

**Congress of the United States**  
**House of Representatives**  
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October 2, 2012

The Honorable Allison M. Macfarlane  
Chairman  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

Dear Chairman Macfarlane:

I write again regarding allegations of safety culture problems at the Nuclear Regulatory Commission's (NRC) Region IV office (which is headquartered in Arlington, TX). Specifically, I am concerned that your July 23, 2012<sup>1</sup> response to my May 9, 2012 letter did not provide me with the information and materials I requested. Additionally, Region IV staff who have recently communicated with my office have informed me<sup>2</sup> that NRC has not even begun an effort to assemble some of these materials. I have also been alerted by these individuals, and through informal communication with the NRC Inspector General's (IG's) office, that the IG investigation into this matter appears to be intentionally limited, and, therefore, unlikely to result in a true assessment of whether safety culture problems in NRC's Region IV exist.

I again request that you engage an independent contractor to evaluate these alleged Region IV problems, since it appears that the IG is either incapable of or unwilling to do so. While I appreciate the commitment you made in a second July 23, 2012 letter<sup>3</sup> that there will be an independent examination of NRC's safety culture conducted on an agency-wide basis, I believe that the allegations regarding Region IV's safety culture require careful and specific attention that they will not receive as part of the NRC-wide survey you described.

I first wrote<sup>4</sup> the NRC about this matter on May 9, when I transmitted an anonymous letter<sup>5</sup> I received from staff at NRC's Region IV. These individuals alleged that Mr. Troy Pruett, the Deputy Division Director of the Division of Reactor Projects, engaged in numerous efforts to thwart and discourage aggressive nuclear safety oversight. These allegations included:

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<http://markey.house.gov/sites/markey.house.gov/files/documents/NRC%20response%20to%20May%209%20NRC%20whistleblower%20letter.pdf>

2 <http://markey.house.gov/document/2012/region-iv-whistleblower-september-follow-letter>

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<http://markey.house.gov/sites/markey.house.gov/files/documents/NRC%20response%20to%20June%204%20safety%20culture%20letter.pdf>

4 <http://markey.house.gov/document/2012/letter-nrc-regarding-texas-headquarters>

5 <http://markey.house.gov/document/2012/letter-rep-marey-nrc-region-4-staff>

- Openly criticizing and denigrating professional staff who brought forward inspection findings that he did not agree with
- Berating and intimidating inspectors for raising safety issues
- Altering or removing safety findings from inspection reports prior to their release
- Downgrading the performance appraisals for staff members who identified regulatory violations with which he disagreed
- Disagreeing with the staff's recommendation to issue the most serious 'red' safety finding to the licensee of the Fort Calhoun Station because "it would result in a 'political environment' that would make his job, as the chairman of the Fort Calhoun Station restart committee, more difficult." It is alleged that he subsequently mischaracterized the technical staff's views on this matter to NRC headquarters personnel

Although I requested in my original letter that the NRC engage an independent contractor to evaluate these allegations, the matter was instead referred to the NRC IG. This led NRC Region IV staff to communicate with me again<sup>6</sup>, this time to inform me that in their view the NRC IG:

"is neither impartial in this matter, nor are they trained to objectively evaluate safety culture issues. In particular, based upon the line of questioning by the IG, it appears that they are more interested in establishing that the safety issues identified by RIV Staff were appropriately dispositioned rather than Mr. Pruett's intimidating management style which has created a 'chilled' work environment. Specifically, the issue involving the 'red' finding at Fort Calhoun was provided as an example of Mr. Pruett's repressive management style and that in spite of his inappropriate actions, the dedication and integrity of Region IV's staff resulted in the appropriate disposition of this issue."

