

# MEETING ON THE DISCRIMINATION TASK GROUP DRAFT REPORT

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- Frank Congel
- Director, Office of Enforcement  
USNRC



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# Group Composition:

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- Frank Congel, Director, Office of Enforcement,  
Group Leader
  - Bill Borchardt, Associate Director for Inspection and  
Programs, NRR
  - Barry Letts, Office of Investigations Field Office  
Director, Region I
  - Dennis Dambly, Assistant General Counsel for  
Materials Litigation and  
Enforcement, Office of General  
Counsel
  - Ed Baker, Agency Allegation Adviser
  - Cynthia D. Pederson, Director, Division of Nuclear  
Materials Safety, Region III
  - Brad Fewell, Regional Counsel, Region I
  - Barry Westreich, Office of Enforcement
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# Task Group Goals

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Formed in June, 2000 to:

- Promote active involvement of internal and external stakeholders.
  - Evaluate the NRC's current process.
  - Review/analyze stakeholder comments.
  - Develop recommendations that ensure the investigation and enforcement process supports an environment where workers are free to raise safety concerns.
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# Task Group Schedule

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- Evaluate current NRC processes.  
(Complete) July-Sept., 2000
  - Conduct Initial Stakeholder meetings.  
(Complete) Sept.-Nov., 2000
  - Review other federal agencies processes  
(Complete) Oct., 2000-March 2001
  - Develop recommendations  
(Complete) Jan.-April, 2001
  - Issue Recommendations for public comment.  
(Complete) May, 2001
  - Stakeholder Meetings June-August, 2001
  - Comment Period Ends August 17, 2001
  - Issue Final Report October, 2001
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# Scheduled Public Meetings

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- Chattanooga, TN - June 25, 2001
  - Chicago, IL - July 11, 2001
  - Paducah, KY - July 12, 2001
  - San Luis Obispo, CA - August 9, 2001
  - Waterford , CT - August 14, 2001
  - Washington, DC - August 16, 2001
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# **GENERAL COMMENTS RECEIVED**

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- Improve Timeliness.
  - Release Information (e.g. OI Reports) prior to PEC.
  - Conduct of OI Investigations.
  - Establish more Criteria for Determination of Severity Level.
  - Need to better explain Legal Standard used.
  - Clarify DOL/NRC interface.
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# RANGE OF COMMENTS

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## ■ INDUSTRY

- Defer to DOL
- No Individual Actions
- Risk Inform process
- No Enf Action Needed
- SCWE oversight  
but no regulations

## PUBLIC

- Allegers need more protection
  - Allegers need financial  
assistance
  - Take stronger enforcement  
(especially against managers)
  - Current Regs sufficient
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# **NOTABLE RECOMMENDATIONS**

