

PUBLIC MEETING ON THE NRC PROCESS FOR HANDLING DISCRIMINATION MATTERS

- Bill Borchardt
- Director, Office of Enforcement
USNRC
Waterford, CT Meeting
November 1, 2000



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WHAT ARE OUR GOALS TODAY?

- Provide an Overview of Current NRC Process
 - Listen to your Comments and Suggestions
 - Respond to your Questions
 - Engage in Dialogue
 - Obtain input to help in the identification of possible improvements
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Group Composition:

- Bill Borchardt, Director, Office of Enforcement,
Group Leader
 - 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
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AGENDA

- Introduction and overview of Task Group
Activities 7:00-7:30
 - Stakeholder Comments 7:30-8:30
 - Open Discussion of Issues 8:30-9:00
 - Wrap up / Closing Remarks 9:00-9:15
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TASK GROUP PURPOSE

- Evaluate the NRC's current process,
 - Propose recommendations for improvements,
 - Ensure that the enforcement process supports an environment where workers are free to raise safety concerns,
 - Promote active and frequent involvement of internal and external stakeholders.
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Task Group Schedule

- Evaluate current NRC processes. July-Sept., 2000
 - Stakeholder meetings. Sept., 2000-April, 2001
 - Review other federal agency processes. Oct.-Dec., 2000
 - Develop recommendations Jan.-March, 2001
 - Recommendations for public comment. May-June, 2001
 - Issue Report with recommendations. June 30, 2001
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PUBLIC MEETINGS

- Washington - Sept. 5, 2000
- Chattanooga - Sept. 7, 2000
- San Luis Obispo - Sept. 14, 2000
- Chicago - Oct. 5, 2000
- Paducah - Oct. 19, 2000
- Millstone -Nov. 1, 2000
- Possible Second Round of Meetings Following Development of Recommended Changes

WHO IS THE NUCLEAR REGULATORY COMMISSION?

- An Independent Federal Regulatory Agency
 - Created by the Atomic Energy Act and Energy Reorganization Act of 1974
 - Regulates the Commercial Use of Nuclear Material
 - Primary Responsibility is to Protect the Public Health and Safety
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Elements of Discrimination

- Did the employee engage in protected activity?
 - Was the employer knowledgeable of the protected activity?
 - Was there an adverse action?
 - Was the adverse action taken, at least in part, because of the protected activity?
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Protected Activities include:

- Notifying an employer of an alleged violation of NRC requirements or safety concern.
 - Refusing to engage in unlawful acts, if the illegality has been identified to the employer.
 - Testifying before Congress or at ANY Federal or State proceeding related to the provision of the Atomic Energy Act or Energy Reorganization Act.
 - Assisting or about to assist in NRC activities .
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Adverse Action Includes:

- Discharge (i.e., firing, layoff), or
 - Causing an adverse change in the employee's compensation, terms, conditions or privileges of employment.
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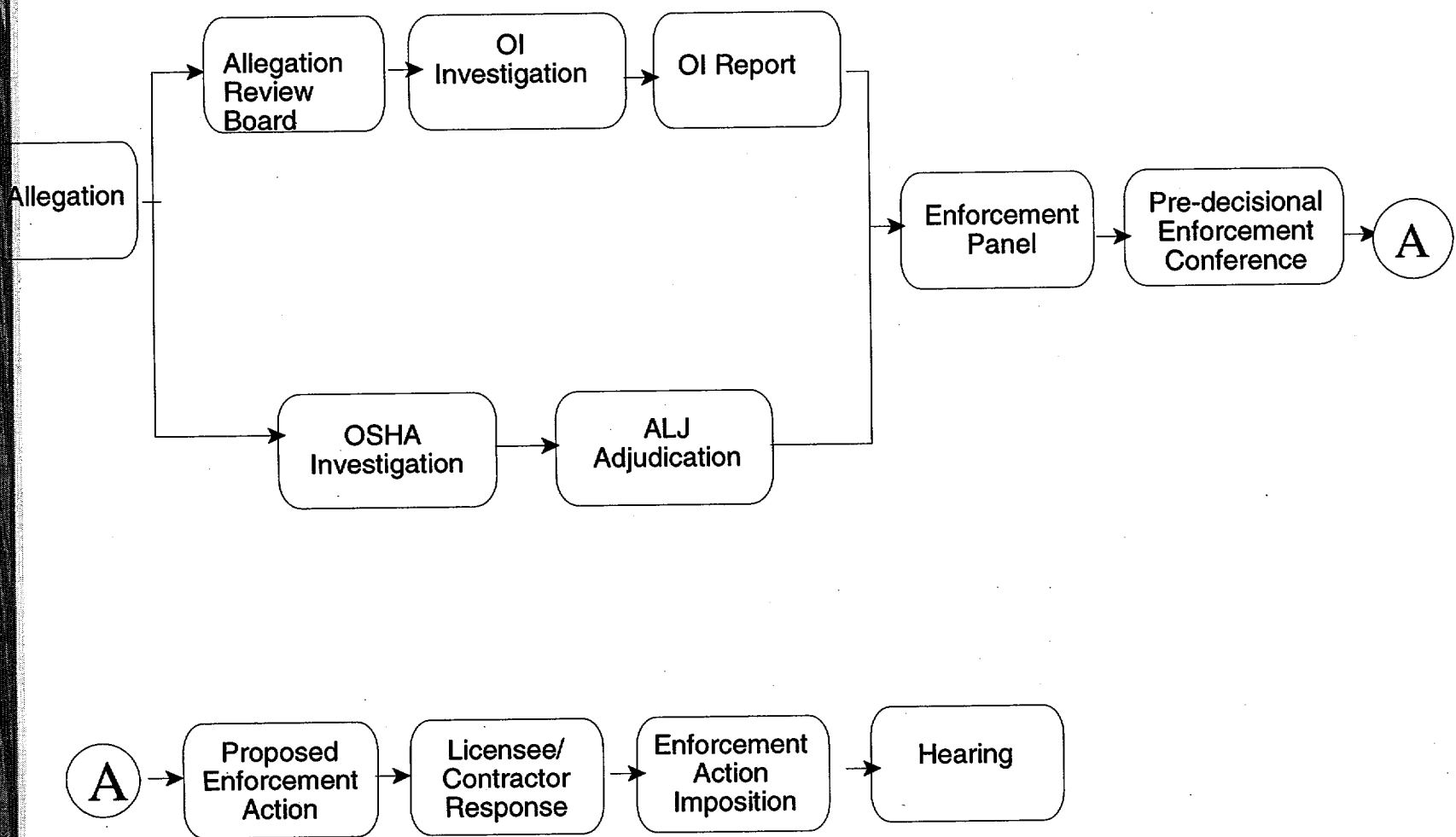
NRC Responsibilities regarding Discrimination

