

2000-0014

3



*72 Docs*

**RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST**

RESPONSE TYPE  FINAL  PARTIAL

REQUESTER

**Maria Webb**

DATE

**FEB 15 2000**

**PART I. -- INFORMATION RELEASED**

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES **D** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **E** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES **E** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

**PART I.A -- FEES**

- AMOUNT \*  You will be billed by NRC for the amount listed.  None. Minimum fee threshold not met.
  - \$**  You will receive a refund for the amount listed.  Fees waived.
- \* See comments for details

**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

**PART I.C COMMENTS (Use attached Comments continuation page if required)**

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

APPENDIX D  
RECORDS ALREADY AVAILABLE IN THE PDR

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	09/13/95	9509130191	Letter from T. Zarges to NRC, subject: Reply to a Notice of Violation. (9 pages)
2.	06/26/98	9807020035	Letter from John Grobe to S. A. Patulski, subject: Notice of Violation (NRC Inspection Rpt. No. 50- 301/98005(DRS). (14 pages)

**APPENDIX E**  
**RECORDS BEING RELEASED IN THEIR ENTIRETY**  
**(If copyrighted identify with \*)**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	E-mail from C. Weil to C. Hauseman, regarding cancellation of 4/16/98 Enforcement Conference (3 pages)
2.	Undated	RIII Proposal of holding conference (1 page)
3.	Undated	Organization Chart : Morrison Knudsen Corporation (1 page)
4.	Undated	Notice of Significant Meeting (2 pages)
5.	Undated	Draft Opening Remarks for MK Meeting (1 page)
6.	10/31/97	Facsimile transmission to K. A. Ashmus from S.D. Bell re: Alain Artayet v. Morrison Knudsen Corporation Case No. 97-ERA-34 (3 pages)
7.	11/20/97	Distribution list (2 pages)
8.	03/03/98	Proposed Enforcement Action EA 98-081 (4 pages)
9.	03/25/98	Ltr. to T. H. Zarges from J. A. Grobe re: Apparent violation of employee discrimination requirements, with attachments. (61 pages)
10.	03/31/98	Notice of Significant Meeting (2 pages)
11.	04/06/98	Note to C. Weil to R. Wendoll re: Purchase order request for court reporter ( 4 pages)
12.	04/13/98	E-mail to M. Hendricks from Alain Artayet re: Point Beach SGRP Girth Weld (2 pages)
13.	04/21/98	Ltr. to J. A. Grobe from T. H. Zarges re: MK's mitigation of any chilling effect among MK employees as a result of MK's retaliation (2 pages)

14. 04/23/98 E-mail to C. Weil from J. Gavula re: MK Enforcement Conference Notification (1 page)
15. 11/02/98 E-mail to M. Stein from C. H. Weil re: request to "Reset the Clock" (1 page)
16. 12/03/98 E-mail to J. Gavula from C. H. Weil re: MK predecisional enforcement conference (1 page)
17. 12/08/98 E-mail from C. Weil to B. Berson, et. al., attaching e-mail from J. Gavula to C. Weil, regarding MK enforcement. (2 pages)
18. 12/17/98 E-mail to B. Berson from C. H. Weil re: MK, EA 98-081 (1 page)
19. 12/18/98 E-mail to J. Petrosino from C.H. Weil re: MK Enforcement Conference (1 page)
20. 01/05/99 Notice of Significant Meeting (2 page)
21. 01/08/99 Ltr. to L. E. Pardi from J. A. Grobe re: Apparent violation of employee discrimination requirements, with enclosures. (48 pages)
22. 01/08/99 Ltr. to D. Edleman from J. A. Grobe re: Apparent violation of employee discrimination requirements, with enclosures. (48 pages)
23. 01/26/99 Note to C. Weil from R. Wendoll re: purchase order for court reporter (10 pages)
24. 01/26/99 Letter from Steven Bell to John Grobe, re: MK (1 page)
25. 01/26/99 Transcript in the matter of MK Predecisional Enforcement conference. ( 122 pages)
26. 01/27/99 View graph of NRC Enforcement Conference (13 pages)
27. 01/27/99 Transcript in the matter of MK Predecisional Enforcement Conference (141 pages)
28. 01/28/99 Letter from R. Edmister to C. Weil re: Morrison Knudsen Corporation (7 pages)
29. 01/29/99 E-mail to M. Stein from C. Weil re: Letter sending transcript

- to complainant in MK Case (3 pages)
30. 02/01/99 E-mail to M. Stein from C. Weil re: documenting of conversation (2 pages)
  31. 02/02/99 E-mail to C. Weil from B. Berson re: MK transcripts (3 pages)
  32. 02/23/99 E-mail to B. Berson from C. Weil re: Complainant's review of MK transcript (1 page)
  33. 02/26/99 E-mail to B. Berson from C. Weil re: Contact with complainant in MK case, attached 2/25/99 e-mail from Weil to Berson & Stein, and 2/23/99 e-mail from Weil to Berson, Stein & Chidakel. (3 pages)
  34. 04/01/99 Ltr. to T. H. Zarges from J. A. Grobe re: Predecisional Enforcement Conference, with enclosures. (14 pages)
  35. 04/08/99 E-mail to B. Clayton from C. Weil re: MK: EA 98-081(1 page)
  36. 08/10/99 E-mail to B. Clayton, et. al., from C. Weil re: MK (EA 98-081; EA 98-540; EA 98-541) (1 pages)

**From:** C. H. Weil  
**To:** CHP2.CAH3 - Cheryl Hauseman III  
**Subject:** CANCELLATION OF 4/16/98 ENFORCEMENT CONFERENCE

Cheryl, we had scheduled an enforcement conference on 4/16/98, and I believe we asked you to set-up the TV hook-up. Please cancel that request. Yesterday, we decided to postpone the conference until early-mid May 1998. We'll let you know when we have a new time and date for the conference. Sorry for the inconvenience. Chuck.

CC: JAGI, KSG

4/10/98 SPOKE WITH JAN STRASMA ABOUT WITHDRAWING MEETING  
NOTICE. JAN SAID A WITHDRAWAL WAS NOT NECESSARY. *W*

E/1

**From:**  
**To:**  
**Date:**  
**Subject:**

C. H. Weil  
WND2.WNP6.MHS Michael Stein, OE  
4/10/98 8:53am  
Cancellation of Enforcement Conference -Forwarded

Mike, attached FYI, Chuck.

**CC:** WND2.WNP6.OEMAIL

**From:** Beverly Hicks  
**To:** PLB1, JRK1, LLC, CHW1, KSG, NPH, CHP2.KJC, CHP2.JX...  
**Date:** 4/10/98 8:41am  
**Subject:** Cancellation of Enforcement Conference

The Morrison Knudsen Enforcement Conference scheduled for April 16, 1998, has been cancelled until further notice. The regional calendar has been updated.

**CC:** HBC

## Morrison Knudsen

### Options

1. Hold conference soon

Pros - Fairly timely enforcement action in response to discrimination issue

Cons - May take action (or no action) without all the evidence

2. Hold conference (if deemed necessary) after reviewing SAM report (issue ~Aug)

Pros - Will have more information on which to make enforcement decision

Cons - Individuals' memories fade  
Less timely enforcement action

3. Wait for Secretary of Labor decision to determine if conference needed  
(Assuming DOL finds discrimination occurred, hold conference only if we think individual actions are appropriate. Otherwise, issue NOV to M-K with no conference if we agree with DOL; or if we disagree, don't issue NOV.)

Pros - We will know DOL's final position (for now we have to assume same as ALJ)  
We will also have the benefit of reading the SAM report

Cons - Less timely still  
Individuals' memories fade more

### Region III Proposal

Hold conference in abeyance until we receive and review the SAM report. At that time, determine whether to proceed with conference or wait for Secretary's decision (if still pending).

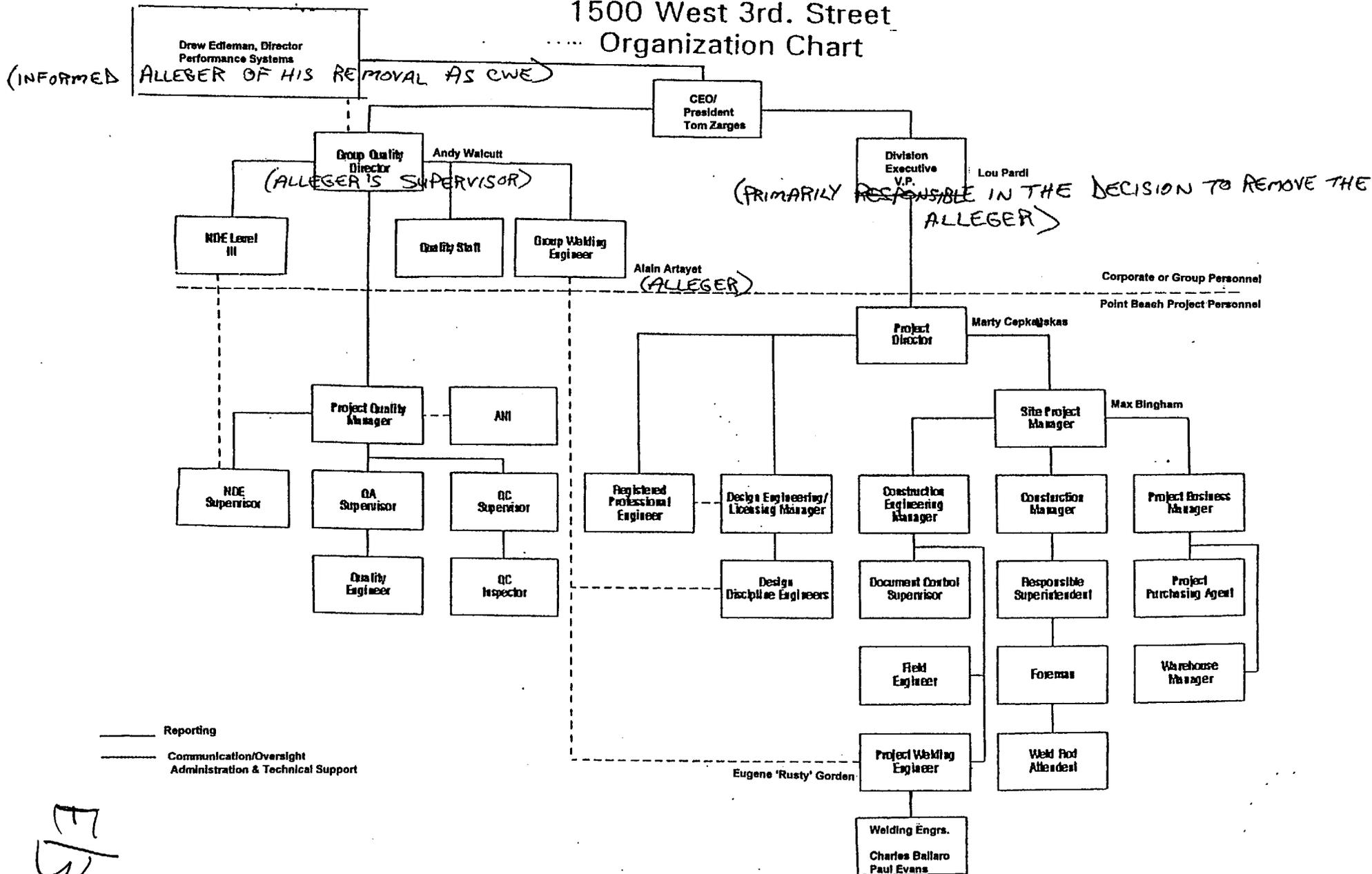
Note: In our conference invitation letters, we asked both M-K and WEPCo to respond within 30 days (and before the conference if possible) regarding chilled environment issue; in effect, this was a chilling effect letter.

*Lieberman agreed via phone conversation with Brent Clay on 9/22/91*

*E/2*

ORGANIZATION

Morrison Knudsen Corporation  
 1500 West 3rd. Street  
 Organization Chart



EB



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

**NOTICE OF SIGNIFICANT MEETING**

**THIS MEETING IS NOT OPEN TO PUBLIC ATTENDANCE**

Name of MK Investigator: Stier, Anderson & Malone Law Offices

Name of Contractor: Morrison Knudsen Corporation

Name of Licensee: Wisconsin Electric Power Company

Name of Facility: Point Beach Nuclear Plant

Docket Nos: 50-266; 50-301

Date and Time of Meeting: Thursday April 9, 1998 at 9 a.m. (CDT)

Location of Meeting: U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, Illinois, 60532-4351

Purpose of Meeting: Meeting with MK investigators to present additional investigation information regarding Morrison Knudsen (EA 98-081).

NRC Attendees:

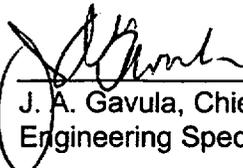
- J. Caldwell, Deputy Regional Administrator, RIII
- J. Lieberman, Director, Office of Enforcement, NRR
- M. Stein, Enforcement Specialist, Office of Enforcement, NRR
- B. Berson, Regional Counsel, Office of Regional Administrator, RIII
- J. Grobe, Director, Division of Reactor Safety, RIII
- J. Gavula, Chief, Engineering Specialist Branch 1
- K. GreenBates, Reactor Engineer, Engineering Specialist Branch 1
- B. Clayton, Enforcement Officer, Enforcement Investigation Coordination Staff
- C. Weil, Enforcement Specialist, Enforcement Investigation Coordination Staff
- J. Ulie, Special Agent, Office of Investigations, RIII

Licensee Investigator Attendees:

- E. Stier, Stier, Anderson & Malone Law Offices
- M. Cooper, Stier, Anderson & Malone Law Offices

NOTE: Attendance at this meeting by NRC personnel, other than those listed above, should be made known to K. S. GreenBates at (630) 829-9738 by COB April 3, 1998.

Approved by: \_\_\_\_\_

  
J. A. Gavula, Chief  
Engineering Specialist Branch 1

See Attached Distribution

E/4

**SIGNIFICANT LICENSEE MEETING DISTRIBUTION FOR ENFORCEMENT CONFERENCES**

H. L. Thompson, Jr., Deputy Executive Director for Regulatory Programs  
B. W. Sheron, Acting Associate Director for Technical Review, NRR  
B. E. Boger, Acting Associate Director for Projects, NRR  
J. Lieberman, Director, Office of Enforcement  
J. R. Goldberg, Deputy Assistant, General Counsel for Enforcement, OGC  
E. G. Adensam, Acting Director, Division of Reactor Projects III/IV NRR  
Chief, PIPB, NRR  
Region III Coordinator, OEDO  
Project Directorate, NRR  
Project Manager, Project Directorate, NRR  
G. E. Grant, Director, Division of Reactor Projects, RIII  
M. L. Dapas, Acting Deputy Director, Division of Reactor Projects, RIII  
C. D. Pederson, Director, Division of Nuclear Materials Safety, RIII  
R. J. Caniano, Deputy Director, Division of Nuclear Materials Safety, RIII  
J. A. Grobe, Director, Division of Reactor Safety, RIII  
DRP Branch Chief  
DRS Branch Chiefs  
H. B. Clayton, Enforcement/Investigations Officer, RIII  
R. M. Lickus, Regional State Liaison Officer, RIII  
PMNS (E-Mail)  
RIII Public Affairs (E-Mail)

## Draft Opening Remarks for MK Meeting

- Good morning. My name is \_\_\_\_\_. I am the \_\_\_\_\_. This meeting concerns an NRC Office of Investigations investigation and U. S. Department of Labor Administrative Law Judge Decision which concluded that the Morrison Knudesen Corporation discriminated against one of its employees, the Corporate Welding Engineer, for raising safety concerns.
- This meeting is being held as requested in your March 16, 1998, letter to Bill Beach, the NRC Region III Administrator and it is being transcribed. It is not open to public observation because the issues involve a potential deliberate violation of NRC requirements. You have requested an opportunity to present the results of an investigation you conducted for Morrison Knutsen on this matter. We are prepared to listen to your presentation, ask questions as necessary, and carefully consider what you have to say. However, no enforcement decisions will be made before the predecisional enforcement conference has been held with Morrison Knudeson and the facility licensee. That conference is currently scheduled for April 16, 1998.
- Before turning the meeting over to you, I request that each of the attendees introduce themselves and spell their last name for the benefit of the court reporter. Please speak up so the court reporter can hear you.

E/S

ULMER & BERNE LLP  
ATTORNEYS AT LAW

Internet Address  
<http://www.ulmer.com/>  
E-mail Address  
[stbell@ulmer.com](mailto:stbell@ulmer.com)

Bond Court Building  
1300 East Ninth Street, Suite 900  
Cleveland, Ohio 44114-1583  
Fax (216) 621-7488

Columbus Office  
88 East Broad Street, Suite 1980  
Columbus, Ohio 43215-3506  
Fax (614) 228-8561  
Telephone (614) 228-8400

STEVEN D. BELL  
Direct Dial (216) 902-8831

(216) 621-8400

October 31, 1997

VIA FACSIMILE TRANSMISSION

Keith A. Ashmus, Esq.  
Thompson, Hine and Flory  
3900 Society Center  
127 Public Square  
Cleveland, OH 44114

Re: *Alain Artayet v. Morrison Knudsen Corporation*  
Case No. 97-ERA-34

Dear Mr. Ashmus:

I assume that you have now received a copy of the Recommended Decision and Order ("RD&O") issued by the Department of Labor on October 28, 1997. This letter is intended to bring to your attention several urgent matters related to the issuance of the RD&O.

At the time Mr. Artayet was unlawfully transferred to the DuPont Washington Works in Parkersburg, West Virginia, he was promised that his assignment there would last until at least February, 1998. As you are aware from my prior correspondence to you, Mr. Artayet was "laid-off" from his job from the DuPont Washington Works project effective September 30, 1997.

It is our opinion that but for the unlawful transfer of Mr. Artayet to the DuPont Washington Works job, he would not have been subject to the purported "lay-off", and that he would not have suffered any interruption in pay or benefits. Instead, as a direct and proximate result of the decision made by Morrison Knudsen Corporation to transfer Mr. Artayet to the DuPont Washington Works job, Mr. Artayet was in a position to be "laid-off", and has now suffered economic damages as a consequence.

E/6

ULMER & BERNE LLP

Keith A. Ashmus, Esq.  
October 31, 1997  
Page 2

Mr. Artayet has applied for unemployment benefits, and he has been told that he should expect to receive his first unemployment check later today. Because he has not yet received an unemployment check, he is uncertain as to the exact amount which he will be receiving, but inasmuch as unemployment benefits are not counted as "mitigating wages" for purposes of determining a backpay award, we consider the amount of Mr. Artayet's unemployment checks to be irrelevant to the following discussion.

Mr. Artayet is ready, willing and able to report for work on Monday, November 3, 1997. If Morrison Knudsen Corporation does not agree to immediately reinstate Mr. Artayet to his position of Corporate Welding Engineer in the Cleveland office with all of the benefits and privileges of that position which were previously enjoyed by Mr. Artayet, we will be forced to ask the Department of Labor to award backpay to Mr. Artayet for the period beginning September 30, 1997 (the date he was "laid-off" from the DuPont Washington Works job) through the date when he returns to work under the terms of a Preliminary Order which will eventually be issued by the Department of Labor. If Morrison Knudsen Corporation acts prudently to now voluntarily reinstate Mr. Artayet to his former position, it would save both parties -- and the Department of Labor -- a tremendous amount of expensive effort.

It is Mr. Artayet's further understanding that certain important benefits of his employment -- including his life and health insurance benefits -- will expire later today. Even if Morrison Knudsen Corporation declines to voluntarily reinstate Mr. Artayet to his position prior to the issuance of a Preliminary Order from the Department of Labor, we believe it would be unnecessarily reckless under the circumstances for Morrison Knudsen Corporation to discontinue any of the benefits to which Mr. Artayet has been entitled in the past, and to which he will be entitled at such time as he returns to his position as Corporate Welding Engineer. We therefore request that Morrison Knudsen Corporation confirm in writing that Mr. Artayet's health and life insurance benefits will be continued from this date through the date on which Mr. Artayet resumes his employment as Corporate Welding Engineer. We shall take such action as is appropriate to obtain this relief for Mr. Artayet if we do not receive a satisfactory response from Morrison Knudsen Corporation.

ULMER & BERNE LLP

Keith A. Ashmus, Esq.  
October 31, 1997  
Page 3

Morrison Knudsen Corporation holds in its hands the unilateral ability to avoid unnecessary and expensive future litigation. Given the fact that today is the last business day of the month of October, and further given the fact that certain benefits of importance to Mr. Artayet and his family are scheduled to expire later today, we would appreciate your immediate response to this letter.

Very truly yours,



Steven D. Bell

145:kmh

cc: The Honorable Daniel L. Leland (by fax)  
Joe Ulie, Nuclear Regulatory Commission, Region V (by fax)  
Richard R. Edmister, Esq. (by fax)

**Distribution:**

T. H. Zarges  
G. B. Williams  
L. E. Pardi  
J. M. Carmody  
L. R. Thomas  
A. J. Walcutt

M. C. Nicholson  
K. R. Tobin  
W. J. Jones  
E. R. Recher

M. M. Cate  
J. C. Garrett  
A. B. Dawood

**I/P Division Project Offices**

Randall Groh  
Gary Andrus  
Frank Benno  
Willie Russell  
Frank Gross  
Cal Skow  
Catherine Vonfeldt  
Sam Artis  
Cliff Felmlee  
Monte Zengelere  
Keith A. Shultis  
Bob Wert

Mike Coffman  
Dave Walker  
Chuck Meyer  
Steve Morey  
Dave Adams  
Larry Nelson  
Chet Ziegler  
Steve Lovellette

Tom Hedges  
Clay Coburn  
John R. Sheldon  
Gary Fugate  
Ted Dunn  
Roa Evans

Jim LaFavers  
Steve Warnock

Bruce Kramer

Riley Barlow  
Tom Way  
Mike Hicks  
Alan Mitzner  
Jerry Kirkland  
Mike Baldwin

Lou Troendle  
John Throgmorton  
Jim Fields  
Ron Drenning  
Kenneth Roberts

Columbia Office  
Detroit Regional Office  
Detroit Regional Office  
Federal Reserve Bank  
Sun Company CM Services  
MK/Etkin Dearborn Sewer Tunnel  
Central Region Operation  
Boise Home Office  
San Francisco Operations Office  
San Antonio Operations Office  
New Frontiers Science Park  
LMK-British Airways World  
Cargo Centre  
Boeing Strategic Partnering  
GAB/U.S. Steel  
Corning Asahi Project  
Aristech Chemical Corporation  
DuPont-Washington Works  
University of Washington  
Bronx Primary Schools  
Illinois Closed Max. Security  
Correctional Center  
San Francisco Airport Expansion  
Rappahannock Regional Jail  
The Idaho Center  
Four Rivers Cultural Center  
NYC Fire Stations Renovations  
Front Street Corridor  
Southside WWTP  
Saturn Corp.-Spring Hill Services  
GM LAD Future Model  
Conversions Plant 1  
GMT800 Program Management  
Office  
GM MFD Marion Plant  
GM Arlington  
GM Flint Buick City Assembly  
GM Wilmington  
GM Milford Proving Grounds  
GMT360 Program Management  
Office  
GM Opel - Poland Site  
GM Opel - Thailand Site  
Ford - Vietnam  
Ford China  
MK/J. S. Alberici Chrysler

Columbia, MD  
Troy, MI  
Troy, MI  
Cleveland, OH  
Philadelphia, PA  
Dearborn, MI  
Englewood, CO  
Boise, ID  
San Francisco, CA  
San Antonio, TX  
Essex, England  
Middelsex, United Kingdom

Auburn, WA  
Cleveland, OH  
Pleasant Gap, PA  
Cleveland, OH  
Washington, WV  
Seattle, WA  
Bronx, NY  
Tamms, IL

San Francisco, CA  
Fredericksburg, VA  
Nampa, ID  
Ontario, OR  
New York City, NY  
Boise, ID  
Boise, ID  
Spring Hill, TN  
Lansing, MI

Clawson, MI

Marion, IN  
Arlington, TX  
Flint, MI  
Wilmington, DE  
Milford, MI  
Pontiac, MI

Gliwice, Poland  
Rayong, Thailand  
Hanoi, Vietnam  
Detroit Office  
Cordoba, Argentina

E/7

Gus Franzen

Shawn Pitt

Bob Lambert  
Khalid Cosser  
Clark Holley  
Frank MastelDaniel M. Wilson  
Michael Harrington  
John Chmelir  
Bob Swanagon  
William AshtonJanice Trump  
Art Boone  
Mary Linder  
Perry KirbyRolf Amundson  
Max Bingham  
Duane Chaffee  
Robert Gilbert  
Toxu Goedjan  
Jack Hammond  
William Hug  
Dennis ReeseJack Adams  
Daryl Crawford  
Michael Hendricks  
Jack Jenkins  
Steve Mager  
Christopher McDonald  
Robert Pommerening  
Paul Dan Price  
Steve Renner  
Raymond Tally  
Robert Webster

Argentina

MK/J.S. Albertici Chrysler  
MaintenanceMK/J.S. Albertici Chrysler  
Brazil Assembly Plant  
MK Finsa de Mexico  
MK - St. Louis office  
MK-Seattle office  
MK Columbia Office

Cortoba, Argentina

Detroit office

Browsville, TX  
St. Louis, MO  
Seattle, WA  
Columbia, MD**MK Centennial**MK Centennial  
MK Centennial - Western Region  
MK Centennial - Mountain Region  
MK Centennial - Central Region  
MK Centennial - Eastern RegionArvada, Co  
Pleasanton, CA  
Murray, UT  
Dallas, TX  
Deerfield Beach, FL**O & M**IBM Mechanicsburg  
IBM Mechanicsburg  
Tektronix, Inc.  
Florida Toll ServiceMechanicsburg, PA  
Mechanicsburg, PA  
Beaverton, OR  
Orlando, FL**Power****Project Managers**Humboldt Bay  
St. Lucie Nuclear StationBureka, CA  
Jensen Beach, FL

Lambton Fine Gas Scrubber

Courtright, Ont., Canada

Navajo Scrubber Project  
Ft. St. Vrain Project  
Walz Mill - WestinghousePage, AZ  
Planeville, CO  
Pittsburgh, PA**Construction Managers**St. Lucie Nuclear Station  
MK ConstructionJensen Beach, FL  
Cleveland, OHSt. Lucie Nuclear Station  
Point Beach Steam Generator  
St. Lucie Nuclear StationJensen Beach, FL  
Jensen Beach, FL  
Jensen Beach, FLTektronix, Inc. Plant Upgrade  
University City Resource Rec. Fac.Beaverton, OR  
Charlotte, NC

3/3/98

G:\ETCS\98-OP1.BRD  
G:\ETCS\BARDDPK6\980305.MK

## PROPOSED ENFORCEMENT ACTION

EA 98-081

Violation: Potential violation of 10 CFR 50.7, "Employee Protection"

Contractor: Morrison-Knudsen Corporation (MK)  
Cleveland, OH

Licensee: MK was under contract to Point Beach, and previously D. C. Cook, for replacement of the steam generators. However, the apparent violation occurred at the MK office in Cleveland, OH, which is described in the OI report as the Corporate Office, the Power Division, and the Engineering and Construction Group. No information was developed to indicate that either NRC licensee was involved in the alleged discriminatory act. At the time of the alleged violation, MK was actively involved in the ongoing steam generator replacement project at the Point Beach plant. Region III recommends that neither licensee be cited.

OI Report No. 3-97-013, dated 2/6/98

DOL No. 97-ERA-34

AMS No. RIII-1997-A-0035

SES Sponsor: Jack Grobe (630-829-9700)

Coordinator: Charles H. Weil (630-810-4372)

Summary of Facts: An allegation was made to the Department of Labor (DOL) and the NRC that MK engaged in employment discrimination when MK transferred the corporate welding engineer to a position as a site welding engineer position at a non-nuclear facility (chemical works). While the individual did not lose pay, he was transferred from Cleveland, OH, to Parkersburg, WV. Also, the position of corporate welding engineer appeared to last for an indefinite period, and the Parkersburg position would end about February 1998. He was laid-off on September 30, 1997. MK subsequently rehired the individual during November 1997, following the November 4, 1997, Preliminary Order of the DOL Administrative Review Board.

During December 1996, Hartford Steam Boiler Insurance Company audited MK and made several audit findings. During January 1997, the individual reviewed the MK welding procedures for the steam generator replacement projects at the Point Beach (1995-97) and D. C. Cook (1988) facilities, and presented his findings to MK management about MK welding procedures for each project. (The welding issues are being followed-up by the Region III Division of Reactor Safety and the NRR vendor inspectors). On January 15, 1997, he was relieved from his position of corporate welding engineer and subsequently transferred to Parkersburg, WV.

In 1994 MK and Duke Power Engineering formed a company known as STG (steam generator group) for the replacement of steam generators. Duke Engineering apparently provided the engineering support for STG and MK, Cleveland, OH, provided the construction and quality assurance aspects for STG. STG appears to be the site organization that actually did the work. As with Point Beach and D. C. Cook plants, STG does not appear to have been involved in the alleged discriminatory act involving the MK corporate welding engineer in Cleveland, OH.

~~PREDECISIONAL ENFORCEMENT INFORMATION, NOT FOR RELEASE  
WITHOUT THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT~~

E/8

The complaint was investigated by the Occupational Safety and Health Administration (OSHA). The OSHA Area Director concluded that the complaint was without merit. That conclusion was appealed. In an October 28, 1997, Recommend Decision and Order, the DOL Administrative Law Judge (ALJ) ordered MK to rehire the individual. In that decision, the ALJ noted that the individual was transferred to "an inferior position" at Parkersburg, WV. The ALJ's decision was upheld on November 7, 1997, in a Preliminary Order by the DOL Administrative Review Board. MK rehired the individual during November 1997, following the Administrative Review Board's Order. However, MK had already hired a new corporate welding engineer and the individual could not be returned to his former position. Rather, he was rehired as a welding engineer at the same pay as he had received when he was the corporate welding engineer.

In Report No. 3-97-013, the Office of Investigations (OI) made essentially the same conclusion as the ALJ and the DOL Administrative Review Board.

Significance:

The safety and risk significance of the apparent violation of 10 CFR 50.7 is low. However, the regulatory significance is high because corporate managers were involved in the alleged discriminatory act. The safety and risk significance for the underlying technical violations may be high because a technical violation would involve welding for the steam generator replacement projects.

Summary of Proposed Enforcement Actions

- A. Conduct a transcribed predecisional enforcement conference (PEC) with MK. Ask MK to bring the involved MK managers to the conference. The alleged would be invited to attend.

The letter to MK confirming the PEC will include relevant "chilling effect" language.

- B. Following the PEC, consider issuing a Severity Level I violation to the MK Corporation.

The letter to MK should indicate that MK can wait until the final DOL order is issued before responding to the proposed violation. However, that letter would tell MK that the response to any "chilling effect" cannot be delayed.

- C. A Demand for Information (DFI) would be issued to MK at the same time as the NOV. DFI language could either be contained in the body of the letter transmitting the NOV to MK or be a separate enclosure to that letter.

The DFI would ask MK to provide written assurance that:

1. The NRC can have confidence that MK will abide by all NRC rules and regulations, including 10 CFR 50.7, in the future,
2. The NRC can have confidence that any "chilling effect," either perceived or actual, has been abated by MK, and

~~PREDECISIONAL ENFORCEMENT INFORMATION, NOT FOR RELEASE  
WITHOUT THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT~~

3. The NRC and MK can both have confidence that the MK managers involved in the discrimination will abide by NRC rules and regulations, including 10 CFR 50.7, in the future.

D. Regarding the individuals involved in the discriminatory act:

Neither DOL nor OI made a specific conclusion about the culpability of any particular MK manager for this violation. However, the information in Paragraph 4 of the OI report discusses the MK Division Executive Vice President and his decision for the discriminatory act. Other MK managers, the CEO/President and the Director of Performance Systems are also discussed in Paragraph 4 of the OI report, but the report shows that each was only aware of the reassignment decision made by the Division Executive Vice President. Therefore, in order to make an informed enforcement decision about the latter MK managers, a very detailed analysis of the OI exhibits will have to be made. It is estimated that the staff would expended 3-4 days to develop the detailed evidence need to support an enforcement position about the individuals.

Region III believes that sufficient evidence could be developed from the OI report to support an order removing the Division Executive Vice President from participating in NRC-licensed activities for a period of five periods. The recommendation of a five year removal from NRC-licensed activities is based on the proposed Severity Level I violation to the company. However, a final decision about any particular MK manager should wait until DOL issues its final decision in this matter.

Proposed NOV

Based on the DOL Orders and the OI findings, Region III recommends that MK be cited for a violation of 10 CFR 50.7, "Employee Protection." A draft NOV follows:

10 CFR 50.7 requires, in part, that discrimination by a contractor or subcontractor of a Commission licensee against an employee engaged in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to the terms, conditions or privileges of employment. Protected activities include, but are not limited to, providing information to the employer about possible violations of NRC activities.

Contrary to the above, on January 15, 1997, Morrison-Knudsen Corporation (MK) engaged in prohibited employment activities when MK removed Mr. (individual's name), from his position as the MK corporate welding engineer at the MK corporate offices in Cleveland, OH, and subsequently transferred Mr. (individual's name) to an MK project in Parkersburg, WV, as a site welding engineer. MK removed Mr. (individual's name) from the position of corporate welding engineer and transferred Mr. (individual's name) after he delivered adverse reports to MK management about the quality of welding procedures used by MK to replace steam generators at the Point Beach and Donald C. Cook nuclear power plants, a protected activity.

~~PREDECISIONAL ENFORCEMENT INFORMATION, NOT FOR RELEASE  
WITHOUT THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT~~

A Severity Level I violation is recommended. Supplement VII to the NRC Enforcement Policy (Policy), Example A.4, categorizes the violation as "action by senior corporate management in violation of 10 CFR 50.7." The MK employees involved in the violation were senior corporate managers of MK in Cleveland, OH.

Section III(3) of the Policy and Section 2.11.b.3 of the NRC Enforcement Manual (Manual) requires that the be consulted Commission prior to issuing a Severity Level I violation.

~~PREDECISIONAL ENFORCEMENT INFORMATION, NOT FOR RELEASE  
WITHOUT THE APPROVAL OF THE DIRECTOR, OFFICE OF ENFORCEMENT~~



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

March 25, 1998

EA 98-081

Mr. Thomas H. Zarges  
President and Chief Executive Officer  
Engineering and Construction Group  
Morrison Knudsen Corporation  
1500 West 3rd Street  
Cleveland, OH 44113

**SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS  
(U. S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 and ARB 98-016)  
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)**

Dear Mr. Zarges:

This is in reference to an apparent violation of NRC requirements prohibiting discrimination against employees who engage in protected activities (i.e., 10 CFR 50.7). The apparent violation involves the Morrison Knudsen Corporation (MK) discriminating against one of its employees at the MK corporate office in Cleveland, OH. At the time of the apparent violation, MK was involved in the replacement of steam generators at the Wisconsin Electric Power Company's (WEPCo) Point Beach nuclear plant. This apparent violation was discussed with Margaret Cunningham of your staff on March 16, 1998 and Lou Pardi on March 17, 1998.

The apparent violation is based on findings from a U.S. Department of Labor (DOL) proceeding (97-ERA-34). The presiding Administrative Law Judge (ALJ) in the DOL proceeding found, in a Recommended Decision and Order issued on October 28, 1997, that MK's removal of the complainant from his position as group welding engineer (GWE) and his subsequent reassignment to an "inferior job" constituted an adverse employment action. Further, the removal of complainant from the position as GWE within 24 hours after he engaged in protected conduct (his findings concerning weld procedures used by MK at the Point Beach plant) raises the inference as a matter of law that his removal was in retaliation for his protected activities. The DOL ALJ's Recommended Order required MK to reinstate the complainant to the position of GWE at MK's office in Cleveland, OH, and the complainant be given the same compensation, terms, conditions, and privileges as he previously had as GWE. In a Preliminary Order, issued on November 4, 1997, the DOL Administrative Review Board (ARB) (ARB Case No. 98-016) confirmed the findings and order of the DOL ALJ. Copies of the DOL ALJ's Recommended Decision and Order and the DOL ARB's Preliminary Decision are enclosed (Enclosures 1 and 2).

The NRC Office of Investigations (OI) also investigated this matter (OI Case No. 3-97-013,) and reached the same conclusion as the DOL. Enclosure 3 is the synopsis of the OI report.

E/9

The NRC staff's review of the DOL and OI findings indicate that the action taken against this individual was in apparent violation of 10 CFR 50.7. Therefore, this apparent violation is being considered for escalated enforcement action in accordance with the "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy), NUREG-1600 (Enclosure 4). The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review.

A transcribed predecisional enforcement conference to discuss this apparent violation has been scheduled for April 16, 1998. The NRC requests that you and Messrs. Lou Pardi, Drew Edleman, and Andy Walcutt be present at the conference. Since the performance of MK employees will be discussed during the conference, the conference will be closed to public observation. However, the NRC licensee, WEPCo, has been requested to attend. In addition, the NRC's Enforcement Policy, as amended by, Policy and Procedure for Enforcement actions: Policy Statement, 62 FR 13906 (March 24, 1997), permits the employee or former employee who was the subject of the alleged discrimination to participate in the conference. Accordingly, the complainant will be invited to attend the conference. He may participate by observing the conference and if desired, following the presentations by MK and WEPCo, make a presentation to address his view on why he believes discrimination occurred and his views on the other presentations. Morrison Knudsen and WEPCo will then be afforded an opportunity to respond, and the NRC may ask some clarifying questions. In no case will the NRC staff permit you or the individual to cross-examine or question each other.

Following the conference with MK and the WEPCo, Messrs. Pardi, Edleman, Walcutt, and you will be invited to hold individual, transcribed, predecisional enforcement conferences with the NRC if any of you wishes to make the NRC aware of any additional information. Should these conferences be requested, they will be held on the afternoon of April 16, 1998, and each will involve only the individual, the individual's counsel (if represented) and the NRC.

The decision to hold an enforcement conference does not mean that the NRC has made a final determination on enforcement action in this case. While the NRC normally relies on the DOL's findings in determining whether a violation occurred when such findings are based on an adjudicatory proceeding, the conference is being held to obtain any additional information that will enable the NRC to make an informed enforcement decision. In addition, the conference is an opportunity for MK to provide its perspectives on: 1) the severity level of the apparent violation; 2) the application of the factors that the NRC considers when it determines the amount of a civil penalty that may be assessed in accordance with Section VI.B.2 of the Enforcement Policy; and 3) any other application of the Enforcement Policy to this case, including the exercise of discretion in accordance with Section VII.

We note that MK was the subject of a previous NRC escalated enforcement action (EA 95-079). That enforcement action was issued on August 14, 1995, and concerned a Severity Level II violation of 10 CFR 50.7 by MK at the Fort St. Vrain nuclear plant. By letter dated September 13, 1995, MK responded to that violation and provided a description of the

corrective actions taken to prevent recurrence of a similar violation in the future. In this regard, the NRC requests that MK be prepared to address why its actions in response to the previous employment discrimination violation were not effective in precluding the action taken against the complainant in the current matter. Also enclosed for the information of MK and its employees are copies of NRC Information Notice No. 98-04, "1997 Enforcement Sanctions for Deliberate Violations of NRC Employee Protection Requirements" (Enclosure 5), and NRC Policy Statement "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," (Enclosure 6).

While we recognize that MK has appealed the DOL ALJ's decision in this case, the NRC must review this matter to determine whether a violation of 10 CFR 50.7 may have occurred. Such a violation, if it occurred, could have a chilling effect on other MK employees in that it might deter them from identifying any nuclear safety related concerns they may have.

In addition, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204, in order for the Commission to determine whether regulatory action needs to be taken pending a determination as to whether enforcement action is to be taken for the issues to be discussed at the conference, and to ensure compliance with NRC regulatory requirements, you are required to provide this office, within 30 days of the date of this letter, or if possible before the April 16, 1998 conference, a response in writing and under oath or affirmation that describes actions you have already taken or plan to take to assure that this matter is not having a chilling effect on the willingness of other employees to raise safety and compliance concerns within your organization.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and the required written response will be placed in the NRC Public Document Room (PDR). To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be placed in the PDR without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding

Mr. T. H. Zarges

- 4 -

confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

Sincerely,



John A. Grobe, Director  
Division of Reactor Safety

Docket Nos. 50-266; 50-301  
License Nos. DPR-24; DPR -27

Enclosures: 1. ALJ's Recommended Decision and Order  
2. ARB's Preliminary Order  
3. OI Report Synopsis  
4. NRC Enforcement Policy  
5. Information Notice 98-04  
6. NRC Policy Statement

cc w/enclosures (1-6):  
L. Pardi  
D. Edleman  
A. Walcutt

Mr. T. H. Zarges

- 5 -

cc w/enclosures (1 - 3):

R. Grigg, President and  
Chief Operating Officer, WEPCo

S. Patulski, Site Vice President  
Point Beach Nuclear Plant

A. Cayia, Plant Manager

B. Burks, P.E., Director  
Bureau of Field Operations

Cheryl L. Parrino, Chairman,  
Wisconsin Public Service Commission  
State Liaison Officer

NRC Office of Enforcement

J. Goldberg, OGC

B. Boger, NRR

C. Carpenter, NRR

L. Gundrum, NRR

R. Medlock, Area Director,  
OSHA Cleveland Area Office

bcc w/o enclosures:

Region III Office Allegation Coordinator  
(AMS No. RIII-1997-A-0035)



OCT 28 1997

CASE NO. 97-ERA-34

In the Matter of

ALAIN ARTAYET  
Complainant

v.

MORRISON KNUDSEN CORPORATION  
Respondent

Appearances:

Steven D. Bell, Esq.  
Lynn R. Rogozinski, Esq.  
For the Complainant

Keith A. Ashmus, Esq.  
Heather L. Areklett, Esq.  
For the Respondent

BEFORE: DANIEL L. LELAND  
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851, which prohibits Nuclear Regulatory Commission Licensees from discharging or otherwise discriminating against an employee who has engaged in activity protected under the Act. Alain Artayet (complainant) filed a complaint under the Act on February 18, 1997, which was investigated by the Occupational Safety and Health Administration and found to be without merit. Complainant made a timely request for a hearing before an administrative law judge, and a hearing was held before the undersigned in Cleveland, Ohio on June 11 and 12, 1997. Complainant's exhibits (CX) 5, 6, 12, 20, 26, 51, 52, and 53, and respondent's exhibits (RX) A-L were admitted into evidence. At the close of the hearing the parties were given sixty days to submit briefs, and the due date for filing briefs was later extended to September 22, 1997. Both parties filed timely briefs.

### Summary of the Evidence

Complainant holds a Bachelor of Science Degree in Welding Engineering from Ohio State University and began working at Morrison Knudsen Corporation (respondent) in June 1988 as a Corporate Welding Engineer, also called Group Welding Engineer (GWE). (TR 33) Respondent is an international engineering and construction company which performs work on nuclear power plants among others. The GWE is located in respondent's Quality Assurance Department. (TR 33) The head of the Quality Assurance Department is Tom Zarges, the Division Executive is Lou Pardi, and the Group Quality Director is Andrew Walcutt, complainant's immediate superior. (TR 35; CX 52) The quality assurance program is required by 10 CFR 50. (TR 34) In 1995, respondent and Duke Engineering Services formed a company called SGT Ltd. which replaces steam generators at nuclear power plants and which has its own quality assurance program. (TR 38; CX 53) The president of SGT Ltd. is Martin Cepkauskas and the Group Quality Director is Andrew Walcutt to whom complainant reported. (TR 39) As GWE, complainant was responsible for oversight of the activities of Project Welding Engineers (PWE) and qualifying welding procedures. (TR 41)

In 1995, SGT Ltd. was awarded a contract to replace two steam generators at the Point Beach Unit Two nuclear power plant in Two Rivers, Wisconsin. (TR 43) The project required a large amount of welding. (TR 44) In May 1996, Max Bingham, the project manager, asked complainant to help develop the welding procedures to be used at Point Beach. (TR 45-46) Bingham wanted complainant to delegate the qualification of the welding procedures at Point Beach to the PWE, Eugene "Rusty" Gorden. (TR 46) Qualification of welding procedures was the function of the GWE. (TR 60-63) Complainant at first refused because he was unfamiliar with Gorden's technical capabilities. (TR 47) Complainant then began the process of qualifying the welds at a site in Memphis, Tennessee in May or June 1996. (TR 49) In July 1996, Bingham again asked complainant to delegate qualification of the welds at Point Beach to Gorden and complainant's refusal to do so angered Bingham. (TR 50-51) Complainant then acquiesced in the delegation of the remaining welds which Gorden accomplished in Chicago. (TR 53)

Complainant emphasizes that the PWE, not the GWE, was responsible for developing the site-specific welding procedures to be used at Point Beach. (TR 55, 65-66; see also CX 51; RX C 1, p. 1; § 9.2.5) The GWE was responsible for submitting generic welding procedures to the PWE who tailored them to the needs at Point Beach. (TR 55) Gorden was supposed to send the site-specific welding procedures to complainant for review but he failed to do so despite complainant's request to see them. (TR 56-57) At the end of October 1996, complainant for the first time reviewed the site-specific welding procedures written by Gorden and found five of them to be unacceptable. (TR 57) On November 6, 1996, complainant sent a fax to Gorden identifying the deficient welding procedures and calling Gorden's attention to the codes of the American Society of Mechanical Engineers. (TR 58-60; CX 6) Gorden, however, ignored complainant's comments. (TR 62) Complainant stated that he informed Walcutt of the problems in the welding procedures for Point Beach but Walcutt felt that as the Hartford Insurance Company audit was coming up on December 30-31, 1996, nothing should be done to correct the problems. (TR 70)

Walcutt denies that complainant informed him of the welding deficiencies at Point Beach or that Walcutt told him to take no action. (TR 247)). Complainant's offer to work with Gorden to remedy the welding problems was also assertedly rejected. (TR 71)

During the week of December 16, 1996, complainant states that Pardi met with him and removed him from nuclear responsibilities for steam generator replacement citing complainant's personality conflicts with Cepkauskas and Bingham. (TR 72) (Pardi denied that this meeting ever took place or that he removed complainant from his supervision of welding at nuclear power plants at this time. (TR 163)) Walcutt asked complainant to prepare for the upcoming Hartford audit and complainant informed him that the audit would reveal deficiencies in the welding procedures at Point Beach. (TR 75-76) The audit was performed on December 30-31, 1996, and on January 6, 1997, Hartford issued a report finding fault with the Point Beach welding procedures. (TR 76-77, 79-80; RX D 1) Upon reading the audit report Walcutt asked complainant to review all the welding procedures for Point Beach. (TR 80) Complainant reviewed the Point Beach welding procedures and wrote an eight page report which he gave to Walcutt on January 14, 1997 who in turn delivered a copy to Pardi and Bingham. (TR 80-81; see CX 12) On the morning of January 15, Walcutt also asked complainant to prepare a report on the welding procedures at the D. C. Cook project. (TR 83-84) Complainant informed Walcutt that there were deficiencies in the D. C. Cook project which were similar to those at Point Beach. (TR 85-86)

Later on the morning of January 15, complainant was summoned to the office of Drew Edleman, complainant's administrative superior, who told complainant that he was being removed from the GWE position because of personality conflicts with Cepkauskas and Bingham. (TR 86) After his removal as GWE complainant continued to work on his report on D. C. Cook and submitted a report on the welding deficiencies at that facility on January 22, 1997. (TR 87, 264-267; CX 20) Complainant was transferred to Parkersburg, WV on February 7, 1997 as an area field engineer on the night shift. (TR 88) Since that date, he has been living away from his family in Cleveland and has been unable to participate in his children's school activities. (TR 88) Complainant has incurred approximately \$10,000 in attorney fees in connection with this litigation. (TR 89)

Louis E. Pardi, whose title is executive vice president of respondent's Power Division, testified that he relied on the complainant to be respondent's welding expert in all matters, particularly qualification of welds, development of corporate welding procedures, and solving welding problems that arose on specific sites. (TR 156, 159) He recalled being told that there was friction between complainant and project personnel at Point Beach regarding qualification of welds and specific welding requirements. (TR 159-160) Pardi remembered seeing a memo from the complainant that drop weight testing was not required at Point Beach which is contrary to what he stated about the D. C. Cook project. (TR 161) In his testimony, Cepkauskas also mentioned the friction between complainant and site personnel and the memo regarding drop weight testing and that he informed Pardi of this. (TR 146, 147) Neither Pardi nor Cepkauskas could produce the memo and Pardi admitted that he had not read the memo. (TR 150, 190) After

being informed of the welding deficiencies found in the Hartford audit, Pardi decided to remove complainant as GWE. (TR 161) As complainant was not in Pardi's chain of command, Pardi told Edleman about the findings in the audit, and after rejecting the idea of relieving complainant only of his jurisdiction over nuclear facilities, they decided to relieve complainant of his duties as GWE. (TR 163-164) The final decision to terminate complainant was made on January 15. (TR 164; see also TR 204-206) Complainant's memorandum regarding Point Beach was considered when the decision was made. (TR 196-197) Pardi averred that the decision to remove the complainant was based on his friction with the project personnel, his determination not to use drop weight testing, and the Hartford audit. (TR 165-166)

Andrew Walcutt is the Group Quality Director for the respondent and was complainant's supervisor. (TR 235-236) He stated that the GWE is responsible for development of the corporate welding program, adherence to the welding codes, providing technical advice to project personnel, and qualification of welding procedures. (TR 236) He recalled a meeting complainant and he had with Gorden in November or December 1995 where an agreement had been reached between complainant and Gorden, but complainant changed his mind the next day. Walcutt told complainant that he should not go back on his word. (TR 237-238) Walcutt also referred to a meeting in July 1996 among Bingham, complainant and himself in which Bingham expressed dissatisfaction with complainant's performance, particularly his delegation of qualifying welds to some one who was not working at Point Beach. (TR 241-242) In the Fall of 1996, Pardi told Walcutt that he had lost confidence in complainant because he failed to recommend drop weight testing. (TR 242-243) Walcutt later found, however, that complainant had not taken this position. (TR 243-244, 281-282) Walcutt also stated that the failure of the welds in Memphis was caused by a discrepancy in testing requirements and was not solely complainant's fault. (TR 244-245) The witness denied that complainant told him that Gorden had failed to respond to his criticisms of the site-specific welds at Point Beach, or that he ordered complainant not to remedy any deficiencies. (TR 247)

Following the Hartford audit, Walcutt instructed complainant to review all the site-specific welding procedures at Point Beach. (TR 250) On January 28, 1995, Walcutt wrote a memo to Tom Zarges (RX D) stating in part that the errors found in the audit could have been prevented by effective communication between the GWE and the PWE. (TR 254) Complainant was not solely responsible for the problems found by the audit and Gorden also contributed to the breakdown in communications. *Id.* Walcutt recommended that Gorden be replaced as PWE. (TR 254-255) The witness was told by complainant that D. C. Cook had similar problems to those at Point Beach, but he did not ask complainant to investigate D. C. Cook. (TR 256) No mention of complainant's review of the D. C. Cook project was made to Pardi, Edleman, or Zarges. (TR 256-257) Walcutt acknowledged that complainant's reassignment to Parkersburg occurred after he wrote the memo about D. C. Cook, but he denies that there was any connection. (TR 261, 265, 266-267)

Gorden developed the site specific welding procedures for Point Beach and in so doing he changed the corporate welding procedures, which was a violation of respondent's quality

assurance program. (TR 270-272) Walcutt told Pardi and Cepkauskas that the problems in Point Beach's welding procedures identified by complainant were not his fault. (TR 274) Complainant always performed competently and professionally as a welding engineer, but had problems communicating. (TR 275) The only valid reason to remove complainant from his position was his failure to communicate with the project team. (TR 294) This problem was not mentioned, however, in complainant's evaluation in December 1996. (See RX G; see also TR 231-232)

Findings of Fact and Conclusions of Law

42 U.S.C. § 5851 provides that:

- (1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee...
  - (A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954;
  - (B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;
  - (C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;
  - (D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, ... or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;
  - (E) testified or is about to testify in any such proceeding or;
  - (F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purpose of the Atomic Energy Act of 1954, as amended.

To establish a prima facie case of discrimination under § 5851, the complainant must show: (1) his employer is subject to the Act; (2) the complainant engaged in protected activity; (3) the complainant was subject to adverse employment action; (4) his employer was aware of the protected activity when it took the adverse action, and (5) an inference that the protected activity was the likely reason for the adverse employment action. *Zinn v. University of Missouri*, 93-ERA- 34 and 36 (Sec'y, January 18, 1996). See also *Carroll v. U. S. Dept. of Labor*, 78 F. 3d

52 (8<sup>th</sup> Cir. 1996). If the complainant proves a prima facie case, the burden of production shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse action. *Carroll*, 78 F. 3d at 356. Where the employer articulates a legitimate nondiscriminatory reason for the adverse action, the complainant has the ultimate burden of persuading that the reasons articulated by his employer were pretextual, either by showing that the unlawful reason more likely motivated the employer or by showing that the proffered explanation is unworthy of credence. *Nichols v. Bechtel Construction Co.*, 87-ERA-44 (Sec'y, October 26, 1992), *Carroll*, *supra*, *Kahn v. U. S. Secretary of Labor*, 64 F. 3d 271, 278 (7<sup>th</sup> Cir. 1995).

Complainant alleges three separate adverse employment actions taken as a result of his protected activity: (1) his removal from jurisdiction over nuclear power plants in December 1996 as a result of his finding of welding deficiencies at Point Beach, (2) his removal as GWE on January 15, 1997 resulting from his January 14, 1997 report on the Point Beach welding problems, and (3) his reassignment to Parkersburg, WV following his report on the flaws in the welding procedures at D. C. Cook. It is necessary to determine if complainant has made a prima facie case as to each of these incidents.

Respondent concedes that is subject to the Act. Moreover, complainant's performance of quality assurance functions constitutes protected activity under the Act. See *Mackowiak v. University Nuclear Systems, Inc.*, 735 F. 2d 1159, 1163 (9<sup>th</sup> Cir. 1984), *Bassett v. Niagara Mohawk Power Co.*, 86-ERA-2 (Sec'y, July 9, 1986). With regard to the first allegation of retaliation, Pardi denied that a meeting with complainant took place in December 1996 in which he removed him from his nuclear responsibilities and his version is supported by the testimony of Edleman and Walcutt. Assuming that Pardi did remove complainant from jurisdiction over nuclear power plants and that this constitutes adverse employment action, the evidence is not persuasive that Pardi knew about complainant's protected activity prior to the meeting and that his removal was in retaliation for his protected activity. I reach the same conclusion regarding complainant's report on the D. C. Cook project. Walcutt credibly testified that he never told Zarges, Pardi, or Edleman of complainant's report on the welding deficiencies at D. C. Cook, and therefore, his reassignment to Parkersburg could not have been in retaliation for his report. Therefore, complainant has failed to make out a prima facie case with regard to these two incidents.

I reach a different conclusion with regard to complainant's removal as GWE and subsequent reassignment to Parkersburg. Respondent argues that Pardi and Edleman had already decided to replace complainant as GWE before they were aware that he drafted the report on the Point Beach welding deficiencies on January 14, but I do not find Pardi's testimony to be credible on this point. Furthermore, the adverse employment action, i.e., complainant's actual removal from his position as GWE, did not take place until January 15, one day after Pardi was given the report on Point Beach. Therefore, I find that respondent was aware of complainant's protected activity when he was replaced as GWE. Respondent also maintains that complainant's removal as GWE and reassignment to a different position in Parkersburg was not an adverse employment action because he was not discharged and there was no decrease in pay. However, complainant's

new position in Parkersburg as an area field engineer does not have the corporate responsibilities involved in his prior position as GWE and is clearly less prestigious. See *DeFord v. Secretary of Labor*, 700 F. 2d 281, 287 (6<sup>th</sup> Cir. 1983). See also *McMahan v. California Water Quality Control Board, San Diego Region*, 90-WPC-1 (Sec'y, July 16, 1993), in which it was held that a transfer was an adverse action in that it prevented the complainant from performing supervisory duties and field enforcement which he preferred. Respondent also argues that "relocation is a way of life" at Morrison Knudsen and that respondent maintains facilities much further from Cleveland than Parkersburg to which complainant could have been reassigned. The fact that complainant could have been sent to more remote locations has no significance, however, as complainant's reassignment from Cleveland to Parkersburg has clearly inconvenienced him and separated him from his home and family in Cleveland. I therefore conclude that complainant's removal as GWE and his subsequent reassignment to an inferior job in Parkersburg constitute adverse employment action. Finally, complainant's removal from the position as GWE within twenty four hours after he engaged in protected conduct raises the inference as a matter of law that his removal was in retaliation for his protected activity. *Couty v. Dole*, 886 F. 2d 147, 148 (8<sup>th</sup> Cir. 1989). Complainant has therefore made out a prima facie case.

Respondent has cited as the reasons for complainant's removal and reassignment his overall performance as GWE, more specifically his recommendation that drop weight testing not be used, the deficiencies found in the Hartford audit, and his friction with on-site personnel. Complainant therefore has the burden of proving that these reasons are pretextual. *Kahn*, 64 F. 3d at 278.

The drop weight testing excuse clearly lacks credibility. Pardi testified of seeing a memo shown to him by Cepkauskas regarding the drop weight testing but could not recall the content of the memo. Cepkauskas was unable to produce the memo. Walcutt testified that complainant had never recommended that drop weight testing not be used thereby indicating that Pardi's asserted loss of confidence in complainant was based on an erroneous premise. Pardi also blamed the welding defects noted in the Hartford audit on complainant, but Walcutt, who has far more technical knowledge than Pardi regarding the welding requirements, stated that Gorden was responsible for these errors as it was his obligation to develop the site-specific welding procedures. Gorden actually changed the corporate welding procedures complainant had sent him in violation of the respondent's quality assurance program. When complainant discovered the unacceptable welding specifications devised by Gorden, he informed him of the deficiencies and tried without success to have Gorden remedy them. Moreover, Walcutt informed Pardi that the deficiencies cited in the audit were not complainant's fault, which indicates that Pardi knew that complainant was not to blame and removed him anyway. Walcutt stated that complainant always acted in a competent and professional manner as a welding engineer. Thus the first two articulated reasons for removing complainant are clearly pretextual.

Walcutt asserted that the only valid reason for removing complainant as GWE was his failure to communicate with project personnel. Initially, I find it difficult to accept that complainant would be relieved of his duties for this relatively insignificant reason. There is

certainly no evidence in the record that this so called "friction" with on site personnel was so persistent or egregious that it affected the efficiency of respondent's construction work. It would also appear that the cause of much of the "friction" was complainant's insistence on not delegating the qualification of the welds to Gorden, whose competence he questioned, apparently with good reason. Some of the "friction" also resulted from complainant's strict adherence to the standards in respondent's quality assurance program and the natural tension that may have taken place with the project personnel who were attempting to adhere to precise schedules. As the court in *Mackowiak* observed, "contractors regulated by § 5851 may not discharge quality control inspectors because they do their job too well." *Mackowiak*, 735 F. 2d at 1163. Finally, I note that Walcutt did not discuss complainant's communication problems in the performance evaluation completed in December 1996 only twenty-three days before he was removed as GWE allegedly for this reason. If complainant's failure to communicate had been such a serious problem, it would have been cited in his performance appraisal. Therefore, I conclude that this purported reason was also pretextual.

As complainant has made out a prima facie case and proven that respondent's purported reasons for the adverse employment action were pretextual, I conclude that respondent has violated § 5851. Complainant is therefore entitled to reinstatement to his position as GWE and reimbursement for attorney fees.

