

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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April 27, 2012

The Honorable Gregory B. Jaczko
Chairman
Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Chairman Jaczko:

We write to learn more about the processes the Nuclear Regulatory Commission (NRC) has in place to ensure NRC employees feel free to raise concerns without fear of reprisal. In a speech you gave on February 29, 2012, to the National Association of Employee Concerns Professionals (NAECP) in the context of work environment at the nation's nuclear plants, you stated that "[t]he existence of a healthy work environment, in which employees are free to raise safety concerns, is a vital underpinning of the NRC's regulatory oversight."¹ We couldn't agree more. In light of this, we seek your assistance to help us understand how practices for ensuring a healthy work environment similarly apply to you and your fellow commissioners at the NRC.

The NRC requires its licensees to maintain a culture of safety and subjects them to inspections and enforcement against a "chilled work environment." The NRC Inspection Manual defines a "chilled work environment" as "one in which employees perceive that raising safety concerns to their employer or to the NRC is being suppressed or is discouraged and can occur because of an event, interaction, decision, or policy change." Allegation Guidance Memorandum 2012-001 provides guidance to agency staff regarding the use of "chilling effect letters" to ensure licensees are taking appropriate actions to foster a safety conscious work environment (SCWE).

Allegation Guidance Memorandum 2012-001 lists factors that contribute to a chilled environment at licensee facilities:

- The number of allegations;
- The number of concerned individuals; and,

¹ <http://pbadupws.nrc.gov/docs/ML1206/ML120610047.pdf>.

- Concerns specifically indicating fear or reluctance to raise concerns.

The Memorandum also directs staff to examine specific events that may have had a chilling effect and to “consider the number of individuals who witnessed the event or who are potentially affected by it; the notoriety of the event; the position, responsibility, and level of influence of the individual causing the chilling effect; and the egregiousness of the behavior.”

Billie Garde, a whistle-blower advocate and frequent witness before the Commission, summarized how unacceptable behavior can derail safety culture in a Commission meeting March 30, 2010:

“...in my experience where these work environments get off track is, and then can result in an erosion of safety culture, it frequently goes back to leadership, but there's still a lot of folks in industry that think leadership in this industry is yelling real loud.

“That isn't it, and I think it is time that we are able to say that respectful work environments that do not -- are not based on that kind of intimidating and harassing behaviors have to have a common understanding.

“It's just not okay in 2010 and 2011 to say, well that's just the way he or she behaves so we all just have to adjust to those types of unacceptable behaviors, because professionals and people that we want to pay attention to safety first, don't.

“Human nature just does not react well to being managed by humiliation.

“If we don't get that out of this industry, it will continue to cause problems that will occupy a lot of time and energy.”

Just as we agree with your aforementioned remarks in February to the NAECP, we agree with those of Ms. Garde.

Moreover, we expect all commissioners to lead by example and to conduct themselves with standards that meet or exceed those required and expected of the industry. This is particularly important for a chairman, as organizationally, he or she sets the tone and is the principal executive with direct influence over the agency's staff.

According to the agency's website:

“The NRC strives to establish and maintain an open collaborative work environment (OCWE) that encourages all employees and contractors to promptly speak up and share concerns and differing views without fear of negative consequences. An OCWE is a model workplace where diverse views, alternative approaches, critical thinking, collaborative problem solving, unbiased evaluations, and honest feedback are encouraged, recognized, and valued. Trust, respect, and open communication promote a positive work environment that maximizes the potential of all individuals and improves our regulatory decision-making.”

Indeed, you yourself have often spoken of the NRC's OCWE as a critical element of the NRC's vibrant safety culture. **However, there is evidence that this is not the case at present, and that a chilled work environment exists at the NRC because of your leadership practices.**

In a letter to you on October 13, 2011, your fellow commissioners raised this concern and cited such an example regarding a meeting with senior staff on October 5, 2011. They wrote:

"We are shocked to have received numerous reports from NRC senior staff about your remarks at the October 5 Senior Leadership Meeting. Your comments have been interpreted by those present not only to reflect your disdain for the Internal Commission procedures, but also your contempt for the Commission. Your remarks to the NRC senior staff undermine the entire Commission."

A report from the Committee on Oversight and Government Reform (OGR) quoted a staff member who characterized your statements at the meeting as: "I know what is best for safety so you need to get on my team, support my objectives. The other Commissioners are just getting in the way."² In conflict with the OCWE, this suggests intolerance for diverse views and alternative approaches, and a lack of interest in collaborative problem solving.

In that same October 13, 2011, letter to you, your fellow commissioners also cited several additional examples. Specifically, the letter states:

"While you are a champion of openness in Commission deliberations, you have taken steps to discourage open communication between the staff and the Commission. There are a number of recent examples where you or your office directed the staff to withhold certain views from the Commission or strongly criticized the staff's views. Two recent examples include your direction to the [Executive Director for Operations (EDO)] to withdraw the [commission paper] on the Fukushima Near Term Task Force Report as well as your strong, ill-tempered criticism of the senior staff's recommendations in the post-Fukushima "21-day" report. While you have communicated to us that your primary motivation in *seeking to remove the EDO* (emphasis added) is based on his lack of communications with you, due diligence with numerous senior staff indicates that your motivation stems from instances where the EDO did not follow your view on what to present to the Commission as the staff's policy position."