- To promote an environment where employees feel free to engage in protected activities.
 - NRC enforcement action is directed at the licensee, contractor and individuals.
 - Notice of Violation
 - Civil Penalty
 - Order
 - Ban from licensed activities
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NRC's Role in the Processing of Discrimination Complaints

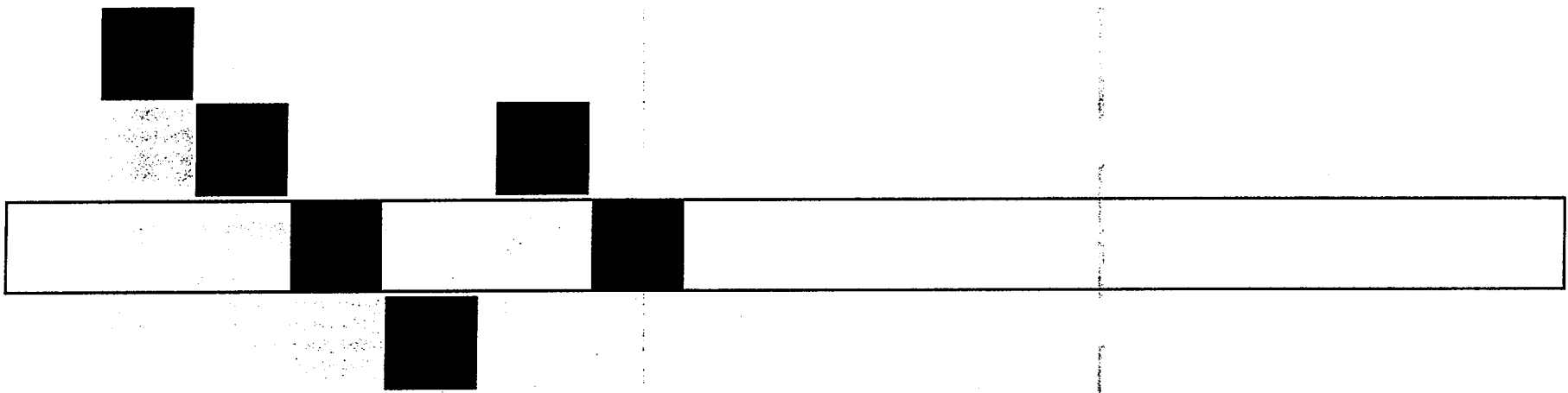
- The NRC does not have the authority to provide personnel remedies such as restoring a job or ordering back pay.
 - U.S. Department of Labor (DOL) has responsibility for providing personal remedies to discriminatory acts such as restoration of back pay, employment status and benefits and compensatory damages to the employee.
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Simplified Discrimination Case Complaint



ISSUES FOR CONSIDERATION

- Stakeholder Participation in Process
- Access to Information
- Appropriateness of Sanctions
- Adequacy of Regulations
- Issues raised in Petition for Rulemaking regarding training of supervisors implementing the employee protection regulations.
- Coordination with DOL
- Timeliness
- Process Issues (Hearings, Conferences)



HANDLING OF DISCRIMINATION COMPLAINTS



Paul Blanch
Energy Consultant


NRC's Allegations Task Force

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History Involving High Profile Whistleblowers has been Contentious