On June 4, I wrote<sup>7</sup> the NRC again, recounting new allegations of serious new safety culture problems brought to my attention in Region IV, which included reports of additional efforts by Mr. Pruett to weaken his staff's safety enforcement and oversight efforts and retaliate against those who did not enable those efforts, detailing the Region IV staff's lack of confidence in the NRC IG investigation, and reiterating my request that an independent entity be engaged to evaluate these allegations. On July 23, 2012, you responded to my letters. This response was inadequate and unsatisfactory in the following respects:

- You informed me that the IG was undertaking an investigation into the complaint, but failed to address my repeated requests that an independent entity do so instead, even in light of the complete lack of confidence in the IG expressed by those who brought the complaints forward in the first place.
- You failed to provide me with copies of documents related to other complaints regarding Mr. Pruett that I requested. While your staff has repeatedly committed to engage with my staff in an effort to accommodate the spirit of my request without disclosing sensitive

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<http://markey.house.gov/sites/markey.house.gov/files/documents/Region%20IV%20whistleblower%20letter%20to%20Markey.pdf>

<sup>7</sup> <http://markey.house.gov/document/2012/june-2012-letter-nrc-regarding-region-iv-follow>

personnel matters, no offer of any accommodation has been made to date, and a recent message from your staff to mine seems to indicate that the NRC will not be willing to provide me with any of this information at all.

- You informed me that NRC was “searching our records,” to identify documents I requested related to the decision to assign a ‘red’ safety finding to the Fort Calhoun Station, but a September 19, 2012 letter<sup>8</sup> I received from Region IV staff states that “no request has been forwarded to RIV staff for documents related to this matter which brings into question the veracity of the NRC’s response.”
- You informed me, in response to my question that “NRC does not have, and the Commission does not support, a performance award policy that equates bonuses to enforcement actions that are challenged or overturned by licensees.” However, the September 19, 2012 letter<sup>9</sup> I received from Region IV staff states that NRC’s strategic goal and objective for the number of enforcement actions being retracted is less than or equal to four, and that accomplishment of this (among other) goal is used as a basis for adjusting base pay. Moreover, this letter goes on to assert that NRC senior management routinely focus on whether or not licensees agree with proposed violations during inspection debrief meetings, and that this is because of the potential that a licensee challenge could have a negative impact on pay.

The September 19 letter I received from Region IV staff also stated that Mr. Pruett recently asserted that the “IG has not substantiated any of the allegations and that he would be returning to his position as Deputy Division Director of the Division of Reactor Projects” by December. This raises questions as to whether Mr. Pruett has inappropriately received information regarding the findings and conclusions of the IG investigation prior to its completion and release. Other informal communications my staff has had with Region IV staff and others has led me to conclude that one reason for Mr. Pruett’s assertion is that there seems to be a fundamental disconnect between what the IG is attempting to ascertain and NRC’s safety culture policy.

On June 14, 2011 NRC published its safety culture policy statement in the Federal Register<sup>10</sup>. That document, which was developed over a three-year period and after extensive stakeholder outreach, lists nine attributes of a positive safety culture:

- (1) *Leadership Safety Values and Actions*—Leaders demonstrate a commitment to safety in their decisions and behaviors;
- (2) *Problem Identification and Resolution*—Issues potentially impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance;
- (3) *Personal Accountability*—All individuals take personal responsibility for safety;
- (4) *Work Processes*—The process of planning and controlling work activities is implemented so that safety is maintained;
- (5) *Continuous Learning*— Opportunities to learn about ways to ensure safety are sought out and implemented;

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<sup>8</sup> <http://markey.house.gov/document/2012/region-iv-whistleblower-september-follow-letter>

<sup>9</sup> <http://markey.house.gov/document/2012/region-iv-whistleblower-september-follow-letter>

<sup>10</sup> <http://www.gpo.gov/fdsys/pkg/FR-2011-06-14/pdf/2011-14656.pdf>

- (6) *Environment for Raising Concerns*—A safety conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination;
- (7) *Effective Safety Communication*— Communications maintain a focus on safety;
- (8) *Respectful Work Environment*— Trust and respect permeate the organization; and
- (9) *Questioning Attitude*—Individuals avoid complacency and continuously challenge existing conditions and activities in order to identify discrepancies that might result in error or inappropriate action.

The NRC's Final Safety Culture Statement declared that, "It is the Commission's expectation that all individuals and organizations, performing or overseeing regulated activities involving nuclear materials, should take the necessary steps to promote a positive safety culture by fostering these traits as they apply to their organizational environments." However, this policy statement does not apply to NRC employees, but extends only to "all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors and suppliers of safety-related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval."

