement conferences and to minimize delays.
8. The Commission approved the DTG's recommendation that the OI report, with appropriate redactions and without the supporting documentation, and after OGC review of the sufficiency of the evidence, should be provided to the participants before the predecisional enforcement conference. Release should be limited to the OI report while the staff explores ways to gain efficiencies in redacting information from supporting documentation. OGC's legal sufficiency review should be performed after OI completes its report, prior to its public release.
9. The Commission has approved the DTG's recommendation to eliminate deferral of the NRC's investigation of complaints where both the NRC and DOL are investigating the same case.
10. The Commission has approved of the staff determining the feasibility and cost of reimbursing the whistleblower and a personal representative's travel expenses to attend the enforcement conference, but only in those cases where their presence would assist the NRC in evaluating the credibility of a licensee's presentation. The staff should provide specific recommendations, based on this information, to the Commission.

In light of efforts by foreign regulators to measure and regulate safety culture, the staff should monitor developments abroad so as to ensure that the Commission remains informed about these efforts and their effectiveness. In particular, because subjectivity is a principal objection to the direct regulation of safety culture, the staff should also monitor efforts to develop objective measures that serve as indicators of possible problems with safety culture.

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
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