Recommended Order

Morrison Knudsen Corporation is ORDERED to:

(1) Reinstate complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio and to the same compensation, terms, conditions, and privileges of employment he previously had, and

(2) Reimburse complainant for the reasonable cost of attorney fees he has expended in pursuing his complaint.

Within thirty (30) days of the date of this decision and order, complainant's counsel shall submit a fully supported fee application detailing his hourly fee, the number of hours expended on this proceeding, and any associated litigation expenses. Respondent will have fifteen (15) days to respond with any objections.



DANIEL L. LELAND  
Administrative Law Judge

**NOTICE:** This Recommended Decision and Order and the administrative file in this matter will be forwarded for final decision to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. The Administrative Review Board was delegated jurisdiction by Secretary Order dated April 17, 1996, to issue final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. *See* 61 Fed. Reg. 19978 and 19982 (1996).

SERVICE SHEET

Case Name: ALAN ARTAYET  
Case Number: 97-ERA-034  
Title of Document: RECOMMENDED DECISION AND ORDER

I hereby certify that on OCT 28 1997 a copy of the above-entitled document was mailed to the following parties:

  
LAURA ANN BROWN  
Legal Technician

UNITED PARCEL SERVICE

Administrative Review Board  
United States Department of Labor  
Room S-4309, Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, DC 20210

CERTIFIED MAIL

Steven Bell, Esq.  
Lynn R. Rogozinski, Esq.  
Ulmer & Berne, L.L.P.  
Bond Court Building  
1300 East Ninth Street, Suite 900  
Cleveland, OH 44114-1583

Keith A. Ashmus, Esq.  
Heather L. Areklett, Esq.  
Thompson Hine & Flory, P.L.L.  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216

REGULAR MAIL

Associate Regional Solicitor  
Federal Building  
1240 East 9<sup>th</sup> Street, Room 881  
Cleveland, OH 44199

REGULAR MAIL

Administrator, ESA  
Wage and Hour Division, US DOL  
Room S-3502, FPB  
200 Constitution Avenue, NW  
Washington, DC 20210

Rob Medlock, Area Director  
OSHA, Cleveland Area Office  
AJC Federal Office Building  
1240 East 9<sup>th</sup> Street, Room 899  
Cleveland, OH 44199

Barry J. Harber, District Director  
U.S. Department of Labor  
AJC Federal Office Building  
1240 East Ninth Street, Room 817  
Cleveland, OH 44199

Deputy Associate Solicitor  
Division of Fair Labor Standards  
Office of the Solicitor  
U.S. DOL, Room N-2716  
200 Constitution Avenue, NW  
Washington, DC 20210



In the Matter of:

**ALAIN ARTAYET,**

**COMPLAINANT,**

v.

**MORRISON KNUDSEN CORPORATION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**ARB CASE NO. 98-016**

**(ALJ CASE NO. 97-ERA-34)**

**DATE: NOV 4 1997**

**NOTICE OF REVIEW  
AND  
ORDER ESTABLISHING BRIEFING SCHEDULE  
AND  
PRELIMINARY ORDER**

The Recommended Decision and Order (R. D. and O.) issued on October 28, 1997 by the Administrative Law Judge (ALJ) has been transmitted to the Board for review. The following briefing schedule is established in this case. Respondent may file an initial brief, not to exceed 30 double spaced typed pages, on or before December 3, 1997. Complainant may file a reply brief, not to exceed 30 double spaced typed pages, on or before January 2, 1998. Respondent may file a rebuttal brief, exclusively responsive to the reply brief and not to exceed 10 double spaced typed pages, on or before January 20, 1998.

All pleadings are expected to conform to the page limitations and should be prepared in Courier 12 point, 10 character-per-inch type or larger, with minimum one inch left and right margins and minimum 1¼ inch top and bottom margins, printed on 8½ by 11 inch paper.

An original and four copies of all pleadings and briefs shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C., 20210 (Telephone Number, 202-219-4728; Facsimile Number 202-219-0315)

**PRELIMINARY ORDER**

As noted, on October 28, 1997, the ALJ issued the R. D. and O. in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (Supp. IV 1992), as amended by the Comprehensive National Energy Policy Act of 1992 (CNEPA), Pub. L. No. 102-486, 106 Stat. 2776, 3123. The ALJ found that Respondent had violated § 5851 and that Complainant is entitled to both reinstatement to his former position and reimbursement for attorney fees..

The following preliminary order is hereby entered:

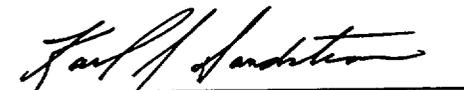
Respondent shall reinstate Complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio at the same compensation, terms, conditions, and privileges of employment which Complainant had previously enjoyed, and

Following the procedures described in the ALJ's R. D. and O., Respondent shall reimburse Complainant for reasonable attorney fees and costs which were expended in the pursuit of this complaint.

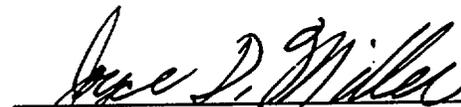
**SO ORDERED.**



**DAVID A O'BRIEN**  
Chair



**KARL J. SANDSTROM**  
Member



**JOYCE D. MILLER**  
Alternate Member

## SYNOPSIS

This investigation was initiated on March 13, 1997, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if the former Corporate Welding Engineer (CWE) for Morrison Knudsen Corporation had been discriminated against for raising safety concerns.

Based on the evidence developed during the investigation, it is concluded that there is sufficient evidence to substantiate the alleged employment discrimination against the former CWE.

# U.S. NUCLEAR REGULATORY COMMISSION

## Enforcement Policy Statement

This document compiles the "General Statement of Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, published June 30, 1995, and the various amendments to the Enforcement Policy approved by the Commission through September 10, 1997. It is the staff's intent to republish NUREG-1600 later this year. Pending that republication, the Office of Enforcement is issuing this interim compilation of all amendments to the Policy since it was last published. This document is also accessible on the Internet at: [www.nrc.gov/OE](http://www.nrc.gov/OE).

The amendments to the Policy were published in the Federal Register as follows:

<u>Subject:</u>	<u>Federal Register</u>	<u>Date</u>
Adjustment of Civil Monetary Penalties	61FR53553	10/11/96
Departures from FSAR	61FR54461	10/18/96
Commission consultation, Open Enforcement Conferences; risk; NCVs	61FR65088	12/10/96
Part 20, Exceedance of dose constraints	61FR65128	12/10/96
Correction as to exercise of discretion	61FR68070	12/26/96
Gaseous Diffusion Plants; NRC organizational changes; Commission consultation	62FR06677	02/12/97
Participation in enforcement conferences involving discrimination	62FR13906	03/24/97
Part 34, Radiography, examples of potential violations	62FR28974	05/28/97
Corrections to Part 34 examples	62FR33447	06/19/97
Enforcement conference clarification	62FR52577	10/08/97

The Enforcement Policy is a general statement of policy explaining the NRC's policies and procedures in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This policy statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment. This statement of general policy and procedures is published to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

Questions concerning the Enforcement Policy should be directed to the NRC's Office of Enforcement at (301) 415-2741.

James Lieberman, Director  
Office of Enforcement

# Compilation of NRC Enforcement Policy as of September 10, 1997

## GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

### Table of Contents

### Preface

#### I. INTRODUCTION AND PURPOSE

#### II. STATUTORY AUTHORITY

- A. Statutory Authority
- B. Procedural Framework

#### III. RESPONSIBILITIES

#### IV. SEVERITY OF VIOLATIONS

- A. Aggregation of Violations
- B. Repetitive Violations
- C. Willful Violations
- D. Violations of Reporting Requirements

#### V. PREDECISIONAL ENFORCEMENT CONFERENCES

#### VI. ENFORCEMENT ACTIONS

- A. Notice of Violation
- B. Civil Penalty
  1. Base Civil Penalty
  2. Civil Penalty Assessment
    - a. Initial Escalated Action
    - b. Credit for Actions Related to Identification
    - c. Credit for Prompt and Comprehensive Corrective Action
    - d. Exercise of Discretion
  - C. Orders
  - D. Related Administrative Actions

#### VII. EXERCISE OF DISCRETION

- A. Escalation of Enforcement Sanctions
  1. Civil Penalties
  2. Orders
  3. Daily Civil Penalties
- B. Mitigation of Enforcement Sanctions
  1. Licensee-Identified Severity Level IV Violations
  2. Violations Identified During Extended Shutdowns or Work Stoppages
  3. Violations Involving Old Design Issues
  4. Violations Identified Due to Previous Escalated Enforcement Action
  5. Violations Involving Discrimination
  6. Violations Involving Special Circumstances
- C. Exercise of Discretion for an Operating Facility

#### VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

#### IX. INACCURATE AND INCOMPLETE INFORMATION

#### X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

#### XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

#### XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

#### XIII. REOPENING CLOSED ENFORCEMENT ACTIONS SUPPLEMENTS

### PREFACE

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission (NRC or Commission) and the NRC staff (staff) in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment.<sup>1</sup> This statement of general policy and procedure will be published as NUREG-1600 to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

#### I. INTRODUCTION AND PURPOSE

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

---

<sup>1</sup> Antitrust enforcement matters will be dealt with on a case-by-case basis.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, vendors<sup>2</sup>, contractors, and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.<sup>3</sup> Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of this enforcement policy. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

#### II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK

##### A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

---

<sup>2</sup> The term "vendor" as used in this policy means a supplier of products or services to be used in an NRC-licensed facility or activity.

<sup>3</sup> This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed \$100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the \$100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of

the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

#### *B. Procedural Framework*

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the

order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

#### III. RESPONSIBILITIES

The Executive Director for Operations (EDO) and the principal enforcement officer of the NRC, the Deputy Executive Director for Regulatory Effectiveness, hereafter referred to as the Deputy Executive Director, has been delegated the authority to approve or issue all escalated enforcement actions.<sup>4</sup> The Deputy Executive Director is responsible to the EDO for the NRC enforcement program. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where

<sup>4</sup> The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Director, Office of the Controller, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection fees.

In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Enforcement Discretion." The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will also be

provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

- (1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;
- (2) Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee;
- (3) Any proposed enforcement action that involves a Severity Level I violation;
- (4) Any action the EDO believes warrants Commission involvement;
- (5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and
- (6) Any proposed enforcement action on which the Commission asks to be consulted.

#### IV. SEVERITY OF VIOLATIONS

Regulatory requirements<sup>5</sup> have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process.

<sup>5</sup> The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

In considering the significance of a violation, the staff considers the technical significance, i.e., actual and potential consequences, and the regulatory significance. In evaluating the technical significance, risk is an appropriate consideration.

Consequently, for purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance within each of the following eight activity areas:

- I. Reactor Operations;
- II. Facility Construction;
- III. Safeguards;
- IV. Health Physics;
- V. Transportation;
- VI. Fuel Cycle and Materials Operations;
- VII. Miscellaneous Matters; and
- VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not

usually described in inspection reports. To the extent such violations are described, they are noted as Non-Cited Violations.<sup>6</sup>

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation. In some cases, special circumstances may warrant an adjustment to the severity level categorization.

#### A. Aggregation of Violations

A group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or the violations

<sup>6</sup> A Non-Cited Violation (NCV) is a violation that has not been formalized into a 10 CFR 2.201 Notice of Violation.

contributed to or were unavoidable consequences of the underlying problem. Normally, Severity Level II and III violations are not aggregated into a higher severity level.

The purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may therefore, warrant a more substantial enforcement action.

#### B. Repetitive Violations

The severity level of a Severity Level IV violation may be increased to Severity Level III, if the violation can be considered a repetitive violation.<sup>7</sup> The purpose of escalating the severity level of a repetitive violation is to acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action for the previous violation. The decision to escalate the severity level of a repetitive violation will depend on the circumstances, such as, but not limited to, the number of times the violation has occurred, the similarity of the violations and their root causes, the adequacy of previous corrective actions, the period of time between the violations, and the significance of the violations.

#### C. Willful Violations

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on

<sup>7</sup> The term "repetitive violation" or "similar violation" as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Although removal of the person is not necessarily required, substantial disciplinary action is expected.

Therefore, the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official<sup>8</sup>

<sup>8</sup> The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's

or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be categorized at least at a Severity Level IV.

*D. Violations of Reporting Requirements*

The NRC expects licensees to provide complete, accurate, and timely information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

**V. PREDECISIONAL ENFORCEMENT CONFERENCES**

organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held unless the licensee requests it. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee will normally be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in

the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

- (1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;
- (2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;
- (3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or
- (4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

- (5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or
- (6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that

the conference will be open to public observation. Consistent with the agency's policy on open meetings, "Staff Meetings Open to Public," published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800-952-9674, (3) a toll-free electronic bulletin board at 800-952-9676, and on the World Wide Web at the NRC Office of Enforcement homepage ([www.nrc.gov/OE](http://www.nrc.gov/OE)). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures for Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where

there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

## VI. ENFORCEMENT ACTIONS

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction,

such as in transportation matters.

Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action.

#### A. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved.

The NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met. However, special circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation. (See Section VII.B, "Mitigation of Enforcement Sanctions.") In addition, licensees are not ordinarily cited for

violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.

#### B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

#### 1. Base Civil Penalty

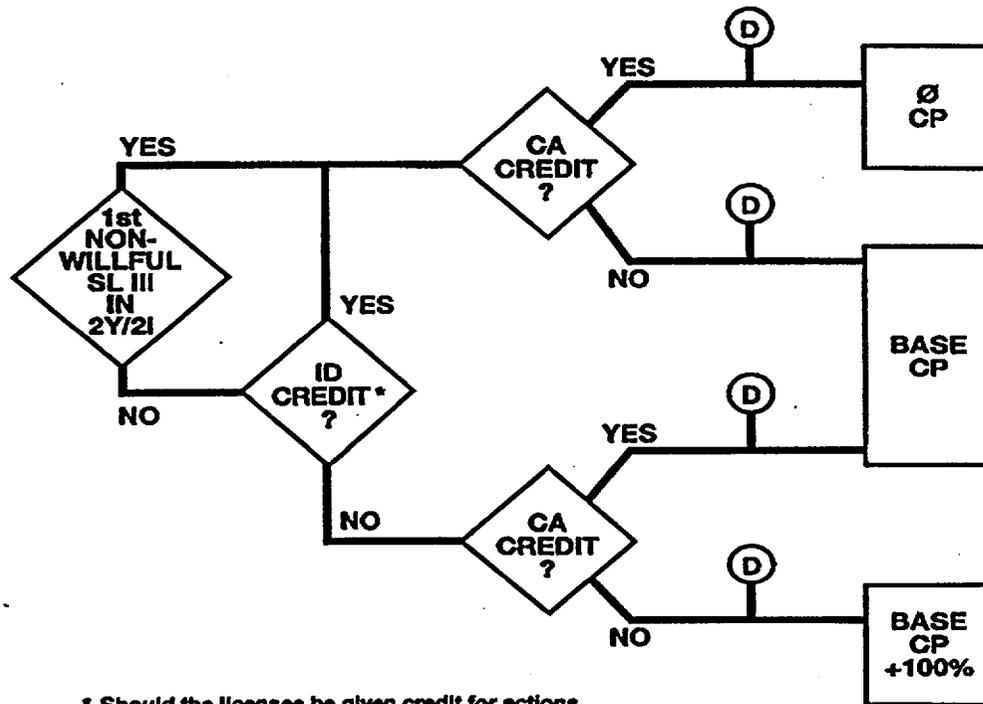
The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, vendors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, materials, and vendor programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

**2. Civil Penalty Assessment**

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) whether the licensee has had any Previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these

associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic representation of the civil penalty assessment process.



\* Should the licensee be given credit for actions related to identification?

(D) Discretion, e.g., SL I and II violations should normally result in a civil penalty regardless of ID and CA.

*a. Initial Escalated Action.*

When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had any previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under Section VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, a Notice of Violation normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the Notice of Violation normally should be issued with a base civil penalty.

*b. Credit for Actions Related to Identification.*

(1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred—or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action—the civil penalty assessment should normally

consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for *Identification* and *Corrective Action* should be separate decisions, the concept of *Identification* presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on *Identification* requires considering all the circumstances of identification including:

- (i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event<sup>9</sup>;
- (ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of

---

<sup>9</sup> An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

those opportunities;

(iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;

(iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;

(v) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;

(vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and

(vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:

(i) Licensee-Identified. When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) Identified Through an Event. When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee

initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) NRC-Identified. When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the

matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) Mixed Identification. For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of the *problem requiring corrective action* (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) Missed Opportunities to Identify. Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice i.e., specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of

employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity--"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity

should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

(3) When the NRC determines that the licensee should receive credit for actions related to *Identification*, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is *not* given credit for actions related to *Identification*, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

*c. Credit for Prompt and Comprehensive Corrective Action.*

The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in issuing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for *Corrective Action*. For cases in which the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective

action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee

- (i) Makes a prompt decision on operability; and either
- (ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or
- (iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

*d. Exercise of Discretion.*

As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee. However, in no instance will a civil penalty for any one violation exceed \$110,000 per day.

TABLE 1A--BASE CIVIL PENALTIES

a. Power reactors and gaseous diffusion plants.....	\$110,000
b. Fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations.....	\$27,500
c. Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers.....	\$11,000
d. Research reactors, academic, medical, or other material licensee'.....	\$5,500

<sup>1</sup> This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

TABLE 1B—BASE CIVIL PENALTIES

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table 1A)
I .....	100%
II .....	80%
III .....	50%

**C. Orders**

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202). Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.
2. Suspension Orders may be used:
  - (a) To remove a threat to the public health and safety, common defense and security, or the environment;
  - (b) To stop facility construction when,
    - (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or
    - (ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;
  - (c) When the licensee has not responded adequately to other enforcement action;
  - (d) When the licensee interferes with the conduct of an inspection or investigation; or
  - (e) For any reason not mentioned above for which license revocation is

legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:

- (a) When a licensee is unable or unwilling to comply with NRC requirements;
  - (b) When a licensee refuses to correct a violation;
  - (c) When licensee does not respond to a Notice of Violation where a response was required;
  - (d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or
  - (e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).
4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to unlicensed persons, including vendors and contractors, and employees of any of them, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior

opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

**D. Related Administrative Actions**

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing vendor's failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices

of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

## VII. EXERCISE OF DISCRETION

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action appropriately reflects the level of NRC concern regarding the violation at issue and conveys the appropriate message to the licensee.

### A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC

may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties, (2) issuing appropriate orders, and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$110,000 per violation, per day.

1. Civil penalties. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

(a) Problems categorized at Severity Level I or II;

(b) Overexposures, or releases of radiological material in excess of NRC requirements;

(c) Situations involving particularly poor licensee performance, or involving willfulness;

(d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;

(e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;

(f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;

(g) Cases involving the loss of a source. In addition, unless the licensee self-

identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient; or

(h) Severity Level II or III violation associated with departures from the Final Safety Analysis Report identified after two years from October 18, 1996. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

2. Orders. The NRC may, where necessary or desirable, issue orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. Daily civil penalties. In order to recognize the added technical safety significance or regulatory significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$110,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

### B. Mitigation of Enforcement Sanctions

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation, if the outcome of the normal process described in Section VI.B does not result in a sanction consistent with an

appropriate regulatory message. However, even if the NRC exercises this discretion, when the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report. The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for exercising discretion of the type described in Section VII.B.1.b where a willful violation is involved, and of the types described in Sections VII.B.2 through VII.B.6. Commission notification is required for exercising discretion of the type described in: (1) Section VII.B.2 the first time discretion is exercised during that plant shutdown, and (2) Section VII.B.6 where appropriate based on the uniqueness or significance of the issue. Examples when discretion should be considered for departing from the normal approach in Section VI.B include but are not limited to the following:

1. Licensee-Identified Severity Level IV Violations. The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

- (a) It was identified by the licensee;
- (b) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;
- (c) It was or will be corrected within a reasonable time, by specific corrective

action committed to by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence;

(d) It was not a willful violation or if it was a willful violation;

(i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.C);

(iii) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization. Although removal of the employee from licensed activities is not necessarily required, substantial disciplinary action is expected.

2. Violations Identified During Extended Shutdowns or Work Stoppages. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or official field notes for some material cases) and that it meets all of the following criteria:

- (a) It was either licensee-identified as a

result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (1) the NRC identifies the violation and a set of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at a severity level higher than Severity Level II;

(d) It was not willful; and

(e) The licensee's decision to restart the plant requires NRC concurrence.

3. Violations Involving Old Design Issues. The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was a licensee-identified as a result of its voluntary initiative;

(b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and

(c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for cases that meet the above criteria provided the violation was caused by

conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years after October 18, 1996;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. Violations Identified Due to Previous Escalated Enforcement Action. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified

after the NRC has taken escalated enforcement action for a Severity Level II or III violation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous escalated enforcement action;

(b) It has the same or similar root cause as the violation for which escalated enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

5. Violations Involving Certain Discrimination Issues. Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL,

that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. Violations Involving Special Circumstances. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, as provided in Section III, "Responsibilities," the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II or III violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the safety significance of the violation, the overall sustained performance of the licensee has been particularly good, and other

relevant circumstances, including any that may have changed since the violation. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted.

*C. Exercise of Discretion for an Operating Facility*

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an

emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the

NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root cause to the extent violations were involved that led to the noncompliance for which enforcement discretion was used. Enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended or plant startup may be delayed, at the exercise of enforcement discretion the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to issue enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only when the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

**VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS**

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. Enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence), failed to take required actions which have actual or potential safety significance. Most transgressions involving individuals at the level of Severity Level III or IV violations will be handled by citing only the facility

licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual. However, violations involving willful

conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR part 50, appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by vendors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.

• Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
3. The safety consequences of the misconduct.
4. The benefit to the wrongdoer, e.g., personal or corporate gain.
5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
6. The employer's response, e.g., disciplinary action taken.
7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
8. The degree of management responsibility or culpability.

9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.<sup>10</sup> Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed

<sup>10</sup> Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

activities.

- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of

integrity, competence, fitness-for or other matters that may not necessarily be a violation of spec Commission requirements.

In the case of an unlicensed per whether a firm or an individual, order modifying the facility licen may be issued to require (1) the removal of the person from all lic activities for a specified period or indefinitely, (2) prior notice to NRC before utilizing the person i licensed activities, or (3) the licer provide notice of the issuance of an order to other persons involve licensed activities making referen inquiries. In addition, orders to employers might require retrainir additional oversight, or independ verification of activities performe the person, if the person is to be involved in licensed activities.

IX. INACCURATE AND INCOMPLETE INFORMATION

A violation of the regulations involving submittal of incomplete and/or inaccurate information, w/ or not considered a material false statement, can result in the full rz of enforcement sanctions. The la of a communication failure as a material false statement will be n on a case-by-case basis and will t reserved for egregious violations. Violations involving inaccurate or incomplete information or the fail provide significant information identified by a licensee normally be categorized based on the guida herein, in Section IV, "Severity o Violations," and in Supplement V

The Commission recognizes tha information may in some situatio inherently less reliable than writte submittals because of the absence opportunity for reflection and management review. However, t Commission must be able to rely oral communications from licens officials concerning significant

information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of NRC reliance on the information; (6) the importance of the information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was

promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

## X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

The Commission's enforcement policy is also applicable to non-licensees, including employees of licensees, to contractors and subcontractors, and to employees of contractors and subcontractors, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors may be required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors supplying products or services to reactor, materials, and 10 CFR Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their vendors have programs that meet applicable requirements. Notices of Violation will be issued for vendors

that violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

#### XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

#### XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

#### XIII. REOPENING CLOSED ENFORCEMENT ACTIONS

If significant new information is received or obtained by NRC which indicates that an enforcement sanction

was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

#### SUPPLEMENT I— REACTOR OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. Severity Level I - Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;

2. A system<sup>11</sup> designed to prevent or mitigate a serious safety event not being able to perform its intended safety function<sup>12</sup> when actually called upon to work;

3. An accidental criticality; or

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. Severity Level II - Violations involving for example:

<sup>11</sup> The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

<sup>12</sup> "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

1. A system designed to prevent mitigate serious safety events not able to perform its intended safety function;

2. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area.

3. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and was as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol; or

4. Failures to meet 10 CFR 50.59 including several unreviewed safety questions, or conflicts with technical specifications, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment.

C. Severity Level III - Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement

2. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability (e.g., component parameters outside approved limits such as pump flow

rates, heat exchanger transfer characteristics, safety valve lift (points, or valve stroke times);

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;

5. [Reserved]

6. A licensee failure to conduct adequate oversight of vendors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;

9. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

10. The failure to meet 10 CFR 50.59 where an unreviewed safety question is involved, or a conflict with a technical specification, such that a license amendment is required;

11. The failure to perform the required evaluation under 10 CFR 50.59 prior to implementation of the change in those situations in which no unreviewed safety question existed, but an extensive evaluation would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist;

12. Programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) that show a significant lack of attention to detail, whether or not such failures involve an unreviewed safety question, resulting in a current safety or regulatory concern about the

accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met. Application of this example requires weighing factors such as: a) the time period over which the violations occurred and existed, b) the number of failures, c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and d) the potential significance of the failures;

13. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation and as a result, an inadequate decision was made demonstrating a significant regulatory concern; or

14. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with (a) an unreviewed safety question, (b) a conflict with a technical specification, or (c) any other Severity Level III violation.

D. Severity Level IV - Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. [Reserved]

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;

4. A failure to make a required Licensee Event Report;

5. Relatively isolated violations of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting 10 CFR 50.59 or 50.71(e);

6. A relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test;

7. A failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented; or

8. A past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met.

E. Minor Violations

A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc., that is being changed, tested, or experimented on.

## SUPPLEMENT II--PART 50 FACILITY CONSTRUCTION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. Severity Level I - Violations involving structures or systems that are

completed<sup>13</sup> in such a manner that they would not have satisfied their intended safety related purpose.

B. Severity Level II - Violations involving for example:

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity Level III - Violations involving for example:

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

D. Severity Level IV - Violations

<sup>13</sup> The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

#### SUPPLEMENT III-SAFEGUARDS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

A. Severity Level I - Violations involving for example:

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity<sup>14</sup> of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM

B. Severity Level II - Violations involving for example:

1. The entry of an unauthorized individual<sup>15</sup> who represents a threat into a vital area<sup>16</sup> from outside the protected area;

<sup>14</sup> See 10 CFR 73.2 for the definition of "formula quantity."

<sup>15</sup> The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

<sup>16</sup> The phrase "vital area" as used in this supplement includes vital areas and material access areas.

2. The theft, loss or diversion of SNM of moderate strategic significance<sup>17</sup> in which the security system did not function as required;

3. Actual unauthorized production of SNM.

C. Severity Level III - Violations involving for example:

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access<sup>18</sup> into a vital area from outside the protected area;

2. A failure to conduct any search the access control point or conducting an inadequate search that resulted in the introduction to the protected area firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used to prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information

<sup>17</sup> See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

<sup>18</sup> In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force;

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access; or

8. A breakdown in the security program involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;

5. A failure to conduct a proper search at the access control point;

6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;

8. A failure to conduct an adequate search at the exit from a material access area;

9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

10. Other violations that have more than minor safeguards significance.

#### SUPPLEMENT IV--HEALTH PHYSICS (10 CFR PART 20)

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.<sup>19</sup>

A. Severity Level I - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5

rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

B. Severity Level II - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the

<sup>19</sup> Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

Commission under Section 20.1301(c));

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

C. Severity Level III - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 5 rem total effective dose equivalent, 15 rem to the lens of the eye, or 50 rem to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));

3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rem to the lens of the eye, or 5 rem to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. A worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;

5. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

7. A failure to make a 24-hour notification required by 10

CFR 20.2202(b) or an immediate notification required by

10 CFR 20.2201(a)(1)(i);

8. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001-20.2401 whether or not an exposure or release occurs;

9. Disposal of licensed material not covered in Severity Levels I or II;

10. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person;

12. A significant failure to control licensed material; or

13. A breakdown in the radiation safety program involving a number of violations that are related (or, if isolated, that are recurring) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable

environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;

8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or

9. Any other matter that has more than a minor safety, health, or environmental significance.

#### SUPPLEMENT V - TRANSPORTATION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violation in the area of NRC transportation requirements<sup>20</sup>.

A. Severity Level I - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public or there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess

<sup>20</sup> Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

of 10 times the NRC limit.

Severity Level II - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;
2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;
3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or
4. A failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity Level III - Violations involving for example:

1. Surface contamination in excess of five but not more than 10 times the NRC limit;
2. External radiation in excess of one but not more than five times the NRC limit;

Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

- (a) A significant failure to identify the type, quantity, or form of material;
- (b) A failure of the carrier or recipient to exercise adequate controls; or
- (c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;
4. A failure to make required initial notification associated with Severity Level III violations; or
5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;
2. Surface contamination in excess of but not more than five times the NRC limit;
3. A failure to register as an authorized user of an NRC-Certified Transport package;
4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;
5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;
6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or
7. Other violations that have more than minor safety or environmental significance.

#### SUPPLEMENT VI—FUEL CYCLE AND MATERIALS OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

A. Severity Level I - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;
3. A nuclear criticality accident;
4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;
5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or
6. Significant injury or loss of life due to a loss of control over licensed or certified

activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. Severity Level II - Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event being inoperable;
3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;
4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or
5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF<sub>6</sub> cylinder by unapproved methods).

C. Severity Level III - Violations involving for example:

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;
2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;
3. Use of radioactive material on humans where such use is not authorized;
4. Conduct of licensed activities by a technically unqualified or uncertified person;
5. A substantial potential for exposures, radiation levels,

contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

6. Substantial failure to implement the quality management program as required by 10 CFR 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

9. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to

conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of vendors or contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably

available, such that a nuclear criticality accident was possible; or

19. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. Severity Level IV - Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance;

3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but

ld have been sufficient to result in a ar criticality.

**SUPPLEMENT VII—MISCELLANEOUS MATTERS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

**A. Severity Level I - Violations involving for example:**

1. Inaccurate or incomplete information<sup>21</sup> that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be by a licensee that is (a) incomplete accurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to substantially implement the required fitness-for-duty program.<sup>22</sup>

**B. Severity Level II - Violations involving for example:**

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

**C. Severity Level III - Violations involving for example:**

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

4. An action by first-line supervision in violation of 10 CFR 50.7 or similar

<sup>21</sup> In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and Incomplete Information," and to the definition of "licensee official" in Section IV.C.

<sup>22</sup> The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

regulations against an employee;

5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. A failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program;

9. A breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. Severity Level IV - Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10

CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

#### SUPPLEMENT VIII—EMERGENCY PREPAREDNESS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. Severity Level I - Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff.)

B. Severity Level II - Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity Level III - Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification; or

3. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
OFFICE OF NUCLEAR REACTOR REGULATION  
OFFICE OF NUCLEAR MATERIAL SAFETY AND SAFEGUARDS  
OFFICE OF ENFORCEMENT  
WASHINGTON, D.C. 20555-0001

February 9, 1998

NRC INFORMATION NOTICE 98-04: 1997 ENFORCEMENT SANCTIONS FOR DELIBERATE VIOLATIONS OF NRC EMPLOYEE PROTECTION REQUIREMENTS

Addressees

All U.S. Nuclear Regulatory Commission licensees.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this information notice (IN) to remind licensees and their employees of the sanctions that could result from deliberately violating NRC requirements in the area of employee protection. It is expected that licensees will review this information notice, distribute it to management and staff involved with licensed activities, including senior management at nuclear power plants, and consider actions, as appropriate, to avoid similar problems. However, suggestions contained in this IN are not NRC requirements; therefore, no specific action is required.

Discussion

The NRC places a high value on nuclear industry employees being free to raise potential safety concerns to both licensee management and to the NRC without fear of reprisal or actual harassment and intimidation. Section 211 of the Energy Reorganization Act (ERA), and 10 CFR 19.20, 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10, provide that no employer may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee engaged in certain protected activities. These protected activities include notifying an employer of an alleged violation of the Atomic Energy Act or ERA, refusing to engage in any practice made unlawful by those Acts, testifying before Congress or in a Federal or State proceeding regarding any provision of these Acts, or commencing, testifying, assisting, or participating in any proceeding under these Acts. Licensees and contractors are responsible for ensuring that discrimination does not occur against its employees for engaging in such protected activities. Licensees and contractors who discriminate against their employees for the employees' protected activities are subject to sanctions by the NRC. These sanctions include Notices of Violation and Civil Penalties.

9802050188

In addition, under the Deliberate Misconduct Rule (see, e.g., 10 CFR 30.10 and 10 CFR 50.5), licensee and contractor employees, including senior managers, are subject to sanctions by the NRC for discrimination against other employees for these employees' protected activities. These sanctions include Orders barring individuals from licensed activities. Significant NRC enforcement actions are published in NUREG-0940 and can be accessed through the NRC Office of Enforcement's Home Page at [www.nrc.gov/OE](http://www.nrc.gov/OE).

#### Descriptions of Significant 1997 Enforcement Actions and Sanctions

- (1) An Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately) (IA 96-101) (NUREG-0940, Vol. 6, No. 1, Part 1 @ A-79) was issued on January 13, 1997, to an individual who, at the time of the events described in this IN, was employed by the Tennessee Valley Authority (TVA) as Vice-President for Nuclear Operations. This individual was responsible for the oversight of TVA's nuclear program at its four nuclear reactor sites. The former Manager, Chemistry and Environmental Protection (C&EP) in TVA's corporate organization alleged that he was engaged in protected activities during his employment at TVA, and as a result of these protected activities, he was discriminated against when he received an adverse employment action in the form of a threat of termination by TVA if he did not resign from his job. This former C&EP Manager filed a complaint with the U.S. Department of Labor (DOL) on June 29, 1993.

A DOL District Director concluded that discrimination, as defined and prohibited by Section 211 of the ERA, was a factor in the actions that comprised the former C&EP Manager's complaint. A DOL Administrative Law Judge (ALJ) issued a Recommended Decision and Order, finding that TVA discriminated against the former C&EP Manager in violation of Section 211 of the ERA (94-ERA-024).<sup>1</sup> The NRC's Office of Investigations (OI) also concluded that despite denials by the TVA managers involved, the methodology of the former C&EP Manager's engagement in protected activities was the primary reason for the adverse action against him. Both the DOL ALJ and OI concluded that the former Vice-President of Nuclear Operations at TVA ordered the forced resignation of the former C&EP Manager. The NRC staff concluded that the former Vice-President of Nuclear Operations at TVA was engaged in deliberate misconduct, in violation of 10 CFR 50.5, when he caused TVA to be in violation of the employee protection regulation contained in 10 CFR 50.7.

As a result of this NRC staff's conclusion, the former Vice-President was prohibited from engaging in, or exercising control over individuals engaged in NRC-licensed activities for a five year period beginning on May 1, 1993. In addition, for a five year period beginning May 1, 1998, this former Vice-President is required to notify the NRC at least five days

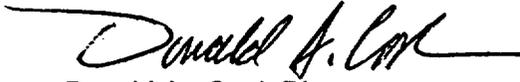
---

<sup>1</sup>On November 20, 1996, the ALJ issued a Recommended Order of Dismissal, based on a conciliation agreement between the former C&EP Manager and TVA, and on November 22, 1996, the DOL Administrative Review Board issued a Final Order Approving Settlement and Dismissing Complaint.

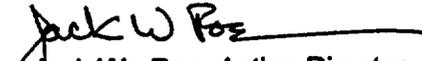
prior to the first time he engages in, or exercises control over, NRC-licensed activities. The level of the sanction against the former Vice-President for Nuclear Operations at TVA was related, in part, to his seniority.

- (2) Related to this case, on January 13, 1997, the NRC issued a Notice of Violation (NOV) and Proposed Imposition of a \$100,000 Civil Penalty (EA 95-199) (NUREG-0940, Vol 16., No. 1, Part 2 @ A-202) to TVA based on a Severity Level I violation of 10 CFR 50.7. As noted above, this violation was based on the licensee's discrimination against the former C&EP Manager by the former Vice-President of Nuclear Operations on April 5, 1993, when the C&EP Manager was forced to resign from TVA because he had engaged in protected activities. TVA paid the Civil Penalty on February 11, 1997.
- (3) On January 23, 1997, the NRC issued an NOV (EA 95-006) (NUREG-0940, Vol. 16, No. 1, Part 3 @ B-159) to the Honolulu Medical Group based on the licensee discriminating against one of its employees by discharging the employee as a result of the employee alleging infractions of NRC requirements in written correspondence to the licensee.
- (4) On March 19, 1997, the NRC issued an NOV and Proposed Imposition of an \$8,000 Civil Penalty (EA 96-498) (NUREG-0940, Vol. 16, No. 1, Part 3 @ A-79) against Koppel Steel Corporation for a Severity Level II violation of 10 CFR 30.7. The enforcement action was based on discrimination by the licensee against its former Radiation Safety Officer (RSO) for the RSO providing information to an NRC inspector during an April 1996 inspection of the licensee's facility. The information provided during the inspection, in part, resulted in the NRC issuance of an NOV to the licensee on May 23, 1996, for five violations of NRC requirements identified during the inspection. Koppel Steel paid the Civil Penalty on April 18, 1997.
- (5) On October 31, 1997, an NOV and Proposed Imposition of a \$10,000 Civil Penalty (EA 97-180) was issued to Mattingly Testing Services, Inc. (MTSI) based on a Severity Level III violation of 10 CFR 30.7. This case was similar to the Koppel Steel case in that the enforcement action was based on discrimination by the licensee against one of its employees because the employee reported violations of NRC requirements to the NRC. The information provided to the NRC by MTSI's employee, in part, resulted in the NRC issuance of an NOV and assessing a \$15,000 Civil Penalty on May 5, 1995, against MTSI, for multiple violations of radiography requirements, and NOVs to individuals who committed the deliberate technical violations.

No specific action or written response is required by this information notice. If you have any questions about this matter, please call the contact listed below or the appropriate NRC regional office.



Donald A. Cool, Director  
Division of Industrial and  
Medical Nuclear Safety  
Office of Nuclear Material Safety  
and Safeguards



Jack W. Roe, Acting Director  
Division of Reactor Program Management  
Office of Nuclear Reactor Regulation

Contact: Michael Stein, OE  
301-415-1688  
E-mail: [mhs@nrc.gov](mailto:mhs@nrc.gov)

Attachment: List of recently issued information notices

LIST OF RECENTLY ISSUED  
 NRC INFORMATION NOTICES

Information Notice No.	Subject	Date of Issuance	Issued to
98-03	Inadequate Verification of Overcurrent Trip Setpoints in Metal-Clad, Low-Voltage Circuit Breakers	2/9/98	All holders of operating licenses for nuclear power reactors
98-02	Nuclear Power Plant Cold Weather Problems and Protective Measures	1/21/98	All holders of operating licenses for nuclear power reactors
98-01	Thefts of Portable Gauges	1/15/98	All portable gauge licensees
97-91	Recent Failures of Control Cables Used on Amersham Model 660 Posilock Radiography Systems	12/31/97	All industrial radiography licensees
97-90	Use of Nonconservative Acceptance Criteria in Safety-Related Pump Surveillance Tests	12/30/97	All holders of OLs for nuclear power reactors except those who have ceased operations and have certified that fuel has been permanently removed from the vessel
97-89	Distribution of Sources and Devices Without Authorization	12/29/97	All sealed source and device manufacturers and distributors
97-88	Experiences During Recent Steam Generator Inspections	12/16/97	All holders of OLs for pressurized-water reactors except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor
97-87	Second Retrofit to Industrial Nuclear Company IR 100 Radiography Camera, to Correct Inconsistency in 10 CFR Part 34 Compatibility	12/12/97	All industrial radiography licensees

OL = Operating License  
 CP = Construction Permit

[Federal Register: May 14, 1996 (Volume 61, Number 94)]  
[Notices]  
[Page 24336-24340]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr14my96-136]

---

## **NUCLEAR REGULATORY COMMISSION**

### **Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation; Policy Statement**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Statement of Policy.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is issuing this policy statement to set forth its expectation that licensees and other employers subject to NRC authority will establish and maintain safety-conscious environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. The responsibility for maintaining such an environment rests with each NRC licensee, as well as with contractors, subcontractors and employees in the nuclear industry. This policy statement is applicable to NRC regulated activities of all NRC licensees and their contractors and subcontractors.

**DATE:** May 14, 1996

**FOR FURTHER INFORMATION CONTACT:** James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-2741.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

NRC licensees have the primary responsibility to ensure the safety of nuclear operations. Identification and communication of potential safety concerns<sup>1</sup> and the freedom of employees to raise such concerns is an integral part of carrying out this responsibility.

In the past, employees have raised important issues and as a result, the public health and safety has benefited. Although the Commission recognizes that not every concern raised by employees is safety significant or, for that matter, is valid, the Commission concludes that it is important that licensees' management establish an environment in which safety issues are promptly identified and effectively resolved and in which employees feel free to raise concerns.

Although hundreds of concerns are raised and resolved daily in the nuclear industry, the Commission, on occasion, receives reports of individuals being retaliated against for raising concerns. This retaliation is unacceptable and unlawful. In addition to the hardship caused to the individual employee, the perception by fellow workers that raising concerns has resulted in retaliation can generate a chilling effect that may discourage other workers from raising concerns. A reluctance on the part of employees to raise concerns is detrimental to nuclear safety.

As a result of questions raised about NRC's efforts to address retaliation against individuals who raise health and safety concerns, the Commission established a review team in 1993 to reassess the NRC's program for protecting allegers against retaliation. In its report (NUREG-1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," January 7, 1994) the review team made numerous recommendations, including several recommendations involving issuing a policy statement to address the need to encourage responsible licensee action with regard to fostering a quality-conscious environment in which employees are free to raise safety concerns without fear of retribution (recommendations IIA-1, IIA-2, and IIA-4). On February 8, 1995, the Commission after considering those recommendations and the bases for them published for comment a proposed policy statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," in the Federal Register (60 FR 7592, February 8, 1995).

The proposed policy statement generated comments from private citizens and representatives of the industry concerning both the policy statement and NRC and Department of Labor (DOL) performance. The more significant comments related to the contents of the policy statement included:

1. The policy statement would discourage employees from bringing their concerns to the NRC because it provided that employees should normally provide concerns to the licensee prior to or contemporaneously with coming to the NRC.
2. The use of a holding period should be at the discretion of the employer and not be considered by the NRC in evaluating the reasonableness of the licensee's action.
3. The policy statement is not needed to establish an environment to raise concerns if NRC uses its authority to enforce existing requirements by pursuing civil and criminal sanctions against those who discriminate.
4. The description of employee concerns programs and the oversight of contractors was too prescriptive; the expectations concerning oversight of contractors were perceived as the imposition of new requirements without adherence to the Administrative Procedure Act and the NRC's Backfit Rule, 10 CFR 50.109.
5. The need for employee concerns programs (ECPs) was questioned, including whether the ECPs fostered the development of a strong safety culture.
6. The suggestion for involvement of senior management in resolving discrimination complaints was too prescriptive and that decisions on senior management involvement should be decided by licensees.

In addition, two public meetings were held with representatives of the Nuclear Energy Institute (NEI) to discuss the proposed policy statement. Summaries of these meetings along with a revised policy statement proposed by NEI were included with the comments to the policy statement filed in the Public Document Room (PDR).

This policy statement is being issued after considering the public comments and coordination with the Department of Labor. The more significant changes included:

1. The policy statement was revised to clarify that senior management is expected to take responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved as opposed to being personally involved in the resolution of these matters.

2. References to maintenance of a "quality-conscious environment" have been changed to "safety-conscious environment" to put the focus on safety.
3. The policy statement has been revised to emphasize that while alternative programs for raising concerns may be helpful for a safety-conscious environment, the establishment of alternative programs is not a requirement.
4. The policy statement continues to emphasize licensees' responsibility for their contractors. This is not a new requirement. However, the policy statement was revised to provide that enforcement decisions against licensees for discriminatory conduct of their contractors would consider such things as the relationship between the licensee and contractor, the reasonableness of the licensee's oversight of the contractor's actions and its attempts to investigate and resolve the matter.
5. To avoid the possibility suggested by some commenters that the policy statement might discourage employees from raising concerns to the NRC if the employee is concerned about retaliation by the employer, the statement that reporting concerns to the Commission "except in limited fact-specific situations" would not absolve employees of the duty to inform the employer of matters that could bear on public, including worker, health and safety has been deleted. However, the policy statement expresses the Commission's expectation that employees, when coming to the NRC, should normally have provided the concern to the employer prior to or contemporaneously with coming to the NRC.

### Statement of Policy

The purpose of this Statement of Policy is to set forth the Nuclear Regulatory Commission's expectation that licensees and other employers subject to NRC authority will establish and maintain a safety-conscious work environment in which employees feel free to raise concerns both to their own management and the NRC without fear of retaliation. A safety-conscious work environment is critical to a licensee's ability to safely carry out licensed activities.

This policy statement and the principles set forth in it are intended to apply to licensed activities of all NRC licensees and their contractors,<sup>2</sup> although it is recognized that some of the suggestions, programs, or steps that might be taken to improve the quality of the work environment (e.g., establishment of a method to raise concerns outside the normal management structure such as an employee concerns program) may not be practical for very small licensees that have only a few employees and a very simple management structure.

The Commission believes that the most effective improvements to the environment for raising concerns will come from within a licensee's organization (or the organization of the licensee's contractor) as communicated and demonstrated by licensee and contractor management. Management should recognize the value of effective processes for problem identification and resolution, understand the negative effect produced by the perception that employee concerns are unwelcome, and appreciate the importance of ensuring that multiple channels exist for raising concerns. As the Commission noted in its 1989 Policy Statement on the Conduct of Nuclear Power Plant Operations (54 FR 3424, January 24, 1989), management must provide the leadership that nurtures and maintains the safety environment.

In developing this policy statement, the Commission considered the need for:

- (1) licensees and their contractors to establish work environments, with effective processes for problem identification and resolution, where employees feel free to raise concerns, both to their management and

to the NRC, without fear of retaliation;

- 2) improving contractors' awareness of their responsibilities in this area;
- (3) senior management of licensees and contractors to take the responsibility for assuring that cases of alleged discrimination are appropriately investigated and resolved; and
- (4) employees in the regulated industry to recognize their responsibility to raise safety concerns to licensees and their right to raise concerns to the NRC.

This policy statement is directed to all employers, including licensees and their contractors, subject to NRC authority, and their employees. It is intended to reinforce the principle to all licensees and other employers subject to NRC authority that an act of retaliation or discrimination against an employee for raising a potential safety concern is not only unlawful but may adversely impact safety. The Commission emphasizes that employees who raise concerns serve an important role in addressing potential safety issues. Thus, the NRC cannot and will not tolerate retaliation against employees who attempt to carry out their responsibility to identify potential safety issues.<sup>3</sup>

Under the Atomic Energy Act of 1954, as amended, the NRC has the authority to investigate allegations that employees of licensees or their contractors have been discriminated against for raising concerns and to take enforcement action if discrimination is substantiated. The Commission has promulgated regulations to prohibit discrimination (see, e.g., 10 CFR 30.7 and 50.7). Under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor also has the authority to investigate complaints of discrimination and to provide a personal remedy to the employee when discrimination is found to have occurred.

The NRC may initiate an investigation even though the matter is also being pursued within the DOL process. However, the NRC's determination of whether to do so is a function of the priority of the case which is based on its potential merits and its significance relative to other ongoing NRC investigations.<sup>4</sup>

### **Effective Processes for Problem Identification and Resolution**

Licensees bear the primary responsibility for the safe use of nuclear materials in their various licensed activities. To carry out that responsibility, licensees need to receive prompt notification of concerns as effective problem identification and resolution processes are essential to ensuring safety. Thus, the Commission expects that each licensee will establish a safety-conscious environment where employees are encouraged to raise concerns and where such concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to employees.

A safety-conscious environment is reinforced by a management attitude that promotes employee confidence in raising and resolving concerns. Other attributes of a work place with this type of an environment may include well-developed systems or approaches for prioritizing problems and directing resources accordingly; effective communications among various departments or elements of the licensee's organization for openly sharing information and analyzing the root causes of identified problems; and employees and managers with an open and questioning attitude, a focus on safety, and a positive orientation toward admitting and correcting personnel errors.

Initial and periodic training (including contractor training) for both employees and supervisors may also be an important factor in achieving a work environment in which employees feel free to raise concerns. In

In addition to communicating management expectations, training can clarify for both supervisors and employees options for problem identification. This would include use of licensee's internal processes as well as providing concerns directly to the NRC.<sup>5</sup> Training of supervisors may also minimize the potential perception that efforts to reduce operating and maintenance costs may cause supervisors to be less receptive to employee concerns if identification and resolution of concerns involve significant costs or schedule delays.

Incentive programs may provide a highly visible method for demonstrating management's commitment to safety, by rewarding ideas not based solely on their cost savings but also on their contribution to safety. Credible self assessments of the environment for raising concerns can contribute to program effectiveness by evaluating the adequacy and timeliness of problem resolution. Self-assessments can also be used to determine whether employees believe their concerns have been adequately addressed and whether employees feel free to raise concerns. When problems are identified through self-assessment, prompt corrective action should be taken.

Licensees and their contractors should clearly identify the processes that employees may use to raise concerns and employees should be encouraged to use them. The NRC appreciates the value of employees using normal processes (e.g., raising issues to the employee supervisors or managers or filing deficiency reports) for problem identification and resolution. However, it is important to recognize that the fact that some employees do not desire to use the normal line management processes does not mean that these employees do not have legitimate concerns that should be captured by the licensee's resolution processes. Nor does it mean that the normal processes are not effective. Even in a generally good environment, some employees may not always be comfortable in raising concerns through the normal channels. From a safety perspective, no method of raising potential safety concerns should be discouraged. Thus, in the interest of having concerns raised, the Commission encourages each licensee to have a dual focus: (1) on achieving and maintaining an environment where employees feel free to raise their concerns directly to their supervisors and to licensee management, and (2) on ensuring that alternate means of raising and addressing concerns are accessible, credible, and effective.

NUREG-1499 may provide some helpful insights on various alternative approaches. The Commission recognizes that what works for one licensee may not be appropriate for another. Licensees have in the past used a variety of different approaches, such as:

- (1) an "open-door" policy that allows the employee to bring the concern to a higher-level manager;
- (2) a policy that permits employees to raise concerns to the licensee's quality assurance group;
- (3) an ombudsman program; or
- (4) some form of an employee concerns program.

The success of a licensee alternative program for concerns may be influenced by how accessible the program is to employees, prioritization processes, independence, provisions to protect the identity of employees including the ability to allow for reporting issues with anonymity, and resources. However, the prime factors in the success of a given program appear to be demonstrated management support and how employees perceive the program. Therefore, timely feedback on the follow-up and resolution of concerns raised by employees may be a necessary element of these programs.

This Policy Statement should not be interpreted as a requirement that every licensee establish alternative programs for raising and addressing concerns. Licensees should determine the need for providing

alternative methods for raising concerns that can serve as internal "escape valves" or "safety nets." <sup>6</sup> Considerations might include the number of employees, the complexity of operations, potential hazards, and the history of allegations made to the NRC or licensee. While effective alternative programs for identifying and resolving concerns may assist licensees in maintaining a safety-conscious environment, the Commission, by making the suggestion for establishing alternative programs, is not requiring licensees to have such programs. In the absence of a requirement imposed by the Commission, the establishment and framework of alternative programs are discretionary.

### **Improving Contractors' Awareness of Their Responsibilities**

The Commission's long-standing policy has been and continues to be to hold its licensees responsible for compliance with NRC requirements, even if licensees use contractors for products or services related to licensed activities. Thus, licensees are responsible for having their contractors maintain an environment in which contractor employees are free to raise concerns without fear of retaliation.

Nevertheless, certain NRC requirements apply directly to contractors of licensees (see, for example, the rules on deliberate misconduct, such as 10 CFR 30.10 and 50.5 and the rules on reporting of defects and noncompliances in 10 CFR Part 21). In particular, the Commission's prohibition on discriminating against employees for raising safety concerns applies to the contractors of its licensees, as well as to licensees (see, for example, 10 CFR 30.7 and 50.7).

Accordingly, if a licensee contractor discriminates against one of its employees in violation of applicable Commission rules, the Commission intends to consider enforcement action against both the licensee, who remains responsible for the environment maintained by its contractors, and the employer who actually discriminated against the employee. In considering whether enforcement actions should be taken against licensees for contractor actions, and the nature of such actions, the NRC intends to consider, among other things, the relationship of the contractor to the particular licensee and its licensed activities; the reasonableness of the licensee's oversight of the contractor environment for raising concerns by methods such as licensee's reviews of contractor policies for raising and resolving concerns and audits of the effectiveness of contractor efforts in carrying out these policies, including procedures and training of employees and supervisors; the licensee's involvement in or opportunity to prevent the discrimination; and the licensee's efforts in responding to the particular allegation of discrimination, including whether the licensee reviewed the contractor's investigation, conducted its own investigation, or took reasonable action to achieve a remedy for any discriminatory action and to reduce potential chilling effects.

Contractors of licensees have been involved in a number of discrimination complaints that are made by employees. In the interest of ensuring that their contractors establish safety-conscious environments, licensees should consider taking action so that:

- (1) each contractor involved in licensed activities is aware of the applicable regulations that prohibit discrimination;
- (2) each contractor is aware of its responsibilities in fostering an environment in which employees feel free to raise concerns related to licensed activities;
- (3) the licensee has the ability to oversee the contractor's efforts to encourage employees to raise concerns, prevent discrimination, and resolve allegations of discrimination by obtaining reports of alleged contractor discrimination and associated investigations conducted by or on behalf of its contractors; conducting its own investigations of such discrimination; and, if warranted, by directing that remedial action be undertaken; and

(4) contractor employees and management are informed of (a) the importance of raising safety concerns and (b) how to raise concerns through normal processes, alternative internal processes, and directly to the NRC.

Adoption of contract provisions covering the matters discussed above may provide additional assurance that contractor employees will be able to raise concerns without fear of retaliation.

### **Involvement of Senior Management in Cases of Alleged Discrimination**

The Commission reminds licensees of their obligation both to ensure that personnel actions against employees, including personnel actions by contractors, who have raised concerns have a well-founded, non-discriminatory basis and to make clear to all employees that any adverse action taken against an employee was for legitimate, non-discriminatory reasons. If employees allege retaliation for engaging in protected activities, senior licensee management should be advised of the matter and assure that the appropriate level of management is involved, reviewing the particular facts and evaluating or reconsidering the action.

The intent of this policy statement is to emphasize the importance of licensee management taking an active role to promptly resolve situations involving alleged discrimination. Because of the complex nature of labor-management relations, any externally-imposed resolution is not as desirable as one achieved internally. The Commission emphasizes that internal resolution is the licensee's responsibility, and that early resolution without government involvement is less likely to disrupt the work place and is in the best interests of both the licensee and the employee. For these reasons, the Commission's enforcement policy provides for consideration of the actions taken by licensees in addressing and resolving issues of discrimination when the Commission develops enforcement sanctions for violations involving discrimination. (59 FR 60697; November 28, 1994).

In some cases, management may find it desirable to use a holding period, that is, to maintain or restore the pay and benefits of the employee alleging retaliation, pending reconsideration or resolution of the matter or pending the outcome of an investigation by the Department of Labor (DOL). This holding period may calm feelings on-site and could be used to demonstrate management encouragement of an environment conducive to raising concerns. By this approach, management would be acknowledging that although a dispute exists as to whether discrimination occurred, in the interest of not discouraging other employees from raising concerns, the employee involved in the dispute will not lose pay and benefits while the action is being reconsidered or the dispute is being resolved. However, inclusion of the holding period approach in this policy statement is not intended to alter the existing rights of either the licensee or the employee, or be taken as a direction by, or an expectation of, the Commission, for licensees to adopt the holding period concept. For both the employee and the employer, participation in a holding period under the conditions of a specific case is entirely voluntary.

A licensee may conclude, after a full review, that an adverse action against an employee is warranted.<sup>7</sup> The Commission recognizes the need for licensees to take action when justified. Commission regulations do not render a person who engages in protected activity immune from discharge or discipline stemming from non-prohibited considerations (see, for example, 10 CFR 50.7(d)). The Commission expects licensees to make personnel decisions that are consistent with regulatory requirements and that will enhance the effectiveness and safety of the licensee's operations.

### **Responsibilities of Employers and Employees**

As emphasized above, the responsibility for maintaining a safety-conscious environment rests with licensee management. However, employees in the nuclear industry also have responsibilities in this area. As a general principle, the Commission normally expects employees in the nuclear industry to raise safety and compliance concerns directly to licensees, or indirectly to licensees through contractors, because licensees, and not the Commission, bear the primary responsibility for safe operation of nuclear facilities and safe use of nuclear materials.<sup>8</sup> The licensee, and not the NRC, is usually in the best position and has the detailed knowledge of the specific operations and the resources to deal promptly and effectively with concerns raised by employees. This is another reason why the Commission expects licensees to establish an environment in which employees feel free to raise concerns to the licensees themselves.

Employers have a variety of means to express their expectations that employees raise concerns to them, such as employment contracts, employers' policies and procedures, and certain NRC requirements. In fact, many employees in the nuclear industry have been specifically hired to fulfill NRC requirements that licensees identify deficiencies, violations and safety issues. Examples of these include many employees who conduct surveillance, quality assurance, radiation protection, and security activities. In addition to individuals who specifically perform functions to meet monitoring requirements, the Commission encourages all employees to raise concerns to licensees if they identify safety issues<sup>9</sup> so that licensees can address them before an event with safety consequences occurs.

The Commission's expectation that employees will normally raise safety concerns to their employers does not mean that employees may not come directly to the NRC. The Commission encourages employees to come to the NRC at any time they believe that the Commission should be aware of their concerns.<sup>10</sup> But, while not required, the Commission does expect that employees normally will have raised the issue with the licensee either prior to or contemporaneously with coming to the NRC. The Commission cautions licensees that complaints that adverse action was taken against an employee for not bringing a concern to his or her employer, when the employee brought the concern to the NRC, will be closely scrutinized by the NRC to determine if enforcement action is warranted for discrimination.

Retaliation against employees engaged in protected activities, whether they have raised concerns to their employers or to the NRC, will not be tolerated. If adverse action is found to have occurred because the employee raised a concern to either the NRC or the licensee, civil and criminal enforcement action may be taken against the licensee and the person responsible for the discrimination.

## Summary

The Commission expects that NRC licensees will establish safety-conscious environments in which employees of licensees and licensee contractors are free, and feel free, to raise concerns to their management and to the NRC without fear of retaliation.

Licensees must ensure that employment actions against employees who have raised concerns have a well-founded, non-discriminatory basis. When allegations of discrimination arise in licensee, contractor, or subcontractor organizations, the Commission expects that senior licensee management will assure that the appropriate level of management is involved to review the particular facts, evaluate or reconsider the action, and, where warranted, remedy the matter.

Employees also have a role in contributing to a safety-conscious environment. Although employees are free to come to the NRC at any time, the Commission expects that employees will normally raise concerns with the involved licensee because the licensee has the primary responsibility for safety and is normally in the best position to promptly and effectively address the matter. The NRC should normally be viewed as a safety valve and not as a substitute forum for raising safety concerns.

