

**MEETING SUMMARY FOR JUNE 25, 2001 DISCRIMINATION TASK GROUP  
MEETING IN CHATTANOOGA, TENNESSEE..**

The meeting began at 7:00 p.m.

**Mr. Congel, Director, Office of Enforcement**

Mr. Congel presented an overview of the Discrimination Task Group activities and recommendations. (Slides provided)

**Mr. Beedle, Nuclear Energy Institute presentation, (Slides Provided)**

- Mr. Beedle stated that he did not think that the task group addressed the universal and substantive comments provided at the stakeholder meetings.
- NEI does not believe that the legal standards used by DOL are being applied by the NRC. The NRC is using a standard of a scintilla of evidence that discrimination occurred.
- There is the issue of fairness that has not been addressed by the Task Group.
- By the time the NRC finishes with the process, the Agency has more of a more detrimental effect on safety and the safety conscious work environment (SCWE) than anything else in the industry.
- The report justifies the status quo and actually regresses the process.
- Paying for the travel costs of the alleger and another individual only results in additional cost to the industry.

Mr. Congel: We are not recommending billing the licensee to pay for these costs.

Mr. Beedle: The industry and rate payers in the long run will be required to pay these costs through higher fees that are passed on and that is unacceptable.

- The Task Group totally blew off everything the stakeholders told the NRC. You should go back and address these issues.
- The public should be disappointed that you did not address any of their concerns.
- People who feel wronged are looking for the NRC to solve their problems. The NRC interjection portrays the aura that the NRC is going to do the same thing that DOL or law enforcement does, and this is not the case.
  
- The threshold for initiation of OI investigations should be re-examined.
- The investigation alone is negatively influencing the attitudes at the facilities.
- I don't find any case in the last several years that would be a reflection of a broken SCWE.
- The nuclear industry is performing better today than they ever have been, which is an indication of the a good SCWE.
- The current process promotes inefficient use of NRC resources.
  
- We believe that the Task Group should go back and see if you can achieve substantive reform.

- DOL should evaluate these individual cases and the NRC should only look in unusual cases.

-Since this Task Group began we are seeing a change in the way investigations are being conducted. Investigators are no longer notifying the licensee when they arrive to interview someone, they just show up unannounced in the middle of the night.

-We suggest the Task Group withdraw the report and do a major revision to it and address the comments received.

**Mr. Mark Burzynski, TVA:**

Mr. Burzynski presented comments on the draft report and indicated that formal TVA comments will be submitted in writing at a later time.

The Draft report does not effectively address important issues:

- There was a universal plea for improvement in the transparency of the process. This has not been accomplished .
- The re-sequencing recommendation is a step backward.
- Limited redacted OI information may provide no real benefit. We need not only the OI report information, but the legal analysis for the case is in order to see how the violation is justified.
- The recommendations do not provide effective due process. The recommendations and justification to provide no hearing rights to individuals is weak.
- There was a universal claim of the OI investigation should be less burdensome, however the report does not offer any relief in this area.
- The report itself has data which shows the increase in investigations with no increase in substantiated cases.
- The current process distracts personnel from real issues.
- More work should be done to address transparency, consistency, effectiveness and efficiency issues.
- Reduce burden by modifying and better focusing the investigations.

Mr. Dambly: What investigative techniques would you consider appropriate?

Mr. Burzynski: Don't hit the individuals cold with no chance for preparation, flash the investigators badge and ask a bunch trick questions. Those methods make employees defensive and less open to talking. The NRC then fills in the blanks and makes broad assumptions on the SCWE. The justification for the use of these techniques are over stated in these areas because they may be used in criminal prosecution.

Mr. Beedle: This is a widely held belief that these techniques are used in cases because it may go to criminal prosecution. We have got a perfectly good set of inspectors out their that could be used for these cases. Licensees are very responsible and the cases could be referred to them in a similar fashion to the other inspections.

Mr. Letts: I disagree with your comments. The record does not reflect the guilty until proven innocent idea that has been presented. If that is true, we are woefully inadequate since we substantiate a relatively low percentage of the cases. With regard to the use of transcribed interviews, the agency would rather see a transcript that rely on the investigators ability to characterize an interview. The use of transcripts does not leave a lot of room for skulduggery or false statements by investigators.