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- **Maintain NRC involvement in discrimination issues.**
  - **Eliminate deferral of cases to DOL.**
  - **Streamline the process to improve timeliness and allow release of redacted OI reports.**
  - **Modify the factors for determining Severity Level.**
    - Severity of the adverse action.
    - Notoriety of the adverse action.
    - Benefit to the individual.
    - Did the protected activity involve participating in government processes.
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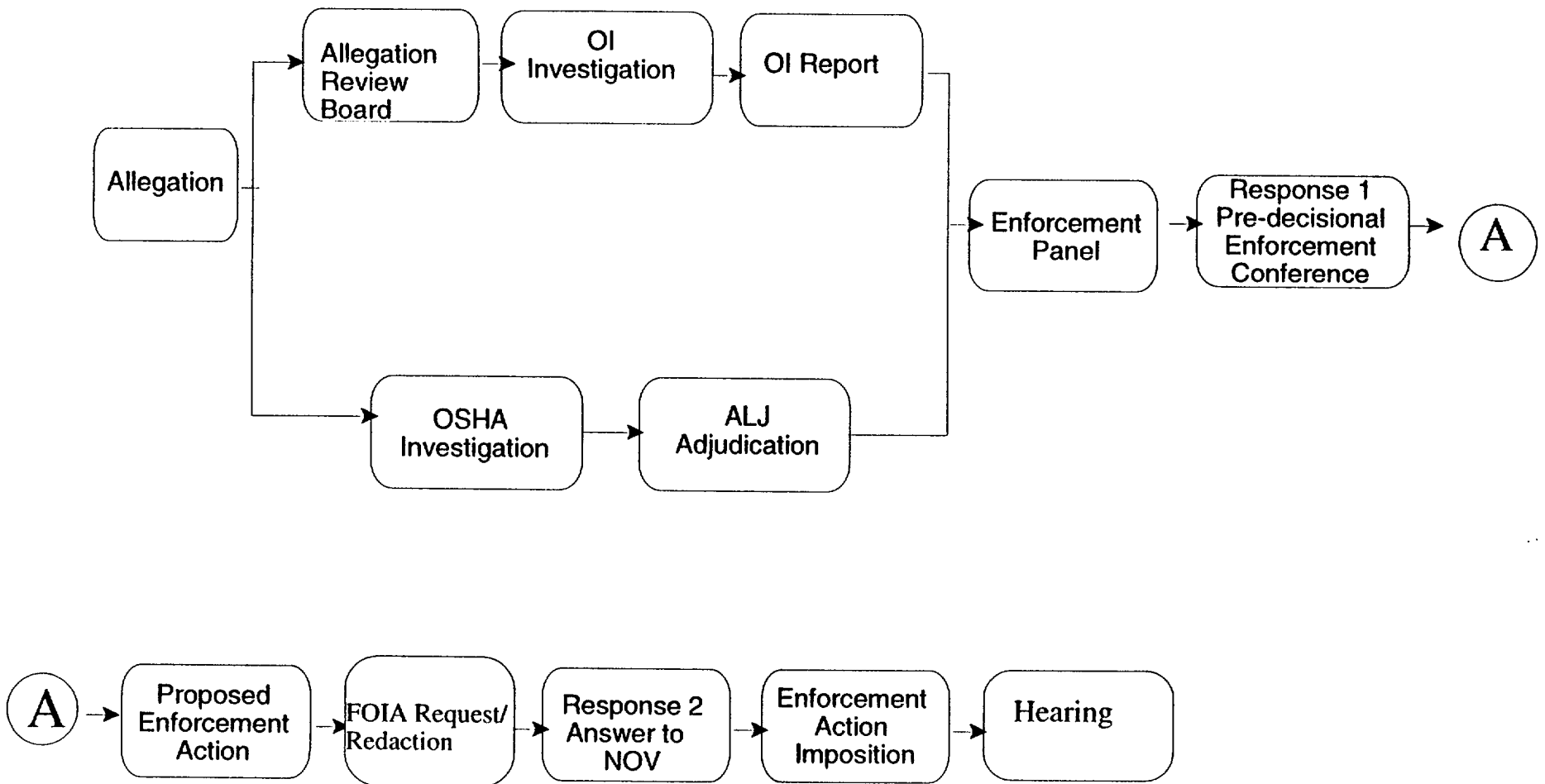
# **NOTABLE RECOMMENDATIONS-**

## **Cont**

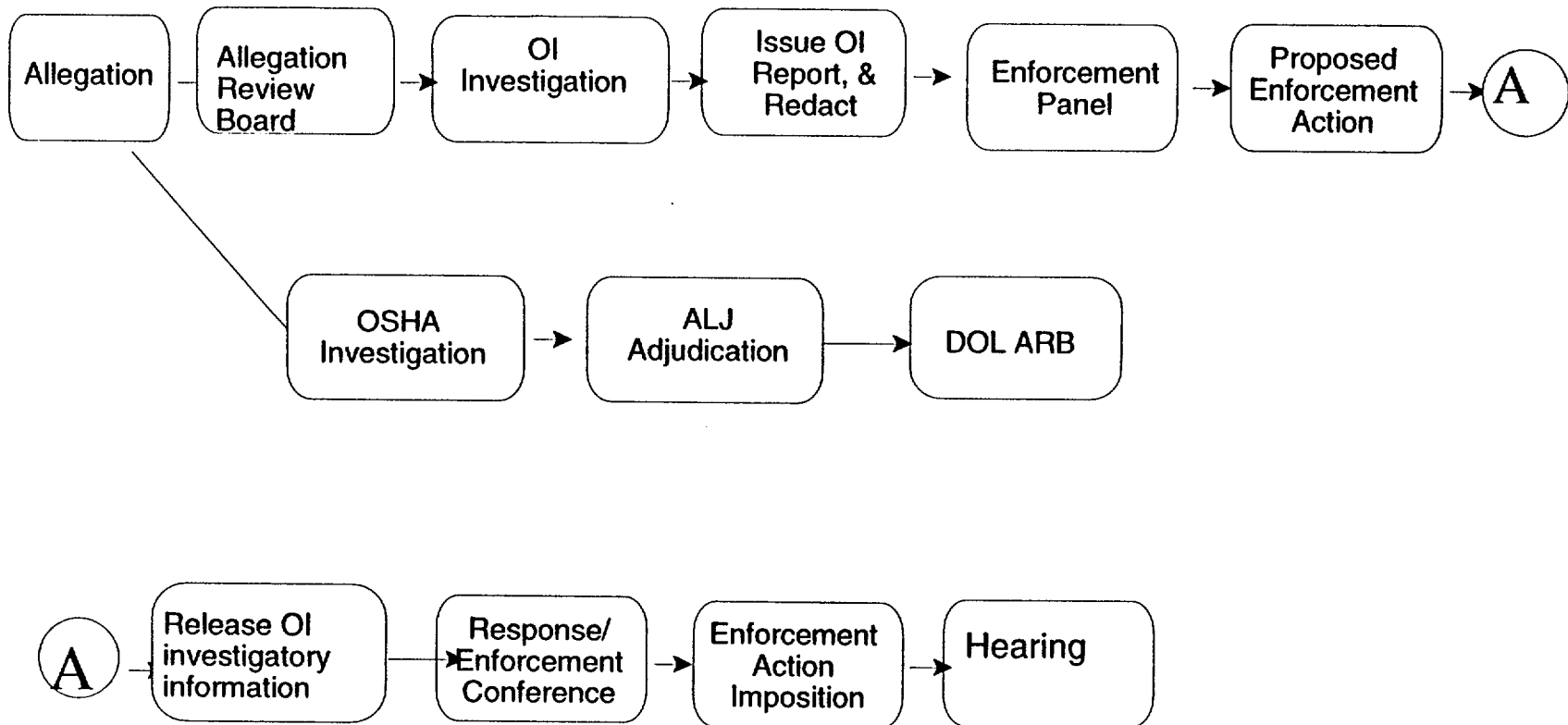
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- Provide financial support to the allegeders and one personal representative to attend PEC.
  - Modify regulations to allow assessing Civil Penalties to Contractors.
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# CURRENT PROCESS