**This policy statement has been issued to highlight licensees' existing obligation to maintain an environment in which employees are free to raise concerns without retaliation. The expectations and suggestions contained in this policy statement do not establish new requirements. However, if a licensee has not established a safety-conscious environment, as evidenced by retaliation against an individual for engaging in a protected activity, whether the activity involves providing information to the licensee or the NRC, appropriate enforcement action may be taken against the licensee, its contractors, and the involved individual supervisors, for violations of NRC requirements.**

**The Commission recognizes that the actions discussed in this policy statement will not necessarily insulate an employee from retaliation, nor will they remove all personal cost should the employee seek a personal remedy. However, these measures, if adopted by licensees, should improve the environment for raising concerns.**

**Dated at Rockville, Maryland, this 8th day of May, 1996.**

**For the Nuclear Regulatory Commission.**

**John C. Hoyle,  
Secretary of the Commission.**



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

March 31, 1998

**NOTICE OF SIGNIFICANT MEETING**

**THIS MEETING IS NOT OPEN TO PUBLIC ATTENDANCE**

Name of Contractor: Morrison Knudsen Corporation  
Name of Licensee: Wisconsin Electric Power Company  
Name of Facility: Point Beach Nuclear Plant  
Docket Nos.: 50-266; 50-301  
Date and Time of Meeting: Thursday April 16, 1998 at 9 a.m. (CDT)  
Location of Meeting: U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, Illinois, 60532-4351

Purpose of Meeting: Transcribed Predecisional Enforcement Conference to discuss an apparent violation of 10 CFR 50.7, "Employee Protection."

NRC Attendees:

A. B. Beach, Regional Administrator, RIII  
J. L. Caldwell, Deputy Regional Administrator, RIII  
J. Lieberman, Director, Office of Enforcement  
J. A. Grobe, Director, Division of Reactor Safety, RIII  
Others as designated

Contractor Attendees:

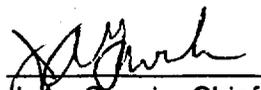
T. Zarges, CEO/President  
R. Edmister, Associate General Counsel  
E. Stier, Stier, Anderson & Malone Law Offices  
G. Hliffta, Group Welding Engineer  
Others as designated

Licensee Attendees:

S. Patulski, Site Vice President  
Others as designated

NOTE: Attendance at this meeting by NRC personnel, other than those listed above, should be made known to K. S. GreenBates at (630) 829-9738 by COB April 10, 1998.

Approved by: \_\_\_\_\_

  
J. A. Gavula, Chief  
Engineering Specialist Branch 1

E/10

See Attached Distribution

**SIGNIFICANT MEETING DISTRIBUTION FOR ENFORCEMENT CONFERENCES**

H. L. Thompson, Jr., Deputy Executive Director for Regulatory Programs  
A. C. Throance, Acting Deputy Executive Director for Regulatory Effectiveness  
B. W. Sheron, Acting Associate Director for Technical Review, NRR  
B. A. Boger, Acting Associate Director for Projects, NRR  
J. Lieberman, Director, Office of Enforcement  
J. R. Goldberg, Deputy Assistant, General Counsel for Enforcement, OGC  
E. G. Adensam, Acting Director, Division of Reactor Projects III/IV NRR  
Chief, PIPB, NRR  
Region III Coordinator, OEDO  
Project Directorate, NRR  
Project Manager, Project Directorate, NRR  
M. H. Stein, Enforcement Specialist, Office of Enforcement  
B. A. Berson, Regional Counsel, Office of Regional Administrator, RIII  
G. E. Grant, Director, Division of Reactor Projects, RIII  
M. L. Dapas, Acting Deputy Director, Division of Reactor Projects, RIII  
C. D. Pederson, Director, Division of Nuclear Materials Safety, RIII  
R. J. Caniano, Deputy Director, Division of Nuclear Materials Safety, RIII  
J. A. Grobe, Director, Division of Reactor Safety, RIII  
DRP Branch Chief  
DRS Branch Chiefs  
H. B. Clayton, Enforcement/Investigations Officer, RIII  
C. H. Weil, Enforcement Specialist, Enforcement/Investigation Staff, RIII  
R. M. Lickus, Regional State Liaison Officer, RIII  
M. A. Kunowski, Project Engineer, Division of Reactor Projects, RIII  
K. S. GreenBates, Reactor Engineer, Engineering Specialist Branch 1, RIII  
PMNS (E-Mail)  
RIII Public Affairs (E-Mail)



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

April 6, 1998

NOTE TO: Chuck Weil, EICS  
FROM: Rowlene Wendoll, Procurement Agent, DRMA *RW*  
SUBJECT: COURT REPORTER

Please review the attached purchase order (PO) regarding your request for a court reporter on April 9, 1998.

You will need to inform the Switchboard of the contact person.

Since we have had payment problems in the past, County Court Reporters has been instructed to send all transcripts to my attention. Upon receipt, the transcript will be forwarded to the "requester" on the Form 30.

If you need to make any changes, please contact me on extension 9558.

DO NOT MAKE ANY REQUESTS OF THE COURT REPORTER THAT ARE NOT INDICATED ON THE PURCHASE ORDER.

E/11  
Received 4/10/98 *WJ*

\* NUMBER MUST APPEAR ON ALL  
 TICKETS AND/OR PACKAGES AND  
 LABELS RELATING TO THIS ORDER.

DATE

**PURCHASE/DELIVERY ORDER**  
**POINT OF ISSUE: U.S. NUCLEAR REGULATORY COMMISSION**

ORDER NUMBER  
**CH98-0093**

04/06/98

**REGION III**

REQUISITION NUMBER

**RA0 98-15**

NOTE: \*CONS. See billing address, lower left corner of this form.

BUYER'S ORDER PER YOUR **telecom**  
 OF **04/01/98 (Sincert)**

APPROPRIATION/ALLOTMENT  
**31X0200 BOC:252L**

FIN  
**J9309**

B & R NUMBER  
**893-15-14-10-10**

NEGOTIATED PURSUANT TO THE AUTHORITY OF 41 USC 252(C)(3).

CONSIGNEE AND DESTINATION (Ship to) RE: P.O. NUMBER

**U.S. Nuclear Regulatory Commission CH98-0093**  
**ATTN: Rowlene Wendoll**  
**801 Warrenville Road**  
**Lisle IL 60532-4351**

DELIVERY ORDER UNDER CONTRACT NUMBER:

SELLER

**County Court Reporters, Inc.**  
**ATTN: Cindy**  
**600 S. County Court Road**  
**Wheaton, IL 60187**

DELIVERY F.O.B. PLACE OF INSPECTION AND ACCEPTANCE DATE  
**Origin Lisle, Illinois 04/09/98**

DELIVERY DATE DISCOUNT PAYMENT TERMS  
**3 days ARO (transcript) Net/30**

PLEASE FURNISH THE FOLLOWING ON THE TERMS SPECIFIED ON BOTH SIDES OF THIS SHEET AND ON THE ATTACHED, IF ANY, EXCEPT THAT ANY SUCH TERMS WHICH MIGHT BE INCONSISTENT WITH THE TERMS OF ANY EXISTING FEDERAL CONTRACT OR AGREEMENT UNDER WHICH THIS ORDER IS PLACED WILL NOT APPLY.

ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	<p><b>Court reporting services for a Pre-Enforcement Meeting scheduled for April 9, 1998, from 9:00 a.m. until approximately 2:00 p.m. The meeting will be conducted at the U.S. Nuclear Regulatory Commission (NRC) location, address as listed above. The transcriber should report to the reception area (second floor) to sign in and then be escorted to the meeting room location.</b></p> <p><b>NRC contact person: Chuck Weil</b></p> <p><b>Requested turnaround time for transcript: 3 days</b></p> <p><b>There should not be any technical terminology involved in the meeting.</b></p> <p><b>Estimated costs:</b>                      Appearance fee @ \$90.00/first two hours; \$20.00 every 1/2 hour after initial two hours                      Transcript fee @ \$4.75/page; estimated @ 40-50 pages/hour</p>	5	HR		\$ 210.00
		5	HR	\$237.50	\$1,187.50
<p><b>PLEASE INCLUDE OUR PURCHASE ORDER NUMBER (CH98-0093) ON ALL CORRESPONDENCE.</b></p>					
<p><b>Transcript should be directed to: U.S. Nuclear Regulatory Commission</b>  <b>ATTN: Rowlene Wendoll</b>  <b>801 Warrenville Road</b>  <b>Lisle IL 60532-4351</b></p>					
<p><b>(Continued on Page 2)</b></p>					

PERSON TO CONTACT REGARDING THIS ORDER

**Rowlene Wendoll, Procurement Agent**

TELEPHONE

AREA CODE NUMBER  
**630 829-9558**

**TOTAL EST. \$1,425.00**

**PURCH E ORDER  
CONTINUATION**

**CN98-0093**

**INSTRUCTIONS.** Purchase orders describing services may provide data crossing the "Quantity, Unit, Unit Price, and Amount" columns.

NAME - CONSIGNER

**County Court Reporters, Inc.**

ITEM	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	<p><b>Invoice(s) should be submitted to: U.S. Nuclear Regulatory Commission Financial Operations Mail Stop: T9H4 Washington DC 20555-0001</b></p> <p><b>Payments will be made using electronic funds transfer through the Automated Clearing House (ACH) network in accordance with the Federal Acquisition Regulation (FAR) 52.232-33, entitled <u>Electronic Funds Transfer Payment Method.</u></b></p>				

REC'D MAR 27 1998 RMD 48-15

NRC FORM 30  
(6-94)

U.S. NUCLEAR REGULATORY COMMISSION

1. DATE OF REQUEST

2. DATE DUE (if applicable)

### REQUEST FOR ADMINISTRATIVE SERVICES

FOR HEADQUARTERS:  
MAIL TO THE APPROPRIATE MAIL STOP ON BACK

3. REQUEST NUMBER (LEAVE BLANK)

#### 4. TYPE OF SERVICE

BUILDING ALTERATIONS  
AND SERVICES

COMPOSITION

COPYING

EDITING

PHOTOGRAPHY/  
AUDIOVISUAL

PRINTING AND DISTRIBUTION

- PUBLISHING NUREGs
- SMALL PURCHASES,  
PROPERTY AND LABOR  
SERVICES
- SUPPLIES
- WORD PROCESSING
- OTHER (Specify)

#### 5. PERSONAL PROPERTY APPROVAL

I certify that personal property assets within the Office/Division have been carefully screened for excess, are currently fully utilized, and the additional requested items are absolutely essential to work performance and will be used only for official purposes.

5a. PROPERTY CUSTODIAN - SIGNATURE

5b. DIVISION DIRECTOR/DESIGNEE - SIGNATURE

*N/A*  
*James J. Caldwell*

#### 6. SENSITIVITY

- CLASSIFIED
- SENSITIVE  
UNCLASSIFIED
- COPYRIGHT MATERIAL

For copyrighted material, sign below to indicate that you have received permission from the copyright owner to use the material.

SIGNATURE - ADMINISTRATIVE OFFICER

7. REQUESTER

C. Weil

8. OFFICE

EICS/RIII

9. TELEPHONE NUMBER

630-810-4372

10. FAX NUMBER

630-810-4377

11. MAIL STOP

RIII

12. E-MAR. I.D.

BAH3

13. SPECIAL INSTRUCTIONS (INCLUDE TITLE, DISTRIBUTION, PRINTING SPECIFICATIONS, INSTRUCTIONS, STOCK NUMBERS, JUSTIFICATION, QUANTITIES, AND UNITS WHEN APPLICABLE.)

REQUEST COURT REPORTER SERVICES FOR A PRE-ENFORCEMENT MEETING. SCHEDULED FOR THURSDAY, APRIL 9, 1998, AT 9:00 A.M., IN THE EXECUTIVE CONFERENCE ROOM. THE MEETING IS EXPECTED TO LAST APPROXIMATELY 4 - 5 HOURS. THE CONTACT IS CHUCK WEIL.

JUSTIFICATION: FOR TRANSCRIBING A PRE-ENFORCEMENT MEETING.

#### 14. FUNDING INFORMATION

JOB CODE

J9309

B & R NUMBER

893-15-14-10-10

BOC

252L

FUND SOURCE

31X0200

AMOUNT

\$1,425.00

14a. FUNDS CERTIFIED AVAILABLE BY SIGNATURE - CERTIFYING OFFICIAL

*Elizabeth Sullivan*

14b. DATE

4/6/98

FOR PROCESSING USE ONLY (LEAVE THIS SECTION BLANK)

15a. REQUIREMENT APPROVED - SIGNATURE

15b. DATE

16a. REQUISITIONING OFFICER - SIGNATURE

16b. DATE

#### 17. OFFICE OF ADMINISTRATION PROCESSING

ACTION

SIGNATURE

DATE

ACTION

SIGNATURE

DATE

A. POSTED

C. DELIVERED

B. FILLED

D. COMPLETED

The material and/or services itemized above have been received in the quantity and quality specified, except as otherwise noted.

17a. SIGNATURE - RECIPIENT

17b. DATE

To: Michael F. Hendricks@Construct@MKF Cleveland  
Cc: Lou Pardi@Admin@MKF Cleveland  
Tom H. Zarges@Admin@MKF Cleveland  
George G. Hlifka@Support@MKF Construct  
bcc:  
From: Alain Artayet@Support@MKF Construct  
Subject: Point Beach SGRP Girth Weld  
Date: Monday, April 13, 1998 11:01:51 EDT  
Attach:  
Certify: Y  
Priority: Normal  
Defer until:  
Expires:  
Forwarded by:

-----  
During last week I became aware of a letter that was sent to you by Mr. Todd Mialke of Wisconsin Electric Power Company (WEPCO) about NRC correspondence regarding PENP U2 SGRP dated April 2, 1998 and received by MK's OMD on April 3, 1998.

Attached with this letter was NRC Notice of Violation EA 97-347 indicating that "The second violation was for the failure to perform the steam generator girth weld with a qualified procedure. Although the weld procedure was subsequently qualified, this is of concern because unqualified welds could result in the subsequent degradation of related pressure boundaries."

Attached with the above NRC notice of violation was a NRC Inspection Report 50-266/97010 (DRS); 50-301/97010 (DRS). Paragraph E3.1(b) title "Observations and Findings" indicates "Subsequently, the SGT contractor performed another qualification weld and additional Charpy impact testing. The test results are satisfactorily completed for Code qualification of weld procedure WPS GT-SM/3.3-2PB."

WEPCO's letter NPL 97-0648 with Attachment A for WEPCO's first response for violation 2 indicates, at WEPCO's request, "SGT Ltd. undertook to repeat the PQR, assuring that the heat input noted in the original PQR was bounded within the impact test coupon of the second PQR. The repeat of this PQR and the associated testing verified that WPS GT-SM/3.3/3-2 PB is qualified. Therefore, there is no question regarding the Code compliance of the replacement steam generators as installed."

WEPCO's letter NPL 98-0098 with attachment for WEPCO's second response for violation 2 indicates that the corrective actions was to have "At the request of Wisconsin Electric, our Steam Generator Replacement Project construction contractor performed another qualification weld and additional associated Charpy impact testing. This additional qualification weld was performed to requalify the gas tungsten arc weld (GTAW) portion of the qualification record. The additional qualification weld is documented as PQR GT/3.3-Q2 dated May 20, 1997. The requalification weld coupon used a heat input range that included the maximum listed on WPS GT-SM/3.3-2PB."

I am writing this e-mail to inform you that I am not aware of a PQR-No. GT/3.3-Q2 dated May 20, 1997 in the QA vault files. The corporate QA files, under WPS GT-SM/3.3-3 supported by PQR GT-SM/3.3-Q2, indicate the linking of Procedure Qualification Data Sheets for GT/3.3-Q2 using both GTAW and SMAW process on one test coupon. I am not aware if these data sheets were actually used for PQR GT/3.3-Q2 dated May 20, 1997. However, be informed

5/11/98 GAVE COPY TO OFFICE RELOCATION COORDINATOR, J. HOPKINS.

E/12

that Bodycote Taussig Inc. test report no. 135785 is dated May 27, 1997.

Please, be advised that ASME Section IX does not permit just testing a portion of a groove weld test coupon for the purpose of procedure qualification. ASME Section IX QW-202.1 indicates that "If any test specimen required by QW-451 fails to meet the applicable acceptance criteria, the test coupon shall be considered as failed, and a new test coupon shall be welded." The entire test coupon is to be tested (INCLUDING BOTH WELDING PROCESSES IN A DUAL SMAW AND GTAW PROCESS TEST COUPON), and if any portion of a test coupon fails, the entire test coupon is considered a failure. In other words, the acceptable GTAW portion of a double-V groove butt joint test coupon cannot be considered acceptable, unless the SMAW process on the second side is also fully tested with tensile and guided-bend testing for acceptance.

If the above test data sheets were used for procedure qualification using GT/3.3-Q2 dated May 20, 1997, then the above testing must be considered incomplete.

end

 **MORRISON KNUDSEN CORPORATION**

**ENGINEERING & CONSTRUCTION GROUP**

MK FERGUSON PLAZA  
1500 WEST 3RD STREET  
CLEVELAND, OHIO U.S.A. 44113-1406  
PHONE: (216) 523-3777  
FAX: (216) 523-8149

**THOMAS H. ZARGES**  
PRESIDENT & CEO

April 21, 1998

Mr. John A. Grobe  
Director, Division of Reactor Safety  
U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, IL 60532-4351

Dear Mr. Grobe:

The attached letter responds to your request concerning our mitigation of any chilling effect among MK employees as a result of MK's alleged retaliation against our Group Welding Engineer. This letter has been prepared at my request by Lou Pardi, who manages all of MK's work at NRC-licensed facilities. Since MK's Notice of Violation at Fort St. Vrain, Lou has been extremely attentive to the requirements of 10CFR50.7. I trust you will agree he and his staff have been pro-active to assure all MK's nuclear projects are free from harassment and intimidation and any resulting chilling effects.

The documentation behind the tabs affixed to Lou's letter shows how active MK has been relative to 10CFR50.7. At both Pt. Beach and St. Lucie, MK had specific policies forbidding harassment and intimidation. Both also had procedures for indoctrination and training on 10CFR50 and the reporting of potential violations. Each project also had a procedure encouraging open communication. These procedures provided a means for employees to report any concerns through a "Condition Evaluation Report" form. Each of the 1537 MK employees on these projects was interviewed at termination and specifically asked if the employee had any unresolved safety concerns. No significant concerns were reported.

These aggressive actions, combined with others mentioned in the letter, make me confident MK had all the proper policies, procedures, attitudes, and support in place to mitigate any chilling effect.

E/13

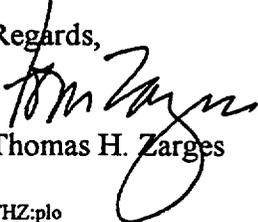
APR. 23 1998

Mr. John A. Grobe  
April 21, 1998  
Page 2

Additionally, the independent and objective investigation performed at my request by Stier, et al, concludes MK did not retaliate against the group welding engineer, and that people at our projects do not perceive we did so. I am awaiting a final report from Stier to determine if any additional actions are advisable or necessary.

Please let me know if I can provide any further information.

Regards,



Thomas H. Zarges

THZ:plo

Attachments

**From:** James Cavala  
**To:** CHWI Charles Weil, RIII  
**Date:** 4/23/98 12:10pm  
**Subject:** MK Enforcement Conference Notification

Chuck,

As discussed this morning with you and Brent, I contacted Point Beach (Doug Johnson 920-755-6653) regarding rescheduling the MK enforcement conference until after we receive the Stier, Anderson & Malone report. I told him that our information indicated that the report would be completed sometime in July and that we would reschedule the enforcement conference sometime after that.

Doug said it was a good decision in order to allow everybody a chance to review the Stier Report, and also that their 30-day response to our March 25 letter was in process. He also stated that he knew MK was working on their 30-day response letter.

I also called MK. Dick Edmister (216-523-5606) was on travel so I left a message with his secretary and related the same information to her.

Thanks,  
Jim G.

E/14

*Reset*  
*OE*  
From: C. H. Weil  
To: Michael Stein, Richard Borchardt, Virgil Beaston  
Date: Mon, Nov 2, 1998 7:57 PM  
Subject: REQUEST TO "RESET THE CLOCK"  
Place: OEMAIL

Region III is asking OE to consider "resetting the clock" for the following cases and reasons:

EA 98-081 Morrison-Knudsen Reset the clock to at least 10/30/98 Reason: information about company's investigation was received on 10/22 and 10/30/98. Consideration might also be given to a restart date during 12/98 when the analysis of the company's investigation is finished. The evaluation could be considered as "ongoing inspection."

IA 98-045 Perry, FFD/Site Access Reset the clock to 10/22/98. Reason: individual had not responded to DFI in allotted time. 10/22/98, the decision was made to proceed with Order.

EA 98-465; EA 98-466 Zion, EP coordinator FFD. Reset the clock until the OI disagreement memo is signed. Reason: letters to ComEd and individual cannot be sent until OI disagreement memo is settled.

Please let us know of your decision. Chuck

CC: H. Brent Clayton, OEMAIL

E/15

From: C. H. Weil <sup>KH</sup>  
To: James Gavula - <sup>KH</sup>  
Date: Thu, Dec 3, 1998 2:36 PM  
Subject: Morrison Knudsen Predecisional Enforcement Conference

Jim

Re: Morrison Knudsen Predecisional Enforcement Conference

I've coordinated possible conference dates with our attorneys and developed the following schedule:

Primary schedule:

Wednesday, 1/20/99, afternoon, both individual conferences  
Thursday, 1/21/99, start open conference with MK in morning and continue until finished.

Back-up schedule

Wednesday, 1/27/98, as above  
Thursday, 1/28/98, as above

Please schedule with MK and the individuals.

12/3/98 5:30p

BRENT & I SPOKE TO J. LIEBEMAN. CONFERENCE WILL BE CLOSED.  
id

E/6

*est III*  
*OE*  
From: C. H. Weil  
To: Bruce Berson, H. Brent Clayton, Michael Stein, ...  
Date: Tue, Dec 8, 1998 4:44 PM  
Subject: Fwd: MK Enforcement Conf. (EA 98-081)  
Place: OEMAIL

Attached is FYI. Chuck

CC: OEMAIL

E/17

**From:** James Gavula *JG III*  
**To:** C. H. Weil  
**Date:** Tue, Dec 8, 1998 3:58 PM  
**Subject:** MK Enforcement Conf.

Chuck,

I talked with the MK attorney regarding setting up the enforcement conferences. He said he needed to check schedules and would get back to me with an answer. I gave him your name as an alternate contact if I wasn't available and he needed to contact someone about the schedule.

Jim G.

**From:** C. H. Weil  
**To:** Bruce Berson, James Gavula, John Grobe, Michael.  
**Date:** Thu, Dec 17, 1998 11:44 AM  
**Subject:** MORRISON KNUDSEN, EA 98-081

2/11

FYI On December 17, 1998, I spoke to the complainant in this employment discrimination case and invited him to attend the enforcement conference. He stated that he, and possibly his attorney will come to the conference.

I am currently drafting the letter inviting him to the conference.

Chuck

E/18

**From:** C. H. Weil *RTH*  
**To:** Joseph Petrosino *MLL*  
**Date:** Fri, Dec 18, 1998 6:51 AM  
**Subject:** MORRISON KNUDSEN ENFORCEMENT CONFERENCE

Joe, I understand that you wanted to know when the predecisional enforcement conference will be held with Morrison Knudsen about the apparent violation of 10 CFR 50.7, "Employee Protection." The following schedule has been established:

EA 98-541	Tuesday	1/26/99	1:00 p.m. (CST)	Individual
EA 98-540	Tuesday	1/26/99	3:00 p.m. (CST)	Individual
EA 98-081	Wednesday	1/27/99	9:00 a.m. (CST)	Morrison Knudsen

A separate conference with Wisconsin Electric Power Company (WEPCo), Point Beach, is not being held, but WEPCo has been invited to participate in the 1/27/99 conference with Morrison Knudsen. The alleged has also been invited to participate in the conference with Morrison Knudsen.

Please call me at (630) 810-4372 with questions.

Chuck

**CC:** James Gavula

E/19



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

January 5, 1999

**NOTICE OF SIGNIFICANT MEETING**

**THIS MEETING IS CLOSED TO PUBLIC ATTENDANCE**

Name of Contractor: Morrison Knudsen Corporation

Name of Licensee: Wisconsin Electric Power Company  
Point Beach Nuclear Plant

Docket Nos.: 50-266; 50-301

Date and Time of Meeting: Wednesday, January 27, 1999 at 9:00 a.m. (CST)

Location of Meeting: U. S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, Illinois 60532-4351

Purpose of Meeting: To discuss the apparent violation of employee discrimination requirements with Morrison Knudsen Corporation representatives, EA 98-081.

**NRC Attendees:**

V. Beaston, Enforcement Specialist, OE  
J. Caldwell, Acting Regional Administrator  
H. Clayton, Chief, EICS  
C. Weil, EICS  
J. Grobe, Director, DRS  
M. Dapas, Deputy Director, DRP  
J. Gavula, Chief, Engineering Specialists Branch 1  
B. Burgess, Chief, Reactor Projects Branch 7  
Others as designated

**Contractor Attendees:**

T. Zarges, CEO/President  
Others as designated

**NOTE:** Attendance at this meeting by NRC personnel, other than those listed above, should be made known to K. S. GreenBates at 630/829-9738 by COB January 22, 1999.

Approved by: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "James A. Gavula".

James A. Gavula, Chief  
Engineering Specialists Branch 1

See Attached Distribution

E/20

**Significant Meeting Distribution For Enforcement Conference**

H. L. Thompson, Jr., Deputy Executive Director for Regulatory Programs  
A. C. Throance, Acting Deputy Executive Director for Regulatory Effectiveness  
B. W. Sheron, Acting Associate Director for Technical Review, NRR  
B. A. Boger, Acting Associate Director for Projects, NRR  
J. Lieberman, Director, Office of Enforcement  
J. R. Goldberg, Deputy Assistant, General Counsel for Enforcement, OGC  
E. G. Adensam, Acting Director, Division of Reactor Projects III/IV NRR  
Chief, PIPB, NRR  
Region III Coordinator, OEDO  
Project Directorate, NRR  
Project Manager, Project Directorate, NRR  
M. H. Stein, Enforcement Specialist, Office of Enforcement  
B. A. Berson, Regional Counsel, Office of Regional Administrator, RIII  
G. E. Grant, Director, Division of Reactor Projects, RIII  
M. L. Dapas, Deputy Director, Division of Reactor Projects, RIII  
C. D. Pederson, Director, Division of Nuclear Materials Safety, RIII  
R. J. Caniano, Deputy Director, Division of Nuclear Materials Safety, RIII  
J. A. Grobe, Director, Division of Reactor Safety, RIII  
S. A. Reynolds, Deputy Director, Division of Reactor Safety, RIII  
DRP Branch Chief  
DRS Branch Chiefs  
H. B. Clayton, Enforcement/Investigations Officer, RIII  
C. H. Weil, Enforcement Specialist, Enforcement/Investigation Staff, RIII  
R. M. Lickus, Regional State Liaison Officer, RIII (E-Mail)  
M. A. Kunowski, Project Engineer, Division of Reactor Projects, RIII  
K. S. GreenBates, Reactor Engineer, Engineering Specialist Branch 1, RIII  
PMNS (E-Mail)  
RIII Public Affairs (E-Mail)  
J. Kweiser, ORA (E-Mail)  
P. Buckley, ORA (E-Mail)



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

January 8, 1999

EA 98-540

Mr. Louis E. Pardi  
Executive Vice President  
Engineering and Construction Group  
Power Division  
Morrison Knudsen Corporation  
MK Ferguson Plaza  
1500 West 3<sup>rd</sup> Street  
Cleveland, OH 44113-1406

SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS  
(U. S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB 98-016)  
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)

Dear Mr. Pardi:

This letter is in reference to apparent violations of U.S. Nuclear Regulatory Commission (NRC) requirements prohibiting deliberate misconduct by individuals (10 CFR 50.5) and discrimination by contractors of NRC licensees against their employees who engage in protected activities (10 CFR 50.7). The apparent violation involves managers of the Morrison Knudsen Corporation (MK) discriminating against one of its employees at the MK corporate office in Cleveland, Ohio. At the time of the apparent violation, MK was involved in the replacement of steam generators at the Wisconsin Electric Power Company's (WEPCo) Point Beach nuclear plant.

The apparent violation is based on findings from a U.S. Department of Labor (DOL) proceeding (97-ERA-34). The presiding Administrative Law Judge (ALJ) in the DOL proceeding found, in a Recommended Decision and Order issued on October 28, 1997, that MK's removal of the complainant from his position as group welding engineer (GWE) and his subsequent reassignment to an "inferior job" constituted an adverse employment action. Further, the removal of complainant from the position as GWE within 24 hours after he engaged in protected conduct (his findings concerned weld procedures used by MK at the Point Beach plant) raises the inference as a matter of law that his removal was in retaliation for his protected activities. The DOL ALJ's Recommended Order required MK to reinstate the complainant to the position of GWE at MK's office in Cleveland, Ohio, and the complainant be given the same compensation, terms, conditions, and privileges as he previously had as GWE. In a Preliminary Order, issued on November 4, 1997, the DOL Administrative Review Board (ARB) (ARB Case No. 98-016) confirmed the findings and order of the DOL ALJ. Subsequently, MK and the individual reached a mutually agreeable settlement to close the issue before DOL. Nevertheless, the NRC must review this matter to determine whether a violation of 10 CFR 50.7 occurred. Copies of the DOL ALJ's Recommended Decision and Order and the DOL ARB's Preliminary Decision are enclosed (Enclosures 1 and 2).

E/21

The NRC Office of Investigations (OI) also investigated this matter (OI Case No. 3-97-013), and reached the same conclusion as DOL. Enclosure 3 is the synopsis of the OI report.

An employee who raises safety concerns at an NRC-licensed facility is considered to have engaged in a protected activity and any retaliatory employment action taken against an employee for such contact is a violation of 10 CFR 50.7, "Employee Protection." Based on the information obtained from the U.S. Department of Labor (*i.e.*, Occupational Safety and Health Administration's investigation report and the Recommended Decision and Order of the Administrative Law Judge), the NRC Office of Investigations, and the investigation conducted for MK by a law firm, violations of NRC requirements may have occurred. Therefore, it appears that your actions may have caused MK to be in violation of 10 CFR 50.7 and you to be in violation of 10 CFR 50.5, "Deliberate Misconduct," and both violations are being considered for escalated enforcement action. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review. Copies of 10 CFR 50.5, and 10 CFR 50.7 are enclosed (Enclosures 4 and 5). Also enclosed is a copy of the NRC's "General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy) (Enclosure 6), which was in effect at the time of the alleged violation.

A transcribed predecisional enforcement conference to discuss this apparent violation with you has been scheduled for January 26, 1999, at 3:00 p.m. (CST) in the NRC Region III office. Since your personal involvement in this matter will be discussed, the conference will be closed to public observation.

The decision to hold an enforcement conference does not mean that the NRC has made a final determination on enforcement action in this case. While the NRC normally relies on OI findings and those of DOL to determine whether a violation occurred, when DOL findings are based on an adjudicatory proceeding, the conference is being held to obtain any additional information that will enable the NRC to make an informed enforcement decision. You are specifically invited to address the factors that the NRC normally considers in determining whether enforcement action should be taken against an individual. These factors are described in Section VIII, "Enforcement Actions Involving Individuals," of the NRC Enforcement Policy. In addition to responding to these factors, should you admit the violation, the NRC requests that you present at the predecisional enforcement conference, why the NRC should be confident that in the future, while engaged in licensed nuclear activities, you will abide by the NRC's regulations and your employer's procedures pertinent to your work. You may additionally provide any information you deem relevant to the NRC in making an enforcement decision.

If the NRC concludes that you engaged in deliberate misconduct, the possible sanctions available to the NRC include issuing to you a Notice of Violation, a civil penalty,<sup>1</sup> or an order. If the NRC issues an order to you, the order may prohibit your future involvement in NRC-licensed activities.

---

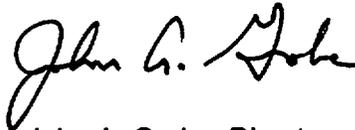
<sup>1</sup> A civil penalty is not normally imposed on unlicensed individuals. See Footnote 10 of the NRC Enforcement Policy.

Please be advised that your cost of transportation to the NRC Region III office in Lisle, Illinois, must be borne by you. Also, you are welcome to have counsel or a personal representative accompany you to an enforcement conference. However, the cost of any such counsel or personal representative and their transportation costs must likewise be borne by you.

The NRC will delay deciding whether to place a copy of this letter and its enclosures into the Public Document Room (PDR) until a final enforcement decision has been made. At that time, in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your written response, should you choose to provide a written reply, with your home address removed, along with a copy of Enclosure 1 may be placed in the PDR.

Should you have any questions about this letter or the predecisional enforcement conference, please contact Mr. Charles H. Weil of the NRC Region III Enforcement Staff at toll free telephone number 1-800-522-3025, or (630) 810-4372.

Sincerely,



John A. Grobe, Director  
Division of Reactor Safety

Docket Nos. 50-266; 50-301  
License Nos. DPR-24; DPR -27

Enclosures: 1. ALJ's Recommended Decision and Order  
2. ARB's Preliminary Order  
3. OI Report Synopsis  
4. 10 CFR 50.5  
5. 10 CFR 50.7  
6. NRC Enforcement Policy

cc w/enclosures: R. R. Edmister, Associate General Counsel  
MK Engineering and Construction Group  
P. Hickey, Esq., Shaw, Pitman

U.S. Department of Labor

OCT 28 1997

Office of Administrative Law Judges  
Seven Parkway Center  
Pittsburgh, Pennsylvania 15220



CASE NO. 97-ERA-34

In the Matter of

ALAIN ARTAYET  
Complainant

v.

MORRISON KNUDSEN CORPORATION  
Respondent

Appearances:

Steven D. Bell, Esq.  
Lynn R. Rogozinski, Esq.  
For the Complainant

Keith A. Ashmus, Esq.  
Heather L. Areklett, Esq.  
For the Respondent

BEFORE: DANIEL L. LELAND  
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851, which prohibits Nuclear Regulatory Commission Licensees from discharging or otherwise discriminating against an employee who has engaged in activity protected under the Act. Alain Artayet (complainant) filed a complaint under the Act on February 18, 1997, which was investigated by the Occupational Safety and Health Administration and found to be without merit. Complainant made a timely request for a hearing before an administrative law judge, and a hearing was held before the undersigned in Cleveland, Ohio on June 11 and 12, 1997. Complainant's exhibits (CX) 5, 6, 12, 20, 26, 51, 52, and 53, and respondent's exhibits (RX) A-L were admitted into evidence. At the close of the hearing the parties were given sixty days to submit briefs, and the due date for filing briefs was later extended to September 22, 1997. Both parties filed timely briefs.

### Summary of the Evidence

Complainant holds a Bachelor of Science Degree in Welding Engineering from Ohio State University and began working at Morrison Knudsen Corporation (respondent) in June 1988 as a Corporate Welding Engineer, also called Group Welding Engineer (GWE). (TR 33) Respondent is an international engineering and construction company which performs work on nuclear power plants among others. The GWE is located in respondent's Quality Assurance Department. (TR 33) The head of the Quality Assurance Department is Tom Zarges, the Division Executive is Lou Pardi, and the Group Quality Director is Andrew Walcutt, complainant's immediate superior. (TR 35; CX 52) The quality assurance program is required by 10 CFR 50. (TR 34) In 1995, respondent and Duke Engineering Services formed a company called SGT Ltd. which replaces steam generators at nuclear power plants and which has its own quality assurance program. (TR 38; CX 53) The president of SGT Ltd. is Martin Cepkauskas and the Group Quality Director is Andrew Walcutt to whom complainant reported. (TR 39) As GWE, complainant was responsible for oversight of the activities of Project Welding Engineers (PWE) and qualifying welding procedures. (TR 41)

In 1995, SGT Ltd. was awarded a contract to replace two steam generators at the Point Beach Unit Two nuclear power plant in Two Rivers, Wisconsin. (TR 43) The project required a large amount of welding. (TR 44) In May 1996, Max Bingham, the project manager, asked complainant to help develop the welding procedures to be used at Point Beach. (TR 45-46) Bingham wanted complainant to delegate the qualification of the welding procedures at Point Beach to the PWE, Eugene "Rusty" Gorden. (TR 46) Qualification of welding procedures was the function of the GWE. (TR 60-63) Complainant at first refused because he was unfamiliar with Gorden's technical capabilities. (TR 47) Complainant then began the process of qualifying the welds at a site in Memphis, Tennessee in May or June 1996. (TR 49) In July 1996, Bingham again asked complainant to delegate qualification of the welds at Point Beach to Gorden and complainant's refusal to do so angered Bingham. (TR 50-51) Complainant then acquiesced in the delegation of the remaining welds which Gorden accomplished in Chicago. (TR 53)

Complainant emphasizes that the PWE, not the GWE, was responsible for developing the site-specific welding procedures to be used at Point Beach. (TR 55, 65-66; see also CX 51; RX C 1, p. 1; § 9.2.5) The GWE was responsible for submitting generic welding procedures to the PWE who tailored them to the needs at Point Beach. (TR 55) Gorden was supposed to send the site-specific welding procedures to complainant for review but he failed to do so despite complainant's request to see them. (TR 56-57) At the end of October 1996, complainant for the first time reviewed the site-specific welding procedures written by Gorden and found five of them to be unacceptable. (TR 57) On November 6, 1996, complainant sent a fax to Gorden identifying the deficient welding procedures and calling Gorden's attention to the codes of the American Society of Mechanical Engineers. (TR 58-60; CX 6) Gorden, however, ignored complainant's comments. (TR 62) Complainant stated that he informed Walcutt of the problems in the welding procedures for Point Beach but Walcutt felt that as the Hartford Insurance Company audit was coming up on December 30-31, 1996, nothing should be done to correct the problems. (TR 70)

Walcutt denies that complainant informed him of the welding deficiencies at Point Beach or that Walcutt told him to take no action. (TR 247)). Complainant's offer to work with Gorden to remedy the welding problems was also assertedly rejected. (TR 71)

During the week of December 16, 1996, complainant states that Pardi met with him and removed him from nuclear responsibilities for steam generator replacement citing complainant's personality conflicts with Cepkauskas and Bingham. (TR 72) (Pardi denied that this meeting ever took place or that he removed complainant from his supervision of welding at nuclear power plants at this time. (TR 163)) Walcutt asked complainant to prepare for the upcoming Hartford audit and complainant informed him that the audit would reveal deficiencies in the welding procedures at Point Beach. (TR 75-76) The audit was performed on December 30-31, 1996, and on January 6, 1997, Hartford issued a report finding fault with the Point Beach welding procedures. (TR 76-77, 79-80; RX D 1) Upon reading the audit report Walcutt asked complainant to review all the welding procedures for Point Beach. (TR 80) Complainant reviewed the Point Beach welding procedures and wrote an eight page report which he gave to Walcutt on January 14, 1997 who in turn delivered a copy to Pardi and Bingham. (TR 80-81; see CX 12) On the morning of January 15, Walcutt also asked complainant to prepare a report on the welding procedures at the D. C. Cook project. (TR 83-84) Complainant informed Walcutt that there were deficiencies in the D. C. Cook project which were similar to those at Point Beach. (TR 85-86)

Later on the morning of January 15, complainant was summoned to the office of Drew Adleman, complainant's administrative superior, who told complainant that he was being removed from the GWE position because of personality conflicts with Cepkauskas and Bingham. (TR 86) After his removal as GWE complainant continued to work on his report on D. C. Cook and submitted a report on the welding deficiencies at that facility on January 22, 1997. (TR 87, 264-267; CX 20) Complainant was transferred to Parkersburg, WV on February 7, 1997 as an area field engineer on the night shift. (TR 88) Since that date, he has been living away from his family in Cleveland and has been unable to participate in his children's school activities. (TR 88) Complainant has incurred approximately \$10,000 in attorney fees in connection with this litigation. (TR 89)

Louis E. Pardi, whose title is executive vice president of respondent's Power Division, testified that he relied on the complainant to be respondent's welding expert in all matters, particularly qualification of welds, development of corporate welding procedures, and solving welding problems that arose on specific sites. (TR 156, 159) He recalled being told that there was friction between complainant and project personnel at Point Beach regarding qualification of welds and specific welding requirements. (TR 159-160) Pardi remembered seeing a memo from the complainant that drop weight testing was not required at Point Beach which is contrary to what he stated about the D. C. Cook project. (TR 161) In his testimony, Cepkauskas also mentioned the friction between complainant and site personnel and the memo regarding drop weight testing and that he informed Pardi of this. (TR 146, 147) Neither Pardi nor Cepkauskas could produce the memo and Pardi admitted that he had not read the memo. (TR 150, 190) After

being informed of the welding deficiencies found in the Hartford audit, Pardi decided to remove complainant as GWE. (TR 161) As complainant was not in Pardi's chain of command, Pardi told Edleman about the findings in the audit, and after rejecting the idea of relieving complainant only of his jurisdiction over nuclear facilities, they decided to relieve complainant of his duties as GWE. (TR 163-164) The final decision to terminate complainant was made on January 15. (TR 164; see also TR 204-206) Complainant's memorandum regarding Point Beach was considered when the decision was made. (TR 196-197) Pardi averred that the decision to remove the complainant was based on his friction with the project personnel, his determination not to use drop weight testing, and the Hartford audit. (TR 165-166)

Andrew Walcutt is the Group Quality Director for the respondent and was complainant's supervisor. (TR 235-236) He stated that the GWE is responsible for development of the corporate welding program, adherence to the welding codes, providing technical advice to project personnel, and qualification of welding procedures. (TR 236) He recalled a meeting complainant and he had with Gorden in November or December 1995 where an agreement had been reached between complainant and Gorden, but complainant changed his mind the next day. Walcutt told complainant that he should not go back on his word. (TR 237-238) Walcutt also referred to a meeting in July 1996 among Bingham, complainant and himself in which Bingham expressed dissatisfaction with complainant's performance, particularly his delegation of qualifying welds to some one who was not working at Point Beach. (TR 241-242) In the Fall of 1996, Pardi told Walcutt that he had lost confidence in complainant because he failed to recommend drop weight testing. (TR 242-243) Walcutt later found, however, that complainant had not taken this position. (TR 243-244, 281-282) Walcutt also stated that the failure of the welds in Memphis was caused by a discrepancy in testing requirements and was not solely complainant's fault. (TR 244-245) The witness denied that complainant told him that Gorden had failed to respond to his criticisms of the site-specific welds at Point Beach, or that he ordered complainant not to remedy any deficiencies. (TR 247)

Following the Hartford audit, Walcutt instructed complainant to review all the site-specific welding procedures at Point Beach. (TR 250) On January 28, 1995, Walcutt wrote a memo to Tom Zarges (RX D) stating in part that the errors found in the audit could have been prevented by effective communication between the GWE and the PWE. (TR 254) Complainant was not solely responsible for the problems found by the audit and Gorden also contributed to the breakdown in communications. *Id.* Walcutt recommended that Gorden be replaced as PWE. (TR 254-255) The witness was told by complainant that D. C. Cook had similar problems to those at Point Beach, but he did not ask complainant to investigate D. C. Cook. (TR 256) No mention of complainant's review of the D. C. Cook project was made to Pardi, Edleman, or Zarges. (TR 256-257) Walcutt acknowledged that complainant's reassignment to Parkersburg occurred after he wrote the memo about D. C. Cook, but he denies that there was any connection. (TR 261, 265, 266-267)

Gorden developed the site specific welding procedures for Point Beach and in so doing he changed the corporate welding procedures, which was a violation of respondent's quality

ssurance program. (TR 270-272) Walcutt told Pardi and Cepkauskas that the problems in Point Beach's welding procedures identified by complainant were not his fault. (TR 274) Complainant always performed competently and professionally as a welding engineer, but had problems communicating. (TR 275) The only valid reason to remove complainant from his position was his failure to communicate with the project team. (TR 294) This problem was not mentioned, however, in complainant's evaluation in December 1996. (See RX G; see also TR 231-232)

Findings of Fact and Conclusions of Law

42 U.S.C. § 5851 provides that:

- (1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee...
  - (A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954;
  - (B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;
  - (C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;
  - (D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, ... or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;
  - (E) testified or is about to testify in any such proceeding or;
  - (F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purpose of the Atomic Energy Act of 1954, as amended.

To establish a prima facie case of discrimination under § 5851, the complainant must show: (1) his employer is subject to the Act; (2) the complainant engaged in protected activity; (3) the complainant was subject to adverse employment action; (4) his employer was aware of the protected activity when it took the adverse action, and (5) an inference that the protected activity was the likely reason for the adverse employment action. *Zinn v. University of Missouri*, 93-ERA- 34 and 36 (Sec'y, January 18, 1996). See also *Carroll v. U. S. Dept. of Labor*, 78 F. 3d

52 (8<sup>th</sup> Cir. 1996). If the complainant proves a prima facie case, the burden of production shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse action. *Carroll*, 78 F. 3d at 356. Where the employer articulates a legitimate nondiscriminatory reason for the adverse action, the complainant has the ultimate burden of persuading that the reasons articulated by his employer were pretextual, either by showing that the unlawful reason more likely motivated the employer or by showing that the proffered explanation is unworthy of credence. *Nichols v. Bechtel Construction Co.*, 87-ERA-44 (Sec'y, October 26, 1992), *Carroll*, *supra*, *Kahn v. U. S. Secretary of Labor*, 64 F. 3d 271, 278 (7<sup>th</sup> Cir. 1995).

Complainant alleges three separate adverse employment actions taken as a result of his protected activity: (1) his removal from jurisdiction over nuclear power plants in December 1996 as a result of his finding of welding deficiencies at Point Beach, (2) his removal as GWE on January 15, 1997 resulting from his January 14, 1997 report on the Point Beach welding problems, and (3) his reassignment to Parkersburg, WV following his report on the flaws in the welding procedures at D. C. Cook. It is necessary to determine if complainant has made a prima facie case as to each of these incidents.

Respondent concedes that is subject to the Act. Moreover, complainant's performance of quality assurance functions constitutes protected activity under the Act. See *Mackowiak v. University Nuclear Systems, Inc.*, 735 F. 2d 1159, 1163 (9<sup>th</sup> Cir. 1984), *Bassett v. Niagara Mohawk Power Co.*, 86-ERA-2 (Sec'y, July 9, 1986). With regard to the first allegation of retaliation, Pardi denied that a meeting with complainant took place in December 1996 in which he removed him from his nuclear responsibilities and his version is supported by the testimony of Edleman and Walcutt. Assuming that Pardi did remove complainant from jurisdiction over nuclear power plants and that this constitutes adverse employment action, the evidence is not persuasive that Pardi knew about complainant's protected activity prior to the meeting and that his removal was in retaliation for his protected activity. I reach the same conclusion regarding complainant's report on the D. C. Cook project. Walcutt credibly testified that he never told Zarges, Pardi, or Edleman of complainant's report on the welding deficiencies at D. C. Cook, and therefore, his reassignment to Parkersburg could not have been in retaliation for his report. Therefore, complainant has failed to make out a prima facie case with regard to these two incidents.

I reach a different conclusion with regard to complainant's removal as GWE and subsequent reassignment to Parkersburg. Respondent argues that Pardi and Edleman had already decided to replace complainant as GWE before they were aware that he drafted the report on the Point Beach welding deficiencies on January 14, but I do not find Pardi's testimony to be credible on this point. Furthermore, the adverse employment action, i.e., complainant's actual removal from his position as GWE, did not take place until January 15, one day after Pardi was given the report on Point Beach. Therefore, I find that respondent was aware of complainant's protected activity when he was replaced as GWE. Respondent also maintains that complainant's removal as GWE and reassignment to a different position in Parkersburg was not an adverse employment action because he was not discharged and there was no decrease in pay. However, complainant's

ew position in Parkersburg as an area field engineer does not have the corporate responsibilities involved in his prior position as GWE and is clearly less prestigious. See *DeFord v. Secretary of Labor*, 700 F. 2d 281, 287 (6<sup>th</sup> Cir. 1983). See also *McMahan v. California Water Quality Control Board, San Diego Region*, 90-WPC-1 (Sec'y, July 16, 1993), in which it was held that a transfer was an adverse action in that it prevented the complainant from performing supervisory duties and field enforcement which he preferred. Respondent also argues that "relocation is a way of life" at Morrison Knudsen and that respondent maintains facilities much further from Cleveland than Parkersburg to which complainant could have been reassigned. The fact that complainant could have been sent to more remote locations has no significance, however, as complainant's reassignment from Cleveland to Parkersburg has clearly inconvenienced him and separated him from his home and family in Cleveland. I therefore conclude that complainant's removal as GWE and his subsequent reassignment to an inferior job in Parkersburg constitute adverse employment action. Finally, complainant's removal from the position as GWE within twenty four hours after he engaged in protected conduct raises the inference as a matter of law that his removal was in retaliation for his protected activity. *Couty v. Dole*, 886 F. 2d 147, 148 (8<sup>th</sup> Cir. 1989). Complainant has therefore made out a prima facie case.

Respondent has cited as the reasons for complainant's removal and reassignment his overall performance as GWE, more specifically his recommendation that drop weight testing not be used, the deficiencies found in the Hartford audit, and his friction with on-site personnel. Complainant therefore has the burden of proving that these reasons are pretextual. *Kahn*, 64 F. 1 at 278.

The drop weight testing excuse clearly lacks credibility. Pardi testified of seeing a memo shown to him by Cepkauskas regarding the drop weight testing but could not recall the content of the memo. Cepkauskas was unable to produce the memo. Walcutt testified that complainant had never recommended that drop weight testing not be used thereby indicating that Pardi's asserted loss of confidence in complainant was based on an erroneous premise. Pardi also blamed the welding defects noted in the Hartford audit on complainant, but Walcutt, who has far more technical knowledge than Pardi regarding the welding requirements, stated that Gorden was responsible for these errors as it was his obligation to develop the site-specific welding procedures. Gorden actually changed the corporate welding procedures complainant had sent him in violation of the respondent's quality assurance program. When complainant discovered the unacceptable welding specifications devised by Gorden, he informed him of the deficiencies and tried without success to have Gorden remedy them. Moreover, Walcutt informed Pardi that the deficiencies cited in the audit were not complainant's fault, which indicates that Pardi knew that complainant was not to blame and removed him anyway. Walcutt stated that complainant always acted in a competent and professional manner as a welding engineer. Thus the first two articulated reasons for removing complainant are clearly pretextual.

Walcutt asserted that the only valid reason for removing complainant as GWE was his failure to communicate with project personnel. Initially, I find it difficult to accept that complainant would be relieved of his duties for this relatively insignificant reason. There is

certainly no evidence in the record that this so called "friction" with on site personnel was so persistent or egregious that it affected the efficiency of respondent's construction work. It would also appear that the cause of much of the "friction" was complainant's insistence on not delegating the qualification of the welds to Gorden, whose competence he questioned, apparently with good reason. Some of the "friction" also resulted from complainant's strict adherence to the standards in respondent's quality assurance program and the natural tension that may have taken place with the project personnel who were attempting to adhere to precise schedules. As the court in *Mackowiak* observed, "contractors regulated by § 5851 may not discharge quality control inspectors because they do their job too well." *Mackowiak*, 735 F. 2d at 1163. Finally, I note that Walcutt did not discuss complainant's communication problems in the performance evaluation completed in December 1996 only twenty-three days before he was removed as GWE allegedly for this reason. If complainant's failure to communicate had been such a serious problem, it would have been cited in his performance appraisal. Therefore, I conclude that this purported reason was also pretextual.

As complainant has made out a prima facie case and proven that respondent's purported reasons for the adverse employment action were pretextual, I conclude that respondent has violated § 5851. Complainant is therefore entitled to reinstatement to his position as GWE and reimbursement for attorney fees.

Recommended Order

Morrison Knudsen Corporation is ORDERED to:

(1) Reinstatement complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio and to the same compensation, terms, conditions, and privileges of employment he previously had, and

(2) Reimburse complainant for the reasonable cost of attorney fees he has expended in pursuing his complaint.

Within thirty (30) days of the date of this decision and order, complainant's counsel shall submit a fully supported fee application detailing his hourly fee, the number of hours expended on this proceeding, and any associated litigation expenses. Respondent will have fifteen (15) days to respond with any objections.



DANIEL L. LELAND  
Administrative Law Judge

**NOTICE:** This Recommended Decision and Order and the administrative file in this matter will be forwarded for final decision to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. The Administrative Review Board was delegated jurisdiction by Secretary Order dated April 17, 1996, to issue final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. *See* 61 Fed. Reg. 19978 and 19982 (1996).

SERVICE SHEET

Case Name: ALAN ARTAYET  
Case Number: 97-ERA-034  
Title of Document: RECOMMENDED DECISION AND ORDER

I hereby certify that on OCT 28 1997 a copy of the above-entitled document was mailed to the following parties:

  
LAURA ANN BROWN  
Legal Technician

UNITED PARCEL SERVICE

Administrative Review Board  
United States Department of Labor  
Room S-4309, Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, DC 20210

CERTIFIED MAIL

Steven Bell, Esq.  
Lynn R. Rogozinski, Esq.  
Ulmer & Berne, L.L.P.  
Bond Court Building  
1300 East Ninth Street, Suite 900  
Cleveland, OH 44114-1583

Keith A. Ashmus, Esq.  
Heather L. Areklett, Esq.  
Thompson Hine & Flory, P.L.L.  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216

REGULAR MAIL

Associate Regional Solicitor  
Federal Building  
1240 East 9<sup>th</sup> Street, Room 881  
Cleveland, OH 44199

REGULAR MAIL

Administrator, ESA  
Wage and Hour Division, US DOL  
Room S-3502, FPB  
200 Constitution Avenue, NW  
Washington, DC 20210

Rob Medlock, Area Director  
OSHA, Cleveland Area Office  
AJC Federal Office Building  
1240 East 9<sup>th</sup> Street, Room 899  
Cleveland, OH 44199

Barry J. Harber, District Director  
U.S. Department of Labor  
AJC Federal Office Building  
1240 East Ninth Street, Room 817  
Cleveland, OH 44199

Deputy Associate Solicitor  
Division of Fair Labor Standards  
Office of the Solicitor  
U.S. DOL, Room N-2716  
200 Constitution Avenue, NW  
Washington, DC 20210



In the Matter of:

ALAIN ARTAYET,

COMPLAINANT,

v.

MORRISON KNUDSEN CORPORATION,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ARB CASE NO. 98-016

(ALJ CASE NO. 97-ERA-34)

DATE: NOV 4 1997

**NOTICE OF REVIEW  
AND  
ORDER ESTABLISHING BRIEFING SCHEDULE  
AND  
PRELIMINARY ORDER**

The Recommended Decision and Order (R. D. and O.) issued on October 28, 1997 by the Administrative Law Judge (ALJ) has been transmitted to the Board for review. The following briefing schedule is established in this case. Respondent may file an initial brief, not to exceed 30 double spaced typed pages, on or before December 3, 1997. Complainant may file a reply brief, not to exceed 30 double spaced typed pages, on or before January 2, 1998. Respondent may file a rebuttal brief, exclusively responsive to the reply brief and not to exceed 10 double spaced typed pages, on or before January 20, 1998.

All pleadings are expected to conform to the page limitations and should be prepared in Courier 12 point, 10 character-per-inch type or larger, with minimum one inch left and right margins and minimum 1¼ inch top and bottom margins, printed on 8½ by 11 inch paper.

An original and four copies of all pleadings and briefs shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C., 20210 (Telephone Number, 202-219-4728; Facsimile Number 202-219-0215)

**PRELIMINARY ORDER**

As noted, on October 28, 1997, the ALJ issued the R. D. and O. in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (Supp. IV 1992), as amended by the Comprehensive National Energy Policy Act of 1992 (CNEPA), Pub. L. No. 102-486, 106 Stat. 2776, 3123. The ALJ found that Respondent had violated § 5851 and that Complainant is entitled to both reinstatement to his former position and reimbursement for attorney fees..

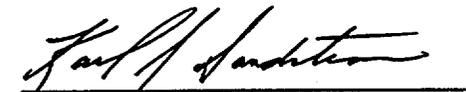
The following preliminary order is hereby entered:

Respondent shall reinstate Complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio at the same compensation, terms, conditions, and privileges of employment which Complainant had previously enjoyed, and

Following the procedures described in the ALJ's R. D. and O., Respondent shall reimburse Complainant for reasonable attorney fees and costs which were expended in the pursuit of this complaint.

**SO ORDERED.**

  
\_\_\_\_\_  
**DAVID A O'BRIEN**  
Chair

  
\_\_\_\_\_  
**KARL J. SANDSTROM**  
Member

  
\_\_\_\_\_  
**JOYCE D. MILLER**  
Alternate Member

## SYNOPSIS

This investigation was initiated on March 13, 1997, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if the former Corporate Welding Engineer (CWE) for Morrison Knudsen Corporation had been discriminated against for raising safety concerns.

Based on the evidence developed during the investigation, it is concluded that there is sufficient evidence to substantiate the alleged employment discrimination against the former CWE.

**§ 50.5 Deliberate misconduct.**

(a) Any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee, who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part; may not:

(1) Engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission, or

(2) Deliberately submit to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission, or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor, or subcontractor.

56 FR 40664

56 FR 40664

**§ 60.7 Employee protection.**

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of the section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415-7230.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential

58 FR 52406

58 FR 52406

61 FR 6762

61 FR 6762

58 FR 52406

# U.S. NUCLEAR REGULATORY COMMISSION

## Enforcement Policy Statement

This document compiles the "General Statement of Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, published June 30, 1995, and the various amendments to the Enforcement Policy approved by the Commission through September 10, 1997. It is the staff's intent to republish NUREG-1600 later this year. Pending that republication, the Office of Enforcement is issuing this interim compilation of all amendments to the Policy since it was last published. This document is also accessible on the Internet at: [www.nrc.gov/OE](http://www.nrc.gov/OE).

The amendments to the Policy were published in the Federal Register as follows:

<u>Subject:</u>	<u>Federal Register</u>	<u>Date</u>
Adjustment of Civil Monetary Penalties	61FR53553	10/11/96
Departures from FSAR	61FR54461	10/18/96
Commission consultation, Open Enforcement Conferences; risk; NCVs	61FR65088	12/10/96
Part 20, Exceedance of dose constraints	61FR65128	12/10/96
Correction as to exercise of discretion	61FR68070	12/26/96
Gaseous Diffusion Plants; NRC organizational changes; Commission consultation	62FR06677	02/12/97
Participation in enforcement conferences involving discrimination	62FR13906	03/24/97
Part 34, Radiography, examples of potential violations	62FR28974	05/28/97
Corrections to Part 34 examples	62FR33447	06/19/97
Enforcement conference clarification	62FR52577	10/08/97

The Enforcement Policy is a general statement of policy explaining the NRC's policies and procedures in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This policy statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment. This statement of general policy and procedures is published to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

Questions concerning the Enforcement Policy should be directed to the NRC's Office of Enforcement at (301) 415-2741.

James Lieberman, Director  
Office of Enforcement

# Compilation of NRC Enforcement Policy as of September 10, 1997

## GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT ACTIONS

Table of Contents

Preface

### I. INTRODUCTION AND PURPOSE

### II. STATUTORY AUTHORITY

- A. Statutory Authority
- B. Procedural Framework

### III. RESPONSIBILITIES

### IV. SEVERITY OF VIOLATIONS

- A. Aggregation of Violations
- B. Repetitive Violations
- C. Willful Violations
- D. Violations of Reporting Requirements

### V. PREDECISIONAL ENFORCEMENT CONFERENCES

### VI. ENFORCEMENT ACTIONS

- A. Notice of Violation
- B. Civil Penalty
  1. Base Civil Penalty
  2. Civil Penalty Assessment
    - a. Initial Escalated Action
    - b. Credit for Actions Related to Identification
    - c. Credit for Prompt and Comprehensive Corrective Action
    - d. Exercise of Discretion
- C. Orders
- D. Related Administrative Actions

### VII. EXERCISE OF DISCRETION

- A. Escalation of Enforcement Sanctions
  1. Civil Penalties
  2. Orders
  3. Daily Civil Penalties
- B. Mitigation of Enforcement Sanctions
  1. Licensee-Identified Severity Level IV Violations
  2. Violations Identified During Extended Shutdowns or Work Stoppages
  3. Violations Involving Old Design Issues
  4. Violations Identified Due to Previous Escalated Enforcement Action
  5. Violations Involving Discrimination
  6. Violations Involving Special Circumstances
- C. Exercise of Discretion for an Operating Facility

### VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

### IX. INACCURATE AND INCOMPLETE INFORMATION

### X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

### XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

### XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

### XIII. REOPENING CLOSED ENFORCEMENT ACTIONS SUPPLEMENTS

## PREFACE

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission (NRC or Commission) and the NRC staff (staff) in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment.<sup>1</sup> This statement of general policy and procedure will be published as NUREG-1600 to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

## I. INTRODUCTION AND PURPOSE

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

---

<sup>1</sup> Antitrust enforcement matters will be dealt with on a case-by-case basis.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, vendors<sup>2</sup>, contractors, and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.<sup>3</sup> Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of this enforcement policy. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

## II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK

### A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

---

<sup>2</sup> The term "vendor" as used in this policy means a supplier of products or services to be used in an NRC-licensed facility or activity.