Mr. Burzynski: The point is, you have a low rate of enforcement in these cases. It is the person that does not get the results of the investigation in a timely manner that is adversely affected in an unintended way, and this has a negative impact on SCWE.

Mr. Beedle: This is a case where managers don't face the performance issues of employees until they are egregious.

Mr. Letts: This detrimental effect of the investigation you talk about is not being shown in the improved performance of the plants, as you described earlier.

Mr. Beedle: The plants are improving in spite of your attempts to undermine it by doing these investigations.

Mr. Burzynski: The investigation is duplicative and does not look at SCWE. Surveys or feedback from inspectors may work better to make general observations about a facility than to perform investigations and take individual action.

Mr. Beedle: The agency has developed the Reactor Oversight Process (ROP) which, as a cross-cutting issue, looks at the SCWE. If they see that as a problem they can raise it. A rule is not necessary at all, and you have all the tools you need.

Mr. Repka: OI techniques and function is to look at the accountability of the individual. Since you have said that is unlikely that a criminal charge will be pursued in these cases, why the focused look at the individual manager. These issues can be dealt with in the regulatory process the way other issues are dealt with, other than showing up in the driveway of an individual. With respect to employment decisions, they are made with the input of a broad range of managers and it is wrong to hold the decision to one manager.

Mr. Vigluicca: With regard to the Deferral to DOL, now the NRC makes a determination of whether discrimination occurred, but will wait for DOLs process. Are you going to continue that?

Mr. Dambly: Unless there is something we did not see in our investigation we would continue forward.

Mr. Beedle: Doesn't the fact that no other agency does these types of investigations give you a clue as to why the NRC shouldn't be doing these cases?.

Mr. Dambly: It has been seen for a number of years in decisions that the NRC has the authority to take action in these cases, but not to take action to make a person whole. DOL was given this authority by Congress after the NRC's authority in order to compliment the NRC's role, not remove it.

Mr. Beedle: The NRC has embellished the standards, and are not using the a preponderance of the evidence.

Mr Dambly: I don't believe that is true, however, we may soon find out at a hearing.

Mr. Burzynski: The recommendation to release the OI reports is qualified to the point that it may not be useful and the final recommendation analysis that the agency uses is not going to be released.

Mr. Dambly: There are two recommendations, one is to release redacted OI reports if the re-sequencing of the process recommendation is not adopted. If the re-sequencing recommendation is adopted, we would release the report and transcripts at the time the action is proposed.

Mr. Burzynski: We need all the information on how the NRC draws the conclusion on the enforcement action. This additional analysis is important. The legal analysis standard is not released and should be in order to tell what the decision was based on.

Mr. Letts: With regard to the detrimental effect of the NRC by investigating these issues. We have heard from stakeholders who have been involved in this process, that by the time the an individual comes to the NRC the employer/employee relationship is already severely broken. Many in the public did not want us to get out of this business.

Mr. Beedle: We suggest you change your threshold and let DOL handle most of these cases.

Mr. Burzynski: If the NRC conducts investigations in parallel with DOL using the techniques that the NRC uses, reconciliation with the allegor is almost impossible. It is contrary to the goal of DOL which is settlement. The NRC process tends to polarize the parties.

Mr. Beedle: Once the NRC gets involved, we end a with one winner and loser in the process, or two losers.

Mr. Repka: The fact that the public that wants the NRC to stay in this business of investigating complaints is a fair statement. But nobody that gets two bites at the apple would opt to get rid of one of them. Still, the stakeholders all agree that the process needs to be more open and transparent.

Mr. Fewell: We tried to address the transparency comment by recommending giving all the information together. These cases are at times the most difficult cases to deal with. We develop a large body of information that we rely on. You can always at the end request a hearing if you still don't agree. I believe that the comments that we didn't address this issue is unfair.

Mr. Burzynski; That would be true if we kept the current sequencing. People still need the sense that due process is being afforded.

Ms. Pederson : What if we didn't releaser the individuals name before they have an opportunity to respond.

Mr. Burzynski: We would agree that would start to address some of the unintended consequences that would occur if we issued a violation without being able to respond.

That would not, though, get at making people happy that they had an action before they had an opportunity to respond.

Mr. Dambly: What about the action being issuing as a proposed NOV/CP in the revised sequence allowing a response prior to final issuance.?