The report from OGR³ provided additional details on the Fukushima matter, describing an exchange between you and the Deputy Director for Operations, Martin Virgilio, where Mr. Virgilio describes your behavior as "red-faced" and "shaking angry," that you became "hostile and accused him of being untruthful." Afterward, it is reported that "staff did not feel that they

² Committee on Oversight and Government Reform "A Crisis of Leadership: How the Actions of Chairman Gregory Jaczko Are Damaging the Nuclear Regulatory Commission", page 46.

³ Id. at 44.

could question the directions from the Chairman on the [commission paper].”⁴ Again, in conflict with the OCWE, this suggests that unbiased evaluations and open communication carry risks of negative consequences.

In a December 15, 2011, hearing before the Senate Environment and Public Works Committee, it became evident that the Director of the Office of Public Affairs emailed reporters urging them to read an outside report that denigrated the four commissioners and criticized them for not supporting your proposals on how the agency should respond to the Fukushima accident. Regardless of whether you or your staff instructed him to do so, the episode was quite notable and may have contributed to the perception among NRC employees that disagreeing with you carries a risk of reprisal, suppressing their willingness to share candid advice and recommendations with the Commission.

When we compare the examples listed above to the factors that contribute to a chilled work environment, it appears that the Commission would receive a Chilling Effect Letter if it were subjected to the same scrutiny as it imposes on its licensees. However, there doesn’t appear to be a similar procedure under which the NRC would hold itself accountable. To help us understand the implications of this situation, please respond to the following questions or request for information by May 11, 2012.

1. Are there specific requirements and guidance within the NRC that prohibit behaviors that may have a chilling effect on the work environment outside of those enumerated by the Equal Employment Opportunity Commission (e.g., race, gender, religion)? If so, please provide them. If not, please explain why not.
2. Should Commissioners be subject to much the same requirements with regard to ensuring a Safety Conscious Work Environment as NRC licensees? If not, please explain why not.
3. Should the fact that a licensee executive is “passionate” about his particular view on nuclear safety be a mitigating factor in licensee cases where agency staff has evidence that a chilled work environment may exist?
4. If an employee wanted to raise a concern about the Chairman’s or another Commissioner’s behavior, what options are available outside of actively having to invoke NRC’s Open Door Policy process or filing a Differing Professional Opinion?
5. Please provide all reports issued within the past two years to any office director, the Executive Director of Operations, or the Commission, that assess safety culture within the NRC.
6. Are you provided with a report listing which agency staff has met with your fellow commissioners and the topics of their discussions? If so, please provide all copies of these reports and explain why this action does not have a chilling effect on the willingness of staff to raise issues and discuss them freely and directly with the Commissioners.
7. On January 26, 2010, the Commission was provided with an Internal Safety Culture Update. This report indicated “...that there are continuing questions on effectiveness of the differing views processes...” and “...continued perception of potential negative consequences for engaging in these processes...” Please explain how your decisions to

⁴ Id.

commend some staff for raising Differing Professional Opinions and ignore those brought by others would not exacerbate the perception of negative consequences and further discourage staff from raising perspectives they perceive you to disagree with, thereby contributing to a chilled environment.

The NRC appears to lack its own guidance for assessing and correcting a chilled work environment, a gap that has, in our view, facilitated a pattern of behavior we find unacceptable at an agency that is responsible for identifying and preventing similar behavior by its licensees. We appreciate your timely response to our request. Please contact Committee staff Annie Caputo at (202) 225-2927 with any questions.

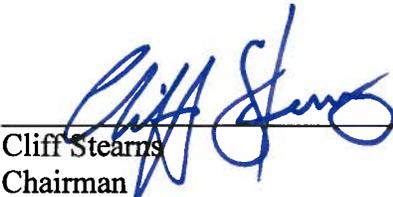
Sincerely,



Fred Upton
Chairman



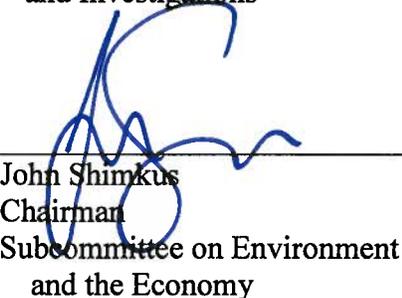
Joe Barton
Chairman Emeritus



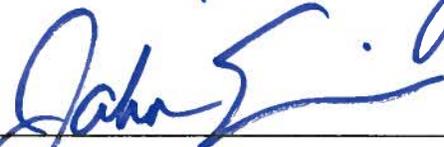
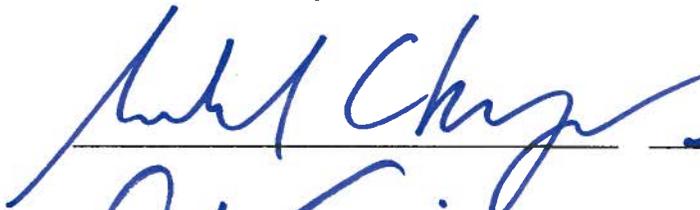
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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

The Honorable Gene Green, Ranking Member
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