<sup>3</sup> This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed \$100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the \$100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of

the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

#### *B. Procedural Framework*

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the

order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

#### **III. RESPONSIBILITIES**

The Executive Director for Operations (EDO) and the principal enforcement officer of the NRC, the Deputy Executive Director for Regulatory Effectiveness, hereafter referred to as the Deputy Executive Director, has been delegated the authority to approve or issue all escalated enforcement actions.<sup>4</sup> The Deputy Executive Director is responsible to the EDO for the NRC enforcement program. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where

<sup>4</sup> The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

Necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Director, Office of the Controller, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license and inspection

and recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Enforcement Discretion." The Commission will be provided written notification of all enforcement actions involving civil penalties or

s. The Commission will also be

provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any action the EDO believes warrants Commission involvement;

(5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and

(6) Any proposed enforcement action on which the Commission asks to be consulted.

#### IV. SEVERITY OF VIOLATIONS

Regulatory requirements<sup>5</sup> have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process.

<sup>5</sup> The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

In considering the significance of a violation, the staff considers the technical significance, i.e., actual and potential consequences, and the regulatory significance. In evaluating the technical significance, risk is an appropriate consideration.

Consequently, for purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance within each of the following eight activity areas:

- I. Reactor Operations;
- II. Facility Construction;
- III. Safeguards;
- IV. Health Physics;
- V. Transportation;
- VI. Fuel Cycle and Materials Operations;
- VII. Miscellaneous Matters; and
- VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not

usually described in inspection reports. To the extent such violations are described, they are noted as Non-Cited Violations.<sup>6</sup>

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation. In some cases, special circumstances may warrant an adjustment to the severity level categorization.

#### A. Aggregation of Violations

A group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or the violations

<sup>6</sup> A Non-Cited Violation (NCV) is a violation that has not been formalized into a 10 CFR 2.201 Notice of Violation.

contributed to or were unavoidable consequences of the underlying problem. Normally, Severity Level II and III violations are not aggregated into a higher severity level.

The purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may therefore, warrant a more substantial enforcement action.

#### B. Repetitive Violations

The severity level of a Severity Level IV violation may be increased to Severity Level III, if the violation can be considered a repetitive violation.<sup>7</sup> The purpose of escalating the severity level of a repetitive violation is to acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action for the previous violation. The decision to escalate the severity level of a repetitive violation will depend on the circumstances, such as, but not limited to, the number of times the violation has occurred, the similarity of the violations and their root causes, the adequacy of previous corrective actions, the period of time between the violations, and the significance of the violations.

#### C. Willful Violations

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on

<sup>7</sup> The term "repetitive violation" or "similar violation" as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Although removal of the person is not necessarily required, substantial disciplinary action is expected.

Therefore, the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official<sup>8</sup>

<sup>8</sup> The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's

non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be categorized at least at a Severity Level IV.

#### *D. Violations of Reporting Requirements*

The NRC expects licensees to provide complete, accurate, and timely information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

#### **V. PREDECISIONAL ENFORCEMENT CONFERENCES**

organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to use of licensed material.

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held unless the licensee requests it. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee will normally be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in

the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

(1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;

(2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;

(3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or

(4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

(5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or

(6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that

The conference will be open to public observation. Consistent with the agency's policy on open meetings, "Staff Meetings Open to Public," published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800-952-9674, (3) a toll-free electronic bulletin board at 800-952-9676, and on the World Wide Web at the NRC Office of Enforcement homepage ([www.nrc.gov/OE](http://www.nrc.gov/OE)). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, but rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures for Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where

there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

## VI. ENFORCEMENT ACTIONS

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction,

as in transportation matters. Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action.

#### A. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date full compliance will be achieved.

NRC may waive all or portions of a written response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met. However, special circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation. (See Section VII.B, "Mitigation of Enforcement Sanctions.") In addition, fees are not ordinarily cited for

violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.

#### B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

#### 1. Base Civil Penalty

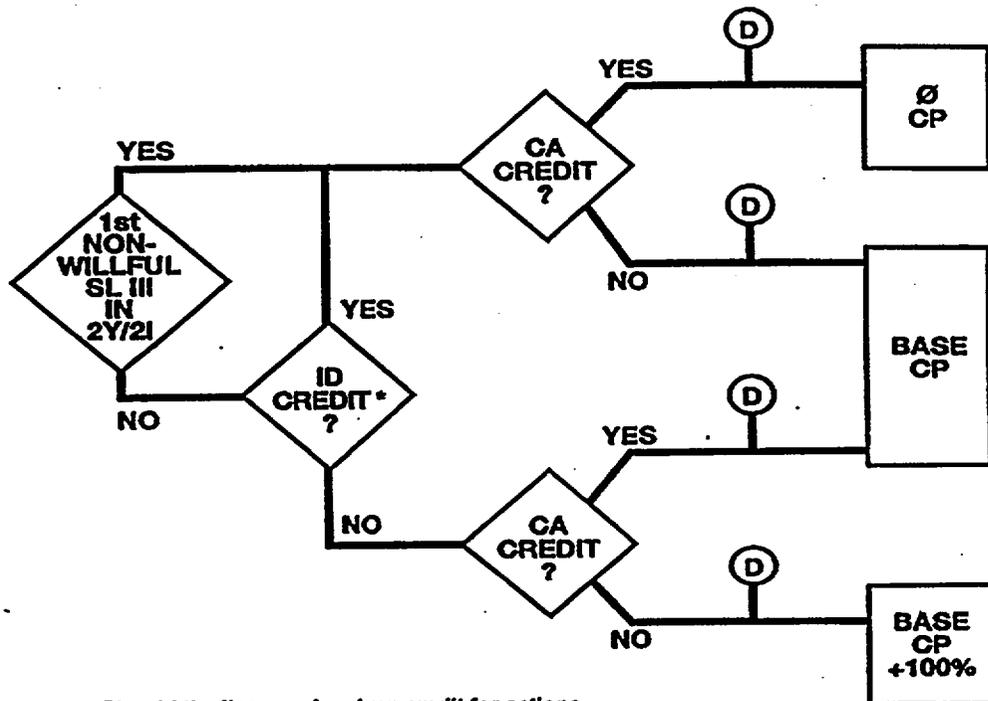
The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, vendors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, materials, and vendor programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

## 2. Civil Penalty Assessment

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) whether the licensee has had any Previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several

associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic representation of the civil penalty assessment process.



\* Should the licensee be given credit for actions related to identification?

(D) Discretion, e.g., SL I and II violations should normally result in a civil penalty regardless of ID and CA.

*a. Initial Escalated Action.*

When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had any previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under Section VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, a Notice of Violation normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the Notice of Violation normally should be issued with a base civil penalty.

*b. Credit for Actions Related to Identification.*

(1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred—or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action—the civil penalty assessment should normally

consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for *Identification* and *Corrective Action* should be separate decisions, the concept of *Identification* presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on *Identification* requires considering all the circumstances of identification including:

- (i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event<sup>9</sup>;
- (ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of

---

<sup>9</sup> An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

those opportunities;

(iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;

(iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;

(v) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;

(vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and

(vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:

(i) Licensee-Identified. When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) Identified Through an Event. When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee

initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) NRC-Identified. When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the

matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) Mixed Identification. For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of *the problem requiring corrective action* (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) Missed Opportunities to Identify. Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice i.e., specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of

employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity--"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity

should also be considered. While a rigid time-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

(3) When the NRC determines that the licensee should receive credit for actions related to *Identification*, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is *not* given credit for actions related to *Identification*, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

*c. Credit for Prompt and Comprehensive Corrective Action.*

The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in imposing at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for *Corrective Action*. For cases in which the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem.

Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective

action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee

- (i) Makes a prompt decision on operability; and either
- (ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or
- (iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

*d. Exercise of Discretion.*

As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee. However, in no instance will a civil penalty for any one violation exceed \$110,000 per day.

TABLE 1A--BASE CIVIL PENALTIES

a. Power reactors and gaseous diffusion plants.....	\$110,000
b. Fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations.....	\$27,500
c. Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers.....	\$11,000
d. Research reactors, academic, medical, or other material licensee'.....	\$5,500

<sup>1</sup> This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

TABLE 1B—BASE CIVIL PENALTIES

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table 1A)
I .....	100%
II .....	80%
III .....	50%

**C. Orders**

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202). Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are issued when some change in licensee equipment, procedures, personnel, or management controls is necessary.
2. Suspension Orders may be used:
  - (a) To remove a threat to the public health and safety, common defense and security, or the environment;
  - (b) To stop facility construction when,
    - (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component; or
    - (ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;
  - (c) When the licensee has not responded adequately to other enforcement action;
  - (d) When the licensee interferes with the conduct of an inspection or investigation; or
  - (e) For any reason not mentioned above for which license revocation is

legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:
  - (a) When a licensee is unable or unwilling to comply with NRC requirements;
  - (b) When a licensee refuses to correct a violation;
  - (c) When licensee does not respond to a Notice of Violation where a response was required;

(d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to unlicensed persons, including vendors and contractors, and employees of any of them, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior

opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

**D. Related Administrative Actions**

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing vendor's failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices

of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

## VII. EXERCISE OF DISCRETION

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action appropriately reflects the level of NRC concern regarding the violation at issue and conveys the appropriate message to the licensee.

### A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC

may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties, (2) issuing appropriate orders, and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$110,000 per violation, per day.

1. Civil penalties. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

- (a) Problems categorized at Severity Level I or II;
  - (b) Overexposures, or releases of radiological material in excess of NRC requirements;
  - (c) Situations involving particularly poor licensee performance, or involving willfulness;
  - (d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;
  - (e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;
  - (f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;
  - (g) Cases involving the loss of a source.
- In addition, unless the licensee self-

identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient; or

(h) Severity Level II or III violation: associated with departures from the Final Safety Analysis Report identified after two years from October 18, 1996. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

2. Orders. The NRC may, where necessary or desirable, issue orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. Daily civil penalties. In order to recognize the added technical safety significance or regulatory significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$110,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

### B. Mitigation of Enforcement Sanctions

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation, if the outcome of the normal process described in Section VI.B does not result in a sanction consistent with an

appropriate regulatory message.

However, even if the NRC exercises this discretion, when the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report. The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for exercising discretion of the type described in Section VII.B.1.b where a willful violation is involved, and of the types described in Sections VII.B.2 through VII.B.6. Commission notification is required for exercising discretion of the type described in: (1) Section VII.B.2 the first time discretion is exercised during that plant shutdown, and (2) Section VII.B.6 where appropriate based on the uniqueness or significance of the issue. Examples when discretion should be considered for departing from the normal approach in Section VI.B include but are not limited to the following:

1. Licensee-Identified Severity Level IV Violations. The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

- (a) It was identified by the licensee;
- (b) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;
- (c) It was or will be corrected within a reasonable time, by specific corrective

action committed by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence;

(d) It was not a willful violation or if it was a willful violation;

(i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.C);

(iii) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization. Although removal of the employee from licensed activities is not necessarily required, substantial disciplinary action is expected.

2. Violations Identified During Extended Shutdowns or Work Stoppages. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or official field notes for some material cases) and that it meets all of the following criteria:

(a) It was either licensee-identified as a

result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (1) the NRC identifies the violation and a set of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at a severity level higher than Severity Level II;

(d) It was not willful; and

(e) The licensee's decision to restart the plant requires NRC concurrence.

3. Violations Involving Old Design Issues. The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was a licensee-identified as a result of its voluntary initiative;

(b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and

(c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for cases that meet the above criteria provided the violation was caused by

conduct that is not reasonably linked to present performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years after October 18, 1996;

(b) The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. Violations Identified Due to Previous Escalated Enforcement Action. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified

after the NRC has taken escalated enforcement action for a Severity Level II or III violation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous escalated enforcement action;

(b) It has the same or similar root cause as the violation for which escalated enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

5. Violations Involving Certain Discrimination Issues. Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL,

that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. Violations Involving Special Circumstances. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, as provided in Section III, "Responsibilities," the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II or III violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the safety significance of the violation, the overall sustained performance of the licensee has been particularly good, and other

relevant circumstances, including any that may have changed since the violation. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted.

### C. Exercise of Discretion for an Operating Facility

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an

emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the

NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root cause to the extent violations were involved that led to the noncompliance for which enforcement discretion was used. Enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended or plant startup may be delayed, at the exercise of enforcement discretion the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forgo enforcement is discretionary. Where enforcement discretion is to be exercised, it is to be exercised only when the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

### VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. Enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence), failed to take required actions which have actual or potential safety significance. Most transgressions by individuals at the level of Severity Level III or IV violations will be handled by citing only the facility

licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Shift Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual.

However, violations involving willful

conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR part 50, appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by vendors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.

- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
3. The safety consequences of the misconduct.
4. The benefit to the wrongdoer, e.g., personal or corporate gain.
5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
6. The employer's response, e.g., disciplinary action taken.
7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
8. The degree of management responsibility or culpability.

9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.<sup>10</sup> Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed

<sup>10</sup> Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

activities.

- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of

integrity, competence, fitness-for or other matters that may not necessarily be a violation of spec Commission requirements.

In the case of an unlicensed per whether a firm or an individual, order modifying the facility licen may be issued to require (1) the removal of the person from all lic activities for a specified period or indefinitely, (2) prior notice to NRC before utilizing the person i licensed activities, or (3) the licer provide notice of the issuance of an order to other persons involve licensed activities making referen inquiries. In addition, orders to employers might require retrainir additional oversight, or independ verification of activities performe the person, if the person is to be involved in licensed activities.

**IX. INACCURATE AND INCOMPLETE INFORMATION**

A violation of the regulations involving submittal of incomplete and/or inaccurate information, w/ or not considered a material false statement, can result in the full re of enforcement sanctions. The la of a communication failure as a material false statement will be r on a case-by-case basis and will t reserved for egregious violations. Violations involving inaccurate or incomplete information or the fail provide significant information identified by a licensee normally be categorized based on the guida herein, in Section IV, "Severity o Violations," and in Supplement V

The Commission recognizes tha information may in some situatio inherently less reliable than writte submittals because of the absence opportunity for reflection and management review. However, t Commission must be able to rely oral communications from licens officials concerning significant

information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of NRC reliance on the information; (6) the importance of the information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was

promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

## X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

The Commission's enforcement policy is also applicable to non-licensees, including employees of licensees, to contractors and subcontractors, and to employees of contractors and subcontractors, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors may be required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors supplying products or services to reactor, materials, and 10 CFR Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their vendors have programs that meet applicable requirements. Notices of Violation will be issued for vendors

that violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

#### XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

#### XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

#### XIII. REOPENING CLOSED ENFORCEMENT ACTIONS

If significant new information is received or obtained by NRC which indicates that an enforcement sanction

was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

#### SUPPLEMENT I-- REACTOR OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

A. Severity Level I - Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;
2. A system<sup>11</sup> designed to prevent or mitigate a serious safety event not being able to perform its intended safety function<sup>12</sup> when actually called upon to work;
3. An accidental criticality; or
4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

B. Severity Level II - Violations involving for example:

<sup>11</sup> The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

<sup>12</sup> "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

1. A system designed to prevent mitigate serious safety events not be able to perform its intended safety function;

2. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area.

3. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol; or

4. Failures to meet 10 CFR 50.55, including several unreviewed safety questions, or conflicts with technical specifications, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment.

C. Severity Level III - Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement

2. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability (e.g., component parameters outside approved limits such as pump flow

rates, heat exchanger transfer characteristics, safety valve lift points, or valve stroke times);

3. Inattentiveness to duty on the part of licensed personnel;

4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;

5. [Reserved]

6. A licensee failure to conduct adequate oversight of vendors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;

Equipment failures caused by

leakage or improper maintenance that substantially complicates recovery from a plant transient;

10. The failure to meet 10 CFR 50.59 where an unreviewed safety question is involved, or a conflict with a technical specification, such that a license amendment is required;

11. The failure to perform the required evaluation under 10 CFR 50.59 prior to implementation of the change in those situations in which no unreviewed safety question existed, but an extensive evaluation would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist;

12. Programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) that show a significant lack of attention to detail, whether or not such failures involve an unreviewed safety question, resulting in a current safety or regulatory concern about the

accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met. Application of this example requires weighing factors such as: a) the time period over which the violations occurred and existed, b) the number of failures, c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and d) the potential significance of the failures;

13. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation and as a result, an inadequate decision was made demonstrating a significant regulatory concern; or

14. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with (a) an unreviewed safety question, (b) a conflict with a technical specification, or (c) any other Severity Level III violation.

D. Severity Level IV - Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

(b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. [Reserved]

3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;

4. A failure to make a required Licensee Event Report;

5. Relatively isolated violations of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting 10 CFR 50.59 or 50.71(e);

6. A relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test;

7. A failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented; or

8. A past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met.

E. Minor Violations

A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc., that is being changed, tested, or experimented on.

## SUPPLEMENT II—PART 50 FACILITY CONSTRUCTION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. Severity Level I - Violations involving structures or systems that are

completed<sup>13</sup> in such a manner that they would not have satisfied their intended safety related purpose.

**B. Severity Level II - Violations involving for example:**

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

**C. Severity Level III - Violations involving for example:**

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

**D. Severity Level IV - Violations**

<sup>13</sup> The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

**SUPPLEMENT III-SAFEGUARDS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

**A. Severity Level I - Violations involving for example:**

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity<sup>14</sup> of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM

**B. Severity Level II - Violations involving for example:**

1. The entry of an unauthorized individual<sup>15</sup> who represents a threat into a vital area<sup>16</sup> from outside the protected area;

<sup>14</sup> See 10 CFR 73.2 for the definition of "formula quantity."

<sup>15</sup> The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

<sup>16</sup> The phrase "vital area" as used in this supplement includes vital areas and material access areas.

2. The theft, loss or diversion of SNM of moderate strategic significance<sup>17</sup> in which the security system did not function as required;

3. Actual unauthorized production SNM.

**C. Severity Level III - Violations involving for example:**

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access<sup>18</sup> into a vital area from outside the protected area;

2. A failure to conduct any search the access control point or conducting an inadequate search that resulted in the introduction to the protected area: firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information

<sup>17</sup> See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

<sup>18</sup> In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force;

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access; or

8. A breakdown in the security program involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

**Severity Level IV - Violations involving for example:**

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;

5. A failure to conduct a proper search at the access control point;

6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;

8. A failure to conduct an adequate search at the exit from a material access area;

9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

10. Other violations that have more than minor safeguards significance.

**SUPPLEMENT IV—HEALTH PHYSICS (10 CFR PART 20)**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.<sup>19</sup>

**A. Severity Level I - Violations involving for example:**

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5

<sup>19</sup> Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

**B. Severity Level II - Violations involving for example:**

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the

Commission under Section 20.1301(c));

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

C. Severity Level III - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));

3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. A worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;

5. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

7. A failure to make a 24-hour notification required by 10

CFR 20.2202(b) or an immediate notification required by

10 CFR 20.2201(a)(1)(i);

8. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001-20.2401 whether or not an exposure or release occurs;

9. Disposal of licensed material not covered in Severity Levels I or II;

10. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person;

12. A significant failure to control licensed material; or

13. A breakdown in the radiation safety program involving a number of violations that are related (or, if isolated, that are recurring) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable

environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;

8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or

9. Any other matter that has more than a minor safety, health, or environmental significance.

#### SUPPLEMENT V - TRANSPORTATION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violation in the area of NRC transportation requirements<sup>20</sup>.

A. Severity Level I - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public as there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess

<sup>20</sup> Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

10 times the NRC limit.

**Severity Level II - Violations involving for example:**

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;
2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;
3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or
4. A failure to make required initial notifications associated with Severity Level I or II violations.

**C. Severity Level III - Violations involving for example:**

1. Surface contamination in excess of five but not more than 10 times the NRC limit;
2. External radiation in excess of one but not more than five times the NRC limit;

Any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

- (a) A significant failure to identify the type, quantity, or form of material;
- (b) A failure of the carrier or recipient to exercise adequate controls; or
- (c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;
4. A failure to make required initial notification associated with Severity Level III violations; or
5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed activities.

**D. Severity Level IV - Violations involving for example:**

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;
2. Surface contamination in excess of but not more than five times the NRC limit;
3. A failure to register as an authorized user of an NRC-Certified Transport package;
4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;
5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;
6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or
7. Other violations that have more than minor safety or environmental significance.

**SUPPLEMENT VI—FUEL CYCLE AND MATERIALS OPERATIONS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

**A. Severity Level I - Violations involving for example:**

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;
3. A nuclear criticality accident;
4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;
5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or
6. Significant injury or loss of life due to a loss of control over licensed or certified

activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

**B. Severity Level II - Violations involving for example:**

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event being inoperable;
3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;
4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or
5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF<sub>6</sub> cylinder by unapproved methods).

**C. Severity Level III - Violations involving for example:**

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;
2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;
3. Use of radioactive material on humans where such use is not authorized;
4. Conduct of licensed activities by a technically unqualified or uncertified person;
5. A substantial potential for exposures, radiation levels,

contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

6. Substantial failure to implement the quality management program as required by 10 CFR 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

9. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to

conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of vendors or contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably

available, such that a nuclear criticality accident was possible; or

19. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. Severity Level IV - Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance;

3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but

have been sufficient to result in a criticality.

**SUPPLEMENT VII—MISCELLANEOUS MATTERS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

**A. Severity Level I - Violations involving for example:**

1. Inaccurate or incomplete information<sup>21</sup> that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by or with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by public health and safety considerations;

3. Information that the licensee has identified as having significant implications for public health and safety or the common defense and security ("significant information identified by a licensee") and is deliberately withheld from the Commission;

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to substantially implement the required fitness-for-duty program.<sup>22</sup>

**B. Severity Level II - Violations involving for example:**

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

**C. Severity Level III - Violations involving for example:**

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

4. An action by first-line supervision in violation of 10 CFR 50.7 or similar

<sup>21</sup> In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and Incomplete Information," and to the definition of "licensee official" in Section IV.C.

<sup>22</sup> The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

regulations against an employee;

5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. A failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program;

9. A breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. Severity Level IV - Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10

CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

#### SUPPLEMENT VIII—EMERGENCY PREPAREDNESS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. Severity Level I - Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff.)

B. Severity Level II - Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity Level III - Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification; or

3. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

January 8, 1999

EA 98-541

Mr. Drew Edleman  
Director, Performance Systems  
Engineering and Construction Group  
Power Division  
Morrison Knudsen Corporation  
MK Ferguson Plaza  
1500 West 3<sup>rd</sup> Street  
Cleveland, OH 44113-1406

**SUBJECT: APPARENT VIOLATION OF EMPLOYEE DISCRIMINATION REQUIREMENTS  
(U. S. DEPARTMENT OF LABOR CASE NOS. 97-ERA-34 AND ARB 98-016)  
(NRC OFFICE OF INVESTIGATIONS CASE NO. 3-97-013)**

Dear Mr. Edleman:

This letter is in reference to apparent violations of U.S. Nuclear Regulatory Commission (NRC) requirements prohibiting deliberate misconduct by individuals (10 CFR 50.5) and discrimination by contractors of NRC licensees against their employees who engage in protected activities (10 CFR 50.7). The apparent violation involves managers of the Morrison Knudsen Corporation (MK) discriminating against one of its employees at the MK corporate office in Cleveland, Ohio. At the time of the apparent violation, MK was involved in the replacement of steam generators at the Wisconsin Electric Power Company's (WEPCo) Point Beach nuclear plant.

The apparent violation is based on findings from a U.S. Department of Labor (DOL) proceeding (97-ERA-34). The presiding Administrative Law Judge (ALJ) in the DOL proceeding found, in a Recommended Decision and Order issued on October 28, 1997, that MK's removal of the complainant from his position as group welding engineer (GWE) and his subsequent reassignment to an "inferior job" constituted an adverse employment action. Further, the removal of complainant from the position as GWE within 24 hours after he engaged in protected conduct (his findings concerned weld procedures used by MK at the Point Beach plant) raises the inference as a matter of law that his removal was in retaliation for his protected activities. The DOL ALJ's Recommended Order required MK to reinstate the complainant to the position of GWE at MK's office in Cleveland, OH, and the complainant be given the same compensation, terms, conditions, and privileges as he previously had as GWE. In a Preliminary Order, issued on November 4, 1997, the DOL Administrative Review Board (ARB) (ARB Case No. 98-016) confirmed the findings and order of the DOL ALJ. Subsequently, MK and the individual reached a mutually agreeable settlement to close the issue before DOL. Nevertheless, the NRC must review this matter to determine whether a violation of 10 CFR 50.7 occurred. Copies of the DOL ALJ's Recommended Decision and Order and the DOL ARB's Preliminary Decision are enclosed (Enclosures 1 and 2).

E/22

The NRC Office of Investigations (OI) also investigated this matter (OI Case No. 3-97-013), and reached the same conclusion as DOL. Enclosure 3 is the synopsis of the OI report.

An employee who raises safety concerns at an NRC-licensed facility is considered to have engaged in a protected activity and any retaliatory employment action taken against an employee for such contact is a violation of 10 CFR 50.7, "Employee Protection." Based on the information obtained from the U.S. Department of Labor (*i.e.*, Occupational Safety and Health Administration's investigation report and the Recommended Decision and Order of the Administrative Law Judge), the NRC Office of Investigations, and the investigation conducted for MK by a law firm, violations of NRC requirements may have occurred. Therefore, it appears that your actions may have caused MK to be in violation of 10 CFR 50.7 and you to be in violation of 10 CFR 50.5, "Deliberate Misconduct," and are being considered for escalated enforcement action. The NRC is not issuing a Notice of Violation at this time; you will be advised by separate correspondence of the results of our deliberations on this matter. Also, please be aware that the characterization of the apparent violation described in this letter may change as a result of further NRC review. Copies of 10 CFR 50.5, and 10 CFR 50.7 are enclosed (Enclosures 4 and 5). Also enclosed is a copy of the NRC's "General Statement of Policy and Procedures for NRC Enforcement Actions (Enforcement Policy) (Enclosure 6), which was in effect at the time of the alleged violation.

A transcribed predecisional enforcement conference to discuss this apparent violation with you has been scheduled for January 26, 1999, at 1:00 p.m. (CST) in the NRC Region III office. Since your personal involvement in this matter will be discussed, the conference will be closed to public observation.

The decision to hold an enforcement conference does not mean that the NRC has made a final determination on enforcement action in this case. While the NRC normally relies on OI findings and those of DOL to determine whether a violation occurred, when DOL findings are based on an adjudicatory proceeding, the conference is being held to obtain any additional information that will enable the NRC to make an informed enforcement decision. You are specifically invited to address the factors that the NRC normally considers in determining whether enforcement action should be taken against an individual. These factors are described in Section VIII, "Enforcement Actions Involving Individuals," of the NRC Enforcement Policy. In addition to responding to these factors, should you admit the violation, the NRC requests that you present at the predecisional enforcement conference, why the NRC should be confident that in the future, while engaged in licensed nuclear activities, you will abide by the NRC's regulations and your employer's procedures pertinent to your work. You may additionally provide any information you deem relevant to the NRC in making an enforcement decision.

If the NRC concludes that you engaged in deliberate misconduct, the possible sanctions available to the NRC include issuing to you a Notice of Violation, a civil penalty,<sup>1</sup> or an order. If the NRC issues an order to you, the order may prohibit your future involvement in NRC-licensed activities for a specified period of time.

---

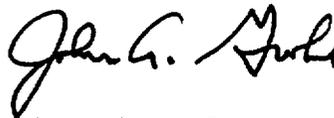
<sup>1</sup> A civil penalty is not normally imposed on unlicensed individuals. See Footnote 10 of the NRC Enforcement Policy.

Please be advised that your cost of transportation to the NRC Region III office in Lisle, Illinois, must be borne by you. Also, you are welcome to have counsel or a personal representative accompany you to an enforcement conference. However, the cost of any such counsel or personal representative and their transportation costs must likewise be borne by you.

The NRC will delay deciding whether to place a copy of this letter and its enclosures into the Public Document Room (PDR) until a final enforcement decision has been made. At that time, in accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter and your written response, should you choose to provide a written reply, with your home address removed, along with a copy of Enclosure 1 may be placed in the PDR.

Should you have any questions about this letter or the predecisional enforcement conference, please contact Charles H. Weil of the NRC Region III Enforcement Staff at toll free telephone number 1-800-522-3025, or (630) 810-4372.

Sincerely,



John A. Grobe, Director  
Division of Reactor Safety

Docket Nos. 50-266; 50-301  
License Nos. DPR-24; DPR-27

- Enclosures:
1. ALJ's Recommended Decision and Order
  2. ARB's Preliminary Order
  3. OI Report Synopsis
  4. 10 CFR 50.5
  5. 10 CFR 50.7
  6. NRC Enforcement Policy

cc w/enclosures: R. R. Edmister, Associate General Counsel  
MK Engineering and Construction Group  
P. Hickey, Esq., Shaw, Pitman

U.S. Department of Labor

OCT 28 1997

Case NO. 97-ERA-34

Office of Administrative Law Judges  
Seven Parkway Center  
Pittsburgh, Pennsylvania 15220



In the Matter of

ALAIN ARTAYET  
Complainant

v.

MORRISON KNUDSEN CORPORATION  
Respondent

Appearances:

Steven D. Bell, Esq.  
Lynn R. Rogozinski, Esq.  
For the Complainant

Keith A. Ashmus, Esq.  
Heather L. Areklett, Esq.  
For the Respondent

BEFORE: DANIEL L. LELAND  
Administrative Law Judge

RECOMMENDED DECISION AND ORDER

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851, which prohibits Nuclear Regulatory Commission Licensees from discharging or otherwise discriminating against an employee who has engaged in activity protected under the Act. Alain Artayet (complainant) filed a complaint under the Act on February 18, 1997, which was investigated by the Occupational Safety and Health Administration and found to be without merit. Complainant made a timely request for a hearing before an administrative law judge, and a hearing was held before the undersigned in Cleveland, Ohio on June 11 and 12, 1997. Complainant's exhibits (CX) 5, 6, 12, 20, 26, 51, 52, and 53, and respondent's exhibits (RX) A-L were admitted into evidence. At the close of the hearing the parties were given sixty days to submit briefs, and the due date for filing briefs was later extended to September 22, 1997. Both parties filed timely briefs.

### Summary of the Evidence

Complainant holds a Bachelor of Science Degree in Welding Engineering from Ohio State University and began working at Morrison Knudsen Corporation (respondent) in June 1988 as a Corporate Welding Engineer, also called Group Welding Engineer (GWE). (TR 33) Respondent is an international engineering and construction company which performs work on nuclear power plants among others. The GWE is located in respondent's Quality Assurance Department. (TR 33) The head of the Quality Assurance Department is Tom Zarges, the Division Executive is Lou Pardi, and the Group Quality Director is Andrew Walcutt, complainant's immediate superior. (TR 35; CX 52) The quality assurance program is required by 10 CFR 50. (TR 34) In 1995, respondent and Duke Engineering Services formed a company called SGT Ltd. which replaces steam generators at nuclear power plants and which has its own quality assurance program. (TR 38; CX 53) The president of SGT Ltd. is Martin Cepkauskas and the Group Quality Director is Andrew Walcutt to whom complainant reported. (TR 39) As GWE, complainant was responsible for oversight of the activities of Project Welding Engineers (PWE) and qualifying welding procedures. (TR 41)

In 1995, SGT Ltd. was awarded a contract to replace two steam generators at the Point Beach Unit Two nuclear power plant in Two Rivers, Wisconsin. (TR 43) The project required a large amount of welding. (TR 44) In May 1996, Max Bingham, the project manager, asked complainant to help develop the welding procedures to be used at Point Beach. (TR 45-46) Bingham wanted complainant to delegate the qualification of the welding procedures at Point Beach to the PWE, Eugene "Rusty" Gorden. (TR 46) Qualification of welding procedures was the function of the GWE. (TR 60-63) Complainant at first refused because he was unfamiliar with Gorden's technical capabilities. (TR 47) Complainant then began the process of qualifying the welds at a site in Memphis, Tennessee in May or June 1996. (TR 49) In July 1996, Bingham again asked complainant to delegate qualification of the welds at Point Beach to Gorden and complainant's refusal to do so angered Bingham. (TR 50-51) Complainant then acquiesced in the delegation of the remaining welds which Gorden accomplished in Chicago. (TR 53)

Complainant emphasizes that the PWE, not the GWE, was responsible for developing the site-specific welding procedures to be used at Point Beach. (TR 55, 65-66; see also CX 51; RX C 1, p. 1; § 9.2.5) The GWE was responsible for submitting generic welding procedures to the PWE who tailored them to the needs at Point Beach. (TR 55) Gorden was supposed to send the site-specific welding procedures to complainant for review but he failed to do so despite complainant's request to see them. (TR 56-57) At the end of October 1996, complainant for the first time reviewed the site-specific welding procedures written by Gorden and found five of them to be unacceptable. (TR 57) On November 6, 1996, complainant sent a fax to Gorden identifying the deficient welding procedures and calling Gorden's attention to the codes of the American Society of Mechanical Engineers. (TR 58-60; CX 6) Gorden, however, ignored complainant's comments. (TR 62) Complainant stated that he informed Walcutt of the problems in the welding procedures for Point Beach but Walcutt felt that as the Hartford Insurance Company audit was coming up on December 30-31, 1996, nothing should be done to correct the problems. (TR 70)

Walcutt denies that complainant informed him of the welding deficiencies at Point Beach or that Walcutt told him to take no action. (TR 247)). Complainant's offer to work with Gorden to remedy the welding problems was also assertedly rejected. (TR 71)

During the week of December 16, 1996, complainant states that Pardi met with him and removed him from nuclear responsibilities for steam generator replacement citing complainant's personality conflicts with Cepkauskas and Bingham. (TR 72) (Pardi denied that this meeting ever took place or that he removed complainant from his supervision of welding at nuclear power plants at this time. (TR 163)) Walcutt asked complainant to prepare for the upcoming Hartford audit and complainant informed him that the audit would reveal deficiencies in the welding procedures at Point Beach. (TR 75-76) The audit was performed on December 30-31, 1996, and on January 6, 1997, Hartford issued a report finding fault with the Point Beach welding procedures. (TR 76-77, 79-80; RX D 1) Upon reading the audit report Walcutt asked complainant to review all the welding procedures for Point Beach. (TR 80) Complainant reviewed the Point Beach welding procedures and wrote an eight page report which he gave to Walcutt on January 14, 1997 who in turn delivered a copy to Pardi and Bingham. (TR 80-81; see CX 12) On the morning of January 15, Walcutt also asked complainant to prepare a report on the welding procedures at the D. C. Cook project. (TR 83-84) Complainant informed Walcutt that there were deficiencies in the D. C. Cook project which were similar to those at Point Beach. (TR 85-86)

Later on the morning of January 15, complainant was summoned to the office of Drew Leman, complainant's administrative superior, who told complainant that he was being removed from the GWE position because of personality conflicts with Cepkauskas and Bingham. (TR 86) After his removal as GWE complainant continued to work on his report on D. C. Cook and submitted a report on the welding deficiencies at that facility on January 22, 1997. (TR 87, 264-267; CX 20) Complainant was transferred to Parkersburg, WV on February 7, 1997 as an area field engineer on the night shift. (TR 88) Since that date, he has been living away from his family in Cleveland and has been unable to participate in his children's school activities. (TR 88) Complainant has incurred approximately \$10,000 in attorney fees in connection with this litigation. (TR 89)

Louis E. Pardi, whose title is executive vice president of respondent's Power Division, testified that he relied on the complainant to be respondent's welding expert in all matters, particularly qualification of welds, development of corporate welding procedures, and solving welding problems that arose on specific sites. (TR 156, 159) He recalled being told that there was friction between complainant and project personnel at Point Beach regarding qualification of welds and specific welding requirements. (TR 159-160) Pardi remembered seeing a memo from the complainant that drop weight testing was not required at Point Beach which is contrary to what he stated about the D. C. Cook project. (TR 161) In his testimony, Cepkauskas also mentioned the friction between complainant and site personnel and the memo regarding drop weight testing and that he informed Pardi of this. (TR 146, 147) Neither Pardi nor Cepkauskas could produce the memo and Pardi admitted that he had not read the memo. (TR 150, 190) After

ing informed of the welding deficiencies found in the Hartford audit, Pardi decided to remove complainant as GWE. (TR 161) As complainant was not in Pardi's chain of command, Pardi told Edleman about the findings in the audit, and after rejecting the idea of relieving complainant only of his jurisdiction over nuclear facilities, they decided to relieve complainant of his duties as GWE. (TR 163-164) The final decision to terminate complainant was made on January 15. (TR 164; see also TR 204-206) Complainant's memorandum regarding Point Beach was considered when the decision was made. (TR 196-197) Pardi averred that the decision to remove the complainant was based on his friction with the project personnel, his determination not to use drop weight testing, and the Hartford audit. (TR 165-166)

Andrew Walcutt is the Group Quality Director for the respondent and was complainant's supervisor. (TR 235-236) He stated that the GWE is responsible for development of the corporate welding program, adherence to the welding codes, providing technical advice to project personnel, and qualification of welding procedures. (TR 236) He recalled a meeting complainant and he had with Gorden in November or December 1995 where an agreement had been reached between complainant and Gorden, but complainant changed his mind the next day. Walcutt told complainant that he should not go back on his word. (TR 237-238) Walcutt also referred to a meeting in July 1996 among Bingham, complainant and himself in which Bingham expressed dissatisfaction with complainant's performance, particularly his delegation of qualifying welds to some one who was not working at Point Beach. (TR 241-242) In the Fall of 1996, Pardi told Walcutt that he had lost confidence in complainant because he failed to recommend drop weight testing. (TR 242-243) Walcutt later found, however, that complainant had not taken this position. (TR 243-244; 281-282) Walcutt also stated that the failure of the welds in Memphis was caused by a discrepancy in testing requirements and was not solely complainant's fault. (TR 244-245) The witness denied that complainant told him that Gorden had failed to respond to his criticisms of the site-specific welds at Point Beach, or that he ordered complainant not to remedy any deficiencies. (TR 247)

Following the Hartford audit, Walcutt instructed complainant to review all the site-specific welding procedures at Point Beach. (TR 250) On January 28, 1995, Walcutt wrote a memo to Tom Zarges (RX D) stating in part that the errors found in the audit could have been prevented by effective communication between the GWE and the PWE. (TR 254) Complainant was not solely responsible for the problems found by the audit and Gorden also contributed to the breakdown in communications. *Id.* Walcutt recommended that Gorden be replaced as PWE. (TR 254-255) The witness was told by complainant that D. C. Cook had similar problems to those at Point Beach, but he did not ask complainant to investigate D. C. Cook. (TR 256) No mention of complainant's review of the D. C. Cook project was made to Pardi, Edleman, or Zarges. (TR 256-257) Walcutt acknowledged that complainant's reassignment to Parkersburg occurred after he wrote the memo about D. C. Cook, but he denies that there was any connection. (TR 261, 265, 266-267)

Gorden developed the site specific welding procedures for Point Beach and in so doing he changed the corporate welding procedures, which was a violation of respondent's quality

urance program. (TR 270-272) Walcutt told Pardi and Cepkauskas that the problems in Point Beach's welding procedures identified by complainant were not his fault. (TR 274) Complainant always performed competently and professionally as a welding engineer, but had problems communicating. (TR 275) The only valid reason to remove complainant from his position was his failure to communicate with the project team. (TR 294) This problem was not mentioned, however, in complainant's evaluation in December 1996. (See RX G; see also TR 231-232)

Findings of Fact and Conclusions of Law

42 U.S.C. § 5851 provides that:

- (1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee...
  - (A) notified his employer of an alleged violation of this chapter or the Atomic Energy Act of 1954;
  - (B) refused to engage in any practice made unlawful by this chapter or the Atomic Energy Act of 1954, if the employee has identified the alleged illegality to the employer;
  - (C) testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of this chapter or the Atomic Energy Act of 1954;
  - (D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, ... or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;
  - (E) testified or is about to testify in any such proceeding or;
  - (F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purpose of the Atomic Energy Act of 1954, as amended.

To establish a prima facie case of discrimination under § 5851, the complainant must show: (1) his employer is subject to the Act; (2) the complainant engaged in protected activity; (3) the complainant was subject to adverse employment action; (4) his employer was aware of the protected activity when it took the adverse action, and (5) an inference that the protected activity was the likely reason for the adverse employment action. *Zinn v. University of Missouri*, 93-ERA- 34 and 36 (Sec'y, January 18, 1996). See also *Carroll v. U. S. Dept. of Labor*, 78 F. 3d

(8<sup>th</sup> Cir. 1996): If the complainant proves a prima facie case, the burden of production shifts to the employer to articulate a legitimate nondiscriminatory reason for the adverse action. *Carroll*, 78 F. 3d at 356. Where the employer articulates a legitimate nondiscriminatory reason for the adverse action, the complainant has the ultimate burden of persuading that the reasons articulated by his employer were pretextual, either by showing that the unlawful reason more likely motivated the employer or by showing that the proffered explanation is unworthy of credence. *Nichols v. Bechtel Construction Co.*, 87-ERA-44 (Sec'y, October 26, 1992), *Carroll*, *supra*, *Kahn v. U. S. Secretary of Labor*, 64 F. 3d 271, 278 (7<sup>th</sup> Cir. 1995).

Complainant alleges three separate adverse employment actions taken as a result of his protected activity: (1) his removal from jurisdiction over nuclear power plants in December 1996 as a result of his finding of welding deficiencies at Point Beach, (2) his removal as GWE on January 15, 1997 resulting from his January 14, 1997 report on the Point Beach welding problems, and (3) his reassignment to Parkersburg, WV following his report on the flaws in the welding procedures at D. C. Cook. It is necessary to determine if complainant has made a prima facie case as to each of these incidents.

Respondent concedes that is subject to the Act. Moreover, complainant's performance of quality assurance functions constitutes protected activity under the Act. See *Mackowiak v. University Nuclear Systems, Inc.*, 735 F. 2d 1159, 1163 (9<sup>th</sup> Cir. 1984), *Bassett v. Niagara Mohawk Power Co.*, 86-ERA-2 (Sec'y, July 9, 1986). With regard to the first allegation of retaliation, Pardi denied that a meeting with complainant took place in December 1996 in which he removed him from his nuclear responsibilities and his version is supported by the testimony of Edleman and Walcutt. Assuming that Pardi did remove complainant from jurisdiction over nuclear power plants and that this constitutes adverse employment action, the evidence is not persuasive that Pardi knew about complainant's protected activity prior to the meeting and that his removal was in retaliation for his protected activity. I reach the same conclusion regarding complainant's report on the D. C. Cook project. Walcutt credibly testified that he never told Zarges, Pardi, or Edleman of complainant's report on the welding deficiencies at D. C. Cook, and therefore, his reassignment to Parkersburg could not have been in retaliation for his report. Therefore, complainant has failed to make out a prima facie case with regard to these two incidents.

I reach a different conclusion with regard to complainant's removal as GWE and subsequent reassignment to Parkersburg. Respondent argues that Pardi and Edleman had already decided to replace complainant as GWE before they were aware that he drafted the report on the Point Beach welding deficiencies on January 14, but I do not find Pardi's testimony to be credible on this point. Furthermore, the adverse employment action, i.e., complainant's actual removal from his position as GWE, did not take place until January 15, one day after Pardi was given the report on Point Beach. Therefore, I find that respondent was aware of complainant's protected activity when he was replaced as GWE. Respondent also maintains that complainant's removal as GWE and reassignment to a different position in Parkersburg was not an adverse employment action because he was not discharged and there was no decrease in pay. However, complainant's

v position in Parkersburg as an area field engineer does not have the corporate responsibilities involved in his prior position as GWE and is clearly less prestigious. See *DeFord v. Secretary of Labor*, 700 F. 2d 281, 287 (6<sup>th</sup> Cir. 1983). See also *McMahan v. California Water Quality Control Board, San Diego Region*, 90-WPC-1 (Sec'y, July 16, 1993), in which it was held that a transfer was an adverse action in that it prevented the complainant from performing supervisory duties and field enforcement which he preferred. Respondent also argues that "relocation is a way of life" at Morrison Knudsen and that respondent maintains facilities much further from Cleveland than Parkersburg to which complainant could have been reassigned. The fact that complainant could have been sent to more remote locations has no significance, however, as complainant's reassignment from Cleveland to Parkersburg has clearly inconvenienced him and separated him from his home and family in Cleveland. I therefore conclude that complainant's removal as GWE and his subsequent reassignment to an inferior job in Parkersburg constitute adverse employment action. Finally, complainant's removal from the position as GWE within twenty four hours after he engaged in protected conduct raises the inference as a matter of law that his removal was in retaliation for his protected activity. *Couty v. Dole*, 886 F. 2d 147, 148 (8<sup>th</sup> Cir. 1989). Complainant has therefore made out a prima facie case.

Respondent has cited as the reasons for complainant's removal and reassignment his overall performance as GWE, more specifically his recommendation that drop weight testing not be used, the deficiencies found in the Hartford audit, and his friction with on-site personnel. Complainant therefore has the burden of proving that these reasons are pretextual. *Kahn*, 64 F. at 278.

The drop weight testing excuse clearly lacks credibility. Pardi testified of seeing a memo shown to him by Cepkauskas regarding the drop weight testing but could not recall the content of the memo. Cepkauskas was unable to produce the memo. Walcutt testified that complainant had never recommended that drop weight testing not be used thereby indicating that Pardi's asserted loss of confidence in complainant was based on an erroneous premise. Pardi also blamed the welding defects noted in the Hartford audit on complainant, but Walcutt, who has far more technical knowledge than Pardi regarding the welding requirements, stated that Gorden was responsible for these errors as it was his obligation to develop the site-specific welding procedures. Gorden actually changed the corporate welding procedures complainant had sent him in violation of the respondent's quality assurance program. When complainant discovered the unacceptable welding specifications devised by Gorden, he informed him of the deficiencies and tried without success to have Gorden remedy them. Moreover, Walcutt informed Pardi that the deficiencies cited in the audit were not complainant's fault, which indicates that Pardi knew that complainant was not to blame and removed him anyway. Walcutt stated that complainant always acted in a competent and professional manner as a welding engineer. Thus the first two articulated reasons for removing complainant are clearly pretextual.

Walcutt asserted that the only valid reason for removing complainant as GWE was his failure to communicate with project personnel. Initially, I find it difficult to accept that complainant would be relieved of his duties for this relatively insignificant reason. There is

tainly no evidence in the record that this so called "friction" with on site personnel was so persistent or egregious that it affected the efficiency of respondent's construction work. It would also appear that the cause of much of the "friction" was complainant's insistence on not delegating the qualification of the welds to Gordon, whose competence he questioned, apparently with good reason. Some of the "friction" also resulted from complainant's strict adherence to the standards in respondent's quality assurance program and the natural tension that may have taken place with the project personnel who were attempting to adhere to precise schedules. As the court in *Mackowiak* observed, "contractors regulated by § 5851 may not discharge quality control inspectors because they do their job too well." *Mackowiak*, 735 F. 2d at 1163. Finally, I note that Walcutt did not discuss complainant's communication problems in the performance evaluation completed in December 1996 only twenty-three days before he was removed as GWE allegedly for this reason. If complainant's failure to communicate had been such a serious problem, it would have been cited in his performance appraisal. Therefore, I conclude that this purported reason was also pretextual.

As complainant has made out a prima facie case and proven that respondent's purported reasons for the adverse employment action were pretextual, I conclude that respondent has violated § 5851. Complainant is therefore entitled to reinstatement to his position as GWE and reimbursement for attorney fees.

Recommended Order

Morrison Knudsen Corporation is ORDERED to:

- (1) Reinstatement complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio and to the same compensation, terms, conditions, and privileges of employment he previously had, and
- (2) Reimburse complainant for the reasonable cost of attorney fees he has expended in pursuing his complaint.

Within thirty (30) days of the date of this decision and order, complainant's counsel shall submit a fully supported fee application detailing his hourly fee, the number of hours expended on this proceeding, and any associated litigation expenses. Respondent will have fifteen (15) days to respond with any objections.



**DANIEL L. LELAND**  
Administrative Law Judge

**NOTICE:** This Recommended Decision and Order and the administrative file in this matter will be forwarded for final decision to the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, DC 20210. The Administrative Review Board was delegated jurisdiction by Secretary Order dated April 17, 1996, to issue final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. See 61 Fed. Reg. 19978 and 19982 (1996).

SERVICE SHEET

Case Name: ALAN ARTAYET  
Case Number: 97-ERA-034  
Title of Document: RECOMMENDED DECISION AND ORDER

I hereby certify that on OCT 28 1997 a copy of the above-entitled document was mailed to the following parties:

  
LAURA ANN BROWN  
Legal Technician

UNITED PARCEL SERVICE

Administrative Review Board  
United States Department of Labor  
Room S-4309, Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, DC 20210

CERTIFIED MAIL

Steven Bell, Esq.  
Lynn R. Rogozinski, Esq.  
Ulmer & Berne, L.L.P.  
Bond Court Building  
1300 East Ninth Street, Suite 900  
Cleveland, OH 44114-1583

Keith A. Ashmus, Esq.  
Heather L. Areklett, Esq.  
Thompson Hine & Flory, P.L.L.  
3900 Key Center  
127 Public Square  
Cleveland, OH 44114-1216

REGULAR MAIL

Associate Regional Solicitor  
Federal Building  
1240 East 9<sup>th</sup> Street, Room 881  
Cleveland, OH 44199

REGULAR MAIL

Administrator, ESA  
Wage and Hour Division, US DOL  
Room S-3502, FPB  
200 Constitution Avenue, NW  
Washington, DC 20210

Rob Medlock, Area Director  
OSHA, Cleveland Area Office  
AJC Federal Office Building  
1240 East 9<sup>th</sup> Street, Room 899  
Cleveland, OH 44199

Barry J. Harber, District Director  
U.S. Department of Labor  
AJC Federal Office Building  
1240 East Ninth Street, Room 817  
Cleveland, OH 44199

Deputy Associate Solicitor  
Division of Fair Labor Standards  
Office of the Solicitor  
U.S. DOL, Room N-2716  
200 Constitution Avenue, NW  
Washington, DC 20210



In the Matter of:

**ALAIN ARTAYET,**

**ARB CASE NO. 98-016**

**COMPLAINANT,**

**(ALJ CASE NO. 97-ERA-34)**

**v.**

**DATE: NOV 4 1997**

**MORRISON KNUDSEN CORPORATION,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**NOTICE OF REVIEW  
AND  
ORDER ESTABLISHING BRIEFING SCHEDULE  
AND  
PRELIMINARY ORDER**

The Recommended Decision and Order (R. D. and O.) issued on October 28, 1997 by the Administrative Law Judge (ALJ) has been transmitted to the Board for review. The following briefing schedule is established in this case. Respondent may file an initial brief, not to exceed 30 double spaced typed pages, on or before December 3, 1997. Complainant may file a reply brief, not to exceed 30 double spaced typed pages, on or before January 2, 1998. Respondent may file a rebuttal brief, exclusively responsive to the reply brief and not to exceed 10 double spaced typed pages, on or before January 20, 1998.

All pleadings are expected to conform to the page limitations and should be prepared in Courier 12 point, 10 character-per-inch type or larger, with minimum one inch left and right margins and minimum 1¼ inch top and bottom margins, printed on 8½ by 11 inch paper.

An original and four copies of all pleadings and briefs shall be filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4309, Washington, D.C., 20210 (Telephone Number, 202-219-4728; Facsimile Number 202-210-0215)

**PRELIMINARY ORDER**

As noted, on October 28, 1997, the ALJ issued the R. D. and O. in this case arising under the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (Supp. IV 1992), as amended by the Comprehensive National Energy Policy Act of 1992 (CNEPA), Pub. L. No. 102-486, 106 Stat. 2776, 3123. The ALJ found that Respondent had violated § 5851 and that Complainant is entitled to both reinstatement to his former position and reimbursement for attorney fees..

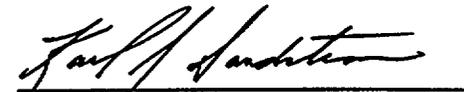
The following preliminary order is hereby entered:

Respondent shall reinstate Complainant to the position of Group Welding Engineer at its office in Cleveland, Ohio at the same compensation, terms, conditions, and privileges of employment which Complainant had previously enjoyed, and

Following the procedures described in the ALJ's R. D. and O., Respondent shall reimburse Complainant for reasonable attorney fees and costs which were expended in the pursuit of this complaint.

**SO ORDERED.**

  
\_\_\_\_\_  
**DAVID A O'BRIEN**  
Chair

  
\_\_\_\_\_  
**KARL J. SANDSTROM**  
Member

  
\_\_\_\_\_  
**JOYCE D. MILLER**  
Alternate Member

## SYNOPSIS

This investigation was initiated on March 13, 1997, by the U.S. Nuclear Regulatory Commission, Office of Investigations, Region III, to determine if the former Corporate Welding Engineer (CWE) for Morrison Knudsen Corporation had been discriminated against for raising safety concerns.

Based on the evidence developed during the investigation, it is concluded that there is sufficient evidence to substantiate the alleged employment discrimination against the former CWE.

**§ 50.5 Deliberate misconduct.**

(a) Any licensee or any employee of a licensee; and any contractor (including a supplier or consultant), subcontractor, or any employee of a contractor or subcontractor, of any licensee, who knowingly provides to any licensee, contractor, or subcontractor, components, equipment, materials, or other goods or services, that relate to a licensee's activities subject to this part; may not:

(1) Engage in deliberate misconduct that causes or, but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission, or

(2) Deliberately submit to the NRC, a licensee, or a licensee's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(c) For purposes of paragraph (a)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation, of any license issued by the Commission, or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, contractor, or subcontractor.

56 FR 40664

56 FR 40664

**§ 50.7 Employee protection.**

(a) Discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act or the Energy Reorganization Act.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of the section or possible violations requirements imposed under either of these statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text.

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

(1) Denial, revocation, or suspension of the license.

(2) Imposition of a civil penalty on the licensee or applicant.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(c)(1) Each licensee and each applicant for a license shall prominently post the revision of NRC Form 3, "Notice to Employees," referenced in 10 CFR 19.11(c). This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to Part 20 of this chapter or by calling the NRC Information and Records Management Branch at (301) 415-7230.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential

58 FR 52406

59 FR 52406

61 FR 6762

61 FR 6762

58 FR 52406

# U.S. NUCLEAR REGULATORY COMMISSION

## Enforcement Policy Statement

This document compiles the "General Statement of Policy and Procedures for NRC Enforcement Actions," (Enforcement Policy), NUREG-1600, published June 30, 1995, and the various amendments to the Enforcement Policy approved by the Commission through September 10, 1997. It is the staff's intent to republish NUREG-1600 later this year. Pending that republication, the Office of Enforcement is issuing this interim compilation of all amendments to the Policy since it was last published. This document is also accessible on the Internet at: [www.nrc.gov/OE](http://www.nrc.gov/OE).

The amendments to the Policy were published in the Federal Register as follows:

<u>Subject:</u>	<u>Federal Register</u>	<u>Date</u>
Adjustment of Civil Monetary Penalties	61FR53553	10/11/96
Departures from FSAR	61FR54461	10/18/96
Commission consultation, Open Enforcement Conferences; risk; NCVs	61FR65088	12/10/96
Part 20, Exceedance of dose constraints	61FR65128	12/10/96
Correction as to exercise of discretion	61FR68070	12/26/96
Gaseous Diffusion Plants; NRC organizational changes; Commission consultation	62FR06677	02/12/97
Participation in enforcement conferences involving discrimination	62FR13906	03/24/97
Part 34, Radiography, examples of potential violations	62FR28974	05/28/97
Corrections to Part 34 examples	62FR33447	06/19/97
Enforcement conference clarification	62FR52577	10/08/97

The Enforcement Policy is a general statement of policy explaining the NRC's policies and procedures in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This policy statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment. This statement of general policy and procedures is published to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

Questions concerning the Enforcement Policy should be directed to the NRC's Office of Enforcement at (301) 415-2741.

James Lieberman, Director  
Office of Enforcement

# Compilation of NRC Enforcement Policy as of September 10, 1997

## GENERAL STATEMENT OF POLICY PROCEDURE FOR NRC ENFORCEMENT ACTIONS

Table of Contents

Preface

- I. INTRODUCTION AND PURPOSE
- II. STATUTORY AUTHORITY
  - A. Statutory Authority
  - B. Procedural Framework
- III. RESPONSIBILITIES
- IV. SEVERITY OF VIOLATIONS
  - A. Aggregation of Violations
  - B. Repetitive Violations
  - C. Willful Violations
  - D. Violations of Reporting Requirements
- V. PREDECISIONAL ENFORCEMENT CONFERENCES
- VI. ENFORCEMENT ACTIONS
  - A. Notice of Violation
  - B. Civil Penalty
    - 1. Base Civil Penalty
    - 2. Civil Penalty Assessment
      - a. Initial Escalated Action
      - b. Credit for Actions Related to Identification
        - Credit for Prompt and Comprehensive Corrective Action
  - C. Orders
  - D. Related Administrative Actions
- VII. EXERCISE OF DISCRETION
  - A. Escalation of Enforcement Sanctions
    - 1. Civil Penalties
    - 2. Orders
    - 3. Daily Civil Penalties
  - B. Mitigation of Enforcement Sanctions
    - 1. Licensee-Identified Severity Level IV Violations
    - 2. Violations Identified During Extended Shutdowns or Work Stoppages
    - 3. Violations Involving Old Design Issues
    - 4. Violations Identified Due to Previous Escalated Enforcement Action
    - 5. Violations Involving Discrimination
    - 6. Violations Involving Special Circumstances
  - C. Exercise of Discretion for an Operating Facility
- VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS
- IX. INACCURATE AND INCOMPLETE INFORMATION
- X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

- XI. REFERRALS TO THE DEPARTMENT OF JUSTICE
- XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS
- XIII. REOPENING CLOSED ENFORCEMENT ACTIONS SUPPLEMENTS

## PREFACE

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission (NRC or Commission) and the NRC staff (staff) in initiating enforcement actions, and of the presiding officers and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment.<sup>1</sup> This statement of general policy and procedure will be published as NUREG-1600 to provide widespread dissemination of the Commission's Enforcement Policy. However, this is a policy statement and not a regulation. The Commission may deviate from this statement of policy and procedure as appropriate under the circumstances of a particular case.

## I. INTRODUCTION AND PURPOSE

The purpose of the NRC enforcement program is to support the NRC's overall safety mission in protecting the public and the environment. Consistent with that purpose, enforcement action should be used:

- As a deterrent to emphasize the importance of compliance with requirements, and
- To encourage prompt identification and prompt, comprehensive correction of violations.