The NRC employees themselves are governed by a much less descriptive 'Open, Collaborative Work Environment' policy statement<sup>11</sup> which is described as follows:

"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 decisionmaking.

"NRC employees understand that everyone has a role in safety and that we are all responsible for promoting a strong safety culture and achieving our mission.

"In reaching this goal, we must collectively act as a team and individually behave as NRC Team Players . In some organizations, being a "team player" means accepting management's views during the decisionmaking process and not "rocking the boat." Being an NRC Team Player does not mean those things. NRC holds its employees to a higher standard of involvement and responsibility for the decisions that are made. We expect all our employees "to get in the game" and routinely engage in informal discussions on issues with their coworkers and supervisors.

"In addition to informal discussions, which should be sufficient to resolve most issues, individuals have various mechanisms for expressing and having their differing views heard by decision-makers."

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<sup>11</sup> <http://www.nrc.gov/about-nrc/values.html#open>

The NRC website then goes on to describe its Open Door Policy, Nonconcurrency Process, and Differing Professional Opinion programs. Although the NRC OCWE program which applies to NRC employees is not equivalent to the Safety Culture Policy Statement which applies to others who participate in NRC-regulated activities, the OCWE materials reference the Safety Culture policy, at least suggesting that these principles should apply universally to both NRC and non-NRC employees working on NRC-regulated activities.

According to repeated concerns raised by Region IV staff in communications with my office, the IG investigation does not appear to be an effort to ascertain whether Mr. Pruett and/or other individuals in NRC's Region IV office behave in a manner that is consistent with either the NRC's Safety Culture policy statement or with the NRC's Open Collaborative Work Environment described above. Instead, the IG is attempting to identify whether it can definitively identify and link any specific act of professional retaliation committed by Mr. Pruett to his staff's efforts to more aggressively oversee or enforce NRC safety regulations. This perception of the scope of the IG efforts was verified in a September 20, 2012 phone conversation between my staff and Mr. Joseph McMillan, Assistant Inspector General for Investigations.

The nature, breadth, quantity and varied sources of the allegations I have received regarding Mr. Pruett have led me to conclude that not a single attribute of a positive safety culture identified by NRC in its safety culture policy statement are met in Region IV. It is also impossible to describe the Region IV office as living up to NRC's Open Collaborative Work Environment. Yet, it is apparent that the IG either was not requested to assess Region IV's safety culture or work environment, or has chosen not to do so.

I am extremely disappointed with the NRC's inadequate response to my letters, with the NRC's failure to require an independent assessment of Region IV's safety culture, and with the IG's apparent failure to recognize that a manager who consistently berates and belittles safety inspectors when they undertake aggressive enforcement actions, bases performance reviews on whether personnel agree with him on safety matters, and alters inspectors' safety findings even in the face of widespread technical disagreement with the alterations, will, without question, adversely impact the safety culture and work environment associated with his organization. Consequently, I ask for your assistance in responding to the following requests for information by October 12, 2012:

- 1) Please provide me with a copy of all emails, correspondence, or other documents that were submitted to the IG by all Commissioners or other NRC staff who referred the Region IV safety culture concerns to the IG so that I may understand the scope of what the IG was asked to do.
- 2) I reiterate my request that an independent entity examine the allegations of safety culture problems in Region IV, and in particular examine all allegations related to Mr. Pruett's actions. At minimum, please include as part of the scope of such an examination the question of whether Mr. Pruett's management style and past actions have, either taken separately or collectively, resulted in adverse impacts to each of NRC's nine listed attributes of what constitutes a positive safety culture at Region IV. Does the NRC believe that the safety culture in Region IV is fully consistent with the NRC's open

collaborative work environment (OCWE) policy statement? Are all employees are able to promptly speak up and share concerns and differing views without fear of negative consequences? Are diverse views, alternative approaches, critical thinking, collaborative problem solving, unbiased evaluations, and honest feedback encouraged, recognized, and valued? Is there a work environment of trust, respect, and open communication that maximizes the potential of all individuals and improves our regulatory decisionmaking? Has it been made clear to all NRC employees in the Region that everyone has a role in safety and that they are all responsible for promoting a strong safety culture and achieving the NRC mission?

