SAMPLE FACTUAL SUMMARY OF OFFICE OF INVESTIGATION REPORT - DISCRIMINATION

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SUMMARY OF OFFICE OF INVESTIGATIONS (OI) REPORT NO. 5-1999-001 Rev. #

OI Report No. X-YYYY-XXX involves a Supervisor of Operations (Supervisor) at the Alpha Nuclear Plant, who was transferred to a less-desirable, non-managerial position by licensee management for allegedly raising safety concerns. Pursuant to 10 CFR 50.7, discrimination by the licensee against an employee for raising safety concerns is prohibited.

Element 1: Did the Employee Engage in Protected Activity?
[Describe the specific evidence supporting a conclusion that the employee engaged in protected activities, e.g., "The Supervisor testified that he raised numerous nuclear safety concerns to the Manager of Safety and Quality Assurance, as well as other managers at the Alpha Nuclear Plant. His testimony is corroborated by plant documents which establish that the concerns were formally raised. The managers admitted to OI that the Supervisor raised concerns. The concerns involved safety-related functions performed by quality systems engineers, including [Be as specific as possible]."]

Element 2: Was the Employer Aware of the Protected Activity at the Time of the Adverse Action?
[Describe the evidence supporting a conclusion that specific Licensee personnel who served in a supervisory or managerial capacity were aware that the employee engaged in protected activities, e.g., "The Supervisor created documentation of his safety concerns to management in early December, 2005, and testified that he verbally related his concerns to management at the same time. During OI's investigation, the Manager of Safety and Quality Assurance and other managers at the Alpha Nuclear Plant testified that as of December 15, 2005, they were aware that the Supervisor had raised nuclear safety concerns."]

Element 3: Was an Adverse Action Taken Against the Employee?
[Describe specifically what action was taken against the employee; indicate whether such action occurred after the employee engaged in protected activities; and describe why the action was adverse to the employee, e.g., "On January 10, 2006, the Manager of Safety and Quality Assurance notified the Supervisor that he was being reassigned to a non-managerial position in the Licensee's training division, which is outside the Licensee's compliance monitoring organization. This action took place approximately one month after the Supervisor had raised the safety concerns described above. The evidence indicates that the position to which the Supervisor was transferred had no supervisory responsibilities, and was generally considered a less desirable position than the Supervisor of Quality Systems."]

Element 4: Was the Adverse Action Taken, at Least in Part, Because of the Protected Activities?
[Describe specifically the evidence supporting a conclusion that there was a causal connection between the protected activities and the adverse action. Include an analysis of reasons

proffered by the Licensee, if any, that the adverse action was taken for legitimate, non-prohibited reasons, e.g., "The evidence indicates that the Manager of Safety and Quality Assurance told the Supervisor that he was causing a lot of problems for the Licensee, and that if the Supervisor did not stop causing problems by raising safety issues, he would be replaced. One manager testified during the investigation that some managers at the Alpha Nuclear Plant viewed the Supervisor as an aggravation and barrier to getting things done. This manager told OI that it appeared to him that certain managers at the Alpha Nuclear Plant could not dissuade the Supervisor from raising concerns, so they took care of the Supervisor by transferring him to a non-managerial position outside the Licensee's compliance monitoring organization. Accordingly, the evidence supports the conclusion that the Supervisor was transferred from his managerial position within the Licensee's compliance monitoring organization to a less-desirable, non-managerial position in the training division at least in part because the Supervisor had raised safety concerns that were viewed by management as erecting barriers to getting things done at the Alpha Nuclear Plant.

Further, there do not appear to be legitimate business reasons for transferring the Supervisor to the training position. Several managers at the Alpha Nuclear Plant, including the Manager of Safety and Quality Assurance, testified that the Supervisor was technically very competent. Therefore, it does not appear that the Supervisor was transferred to a non-managerial position for cause. Based on OI's interview of the Licensee's Manager of Training, the Supervisor was not transferred to the training division to fill a critical need within that division. Furthermore, the Supervisor had received good performance appraisals during the years prior to his transfer to the training division. While some managers at the Alpha Nuclear Plant stated to OI that they had heard that the Supervisor was having problems dealing with certain individuals at Alpha Nuclear Plant, many managers stated to OI that they personally were not having problems with the Supervisor. In addition, there was no documentation of problems the Supervisor may have experienced relating to inter-personal relationships."]

Conclusion

[Indicate whether the staff believes that, based on all available evidence, there is information sufficient to provide a reasonable expectation that a violation of Section 50.7 (or analogous requirement) can be shown by a preponderance of the evidence, e.g., "The evidentiary record outlined above supports a conclusion that the Supervisor was retaliated against by management for engaging in protected activities. OGC has advised that there is sufficient information to provide a reasonable expectation that a violation of Section 50.7 can be established by a preponderance of the evidence."]