<sup>1</sup> Antitrust enforcement matters will be dealt with on a case-by-case basis.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees, vendors<sup>2</sup>, contractors, and their employees, who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects.<sup>3</sup> Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of this enforcement policy. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

## II. STATUTORY AUTHORITY AND PROCEDURAL FRAMEWORK

### A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

<sup>2</sup> The term "vendor" as used in this policy means a supplier of products or services to be used in an NRC-licensed facility or activity.

<sup>3</sup> This policy primarily addresses the activities of NRC licensees and applicants for NRC licenses. Therefore, the term "licensee" is used throughout the policy. However, in those cases where the NRC determines that it is appropriate to take enforcement action against a non-licensee or individual, the guidance in this policy will be used, as applicable. Specific guidance regarding enforcement action against individuals and non-licensees is addressed in Sections VIII and X, respectively.

Section 161 of the Atomic Energy Act authorizes the NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes the NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes the NRC to impose civil penalties not to exceed \$100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes the NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes the NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Notwithstanding the \$100,000 limit stated in the Atomic Energy Act, the Commission may impose higher civil penalties as provided by the Debt Collection Improvement Act of 1996. Under the Act, the Commission is required to modify civil monetary penalties to reflect inflation. The adjusted maximum civil penalty amount is reflected in 10 CFR 2.205 and this Policy Statement.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of

the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

### *B. Procedural Framework*

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the civil penalty process is initiated by issuing a Notice of Violation and Proposed Imposition of a Civil Penalty. The licensee or other person is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the response, the civil penalty may be mitigated, remitted, or imposed. An opportunity is provided for a hearing if a civil penalty is imposed. If a civil penalty is not paid following a hearing or if a hearing is not requested, the matter may be referred to the U.S. Department of Justice to institute a civil action in District Court.

The procedure for issuing an order to institute a proceeding to modify, suspend, or revoke a license or to take other action against a licensee or other person subject to the jurisdiction of the Commission is set forth in 10 CFR 2.202. The licensee or any other person adversely affected by the

order may request a hearing. The NRC is authorized to make orders immediately effective if required to protect the public health, safety, or interest, or if the violation is willful. Section 2.204 sets out the procedures for issuing a Demand for Information (Demand) to a licensee or other person subject to the Commission's jurisdiction for the purpose of determining whether an order or other enforcement action should be issued. The Demand does not provide hearing rights, as only information is being sought. A licensee must answer a Demand. An unlicensed person may answer a Demand by either providing the requested information or explaining why the Demand should not have been issued.

### III. RESPONSIBILITIES

The Executive Director for Operations (EDO) and the principal enforcement officer of the NRC, the Deputy Executive Director for Regulatory Effectiveness, hereafter referred to as the Deputy Executive Director, has been delegated the authority to approve or issue all escalated enforcement actions.<sup>4</sup> The Deputy Executive Director is responsible to the EDO for the NRC enforcement program. The Office of Enforcement (OE) exercises oversight of and implements the NRC enforcement program. The Director, OE, acts for the Deputy Executive Director in enforcement matters in his absence or as delegated.

Subject to the oversight and direction of OE, and with the approval of the Deputy Executive Director, where

---

<sup>4</sup> The term "escalated enforcement action" as used in this policy means a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem) or any order based upon a violation.

necessary, the regional offices normally issue Notices of Violation and proposed civil penalties. However, subject to the same oversight as the regional offices, the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) may also issue Notices of Violation and proposed civil penalties for certain activities. Enforcement orders are normally issued by the Deputy Executive Director or the Director, OE. However, orders may also be issued by the EDO, especially those involving the more significant matters. The Directors of NRR and NMSS have also been delegated authority to issue orders, but it is expected that normal use of this authority by NRR and NMSS will be confined to actions not associated with compliance issues. The Director, Office of the Controller, has been delegated the authority to issue orders where licensees violate Commission regulations by payment of license and inspection

... recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, judgment and discretion must be exercised in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to issue a Notice of Violation, or to propose or impose a civil penalty and the amount of this penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, "Exercise of Enforcement Discretion."

The Commission will be provided written notification of all enforcement actions involving civil penalties or

The Commission will also be

provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation;

(2) Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any action the EDO believes warrants Commission involvement;

(5) Any proposed enforcement case involving an Office of Investigations (OI) report where the NRC staff (other than the OI staff) does not arrive at the same conclusions as those in the OI report concerning issues of intent if the Director of OI concludes that Commission consultation is warranted; and

(6) Any proposed enforcement action on which the Commission asks to be consulted.

#### IV. SEVERITY OF VIOLATIONS

Regulatory requirements<sup>5</sup> have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process.

<sup>5</sup> The term "requirement" as used in this policy means a legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

In considering the significance of a violation, the staff considers the technical significance, i.e., actual and potential consequences, and the regulatory significance. In evaluating the technical significance, risk is an appropriate consideration.

Consequently, for purposes of formal enforcement action, violations are normally categorized in terms of four levels of severity to show their relative importance within each of the following eight activity areas:

- I. Reactor Operations;
- II. Facility Construction;
- III. Safeguards;
- IV. Health Physics;
- V. Transportation;
- VI. Fuel Cycle and Materials Operations;
- VII. Miscellaneous Matters; and
- VIII. Emergency Preparedness.

Licensed activities will be placed in the activity area most suitable in light of the particular violation involved including activities not directly covered by one of the above listed areas, e.g., export license activities. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level IV violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant regulatory concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

The Commission recognizes that there are other violations of minor safety or environmental concern which are below the level of significance of Severity Level IV violations. These minor violations are not the subject of formal enforcement action and are not

usually described in inspection reports. The extent such violations are described, they are noted as Non-Cited Violations.<sup>6</sup>

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Facility Construction.

Supplements I through VIII provide examples and serve as guidance in determining the appropriate severity level for violations in each of the eight activity areas. However, the examples are neither exhaustive nor controlling. In addition, these examples do not create new requirements. Each is designed to illustrate the significance that the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of a regulatory requirement.

The NRC reviews each case being considered for enforcement action on its own merits to ensure that the severity of a violation is characterized at the level best suited to the significance of the particular violation. In some cases, special circumstances may warrant an adjustment to the severity level categorization.

#### A. Aggregation of Violations

A group of Severity Level IV violations may be evaluated in the aggregate and assigned a single, increased severity level, thereby resulting in a Severity Level III problem, if the violations have the same underlying cause or programmatic deficiencies, or the violations

<sup>6</sup> A Non-Cited Violation (NCV) is a violation that has not been formalized into a 10 CFR 2.201 Notice of Violation.

contributed to or were unavoidable consequences of the underlying problem. Normally, Severity Level II and III violations are not aggregated into a higher severity level.

The purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may therefore, warrant a more substantial enforcement action.

#### B. Repetitive Violations

The severity level of a Severity Level IV violation may be increased to Severity Level III, if the violation can be considered a repetitive violation.<sup>7</sup> The purpose of escalating the severity level of a repetitive violation is to acknowledge the added significance of the situation based on the licensee's failure to implement effective corrective action for the previous violation. The decision to escalate the severity level of a repetitive violation will depend on the circumstances, such as, but not limited to, the number of times the violation has occurred, the similarity of the violations and their root causes, the adequacy of previous corrective actions, the period of time between the violations, and the significance of the violations.

#### C. Willful Violations

Willful violations are by definition of particular concern to the Commission because its regulatory program is based on

<sup>7</sup> The term "repetitive violation" or "similar violation" as used in this policy statement means a violation that reasonably could have been prevented by a licensee's corrective action for a previous violation normally occurring (1) within the past 2 years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer.

licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Licensees are expected to take significant remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Although removal of the person is not necessarily required, substantial disciplinary action is expected.

Therefore, the severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official<sup>8</sup>

<sup>8</sup> The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's

non-supervisory employee), the significance of any underlying violation, intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be categorized at least at a Severity Level IV.

#### D. Violations of Reporting Requirements

The NRC expects licensees to provide complete, accurate, and timely information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event that it failed to report. A licensee will, on the other hand, normally be cited for a failure to report a condition or event if the licensee knew of the information to be reported, but did not recognize that it was required to make a report.

#### V. PREDECISIONAL ENFORCEMENT CONFERENCES

organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the handling of licensed material.

Whenever the NRC has learned of the existence of a potential violation for which escalated enforcement action appears to be warranted, or recurring nonconformance on the part of a vendor, the NRC may provide an opportunity for a predecisional enforcement conference with the licensee, vendor, or other person before taking enforcement action. The purpose of the conference is to obtain information that will assist the NRC in determining the appropriate enforcement action, such as: (1) a common understanding of facts, root causes and missed opportunities associated with the apparent violations, (2) a common understanding of corrective actions taken or planned, and (3) a common understanding of the significance of issues and the need for lasting comprehensive corrective action.

If the NRC concludes that it has sufficient information to make an informed enforcement decision, a conference will not normally be held unless the licensee requests it. However, an opportunity for a conference will normally be provided before issuing an order based on a violation of the rule on Deliberate Misconduct or a civil penalty to an unlicensed person. If a conference is not held, the licensee will normally be requested to provide a written response to an inspection report, if issued, as to the licensee's views on the apparent violations and their root causes and a description of planned or implemented corrective actions.

During the predecisional enforcement conference, the licensee, vendor, or other persons will be given an opportunity to provide information consistent with the purpose of the conference, including an explanation to the NRC of the immediate corrective actions (if any) that were taken following identification of the potential violation or nonconformance and the long-term comprehensive actions that were taken or will be taken to prevent recurrence. Licensees, vendors, or other persons will be told when a meeting is a predecisional enforcement conference.

A predecisional enforcement conference is a meeting between the NRC and the licensee. Conferences are normally held in

the regional offices and are normally open to public observation. Conferences will not normally be open to the public if the enforcement action being contemplated:

- (1) Would be taken against an individual, or if the action, though not taken against an individual, turns on whether an individual has committed wrongdoing;
- (2) Involves significant personnel failures where the NRC has requested that the individual(s) involved be present at the conference;
- (3) Is based on the findings of an NRC Office of Investigations report that has not been publicly disclosed; or
- (4) Involves safeguards information, Privacy Act information, or information which could be considered proprietary;

In addition, conferences will not normally be open to the public if:

- (5) The conference involves medical misadministrations or overexposures and the conference cannot be conducted without disclosing the exposed individual's name; or
- (6) The conference will be conducted by telephone or the conference will be conducted at a relatively small licensee's facility.

Notwithstanding meeting any of these criteria, a conference may still be open if the conference involves issues related to an ongoing adjudicatory proceeding with one or more intervenors or where the evidentiary basis for the conference is a matter of public record, such as an adjudicatory decision by the Department of Labor. In addition, notwithstanding the above normal criteria for opening or closing conferences, with the approval of the Executive Director for Operations, conferences may either be open or closed to the public after balancing the benefit of the public's observation against the potential impact on the agency's decision-making process in a particular case.

The NRC will notify the licensee that

the conference will be open to public observation. Consistent with the Agency's policy on open meetings, "Staff Meetings Open to Public," published September 20, 1994 (59 FR 48340), the NRC intends to announce open conferences normally at least 10 working days in advance of conferences through (1) notices posted in the Public Document Room, (2) a toll-free telephone recording at 800-952-9674, (3) a toll-free electronic bulletin board at 800-952-9676, and on the World Wide Web at the NRC Office of Enforcement homepage ([www.nrc.gov/OE](http://www.nrc.gov/OE)). In addition, the NRC will also issue a press release and notify appropriate State liaison officers that a predecisional enforcement conference has been scheduled and that it is open to public observation.

The public attending open conferences may observe but may not participate in the conference. It is noted that the purpose of conducting open conferences is not to maximize public attendance, rather to provide the public with opportunities to be informed of NRC activities consistent with the NRC's ability to exercise its regulatory and safety responsibilities. Therefore, members of the public will be allowed access to the NRC regional offices to attend open enforcement conferences in accordance with the "Standard Operating Procedures for Providing Security Support For NRC Hearings and Meetings," published November 1, 1991 (56 FR 56251). These procedures provide that visitors may be subject to personnel screening, that signs, banners, posters, etc., not larger than 18" be permitted, and that disruptive persons may be removed. The open conference will be terminated if disruption interferes with a successful conference. NRC's Predecisional Enforcement Conferences (whether open or closed) normally will be held at the NRC's regional offices or in NRC Headquarters Offices and not in the vicinity of the licensee's facility.

For a case in which an NRC Office of Investigations (OI) report finds that discrimination as defined under 10 CFR 50.7 (or similar provisions in Parts 30, 40, 60, 70, or 72) has occurred, the OI report may be made public, subject to withholding certain information (i.e., after appropriate redaction), in which case the associated predecisional enforcement conference will normally be open to public observation. In a conference where a particular individual is being considered potentially responsible for the discrimination, the conference will remain closed. In either case (i.e., whether the conference is open or closed), the employee or former employee who was the subject of the alleged discrimination (hereafter referred to as "complainant") will normally be provided an opportunity to participate in the predecisional enforcement conference with the licensee/employer. This participation will normally be in the form of a complainant statement and comment on the licensee's presentation, followed in turn by an opportunity for the licensee to respond to the complainant's presentation. In cases where the complainant is unable to attend in person, arrangements will be made for the complainant's participation by telephone or an opportunity given for the complainant to submit a written response to the licensee's presentation. If the licensee chooses to forego an enforcement conference and, instead, responds to the NRC's findings in writing, the complainant will be provided the opportunity to submit written comments on the licensee's response. For cases involving potential discrimination by a contractor or vendor to the licensee, any associated predecisional enforcement conference with the contractor or vendor would be handled similarly. These arrangements for complainant participation in the predecisional enforcement conference are not to be conducted or viewed in any respect as an adjudicatory hearing. The purpose of the complainant's participation is to provide information to the NRC to assist it in its enforcement deliberations.

A predecisional enforcement conference may not need to be held in cases where

there is a full adjudicatory record before the Department of Labor. If a conference is held in such cases, generally the conference will focus on the licensee's corrective action. As with discrimination cases based on OI investigations, the complainant may be allowed to participate.

Members of the public attending open conferences will be reminded that (1) the apparent violations discussed at predecisional enforcement conferences are subject to further review and may be subject to change prior to any resulting enforcement action and (2) the statements of views or expressions of opinion made by NRC employees at predecisional enforcement conferences, or the lack thereof, are not intended to represent final determinations or beliefs.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order, will be taken before the conference. In these cases, a conference may be held after the escalated enforcement action is taken.

## VI. ENFORCEMENT ACTIONS

This section describes the enforcement sanctions available to the NRC and specifies the conditions under which each may be used. The basic enforcement sanctions are Notices of Violation, civil penalties, and orders of various types. As discussed further in Section VI.D, related administrative actions such as Notices of Nonconformance, Notices of Deviation, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information are used to supplement the enforcement program. In selecting the enforcement sanctions or administrative actions, the NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurrent jurisdiction,

as in transportation matters.

Usually, whenever a violation of NRC requirements of more than a minor concern is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, a Notice of Violation or a Notice of Nonconformance is the normal action.

#### A. Notice of Violation

A Notice of Violation is a written notice setting forth one or more violations of a legally binding requirement. The Notice of Violation normally requires the recipient to provide a written statement describing (1) the reasons for the violation or, if contested, the basis for disputing the violation; (2) corrective steps that have been taken and the results achieved; (3) corrective steps that will be taken to prevent recurrence; and (4) the date when full compliance will be achieved.

The NRC may waive all or portions of a licensee's response to the extent relevant information has already been provided to the NRC in writing or documented in an NRC inspection report. The NRC may require responses to Notices of Violation to be under oath. Normally, responses under oath will be required only in connection with Severity Level I, II, or III violations or orders.

The NRC uses the Notice of Violation as the usual method for formalizing the existence of a violation. Issuance of a Notice of Violation is normally the only enforcement action taken, except in cases where the criteria for issuance of civil penalties and orders, as set forth in Sections VI.B and VI.C, respectively, are met. However, special circumstances regarding the violation findings may warrant discretion being exercised such that the NRC refrains from issuing a Notice of Violation. (See Section VII.B, "Mitigation of Enforcement Sanctions.") In addition, violations are not ordinarily cited for

violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of their employees. Accordingly, this policy should not be construed to excuse personnel errors.

#### B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of (1) certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders; (2) any requirement for which a license may be revoked; or (3) reporting requirements under section 206 of the Energy Reorganization Act. Civil penalties are designed to deter future violations both by the involved licensee as well as by other licensees conducting similar activities and to emphasize the need for licensees to identify violations and take prompt comprehensive corrective action.

Civil penalties are considered for Severity Level III violations. In addition, civil penalties will normally be assessed for Severity Level I and II violations and knowing and conscious violations of the reporting requirements of section 206 of the Energy Reorganization Act.

Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern.

Although management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of management involvement may not be used to mitigate a civil penalty. Allowing mitigation in the latter case could encourage the lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

#### 1. Base Civil Penalty

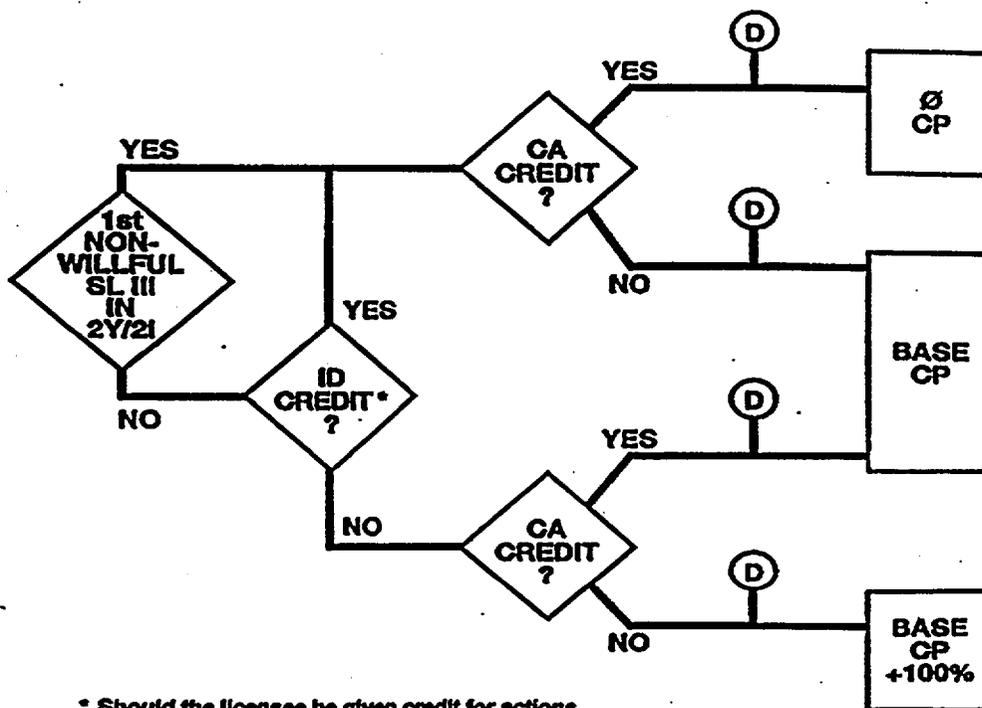
The NRC imposes different levels of penalties for different severity level violations and different classes of licensees, vendors, and other persons. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, materials, and vendor programs. (Civil penalties issued to individuals are determined on a case-by-case basis.) The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of the penalties take into account a licensee's ability to pay. In determining the amount of civil penalties for licensees for whom the tables do not reflect the ability to pay or the gravity of the violation, the NRC will consider as necessary an increase or decrease on a case-by-case basis. Normally, if a licensee can demonstrate financial hardship, the NRC will consider payments over time, including interest, rather than reducing the amount of the civil penalty. However, where a licensee claims financial hardship, the licensee will normally be required to address why it has sufficient resources to safely conduct licensed activities and pay license and inspection fees.

## 2. Civil Penalty Assessment

In an effort to (1) emphasize the importance of adherence to requirements and (2) reinforce prompt self-identification of problems and root causes and prompt and comprehensive correction of violations, the NRC reviews each proposed civil penalty on its own merits and, after considering all relevant circumstances, may adjust the base civil penalties shown in Table 1A and 1B for Severity Level I, II, and III violations as described below.

The civil penalty assessment process considers four decisional points: (a) whether the licensee has had any Previous escalated enforcement action (regardless of the activity area) during the past 2 years or past 2 inspections, whichever is longer; (b) whether the licensee should be given credit for actions related to identification; (c) whether the licensee's corrective actions are prompt and comprehensive; and (d) whether, in view of all the circumstances, the matter in question requires the exercise of discretion. Although each of these decisional points may have several

associated considerations for any given case, the outcome of the assessment process for each violation or problem, absent the exercise of discretion, is limited to one of the following three results: no civil penalty, a base civil penalty, or a base civil penalty escalated by 100%. The flow chart presented below is a graphic representation of the civil penalty assessment process.



\* Should the licensee be given credit for actions related to identification?

(D) Discretion, e.g., SL I and II violations should normally result in a civil penalty regardless of ID and CA.

*a. Initial Escalated Action.*

When the NRC determines that a non-willful Severity Level III violation or problem has occurred, and the licensee has not had any previous escalated actions (regardless of the activity area) during the past 2 years or 2 inspections, whichever is longer, the NRC will consider whether the licensee's corrective action for the present violation or problem is reasonably prompt and comprehensive (see the discussion under Section VI.B.2.c, below). Using 2 years as the basis for assessment is expected to cover most situations, but considering a slightly longer or shorter period might be warranted based on the circumstances of a particular case. The starting point of this period should be considered the date when the licensee was put on notice of the need to take corrective action. For a licensee-identified violation or an event, this would be when the licensee is aware that a problem or violation exists

requiring corrective action. For an NRC-identified violation, the starting point would be when the NRC puts the licensee on notice, which could be during the inspection, at the inspection exit meeting, or as part of post-inspection communication.

If the corrective action is judged to be prompt and comprehensive, a Notice of Violation normally should be issued with no associated civil penalty. If the corrective action is judged to be less than prompt and comprehensive, the Notice of Violation normally should be issued with a base civil penalty.

*b. Credit for Actions Related to Identification.*

(1) If a Severity Level I or II violation or a willful Severity Level III violation has occurred—or if, during the past 2 years or 2 inspections, whichever is longer, the licensee has been issued at least one other escalated action—the civil penalty assessment should normally

consider the factor of identification in addition to corrective action (see the discussion under Section VI.B.2.c, below). As to identification, the NRC should consider whether the licensee should be given credit for actions related to identification.

In each case, the decision should be focused on identification of the problem requiring corrective action. In other words, although giving credit for *Identification and Corrective Action* should be separate decisions, the concept of *Identification* presumes that the identifier recognizes the existence of a problem, and understands that corrective action is needed. The decision on *Identification* requires considering all the circumstances of identification including:

- (i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event<sup>9</sup>;
- (ii) Whether prior opportunities existed to identify the problem requiring corrective action, and if so, the age and number of

<sup>9</sup> An "event," as used here, means (1) an event characterized by an active adverse impact on equipment or personnel, readily obvious by human observation or instrumentation, or (2) a radiological impact on personnel or the environment in excess of regulatory limits, such as an overexposure, a release of radioactive material above NRC limits, or a loss of radioactive material. For example, an equipment failure discovered through a spill of liquid, a loud noise, the failure to have a system respond properly, or an annunciator alarm would be considered an event; a system discovered to be inoperable through a document review would not. Similarly, if a licensee discovered, through quarterly dosimetry readings, that employees had been inadequately monitored for radiation, the issue would normally be considered licensee-identified; however, if the same dosimetry readings disclosed an overexposure, the issue would be considered an event.

those opportunities;

(iii) Whether the problem was revealed as the result of a licensee self-monitoring effort, such as conducting an audit, a test, a surveillance, a design review, or troubleshooting;

(iv) For a problem revealed through an event, the ease of discovery, and the degree of licensee initiative in identifying the root cause of the problem and any associated violations;

(v) For NRC-identified issues, whether the licensee would likely have identified the issue in the same time-period if the NRC had not been involved;

(vi) For NRC-identified issues, whether the licensee should have identified the issue (and taken action) earlier; and

(vii) For cases in which the NRC identifies the overall problem requiring corrective action (e.g., a programmatic issue), the degree of licensee initiative or lack of initiative in identifying the problem or problems requiring corrective action.

(2) Although some cases may consider all of the above factors, the importance of each factor will vary based on the type of case as discussed in the following general guidance:

(i) Licensee-Identified. When a problem requiring corrective action is licensee-identified (i.e., identified before the problem has resulted in an event), the NRC should normally give the licensee credit for actions related to identification, regardless of whether prior opportunities existed to identify the problem.

(ii) Identified Through an Event. When a problem requiring corrective action is identified through an event, the decision on whether to give the licensee credit for actions related to identification normally should consider the ease of discovery, whether the event occurred as the result of a licensee self-monitoring effort (i.e., whether the licensee was "looking for the problem"), the degree of licensee

initiative in identifying the problem or problems requiring corrective action, and whether prior opportunities existed to identify the problem.

Any of these considerations may be overriding if particularly noteworthy or particularly egregious. For example, if the event occurred as the result of conducting a surveillance or similar self-monitoring effort (i.e., the licensee was looking for the problem), the licensee should normally be given credit for identification. As a second instance, even if the problem was easily discovered (e.g., revealed by a large spill of liquid), the NRC may choose to give credit because noteworthy licensee effort was exerted in ferreting out the root cause and associated violations, or simply because no prior opportunities (e.g., procedural cautions, post-maintenance testing, quality control failures, readily observable parameter trends, or repeated or locked-in annunciator warnings) existed to identify the problem.

(iii) NRC-Identified. When a problem requiring corrective action is NRC-identified, the decision on whether to give the licensee credit for actions related to *Identification* should normally be based on an additional question: should the licensee have reasonably identified the problem (and taken action) earlier?

In most cases, this reasoning may be based simply on the ease of the NRC inspector's discovery (e.g., conducting a walkdown, observing in the control room, performing a confirmatory NRC radiation survey, hearing a cavitating pump, or finding a valve obviously out of position). In some cases, the licensee's missed opportunities to identify the problem might include a similar previous violation, NRC or industry notices, internal audits, or readily observable trends.

If the NRC identifies the violation but concludes that, under the circumstances, the licensee's actions related to *Identification* were not unreasonable, the

matter would be treated as licensee-identified for purposes of assessing the civil penalty. In such cases, the question of *Identification* credit shifts to whether the licensee should be penalized for NRC's identification of the problem.

(iv) Mixed Identification. For "mixed" identification situations (i.e., where multiple violations exist, some NRC-identified, some licensee-identified, or where the NRC prompted the licensee to take action that resulted in the identification of the violation), the NRC's evaluation should normally determine whether the licensee could reasonably have been expected to identify the violation in the NRC's absence. This determination should consider, among other things, the timing of the NRC's discovery, the information available to the licensee that caused the NRC concern, the specificity of the NRC's concern, the scope of the licensee's efforts, the level of licensee resources given to the investigation, and whether the NRC's path of analysis had been dismissed or was being pursued in parallel by the licensee.

In some cases, the licensee may have addressed the isolated symptoms of each violation (and may have identified the violations), but failed to recognize the common root cause and taken the necessary comprehensive action. Where this is true, the decision on whether to give licensee credit for actions related to *Identification* should focus on identification of the *problem requiring corrective action* (e.g., the programmatic breakdown). As such, depending on the chronology of the various violations, the earliest of the individual violations might be considered missed opportunities for the licensee to have identified the larger problem.

(v) Missed Opportunities to Identify. Missed opportunities include prior notifications or missed opportunities to identify or prevent violations such as (1) through normal surveillances, audits, or quality assurance (QA) activities; (2) through prior notice i.e., specific NRC or industry notification; or (3) through other reasonable indication of a potential problem or violation, such as observations of

employees and contractors, and failure to take effective corrective steps. It may include findings of the NRC, the licensee, or industry made at other facilities operated by the licensee where it is reasonable to expect the licensee to take action to identify or prevent similar problems at the facility subject to the enforcement action at issue. In assessing this factor, consideration will be given to, among other things, the opportunities available to discover the violation, the ease of discovery, the similarity between the violation and the notification, the period of time between when the violation occurred and when the notification was issued, the action taken (or planned) by the licensee in response to the notification, and the level of management review that the notification received (or should have received).

The evaluation of missed opportunities should normally depend on whether the information available to the licensee should reasonably have caused action that would have prevented the violation. Missed opportunities is normally not applied where the licensee appropriately reviewed the opportunity for application to its activities and reasonable action was either taken or planned to be taken within a reasonable time.

In some situations the missed opportunity is a violation in itself. In these cases, unless the missed opportunity is a Severity Level III violation in itself, the missed opportunity violation may be grouped with the other violations into a single Severity Level III "problem." However, if the missed opportunity is the *only* violation, then it should not normally be counted twice (i.e., both as the violation and as a missed opportunity—"double counting") unless the number of opportunities missed was particularly significant.

The timing of the missed opportunity

ould also be considered. While a rigid e-frame is unnecessary, a 2-year period should generally be considered for consistency in implementation, as the period reflecting relatively current performance.

(3) When the NRC determines that the licensee should receive credit for actions related to *Identification*, the civil penalty assessment should normally result in either no civil penalty or a base civil penalty, based on whether *Corrective Action* is judged to be reasonably prompt and comprehensive. When the licensee is *not* given credit for actions related to *Identification*, the civil penalty assessment should normally result in a Notice of Violation with either a base civil penalty or a base civil penalty escalated by 100%, depending on the quality of *Corrective Action*, because the licensee's performance is clearly not acceptable.

*c. Credit for Prompt and Comprehensive Corrective Action.*

The purpose of the *Corrective Action* factor is to encourage licensees to (1) take the immediate actions necessary upon discovery of a violation that will restore safety and compliance with the license, regulation(s), or other requirement(s); and (2) develop and implement (in a timely manner) the lasting actions that will not only prevent recurrence of the violation at issue, but will be appropriately comprehensive, given the significance and complexity of the violation, to prevent occurrence of violations with similar root causes.

Regardless of other circumstances (e.g., past enforcement history, identification), the licensee's corrective actions should always be evaluated as part of the civil penalty assessment process. As a reflection of the importance given to this factor, an NRC judgment that the licensee's corrective action has not been prompt and comprehensive will always result in at least a base civil penalty.

In assessing this factor, consideration will be given to the timeliness of the corrective action (including the promptness in developing the schedule for long term corrective action), the adequacy of the licensee's root cause analysis for the violation, and, given the significance and complexity of the issue, the comprehensiveness of the corrective action (i.e., whether the action is focused narrowly to the specific violation or broadly to the general area of concern). Even in cases when the NRC, at the time of the enforcement conference, identifies additional peripheral or minor corrective action still to be taken, the licensee may be given credit in this area, as long as the licensee's actions addressed the underlying root cause and are considered sufficient to prevent recurrence of the violation and similar violations.

Normally, the judgment of the adequacy of corrective actions will hinge on whether the NRC had to take action to focus the licensee's evaluative and corrective process in order to obtain comprehensive corrective action. This will normally be judged at the time of the enforcement conference (e.g., by outlining substantive additional areas where corrective action is needed). Earlier informal discussions between the licensee and NRC inspectors or management may result in improved corrective action, but should not normally be a basis to deny credit for *Corrective Action*. For cases in which the licensee does not get credit for actions related to *Identification* because the NRC identified the problem, the assessment of the licensee's corrective action should begin from the time when the NRC put the licensee on notice of the problem. Notwithstanding eventual good comprehensive corrective action, if immediate corrective action was not taken to restore safety and compliance once the violation was identified, corrective action would not be considered prompt and comprehensive.

Corrective action for violations involving discrimination should normally only be considered comprehensive if the licensee takes prompt, comprehensive corrective

action that (1) addresses the broader environment for raising safety concerns in the workplace, and (2) provides a remedy for the particular discrimination at issue.

In response to violations of 10 CFR 50.59, corrective action should normally be considered prompt and comprehensive only if the licensee

- (i) Makes a prompt decision on operability; and either
- (ii) Makes a prompt evaluation under 10 CFR 50.59 if the licensee intends to maintain the facility or procedure in the as found condition; or
- (iii) Promptly initiates corrective action consistent with Criterion XVI of 10 CFR 50, Appendix B, if it intends to restore the facility or procedure to the FSAR description.

*d. Exercise of Discretion.*

As provided in Section VII, "Exercise of Discretion," discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects the NRC's concern regarding the violation at issue and that it conveys the appropriate message to the licensee. However, in no instance will a civil penalty for any one violation exceed \$110,000 per day.

TABLE 1A--BASE CIVIL PENALTIES

a. Power reactors and gaseous diffusion plants.....	\$110,000
b. Fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations.....	\$27,500
c. Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers.....	\$11,000
d. Research reactors, academic, medical, or other material licensee'.....	\$5,500

<sup>1</sup> This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

TABLE 1B—BASE CIVIL PENALTIES

Severity Level	Base Civil Penalty Amount (Percent of amount listed in Table 1A)
I .....	100%
II .....	80%
III .....	50%

**C. Orders**

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202). Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate for Severity Level I, II, or III violations. Orders may be issued as follows:

1. License Modification orders are used when some change in licensee equipment, procedures, personnel, or management controls is necessary.
2. Suspension Orders may be used:
  - (a) To remove a threat to the public health and safety, common defense and security, or the environment;
  - (b) To stop facility construction when:
    - (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component;
    - (ii) The licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;
  - (c) When the licensee has not responded adequately to other enforcement action;
  - (d) When the licensee interferes with the conduct of an inspection or investigation; or
  - (e) For any reason not mentioned above for which license revocation is

legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

3. Revocation Orders may be used:

- (a) When a licensee is unable or unwilling to comply with NRC requirements;
- (b) When a licensee refuses to correct a violation;
- (c) When licensee does not respond to a Notice of Violation where a response was required;

(d) When a licensee refuses to pay an applicable fee under the Commission's regulations; or

(e) For any other reason for which revocation is authorized under section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

4. Cease and Desist Orders may be used to stop an unauthorized activity that has continued after notification by the NRC that the activity is unauthorized.

5. Orders to unlicensed persons, including vendors and contractors, and employees of any of them, are used when the NRC has identified deliberate misconduct that may cause a licensee to be in violation of an NRC requirement or where incomplete or inaccurate information is deliberately submitted or where the NRC loses its reasonable assurance that the licensee will meet NRC requirements with that person involved in licensed activities.

Unless a separate response is warranted pursuant to 10 CFR 2.201, a Notice of Violation need not be issued where an order is based on violations described in the order. The violations described in an order need not be categorized by severity level.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interest, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior

opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show why the order should not be issued in the proposed manner by way of a Demand for Information. (See 10 CFR 2.204)

**D. Related Administrative Actions**

In addition to the formal enforcement actions, Notices of Violation, civil penalties, and orders, the NRC also uses administrative actions, such as Notices of Deviation, Notices of Nonconformance, Confirmatory Action Letters, Letters of Reprimand, and Demands for Information to supplement its enforcement program. The NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these actions and will not hesitate to issue appropriate orders to ensure that these obligations and commitments are met.

1. Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A Notice of Deviation requests a licensee to provide a written explanation or statement describing corrective steps taken (or planned), the results achieved, and the date when corrective action will be completed.

2. Notices of Nonconformance are written notices describing vendor's failures to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices

of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

3. Confirmatory Action Letters are letters confirming a licensee's or vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

4. Letters of Reprimand are letters addressed to individuals subject to Commission jurisdiction identifying a significant deficiency in their performance of licensed activities.

5. Demands for Information are demands for information from licensees or other persons for the purpose of enabling the NRC to determine whether an order or other enforcement action should be issued.

## VII. EXERCISE OF DISCRETION

Notwithstanding the normal guidance contained in this policy, as provided in Section III, "Responsibilities," the NRC may choose to exercise discretion and either escalate or mitigate enforcement sanctions within the Commission's statutory authority to ensure that the resulting enforcement action appropriately reflects the level of NRC concern regarding the violation at issue and conveys the appropriate message to the licensee.

### A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC

may apply its full enforcement authority where the action is warranted. NRC action may include (1) escalating civil penalties, (2) issuing appropriate orders, and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$110,000 per violation, per day.

1. Civil penalties. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, the NRC may exercise discretion by either proposing a civil penalty where application of the factors would otherwise result in zero penalty or by escalating the amount of the resulting civil penalty (i.e., base or twice the base civil penalty) to ensure that the proposed civil penalty reflects the significance of the circumstances and conveys the appropriate regulatory message to the licensee. The Commission will be notified if the deviation in the amount of the civil penalty proposed under this discretion from the amount of the civil penalty assessed under the normal process is more than two times the base civil penalty shown in Tables 1A and 1B. Examples when this discretion should be considered include, but are not limited to the following:

- (a) Problems categorized at Severity Level I or II;
- (b) Overexposures, or releases of radiological material in excess of NRC requirements;
- (c) Situations involving particularly poor licensee performance, or involving willfulness;
- (d) Situations when the licensee's previous enforcement history has been particularly poor, or when the current violation is directly repetitive of an earlier violation;
- (e) Situations when the violation results in a substantial increase in risk, including cases in which the duration of the violation has contributed to the substantial increase;
- (f) Situations when the licensee made a conscious decision to be in noncompliance in order to obtain an economic benefit;
- (g) Cases involving the loss of a source. In addition, unless the licensee self-

identifies and reports the loss to the NRC, these cases should normally result in a civil penalty in an amount at least in the order of the cost of an authorized disposal of the material or of the transfer of the material to an authorized recipient; or

(h) Severity Level II or III violation associated with departures from the Final Safety Analysis Report identified after two years from October 18, 1996. Such a violation or problem would consider the number and nature of the violations, the severity of the violations, whether the violations were continuing, and who identified the violations (and if the licensee identified the violation, whether exercise of Section VII.B.3 enforcement discretion is warranted).

2. Orders. The NRC may, where necessary or desirable, issue orders in conjunction with or in lieu of civil penalties to achieve or formalize corrective actions and to deter further recurrence of serious violations.

3. Daily civil penalties. In order to recognize the added technical safety significance or regulatory significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of \$110,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

### B. Mitigation of Enforcement Sanctions

The NRC may exercise discretion and refrain from issuing a civil penalty and/or a Notice of Violation, if the outcome of the normal process described in Section VI.B does not result in a sanction consistent with an

appropriate regulatory message. However, even if the NRC exercises this discretion, when the licensee failed to make a required report to the NRC, a separate enforcement action will normally be issued for the licensee's failure to make a required report. The approval of the Director, Office of Enforcement, with consultation with the Deputy Executive Director as warranted, is required for exercising discretion of the type described in Section VII.B.1.b where a willful violation is involved, and of the types described in Sections VII.B.2 through VII.B.6. Commission notification is required for exercising discretion of the type described in: (1) Section VII.B.2 the first time discretion is exercised during that plant shutdown, and (2) Section VII.B.6 where appropriate based on the uniqueness or significance of the issue. Examples when discretion should be considered for departing from the normal approach in Section VI.B include but are not limited to the following:

1. Licensee-Identified Severity Level / Violations. The NRC, with the approval of the Regional Administrator or his or her designee, may refrain from issuing a Notice of Violation for a Severity Level IV violation that is documented in an inspection report (or official field notes for some material cases) and described therein as a Non-Cited Violation (NCV) provided that the inspection report includes a brief description of the corrective action and that the violation meets all of the following criteria:

- (a) It was identified by the licensee;
- (b) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, or the period within the last two inspections, whichever is longer;
- (c) It was or will be corrected within a reasonable time, by specific corrective

action committed to by the licensee by the end of the inspection, including immediate corrective action and comprehensive corrective action to prevent recurrence;

(d) It was not a willful violation or if it was a willful violation;

(i) The information concerning the violation, if not required to be reported, was promptly provided to appropriate NRC personnel, such as a resident inspector or regional section or branch chief;

(ii) The violation involved the acts of a low-level individual (and not a licensee official as defined in Section IV.C);

(iii) The violation appears to be the isolated action of the employee without management involvement and the violation was not caused by lack of management oversight as evidenced by either a history of isolated willful violations or a lack of adequate audits or supervision of employees; and

(iv) Significant remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization. Although removal of the employee from licensed activities is not necessarily required, substantial disciplinary action is expected.

2. Violations Identified During Extended Shutdowns or Work Stoppages. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified after (i) the NRC has taken significant enforcement action based upon a major safety event contributing to an extended shutdown of an operating reactor or a material licensee (or a work stoppage at a construction site), or (ii) the licensee enters an extended shutdown or work stoppage related to generally poor performance over a long period of time, provided that the violation is documented in an inspection report (or official field notes for some material cases) and that it meets all of the following criteria:

- (a) It was either licensee-identified as a

result of a comprehensive program for problem identification and correction that was developed in response to the shutdown or identified as a result of an employee allegation to the licensee; (If the NRC identifies the violation and a number of the other criteria are met, the NRC should determine whether enforcement action is necessary to achieve remedial action, or if discretion may still be appropriate.)

(b) It is based upon activities of the licensee prior to the events leading to the shutdown;

(c) It would not be categorized at a severity level higher than Severity Level II;

(d) It was not willful; and

(e) The licensee's decision to restart the plant requires NRC concurrence.

3. Violations Involving Old Design Issues. The NRC may refrain from proposing a civil penalty for a Severity Level II or III violation involving a past problem, such as in engineering, design, or installation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was a licensee-identified as a result of its voluntary initiative;

(b) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification (this action should involve expanding the initiative, as necessary, to identify other failures caused by similar root causes); and

(c) It was not likely to be identified (after the violation occurred) by routine licensee efforts such as normal surveillance or quality assurance (QA) activities.

In addition, the NRC may refrain from issuing a Notice of Violation for cases that meet the above criteria provided the violation was caused by

conduct that is not reasonably linked to recent performance (normally, violations that are at least 3 years old or violations occurring during plant construction) and there had not been prior notice so that the licensee should have reasonably identified the violation earlier. This exercise of discretion is to place a premium on licensees initiating efforts to identify and correct subtle violations that are not likely to be identified by routine efforts before degraded safety systems are called upon to work.

Section VII.B.3 discretion would not normally be applied to departures from the FSAR if:

(a) The NRC identifies the violation unless it was likely in the staff's view that the licensee would have identified the violation in light of the defined scope, thoroughness, and schedule of the licensee's initiative (provided the schedule provides for completion of the licensee's initiative within two years after October 18, 1996;

The licensee identifies the violation as a result of an event or surveillance or other required testing where required corrective action identifies the FSAR issue;

(c) The licensee identifies the violation but had prior opportunities to do so (was aware of the departure from the FSAR) and failed to correct it earlier;

(d) There is willfulness associated with the violation;

(e) The licensee fails to make a report required by the identification of the departure from the FSAR; or

(f) The licensee either fails to take comprehensive corrective action or fails to appropriately expand the corrective action program. The corrective action should be broad with a defined scope and schedule.

4. Violations Identified Due to Previous Escalated Enforcement Action. The NRC may refrain from issuing a Notice of Violation or a proposed civil penalty for a violation that is identified

after the NRC has taken escalated enforcement action for a Severity Level II or III violation, provided that the violation is documented in an inspection report (or official field notes for some material cases) that includes a description of the corrective action and that it meets all of the following criteria:

(a) It was licensee-identified as part of the corrective action for the previous escalated enforcement action;

(b) It has the same or similar root cause as the violation for which escalated enforcement action was issued;

(c) It does not substantially change the safety significance or the character of the regulatory concern arising out of the initial violation; and

(d) It was or will be corrected, including immediate corrective action and long term comprehensive corrective action to prevent recurrence, within a reasonable time following identification.

5. Violations Involving Certain Discrimination Issues. Enforcement discretion may be exercised for discrimination cases when a licensee who, without the need for government intervention, identifies an issue of discrimination and takes prompt, comprehensive, and effective corrective action to address both the particular situation and the overall work environment for raising safety concerns. Similarly, enforcement may not be warranted where a complaint is filed with the Department of Labor (DOL) under Section 211 of the Energy Reorganization Act of 1974, as amended, but the licensee settles the matter before the DOL makes an initial finding of discrimination and addresses the overall work environment. Alternatively, if a finding of discrimination is made, the licensee may choose to settle the case before the evidentiary hearing begins. In such cases, the NRC may exercise its discretion not to take enforcement action when the licensee has addressed the overall work environment for raising safety concerns and has publicized that a complaint of discrimination for engaging in protected activity was made to the DOL,

that the matter was settled to the satisfaction of the employee (the terms of the specific settlement agreement need not be posted), and that, if the DOL Area Office found discrimination, the licensee has taken action to positively reemphasize that discrimination will not be tolerated. Similarly, the NRC may refrain from taking enforcement action if a licensee settles a matter promptly after a person comes to the NRC without going to the DOL. Such discretion would normally not be exercised in cases in which the licensee does not appropriately address the overall work environment (e.g., by using training, postings, revised policies or procedures, any necessary disciplinary action, etc., to communicate its policy against discrimination) or in cases that involve: allegations of discrimination as a result of providing information directly to the NRC, allegations of discrimination caused by a manager above first-line supervisor (consistent with current Enforcement Policy classification of Severity Level I or II violations), allegations of discrimination where a history of findings of discrimination (by the DOL or the NRC) or settlements suggests a programmatic rather than an isolated discrimination problem, or allegations of discrimination which appear particularly blatant or egregious.

6. Violations Involving Special Circumstances. Notwithstanding the outcome of the normal civil penalty assessment process addressed in Section VI.B, as provided in Section III, "Responsibilities," the NRC may reduce or refrain from issuing a civil penalty or a Notice of Violation for a Severity Level II or III violation based on the merits of the case after considering the guidance in this statement of policy and such factors as the age of the violation, the safety significance of the violation, the overall sustained performance of the licensee has been particularly good, and other

relevant circumstances, including any that may have changed since the violation. This discretion is expected to be exercised only where application of the normal guidance in the policy is unwarranted.

### *C. Exercise of Discretion for an Operating Facility*

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to issue a NOED.

The appropriate Regional Administrator, or his or her designee, may issue a NOED where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his or her designee, may issue a NOED if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an

emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the

NRC staff has chosen to issue a NOED, enforcement action will normally be taken for the root cause to the extent violations were involved that led to the noncompliance for which enforcement discretion was used. Enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended or plant startup may be delayed, at the exercise of enforcement discretion the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forgo enforcement is discretionary. When enforcement discretion is to be exercised, it is to be exercised only when the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

### VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

Enforcement actions involving individuals, including licensed operators, are significant personnel actions, which will be closely controlled and judiciously applied. Enforcement action involving an individual will normally be taken only when the NRC is satisfied that the individual fully understood, or should have understood, his or her responsibility; knew, or should have known, the required actions; and knowingly, or with careless disregard (i.e., with more than mere negligence), failed to take required actions which have actual or potential safety significance. Most transgressions involving individuals at the level of Severity Level III or IV violations will be handled by citing only the facility

licensee.

More serious violations, including those involving the integrity of an individual (e.g., lying to the NRC) concerning matters within the scope of the individual's responsibilities, will be considered for enforcement action against the individual as well as against the facility licensee. Action against the individual, however, will not be taken if the improper action by the individual was caused by management failures. The following examples of situations illustrate this concept:

- Inadvertent individual mistakes resulting from inadequate training or guidance provided by the facility licensee.
- Inadvertently missing an insignificant procedural requirement when the action is routine, fairly uncomplicated, and there is no unusual circumstance indicating that the procedures should be referred to and followed step-by-step.
- Compliance with an express direction of management, such as the Plant Supervisor or Plant Manager, resulted in a violation unless the individual did not express his or her concern or objection to the direction.
- Individual error directly resulting from following the technical advice of an expert unless the advice was clearly unreasonable and the licensed individual should have recognized it as such.
- Violations resulting from inadequate procedures unless the individual used a faulty procedure knowing it was faulty and had not attempted to get the procedure corrected.

Listed below are examples of situations which could result in enforcement actions involving individuals, licensed or unlicensed. If the actions described in these examples are taken by a licensed operator or taken deliberately by an unlicensed individual, enforcement action may be taken directly against the individual.

However, violations involving willful

conduct not amounting to deliberate action by an unlicensed individual in these situations may result in enforcement action against a licensee that may impact an individual. The situations include, but are not limited to, violations that involve:

- Willfully causing a licensee to be in violation of NRC requirements.
- Willfully taking action that would have caused a licensee to be in violation of NRC requirements but the action did not do so because it was detected and corrective action was taken.
- Recognizing a violation of procedural requirements and willfully not taking corrective action.
- Willfully defeating alarms which have safety significance.
- Unauthorized abandoning of reactor controls.
- Dereliction of duty.
- Falsifying records required by NRC regulations or by the facility license.
- Willfully providing, or causing a licensee to provide, an NRC inspector or investigator with inaccurate or incomplete information on a matter material to the NRC.
- Willfully withholding safety significant information rather than making such information known to appropriate supervisory or technical personnel in the licensee's organization.
- Submitting false information and as a result gaining unescorted access to a nuclear power plant.
- Willfully providing false data to a licensee by a contractor or other person who provides test or other services, when the data affects the licensee's compliance with 10 CFR part 50, appendix B, or other regulatory requirement.
- Willfully providing false certification that components meet the requirements of their intended use, such as ASME Code.
- Willfully supplying, by vendors of equipment for transportation of radioactive material, casks that do not comply with their certificates of compliance.
- Willfully performing unauthorized bypassing of required reactor or other facility safety systems.

- Willfully taking actions that violate Technical Specification Limiting Conditions for Operation or other license conditions (enforcement action for a willful violation will not be taken if that violation is the result of action taken following the NRC's decision to forego enforcement of the Technical Specification or other license condition or if the operator meets the requirements of 10 CFR 50.54 (x), (i.e., unless the operator acted unreasonably considering all the relevant circumstances surrounding the emergency.)

Normally, some enforcement action is taken against a licensee for violations caused by significant acts of wrongdoing by its employees, contractors, or contractors' employees. In deciding whether to issue an enforcement action to an unlicensed person as well as to the licensee, the NRC recognizes that judgments will have to be made on a case by case basis. In making these decisions, the NRC will consider factors such as the following:

1. The level of the individual within the organization.
2. The individual's training and experience as well as knowledge of the potential consequences of the wrongdoing.
3. The safety consequences of the misconduct.
4. The benefit to the wrongdoer, e.g., personal or corporate gain.
5. The degree of supervision of the individual, i.e., how closely is the individual monitored or audited, and the likelihood of detection (such as a radiographer working independently in the field as contrasted with a team activity at a power plant).
6. The employer's response, e.g., disciplinary action taken.
7. The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
8. The degree of management responsibility or culpability.

9. Who identified the misconduct.

Any proposed enforcement action involving individuals must be issued with the concurrence of the Deputy Executive Director. The particular sanction to be used should be determined on a case-by-case basis.<sup>10</sup> Notices of Violation and Orders are examples of enforcement actions that may be appropriate against individuals. The administrative action of a Letter of Reprimand may also be considered. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

Orders to NRC-licensed reactor operators may involve suspension for a specified period, modification, or revocation of their individual licenses. Orders to unlicensed individuals might include provisions that would:

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed

<sup>10</sup> Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

activities.

- Require the person to tell a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.

In the case of a licensed operator's failure to meet applicable fitness-for-duty requirements (10 CFR 55.53(j)), the NRC may issue a Notice of Violation or a civil penalty to the Part 55 licensee, or an order to suspend, modify, or revoke the Part 55 license. These actions may be taken the first time a licensed operator fails a drug or alcohol test, that is, receives a confirmed positive test that exceeds the cutoff levels of 10 CFR Part 26 or the facility licensee's cutoff levels, if lower. However, normally only a Notice of Violation will be issued for the first confirmed positive test in the absence of aggravating circumstances such as errors in the performance of licensed duties or evidence of prolonged use. In addition, the NRC intends to issue an order to suspend the Part 55 license for up to 3 years the second time a licensed operator exceeds those cutoff levels. In the event there are less than 3 years remaining in the term of the individual's license, the NRC may consider not renewing the individual's license or not issuing a new license after the three year period is completed. The NRC intends to issue an order to revoke the Part 55 license the third time a licensed operator exceeds those cutoff levels. A licensed operator or applicant who refuses to participate in the drug and alcohol testing programs established by the facility licensee or who is involved in the sale, use, or possession of an illegal drug is also subject to license suspension, revocation, or denial.

In addition, the NRC may take enforcement action against a licensee that may impact an individual, where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, appropriate enforcement actions may be taken regarding matters that raise issues of

integrity, competence, fitness-for or other matters that may not necessarily be a violation of spec Commission requirements.

In the case of an unlicensed per whether a firm or an individual, order modifying the facility licen may be issued to require (1) the removal of the person from all lic activities for a specified period or indefinitely, (2) prior notice to NRC before utilizing the person i licensed activities, or (3) the lice provide notice of the issuance of an order to other persons involve licensed activities making referen inquiries. In addition, orders to employers might require retrainin additional oversight, or independ verification of activities performe the person, if the person is to be involved in licensed activities.

#### IX. INACCURATE AND INCOMPLETE INFORMATION

A violation of the regulations involving submittal of incomplete and/or inaccurate information, will or not considered a material false statement, can result in the full re of enforcement sanctions. The la of a communication failure as a material false statement will be n on a case-by-case basis and will t reserved for egregious violations. Violations involving inaccurate or incomplete information or the fail provide significant information identified by a licensee normally be categorized based on the guida herein, in Section IV, "Severity o Violations," and in Supplement V

The Commission recognizes tha information may in some situatio inherently less reliable than writte submittals because of the absence opportunity for reflection and management review. However, t Commission must be able to rely oral communications from license officials concerning significant

information. Therefore, in determining whether to take enforcement action for an oral statement, consideration may be given to factors such as (1) the degree of knowledge that the communicator should have had, regarding the matter, in view of his or her position, training, and experience; (2) the opportunity and time available prior to the communication to assure the accuracy or completeness of the information; (3) the degree of intent or negligence, if any, involved; (4) the formality of the communication; (5) the reasonableness of NRC reliance on the information; (6) the importance of the information which was wrong or not provided; and (7) the reasonableness of the explanation for not providing complete and accurate information.

Absent at least careless disregard, an incomplete or inaccurate unsworn oral statement normally will not be subject to enforcement action unless it involves significant information provided by a licensee official. However,

enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to the NRC by a licensee official or others on behalf of a licensee, if a record was made of the oral information and provided to the licensee thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the licensee and was not subsequently corrected in a timely manner.

When a licensee has corrected inaccurate or incomplete information, the decision to issue a Notice of Violation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether the NRC or the licensee identified the problem with the communication, and whether the NRC relied on the information prior to the correction. Generally, if the matter was

promptly identified and corrected by the licensee prior to reliance by the NRC, or before the NRC raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after the NRC relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected. However, if the initial submittal was accurate when made but later turns out to be erroneous because of newly discovered information or advance in technology, a citation normally would not be appropriate if, when the new information became available or the advancement in technology was made, the initial submittal was corrected.

The failure to correct inaccurate or incomplete information which the licensee does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if the licensee later determines that the initial submittal was in error and does not correct it or if there were clear opportunities to identify the error. If information not corrected was recognized by a licensee as significant, a separate citation may be made for the failure to provide significant information. In any event, in serious cases where the licensee's actions in not correcting or providing information raise questions about its commitment to safety or its fundamental trustworthiness, the Commission may exercise its authority to issue orders modifying, suspending, or revoking the license. The Commission recognizes that enforcement determinations must be made on a case-by-case basis, taking into consideration the issues described in this section.

## X. ENFORCEMENT ACTION AGAINST NON-LICENSEES

The Commission's enforcement policy is also applicable to non-licensees, including employees of licensees, to contractors and subcontractors, and to employees of contractors and subcontractors, who knowingly provide components, equipment, or other goods or services that relate to a licensee's activities subject to NRC regulation. The prohibitions and sanctions for any of these persons who engage in deliberate misconduct or submission of incomplete or inaccurate information are provided in the rule on deliberate misconduct, e.g., 10 CFR 30.10 and 50.5.

Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors may be required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors supplying products or services to reactor, materials, and 10 CFR Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments (e.g., 10 CFR Part 50, Appendix B) that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensee failures to ensure that their vendors have programs that meet applicable requirements. Notices of Violation will be issued for vendors

that violate 10 CFR Part 21. Civil penalties will be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

#### XI. REFERRALS TO THE DEPARTMENT OF JUSTICE

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice (DOJ) for investigation. Referral to the DOJ does not preclude the NRC from taking other enforcement action under this policy. However, enforcement actions will be coordinated with the DOJ in accordance with the Memorandum of Understanding between the NRC and the DOJ, 53 FR 50317 (December 14, 1988).

#### XII. PUBLIC DISCLOSURE OF ENFORCEMENT ACTIONS

Enforcement actions and licensees' responses, in accordance with 10 CFR 2.790, are publicly available for inspection. In addition, press releases are generally issued for orders and civil penalties and are issued at the same time the order or proposed imposition of the civil penalty is issued. In addition, press releases are usually issued when a proposed civil penalty is withdrawn or substantially mitigated by some amount. Press releases are not normally issued for Notices of Violation that are not accompanied by orders or proposed civil penalties.

#### XIII. REOPENING CLOSED ENFORCEMENT ACTIONS

If significant new information is received or obtained by NRC which indicates that an enforcement sanction

was incorrectly applied, consideration may be given, dependent on the circumstances, to reopening a closed enforcement action to increase or decrease the severity of a sanction or to correct the record. Reopening decisions will be made on a case-by-case basis, are expected to occur rarely, and require the specific approval of the Deputy Executive Director.

#### SUPPLEMENT I— REACTOR OPERATIONS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of reactor operations.

##### A. Severity Level I - Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications being exceeded;

2. A system<sup>11</sup> designed to prevent or mitigate a serious safety event not being able to perform its intended safety function<sup>12</sup> when actually called upon to work;

3. An accidental criticality; or

4. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors which result in, or exacerbate the consequences of, an alert or higher level emergency and who, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol.

##### B. Severity Level II - Violations involving for example:

<sup>11</sup> The term "system" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

<sup>12</sup> "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

1. A system designed to prevent mitigate serious safety events not being able to perform its intended safety function;

2. A licensed operator involved in the use, sale, or possession of illegal drugs or the consumption of alcoholic beverages, within the protected area.

3. A licensed operator at the controls of a nuclear reactor, or a senior operator directing licensed activities, involved in procedural errors and was, as a result of subsequent testing, receives a confirmed positive test result for drugs or alcohol; or

4. Failures to meet 10 CFR 50.55 including several unreviewed safety questions, or conflicts with technical specifications, involving a broad spectrum of problems affecting multiple areas, some of which impact the operability of required equipment.

##### C. Severity Level III - Violations involving for example:

1. A significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In a pressurized water reactor the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement

(b) In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement

2. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability (e.g., component parameters outside approved limits such as pump flow

rates, heat exchanger transfer characteristics, safety valve lift joints, or valve stroke times);

3. Inattentiveness to duty on the part of licensed personnel;
4. Changes in reactor parameters that cause unanticipated reductions in margins of safety;
5. [Reserved]
6. A licensee failure to conduct adequate oversight of vendors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;
7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;
8. A licensed operator's confirmed positive test for drugs or alcohol that does not result in a Severity Level I or II violation;

Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

10. The failure to meet 10 CFR 50.59 where an unreviewed safety question is involved, or a conflict with a technical specification, such that a license amendment is required;
11. The failure to perform the required evaluation under 10 CFR 50.59 prior to implementation of the change in those situations in which no unreviewed safety question existed, but an extensive evaluation would be needed before a licensee would have had a reasonable expectation that an unreviewed safety question did not exist;
12. Programmatic failures (i.e., multiple or recurring failures) to meet the requirements of 10 CFR 50.59 and/or 50.71(e) that show a significant lack of attention to detail, whether or not such failures involve an unreviewed safety question, resulting in a current safety or regulatory concern about the

accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met. Application of this example requires weighing factors such as: a) the time period over which the violations occurred and existed, b) the number of failures, c) whether one or more systems, functions, or pieces of equipment were involved and the importance of such equipment, functions, or systems, and d) the potential significance of the failures;

13. The failure to update the FSAR as required by 10 CFR 50.71(e) where the unupdated FSAR was used in performing a 10 CFR 50.59 evaluation and as a result, an inadequate decision was made demonstrating a significant regulatory concern; or

14. The failure to make a report required by 10 CFR 50.72 or 50.73 associated with (a) an unreviewed safety question, (b) a conflict with a technical specification, or (c) any other Severity Level III violation.