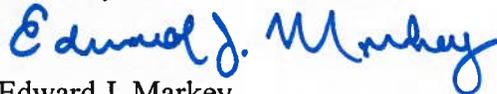
- 3) Please also include as part of such an examination a request that the independent entity attempt to ascertain whether Mr. Pruett based his alleged assertions that the IG has not substantiated any of the allegations made against him prior to the completion and release of the IG report on communications between the IG office and Mr. Pruett (and otherwise, what the source, if any, of Mr. Pruett's information was).
- 4) Using the information contained in the September 19, 2012 letter I received from Region IV staff, please again provide a response as to whether the Commission supports a performance award policy that equates bonuses to enforcement actions that are challenged or overturned by the licensee. If so, how does the Commission justify this view, and if not, what will the Commission do to alter the pay incentives described in the September 19 letter?
- 5) Please provide the NRC's proposed response to my May 2012 request for a copy of all documents (including but not limited to emails, phone logs, memos, or letters) in which NRC staff have identified or complained about the management style, acts of retaliation or other personnel complaints associated with Mr. Pruett. For each complaint that was brought to the attention of more senior NRC personnel, please indicate a) whether the alleged action was investigated and if so, please provide a copy of all documents related to any such investigation, b) whether the alleged action was remedied and if so, please provide a copy of all relevant documents, and c) whether any disciplinary actions were taken against Mr. Pruett, and if so, please provide a copy of all relevant documents. I understand that some of these materials may contain private personnel information, and it is not my intention to require the disclosure of such material. My staff has, on numerous occasions, conveyed my willingness to work collaboratively with you to devise an acceptable response to this request that would satisfy all involved. Yet on September 26, your staff informed mine that the NRC is unwilling to provide me with any response whatsoever due to these so-called 'privacy concerns.' Please propose a suitable accommodation.
- 6) Please provide NRC's timetable for providing me with my May 2012 request for copies of all documents (including but not limited to emails, letters, telephone logs, and memos) to or from Commissioners, Commissioner staff, and senior NRC officials (including but not limited to Bill Borchardt, Marty Virgilio and Elmo Collins) that are in any way related to the decision to assign a "red" safety finding to the Fort Calhoun Station or to subject the Fort Calhoun Station to more aggressive oversight. While I have received

responses from Commissioners Apostolakis, Ostendorff, Svinicki and Magwood, I have yet to receive a submission from former-Chairman Jaczko or any of the relevant senior NRC staff. According to the September 19 letter I received from Region IV staff, "Congressional requests of this nature typically generate a "Green Ticket" from the EDO [Executive Director for Operations, Bill Borchardt]. This administrative tracking mechanism would be forwarded to all potentially affected NRC staff in order to conduct the requisite records search. However, to date, no such request has been forwarded to RIV staff for documents related to this matter which brings into question the veracity of the NRC's response." This failure to undertake a search for responsive documents, if true, is completely unacceptable. I ask that you additionally include, as part of this request, any and all documents (including but not limited to emails, letters, telephone logs, and memos) to, from or about Mr. Pruett that are also related in any way to the decision to assign a "red" safety finding to the Fort Calhoun Station or to subject the Fort Calhoun Station to more aggressive oversight.

- 7) Does the NRC believe that the safety culture of the Nuclear Regulatory Commission itself should conform with the principles outlined in its Final Safety Culture Statement? If so, what specifically is the NRC planning to do to ensure that this is the case in Region IV? If not, please explain why the NRC would not wish the Final Safety Culture Statement to be applicable to the activities of its own staff? Does the Commission believe that the only measure of whether there is a strong safety culture or an open and collaborative work environment at the NRC to be the definitive disposition of whistleblower retaliation complaints?

Thank you for your attention to this matter. I look forward to your response. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,



Edward J. Markey