# RECOMMENDED PROCESS



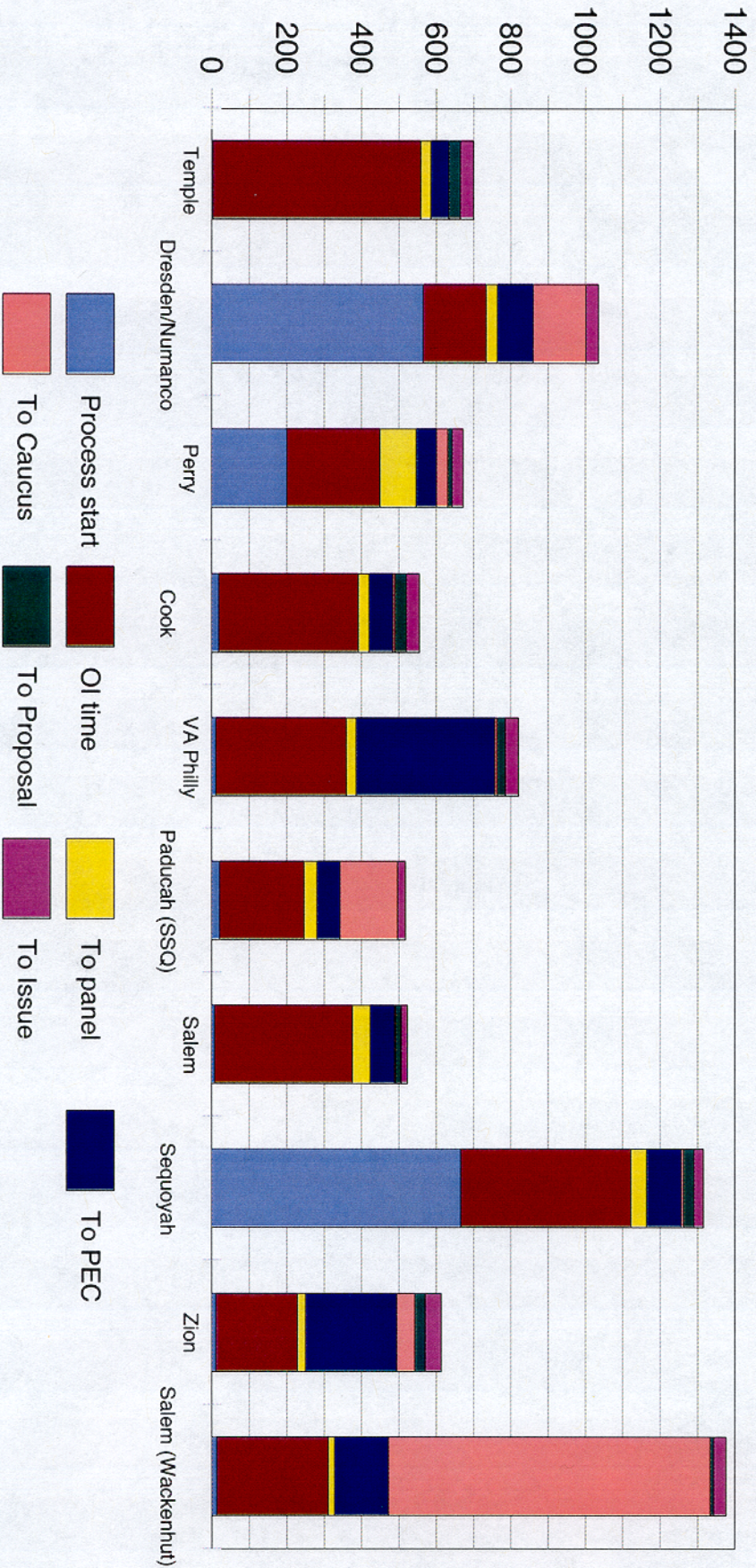
# **FUTURE ACTIVITIES**

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- Stakeholder Meetings and Feedback
  - Comments accepted until August 17, 2001
  - Issue Final Report to Commission
  - Disposition recommendations
  - Tasking to staff for evaluation and follow up
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# Discrimination Cases

Total Time Breakdown



*Presentation to  
NRC Discrimination Task Group*

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**Discrimination Task Group  
Draft Review and Preliminary  
Recommendations**

*Ralph Beedle, Senior Vice President  
Nuclear Energy Institute  
June 25, 2001*



# **NRC's Evaluation Process**

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- ▶ **Perform internal evaluation of current NRC investigative and enforcement processes**
- ▶ **Obtain views of stakeholders through public meetings and written comments**
- ▶ **Review processes used by other federal agencies**



# **Stakeholders Agree on Need for Reform**

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- ▶ **Strong consensus that NRC should revise approach to employee protection**
- ▶ **Stakeholders agree reform needed to address:**
  - ▶ **Conduct of OI investigations**
  - ▶ **Legal standards and evaluation process**
  - ▶ **Lack of fundamental fairness in enforcement process**
  - ▶ **Lack of transparency**
  - ▶ **Lack of timeliness**





# **Discrimination Task Group Draft Review and Preliminary Recommendations**

- ▶ **Suggests lack of objectivity**
  - ▶ Largely justifies the *status quo*
  - ▶ Fails to consider processes of other agencies
- ▶ **Suggests lack of appreciation of stakeholder concerns**
- ▶ **Recommended changes will not produce a fairer, more understandable process**
  - ▶ Result will be greater duplication and inefficiency
- ▶ **Fails to justify significant expenditure of resources given industry performance**



# **NRC Should Reconsider Preliminary Findings and Recommendations**

- ▶ **NRC recommendations do not address issues of fundamental fairness**
  - ▶ **Retain current approach to conduct of investigations**
  - ▶ **Retain current legal standards/evidentiary bases for enforcement**
  - ▶ **Eliminate predecisional enforcement conference**
  - ▶ **No opportunity for hearing by individual subject to NOV**
  - ▶ **Continued failure to provide full explanation of bases for enforcement action**



# **NRC Should Reconsider Policy Issues**

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- ▶ **Conduct of independent investigation and enforcement action**
- ▶ **Threshold for initiation of OI investigation**
- ▶ **Adverse impact on nuclear employee accountability**
- ▶ **Promotion of settlement through credit in Enforcement Policy**



# **Bases for Reform of 50.7 Implementation**

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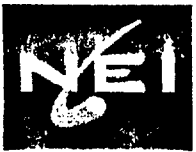
- ▶ **Nuclear industry performance demonstrates freedom of employees to report safety concerns**
- ▶ **Preserving nuclear employee accountability is an important public interest**
- ▶ **Current legal and evidentiary standards are inappropriate**
- ▶ **Lack of openness and transparency undermines credibility of results**
- ▶ **Current process promotes inefficient use of NRC resources**



# Achieving Reform

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- ▶ **Fundamentally revise NRC's approach to individual discrimination claims by allowing Department of Labor to handle in first instance**
  - ▶ **Other federal agencies with similar public health and safety responsibility do not independently investigate or take enforcement action on grounds of discrimination**
- ▶ **NRC could retain enforcement authority--reserved for "exceptional circumstances"**



# Achieving Reform, con't

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- ▶ **Revise the current process to achieve greater fairness, appropriate allocation of resources and transparency**
  - ▶ **Adopt appropriate threshold for initiation of OI investigation**
  - ▶ **Adopt and apply appropriate legal standard and “preponderance of evidence” standard**
  - ▶ **Provide *meaningful* predecisional enforcement conference**
  - ▶ **Provide full and reasoned explanation of bases for enforcement**
  - ▶ **Provide right to hearing for individual subject to enforcement**



# Conclusions

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- ▶ **NRC should withdraw preliminary report and reconsider input from stakeholders and other agencies**
- ▶ **Substantive reform is imperative to address the flaws in the current process**
- ▶ **All stakeholders will benefit from a fairer, more open, and more timely approach**



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