- 1993 US Senate Hearings
 - Usually a NO-WIN Situation
 - Concernees Banished from Nuclear Industry
 - Extensive Licensee and NRC Expenditures
 - Erosion of Public Confidence
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Root Cause of Major Allegations


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- Technical/Programmatic Issue(s)
 - Licensee/NRC response not perceived timely or accurate
 - Communications breakdown
 - Perceived retaliation
 - Seeks resolution/vindication elsewhere
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Present Regulations are Adequate

- Program/Regulation changes will not be effective until the NRC has the will to enforce existing regulations
 - OIG reported NRC also has retaliation problems
 - Appearance that NRC/OI ignored vital evidence in major investigation (DCNNP)
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A Better Approach

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- An Approach Looking for WIN-WIN Offers Promise
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An Approach Looking for WIN-WIN Offers Promise

- Industry could seek to take an active and constructive role
 - Consider role of Credible Response Team
 - Demonstrated Success at Millstone and Promising Outlook for Byron
 - Reestablish Communication and Trust
 - Resolve Issues Internally
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A WIN-WIN Strategy Offers Substantial Benefits

- Demonstrate Care and Respect for the Individual
 - Reduce "Chilling Effect"
 - Fewer DOL and OI Investigations
 - Increase Public Confidence
 - Increase Employee Trust
 - Improve SCWE
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NRC's Performance Goals

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- Maintaining safety
 - Reducing unnecessary regulatory burden
 - Increasing public confidence
 - Carrying out responsibilities more effectively, efficiently, and realistically
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Summary

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- The NRC has made little progress WRT Allegations
 - The Nuclear Industry must learn lessons from "Millstone"
 - There is a better way
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*Presentation to
NRC Discrimination Task Group*

**Implementation of
Employee Protection
Regulations**

*Ellen C. Ginsberg
Deputy General Counsel
Nuclear Energy Institute
November 1, 2000*



**Common Themes Identified at
Previous Task Force Meetings**

- ▶ **Ensuring employees feel free to identify and communicate safety concerns clearly is important to the nuclear energy industry**
- ▶ **NRC should improve agency implementation of employee protection regulations**
- ▶ **Current punitive approach impedes resolution of employee-employer dispute**
- ▶ **Current approach may lead to unintended consequences affecting safety**



NRC Should Improve Implementation of Employee Protection Regulations Because...

- ▶ **Current investigation and enforcement focus:**
 - ▶ **Does not promote resolution between employee and employer**
 - ▶ **Does not incorporate adequate procedural safeguards**
 - ▶ **Is not timely**
 - ▶ **Is not transparent**
 - ▶ **Does not promote safety**



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Current Commission Policy

- ▶ **Focus on wrongdoing**
 - ▶ **Referral to Office of Investigations**
 - ▶ **Referral to DOJ for criminal prosecution**
- ▶ **Duplicative investigations and inconsistent decisions by NRC and DOL**
- ▶ **Inadequate procedural safeguards afforded by enforcement process**
- ▶ **Allocation of NRC resources to allegations of discrimination**



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Policy Changes Necessary to Refocus NRC Approach to Employee Protection Regulations

- ▶ **Focus on underlying safety issue and licensee response to chilling effect letter**
 - ▶ **Enforcement would be reserved for 50.7 violations which meet threshold specific threshold criteria**
- ▶ **Defer to DOL on individual discrimination claims**
- ▶ **Discontinue automatic referral to Office of Investigations**



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Policy Changes Necessary to Refocus NRC Approach to Employee Protection Regulations, con't

- ▶ **Establish schedule for NRC to ensure timely response on safety issues and response to chilling effect letter**
- ▶ **Allocate NRC resources to allegations of discrimination based on *demonstrated* need**
- ▶ **Provide appropriate procedural safeguards during enforcement process**



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Proposed Revisions to NRC Enforcement Process for 50.7 Violations

- ▶ **NRC should consider enforcement for 50.7 violations under *limited* circumstances**
 - ▶ **NRC to initiate enforcement action if specific threshold criteria are met**
 - ▶ (e.g., significance of adverse action; level of accused individual; safety significance of allegation; egregious circumstances)
- ▶ **NRC should apply appropriate legal and evidentiary standards**



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Proposed Revisions to NRC Enforcement Process for 50.7 Violations, con't

- ▶ **Procedural safeguards should be incorporated into the enforcement process**
 - ▶ **Limit use of 50.5 in conjunction with 50.7**
 - ▶ **If 50.5 is applied, provide accused with hearing opportunity prior to taking enforcement action**
 - ▶ **Release investigation report to licensee, accused and allegor prior to pre-decisional enforcement conference**
 - ▶ **Provide written notice of agency's bases for proposed enforcement action**
- ▶ **Develop graded criteria for severity levels**



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DISCRIMINATION TASK GROUP MEETING ATTENDANCE

DATE 11/1/2000

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Please indicate by "*" whether you intend to give a presentation.