Ms. Pederson: We have given these areas a lot of thought. The recommendation for re-sequencing was to try to address the timeliness comments. Your proposal is that we put these steps back in, If we do that, how do we deal with timeliness?

Mr. Burzynski; You make some good points. We will have to consider them and address them in the written comments.

Mr. Westreich: If you look at the timeliness data over a number of cases (Slide Provided), we tried to address the steps in the process that areas that had the most impact on lengthening the time to complete the process. Deferral to DOL, waiting for a DOL decision, time needed to respond to a Freedom of Information (FOIA) request, and time to schedule a PEC all have had impacts, in one case or another, on significantly lengthening the time to complete the process. The re-sequencing proposal would eliminate the time to process the FOIA request and address the transparency comments, because we would give the information to you at the time the action is initially taken, or proposed as has been discussed, without the need for a FOIA. We would eliminate the significant delays related to the DOL process by not waiting for DOL and require that once the action is taken or proposed, that a PEC is scheduled and conducted within 60 days..

Mr. Burzynski: If you take the names off the NOV this may solve some of our problems.

Mr. Beedle: If a pump breaks the licensee and agency are involved and both develop a good understanding of why the pump fails and the things done to correct that. This process does not allow this. Once the NRC investigation starts, no other work is done.

Ms. Pederson: Why is that? The lawyers for the licensee are involved in the majority of the cases. An investigation into the circumstances of the case could be conducted by the licensee.

Mr. Repka: The paradigm needs to shifted to have a process that is more timely, not tweaking individual pieces of the current process.

Mr Fewell: In our deliberations into this process, the Task Group talked long and hard about changing the fundamental process, but concluded that we didn't think we should fundamentally alter the process. That was a conscious decision. I'm hoping that aside from the fundamental process change recommendations that we didn't adopt, that we should stay in the business of looking at these cases, the changes we recommended, such as not looking at issues more than a year old and others would be looked at favorably. We would love to hear feedback on the changes we recommended. Although we considered the issues raised and did not agree to fundamentally alter the process, we did make recommendations to address many of the comments submitted.

Mr Repka: Beyond a fundamental change is a look at the thresholds that go into this process. The run of the mill case cannot be run through the process and get change. I think the change to issue a proposed violation that has been discussed tonight may be a good one.

Mr. Dambly: Going to the earlier comment, the difference between these cases and a pump failure is that the equipment does not have an intention to do something. That is why these cases are different and difficult. Pumps either work or they don't, but there is not intent that needs to be evaluated.

Mr. Beedle: I agree, the blackest box in the process is where the investigators come up with intent.

Mr. Burzynski: The case history time line slide goes along way to explain the reasons for many of the recommendations. You should include that in the report.

Mr. Beedle: What is the reluctance of the NRC in getting the licensee involved in the process sooner.

Mr. Dambly: What we heard from the rest of the stakeholders, non-utility individuals, is that this would result in the fox watching the hen house.

Mr. Fewell: We do take into consideration position papers that we receive from the licensee while evaluating a case. I believe the licensee is involved in the process. There is not hardly an interview with a manager conducted without counsel present. Some utilities are more pro-active and run a parallel investigation.

Mr. Dambly: It is not unusual to get these position papers after the PEC.

Mr. Vigluicca: With regard to receiving Inspector General (IG) reports, does the NRC look at these?.

Mr. Letts: We look at them, yes.

Mr Beedle: Is the IG report viewed with any more credibility than a report from a counsel?

Mr. Letts: No, not really.

Mr. DeMiranda: The TVA IG does not look at discrimination, only wrongdoing.

Mr. Burzynski: We would suggest that if you conclude that you have to use the hammer, use it less often, and looking at the data, it looks that you are doing too many cases. Many people may agree that after looking at all the sides this is the right process, but the unintended consequences need to be addressed.

Mr. Beedle: You are not having a positive impact on the safety.

Mr. DeMiranda: Well, we are only responding to allegations that we receive.

Mr. Dambly: You are saying managers are afraid to take actions, but at the same time we are not having an effect. That seems to be contradictory.

Mr. Beedle: But you are having an impact on the ability of managers to get normal evaluations etc, considered.

Mr Congel: We can go to extremes on either side, but I think a move to either of those sides need to be evaluated carefully.

At 9:00p.m. the meeting concluded.