D. Severity Level IV - Violations involving for example:

1. A less significant failure to comply with the Action Statement for a Technical Specification Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

- (a) In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or
- (b) In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable;

2. [Reserved]
3. A failure to meet regulatory requirements that have more than minor safety or environmental significance;
4. A failure to make a required Licensee Event Report;

5. Relatively isolated violations of 10 CFR 50.59 not involving severity level II or III violations that do not suggest a programmatic failure to meet 10 CFR 50.59. Relatively isolated violations or failures would include a number of recently discovered violations that occurred over a period of years and are not indicative of a programmatic safety concern with meeting 10 CFR 50.59 or 50.71(e);

6. A relatively isolated failure to document an evaluation where there is evidence that an adequate evaluation was performed prior to the change in the facility or procedures, or the conduct of an experiment or test;

7. A failure to update the FSAR as required by 10 CFR 50.71(e) where an adequate evaluation under 10 CFR 50.59 had been performed and documented; or

8. A past programmatic failure to meet 10 CFR 50.59 and/or 10 CFR 50.71(e) requirements not involving Severity Level II or III violations that does not reflect a current safety or regulatory concern about the accuracy of the FSAR or a concern that 10 CFR 50.59 requirements are not being met.

#### E. Minor Violations

A failure to meet 10 CFR 50.59 requirements that involves a change to the FSAR description or procedure, or involves a test or experiment not described in the FSAR, where there was not a reasonable likelihood that the change to the facility or procedure or the conduct of the test or experiment would ever be an unreviewed safety question. In the case of a 10 CFR 50.71(e) violation, where a failure to update the FSAR would not have a material impact on safety or licensed activities. The focus of the minor violation is not on the actual change, test, or experiment, but on the potential safety role of the system, equipment, etc., that is being changed, tested, or experimented on.

#### SUPPLEMENT II—PART 50 FACILITY CONSTRUCTION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of Part 50 facility construction.

A. Severity Level I - Violations involving structures or systems that are

completed<sup>13</sup> in such a manner that they would not have satisfied their intended safety related purpose.

**B. Severity Level II - Violations involving for example:**

1. A breakdown in the Quality Assurance (QA) program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical, foundations). These deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

**C. Severity Level III - Violations involving for example:**

1. A deficiency in a licensee QA program for construction related to a single work activity (e.g., structural, piping, electrical or foundations). This significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. A failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. A failure to make a required 10 CFR 50.55(e) report.

**D. Severity Level IV - Violations**

involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

**SUPPLEMENT III-SAFEGUARDS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of safeguards.

**A. Severity Level I - Violations involving for example:**

1. An act of radiological sabotage in which the security system did not function as required and, as a result of the failure, there was a significant event, such as:

(a) A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, was exceeded;

(b) A system designed to prevent or mitigate a serious safety event was not able to perform its intended safety function when actually called upon to work; or

(c) An accidental criticality occurred;

2. The theft, loss, or diversion of a formula quantity<sup>14</sup> of special nuclear material (SNM); or

3. Actual unauthorized production of a formula quantity of SNM

**B. Severity Level II - Violations involving for example:**

1. The entry of an unauthorized individual<sup>15</sup> who represents a threat into a vital area<sup>16</sup> from outside the protected area;

<sup>14</sup> See 10 CFR 73.2 for the definition of "formula quantity."

<sup>15</sup> The term "unauthorized individual" as used in this supplement means someone who was not authorized for entrance into the area in question, or not authorized to enter in the manner entered.

<sup>16</sup> The phrase "vital area" as used in this supplement includes vital areas and material access areas.

2. The theft, loss or diversion of SNM of moderate strategic significance<sup>17</sup> in which the security system did not function as required;

3. Actual unauthorized production SNM.

**C. Severity Level III - Violations involving for example:**

1. A failure or inability to control access through established systems or procedures, such that an unauthorized individual (i.e., not authorized unescorted access to protected area) could easily gain undetected access<sup>18</sup> into a vital area from outside the protected area;

2. A failure to conduct any search the access control point or conducting an inadequate search that resulted in the introduction to the protected area: firearms, explosives, or incendiary devices and reasonable facsimiles thereof that could significantly assist radiological sabotage or theft of strategic SNM;

3. A failure, degradation, or other deficiency of the protected area intrusion detection or alarm assessment systems such that an unauthorized individual who represents a threat could predictably circumvent the system or defeat a specific zone with high degree of confidence without insider knowledge, or other significant degradation of overall system capability;

4. A significant failure of the safeguards systems designed or used prevent or detect the theft, loss, or diversion of strategic SNM;

5. A failure to protect or control classified or safeguards information

<sup>17</sup> See 10 CFR 73.2 for the definition of "special nuclear material of moderate strategic significance."

<sup>18</sup> In determining whether access can be easily gained, factors such as predictability, identifiability, and ease of passage should be considered.

<sup>13</sup> The term "completed" as used in this supplement means completion of construction including review and acceptance by the construction QA organization.

considered to be significant while the information is outside the protected area and accessible to those not authorized access to the protected area;

6. A significant failure to respond to an event either in sufficient time to provide protection to vital equipment or strategic SNM, or with an adequate response force;

7. A failure to perform an appropriate evaluation or background investigation so that information relevant to the access determination was not obtained or considered and as a result a person, who would likely not have been granted access by the licensee, if the required investigation or evaluation had been performed, was granted access; or

8. A breakdown in the security program involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed responsibilities.

#### Severity Level IV - Violations

Involving for example:

1. A failure or inability to control access such that an unauthorized individual (i.e., authorized to protected area but not to vital area) could easily gain undetected access into a vital area from inside the protected area or into a controlled access area;

2. A failure to respond to a suspected event in either a timely manner or with an adequate response force;

3. A failure to implement 10 CFR Parts 25 and 95 with respect to the information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

4. A failure to make, maintain, or provide log entries in accordance with 10 CFR 73.71 (c) and (d), where the omitted information (i) is not otherwise available in easily retrievable records, and (ii) significantly contributes to the ability of either the NRC or the licensee to identify a programmatic breakdown;

5. A failure to conduct a proper search at the access control point;

6. A failure to properly secure or protect classified or safeguards information inside the protected area which could assist an individual in an act of radiological sabotage or theft of strategic SNM where the information was not removed from the protected area;

7. A failure to control access such that an opportunity exists that could allow unauthorized and undetected access into the protected area but which was neither easily or likely to be exploitable;

8. A failure to conduct an adequate search at the exit from a material access area;

9. A theft or loss of SNM of low strategic significance that was not detected within the time period specified in the security plan, other relevant document, or regulation; or

10. Other violations that have more than minor safeguards significance.

#### SUPPLEMENT IV-HEALTH PHYSICS (10 CFR PART 20)

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of health physics, 10 CFR Part 20.<sup>19</sup>

A. Severity Level I - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 25 rems total effective dose equivalent, 75 rems to the lens of the eye, or 250 rads to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 2.5

<sup>19</sup> Personnel overexposures and associated violations incurred during a life-saving or other emergency response effort will be treated on a case-by-case basis.

rems total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 2.5 rems total effective dose equivalent, 7.5 rems to the lens of the eye, or 25 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 1.0 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 50 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i); or

6. Disposal of licensed material in quantities or concentrations in excess of 10 times the limits of 10 CFR 20.2003.

B. Severity Level II - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 10 rems total effective dose equivalent, 30 rems to the lens of the eye, or 100 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 1.0 rem total effective dose equivalent;

3. A radiation exposure during any year of a minor in excess of 1 rem total effective dose equivalent; 3.0 rems to the lens of the eye, or 10 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. An annual exposure of a member of the public in excess of 0.5 rem total effective dose equivalent;

5. A release of radioactive material to an unrestricted area at concentrations in excess of 10 times the limits for members of the public as described in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the

Commission under Section 20.1301(c));

6. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.2003; or

7. A failure to make an immediate notification as required by 10 CFR 20.2202 (a)(1) or (a)(2).

C. Severity Level III - Violations involving for example:

1. A radiation exposure during any year of a worker in excess of 5 rems total effective dose equivalent, 15 rems to the lens of the eye, or 50 rems to the skin of the whole body or to the feet, ankles, hands or forearms, or to any other organ or tissue;

2. A radiation exposure over the gestation period of the embryo/fetus of a declared pregnant woman in excess of 0.5 rem total effective dose equivalent (except when doses are in accordance with the provisions of Section 20.1208(d));

3. A radiation exposure during any year of a minor in excess of 0.5 rem total effective dose equivalent; 1.5 rems to the lens of the eye, or 5 rems to the skin of the whole body, or to the feet, ankles, hands or forearms, or to any other organ or tissue;

4. A worker exposure above regulatory limits when such exposure reflects a programmatic (rather than an isolated) weakness in the radiation control program;

5. An annual exposure of a member of the public in excess of 0.1 rem total effective dose equivalent (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

6. A release of radioactive material to an unrestricted area at concentrations in excess of two times the effluent concentration limits referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

7. A failure to make a 24-hour notification required by 10

CFR 20.2202(b) or an immediate notification required by 10 CFR 20.2201(a)(1)(i);

8. A substantial potential for exposures or releases in excess of the applicable limits in 10 CFR Part 20 Sections 20.1001-20.2401 whether or not an exposure or release occurs;

9. Disposal of licensed material not covered in Severity Levels I or II;

10. A release for unrestricted use of contaminated or radioactive material or equipment that poses a realistic potential for exposure of the public to levels or doses exceeding the annual dose limits for members of the public, or that reflects a programmatic (rather than an isolated) weakness in the radiation control program;

11. Conduct of licensee activities by a technically unqualified person;

12. A significant failure to control licensed material; or

13. A breakdown in the radiation safety program involving a number of violations that are related (or, if isolated, that are recurring) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.1201, 20.1207, or 20.1208 not constituting Severity Level I, II, or III violations;

2. A release of radioactive material to an unrestricted area at concentrations in excess of the limits for members of the public as referenced in 10 CFR 20.1302(b)(2)(i) (except when operation up to 0.5 rem a year has been approved by the Commission under Section 20.1301(c));

3. A radiation dose rate in an unrestricted or controlled area in excess of 0.002 rem in any 1 hour (2 millirem/hour) or 50 millirems in a year;

4. Failure to maintain and implement radiation programs to keep radiation exposures as low as is reasonably achievable;

5. Doses to a member of the public in excess of any EPA generally applicable

environmental radiation standards, such as 40 CFR Part 190;

6. A failure to make the 30-day notification required by 10 CFR 20.2201(a)(1)(ii) or 20.2203(a);

7. A failure to make a timely written report as required by 10 CFR 20.2201(b), 20.2204, or 20.2206;

8. A failure to report an exceedance of the dose constraint established in 10 CFR 20.1101(d) or a failure to take corrective action for an exceedance, as required by 10 CFR 20.1101(d); or

9. Any other matter that has more than a minor safety, health, or environmental significance.

#### SUPPLEMENT V - TRANSPORTATION

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violation in the area of NRC transportation requirements<sup>20</sup>.

A. Severity Level I - Violations involving for example:

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that the material caused a radiation exposure to a member of the public as there was clear potential for the public to receive more than .1 rem to the whole body;

2. Surface contamination in excess of 50 times the NRC limit; or

3. External radiation levels in excess

<sup>20</sup> Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper and a carrier. When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

10 times the NRC limit.

**Severity Level II - Violations involving for example:**

1. Failure to meet transportation requirements that resulted in loss of control of radioactive material with a breach in package integrity such that there was a clear potential for the member of the public to receive more than .1 rem to the whole body;
2. Surface contamination in excess of 10, but not more than 50 times the NRC limit;
3. External radiation levels in excess of five, but not more than 10 times the NRC limit; or
4. A failure to make required initial notifications associated with Severity Level I or II violations.

**C. Severity Level III - Violations involving for example:**

1. Surface contamination in excess of five but not more than 10 times the NRC limit;
2. External radiation in excess of one but not more than five times the NRC

any noncompliance with labeling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

- (a) A significant failure to identify the type, quantity, or form of material;
- (b) A failure of the carrier or recipient to exercise adequate controls;
- (c) A substantial potential for either personnel exposure or contamination above regulatory limits or improper transfer of material;
4. A failure to make required initial notification associated with Severity Level III violations; or
5. A breakdown in the licensee's program for the transportation of licensed material involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively reflect a potentially significant lack of attention or carelessness toward licensed activities.

**D. Severity Level IV - Violations involving for example:**

1. A breach of package integrity without external radiation levels exceeding the NRC limit or without contamination levels exceeding five times the NRC limits;
2. Surface contamination in excess of but not more than five times the NRC limit;
3. A failure to register as an authorized user of an NRC-Certified Transport package;
4. A noncompliance with shipping papers, marking, labeling, placarding, packaging or loading not amounting to a Severity Level I, II, or III violation;
5. A failure to demonstrate that packages for special form radioactive material meets applicable regulatory requirements;
6. A failure to demonstrate that packages meet DOT Specifications for 7A Type A packages; or
7. Other violations that have more than minor safety or environmental significance.

**SUPPLEMENT VI—FUEL CYCLE AND MATERIALS OPERATIONS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle and materials operations.

**A. Severity Level I - Violations involving for example:**

1. Radiation levels, contamination levels, or releases that exceed 10 times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function;
3. A nuclear criticality accident;
4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;
5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or
6. Significant injury or loss of life due to a loss of control over licensed or certified

activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

**B. Severity Level II - Violations involving for example:**

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license;
2. A system designed to prevent or mitigate a serious safety event being inoperable;
3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;
4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or
5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF<sub>6</sub> cylinder by unapproved methods).

**C. Severity Level III - Violations involving for example:**

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;
2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;
3. Use of radioactive material on humans where such use is not authorized;
4. Conduct of licensed activities by a technically unqualified or uncertified person;
5. A substantial potential for exposures, radiation levels,

contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

6. Substantial failure to implement the quality management program as required by 10 CFR 35.32 that does not result in a misadministration; failure to report a misadministration; or programmatic weakness in the implementation of the quality management program that results in a misadministration;

7. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities;

8. A failure, during radiographic operations, to have present at least two qualified individuals or to use radiographic equipment, radiation survey instruments, and/or personnel monitoring devices as required by 10 CFR Part 34;

9. A failure to submit an NRC Form 241 as required by 10 CFR 150.20;

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet

decommissioning standards, failure to

conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of vendors or contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient;

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably

available, such that a nuclear criticality accident was possible; or

19. A failure, during radiographic operations, to stop work after a pocket dosimeter is found to have gone off-scale, or after an electronic dosimeter reads greater than 200 mrem, and before a determination is made of the individual's actual radiation exposure.

D. Severity Level IV - Violations involving for example:

1. A failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance;

3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but

have been sufficient to result in a  
criticality.

**SUPPLEMENT VII—MISCELLANEOUS  
MATTERS**

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations involving miscellaneous matters.

**A. Severity Level I - Violations  
involving for example:**

1. Inaccurate or incomplete information<sup>21</sup> that is provided to the NRC (a) deliberately with the knowledge of a licensee official that the information is incomplete or inaccurate, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as an immediate order required by the public health and safety;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of falsification by a licensee official with the knowledge of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as an immediate order required by the public health and safety considerations;

3. Information that the licensee has identified as having significant applications for public health and safety (the common defense and security "significant information identified by licensee") and is deliberately withheld from the Commission;

<sup>21</sup> In applying the examples in this supplement regarding inaccurate or incomplete information and records, reference should also be made to the guidance in Section IX, "Inaccurate and incomplete information," and to the definition of "licensee official" in Section IV.C.

4. Action by senior corporate management in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A knowing and intentional failure to provide the notice required by 10 CFR Part 21; or

6. A failure to substantially implement the required fitness-for-duty program.<sup>22</sup>

**B. Severity Level II - Violations  
involving for example:**

1. Inaccurate or incomplete information that is provided to the NRC (a) by a licensee official because of careless disregard for the completeness or accuracy of the information, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee which is (a) incomplete or inaccurate because of careless disregard for the accuracy of the information on the part of a licensee official, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in regulatory action such as a show cause order or a different regulatory position;

3. "Significant information identified by a licensee" and not provided to the Commission because of careless disregard on the part of a licensee official;

4. An action by plant management above first-line supervision in violation of 10 CFR 50.7 or similar regulations against an employee;

5. A failure to provide the notice required by 10 CFR Part 21;

6. A failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

<sup>22</sup> The example for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

7. A failure to take reasonable action when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use;

8. A deliberate failure of the licensee's Employee Assistance Program (EAP) to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities; or

9. The failure of licensee management to take effective action in correcting a hostile work environment.

**C. Severity Level III - Violations  
involving for example:**

1. Incomplete or inaccurate information that is provided to the NRC (a) because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate at the time provided, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

2. Incomplete or inaccurate information that the NRC requires be kept by a licensee that is (a) incomplete or inaccurate because of inadequate actions on the part of licensee officials but not amounting to a Severity Level I or II violation, or (b) if the information, had it been complete and accurate when reviewed by the NRC, likely would have resulted in a reconsideration of a regulatory position or substantial further inquiry such as an additional inspection or a formal request for information;

3. A failure to provide "significant information identified by a licensee" to the Commission and not amounting to a Severity Level I or II violation;

4. An action by first-line supervision in violation of 10 CFR 50.7 or similar

regulations against an employee;

5. An inadequate review or failure to review such that, if an appropriate review had been made as required, a 10 CFR Part 21 report would have been made;

6. A failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning denials of access so that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. A failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. A failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program;

9. A breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10; or

10. Threats of discrimination or restrictive agreements which are violations under NRC regulations such as 10 CFR 50.7(f).

D. Severity Level IV - Violations involving for example:

1. Incomplete or inaccurate information of more than minor significance that is provided to the NRC but not amounting to a Severity Level I, II, or III violation;

2. Information that the NRC requires be kept by a licensee and that is incomplete or inaccurate and of more than minor significance but not amounting to a Severity Level I, II, or III violation;

3. An inadequate review or failure to review under 10 CFR Part 21 or other procedural violations associated with 10

CFR Part 21 with more than minor safety significance;

4. Violations of the requirements of Part 26 of more than minor significance;

5. A failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73; or

6. Discrimination cases which, in themselves, do not warrant a Severity Level III categorization.

#### SUPPLEMENT VIII--EMERGENCY PREPAREDNESS

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of emergency preparedness. It should be noted that citations are not normally made for violations involving emergency preparedness occurring during emergency exercises. However, where exercises reveal (i) training, procedural, or repetitive failures for which corrective actions have not been taken, (ii) an overall concern regarding the licensee's ability to implement its plan in a manner that adequately protects public health and safety, or (iii) poor self critiques of the licensee's exercises, enforcement action may be appropriate.

A. Severity Level I - Violations involving for example:

In a general emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff.)

B. Severity Level II - Violations involving for example:

1. In a site emergency, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. A licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity Level III - Violations involving for example:

1. In an alert, licensee failure to promptly (1) correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff);

2. A licensee failure to meet or implement one emergency planning standard involving assessment or notification; or

3. A breakdown in the control of licensed activities involving a number of violations that are related (or, if isolated, that are recurring violations) that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities.

D. Severity Level IV - Violations involving for example:

A licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

January 26, 1999

NOTE TO: Chuck Weil, EICS *[Signature]*  
FROM: Rowlene Wendoll, Procurement Agent, DRMA *RW*  
SUBJECT: COURT REPORTER  
CH99-0054

Please review the attached purchase order (PO) regarding your request for a court reporter on January 26, 1999 (1:00-5:00 p.m.)

You will need to inform the Switchboard of the contact person.

Since we have had payment problems in the past, County Court Reporters has been instructed to send all transcripts to my attention. Upon receipt, the transcript will be forwarded to the "requester" on the Form 30.

If you need to make any changes, please contact me on extension 9558.

DO NOT MAKE ANY REQUESTS OF THE COURT REPORTER THAT ARE NOT INDICATED ON THE PURCHASE ORDER.

FOR BILLING PURPOSES, PLEASE COMPLETE THE FOLLOWING INFORMATION AND FORWARD TO ROWLENE (DRMA).

COURT REPORTER(S) ARRIVED AT THE REGIONAL OFFICE AT: 1:00 PM

COURT REPORTER(S) LEFT THE REGIONAL OFFICE AT:

4:30 - 5:00 PM *[Signature]*

THANK YOU...

TRANSCRIPT SHOULD SHOW  
TIME MEETING ENDED. *[Signature]*

E/23

**ORDER FOR SUPPLIES OR SERVICES**

PAGE OF PAGES

1 2

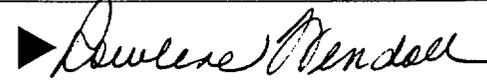
**IMPORTANT:** Mark all packages and papers with contract and/or order numbers.

1. DATE OF ORDER <b>01/26/1999</b>		2. CONTRACT NO. (If any) <b>N/A</b>		6. SHIP TO:	
ER NO. <b>CH99-0054</b>		4. REQUISITION/REFERENCE NO. <b>DRS 99-17; DRS 99-18</b>		a. NAME OF CONSIGNEE <b>U.S. Nuclear Regulatory Commission - ATTN: Rowlene Wendoll</b>	
5. ISSUING OFFICE (Address correspondence to) <b>U.S. Nuclear Regulation Commission - Region III</b>				b. STREET ADDRESS <b>801 Warrenville Road</b>	
7. TO:				c. CITY <b>Lisle</b>	d. STATE <b>IL</b>
				e. ZIP CODE <b>60532-4351</b>	
a. NAME OF CONTRACTOR <b>County Court Reporters, Inc.</b>				f. SHIP VIA <b>N/A</b>	
b. COMPANY NAME <b>ATTN: Cindy</b>				8. TYPE OF ORDER	
c. STREET ADDRESS <b>600 S. County Farm Road</b>				<input type="checkbox"/> a. PURCHASE <input type="checkbox"/> b. DELIVERY -- Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.	
d. CITY <b>Wheaton</b>				REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.	
e. STATE <b>IL</b>		f. ZIP CODE <b>60187</b>		10. REQUISITIONING OFFICE <b>See Item #6</b>	
9. ACCOUNTING AND APPROPRIATION DATA <b>31X0200 BOC:252A J9310 9315-511115</b>					

11. BUSINESS CLASSIFICATION (Check appropriate box(es))					
<input checked="" type="checkbox"/> a. SMALL		<input type="checkbox"/> b. OTHER THAN SMALL		<input type="checkbox"/> c. DISADVANTAGED	
<input checked="" type="checkbox"/> d. WOMEN-OWNED					
12. F.O.B. POINT <b>Dest</b>		14. GOVERNMENT B/L NO.		15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date) <b>2-1-99</b>	
16. DISCOUNT TERMS <b>Net/30</b>					
13. PLACE OF					
a. INSPECTION		b. ACCEPTANCE			

**17. SCHEDULE (See reverse for Rejections)**

EM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
	<p><b>Court reporting services for an Enforcement Conference with Morrison Knudsen scheduled for January 26, 1999, from 1:00 p.m. until approximately 5:00 p.m. The conference will be conducted at the U.S. Nuclear Regulatory Commission (NRC) location, address as listed above. The transcriber should report to the reception area (second floor) to sign in and then be escorted to the meeting room location.</b></p> <p><b>NRC contact person: Chuck Weil</b></p> <p><b>Requested turnaround time: 3 days</b></p> <p><b>There will be no technical terminology involved.</b></p>					
<b>(Continued on Page 2)</b>		18. GROSS SHIPPING WEIGHT		20. INVOICE NO.		
21. MAIL INVOICE TO:						17(h) TOT. (Cont. pages)
a. NAME <b>U.S. Nuclear Regulatory Commission</b>						\$1,160.00
b. STREET ADDRESS (or P.O. Box) <b>Mail Stop: T9H4</b>						
c. CITY <b>Washington</b>						Est. \$1,160.00
d. STATE <b>DC</b>		e. ZIP CODE <b>20555-0001</b>				
23. NAME (Typed) <b>Rowlene Wendoll</b>						17(i) GRAND TOTAL

UNITED STATES OF AMERICA BY (Signature)  TITLE: CONTRACTING/ORDERING OFFICER

**ORDER FOR SUPPLIES OR SERVICES  
SCHEDULE -- CONTINUATION**

PAGE NO.

2

**IMPORTANT:** Mark all packages and papers with contract and/or order numbers.

DATE OF ORDER <b>01/26/1999</b>	CONTRACT NO. <b>N/A</b>	ORDER NO. <b>CH99-0054</b>
------------------------------------	----------------------------	-------------------------------

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
	<b>Estimated costs:</b>					
	<b>Appearance fee @ \$90.00/first two hours</b>	<b>1</b>	<b>EA</b>	<b>90.00</b>	<b>90.00</b>	
	<b>\$20.00 every 1/2 hour thereafter</b>	<b>3</b>	<b>HR</b>	<b>40.00</b>	<b>120.00</b>	
	<b>Transcript fee @ \$4.75/page; estimated @ 40-50 pages/hour</b>	<b>4</b>	<b>HR</b>	<b>237.50</b>	<b>950.00</b>	
	<b>PLEASE INCLUDE OUR PURCHASE ORDER NUMBER (CH99-0054) ON ALL CORRESPONDENCE.</b>					
	<b>Transcript should be forwarded to:</b>					
	<b>U.S. Nuclear Regulatory Commission ATTN: Rowlene Wendoll 801 Warrenville Road Lisle IL 60532-4351</b>					
	<b>Invoice(s) should be submitted to:</b>					
	<b>U.S. Nuclear Regulatory Commission Financial Operations Mail Stop: T9H4 Washington DC 20555-0001</b>					
	<b>Payments will be made using electronic funds transfer through the Automated Clearing House (ACH) network in accordance with the Federal Acquisition Regulation (FAR) 52.232-33, entitled "Electronic Funds Transfer Payment Method".</b>					

**TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H))**

**\$1,160.00**

NRC FORM 30 (6-94) U.S. NUCLEAR REGULATORY COMMISSION

1. DATE OF REQUEST  
**REC'D JAN 15 1999**  
1/5/99

2. DATE DUE (If applicable)

**REQUEST FOR ADMINISTRATIVE SERVICES**

3. REQUEST NUMBER (LEAVE BLANK)

FOR HEADQUARTERS:  
MAIL TO THE APPROPRIATE MAIL STOP ON BACK

**4. TYPE OF SERVICE**

- |  |  |
|--|--|
| <input type="checkbox"/> BUILDING ALTERATIONS AND SERVICES | <input type="checkbox"/> PUBLISHING NUREGs                                       |
| <input type="checkbox"/> COMPOSITION                       | <input checked="" type="checkbox"/> SMALL PURCHASES, PROPERTY AND LABOR SERVICES |
| <input type="checkbox"/> COPYING                           | <input type="checkbox"/> SUPPLIES  |
| <input type="checkbox"/> EDITING                           | <input type="checkbox"/> WORD PROCESSING   |
| <input type="checkbox"/> PHOTOGRAPHY/AUDIOVISUAL           | <input type="checkbox"/> OTHER (Specify)   |
| <input type="checkbox"/> PRINTING AND DISTRIBUTION         |  |

**5. PERSONAL PROPERTY APPROVAL**

I certify that personal property assets within the Office/Division have been carefully screened for excess, are currently fully utilized, and the additional requested items are absolutely essential to work performance and will be used only for official purposes.

5a. PROPERTY CUSTODIAN - SIGNATURE  
*N/A*

5b. DIVISION DIRECTOR/DESIGNEE - SIGNATURE  
John A. Grobe *[Signature]*

**6. SENSITIVITY**

- For copyrighted material, sign below to indicate that you have received permission from the copyright owner to use the material.
- SIGNATURE - ADMINISTRATIVE OFFICER
- CLASSIFIED  
 SENSITIVE  
 UNCLASSIFIED  
 COPYRIGHT MATERIAL

7. REQUESTER  
Charles Brown

8. OFFICE  
DRS

9. TELEPHONE NUMBER  
630-829-9604

10. FAX NUMBER

11. MAIL STOP  
*RTH*

12. E-MAIL I.D.  
CHB2

**13. SPECIAL INSTRUCTIONS (INCLUDE TITLE, DISTRIBUTION, PRINTING SPECIFICATIONS, INSTRUCTIONS, STOCK NUMBERS, JUSTIFICATION, QUANTITIES, AND UNITS WHEN APPLICABLE.)**

Arrange for a court reporter for the Morrison Knudsen Enforcement Conference on January 26, 1999 from 1:00 PM to 3:00 PM.  
Point of contact: Charles Weil, 630-810-4372.  
There will be no technical terminology used.  
*One original*  
The transcript is required in three days-original-no copies.  
Justification: Enforcement Conference transcript.

*5:00*

*See DES 99-18*

**14. FUNDING INFORMATION**

JOB CODE	B & R NUMBER	BOC	FUND SOURCE	AMOUNT
<i>J9310</i>	<i>9315-51115</i>	<i>252A</i>	<i>31X0280</i>	<i>7160.00</i>

14a. FUNDS CERTIFIED AVAILABLE BY: SIGNATURE - CERTIFYING OFFICIAL  
*[Signature]*

14b. DATE  
*1/26/99*

**FOR PROCESSING USE ONLY (LEAVE THIS SECTION BLANK)**

15a. REQUIREMENT APPROVED - SIGNATURE <i>[Signature]</i>	15b. DATE <i>1/7/99</i>	16a. REQUISITIONING OFFICER - SIGNATURE	16b. DATE
---	----------------------------	---	-----------

**17. OFFICE OF ADMINISTRATION PROCESSING**

ACTION	SIGNATURE	DATE	ACTION	SIGNATURE	DATE
POSTED			C. DELIVERED		
B. FILLED			D. COMPLETED		

The material and/or services itemized above have been received in the quantity and quality specified, except as otherwise noted.

18a. SIGNATURE - RECIPIENT  
18b. DATE

REC'D JAN 15 1999  
1/5/99

REQUEST FOR ADMINISTRATIVE SERVICES

3. REQUEST NUMBER (LEAVE BLANK)

FOR HEADQUARTERS:  
MAIL TO THE APPROPRIATE MAIL STOP ON BACK

4. TYPE OF SERVICE

5. PERSONAL PROPERTY APPROVAL

- BUILDING ALTERATIONS AND SERVICES
- COMPOSITION
- COPYING
- EDITING
- PHOTOGRAPHY/AUDIOVISUAL
- PRINTING AND DISTRIBUTION

- PUBLISHING NUREGs
- SMALL PURCHASES, PROPERTY AND LABOR SERVICES
- SUPPLIES
- WORD PROCESSING
- OTHER (Specify)

I certify that personal property assets within the Office/Division have been carefully screened for excess, are currently fully utilized, and the additional requested items are absolutely essential to work performance and will be used only for official purposes.

5a. PROPERTY CUSTODIAN - SIGNATURE

NIA

5b. DIVISION DIRECTOR/DESIGNER - SIGNATURE

John A. Grobe

*[Signature]*

6. SENSITIVITY

For copyrighted material, sign below to indicate that you have received permission from the copyright owner to use the material.

- CLASSIFIED
- SENSITIVE
- UNCLASSIFIED
- COPYRIGHT MATERIAL

SIGNATURE - ADMINISTRATIVE OFFICER

7. REQUESTER

Charles Brown

8. OFFICE

DRS

9. TELEPHONE NUMBER

630-829-9604

10. FAX NUMBER

11. MAIL STOP

RTH

12. E-MAIL I.D.

CHB2

13. SPECIAL INSTRUCTIONS (INCLUDE TITLE, DISTRIBUTION, PRINTING SPECIFICATIONS, INSTRUCTIONS, STOCK NUMBERS, JUSTIFICATION, QUANTITIES, AND UNITS WHEN APPLICABLE.)

Arrange for a court reporter for the Morrison Knudsen Enforcement Conference on January 26, 1999 from 3:00 PM to 5:00 PM.

Point of contact: Charles Weil, 630-810-4372.

There will be no technical terminology used.

One original

The transcript is required in three days-original-no copies.

Justification: Enforcement Conference transcript.

See DRS 99-17

14. FUNDING INFORMATION

JOB CODE	B & R NUMBER	BOC	FUND SOURCE	AMOUNT

14a. FUNDS CERTIFIED AVAILABLE BY: SIGNATURE - CERTIFYING OFFICIAL

14b. DATE

FOR PROCESSING USE ONLY (LEAVE THIS SECTION BLANK)

15a. REQUIREMENT APPROVED - SIGNATURE

15b. DATE

16a. REQUISITIONING OFFICER - SIGNATURE

16b. DATE

17. OFFICE OF ADMINISTRATION PROCESSING

ACTION	SIGNATURE	DATE	ACTION	SIGNATURE	DATE
POSTED			C. DELIVERED		
B. FILLED			D. COMPLETED		

The material and/or services itemized above have been received in the quantity and quality specified, except as otherwise noted.

18a. SIGNATURE - RECIPIENT

18b. DATE



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

January 26, 1999

NOTE TO: Chuck Weil, EICS 

FROM: Rowlene Wendoll, Procurement Agent, DRMA 

SUBJECT: COURT REPORTER  
CH99-0056

Please review the attached purchase order (PO) regarding your request for a court reporter on January 27, 1999 (9:00 a.m.-1:00 p.m.)

You will need to inform the Switchboard of the contact person.

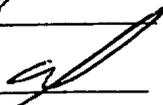
Since we have had payment problems in the past, County Court Reporters has been instructed to send all transcripts to my attention. Upon receipt, the transcript will be forwarded to the "requester" on the Form 30.

If you need to make any changes, please contact me on extension 9558.

**DO NOT MAKE ANY REQUESTS OF THE COURT REPORTER THAT ARE NOT INDICATED ON THE PURCHASE ORDER.**

**FOR BILLING PURPOSES, PLEASE COMPLETE THE FOLLOWING INFORMATION AND FORWARD TO ROWLENE (DRMA).**

COURT REPORTER(S) ARRIVED AT THE REGIONAL OFFICE AT: 9:00 AM

COURT REPORTER(S) LEFT THE REGIONAL OFFICE AT: NOON 

THANK YOU...



**ORDER FOR SUPPLIES OR SERVICES**

PAGE OF PAGES

**IMPORTANT:** Mark all packages and papers with contract and/or order numbers.

1 2

1. DATE OF ORDER <b>01/26/1999</b>		2. CONTRACT NO. (If any) <b>N/A</b>		6. SHIP TO:	
IR NO. <b>CH99-0056</b>		4. REQUISITION/REFERENCE NO. <b>DRS 99-19</b>		a. NAME OF CONSIGNEE <b>U.S. Nuclear Regulatory Commission - ATTN: Rowlene Wendoll</b>	
5. ISSUING OFFICE (Address correspondence to) <b>U.S. Nuclear Regulation Commission - Region III</b>					
7. TO:		c. CITY <b>Lisle</b>		d. STATE <b>IL</b>	e. ZIP CODE <b>60532-4351</b>
a. NAME OF CONTRACTOR <b>County Court Reporters, Inc.</b>		f. SHIP VIA <b>N/A</b>		8. TYPE OF ORDER	
b. COMPANY NAME <b>ATTN: Cindy</b>		REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.		<input type="checkbox"/> a. PURCHASE <input type="checkbox"/> b. DELIVERY -- Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.	
c. STREET ADDRESS <b>600 S. County Farm Road</b>					
d. CITY <b>Wheaton</b>	e. STATE <b>IL</b>	f. ZIP CODE <b>60187</b>		10. REQUISITIONING OFFICE <b>See Item #6</b>	
9. ACCOUNTING AND APPROPRIATION DATA <b>31X0200 BOC:252A J9310 9315-511115</b>					

11. BUSINESS CLASSIFICATION (Check appropriate box(es))			
<input checked="" type="checkbox"/> SMALL	<input type="checkbox"/> b. OTHER THAN SMALL	<input type="checkbox"/> c. DISADVANTAGED	<input checked="" type="checkbox"/> d. WOMEN-OWNED
12. F.O.B. POINT <b>Dest</b>		14. GOVERNMENT BL. NO.	15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date) <b>2-1-99</b>
13. PLACE OF		16. DISCOUNT TERMS <b>Net/30</b>	
a. INSPECTION	b. ACCEPTANCE		

**17. SCHEDULE (See reverse for Rejections)**

EM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
	<p><b>Court reporting services for an Enforcement Conference with Morrison Knudsen scheduled for January 27, 1999, from 9:00 a.m. until approximately 1:00 p.m. The conference will be conducted at the U.S. Nuclear Regulatory Commission (NRC) location, address as listed above. The transcriber should report to the reception area (second floor) to sign in and then be escorted to the meeting room location.</b></p> <p><b>NRC contact person: Chuck Well</b></p> <p><b>Requested turnaround time: 3 days</b></p> <p><b>There will not be any technical terminology involved.</b></p> <p><b>(Continued on Page 2)</b></p>					

<b>SEE BILLING INSTRUCTIONS ON REVERSE</b>	18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.		<b>\$1,160.00</b>	◀ <b>17(h) TOT. (Cont. pages)</b>
	21. MAIL INVOICE TO:							
	a. NAME <b>U.S. Nuclear Regulatory Commission</b>						<b>EST. \$1,160.00</b>	◀ <b>17(i) GRAND TOTAL</b>
	b. STREET ADDRESS (or P.O. Box) <b>Mail Stop: T9H4</b>							
c. CITY <b>Washington</b>				d. STATE <b>DC</b>	e. ZIP CODE <b>20555-0001</b>			

22. UNITED STATES OF AMERICA BY (Signature) ▶	23. NAME (Typed) <b>Rowlene Wendoll</b> TITLE: CONTRACTING/ORDERING OFFICER
---	---

**ORDER FOR SUPPLIES OR SERVICES  
SCHEDULE - CONTINUATION**

PAGE NO.

2

**IMPORTANT: Mark all packages and papers with contract and/or order numbers.**

<b>DATE OF ORDER</b> 01/26/1999	<b>CONTRACT NO.</b> N/A	<b>ORDER NO.</b> CH99-0056
------------------------------------	----------------------------	-------------------------------

ITEM NO. (A)	SUPPLIES OR SERVICES (B)	QUANTITY ORDERED (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)	QUANTITY ACCEPTED (G)
	<b>Estimated costs:</b>					
	Appearance fee @ \$90.00/first two hours	1	EA	90.00	90.00	
	\$20.00 every 1/2 hour thereafter	3	HR	40.00	120.00	
	Transcript fee @ \$4.75/page; estimated @ 40-50 pages/hour	4	HR	237.50	950.00	
	<b>PLEASE INCLUDE OUR PURCHASE ORDER NUMBER (CH99-0056) ON ALL CORRESPONDENCE.</b>					
	<b>Transcript should be forwarded to:</b>					
	U.S. Nuclear Regulatory Commission ATTN: Rowlene Wendoll 801 Warrenville Road Lisle IL 60532-4351					
	<b>Invoice(s) should be submitted to:</b>					
	U.S. Nuclear Regulatory Commission Financial Operations Mail Stop: T9H4 Washington DC 20555-0001					
	Payments will be made using electronic funds transfer through the Automated Clearing House (ACH) network in accordance with the Federal Acquisition Regulation (FAR) 52.232-33, entitled "Electronic Funds Transfer Payment Method".					

TOTAL CARRIED FORWARD TO 1ST PAGE (ITEM 17(H))



**\$1,160.00**

1. DATE OF REQUEST

REC'D JAN 15 1999  
1/5/99

2. DATE DUE (If applicable)

REQUEST FOR ADMINISTRATIVE SERVICES

3. REQUEST NUMBER (LEAVE BLANK)

FOR HEADQUARTERS:  
MAIL TO THE APPROPRIATE MAIL STOP ON BACK

4. TYPE OF SERVICE

- BUILDING ALTERATIONS AND SERVICES
- COMPOSITION
- COPYING
- EDITING
- PHOTOGRAPHY/AUDIOVISUAL
- PRINTING AND DISTRIBUTION
- PUBLISHING NUREGs
- SMALL PURCHASES, PROPERTY AND LABOR SERVICES
- SUPPLIES
- WORD PROCESSING
- OTHER (Specify)

5. PERSONAL PROPERTY APPROVAL

I certify that personal property assets within the Office/Division have been carefully screened for excess, are currently fully utilized, and the additional requested items are absolutely essential to work performance and will be used only for official purposes.

5a. PROPERTY CUSTODIAN - SIGNATURE

N/A

5b. DIVISION DIRECTOR/DESIGNEE - SIGNATURE

John A. Grobe

*[Handwritten Signature]*

6. SENSITIVITY

- CLASSIFIED
- SENSITIVE
- UNCLASSIFIED
- COPYRIGHT MATERIAL

For copyrighted material, sign below to indicate that you have received permission from the copyright owner to use the material.

SIGNATURE - ADMINISTRATIVE OFFICER

7. REQUESTER

Charles Brown

8. OFFICE

DRS

9. TELEPHONE NUMBER

630-829-9604

10. FAX NUMBER

11. MAIL STOP

RTII

12. E-MAIL I.D.

CHB2

13. SPECIAL INSTRUCTIONS (INCLUDE TITLE, DISTRIBUTION, PRINTING SPECIFICATIONS, INSTRUCTIONS, STOCK NUMBERS, JUSTIFICATION, QUANTITIES, AND UNITS WHEN APPLICABLE.)

Arrange for a court reporter for the Morrison Knudsen Enforcement Conference on January 27, 1999 from 9:00 AM to 1:00 PM.

Point of contact: Charles Weil, 630-810-4372.

There will be no technical terminology used.

*One original*

The transcript is required in three days-original-no copies.

Justification: Enforcement Conference transcript.

*break  
noon*

*\* See note from  
Charles Weil*

14. FUNDING INFORMATION

JOB CODE	B & R NUMBER	BOC	FUND SOURCE	AMOUNT
J4310	9315-5/1115	252A	31X0202	\$1160.00

14a. FUNDS CERTIFIED AVAILABLE BY: SIGNATURE - CERTIFYING OFFICIAL

*[Handwritten Signature]*

14b. DATE

1/26/99

FOR PROCESSING USE ONLY (LEAVE THIS SECTION BLANK)

15a. REQUIREMENT APPROVED - SIGNATURE

*[Handwritten Signature]*

15b. DATE

1/7/99

16a. REQUISITIONING OFFICER - SIGNATURE

16b. DATE

17. OFFICE OF ADMINISTRATION PROCESSING

ACTION	SIGNATURE	DATE	ACTION	SIGNATURE	DATE
POSTED			C. DELIVERED		
B. FILLED			D. COMPLETED		

The material and/or services itemized above have been received in the quantity and quality specified, except as otherwise noted.

18a. SIGNATURE - RECIPIENT

18b. DATE

EA 98-081

# CONVERSATION RECORD

TIME  
APPROX. 1150 AM

DATE  
1/15/99

TYPE

VISIT

CONFERENCE

TELEPHONE

INCOMING

OUTGOING

ROUTING

NAME/SYMBOL

INT

Location of Visit/Conference:

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU

ORGANIZATION (Office, dept., bureau, etc.)

TELEPHONE NO.

ROSELENE WENDALL

DRMA

9558

SUBJECT

CHANGE IN COURT REPORTER HOURS FOR 1/27/99

PREDECESSIONAL ENFORCEMENT CONFERENCE

SUMMARY

A MORE DEFINITIVE TIME HAS BEEN SET FOR THE PREDECESSIONAL ENFORCEMENT CONFERENCE WITH MARRIEN KNUDSON (EA 98-081) ON WED. 1/27/99. WE ARE NOW PURCHASING WE WILL NEED A COURT REPORTER/STENOGRAPHER FOR ONLY 4 HOURS INSTEAD OF 8. STARTING TIME IS STILL 9:00 AM 1/27/99 AND ENDING AT APPROXIMATELY 1:00 PM THE SAME DAY.

COPI TO: C. BROWN, DRS

ACTION REQUIRED

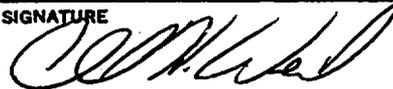
SINCE DRS MADE THE PURCHASE REQUEST, THE CHANCES TO THAT REQUEST SHOULD BE MADE BY DRS

NAME OF PERSON DOCUMENTING CONVERSATION

SIGNATURE

DATE

CHARLES A. LUSK  
ENFORCEMENT SPECIALIST



1/15/99

ACTION TAKEN

SIGNATURE

TITLE

DATE

→ Weil

# ULMER & BERNE LLP

ATTORNEYS AT LAW

Internet Address  
http://www.ulmer.com/  
E-mail Address  
sbell@ulmer.com

Bond Court Building  
1300 East Ninth Street, Suite 900  
Cleveland, Ohio 44114-1583  
Fax (216) 621-7488

Columbus Office  
88 East Broad Street, Suite 1980  
Columbus, Ohio 43215-3506  
Fax (614) 228-8561  
Telephone (614) 228-8400

STEVEN D. BELL  
Direct Dial (216) 902-8831

(216) 621-8400

January 26, 1999

**VIA FACSIMILE TRANSMISSION**

FAX #(630) 515-1078

John A. Grobe, Director  
Division of Reactor Safety  
United States Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, Illinois 60532-4351

Re: Morrison Knudsen Corporation

Dear Mr. Grobe:

I have discussed your January 8, 1999 letter with my client, Alain Artayet. As Mr. Artayet has explained to your staff, his professional obligations require that he be in Greensboro, North Carolina on January 27, 1999. Accordingly, he is unable to attend the predecisional enforcement conference at Region III headquarters.

Mr. Artayet and I understand that he may request an opportunity to provide input into your decision by supplying written comments. Please be advised that Mr. Artayet would appreciate having the opportunity to respond in writing to any presentation made by representatives of Morrison Knudsen Corporation. Please contact me so that we might discuss a time table for providing such comments.

Very truly yours,

Steven D. Bell

145/kmh/864800.d1

22729.0

cc: Alain Artayet

FIRST SIGN THIS 12.54, 2/18/99,  
FOUND ON DECK AFTER LUNCH.

2/9/99 LETTER TO ARTAYET w/ COPY TO  
BELL IN-STATE REQUEST.  
2/18/99

E/24

BEFORE THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION

IN RE THE MATTER OF: )

Predecisional Enforcement Conference )  
Morrison Knudsen )  
Mr. Drew T. Edleman )

) CONFIDENTIAL

NUCLEAR REGULATORY COMMISSION HEARING  
January 26, 1999  
1:00 o'clock P.M.

PROCEEDINGS HAD and testimony taken before the  
UNITED STATES NUCLEAR REGULATORY COMMISSION, taken at the  
United States Nuclear Regulatory Commission, Region III,  
801 Warrenville Road, Lisle, Illinois, before Jeffrey D.  
Stupak, C.S.R., License No. 084-004188, a Notary Public  
qualified and commissioned for the State of Illinois.

PRESENT FOR THE NUCLEAR REGULATORY COMMISSION:

MR. JACK GROBE, Director of the Division of  
Reactor Safety, Chairman;

MS. SUSAN CHIDAKEL, Office of General Counsel;

MR. MIKE STEIN, Office of Enforcement;

MR. CHUCK WEIL, Enforcement Specialist;

MR. BRUCE BERSON, Regional Counsel;

MR. RICHARD PAUL, Director, Office of  
Investigations Field Office, Region III;

**CCR**

**County Court Reporters, Inc.**

Oak Brook Office  
(630) 654-1121

County View Centre, Suite 200  
600 South County Farm Road  
Wheaton, Illinois 60187  
(630) 653-1622 • FAX (630) 653-4119

REC'D FEB 01 1999  
E/S  
Kane County Office  
(630) 897-8852

ORIGINAL TO OE 2/1/99

ER 98-541

1 PRESENT FOR MORRISON KNUDSEN CORPORATION:

2 SHAW, PITTMAN, POTTS & TROWBRIDGE, by  
3 MR. J. PATRICK HICKEY, P.C.  
4 2300 N Street, N.W.  
5 Washington, D.C. 20037-1128

6 appeared on behalf of Morrison  
7 Knudsen Corporation;

8 MR. DREW T. EDLEMAN, Director, Performance  
9 Systems, Morrison Knudsen Corporation;

10 ALSO PRESENT:

11 MR. EDWIN H. STIER, Stier, Anderson &  
12 Malone;

13 MS. MARY JANE COOPER, Stier, Anderson &  
14 Malone.

15

16

17

18

19

20

21

22

1           MR. GROBE: Good afternoon. My name is Jack  
2 Grobe. I am the Director of the Division of Reactor  
3 Safety for the NRC here in Region III.

4           With me today from the NRC I'd like to  
5 introduce Bruce Berson on my far left. Bruce is  
6 regional counsel for the regional office here in  
7 Region III.

8           On my immediate left is Chuck Weil. Chuck  
9 is the enforcement staff member here in Region III.

10          On my right is Mike Stein. Mike's on the  
11 enforcement staff in our headquarters offices in  
12 Rockville, Maryland.

13          And on my far right is Susan Chidakel.  
14 Susan's an attorney with our Office of General  
15 Counsel at headquarters.

16          Today's meeting is what we call a  
17 Predecisional Enforcement Conference. The purposes  
18 of the meeting is to discuss a potential enforcement  
19 issue. This meeting is specifically to Mr. Drew  
20 Edleman. Mr. Edleman is here, with his  
21 representation, Patrick Hickey.

22          We have several other attorneys here in the

1 room, and I'd like you to introduce yourselves and  
2 indicate what association you have with this  
3 situation.

4 MR. STIER: My name is Edwin Stier. I am a  
5 partner with the law firm of Stier, Anderson and  
6 Malone. We were retained by Morrison Knudsen, not as  
7 counsel for the corporation, but to conduct an  
8 independent investigation of the allegations that are  
9 the subject matter of this proceeding.

10 MS. COOPER: My name is Mary Jane Cooper, and  
11 I'm Ed's partner, and I worked on the investigation  
12 that we are continuing to conduct.

13 MR. GROBE: Also here today from the Nuclear  
14 Regulatory Commission is Richard Paul. Rich is the  
15 director of the Office of Investigations field office  
16 here in the Region III office.

17 As I mentioned, we are here to conduct a  
18 Predecisional Enforcement Conference, to discuss your  
19 involvement, Mr. Edleman, in a potential employment  
20 discrimination case associated with actions taken  
21 against Mr. Alain Artayet in January of '97. We  
22 appreciate your coming in today.

1           Mr. Berson, do you have any comments  
2 regarding Mr. Edleman's representation?

3           MR. BERSON: Just for the record I thought,  
4 Mr. Hickey, it might be useful if you would explain  
5 the nature of your representation of Mr. Edleman,  
6 since I understand you also represent MK, and talk  
7 about this failure to be a conflict-of-interest  
8 situation.

9           MR. HICKEY: Sure. I'm Patrick Hickey from the  
10 firm of Shaw, Pittman in Washington. I represent  
11 Mr. Edleman at this proceeding today; I will, at the  
12 succeeding proceeding, represent Mr. Pardi; and then  
13 tomorrow I will represent the company, Morrison  
14 Knudsen, in connection with these enforcement  
15 matters. All of the parties are aware of my  
16 representation of the others. I think we have  
17 concluded that there is no conflict between the  
18 interest of the individual clients and the corporate  
19 client, Morrison Knudsen, and so they have consented  
20 to my appearing on behalf of each of them in  
21 connection with these proceedings.

22           MR. BERSON: Mr. Edleman, you agree to have

1 Mr. Hickey representing you?

2 MR. EDLEMAN: Yes, I do.

3 MR. BERSON: Okay...

4 MR. GROBE: I'd like to just briefly,

5 Mr. Edleman, talk about our enforcement process just  
6 so you clearly understand how our process works and  
7 where today's meeting fits in the process.

8 The purpose of our enforcement process is  
9 to encourage compliance with our requirements and  
10 ensure that any violations of our requirements are  
11 identified and promptly corrected. The enforcement  
12 process begins with the NRC evaluating findings of an  
13 inspection or investigation and concluding that there  
14 may be apparent violations. Those violations could  
15 be categorized at one of four severity levels,  
16 Severity Level 1 being most severe, down to Severity  
17 Level 4 being the least severe violation. It is  
18 normal for us to conduct a Predecisional Enforcement  
19 Conference for Severity Level 1, 2 and 3 violations  
20 because of their significance.

21 The primary purpose of the conference is to  
22 make sure that we have a clear and common

1 understanding of the facts involved in the case so  
2 that when we make our enforcement decision that it is  
3 based upon as comprehensive a set of facts as  
4 possible. We are looking to you today to describe  
5 your involvement in the situation and any causes of  
6 the events that occurred that you believe would be  
7 relevant for our consideration. The conference is  
8 essentially the last step before the NRC proposes an  
9 enforcement action.

10 The staff, the NRC staff, has spent a  
11 significant amount of time reviewing information that  
12 came to our attention from the Department of Labor,  
13 from our own Office of Investigations, as well as  
14 from Morrison Knudsen and their internal  
15 investigation of this issue. I'd like to briefly  
16 summarize some key points relative to this case just  
17 to set the stage for the discussion that we are going  
18 to have.

19 In December of 1996, Mr. Artayet received a  
20 satisfactory performance appraisal. Shortly after  
21 that appraisal, it's our understanding that a  
22 Hartford Steam Boiler Insurance Company audited

1 Morrison Knudsen and made several audit findings. In  
2 early January of 1997, Mr. Artayet performed a review  
3 which identified problems with Morrison Knudsen  
4 welding procedures used for steam generator placement  
5 projects at Point Beach in particular.

6 Following Mr. Artayet's audit, he was  
7 removed from his position as Group Welding Engineer  
8 in January of 1997 and was involuntarily transferred  
9 from Cleveland, Ohio, to Parkersburg, West Virginia,  
10 eventually leading to a layoff approximately nine  
11 months later.

12 The transfer of Mr. Artayet so shortly  
13 after a satisfactory performance appraisal appears to  
14 be a discriminatory action in violation of our  
15 requirements.

16 I'd like now, if I can, to turn the meeting  
17 over to you for comments that you believe to be  
18 helpful in us understanding the facts of this case.  
19 We may interrupt you from time to time with specific  
20 questions on issues or specific facts. Unless there  
21 is any other opening comments from the NRC staff,  
22 I'll turn it over.

1 MR. WEIL: Yes. Mr. Edleman, if you will for  
2 the record identify your current position with  
3 Morrison Knudsen and your position in December of  
4 '96, January of '97.

5 MR. EDLEMAN: My position at both times, '96  
6 and '97, and at the current time, is Director of  
7 Performance Systems. So my duties have changed since  
8 '96, '97 time period, but my title is the same.

9 MR. GROBE: Any other opening questions or  
10 comments? Very good. Thank you.

11 MR. EDLEMAN: As you said, I'm here to request  
12 and I'm going to try to provide you with an  
13 understanding of what transpired as I see it as  
14 related to Alain Artayet. I know this hearing is an  
15 important step in the process, and I do somewhat  
16 understand the process of this hearing that you  
17 talked about. I also think this is a serious issue  
18 that I'm very concerned about. I've never had these  
19 sorts of accusations leveled against me, and I do  
20 take it seriously, and so I'm eager to try to clarify  
21 that. I have spent a substantial amount of time  
22 thinking about what's transpired over the last two

1 years, living with this particular issue, so that I'm  
2 going to try to lay out for you is what I see it,  
3 from my perception, as best I can recollect it.

4 MR. GROBE: Okay.

5 MR. EDLEMAN: I'm basically going to focus on my  
6 removal of Alain Artayet as the Group Welding  
7 Engineer and subsequently his transfer to  
8 Parkersburg, West Virginia. In order for me to do  
9 that, I think it's important that I put my decision  
10 making process into some kind of context, and so I am  
11 going to address a number of topics. Those topics  
12 are what you have in that handout, in general, so  
13 they become a flavor of where I am going with this  
14 particular presentation. Those things are that I'm  
15 going to talk about my responsibility as related to  
16 Alain Artayet. I'm going to talk about the  
17 information that I had and when I had it as it  
18 related to his performance. I'm going to talk about  
19 the meeting, that I think you mentioned specifically,  
20 in mid December of '96, where in that particular  
21 meeting Lou Fardi conveyed to me that the Power  
22 Division personnel had lost confidence in Alain

1 Artayet's ability as Group Welding Engineer. I'm  
2 going to talk about a meeting that I had on January  
3 2nd, 1997, with Lou Pardi again, where he had told me  
4 that he had received a verbal response from the  
5 Hartford Steam Boiler audit that dealt with a lot of  
6 welding issues, and that's the same meeting where he  
7 told me that he no longer wanted Alain Artayet on  
8 Power Division work. I'm going to talk about Alain's  
9 performance evaluation and my review of that and  
10 approval. And lastly I want to talk a little bit  
11 about the actions that took place on January 15th  
12 with the removal of him as Group Welding Engineer and  
13 transfer to -- and ultimately transfer to  
14 Parkersburg, West Virginia, and explain that process  
15 a little bit. So that's what I intend on trying to  
16 cover in about 30 minutes if I could.

17 Let me step back and talk just for a second  
18 as to who I am, just to get a flavor of -- I told you  
19 my title is Director of Performance Systems. I  
20 report directly to Tom Zarges, the president and CEO  
21 of the Engineering Construction Group of Morrison  
22 Knudsen.

1           My background, I'm a graduate civil  
2 engineer. I have over 25 years experience in the  
3 engineering construction business in many different  
4 facets, but I'm not a welding engineer and I'm not  
5 qualified to evaluate welding codes or welding  
6 procedures. My job responsibility in 1996, 1997,  
7 primary responsibility was dealing with operational  
8 improvements, dealing with metrics and measurements  
9 of the quality and performance of our operation in  
10 general, trying to improve the operation. In 1994,  
11 Tom Zarges asked me to take over administrative  
12 responsibility for the quality management department,  
13 of which Alain was a part of.

14           When I look at how I spent my time, I spent  
15 about 95 percent of my time, or greater, on those  
16 improvement -- operational improvement initiatives  
17 and about 5 percent or less on issues that related  
18 specifically to the administration of quality  
19 management personnel. So I really did have minimal  
20 involvement in, specifically, in QA -- quality  
21 assurance programs. I did have administrative  
22 responsibility over Andy Walcott, who is the director

1 of the quality management group, and he reported to  
2 me on those administrative issues. Alain Artayet  
3 reported to Andy Walcott both on technical, as well  
4 as most administrative issues. Now when it came to  
5 reporting specifically on technical and quality  
6 assurance programs, that was really Andy Walcott's  
7 responsibility to manage and handle, and he reported  
8 directly to Tom Zarges as it related to those quality  
9 assurance programs and compliance with those  
10 programs.

11 Now just to understand a little bit about  
12 how we are organized and how we are kind of  
13 structured a little bit, there's really kind of two  
14 parts to our organization: There are line  
15 management, if you will, or people who run divisional  
16 operations, of which we have a Power Division which  
17 has both -- it both supports work in the nuclear  
18 industry and non-nuclear industry for power. In  
19 addition to that, we also have an Industrial Process  
20 Division that deals with chemical plants and  
21 refineries and automotive and those kind of things,  
22 and Alain Artayet supported both of those divisions

1 primarily.

