



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION IV
611 RYAN PLAZA DRIVE, SUITE 400
ARLINGTON, TEXAS 76011-4005

May 11, 2006

(b)(7)c

SUBJECT: ALLEGATION NO. RIV-2006-A-0033

Dear (b)(7)c

This letter refers to your letter dated April 13, 2006, to the NRC Resident Inspectors at the Callaway Plant. Your letter expressed concern that management was aware that a (b)(7)c (b)(7)c was less than fully attentive while on-shift yet took no action until you brought the concern to the Employee Concern Program. You also indicate that you have been subjected to retaliation because you raised this issue.

Enclosure 1 to this letter documents our understanding of your concerns. We will initiate actions to examine the facts and circumstances based on our understanding of your concerns. Therefore, if the summary of your concerns is not accurate, please contact me so that we can correct any misunderstanding before we complete our review.

An evaluation of your technical concerns should normally be completed within 6 months, although complex issues may take longer. You will be informed of the results of our review. In resolving your concerns, NRC intends to take all reasonable efforts not to disclose your identity (as discussed in the enclosed brochure). However, you are not considered a confidential source unless an explicit request of confidentiality has been formally granted in writing.

One of your concerns involves employment discrimination for raising safety concerns or engaging in protected activity in some other manner. The NRC staff has reviewed your complaint and has determined that an evaluation of your complaint is warranted. If you wish, the NRC's Office of Investigation can investigate your concern. An investigation without identifying you would be extremely difficult. Therefore, if the NRC does investigate, please be aware that your name will be disclosed. Furthermore, NRC's evaluation of your claim of employment discrimination may take up to 18 months to complete.

Instead of an NRC investigation, you may choose to employ the NRC's pilot program which uses alternative dispute resolution (ADR), a form of mediation, to address a discrimination complaint. Mediation is a voluntary process where two parties (you and your employer) use an unbiased, neutral individual (mediator), in an attempt to resolve and settle your complaint. If such an agreement is reached, the NRC will close your discrimination complaint upon

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
This document and its contents were deleted in accordance with the Freedom of Information Act.
Exemptions 2C
FOIA/PA 2009-127

c/a

settlement and will not investigate. However, if a settlement is not reached, the NRC may initiate an investigation into your complaint. As mentioned above, the NRC's ADR program is *voluntary*, and any participant may end the mediation at any time. Additional information on this pilot program is included in the Enclosure 3, "NRC's Early ADR Program." More detailed information on the program can be found on our website at the following web address - <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html>.

The NRC has contracted with the Cornell University Institute on Conflict Resolution (ICR) to aid you, if you choose, and your employer in resolving the dispute. If both parties agree to participate in the ADR program, ICR will assist you in selecting a mediator who will meet with you and your employer in an attempt to settle your complaint. If you select a mediator through ICR, there will be no charge to you for the mediator's services. Please contact the ICR directly to discuss ADR in general, the NRC's pilot program, or any other information related to resolving your complaint through this process. We request that you make a decision regarding your interest in attempting mediation within 10 days of receipt of this letter. **If you wish to participate in the ADR program, you must contact ICR directly at 1-877-733-9415. If you decide that not to participate in the ADR program, please call me.** If we do not hear back from you, the NRC's Office of Investigations may initiate actions to begin their own investigation and you will no longer have the option to use the ADR program.

In cases where an assertion of employment discrimination is substantiated, the NRC would be responsible for enforcement actions against the utility, vendor, or other individual, (who caused the discrimination) only, while the DOL would be responsible for providing you any personal remedy (reinstatement, back pay, etc.). For the DOL to accept a complaint of discrimination, it must be in writing and must be submitted to DOL within 180 days of the date of the discriminatory act or the date you were advised of a pending personnel action (e.g., being notified that you would ^{(b)(7)c} _____ **whichever occurred first**. While your participation in the NRC's ADR program could result in resolution of your dispute, the DOL's timeliness requirement for filing a claim is in no way altered by agreeing to participate in the NRC's ADR Program. Failure to file within the required time could preclude you from pursuing settlement through the DOL. Pages 8-10 of Enclosure 2 includes a discussion of the DOL process. Should you decide to file with DOL, the office for processing your complaint follows:

U.S. Department of Labor - OSHA
City Center Square
1100 Main Street, Suite 800
Kansas City, MO 64105
Phone: 816-426-5861
Facsimile: 816-426-2750

If you file a complaint with DOL, please send a copy to the NRC Region IV office.

The enclosed NRC brochure, "Reporting Safety Concerns to the NRC," contains information that you may find helpful in understanding our process for review of safety concerns. It includes an important discussion (on Pages 5-7) of our identity protection procedures and limitations. **Please read that section.** Please also note that in light of the changes to the NRC inspection program for reactors, the licensee may conclude that any NRC followup of your

concerns is related to an allegation. Additionally, if you have raised this issue internally, there is the possibility that the licensee may conclude that you raised the issue to our attention. The NRC will take all reasonable efforts not to disclose your identity during any followup of your concern. Please be aware that if you fall under any of the six circumstances described on Page 6 of the Identity Protection Limitations section of the enclosed NRC brochure, we may not be able to protect your identity. The brochure also includes a discussion of your right to file a complaint with the U.S. Department of Labor if you believe you have been subjected to employment discrimination for raising safety concerns and you desire a personal remedy.

Thank you for notifying us of your concerns. We will advise you when we have completed our review of this matter. Should you have any questions or comments during the interim regarding this matter, please call me Monday - Friday between 8:00 a.m. and 4:30 p.m. central time at 800-952-9677 extension 245 or on the NRC Safety Hotline at 800-695-7403. Should you want to respond in writing, our mailing address is listed in the header of this letter.

Sincerely,



Harry A. Freeman
Senior Allegation Coordinator

Enclosures:

1. Statement of Concerns
2. Reporting Safety Concerns to the NRC
3. NRC's Early ADR Program

STATEMENT OF CONCERNS

RIV-2006-A-0033

Allegedly:

Concern 1

You believe that the licensee's fitness-for-duty program failed in that an operations (b)(7)c (b)(7)c was not attentive to his duties for months. During this time period, perhaps 30-40 individuals had regular contact with the (b)(7)c but they did not pursue resolution of the problem.

Concern 2

You and the (b)(7)c told licensee management about the problem but management took no action to address the issue until they were forced to by the Employee Concerns Program investigation.

Concern 3

You were subjected to retaliation for reporting the fitness-for-duty problem to the Employee Concerns Program in that you did (b)(7)c (b)(7)c

Concern 4

The operations crew in which the inattentive operations (b)(7)c resided and other levels of licensee management may have been covering for the (b)(7)c for licensed operator requalification.

Concern 5

Based upon your concerns, the NRC is concerned that although the inattentive operations (b)(7)c (b)(7)c has been purportedly removed from shift duties, the licensee has not terminated his SRO license and the individual may be placed on shift as needed.

ENCLOSURE 1