2 MR. STEIN: I'd like to explore that for a  
3 second.

4 MR. EDLEMAN: Sure.

5 MR. STEIN: I noticed in the testimony that  
6 Industrial Process Division accounted for the bulk of  
7 the revenue and the projects among the two divisions.

8 MR. EDLEMAN: That's true.

9 MR. STEIN: Would you say Artayet's -- the bulk  
10 of his work was done in the Industrial Process  
11 Division?

12 MR. EDLEMAN: No. And I was going to address  
13 that. I'll tell you right now that when you look at  
14 it, about 60 percent of his work was Power, about 40  
15 percent was Industrial Processing.

16 MS. CHIDAKEL: Can I ask a question on that  
17 line? When you say "power," was that all nuclear  
18 power?

19 MR. EDLEMAN: No, it was not.

20 MS. CHIDAKEL: How much of that was nuclear  
21 power?

22 MR. EDLEMAN: Well, we had --

1 MR. STEIN: I'm sorry, or more specifically,  
2 Point Beach?

3 MS. CHIDAKEL: Well I'd like to know  
4 specifically how much of that was nuclear Power work?

5 MR. EDLEMAN: Well we had a nuclear power  
6 project at D.C. Cook in 1988. We have not had  
7 another nuclear project that involved welding until  
8 1996 at Point Beach. We did have some work at Fort  
9 St. Vrain, but that was really a decommissioning job,  
10 so there was really no work for eight years in  
11 nuclear.

12 MR. HICKEY: That Mr. Artayet --

13 MR. EDLEMAN: That Mr. Artayet was involved in,  
14 yes. Does that answer your question?

15 MS. CHIDAKEL: Yes.

16 At the time he was handling the nuclear  
17 work at Point Beach, was he also still involved in  
18 non-nuclear work?

19 MR. EDLEMAN: Yes.

20 MS. CHIDAKEL: That's all I have.

21 MR. EDLEMAN: Let me talk a little bit about the  
22 knowledge I had and the information I had on Alain

1 Artayet's performance. The first time that an issue  
2 came about, and I didn't recognize the significance  
3 of it at the time, but in the summer of 1996, Alain  
4 Artayet approached me, came to my office and said he  
5 was having problems with Max Bingham. Max Bingham  
6 was the project manager for Point Beach. I asked him  
7 if there was something that I could do to get  
8 involved with that particular issue, and he said it  
9 wasn't necessary, that Andy Walcott was looking into  
10 it and dealing with it, so there was nothing really  
11 for me to do. Now even though Alain had spoken with  
12 me about this problem and said there wasn't anything  
13 I needed to do, I did have a conversation immediately  
14 after that with Andy Walcott, and I asked Andy what  
15 was going on with this issue, and he told me,  
16 basically, that there was issues around welding  
17 procedures and more specifically, about the  
18 qualification of welding procedures for Point Beach.  
19 I again asked Andy whether or not he wanted me to get  
20 involved in this issue or not; he said that wasn't  
21 necessary, that he had already had a meeting, if you  
22 will, or a sit-down with Max Bingham and they had

1 worked all this issue out, so there was nothing for  
2 me to do at that point.

3           Again, I think the thing -- these  
4 particular meetings were not significant at the time,  
5 but in retrospect when I think about it, it really  
6 was the first indicator that I have heard about of a  
7 real problem.

8           Now, what happened next was really this mid  
9 December of 1996 period (indicating), if we could?  
10 This was the first time that I really thought there  
11 was a serious problem, except in retrospect, and Lou  
12 Pardi had come to me, and he talked to me about the  
13 fact that Power Division personnel had lost  
14 confidence in Alain Artayet's abilities as a welding  
15 engineer as a Group Welding Engineer.

16           MR. STEIN: You never heard from the Power  
17 Division site people between '96 -- mid '96 and  
18 December of '96 that there was a problem?

19           MR. EDLEMAN: I'm confused. Mid December is --  
20 can you say that again, please?

21           MR. STEIN: Between when Andy Walcott and you  
22 had your discussion in --

1 MR. EDLEMAN: In the summer of '96.

2 MR. EDLEMAN: Right, in the summer, and December  
3 of '96, none of the site people came to you that  
4 there was a problem?

5 MR. EDLEMAN: I never heard anything about the  
6 problem.

7 MR. STEIN: Thank you.

8 MR. EDLEMAN: One of the things that Lou Pardi  
9 expressed to me, a concern that he had and the field  
10 personnel had, was that they weren't for sure if he  
11 really understood the codes well enough and the  
12 interpretation of codes. One of the things that I  
13 would use an example that Lou made to me was an issue  
14 around drop weight testing. I don't know all the  
15 details of that, and I don't really understand the  
16 details of that, but I did recognize one thing  
17 that -- what I was told was that in 1998 on the D.C.  
18 Cook project, Artayet had taken some position on when  
19 to do the drop weight testing. He had a completely  
20 diametrically opposed version of that in 1996 on the  
21 Point Beach, so to me and him and those people was an  
22 indicator that something was wrong.

1 MR. BERSON: So Mr. Pardi conveyed this  
2 information to you in this mid December 1996 meeting?

3 MR. EDLEMAN: Right, in general, just how I  
4 described it. Again, I didn't get into details  
5 because I didn't quite understand it either.

6 MR. BERSON: Was that a big deal in Mr. Pardi's  
7 mind, as you understood it, during that conversation?

8 MR. EDLEMAN: I think it was a fairly major  
9 factor because of -- what it meant to him, I think,  
10 was the fact he didn't feel comfortable that he  
11 understood the codes.

12 MR. BERSON: Did he use those words, similar to  
13 that, that he felt that Artayet didn't understand the  
14 codes?

15 MR. EDLEMAN: Something to that effect. I don't  
16 remember the exact words that happened at the time to  
17 be honest with you.

18 MS. CHIDAKEL: Just to clarify, this was at your  
19 December meeting that --

20 MR. EDLEMAN: Mid December meeting I'm  
21 describing right now, yes.

22 MS. CHIDAKEL: Maybe you already covered this,

1 but you said one of the things he said was this  
2 issue; could you tell us please what exactly other  
3 specific issues did he raise with respect to Artayet  
4 at that time?

5 MR. EDLEMAN: Well the other issue that he  
6 brought up dealt specifically with the fact that he  
7 didn't qualify the welds as was a part of his job on  
8 the Point Beach; there was a problem with that issue,  
9 and the project really had to scramble to do Alain  
10 Artayet's job. So it was really two issues: One was  
11 the concern about whether he could interpret the  
12 code; and the second concern was he really wasn't  
13 doing his job, that was part of his job to qualify  
14 the welds.

15 MS. CHIDAKEL: To qualify the welds himself?

16 MR. EDLEMAN: To be part of the process, to  
17 manage the process, to lead the process; he didn't  
18 necessarily have to do the welding.

19 MR. HICKEY: Do you mean welding or welding  
20 procedures?

21 MR. EDLEMAN: Welding procedures, he was  
22 responsible for. Qualifying the welding procedures.

1 MR. BERSON: Just for clarity, this is when  
2 Mr. Artayet went down to Memphis to have these  
3 coupons welded, that whole effort to try to get these  
4 11 or so welding procedures qualified; that's what  
5 you are referring to?

6 MR. EDLEMAN: Yes, I am.

7 MR. BERSON: Okay.

8 MR. EDLEMAN: And as I understand it -- I didn't  
9 understand at the time, but as I understand it today,  
10 that's about the time when he had -- when Alain  
11 Artayet first came to me in September of '96. That's  
12 what he and Andrew were both talking about, the  
13 problem with that qualification.

14 MR. BERSON: September of '96 or summer of --

15 MR. EDLEMAN: I'm sorry, the summer of '96.

16 MS. CHIDAKEL: I'm confused. You said Pardi  
17 brought up that he didn't qualify the welds, and then  
18 you said the welding procedures. Could you clarify  
19 exactly what it was that Pardi was concerned that  
20 Artayet was supposed to be doing that he wasn't  
21 doing?

22 MR. EDLEMAN: As best I understand it -- and I'm

1 no expert in this area -- but if there is a corporate  
2 procedure for welding that's already qualified, then  
3 the site, project-specific, and just use that  
4 procedure to create their project-specific welding  
5 procedures, okay? In the case of Point Beach, there  
6 were a number of procedures -- I'm sorry, a number of  
7 types of welding that needed special qualification  
8 that they didn't have, I guess, statistical  
9 information on. That was the primary job of Alain  
10 was to make sure that the program was working  
11 properly and that he qualified those new types of  
12 welds. That's the best I can explain it to you.

13 MR. STEIN: Are you aware of a memo that was  
14 written from Artayet to Rusty Gordon on August 1st,  
15 1996, delegating his authority for the preparation  
16 and qualification of welding procedures under  
17 certain --

18 MR. EDLEMAN: I have learned of that letter in  
19 the last two years, but I was not aware of that  
20 letter in mid December.

21 MR. STEIN: Okay, because the C.C. was to Max  
22 Bingham, and also to Andy Walcott, and also, I guess,

1 into your QA record files, but you were not aware of,  
2 when you were meeting with Mr. Pardi, that this  
3 delegation had occurred?

4 MR. EDLEMAN: That's correct. I was not aware  
5 of it. So I guess I --

6 MS. CHIDAKEL: So what exactly was Pardi's  
7 concern? That Artayet had delegated the  
8 qualification to Memphis? That he had delegated  
9 to -- that he wasn't on top of things? What exactly  
10 did Pardi say?

11 MR. EDLEMAN: It was his job to manage the  
12 qualification of those welding -- what do you call  
13 them -- specifications, I guess. That was his job.  
14 He didn't do that. It didn't get done, and it didn't  
15 get done in a timely fashion. That was his job.

16 MS. CHIDAKEL: And that was what Pardi raised  
17 with you at the first meeting?

18 MR. EDLEMAN: That was one of the issues raised.

19 MS. CHIDAKEL: Okay.

20 MR. EDLEMAN: The other issue, as I have  
21 explained to you, was the issue of the feeling that  
22 he didn't understand the code, and he gave me an

1 example of that with the drop weight testing.

2 MR. STEIN: I want to explore that for a second  
3 too. There was a fax, it's dated 7/10/96, I think,  
4 from Artayet to Rusty Gordon talking about the drop  
5 weight testing, and there is a note on the bottom.  
6 Were you aware of -- did he share this with you?

7 MR. EDLEMAN: I know of that memo only  
8 subsequent to what was happening.

9 MR. STEIN: Okay.

10 MR. EDLEMAN: I had really no knowledge of what  
11 was going on with this whole issue until mid December  
12 of '96, when Lou Pardi approached me; that's when I  
13 really understood that there was a problem.

14 MS. CHIDAKEL: At that point, what did Pardi  
15 want you to do about it?

16 MR. EDLEMAN: At that point, there was no  
17 decision on his part to do anything. He was  
18 conveying to me that he had some real concerns about  
19 him continuing support of Power Division work.

20 MS. CHIDAKEL: But he didn't suggest anything to  
21 you; what did he want you to do about it?

22 MR. EDLEMAN: Nothing at that point. He was

1 making me aware.

2 MS. CHIDAKEL: He was bringing it to your  
3 attention.

4 MR. EDLEMAN: As a matter of fact, we were  
5 discussing something else in the meeting, and he  
6 brought it up as a second afterthought in that  
7 particular mid December meeting.

8 MR. BERSON: Mr. Edleman, I don't know  
9 Mr. Pardi.

10 MR. EDLEMAN: Okay.

11 MR. BERSON: Obviously, you have worked with  
12 him. Is he the type of individual -- there are some  
13 people that make mountains out of mole hills, or  
14 whatever, and something flashes through their mind,  
15 they'll bring it up. Other people are -- I'm not  
16 going to make a judgment what's better or what's  
17 worse, but other people, you know, they're going to  
18 keep their mouth shut until they are generally  
19 concerned about something. What's your take on  
20 Mr. Pardi? I mean, in his bringing this up to you,  
21 you took it that he was serious about and generally  
22 concerned?

1 MR. EDLEMAN: I took it as a very serious issue  
2 at that meeting.

3 MR. BERSON: Okay.

4 MR. EDLEMAN: I was concerned with the fact that  
5 we have an individual here where a whole division  
6 doesn't think he is competent in his job and he  
7 wasn't performing his job. That concerns me and we  
8 have to do something about that.

9 MR. STEIN: I'd like to explore that for just a  
10 second. He was working for the company since 1988?

11 MR. EDLEMAN: I believe that's correct.

12 MR. STEIN: In that same position as Group  
13 Welding Engineer, doing these kind of code  
14 certifications, and it was only up until 1996 where  
15 people are questioning his competence to do his job;  
16 is that accurate?

17 MR. EDLEMAN: That's not quite accurate. I  
18 think that he had been slightly involved at the end  
19 of D.C. Cook in 1988, shortly after he started, and I  
20 think it was really trying to understand the codes  
21 and how we worked on a nuclear project because he had  
22 just gotten out of school as I understand it. We

1 hadn't had another nuclear job for him to work on  
2 until 1996. All the rest of his work was on other  
3 types of projects, including a lot of Industrial-  
4 Process-type work, which isn't as rigorous in the  
5 codes as you find in a nuclear job. So, yes --  
6 there's a difference there in the types of things  
7 you're doing.

8 MR. GROBE: If I could reiterate Mike's  
9 questions, was there a question regarding his  
10 competence prior to late 1996?

11 MR. EDLEMAN: There's nothing that I know about  
12 prior to that time. If anything was raised, I wasn't  
13 aware of it.

14 MR. HICKEY: Well you mentioned the Cook thing;  
15 that was before 1996?

16 MR. EDLEMAN: Yeah. That related to the drop  
17 weight testing we talked about before. But I wasn't  
18 aware of that until subsequent to all of this.

19 MR. GROBE: Why don't you go on with your  
20 discussion.

21 MR. EDLEMAN: We've covered a lot of my points  
22 already, but I'll continue on and try to make it

1 short for those here.

2 You had asked a question specifically about  
3 my thought process a little bit was after this  
4 December '96 meeting and what happened.

5 MR. BERSON: Yes.

6 MR. EDLEMAN: And let me try to tell you about  
7 that a little bit.

8 Again, Lou Pardi did not say that Alain  
9 Artayet was off of Power workat that meeting, but to  
10 me it was kind of a foregone conclusion that he was  
11 not going to work on Power workin the future.

12 MS. CHIDAKEL: Why was that if Pardi didn't tell  
13 you that?

14 MR. EDLEMAN: Let me explain it if I could. I  
15 was lead to that conclusion, No. 1 is it had already  
16 risen up to the level of the executive  
17 vice-president, Lou Pardi, which to me is a fairly  
18 serious thing, and I hadn't heard about anything  
19 until that point, but it told me that it would be  
20 very difficult, at best, to probably change his mind  
21 because of all the things that transpired that he was  
22 aware of it. It also reflected back to me the

1 meeting that I had with Alain and Andy in the summer  
2 of '96 where they brought this issue up to me and I  
3 said that this had to have been going on for quite a  
4 while; obviously, at least back to the summer of '96.

5 MS. CHIDAKEL: "This" being what; I'm sorry?

6 MR. EDLEMAN: This whole issue with Pardi and  
7 Alain's qualifications.

8 Is that clear?

9 MS. CHIDAKEL: Yes.

10 MR. EDLEMAN: The other thing is you asked me a  
11 little bit about Lou Pardi and how I knew him. I met  
12 Lou in 1992 when he came to work for Morrison  
13 Knudsen. I knew he had a very strong operational  
14 background, he knew how to get work done. I thought  
15 him to be a very fair based man. He had a lot of  
16 technical background and experience, and he was a  
17 welding engineer and handled the technical department  
18 at Fluor Daniels, as I understood it.

19 The one thing that I always thought about  
20 Lou Pardi is that I never see him get mad over an  
21 issue. His approach has always been: We've got a  
22 problem; let's go solve the problem. So that's my

1 impression of Lou Pardi.

2 So the basic conclusion that I had out of  
3 this whole thing was that Alain Artayet was going to  
4 be removed from Power Division work shortly, that I  
5 had a problem, I had to figure out what I was going  
6 to do with Alain Artayet, how I was going to use him;  
7 could he only support one division? Could I have two  
8 Group Welding Engineers? I need some time to think  
9 about this process a little bit and what I was go to  
10 do.

11 MS. CHIDAKEL: Excuse me. At that point after  
12 Pardi came to see you in December, did you go to talk  
13 to Walcott and tell him what Pardi had expressed to  
14 you?

15 MR. EDLEMAN: You should have a copy of my  
16 outline. Actually that's the next thing that I was  
17 going to talk about, the fact that I, immediately  
18 after that -- I'll say shortly after that, I had a  
19 conversation with Andy Walcott about this. I talked  
20 to him and explained to him what Lou Pardi had said  
21 to me and his concern about him working on Power work  
22 in the future.

1           One of things that I had thought about  
2 early on was that if he did lose the Power work,  
3 could we hire another person to support Power as a  
4 welding engineer, keep Alain Artayet on for the  
5 Industrial Process Division, and have two, if you  
6 will, Group Welding Engineers or Division Welding  
7 Engineers? And I talked about that to Andy Walcott  
8 at the time.

9           MS. CHIDAKEL: Pardon me one second, I'm sorry,  
10 but you said you told Walcott at that time? Pardon  
11 me if I misunderstood you, but did you say you told  
12 Walcott at that time that Pardi wanted him out of the  
13 Power Division, or that you felt he was going to be?  
14 What exactly did you tell Walcott?

15           MR. EDLEMAN: I did not tell him that Lou Pardi  
16 had removed him at that point. What I said was that  
17 it was my impression that he was going to not work on  
18 Power workin the future. There was nothing definite  
19 in December of '96, where Pardi said he is not going  
20 to work on Power. That was my interpretation that I  
21 saw that coming about, and I expressed that to Andy  
22 Walcott. After I talked to Andy Walcott, I talked to

1 Alain Artayet, and I told him about the conversation  
2 that I had with Lou Pardi and expressed the same  
3 concern. I told him that I was going to try to look  
4 into having two Group Welding Engineers, but it  
5 wasn't definite.

6 MR. STEIN: In all of these meetings that you  
7 have had in December with Pardi, with Walcott, with  
8 Artayet, nothing was documented? There was no  
9 meeting minutes? There's -- is there a policy at MK  
10 when you are dealing with personnel issues that you  
11 document the meetings that you have?

12 MR. EDLEMAN: Well, we probably don't have  
13 procedures as good as we should. We are somewhat of  
14 an informal company when it comes to that kind of  
15 thing, and most of these types of conversations,  
16 again, were just general conversations between people  
17 and, again, in this mid December time frame where it  
18 was still discussion, and some of this I'm conveying  
19 to you was my thought process, not necessarily  
20 something that was a decision made and documented.

21 MR. HICKEY: It might be useful if you indicate  
22 something about the size of the corporate staff that

1 we're dealing with because it relates to the degree  
2 of formality or informality of personnel matters.

3 MR. EDLEMAN: Well if you look at the divisions,  
4 basically five divisions and Tom Zarges, the  
5 president, all sit basically together in the same  
6 area. I sit on the same floor and area as they do.  
7 The whole quality management department consisted of  
8 three people and a clerk, so four people total,  
9 including Alain Artayet. So we're not talking about  
10 a big staff of people that we're dealing with here,  
11 so a lot of things were informal.

12 MR. GROBE: What is the size of Morrison  
13 Knudsen, including the divisions?

14 MR. EDLEMAN: The total number, I think we are  
15 at about 8,000, but that's across all the divisions.

16 MR. GROBE: Are there separate personnel  
17 practices or procedures in different parts of the  
18 company?

19 MR. EDLEMAN: There are in certain cases.  
20 Obviously if we're dealing with a nuclear job and  
21 one of those kinds of procedures --

22 MR. GROBE: I'm talking about personnel

1 practices.

2 MR. EDLEMAN: Oh, personnel practices? In  
3 general, the same.

4 MR. GROBE: Okay.

5 MR. EDLEMAN: After talking both to Andy and  
6 Alain about the conversation with Lou in mid  
7 December, I went down to see Kevin Tobin, director of  
8 HR, Human Resources.

9 MR. GROBE: I'm sorry, Mr. Edleman. Before you  
10 get into that, what was Mr. Walcott's reaction to  
11 your conversation with him?

12 MR. EDLEMAN: I can't remember specifically his  
13 reaction. I don't remember him being shocked about  
14 it. You have to remember, I think they were very  
15 much aware of what was going on in a lot more detail  
16 than I was at the time for at least the last six  
17 months, so --

18 MS. CHIDAKEL: Were you surprised when Pardi  
19 came to you?

20 MR. EDLEMAN: Yes.

21 MR. BERSON: In your day-to-day  
22 responsibilities, did you have much interaction with

1 the site, with Mr. -- I'm probably not pronouncing it  
2 correctly -- Mr. Sikofis or --

3 MR. EDLEMAN: No... I have very little contact  
4 with the site. Again, my job was more of a corporate  
5 group kind of level, and I hadn't dealt with project  
6 sites for at least five years.

7 MR. BERSON: Okay, so you wouldn't talk to them  
8 even on a monthly basis?

9 MR. EDLEMAN: Not on a regular basis. If I  
10 happened to see one of them in the office, Marty or  
11 something, I might say "Hi," that kind of thing, but  
12 that was it.

13 MR. BERSON: But there were no discussions about  
14 Mr. Artayet with the site people?

15 MR. EDLEMAN: Absolutely not.

16 MR. BERSON: Thank you.

17 MR. EDLEMAN: So I had a conversation with Kevin  
18 Tobin, the HR director, and in there we talked about,  
19 you know, some thoughts of what I could do if I did  
20 lose Power Division work; you know, what could I do  
21 with Alain in that event? We are now just before  
22 Christmas, and I was going to take some vacation and

1 basically that's all the activities that I handled up  
2 to that point, and I figured I would deal with this  
3 sometime after the first of the year.

4 MR. STEIN: Did your OHR director ever advise  
5 you to document -- start documenting?

6 MR. EDLEMAN: We never discussed that.

7 MR. HICKEY: I might add just one thing if I  
8 could? I don't want to interrupt Mr. Edleman's  
9 discussion, but since you have raised the question  
10 twice, it is unfortunate that there's not a more  
11 rigorous documenting of personnel action. The main  
12 benefit of that is to confirm or corroborate what  
13 happened and what went on; and what we to have,  
14 luckily, in this matter and in this investigation is  
15 confirmation both from Mr. Walcott and Mr. Artayet in  
16 their interviews with Mr. Stier's investigation that  
17 not only confirmed that the conversations happened,  
18 but to give their understanding of the message that  
19 they received. So Mr. Edleman tells you what he  
20 remembers about what he said, which is the best he  
21 can do, but you can also get a part of the picture  
22 from seeing what Mr. Walcott is --

1           MR. STEIN: The problem with the documentation,  
2 of course, is that there is the performance  
3 appraisals and, you know, basically this is centering  
4 on performance.

5           MS. CHIDAKEL: Why don't we let Mr. Edleman  
6 continue through his thing, because he has something  
7 down there.

8           MR. EDLEMAN: I'm going to cover that.

9           MS. CHIDAKEL: Please continue, if you would, on  
10 that line?

11          MR. EDLEMAN: Okay. Let me move to January 2nd,  
12 1997, next if I could?

13                   I came back from vacation, and I believe  
14 Lou Pardi also came back from vacation, and on the  
15 2nd, he talked to me again about Alain Artayet, and  
16 he told me that he had just received a verbal  
17 debriefing on the yearly management review of the  
18 Hartford Steam Boiler audit. This was an audit that  
19 took about a day and a half, I believe, just before  
20 Christmas, and it was done with one person, one  
21 auditor who came in, and that auditor was not a  
22 welding engineer, but he was concerned with the fact

1 that the findings were that there were three welding-  
2 related detail findings related to those kind of  
3 welding problems by somebody who is a non-technical  
4 kind of person who was really just doing an overview  
5 or a management review of the system. So he  
6 expressed to me that he felt that if there's -- if  
7 those kind of detail problems can be found by  
8 somebody non-technical, what other issues do we have  
9 out there? Do we have more serious procedural  
10 problems? And the biggest concern that he really had  
11 about that was the fact that that was really  
12 Artayet's job, as he saw it, and as I saw it, was to  
13 make sure that we did have welding procedures that  
14 met the codes and welding procedures that met the  
15 contract requirements that we had. So that was  
16 primarily his responsibility.

17 MR. GROBE: Is that a common understanding among  
18 all parties?

19 MR. EDLEMAN: I think so.

20 MS. CHIDAKEL: At that point were you aware of  
21 whether Artayet was actually reviewing the site-  
22 specific procedures?

1           MR. EDLEMAN: I believe so, but I don't think I  
2 knew any details.

3           ...MS. CHIDAKEL: You believed he was reviewing the  
4 site-specific procedures, but you're not sure?

5           MR. EDLEMAN: I knew he was involved in the -- I  
6 thought he was involved in the process of supporting  
7 the project and welding procedures early on. At that  
8 time, after Lou came to me and said he wasn't --  
9 because the welding procedures were already qualified  
10 by the field later -- before, or at least some time,  
11 I think, just before December of '96, so that whole  
12 process occurred sometime in the summer-fall period  
13 of '96, the actual qualification of the procedures.

14                   Going back to what we talked about, again  
15 he mentioned to me the drop weight testing issue on  
16 the January 2nd meeting, and he mentioned to me about  
17 the Power personnels' loss of confidence in Alain  
18 Artayet as the Group Welding Engineer. The basic  
19 conclusion that he came to was the fact that he had  
20 lost confidence in his ability to understand the  
21 code, and drop weight testing was one of the issues  
22 that he explained, to me, the kind of evidence that

1 it was very apparent the fact was he did not get the  
2 welding procedures qualified and had problems doing  
3 that, and that was his job, so he really wasn't doing  
4 his job. And the third thing really was the concern  
5 over the Hartford Steam Boiler, that his job was to  
6 make sure that the welding procedures met code in all  
7 of that, and yet the audit proved that we at least  
8 had three problems there and maybe more. So at that  
9 point --

10 MR. GROBE: What type of action was necessary in  
11 response to the audit, the Steam Boiler audit?

12 MR. EDLEMAN: Well I assume somebody had -- Andy  
13 Walcott had looked into those three problems and  
14 would have to close those out, but I don't know  
15 specifically the actions that occurred.

16 MR. GROBE: Did it result in stop work on the  
17 project?

18 MR. EDLEMAN: I don't know. I don't believe so.  
19 I've never heard that.

20 But at this particular meeting, the  
21 important point I want to make, his conclusion was  
22 that Alain Artayet wasn't going to work on Power

1 workany more. The next thing that happened --

2 MS. CHIDAKEL: That was Pardi's conclusion  
3 you're saying; not your conclusion?

4 MR. EDLEMAN: It was Pardi's conclusion.

5 MR. STEIN: I have got a question about the  
6 hierarchy at Morrison Knudsen.

7 MR. EDLEMAN: Okay.

8 MR. STEIN: He is the division executive VP for  
9 the Power Division?

10 MR. EDLEMAN: Correct.

11 MR. STEIN: Can he tell you -- Artayet works for  
12 you, so I guess you would be the one who would be  
13 assigning him his work; can he tell you, "I don't  
14 want him involved in Power work," and then if you  
15 disagreed, you take it up the chain to the president?  
16 Or how -- what's the --

17 MR. EDLEMAN: Well in this case, the real issue  
18 was the fact that he wasn't doing his job supporting  
19 it. His job as a welding engineer was to support  
20 projects in the field qualifying welding procedures,  
21 so he wasn't doing that, and so as a customer,  
22 internal customer, the division's considered an

1 internal customer by all us who are support people,  
2 and yes, he does have a right to say, "I'm not going  
3 to work with those people any more." I think his  
4 biggest concern was really a quality and safety  
5 concern over this, and that's what he has always  
6 expressed to me: His concern about having procedures  
7 that are up to snuff and making sure they meet code  
8 and those sorts of things. That's always been his  
9 impression.

10 MS. CHIDAKEL: But Hartford had done audits in  
11 prior years; right?

12 MR. EDLEMAN: Yes.

13 MS. CHIDAKEL: They did an audit every year; is  
14 that correct?

15 MR. EDLEMAN: Yes, a management review audit at  
16 least once a year.

17 MS. CHIDAKEL: And had you been aware of their  
18 findings before that year? Were you generally made  
19 aware of their findings?

20 MR. EDLEMAN: No. Again, I did not get involved  
21 until the quality assurance program. I got involved  
22 only in administrative issues.

1 MS. CHIDAKEL: So you didn't know what their  
2 previous findings had been or whether there had been  
3 similar findings in previous years?

4 MR. EDLEMAN: No, I did not know that.

5 MR. HICKEY: Mr. Pardi can speak to that. That  
6 was one of the issues that was flagged in the --

7 MS. CHIDAKEL: No, please excuse me, I don't want  
8 to be rude, I'd really -- if you don't mind, I  
9 realize you represent Mr. Edleman, but we would like  
10 to get Mr. Edleman's views.

11 MR. HICKEY: Sure. I just thought that you'd be  
12 interested in knowing that there was an answer to  
13 your question coming, that Mr. Pardi will address  
14 that.

15 MS. CHIDAKEL: That's fine, thanks.

16 MR. EDLEMAN: I don't know what the results of  
17 those audits were.

18 MS. CHIDAKEL: I'm sorry, can you --

19 MR. EDLEMAN: I do not know what the results of  
20 those previous audits were.

21 MS. CHIDAKEL: Okay.

22 MR. BERSON: Mr. Edleman, I've got a question.

1 Basically you had the executive vice-president of the  
2 Power Division telling you that one of your  
3 subordinates wasn't doing his job in mid December and  
4 also on January 2nd, '97; what if anything did you do  
5 after hearing about that? For example, did you go to  
6 Mr. Walcott and say, you know, "What's the story  
7 here? Is Lou right or is Lou wrong?" Was there any  
8 of that kind of interaction?

9 MR. EDLEMAN: Yeah. I had separate meetings  
10 both with Andy Walcott and Alain Artayet shortly  
11 after my meeting with Lou Pardi on January 2nd. I  
12 told both of them the conversation that Lou had, that  
13 I wanted Alain Artayet to stay away from Power workin  
14 the future because of what Lou Pardi said; I told  
15 them both, again, my idea was still trying to  
16 separate Power Division work from Industrial Process  
17 Division, but I wasn't sure whether that was going to  
18 work, but I did convey to them that I was working on  
19 that. That's what transpired immediately after that  
20 January 2nd meeting so --

21 MR. BERSON: Well it sounds like you were  
22 accepting at face value what Lou Pardi told you in

1 terms of who was responsible for the poor  
2 performance; is that --

3 MR. EDLEMAN: No, that's not true. I mean he  
4 was responsible for the whole welding program at MK.

5 MR. BERSON: "He" meaning?

6 MR. EDLEMAN: Alain Artayet, I'm sorry, was  
7 responsible for the welding program at MK. He knew  
8 that. He was supposed to be the welding expert. He  
9 was supposed to be the expert in the code. He was  
10 supposed to be the one that made sure that all of our  
11 procedures -- our project procedures, our corporate  
12 procedures that related to the welding program were  
13 up to snuff. That was his job.

14 MR. BERSON: But wasn't there a document  
15 prepared in November of '97, I think it came out  
16 under Mr. Walcott's signature, which was, in essence,  
17 a defense of Mr. Artayet and how he handled the  
18 welding qualification process; were you aware of that  
19 document?

20 MR. EDLEMAN: No, I was not aware of it at the  
21 time. I am aware of it today.

22 MR. GROBE: Neither Mr. Walcott, nor Mr. Artayet

1 brought any of these issues to the fore when you  
2 discussed your performance concerns that Mr. Pardi  
3 raised?

4 MR. EDLEMAN: No. So I've gone through a lot of  
5 things. Can I just --

6 MR. WEIL: Let me just jump in here.

7 MR. EDLEMAN: Sure.

8 MR. WEIL: When Mr. Pardi came to you, did he  
9 indicate that he was displeased with Mr. Artayet at  
10 everything in the Power Division or, more  
11 specifically, just the nuclear application in  
12 particular at Point Beach?

13 MR. EDLEMAN: Well his biggest concern was  
14 nuclear and Point Beach because that was the one we  
15 just worked on. We also had another project coming  
16 up in St. Louis which is the same type of job, steam  
17 generator replacement, and so his concern was if  
18 we're not meeting the code, we don't have the right  
19 guy; we better make sure we get the right guy before  
20 the next project.

21 MR. WEIL: He didn't say anything about the  
22 other Power Division power plants that would, of

1 course, not be nuclear? He didn't say that he was in  
2 any way in arrears or wrong about the codes that were  
3 being set for those situations? -

4 MR. EDLEMAN: He never conveyed that to me.

5 MR. WEIL: Thank you.

6 MR. BERSON: Just to follow up, I think earlier  
7 you told us that approximately 60 percent of  
8 Mr. Artayet's work was on the Power side of the  
9 house, 40 percent in the industrial?

10 MR. EDLEMAN: Right.

11 MR. BERSON: Point Beach was the only nuclear  
12 job on the Power side, so of that 60 percent of his  
13 time that I guess was spent doing Power work, what  
14 percent of that 60 percent was spent on the Point  
15 Beach, versus all the other jobs in the Power  
16 Division; do you know or have any sense of that?

17 MR. EDLEMAN: I couldn't answer that now. The  
18 only way I could find it is I'd have to go back  
19 through our personnel -- I'm sorry, our payroll  
20 records and see how he charged his time and which  
21 work orders.

22 MR. BERSON: Do you have a qualitative sense? I

1 mean I'm not going to hold you to numbers, but was he  
2 essentially full-time on Point Beach during this  
3 period of time, or 50 percent or---

4 MR. EDLEMAN: I really can't answer that. I  
5 really don't know.

6 MR. BERSON: Okay.

7 MR. EDLEMAN: It would just be a guess on my  
8 part.

9 MR. BERSON: Okay.

10 MR. EDLEMAN: What I was trying to tell you, so  
11 far, was basically that I had a first kind of  
12 knowledge, in retrospect, in the summer of '96, where  
13 Alain came to me about Max Bingham, and I talked to  
14 Andy Walcott about it, and he kind of confirmed there  
15 was a problem there, but it was being taken care of.  
16 I had a meeting with Lou Pardi in mid December of  
17 '96, where he told me that the Power Division  
18 personnel had lost confidence in Alain Artayet's  
19 abilities, and I talked to basically three people  
20 around that time shortly, I think, just before  
21 Christmas, and that was Walcott, Artayet, and the  
22 Human Resources director, Kevin Tobin. And then I

1 had another meeting on January 2nd with Pardi where  
2 he told me his concerns about the Hartford Steam  
3 Boiler audit, and some of those results that he held  
4 Alain Artayet responsible for and that he had removed  
5 him from doing any more Power work at that particular  
6 meeting, so that's kind of where we're at. And I did  
7 have a conversation, by the way, with both Alain  
8 Artayet, as I explained, and Andy Walcott to explain  
9 the situation. That's kind of where we're at.

10 MR. BERSON: So on January 2nd, Mr. Artayet was  
11 removed from all Power Division work?

12 MR. EDLEMAN: Power, yes.

13 MR. BERSON: And that was communicated to him?

14 MR. EDLEMAN: Yes, verbally.

15 What I'd kind of like to move into is the  
16 performance evaluation because it kind of fits in the  
17 time frame here that was occurring in late December  
18 of '96 -- or I should say December of '96 and January  
19 of '97. Let me talk about that a little bit.

20 This Performance Review, the '96  
21 Performance Review, was prepared by Andy Walcott.  
22 And in previous years Alain Artayet had been rated

1 excellent, and the best way to think about excellent  
2 are -- we have five grades -- excellent is really the  
3 same as thinking about a B, if you will, in school;  
4 so he was rated with a B. But again, as I said, his  
5 experience had been very little nuclear experience, a  
6 little bit in 1988 when he started on D.C. Cook,  
7 until 1996, and everything else that occurred was  
8 non-nuclear type work. The problem really began  
9 arising in 1996.

10 MR. STEIN: We have a similar structure here in  
11 our performance appraisal systems for the Nuclear  
12 Regulatory Commission. Do you have a sense of  
13 numbers? I mean, is "effective" the baseline and the  
14 majority of MK employees get "effective," or, you  
15 know, do you have grade creep, where everybody's  
16 getting an "outstanding"?

17 MR. EDLEMAN: I can't tell you statistically  
18 where most people fall, but I guess, if I had to  
19 guess, that you're going to have a bell-shaped curve,  
20 and the bell-shaped curve would probably fall on the  
21 B rating. That's only my guess. The truth is every  
22 individual manager or supervisor who evaluates

1 somebody can evaluate them any way he wants. Some  
2 may look at people "outstanding," and some may see  
3 people a lot less and never give an "outstanding".

4 MR. HICKEY: I was wondering if you could  
5 address more specifically the ratings in your area or  
6 your division if you can't summarize the whole  
7 company?

8 MR. EDLEMAN: Oh, well since '94, when I got  
9 involved in the administrative part of the quality  
10 management, there weren't a lot of people, but there  
11 were various people, I think ten or twelve in and  
12 out, and there was really only one other time when I  
13 had reduced a rating from the B rating, if you will,  
14 to a C rating, and it was for a different individual,  
15 and it was for poor performance; he wasn't doing his  
16 job on supporting a project. Otherwise, everybody  
17 else that I have been involved with evaluating, or at  
18 least approving their evaluations, were always at  
19 that B level.

20 MR. STEIN: So a poor performer would end up  
21 getting an "effective."

22 MR. EDLEMAN: Well, reduced.

1 MR. STEIN: Did you ever see a lower grade; a  
2 marginal or unsatisfactory?

3 MR. EDLEMAN: Not with the quality management  
4 department, no.

5 MR. BERSON: Can you elaborate a little bit on  
6 how the performance appraisal process works? For  
7 example, does Mr. Walcott prepare this -- the  
8 appraisal Mr. Artayet sort of in a vacuum, or does he  
9 consult with you in advance? Do you talk about it  
10 before it's written down, that kind of thing?

11 MR. EDLEMAN: Yes, I'll explain it. Basically  
12 what happens is the supervisor or the manager  
13 receives two forms. One is the performance  
14 evaluation form, of which you have a copy of; there  
15 is also an employee version of that. The manager is  
16 supposed to take that employee version and give it to  
17 the employee and say, "We'd like you to look at it  
18 and prepare for your performance evaluation scheduled  
19 such-and-such a date." The intent is that the  
20 supervisor then goes about and fills out that  
21 performance evaluation, the employee fills out how he  
22 believes his performance was, they have a meeting of

1 the minds and they talk about these issues, and they  
2 basically agree to all the things that are documented  
3 on the performance evaluation, the career development  
4 plan and the rating, or at least they have an  
5 opportunity, if they object to the rating, to put it  
6 down on the form, but both employees sign it. Now  
7 that's pretty typical.

8 In this case, because of my administrative  
9 involvement, I asked that I have a chance to review  
10 those before they were sent down to the HR  
11 department, and what I would typically do was I would  
12 receive those; if I had clarifying questions from  
13 whoever the appropriate person was, I would talk to  
14 that person, I would sign it, and then I would send  
15 it down to the Human Resource department shortly  
16 after, within usually a few days or a week. That was  
17 my normal habit, if you will. In this particular  
18 case, that didn't happen quite that way from the  
19 standpoint as when I received that performance  
20 evaluation after they had signed it on, I think, the  
21 23rd of December, I didn't react to it real quickly  
22 because of the fact that, well number one, the

1 holidays were there and I took my vacation time. But  
2 in addition to that, I had heard a lot of things  
3 recently about Alain Artayet's performance evaluation  
4 from Lou Pardi, and confirmation from some other  
5 areas and Walcott, and I really wanted to think about  
6 his rating and whether it was the right rating for  
7 him. And so it took me some time to go through that  
8 and think about that. There are really a couple  
9 things that went through my mind --

10 MR. STEIN: It was an "effective" rating, and  
11 you wanted to think about whether it should have been  
12 lower?

13 MR. EDLEMAN: Yes. I definitely wasn't going to  
14 raise it because he had already reduced it once, and  
15 I knew about the performance problems.

16 MR. BERSON: Had you been involved in the  
17 "effective" rating at all up to that point in time,  
18 or was this something that Mr. Walcott prepared on  
19 his own or based on his own observations of  
20 Mr. Artayet, without any input from you at that time?

21 MR. EDLEMAN: That's correct. I had no input  
22 into this until I had -- I had an opportunity for

1 input after the 23rd when it was signed by both  
2 parties.

3 MR. BERSON: But that would have been after the  
4 supervisor met with Mr. Artayet and they supposedly  
5 had a meeting of the minds and basically agreed on  
6 the rating. You didn't direct or --

7 MR. EDLEMAN: No, I wasn't involved and I  
8 didn't --

9 MR. BERSON: Okay.

10 MS. CHIDAKEL: Was it at that point that you  
11 wanted to reconsider the evaluation?

12 MR. EDLEMAN: When I received it --

13 MS. CHIDAKEL: Signed by both people?

14 MR. EDLEMAN: Signed by both people and came up  
15 to me, I wanted to look at it again and think about  
16 it because of the things that I had heard about Alain  
17 Artayet's performance. I was thinking that maybe I  
18 might want to consider a lower rating. If I had done  
19 that and considered a lower rating, I would have gone  
20 back to Alain Artayet and probably Andy and sat down  
21 and discussed these issues more.

22 MR. STEIN: Would you have gone to personnel and

1 put him into some kind of performance improving plan?

2 MR. EDLEMAN: Well that's really what the career  
3 development piece is, and it's really agreed on  
4 between the two parties what action should be taken  
5 if you have some deficiencies. The second part is  
6 what do you do to get those deficiencies removed? It  
7 could be additional education, schooling, training,  
8 maybe personal action that you're going to take. And  
9 that's the idea of the career development piece that  
10 goes along with the performance evaluation.

11 MS. CHIDAKEL: Hadn't you had a chance to look  
12 at the performance evaluation and find out what  
13 Walcott was planning on giving Artayet before that  
14 was seen by both people?

15 MR. EDLEMAN: No, that was not the process. My  
16 process was to look at it and see whether I basically  
17 agreed with it or had any objections to it after --

18 MS. CHIDAKEL: After it --

19 MR. EDLEMAN: -- it was approved by the  
20 immediate supervisor. It didn't make sense for me to  
21 evaluate Alain Artayet because I wasn't working with  
22 him on a daily basis, as I said. It made sense to

1 make sure that Andy reviewed him and gave me his  
2 input. Then I could evaluate and say, "Does that  
3 really make sense, or is there a problem there?"

4 MS. CHIDAKEL: I guess what I'm concerned about  
5 is the fact that Artayet had already signed his  
6 performance appraisal at the point at which you  
7 reviewed it.

8 MR. EDLEMAN: That's correct.

9 MS. CHIDAKEL: It doesn't usually go up to you  
10 before it --

11 MR. EDLEMAN: It always goes up to me, even  
12 after the employees sign it. I don't want to look at  
13 it until they both have agreed to it.

14 MS. CHIDAKEL: I see.

15 MR. BERSON: It would seem like it's a practical  
16 matter, that unless something is really out in left  
17 field, if a supervisor and employee agreed on a  
18 rating, that for the second level supervisor to  
19 intervene and lower or raise an appraisal would be a  
20 fairly rare occurrence.

21 MR. EDLEMAN: Yes, it would be.

22 MR. BERSON: Have you ever had occasion to do

1 that?

2 MR. EDLEMAN: No, I've never done it. I've  
3 always agreed -- I've had some discussion about  
4 people, but I've always agreed after I've had the  
5 discussion. But that was my process.

6 MS. CHIDAKEL: And you did not lower him then in  
7 the end any further. You did not sign the  
8 performance appraisal at that point and --

9 MR. EDLEMAN: Let me explain that a little bit  
10 if I could, my thought process here. When I looked  
11 at that performance evaluation and I had heard all of  
12 these things about Alain's poor performance, and I  
13 had a couple of different things to weigh.

14 On the one hand, he was taken off of all of  
15 his Power work, he's lost an internal customer, 60  
16 percent of his work from his poor performance, and  
17 that is a very, very negative thing in my mind,  
18 obviously. On the other hand, he had done a lot of  
19 work for the Industrial Process Division, had been  
20 supporting them, I had heard no complaints, and on  
21 some jobs I even heard he did a very good job of  
22 helping a customer establish welding procedures.

1           So when I looked at his performance  
2 evaluation, I really had to weigh what happened in  
3 1996, overall, between all his support; not one  
4 project, on not one issue if I was going to be fair  
5 about it and had to make sure it balanced that way.

6           The second part of this that I struggled  
7 over for quite a while as it related to the rating  
8 system was really the whole factor about what impact  
9 this document was going to have on Alain Artayet's  
10 future at MK. I knew that he wasn't going to be in  
11 his position. I knew that meant that I'm going to  
12 have to find him another position somewhere in the  
13 company, and so in doing that, I had to really think  
14 about what would you put in that documentation? And  
15 let me explain that.

16           If I had given him an "unsatisfactory," an  
17 F, if you will, that almost never happens in our  
18 company because you should have fired somebody  
19 already before they even get to the F rating, if you  
20 will. If I had lowered him to the D rating, if you  
21 will, or the "marginal," that was sending a message,  
22 in my mind, to some future manager who was going to

1 inherit Alain that maybe I'm landing him with  
2 somebody else's problem and would basically make him  
3 untransferable. And it was never my intention or  
4 anybody's intention to fire Alain; my intention was  
5 to get him another position in the company, and I  
6 thought that if I reduced him just one more rating,  
7 it might make it just that much more difficult. So  
8 going through that thought process, basically that's  
9 where I came to the conclusion that I thought that  
10 the rating was appropriate as agreed to by those two  
11 parties.

12 MR. STEIN: I also read somewhere about your  
13 awards system, that there's a yearly incentive award,  
14 and that he received his award for 1996.

15 MR. EDLEMAN: Well his salary increase, if  
16 that's what you're referring to?

17 MR. STEIN: Maybe that's it.

18 MR. EDLEMAN: Basically every year employees get  
19 salary increases. Many times it's called a merit  
20 raise. A lot of times it's really inflation because  
21 over the last few years they have only been in the 3-  
22 or 4-percent range. But yes, pretty much everybody

1 gets a raise. I think in 1996, Alain was given a  
2 2.9-percent raise, I believe, and the structure for  
3 that year, the target that we were given was  
4 3 percent.

5           And let me explain that a little bit so you  
6 understand. This is maybe one of the fallacies of  
7 our system, but if you have a big department, an  
8 engineering department, for example, that has  
9 hundreds of people, you still get 3 percent,  
10 multiplied times the total number of dollars in  
11 salaries, and that's what you get to work with. So  
12 you can reward, highly reward good performers and not  
13 reward poor performers at all. When you add up a  
14 department with four people, it's very difficult to  
15 spread 3 percent and give good performers and bad  
16 performers a whole lot of difference. It's an  
17 unfortunate part of the system, but that is the  
18 system.

19           So I weighed all these considerations, I  
20 looked at what was documented in the performance  
21 evaluation, and I thought it reflected basically a  
22 good portion of the performance issues around not

1 meeting his job qualifying welding procedures and  
2 managing that process, and I signed it, sent it down  
3 to our personnel department on the 14th of January,  
4 and that was basically one more day before January  
5 15th that I'm going to talk about next.

6 MR. GROBE: Could you just tell me, in time, the  
7 mid December '96 meeting with Pardi and then with  
8 Walcott and Artayet, did that occur before the 23rd  
9 or after?

10 MR. EDLEMAN: I don't know when the meeting  
11 occurred with Pardi. The best I can recollect, it  
12 was mid December; I know it was before Christmas, but  
13 I can't pinpoint the day of it. I don't know.  
14 There's no record that I could find in my log.

15 MR. BERSON: Are you open on Christmas Eve?

16 MR. EDLEMAN: Yes, actually we are.

17 MR. BERSON: There wasn't a whole lot of time  
18 before Christmas.

19 MR. EDLEMAN: Actually we are. That meeting  
20 occurred in mid December. I couldn't pinpoint a  
21 date. Might have been a week, week and a half, two  
22 weeks before Christmas. I really don't know exactly

1 when it was.

2 MR. GROBE: It wasn't the day before Christmas?

3 MR. EDLEMAN: No, it was not the day before  
4 Christmas.

5 MR. BERSON: So I think you're saying it was  
6 before the 23rd of December.

7 MR. EDLEMAN: Yes.

8 MR. BERSON: Okay.

9 MR. EDLEMAN: I think that's fair. If the 23rd  
10 was the day that we would have off for -- you're  
11 suggesting the 23rd would be Christmas Eve?

12 MR. GROBE: We're trying to find out when the  
13 document was signed was --

14 MR. EDLEMAN: Oh, when it was signed?

15 MR. BERSON: If it was signed on the 23rd,  
16 there's only one more day until Christmas.

17 MR. EDLEMAN: Oh. No, no.

18 MR. BERSON: Okay, so the mid December meeting  
19 was prior to the 23rd.

20 MR. EDLEMAN: Absolutely.

21 MR. BERSON: Okay.

22 MR. EDLEMAN: Okay? I'm going move onto January

1 15th --

2 MR. STEIN: One more question on the performance  
3 appraisal.

4 MR. EDLEMAN: Sure.

5 MR. STEIN: If you had the concerns that you had  
6 about his interaction with the Point Beach site  
7 personnel, why was it not included in the career  
8 development plan? Would you have amended this?  
9 Because this isn't really part of the performance  
10 appraisal; this is the remedy.

11 MR. EDLEMAN: That's the actions, if you will.

12 MR. STEIN: The actions.

13 MR. EDLEMAN: The corrective actions, if you  
14 want to think about it that way. And there were some  
15 corrective actions, in a kind of real broad sense, a  
16 really broad brush. I guess the way we have  
17 typically looked at our performance evaluation and  
18 career department is we don't document a whole lot in  
19 that area; that we expect that people really know if  
20 they are working with their immediate supervisor  
21 almost on a daily basis, they really know what their  
22 performance is, and they should know that, and they

1 should have communication about that all through the  
2 whole year. And also when they are having this  
3 discussion, this sit-down to agree to the performance  
4 evaluation, to me that's really the element of it,  
5 and not as much of that is documented.

6 MR. STEIN: Thank you.

7 MR. BERSON: A few things. Just kind of a  
8 hypothetical, unless you know from personal  
9 knowledge, but do you think Mr. Walcott would have  
10 agreed that Mr. Artayet had technical competence in  
11 the welding area as of the middle of December of '96?

12 MR. EDLEMAN: It would be speculation on my  
13 part.

14 MR. BERSON: He didn't ever say to you that --

15 MR. EDLEMAN: We generally did not get into a  
16 lot of technical issues. That was not my area.

17 MR. GROBE: But you had meetings in mid December  
18 and then again in the first week of January  
19 specifically addressing the technical competence of  
20 Mr. Artayet.

21 MR. EDLEMAN: Well what it addressed was what  
22 Lou Pardi had conveyed to me about those technical

1 issues. I didn't get in there and try to analyze  
2 whether Lou Pardi or Alain Artayet was correct about  
3 drop weight testing and those kind of things. I have  
4 no idea how to even do that. That's not my --I don't  
5 have any expertise.

6 MR. GROBE: I understand. But there wasn't a  
7 discussion regarding Mr. Artayet's responsibilities  
8 with respect to qualifying the procedures or his  
9 technical competence during those meetings with  
10 Walcott and Artayet?

11 MR. EDLEMAN: I told them what Lou Pardi had  
12 said to me about his technical competence and about  
13 the performance evaluation, the qualification of  
14 welding procedures.

15 MR. GROBE: Okay.

16 MR. EDLEMAN: I don't remember the details of  
17 each of those conversations, but I know I touched on  
18 those issues because those are the same issues that  
19 were conveyed to me by Lou Pardi.

20 MR. GROBE: But you don't recall what their  
21 response to those issues was.

22 MR. EDLEMAN: I don't remember the details of

1 the response.

2 MR. GROBE: Okay.

3 MR. EDLEMAN: I have struggled with this over a  
4 couple years, trying to remember who I said what to  
5 when; it's very difficult.

6 So let me talk a little bit about January  
7 15th and what transpired?

8 MR. GROBE: One more thing.

9 MR. EDLEMAN: Sure.

10 MR. GROBE: Has Mr. Pardi ever come to you in  
11 the past regarding the performance of an individual?

12 MR. EDLEMAN: Prior to this, no.

13 MR. GROBE: Is this -- is what happened with  
14 Mr. Artayet an extraordinary occurrence in your  
15 experience with MK?

16 MR. EDLEMAN: Extraordinary to me in the sense  
17 that I didn't really hear about it until it was  
18 almost a done deal. That's where to me it was kind  
19 of extraordinary, that I didn't get input from the  
20 field and said we had a problem, or whatever, and I  
21 didn't hear it from Andy Walcott, and I didn't really  
22 hear it from Alain Artayet. So from that point, I

1 think it's somewhat extraordinary.

2 MR. STEIN: Is it outside of your process? Do  
3 you generally hear from the site-people on these  
4 kinds of issues?

5 MR. EDLEMAN: Well in my present job, no; but it  
6 could be that way many times, depending on where you  
7 fit in the organization. To be honest, our structure  
8 was not probably the best organizational structure,  
9 in this case for communications, and it caused some  
10 of that problem.

11 MR. GROBE: Go on.

12 MR. EDLEMAN: Okay. I'll talk about January  
13 15th, '97.

14 Lou Pardi again called me in his office.  
15 He had received a report related to procedures,  
16 welding procedures and Power Division activities.  
17 And his question to me was: "Why is Alain Artayet  
18 working on Power Division work? He was supposed to  
19 have been taken off of this work a couple of weeks  
20 ago." I told him that I did have a conversation both  
21 with Andy and Alain and told both of them to have  
22 Alain stay away from Power Division work. I also

1 told him that I hadn't done anything yet because I  
2 was still balancing what to do with Alain Artayet. I  
3 was still considering, at that time, how to use him  
4 across two divisions. During that time frame, I also  
5 did some investigation where I did find out about  
6 that 60-percent Power and 40-percent Industrial  
7 Process, did a little research on that, and what it  
8 really told me, from a business decision on my part,  
9 was that we couldn't have two Group Welding  
10 Engineers; we couldn't support them from a financial  
11 standpoint. It didn't make sense anyway. You really  
12 needed, for the size of the company, one person who  
13 would be expert in that area.

14 Then basically based on that, I made a  
15 business decision that said: Well if he's not  
16 supporting Power as I was told before, and I don't  
17 have enough work for him to support Industrial  
18 Processing, he needs to be removed as Group Welding  
19 Engineer and put into another position, and we need  
20 to fill that position with another person.

21 MS. CHIDAKEL: That was your decision?

22 MR. EDLEMAN: That was my decision.

1 MR. STEIN: When did the Point Beach project  
2 end?

3 MR. EDLEMAN: I'm not sure... Somewhere towards  
4 the end of the year, I believe, but --

5 MR. STEIN: Somewhere in December of '96?

6 MR. EDLEMAN: I think, but I don't know exactly.

7 MS. CHIDAKEL: Were there any further contacts  
8 with Pardi between the 2nd of January and the 15th of  
9 January? Did you have any further meetings with him  
10 during this time?

11 MR. EDLEMAN: I think we have had some -- we had  
12 some additional discussions maybe. I had numerous  
13 little things, walking in the hallway, discussion  
14 kind of things. I respected Lou Pardi's opinion and  
15 his input, and I think consulted with him about this  
16 issue a couple times, discussed it. But what I said?  
17 When? They were all brief conversations, usually in  
18 passing kind of thing.

19 MR. BERSON: Mr. Edleman, why would, if on  
20 January 2nd or 3rd or shortly after the meeting on  
21 the 2nd, you instructed Walcott and Artayet not to  
22 the do any Power work, why would they have

1 continued -- why would Alain have continued to do  
2 Power work --

3 MR. EDLEMAN: I can't answer for Alain.

4 MR. BERSON: -- after that date?

5 MR. EDLEMAN: I was not aware they were doing  
6 that until I spoke with Lou Pardi, and he told me  
7 about that on the 15th.

8 MR. EDLEMAN: You're sure that January 2nd was  
9 the date the actual decision was made to remove him  
10 from Power work?

11 MR. EDLEMAN: Yes. We had the discussion, it  
12 was -- the Hartford Steam Boiler report, his verbal  
13 debriefing on that, that basically said I've got a  
14 guy that I can't trust handling the welding  
15 procedures, and that's it. We've got to do something.

16 MR. BERSON: I thought in your testimony to  
17 Stier's investigation that you said that the straw  
18 that broke the camel's back, so to speak, was what  
19 occurred on January 15th, the meeting of the 15th,  
20 and that's when the decision was made to remove him.

21 MR. EDLEMAN: That's where my decision had to be  
22 made. I finally realized there was no way I could

1 put this off any more. There was nothing I could do.  
2 I couldn't have two Group Welding Engineers. I was  
3 done. I had to make a decision, and I had to act on  
4 my decision.

5 MR. STEIN: You didn't have any Group Welding  
6 Engineer after January 15th. Did you have any plan  
7 in place to post for the position or --

8 MR. EDLEMAN: We had a person in a temporary --  
9 a person who also had -- had another person that Lou  
10 Pardi knew that could act as a backup if we needed  
11 it.

12 I don't think any of the work had really  
13 started on the next nuclear project yet, so it wasn't  
14 critical but it was going to be critical if we didn't  
15 get somebody before too long.

16 MR. BERSON: What decision did you have to make  
17 on January 15th?

18 MR. EDLEMAN: There are really two decisions  
19 here if you think about it. There was the decision  
20 that Lou Pardi made on January 2nd which said Alain's  
21 not going to work on Power workany more. That left  
22 me with a problem. I've got a guy who's no more than

1 40-percent billable to a customer; what do I do with  
2 him? I've got to have him someplace. I couldn't  
3 justify to my boss, Tom Zarges, to have a person  
4 sitting around doing nothing, so my decision was I've  
5 got to get him out of there, I've got to replace him  
6 because there's not enough work. I can only afford  
7 to have one. So, those are two distinct decisions.

8 MR. STEIN: What activities were you doing  
9 between January 2nd and January 15th to find Artayet  
10 another position?

11 MR. EDLEMAN: I didn't do a great deal to find  
12 him a position at that time. What I was spending  
13 time trying to analyze how we could have two welding  
14 engineers and how they would spending their time.  
15 This wasn't the only thing I was doing at the time.  
16 I mean I was doing other work, so in that  
17 approximately two-week time, or less, I was thinking  
18 about this process before I actually acted.

19 MR. STEIN: And when you did act after January  
20 15th, what happened to Artayet? What activities  
21 occurred to place him?

22 MR. EDLEMAN: Well, okay. Let me go through a

1 little bit of the subsequence and get to that if I  
2 could because I'm almost there, to that point.

3 MR. STEIN: Sure. -- Go ahead.

4 MR. EDLEMAN: After I talked to Lou Pardi, and  
5 made the decision on January 15th to remove Alain as  
6 the Group Welding Engineer, I immediately went down  
7 to Kevin Tobin, director of HR, and I talked to him  
8 about the situation. What he recommended to me was  
9 that we could not have an open-ended time period to  
10 find Alain Artayet another job; he suggested two or  
11 three months. He also suggested to me that I get Tom  
12 Zarges' approval to carry Alain Artayet in case it  
13 took a while to get him a position.

14 After that, both Lou Pardi and I went into  
15 Tom Zarges' office and basically said here's the  
16 decision we're talking about. Lou Pardi explained  
17 why he had removed Alain Artayet from the Power  
18 Division work and dealt a bit more with the technical  
19 aspects of it, and Tom Zarges had been working in the  
20 power business for a lot of year and he understood  
21 that. I explained to Tom Zarges my thought process  
22 originally of having two Group Welding Engineers and

1 dividing up the work, but I told him based on my  
2 findings of the 60-percent/40-percent usage that it  
3 just didn't make business sense and I couldn't  
4 justify it to him. So I told him that, you know, we  
5 will have to take the action on this. The thing I  
6 did ask Tom was I asked for his permission to carry  
7 him for three months. Tom agreed to this whole  
8 issue, and then I went about implementing it that  
9 morning.

10 What I did then was I, as a courtesy, I  
11 talked to Andy Walcott, and I told him what the  
12 decision was, and I was going to talk to Alain  
13 Artayet. As soon as Andy Walcott left my office, I  
14 called Alain Artayet to my office and I told Alain  
15 about the fact that he was being removed as the Group  
16 Welding Engineer, and that applied not only to Power,  
17 but to the Industrial Process work. We had talked  
18 briefly about the conversation that we had before  
19 about the Max Bingham issue back in the summer. We  
20 talked about the conversation that I had shared with  
21 him that Lou Pardi and I had had back in mid December  
22 of '96. We talked about the fact that this problem

1 had been festering for quite a while, and he actually  
2 knew the details a lot better than I did of what had  
3 transpired. I told him that he wasn't being fired.  
4 I told him that he wasn't going to be the Group  
5 Welding Engineer and we'd have to find him another  
6 position in the company. He and I did spend some  
7 time talking about that a little bit and what the  
8 possibilities were. I told him that I had gotten Tom  
9 Zarges' permission to carry him for three months. So  
10 basically we kind of left the meeting with the fact  
11 that we're both going to work on trying to find him  
12 another position in the company.

13 MR. STEIN: And again, there's no meeting  
14 minutes and I -- I didn't see a letter of removal  
15 from MK.

16 MR. EDLEMAN: There is no letter of removal.  
17 But the one thing that there is, and unbeknownst to  
18 me at the time, but Alain Artayet had taped our  
19 conversation on that morning on the 15th, and if you  
20 listen to that tape, I mean it's very clear that what  
21 I'm telling you here and the details that I know are  
22 verified through that tape that he provided to Stier.

1 And I think the other things that's very clear and  
2 obvious if you look at that tape and the transcript,  
3 is the fact that Alain Artayet knew he was not on  
4 Power workany more prior to the 15th of January; it's  
5 very clear.

6 So now to get back to your question, if I  
7 could, after telling Alain, shortly after that, I had  
8 conversations with a number of people, I had Alain  
9 put together his current resume to make sure I knew  
10 exactly what he had, and I talked to a number of  
11 people. Subsequent to that we -- actually the  
12 Industrial Process Division construction vice  
13 president found a position for Alain Artayet at  
14 Parkersburg, West Virginia. That job was for Dupont,  
15 which Alain had supported and had some pretty  
16 positive results about their welding program, and he  
17 was transferred on the 8th of February, 1997.

18 As I said, there's really two distinct  
19 decisions here that were made, and I don't think it  
20 was very clear to a lot of people. There was the  
21 decision by Lou Pardi to remove him from Power work,  
22 which left me with a problem. And there was my

1 business decision which was: We have to remove him  
2 totally because I can't have two Group Welding  
3 Engineers; it didn't make business sense.

4 MR. STEIN: At the meeting you had with Artayet,  
5 what was the feedback you were getting when you told  
6 him he was no longer Group Welding Engineer?

7 MR. EDLEMAN: He didn't have -- there wasn't a  
8 big reaction on his part. He knew that this was  
9 almost -- well, he knew he had been removed from  
10 Power already. I think he was maybe a little shocked  
11 about the industrial process, removal from that, and  
12 I think he states that somewhere in the tape.

13 MR. STEIN: When did you tell him he was going  
14 to be transferred to Parkersburg?

15 MR. EDLEMAN: I never told him he was going to  
16 be transferred to Parkersburg. I said we were going  
17 to find him a job.

18 MR. STEIN: Right. But at some point --

19 MR. EDLEMAN: He had a conversation with that  
20 vice president of construction.

21 MR. STEIN: Okay.

22 MR. EDLEMAN: They had a meeting. As a matter

1 of, fact Jim Garret, the vice president of  
2 construction, did not know Alain Artayet, and the  
3 first thing said is, "Can I talk to him and sit down  
4 and try to understand where he's coming from because  
5 I don't know the guy?" I said absolutely. They had  
6 a meeting at some point, discussed it, he proposed  
7 this job at Parkersburg, West Virginia.

8 MR. STEIN: Garret did?

9 MR. EDLEMAN: Jim Garret did. And the two of  
10 them got together and agreed to whatever terms and  
11 conditions they were going to work under, and that  
12 dealt with things like per diem and how often you  
13 were going to come home and those kind of issues, and  
14 they made the agreement and Jim Garret called me and  
15 said, "I'd like to do it," and the actual transfer,  
16 as I understood, was on the 8th of February.

17 MR. STEIN: And from your perspective, Artayet  
18 was in favor of this move?

19 MR. EDLEMAN: Well I think in my mind it was the  
20 right kind of move given the circumstance he was no  
21 longer Group Welding Engineer. Given that  
22 circumstances -- he had told me in the past that he

1 wanted to be a project manager, for example. In  
2 order to be a project manager in our company, you  
3 really do have to get construction experience and  
4 managing a lot of different jobs, and so this  
5 opportunity with Jim Garret, to me, was a way to do  
6 that and grow in the company still but in a different  
7 perspective than where he had been before.

8 MR. STEIN: But did you ever get feedback from  
9 him saying something like, I don't know, "This is a  
10 good career move because this will broaden myself and  
11 the company," some positive feedback from Artayet  
12 between the 15th and the transfer?

13 MR. EDLEMAN: No. We never really had a lot of  
14 conversation after that because once he had talked to  
15 Jim Garret, it was really in Jim Garret's hands and  
16 Alain's hands to kind of deal with it and see if  
17 there was a fit. So, you know he didn't come back to  
18 me and say, "Gee, I think there's a fit."

19 MS. CHIDAKEL: I'd like to go back again over  
20 the sequence of exactly what happened between the  
21 time that -- when you met with Pardi on the 2nd of  
22 January and make sure that I understand exactly whose

1 decision was what. And then you said you had several  
2 short meetings with Pardi or short conversations with  
3 Pardi before this final thing. And ask you if you  
4 can recall just what was said during these short  
5 conversations? Could you just go back over that time  
6 frame so starting with the 2nd of January, Pardi came  
7 to you and said he received the debriefing on the  
8 audit and what happened? And Pardi made the decision  
9 at that point that Artayet was no longer going to be  
10 in power.

11 MR. EDLEMAN: At that January 2nd meeting, he  
12 came to the conclusion, based on all the performance  
13 issues we have talked about, that he was not going to  
14 work -- Alain Artayet was not going to work on Power  
15 Division work.

16 MS. CHIDAKEL: That was his decision to make?

17 MR. EDLEMAN: That was his decision.

18 MR. GROBE: Could you talk a little bit about  
19 the independence between the --

20 MS. CHIDAKEL: Excuse me a second, Jack.

21 MR. GROBE: Go ahead.

22 MS. CHIDAKEL: I want to go through this part

1 first, and then you can talk about the other. Keep  
2 going, I'm sorry.

3 MR. EDLEMAN: Okay.

4 MS. CHIDAKEL: So that was Pardi's decision; he  
5 was able to make that decision that he wanted Artayet  
6 removed from Power?

7 MR. EDLEMAN: Yes. He was responsible for the  
8 quality and safety of the operations, the Power  
9 operations.

10 MR. WEIL: Susan, this is where Jack and I want  
11 to ask a series of questions about the quality  
12 assurance.

13 MS. CHIDAKEL: Yes, but not right here because I  
14 want to go through this sequence; it's a different  
15 topic, Chuck. After he goes through this, okay?

16 All right, so that was the decision was  
17 made on the 2nd of January. And then what happened?  
18 Were you going to get back to Pardi, or what was  
19 going to happen after that?

20 MR. EDLEMAN: Well there was -- I don't know if  
21 Pardi had any expectation that I would get back to  
22 him necessarily.

1 MS. CHIDAKEL: So in his view, that was the end  
2 of it?

3 MR. EDLEMAN: Yeah, he was rid of him. My  
4 problem now was what to do with Alain.

5 MS. CHIDAKEL: Okay, and then what did you talk  
6 to him about when you bumped into him in the  
7 corridors or you had several meetings with him?

8 MR. EDLEMAN: We had conversations that -- I  
9 think we talked about another individual for  
10 supporting Power Division, Group Welding. I really  
11 don't remember the details of those conversations.

12 MS. CHIDAKEL: Okay, good enough.

13 And then on the 15th or what was it, the  
14 14th of January -- 15th of January, excuse me, Lou  
15 called you, and would you go through that again, why  
16 he called you?

17 MR. EDLEMAN: He called me because he had  
18 received a report from Alain Artayet related to  
19 welding procedures and the Power Division project, I  
20 think it was the Point Beach project, I guess. And  
21 his concern on that was why was he still working on  
22 Power Division work at that point in time when he

1 already told me he wasn't supposed to be working on  
2 that.

3 MS. CHIDAKEL: And what did you tell him?

4 MR. EDLEMAN: I told him that I had talked to  
5 both he and Alain, that he was -- that Alain was  
6 supposed to stay away from Power Division work.  
7 Okay?

8 MS. CHIDAKEL: Yes.

9 MR. EDLEMAN: And I also told him that I wasn't  
10 sure yet what I was going to do with Alain, that I  
11 was still considering the two Group Welding  
12 Engineers, and I was looking into that.

13 MR. STEIN: That was on the 15th?

14 MR. EDLEMAN: That was --

15 MS. CHIDAKEL: Did you say anything to --

16 MR. EDLEMAN: Wait, you're confusing me.

17 MR. STEIN: The 15th you said was the date that  
18 you made your decision?

19 MR. EDLEMAN: Yes, that was the 15th. I'm  
20 sorry. What we just talked about was the 15th of  
21 January.

22 MS. CHIDAKEL: Did he say anything in particular

1 about what was in the report?

2 MR. EDLEMAN: No. I know today that that was a  
3 quality finding report.

4 MS. CHIDAKEL: That it was a what? I couldn't  
5 hear you.

6 MR. EDLEMAN: A quality finding report.

7 MS. CHIDAKEL: Yes?

8 MR. EDLEMAN: I know that today. When I was at  
9 that meeting, if somebody had asked me that afternoon  
10 or the next day what I was looking at, I couldn't  
11 even tell you what it was.

12 MS. CHIDAKEL: But no, my question was did Pardi  
13 tell you anything about what was in the report or ask  
14 you anything or say anything or --

15 MR. EDLEMAN: Welding problems.

16 MS. CHIDAKEL: Welding problems.

17 MR. EDLEMAN: I mean that's my best  
18 recollection. I don't know the details I don't even  
19 know if I read the report or looked at it. I don't  
20 think I did.

21 MS. CHIDAKEL: But his concern was Artayet still  
22 in this.

1 MR. EDLEMAN: Why was he still working on this?  
2 He's not supposed to be working on Power work, and  
3 this related to Power work.

4 MR. STEIN: Did you share your decision with Lou  
5 Pardi on the 15th, or the decision was yours to make?

6 MR. EDLEMAN: I was in his office when I made  
7 the decision because we had talked about this, and I  
8 said, "That's it. I've got to do something. I've  
9 got do it now."

10 MR. STEIN: So you told him he was going to be  
11 removed as Group Welding Engineer for MK; what was  
12 Pardi's reaction to that?

13 MR. EDLEMAN: As far as he was concerned, he  
14 didn't care. He had already made his decision that  
15 he wasn't going to work Power. The decision that I  
16 made was mine, and I didn't get any reaction. He  
17 probably agreed with it, but I don't know. You'll  
18 have to ask him his reaction .

19 MR. BERSON: Did you ever follow up with Walcott  
20 as to why he allowed or permitted Artayet to do Power  
21 work after the 2nd of January?

22 MR. EDLEMAN: I never really questioned it, I .

1 don't think.

2 MR. BERSON: Did you tell Mr. Zarges, prior to  
3 the 15th of January and after the 2nd of January,  
4 that Mr. Artayet had been removed from Power work?

5 MR. EDLEMAN: No, I didn't.

6 MR. BERSON: Why not?

7 MR. EDLEMAN: I'm not really sure why. I guess  
8 my feeling was that he had been removed from Power  
9 work; I still had made no decision on what to do with  
10 Alain Artayet, whether he would still support  
11 Industrial Process. I knew that I would have to get  
12 Tom Zarges' approval to do that, but at that point,  
13 no decision had been made on my part to do that, so I  
14 didn't see where I had to go talk to him about that  
15 issue. But once he was totally removed from the  
16 Group Welding Engineer position now, and there is  
17 only one of those in the company, it's fairly  
18 significant. If there was 400 Group Welding  
19 Engineers I probably would have never even talked to  
20 Tom Zarges about it, but when there's only one, it's  
21 very significant.

22 MR. STEIN: Who became the acting Group Welding

1 Engineer after Artayet, and how did that process of  
2 selection occur?

3 MR. EDLEMAN: We had a temporary person. To be  
4 honest with you, I started getting disinvolved in  
5 that process a little bit after --

6 MR. STEIN: Well wouldn't you be the selecting  
7 official? Officially, you would be the one who put  
8 the new Group Welding Engineer in place because you  
9 were the one who took the old one out.

10 MR. EDLEMAN: Well because I didn't have all the  
11 technical background, I was really looking at Lou  
12 Pardi and helping support those activities, and some  
13 of his people would go out and look for a new welding  
14 engineer, somebody qualified. I could interview  
15 people administratively but not technically, and when  
16 it came to a welding engineer, it wouldn't make sense  
17 for me to do that.

18 MR. STEIN: So it would be one of the site  
19 people -- or was it one of the site people who came  
20 and --

21 MR. EDLEMAN: Well it would be Lou Pardi and  
22 Andy Walcott who got involved in that.

1 MR. GROBE: Where did the individual come from  
2 that was acting in that capacity when Mr. Artayet  
3 left the position?

4 MR. EDLEMAN: I think we hired him as a  
5 temporary, and he had worked on some projects in the  
6 Cleveland area, and I think he had worked on a  
7 nuclear project before like Perry Plant.

8 MR. GROBE: Was he known to the company?

9 MR. EDLEMAN: He was known to certain  
10 individuals in company, I believe.

11 MR. GROBE: What individuals was that?

12 MR. EDLEMAN: Probably Andy Walcott. I mean I  
13 don't know the details of some of what you're asking  
14 me here.

15 MR. GROBE: Okay.

16 MR. STEIN: Lou Pardi would know the details;  
17 wouldn't he?

18 MR. EDLEMAN: He should know more about it  
19 because he obviously was very concerned about  
20 supporting welding so --

21 MS. CHIDAKEL: You discussed -- you said after  
22 January 2nd you went to talk to Walcott. I believe

1 that was when you first started to talk to Walcott;  
2 is that correct?

3 MR. EDLEMAN: No, the first time I talked to  
4 Walcott was in the summer of '96.

5 MS. CHIDAKEL: No, I'm talking about when this  
6 all came to a head. After Pardi came to see you, you  
7 went to see Walcott; I forgot was it after the first  
8 meeting, the December meeting or --

9 MR. EDLEMAN: I saw him both after the mid  
10 December meeting and after the January 2nd meeting.

11 MS. CHIDAKEL: And could you reiterate, please,  
12 what did you say to Walcott was the crux of the  
13 concern that Pardi raised?

14 MR. EDLEMAN: Well the basic concern was the  
15 fact that, you know, they didn't believe he was  
16 qualified to do the job because of some of the issues  
17 around drop weight testing. That he didn't meet  
18 the -- didn't do his job as far as qualifying welding  
19 procedures, and the concern about -- after the  
20 Hartford Steam Boiler audit, the concern that, you  
21 know, he was responsible for those welding procedures  
22 being correct and meeting the code, and they weren't.

1 MS. CHIDAKEL: As far as not doing his job as  
2 far as the qualification of the welding procedures,  
3 what exactly was that issue? Was that the fact that  
4 he had delegated that to the Memphis site, or was  
5 that the fact that -- I'm just a little confused  
6 about it. What exactly was that issue about?

7 MR. EDLEMAN: It was his job to put together a  
8 program to qualify those ten or eleven welding  
9 procedures that we had qualified for Point Beach.

10 MS. CHIDAKEL: Those specific procedures.

11 MR. EDLEMAN: Right, the ones where we didn't  
12 have corporate procedures already the project could  
13 use. So that was his job to organize that, to buy  
14 the material, to figure out where to do the welding,  
15 to get it qualified, to make sure all the  
16 documentation was correct, whatever certifications,  
17 the whole process, to go through that. That was  
18 primarily his job. He had to manage that job.

19 MS. CHIDAKEL: And did that involve -- that  
20 would involve reviewing the site-specific procedures?

21 MR. EDLEMAN: Yes.

22 MS. CHIDAKEL: Now what was Walcott's reaction

1 when you said that to him? Did Walcott say anything  
2 on that issue, do you remember?

3 MR. EDLEMAN: Well Walcott first brought that  
4 issue to me.

5 MS. CHIDAKEL: I know it's a long time and it's  
6 hard to remember but --

7 MR. EDLEMAN: Well I'm trying to remember the  
8 dates, and I want to get the dates correct because  
9 you've been jumping back and forth between dates, and  
10 I don't want to get too confused here.

11 When I first had the conversation with  
12 Alain Artayet in the summer of '96, where he said he  
13 had the problem with Max Bingham, I said that I had a  
14 meeting with Alain Artayet -- I'm sorry, a meeting  
15 with Andy Walcott right after that, and I asked him,  
16 "What's this issue with Max Bingham and Alain?" And  
17 what he had said was there was a problem with the  
18 qualification of welding procedures, that it wasn't  
19 getting done. And second to that was the fact that  
20 there was something about this being in a location in  
21 Memphis or something. Those were -- that was the  
22 information that was conveyed to me from Andy Walcott

1 in the summer of '96.

2 MS. CHIDAKEL: No, I'm talking about the later  
3 time frame when Pardi came to you and wanted Artayet  
4 removed as -- from Power, and you went to tell  
5 Walcott.

6 MR. EDLEMAN: Right.

7 MS. CHIDAKEL: And you're talking -- forgetting  
8 the other issues that you said Pardi raised, the  
9 issue about his not doing his job as far as the  
10 qualification of the welds. That's what I wanted to  
11 focus on, just what exactly you told Walcott and what  
12 Walcott said about that issue? I mean if he's  
13 Artayet's supervisor, wouldn't you expect him to give  
14 you a response to that kind of a flaw? And if he  
15 did, what was his response? Do you remember or --

16 MR. EDLEMAN: I don't remember exact response.  
17 I know in general the conversation that we had, but I  
18 can't tell you exactly his response and what exact  
19 words were said.

20 MS. CHIDAKEL: Was it your expectation then that  
21 Artayet was going to review all of the procedures,  
22 the site-specific procedures, as well as the

1 corporate procedures?

2 MR. EDLEMAN: That was generally what was  
3 required by the quality manual.

4 MS. CHIDAKEL: That was your expectation. Do  
5 you think that that was Walcott's expectation? Did  
6 you ever discuss that with Walcott?

7 MR. EDLEMAN: I never discussed it with him, no.  
8 If it was in the manual, then that would be Walcott's  
9 expectation too.

10 MS. CHIDAKEL: But it was never discussed, and  
11 you don't recall any of it?

12 MR. EDLEMAN: No. I -- most of my conversations  
13 were not getting into all of these technical issues.  
14 It was not my job. My job was: They have a concern;  
15 this guy's not performing. I don't want to know all  
16 the details about drop weight testing because I can't  
17 evaluate those kind of things. But I can deal with  
18 the fact that somebody is not doing their job that  
19 was specifically their job to qualify welding  
20 procedures. If they're not doing that, that's pretty  
21 clear to me.

22 MR. GROBE: Could you help me understand? I

1 believe you said a few minutes ago that the Point  
2 Beach project was completed in late '96?

3 MR. EDLEMAN: I said I think it was. I really  
4 don't know for sure.

5 MR. GROBE: Do you have any knowledge as to when  
6 the welding procedures for the Point Beach project  
7 were qualified?

8 MR. EDLEMAN: I don't recollect.

9 MR. GROBE: Did Mr. Pardi share with you why he  
10 was bringing this issue up in mid December?

11 MR. EDLEMAN: Well, in mid December? Well I  
12 think it was that issue plus, as I explained, the  
13 other issue that he had out there was the complaint  
14 about this -- whether he was really technically  
15 competent as it related to the drop weight testing  
16 issues. That's what he had talked to me about, those  
17 two things, in the mid December time. Those were the  
18 two issues.

19 MR. GROBE: You're not aware as to what  
20 motivated him to bring it up at that time?

21 MR. EDLEMAN: No.

22 MR. GROBE: Okay.

1           MR. STEIN: I'd like some clarification on the  
2 decision. This wasn't a consensus decision on  
3 January 15th. You were the -- you made the decision,  
4 and Lou Pardi never told you to have him removed as  
5 Group Welding Engineer. This was totally your  
6 decision; is that accurate?

7           MR. EDLEMAN: I made the decision to remove him  
8 as Group Welding Engineer. Pardi did not tell me to  
9 do that.

10          MR. STEIN: So on January 2nd, he said to remove  
11 him from Power.

12          MR. EDLEMAN: Correct.

13          MR. STEIN: And on January 15th, you solely made  
14 the decision to remove him as Group Welding Engineer.

15          MR. EDLEMAN: Based on a business decision.

16          MS. CHIDAKEL: Do you think Pardi would have  
17 been satisfied if you had two Group Welding Engineers  
18 and just removed him from the Power Division; would  
19 that have been sufficient?

20          MR. EDLEMAN: I don't know whether he would be  
21 satisfied. He would probably be satisfied as long as  
22 he had somebody to support his work.

1 MS. CHIDAKEL: So he didn't much care what  
2 happened to Artayet as long as he wasn't involved in  
3 Power.

4 MR. EDLEMAN: It wasn't much his concern. It  
5 was my concern.

6 MS. CHIDAKEL: All he wanted was he didn't want  
7 Artayet involved in Power; further than that, he  
8 didn't care basically happened to him.

9 MR. EDLEMAN: No.

10 MR. GROBE: Could you talk a little bit,  
11 organizationally, about the independence between the  
12 quality group and the production divisions?

13 MR. EDLEMAN: Well the quality assurance group  
14 headed by Andy Walcott is independent from the  
15 projects and the divisions. He reported directly to  
16 Tom Zarges as it related to non-administrative  
17 issues. So if it was anything to do with the quality  
18 system or the quality management program, the nuclear  
19 program, or any other quality program, he reported  
20 directly to Tom Zarges and had independence that way  
21 from Lou Pardi and from any project people.

22 MR. WEIL: Do you have any knowledge does MK

1 have a corporate quality assurance manual in place  
2 for nuclear work?

3 MR. EDLEMAN: Yes.

4 MR. WEIL: I guess what I'm really having a very  
5 difficult time understanding is I believe you said  
6 that Mr. Pardi removed Mr. Artayet from the position  
7 of Group Welding Engineer, which was within the  
8 quality organization.

9 MR. EDLEMAN: That was part of the  
10 organizational structure problem because most of what  
11 Alain really did was a project support type of  
12 function and not really a QA function. That doesn't  
13 mean that there weren't times when he wasn't busy  
14 doing welding work that he didn't do some work to  
15 support Andy Walcott in that department, sometimes  
16 supporting with audits that had to be done, like his  
17 yearly audits, that kind of thing. But his primary  
18 function was really not a quality assurance function.  
19 It was a welding specialist, if you will, within the  
20 company, no different than my job is in supporting  
21 projects.

22 MR. WEIL: Maybe I'm being too simplistic here,

1 but he was within the quality -- Mr. Artayet, that  
2 is, was within the quality organization?

3 MR. EDLEMAN: Yes.. He reported to Andy Walcott.

4 MR. WEIL: And where I'm having difficulty, and  
5 again maybe I'm being too simplistic, is I don't  
6 understand how the production side or the  
7 construction side, or whatever term you want to use,  
8 could more or less dictate almost -- maybe that's too  
9 strong of a word -- the removal of Mr. Artayet from  
10 the quality side of the house. I just -- can you  
11 elaborate to help me understand it?

12 MR. EDLEMAN: I think what I'm saying, and I  
13 think I've explained it once, is the fact that No. 1,  
14 he wasn't doing a quality assurance function as we  
15 saw it. He was doing a support function. It is  
16 unfortunate in the organizational structure that he  
17 was put in there. The reason he was put in there, as  
18 I understand it, is because the person in the past  
19 who was responsible for both functions was a person  
20 who understood quality assurance and was also a  
21 welding engineer, it was under one person, and it  
22 made sense back then, prior to Andy Walcott, that

1 they were both under the same manager, if you will.  
2 They were still looked at as separate departments, if  
3 you will, or separates functions, QA and welding, but  
4 they had an individual who knew both. So  
5 traditionally that's what happened in the company  
6 because of an individual; when he retired, Andy  
7 Walcott moved into the position and probably didn't  
8 the have the technical as strong.

9 MR. STEIN: In this time frame up until January  
10 15th, did you have any knowledge that Mr. Artayet was  
11 raising safety concerns? That he -- you know, that  
12 him and Rusty were at loggerheads and that he had  
13 concerns about the welding qualifications that he was  
14 bringing to Andy Walcott?

15 MR. EDLEMAN: I knew there were disagreements,  
16 but there was nothing with me that he indicated those  
17 were safety issues and something serious was going to  
18 happen because of those.

19 MS. CHIDAKEL: When Pardi came to you on the  
20 15th of January and he was upset and wanted to know  
21 why Artayet was still in Power, he had written this  
22 report, and he was -- it was his understanding that

1 Artayet was supposed to have been taken off, did you  
2 go to either Walcott or Artayet and ask them or raise  
3 this issue of why were they still doing this job when  
4 you had told them they weren't supposed to be doing  
5 that any more? Is that --

6 MR. EDLEMAN: Well at that point, that was the  
7 same day that I removed him. I mean once the  
8 decision was made, I talked to Kevin Tobin, I talked  
9 to -- I talked to Tom Zarges, and I immediately  
10 talked to Andy Walcott, and then I talked to Alain  
11 Artayet, and it all happened in a matter of a few  
12 hours.

13 MS. CHIDAKEL: But you never actually went back  
14 and wondered why your instruction was not followed  
15 through with?

16 MR. EDLEMAN: Well I -- no, I didn't. I can't  
17 say that I did. If I asked him, I don't remember.

18 MR. STEIN: I want to go back to what you knew  
19 on January 15th of the issues that were being raised  
20 by Mr. Artayet as -- you know, regarding the Point  
21 Beach project; what did you know, as far as things he  
22 was raising?

1           MR. EDLEMAN: As I said before, I know now that  
2 it was a QFR. At the time, to me it was just another  
3 piece of paper. I hadn't been involved in quality  
4 assurance programs of that level, and I have never  
5 been involved in nuclear work, and to me it was just  
6 another piece of paper talking about welding  
7 procedures. It really had no impact on me any more  
8 than any other document that I saw that Lou might  
9 have showed me, like the Hartford Steam Boiler report  
10 and those discussions so -- to me it was just another  
11 piece of paper.

12           MR. STEIN: Have you ever had any formal 50.7  
13 training?

14           MR. EDLEMAN: No, not formal. I am somewhat  
15 aware of what it was about, but no I've never had any  
16 formal training that I'm aware of.

17           MR. WEIL: Any training in the area of 10 CFR  
18 Part 50, Appendix B?

19           MR. EDLEMAN: No, I did not have any training in  
20 that. I'm aware of what that is. It relates to the  
21 quality assurance program for nuclear work. I had a  
22 copy of the manual, but I didn't get involved in it

1 on a daily basis, so I didn't really need to  
2 understand what it meant and what I had to do about  
3 it.

4 MR. WEIL: And yet you are responsible for  
5 quality assurance?

6 MR. EDLEMAN: An administrative responsibility.

7 MR. WEIL: Maybe that's what I'm having trouble  
8 understanding.

9 MR. EDLEMAN: That's why I kept saying there was  
10 probably some problem with the organizational  
11 structure.

12 MR. HICKEY: Would it help if he described what  
13 his responsibilities include?

14 MR. WEIL: Yes, it might.

15 MR. EDLEMAN: My responsibilities, as I said, I  
16 spent less than 5 percent of my time on this. For  
17 example, when I first took over, one of the issues  
18 was that we had a lot of people in quality assurance  
19 that really needed to be out on projects doing work  
20 instead of sitting around the office, so I took a  
21 number of those people and shrunk the department down  
22 to about four people and got those people out

1 assigned to doing jobs.

2           The other issue that Tom Zarges would talk  
3 about a little bit more, but I think part of the  
4 reason he got me involved was that he felt that the  
5 department -- the quality management department was  
6 trying to broaden its scope too far and not just  
7 stick with a specific task, which was managing the  
8 quality assurance programs, and especially the  
9 nuclear programs, and so he wanted to make sure that  
10 I kept that shrunk and focused on what they were  
11 supposed to focus on.

12           MR. GROBE: Just give me a year; what time frame  
13 was this?

14           MR. EDLEMAN: '94.

15           MR. GROBE: But you hadn't had any nuclear  
16 projects since '88, and you didn't have any then.  
17 I'm a little confused.

18           MR. HICKEY: No, since '88, he didn't have any  
19 nuclear welding projects.

20           MR. EDLEMAN: Welding. Yes, welding. So you  
21 know, it deals with what I talked about performance  
22 reviews, I kind of gave you an overview; pay raises,

1 I get involved in that; any time that we're spending  
2 time, if they wanted to go out to seminars and get  
3 some special training and that required my approval.  
4 It was purely administrative oversight.

5 MS. CHIDAKEL: Why was it that when Pardi came  
6 to you on the 15th wanting to know why Artayet was  
7 still involved in Power work, your reaction was at  
8 that point to remove him as GWE from everything? I  
9 guess I just have a hard time seeing what was the  
10 link between that concern and you suddenly making  
11 that decision to remove him entirely from non-power  
12 work, as well as Power work?

13 MR. EDLEMAN: I was moving towards that  
14 decision --

15 MS. CHIDAKEL: I'm sorry?

16 MR. EDLEMAN: I was moving toward that decision  
17 in the beginning and mid December of 1996, as I've  
18 explained to you.

19 MS. CHIDAKEL: Yes.

20 MR. EDLEMAN: I was pretty much sure that he was  
21 out of Power work in mid December.

22 MS. CHIDAKEL: Right.

1 MR. EDLEMAN: Didn't know that for sure, but I  
2 was --

3 MS. CHIDAKEL: Right, and then you made it clear  
4 to him after your previous meeting with Pardi that he  
5 was out of Power work.

6 MR. EDLEMAN: Right.

7 MS. CHIDAKEL: And then Pardi comes to you and  
8 wants to know why he is still in Power work, and your  
9 reaction is to remove him altogether, and I guess I'm  
10 having a hard time understanding why was that your  
11 reaction? I mean that had nothing to do with his  
12 being GWE over non-Power work. Why did you decide to  
13 remove him entirely at that point?

14 MR. EDLEMAN: Let me explain again. I told you  
15 in mid December of '96, I had already determined he  
16 was probably going to be removed from Power work.

17 I had a problem, a business problem: What  
18 do I do with a guy that we have no work for or very  
19 little work for? We were moving towards that  
20 decision. When we came to January 2nd and did remove  
21 him from Power work, that made it very clear that I  
22 had to do something and take some action to get him

1 transferred and do whatever was necessary to find him  
2 another job.

3           So moving to January 15th was basically a  
4 tickler to me that here's another piece of document,  
5 I haven't done anything, I've got to do it, there's  
6 no sense in putting this off. And believe me, it was  
7 no fun duty. I didn't want to do this, and I didn't  
8 want to -- I was probably avoiding it somewhat to  
9 make it happen, so I finally made a decision I have  
10 to do it, I can't ignore this any more, and that  
11 happened on the 15th.

12           MR. STEIN: This is a question that I should  
13 probably ask Mr. Zarges tomorrow, but MK deals with  
14 nuclear plants, it deals with chemical plants, you  
15 deal with OSHA all the time I'm sure; do you have any  
16 training for your management or for your employees on  
17 whistle-blower protection?

18           MR. EDLEMAN: As a matter of fact, there is.  
19 The training is done through a tape and the  
20 individuals -- I happen to be involved in -- sort of  
21 produced the tape, which dealt with a number of  
22 employment law type issues; 50.7 was one of them,

1 which is the whistle blower, and had other things to  
2 do with other discriminatory things. So yes, there  
3 is some training on that, and that's documented. The  
4 training for this kind of thing on nuclear though was  
5 focused more on the people who were involved in the  
6 nuclear work on a regular basis, and I'm certain  
7 there's documentation on all of that in project  
8 people.

9 MS. CHIDAKEL: You may have answered this  
10 before, and if so I apologize, but had you received  
11 any feedback during the same time from people who  
12 were not in the Power division about Artayet's  
13 performance?

14 MR. EDLEMAN: I had not received any negative  
15 feedback, and I had heard some positive feedback on  
16 his support of the Dupont project in Parkersburg  
17 because he was involved in helping set up their  
18 welding program for Dupont, and they were very happy  
19 with his work there. That's part of the reason why  
20 the connection with Parkersburg made so much sense;  
21 he knew the people there, he knew the job, the  
22 customer liked him, so it was kind of a logical

1 sequence.

2 MR. STEIN: In his performance file, is that  
3 documented? Are there, like, letters of commendation  
4 from Parkersburg and Dupont or --

5 MR. EDLEMAN: If there are -- I don't know if  
6 there are or not. I never saw any. Again, a lot of  
7 things happen by word of mouth.

8 MR. GROBE: Any other questions? Okay.

9 Did you have any other comments that you  
10 wanted to make?

11 MR. EDLEMAN: Well, the only comment I want to  
12 make is I really didn't personally feel I retaliated  
13 against Alain Artayet. I don't think I did anything  
14 wrong.

15 MR. WEIL: Would you say that again, please?

16 MR. EDLEMAN: I said I don't think I retaliated  
17 against Alain Artayet. I don't think I did anything  
18 wrong.

19 MR. WEIL: I'm sorry, I did not hear the "do  
20 not" part.

21 MR. GROBE: We've covered a lot of ground, and I  
22 appreciate that we've covered some of it more than

1 once. The fact that we have had this meeting doesn't  
2 indicate that we have made any decisions regarding  
3 whether or not there is a violation or regarding your  
4 involvement in that violation if it did occur. The  
5 final decision regarding any appropriate enforcement  
6 action won't be made until after we have two more  
7 meetings today and tomorrow, as well as thorough  
8 consideration of the issue both here in Region III  
9 and in our headquarters offices.

10 The scope of the proposed enforcement  
11 actions could range from a notice of violation to  
12 civil penalties, monetary fines, to orders to the  
13 company which could involve orders requiring certain  
14 actions, and those actions could include removal of  
15 individuals from nuclear related work. So that's  
16 just to give you the broad spectrum of what may come.  
17 I would expect that a decision would be made within  
18 approximately a month, and that decision will be  
19 communicated orally to the company and also in  
20 writing.

21 Unless you have any other comments or  
22 questions, this meeting will be complete. Anything

1 else?

2 MR. EDLEMAN: Thanks for your time.

3 MR. GROBE: Thank you very much.

4 MS. CHIDAKEL: Thank you.

5

6 (Which were all the proceedings had  
7 at the hearing of the above-entitled  
8 cause.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 STATE OF ILLINOIS )  
2 ) SS  
3 COUNTY OF K A N E )  
4  
5

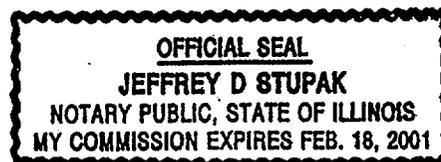
6 I, JEFFREY D. STUPAK, C.S.R. No. 084-4188, a  
7 Notary Public duly qualified and commissioned for the  
8 State of Illinois, County of Kane, do hereby certify  
9 that I reported in shorthand the testimony taken at  
10 the hearing of the above-entitled cause, and that the  
11 foregoing transcript is a true, correct and complete  
12 report of the testimony so taken at the time and  
13 place hereinabove set forth.  
14  
15  
16  
17

18 *Jeffrey D. Stupak*

19 JEFFREY D. STUPAK

20  
21 My Commission Expires:

22 February 18, 2001



# ***Drew Edleman Presentation***

---

1. Edleman responsibilities regarding Artayet
2. Information provided to Edleman about Artayet's performance
3. Edleman-Pardi (**mid-December 1996**); Pardi advises Edleman project staff had lost confidence in Artayet's abilities as Group Welding Engineer
4. Edleman-Pardi meeting (**Jan. 2, 1997**); Pardi decides following Hartford Steam Boiler audit that Artayet can no longer work on Power Division projects
5. Edleman approval of Artayet's Performance Review with downgraded rating proposed by Artayet's supervisor and agreed to by Artayet
6. (**Jan. 15, 1997**) Edleman's removal of Artayet from the Group Welding Engineer position; subsequent assignment to Parkersburg, West Virginia



	400 [1] 87:18	3,17 57:13,17 58:3-4 60:10 65:10 75:7 79: 10 86:17	Artayet [106] 4:21 7: 19 8:2,12 9:14 10:6, 16 11:7 13:2,22 15:12- 13 16:4 18:18 19:13 20:3 21:2,11,20 22:14 23:7 24:4 28:9 30:3,6 31:4 32:1,8 33:9 14 36:15 37:15 3 39:18 40:22 41:11 10,13 45:6,17,22 46:9 48:21 49:4,8,10,22 52: 8 54:20 55:4,20 56:13, 21 57:5 62:8 65:10,20 66:2,10 67:14,22 68: 17 69:2 70:21 73:9,20 74:10,12,17 75:13-14 76:18 77:3,13 78:4 79: 2,17 80:11 81:9,14 82: 5 83:18 85:21 86:20 87:4,10 88:1 89:2 92: 12,14 93:3,21 97:2,7 98:6 99:1,9 100:10,21 101:1-2,11,20 105:6 109:13,17
'96 [6] 9:5,8 10:20 17:17-18	<b>5</b>	<b>Agreement</b> [1] 79:14	<b>Artayet's</b> [15] 8:6 11:1 14:9 16:1 17:14 20:10 38:12 47:8 48: 18 54:3 55:17 59:9 66: 7 93:13 108:12
'88 [2] 104:16,18	5 [2] 12:17 103:16	<b>Ahead</b> [2] 74:3 81:21	<b>Aspects</b> [1] 74:19
'94 [2] 51:8 104:14	50 [2] 48:3 102:18	<b>Alain</b> [80] 4:21 9:14	<b>Assigned</b> [1] 104:1
'96 [27] 9:4 18:1,3 21:11,14-15 24:12 28: 4 29:2,4 31:19 39:11, 13 48:12,17 49:18,20 62:7 65:11 70:5 75:22 90:4 92:12 93:1 95:2 106:15	50.7 [2] 102:12 107:22	<b>Alain</b> [80] 4:21 9:14 10:6,16,22 11:7 12:13 13:2,22 15:22 16:3,11 17:14 20:9 21:10 22:9 28:8 29:1 30:3,6 31:4 32:1 33:9 34:6 35:21 37:15 39:17 40:22 44: 10,13 45:6 48:13,18 49:4,7,22 54:3 55:16, 20 56:21 59:9 60:1,4 61:1 66:2 67:22 68:17, 21-22 69:2 71:1,3 74: 5,10,12,17 75:12,14 76:18 77:3,7-8,13,15 79:2 81:14 83:4,18 84: 5,10 87:10 92:12,14, 16 98:11 101:10 109: 13,17	<b>Assuming</b> [1] 40:12
21:11,14-15 24:12 28: 4 29:2,4 31:19 39:11, 13 48:12,17 49:18,20 62:7 65:11 70:5 75:22 90:4 92:12 93:1 95:2 106:15	<b>6</b>	<b>Alain's</b> [5] 11:8 29: 7 58:12 72:20 80:16	<b>Assurance</b> [15] 12:21 13:6,9 42:21 82:12 97: 13 98:1,18 99:14,20 102:4,21 103:5,18 104: 8
'97 [8] 4:21 9:4,6,8 44:4 45:15 49:19 68:13	60 [5] 14:14 47:7,12, 14 58:15	<b>Allegations</b> [1] 4:8	<b>Attention</b> [2] 7: 25:3
	60-percent [1] 69:6	<b>Allowed</b> [1] 86:20	<b>Attorney</b> [1] 3:1
	60-percent/40-percen t [1] 75:2	<b>Almost</b> [6] 59:17 64: 21 67:18 74:2 78:9 99: 8	<b>Attorneys</b> [1] 3:22
	<b>7</b>	<b>Altogether</b> [1] 106:9	<b>Audit</b> [13] 8:1,6 11:5 37:18 40:7,11 42:13, 15 49:3 81:8 90:20
	7/10/96 [1] 24:3	<b>Amended</b> [1] 64:8	<b>Audited</b> [1] 7:22
	<b>8</b>	<b>Amount</b> [2] 7:11 9:21	<b>Auditor</b> [2] 37:21
	8,000 [1] 33:15	<b>Analyze</b> [2] 66:1 73: 13	<b>Audits</b> [5] 42:10 43: 17,20 98:16-17
	801 [1] 1:12	<b>Anderson</b> [3] 2:9-10 4:5	<b>August</b> [1] 22:14
	8th [2] 77:17 79:16	<b>Andrew</b> [1] 21:12	<b>Authority</b> [1] 22:15
	<b>9</b>	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	<b>Automotive</b> [1] 13:21
	95 [1] 12:15	<b>Anderson</b> [3] 2:9-10 4:5	<b>Availing</b> [1] 107:8
	<b>A</b>	<b>Andrew</b> [1] 21:12	<b>Award</b> [2] 60:13-14
	<b>Abilities</b> [2] 17:14 48:19	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	<b>Awards</b> [1] 60:13
	<b>Ability</b> [2] 11:1 39: 20	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	<b>Aware</b> [22] 5:15 22:13, 19 23:1,4 24:6 25:1 27:13,18 28:22 34:15 38:20 42:17,19 45:18, 20-21 71:5 95:19 102: 15-16,20
	<b>Able</b> [1] 82:5	<b>Andrew</b> [1] 21:12	
	<b>Above-entitled</b> [2] 111:7 112:10	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Absolutely</b> [3] 35:15 63:20 79:5	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Accepting</b> [1] 44:22	<b>Anderson</b> [3] 2:9-10 4:5	
	<b>Accounted</b> [1] 14:6	<b>Andrew</b> [1] 21:12	
	<b>Accurate</b> [3] 26:16- 17 96:6	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Accusations</b> [1] 9:19	<b>Anderson</b> [3] 2:9-10 4:5	
	<b>Act</b> [3] 72:3,10 73:19	<b>Andrew</b> [1] 21:12	
	<b>Acted</b> [1] 73:18	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Acting</b> [2] 87:22 89:2	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Action</b> [9] 7:9 8:14 36:11 40:10 56:4,8 75: 5 106:22 110:6	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Actions</b> [10] 4:20 11: 11 40:15 64:11-13,15 110:11,14	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Activities</b> [5] 36:1 68:16 73:8,20 88:12	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Actual</b> [3] 39:13 71: 9 79:15	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Add</b> [2] 36:7 61:13	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Addition</b> [2] 13:19 54:2	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Additional</b> [2] 56:7 70:12	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Address</b> [4] 10:11 14: 12 43:13 51:5	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Addressed</b> [1] 65:21	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Addressing</b> [1] 65:19	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Administration</b> [1] 12:18	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Administrative</b> [10] 12:11,21 13:2,4 42:22 51:9 53:8 97:16 103:6 105:4	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Administratively</b> [1] 88:15	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Advance</b> [1] 52:9	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Advise</b> [1] 36:4	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Afford</b> [1] 73:6	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Afternoon</b> [2] 3:1 85: 9	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Afterthought</b> [1] 25:6	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Ago</b> [2] 68:20 95:1	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Agree</b> [3] 5:22 53:2 65:3	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
	<b>Agreed</b> [12] 55:5 56:	<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
		<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
		<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
		<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
		<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
		<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
		<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100:6,14 101:10	
		<b>Andy</b> [37] 12:22 13:3, 6 16:9,14,19 17:21 22: 22 29:1 30:19 31:7,21- 22 34:5 40:12 44:10 48:14 49:8,21 55:20 57:1 67:21 68:21 75: 11,13 88:22 89:12 92: 15,22 97:14 98:15 99: 3,22 100	

17 16:6,18 18:21 20:8 22:5 46:12,14 47:11, 15 48:2 64:6 70:1 83: 20 91:9 95:2,6 101:21 Became [1] 87:22 Become [1] 10:13 Began [1] 50:8 Beginning [1] 105:17 Begins [1] 6:12 Behalf [2] 2:4 5:20 Believes [1] 52:22 Bell [2] 50:19-20 Bell-shaped [2] 50: 19-20 Benefit [1] 36:12 Berson [53] 1:21 3:5 5:1,3,22 6:3 19:1,6, 12 21:1,7,14 25:8,11 26:3 28:5 34:21 35:7, 13,16 43:22 44:21 45: 5,14 47:6,11,22 48:6, 9 49:10,13 52:5 54:16 55:3,9 57:15,22 62:15, 17 63:5,8,15,18,21 65: 7,14 70:19 71:4,16 72: 16 86:19 87:2,6 Best [9] 10:3 21:22 22:12 28:20 36:20 50: 1 62:11 68:8 85:17 Better [3] 25:16 46: 19 76:2 Between [14] 5:17 17: 17,21 32:16 56:4 59:3 70:8 73:9 80:12,20 81: 19 92:9 97:11 105:10 Big [4] 19:6 33:10 61: 7 78:8 Biggest [3] 38:10 42: 4 46:13 Billable [1] 73:1 Bingham [8] 16:5,22 22:22 48:13 75:19 92: 13,16 Bit [22] 11:10,15 13: 11,13 15:21 28:3,7 29: 11 30:9 49:19 50:6 52: 5 58:9 61:5 67:6 74:1, 18 76:7 81:18 88:5 97: 10 104:3 Blower [2] 107:17 108:1 Boiler [9] 7:22 11:5 37:18 40:5,11 49:3 71: 12 90:20 102:9 Boss [1] 73:3 Bottom [1] 24:5 Brief [1] 70:17 Briefly [3] 6:4 7:15 75:18 Bring [2] 25:15 95:20 Bringing [4] 25:2,20 95:10 100:14 Broad [3] 64:15-16 110:16 Broaden [2] 80:10 104:6 Broke [1] 71:18 Brought [6] 20:6 21: 17 25:6 29:2 46:1 92:3 Bruce [3] 1:21 3:5 Brush [1] 64:16 Bulk [2] 14:6,9 Bumped [1] 83:6 Business [9] 12:3 69: 8,15 74:20 75:3 78:1, 3 96:15 106:17 Busy [1] 98:13 Buy [1] 91:13	<b>C</b>	C.S.R. [1] 112:6 Camel's [1] 71:18 Capacity [1] 89:2 Care [4] 48:15 86:14 97:1,8 Career [6] 53:3 56:2, 9 64:7,18 80:10 Carry [3] 74:12 75:6 76:9 Case [10] 4:20 7:1,16 8:18 22:5 41:17 53:8, 18 68:9 74:12 Cases [1] 33:19 Categorized [1] 6:15 Caused [1] 68:9 Causes [1] 7:5 CC [1] 22:21 Centering [1] 37:3 CEO [1] 11:20 Certain [5] 22:17 33: 19 89:9 108:6 110:13 Certifications [2] 26:14 91:16 Certify [1] 112:8 CFR [1] 102:17 Chain [1] 41:15 Chairman [1] 1:17 Chance [2] 53:9 56:11 Change [1] 28:20 Changed [1] 9:7 Charged [1] 47:20 Chemical [2] 13:20 107:14 Chidakel [90] 1:18 3: 13 14:16,20 15:3,15, 20 19:18,22 20:15 21: 16 23:6,16,19 24:14, 20 25:2 28:12 29:5,9 30:11 31:9 34:18 37:5, 9 38:20 39:3 41:2 42: 10,13,17 43:1,7,15,18, 21 55:10,13 56:11,18 57:4,9,14 58:6 69:21 70:7 80:19 81:16,20, 22 82:4,13 83:1,5,12 84:3,8,15,22 85:4,7, 12,16,21 89:21 90:5, 11 91:1,10,19,22 92:5 93:2,7,20 94:4,10 96: 16 97:1,6 100:19 101: 13 105:5,15,19,22 106: 3,7 108:9 111:4 Christmas [11] 35:22 37:20 48:21 62:12,15, 18,22 63:2,4,11,16 Chuck [4] 1:20 3:8 82: 15 Circumstance [1] 79: 20 Circumstances [1] 79: 22 Civil [2] 12:1 110:12 Clarification [1] 96: 1 Clarify [3] 9:20 19: 18 21:18 Clarifying [1] 53:12 Clarity [1] 21:1 Clear [9] 6:22 29:8 76:20 77:1,5,20 94:21 106:3,21 Clearly [1] 6:6 Clerk [1] 33:8 Cleveland [2] 8:9 89: 6 Client [1] 5:19 Clients [1] 5:18	Close [1] 40:14 Code [9] 20:12 23:22 26:13 39:21 40:6 42:7 45:9 46:18 90:22 Codes [9] 12:5 18:11- 12 19:11,14 26:20 27: 5 38:14 47:2 Comfortable [1] 19:10 Coming [5] 4:22 31: 21 43:13 46:15 79:4 Commendation [1] 109: 3 Comment [1] 109:11 Comments [6] 5:1 8: 17,21 9:10 109:9 110: 21 Commission [8] 1:1,6, 10-11,15 4:14 50:12 112:21 Commissioned [2] 1: 14 112:7 Common [2] 6:22 38:17 Communicated [2] 49: 13 110:19 Communication [1] 65: 1 Communications [1] 68:9 Company [22] 5:13 7: 22 26:10 32:14 33:18 51:7 59:13,18 60:5 69: 12 76:6,12 80:2,6,11 87:17 89:8,10 98:20 100:5 110:13,19 Competence [6] 26:15 27:10 65:10,19 66:9,12 Competent [2] 26:6 95:15 Complaint [1] 95:13 Complaints [1] 58:20 Complete [2] 110:22 112:11 Completed [1] 95:2 Completely [1] 18:19 Compliance [2] 6:9 13:9 Comprehensive [1] 7:3 Concern [23] 18:9 20: 11-12 23:7 30:21 32:3 38:10 40:4 42:4-6 46: 13,17 83:21 85:21 90: 13-14,19-20 94:14 97: 4-5 105:10 Concerned [9] 9:18 21:19 25:19,22 26:4 37:22 57:4 86:13 89:19 Concerns [7] 24:18 26:7 46:2 49:2 64:5 100:11,13 Concluded [1] 5:17 Concluding [1] 6:13 Conclusion [10] 28: 10,15 30:2 39:19 40: 21 41:2-4 60:9 81:12 Conditions [1] 79:11 Conduct [4] 4:7,12, 17 6:18 Conference [6] 1:4 3: 17 4:18 6:19,21 7:7 Confidence [5] 10:22 17:14 39:17,20 48:18 CONFIDENTIAL [1] 1:4 Confirm [1] 36:12 Confirmation [2] 36: 15 54:4 Confirmed [2] 36:17 48:14 Conflict [1] 5:17 Conflict-of-interest	[1] 5:7 Confused [5] 17:19 21:16 91:5 92:10 104: 17 Confusing [1] 84:16 Connection [3] 5:14, 21 108:20 Consensus [1] 96:2 Consented [1] 5:19 Consider [1] 55:18 Consideration [2] 7: 7 110:8 Considerations [1] 61:19 Considered [2] 41:22 55:19 Considering [2] 69:3 84:11 Consisted [1] 33:7 Construction [7] 11: 21 12:3 77:12 78:20 79:2 80:3 99:7 Consult [1] 52:9 Consulted [1] 70:15 Contact [1] 35:3 Contacts [1] 70:7 Context [1] 10:10 Continue [3] 27:22 37:6,9 Continued [2] 71:1 Continuing [2] 4:12 24:19 Contract [1] 38:15 Conversation [17] 16: 13 19:7 30:19 32:1 34: 6,11 35:17 44:12 49:7 68:20 75:18,20 76:19 78:19 80:14 92:11 93: 17 Conversations [11] 32:15-16 36:17 66:17 70:17 77:8 81:2,5 83: 8,11 94:12 Convey [1] 44:18 Conveyed [6] 10:21 19:1 47:4 65:22 66:19 92:22 Conveying [2] 24:18 32:18 Cook [5] 15:6 18:18 26:19 27:14 50:6 Cooper [3] 2:10 4:10 Copy [3] 30:15 52:14 102:22 Corporate [8] 5:18 22:1 32:22 35:4 45:11 91:12 94:1 98:1 Corporation [4] 2:1, 5-6 4:7 Correct [13] 23:4 26: 11 41:10 42:14 54:21 57:8 66:2 90:2,22 91: 16 92:8 96:12 112:11 Corrected [1] 6:11 Corrective [2] 64:13, 15 Correctly [1] 35:2 Corridors [1] 83:7 Corroborate [1] 36:12 Counsel [5] 1:18,21 3:6,15 4:7 County [2] 112:3,8 Couple [5] 54:8 58: 13 67:4 68:19 70:16 Coupons [1] 21:3 Course [2] 37:2 47:1 Courtesy [1] 75:10 Cover [2] 11:16 37:8 Covered [4] 19:22 27:
--	----------	--	---	--

21 109:21-22  
Create [1] 22:4  
Creep [1] 50:15  
Critical [2] 72:14  
Crux [1] 90:12  
CSR [1] 1:13  
Current [3] 9:2,6 77:9  
Curve [2] 50:19-20  
Customer [7] 41:21-22 42:1 58:15,22 73:1 108:22

### D

D.C. [4] 2:3 15:6 26:19 50:6  
Daily [3] 56:22 64:21 103:1  
Daniels [1] 29:18  
Date [5] 52:19 62:21 71:4,9 84:17  
Dated [1] 24:3  
Dates [3] 92:8-9  
Day-to-day [1] 34:21  
Days [1] 53:16  
DC [1] 18:17  
Deal [7] 19:6 36:2 67:18 73:11 80:16 94:17 107:15  
Dealing [7] 12:7-8 16:10 32:10 33:1,10,20  
Deals [4] 13:20 104:21 107:13-14  
Dealt [6] 11:5 20:6 35:5 74:18 79:12 107:21  
Debriefing [3] 37:17 71:13 81:7  
December [42] 7:19 9:3 10:20 17:9,18-19 18:2 19:2,19-20 22:20 24:11 25:7 28:4 30:12 31:19 32:7,17 34:7 39:11 44:3 48:16 49:17-18 53:21 62:7,12,20 63:6,18 65:11,17 70:5 75:21 90:8,10 95:10-11,17 105:17,21 106:15  
Decide [1] 106:12  
Decision [52] 7:2 10:9 24:17 32:20 69:8,15,21-22 71:9,20-21 72:3-4,16,19 73:4 74:5,16 75:12 77:21 78:1 81:1,8,16-17 82:4-5,16 84:18 86:4-5,7,14-15 87:9,13 96:2-3,6-7,14-15 101:8 105:11,14,16 106:20 107:9 110:5,17-18  
Decisions [4] 72:18 73:7 77:19 110:2  
Decommissioning [1] 15:9  
Defense [1] 45:17  
Deficiencies [2] 56:5-6  
Definite [2] 31:18 32:5  
Definitely [1] 54:13  
Degree [1] 33:1  
Delegated [3] 23:7-8 91:4  
Delegating [1] 22:15  
Delegation [1] 23:3  
Department [16] 7:12 12:12 29:17 33:7 52:4 53:11,15 61:7-8,14 62:3 64:18 98:15 103:21 104:5

Departments [1] 100:2  
Describe [1] 7:4  
Described [2] 19:4 103:12  
Describing [1] 19:21  
Detail [3] 34:15 38:2,7  
Details [13] 18:15-16 19:4 39:2 66:16,22 76:2,21 83:11 85:18 89:13,16 94:16  
Determined [1] 106:15  
Development [4] 53:3 56:3,9 64:8  
Diametrically [1] 18:20  
Dictate [1] 99:8  
Diem [1] 79:12  
Difference [2] 27:6 61:16  
Different [8] 12:3 33:17 51:14 58:13 80:4,6 82:14 98:20  
Difficult [5] 28:20 60:7 61:14 67:5 98:5  
Difficulty [1] 99:4  
Direct [1] 55:6  
Directly [4] 11:20 13:8 97:15,20  
Director [13] 1:16,22 2:6 3:2 4:15 9:6 11:19 12:22 34:7 35:18 36:4 48:22 74:7  
Disagreed [1] 41:15  
Disagreements [1] 100:15  
Discrimination [1] 4:20  
Discriminatory [2] 8:14 108:2  
Discuss [3] 3:18 4:18 94:6  
Discussed [8] 36:6,46:2 55:21 70:16 79:6 89:21 94:7,10  
Discussing [1] 25:5  
Discussion [11] 7:17 17:22 27:20 32:18 36:9 58:3,5 65:3 66:7 70:13 71:11  
Discussions [3] 35:13 70:12 102:10  
Disinvolved [1] 88:4  
Displeased [1] 46:9  
Distinct [2] 73:7 77:18  
Dividing [1] 75:1  
Division [42] 1:16 3:2 10:22 11:8 13:16,20 14:6,11 17:13,17 24:19 26:5 30:4,7 31:5-6,13 35:20 41:8-9 44:2,16-17 46:10,22 47:16 48:17 49:11 51:6 58:19 68:16,18,22 74:18 77:12 81:15 83:10,19,22 84:6 96:18 108:12  
Division's [1] 41:22  
Divisional [1] 13:15  
Divisions [9] 13:22 14:7 33:3-4,13,15 69:4 97:12,15  
Document [9] 32:11 36:5 45:14,19 59:9 63:13 64:18 102:8 107:4  
Documentation [4] 37:1 59:14 91:16 108:7  
Documented [7] 32:8,20 53:2 61:20 65:5

108:3 109:3  
Documenting [2] 36:5,11  
Dollars [1] 61:10  
Done [16] 14:10 23:14-15 29:14 37:20 42:10 55:18 58:2,18 67:18 69:1 72:3 92:19 98:16 107:5,19  
Down [14] 6:16 21:2 34:7 37:7 52:10 53:6,10,15 55:20 62:2 65:3 74:6 79:3 103:21  
Drew [3] 1:5 2:6 3:19  
Drop [11] 18:14,19 24:1,4 27:16 39:15,21 66:3 90:17 94:16 95:15  
Duly [1] 112:7  
Dupont [4] 77:14 108:16,18 109:4  
During [7] 19:7 48:2 66:9 69:4 70:10 81:4 108:11  
Duties [1] 9:7  
Duty [1] 107:7

### E

Eager [1] 9:20  
Early [3] 8:2 31:2 39:7  
Ed's [1] 4:11  
Edleman [264] 1:5 2:6 3:20 4:19 5:5,11,22 6:2,5 9:1,5,11 10:5 14:4,8,12,19,22 15:5,13,19,21 17:19 18:1-2,5,8 19:3,8,15,20 20:5,16,21 21:6,8,15,22 22:18 23:4,11,18,20 24:7,10,16,22 25:4,8,10 26:1,4,11,17 27:11,16,21 28:6,14 29:6,10 30:15 31:15 32:12 33:3,14,19 34:2,5,9,12,20 35:3,9,15,17 36:6,19 37:5,8,11 38:19 39:1,5 40:12,18 41:4,7,10,17 42:12,15,20 43:4,9,16,19,22 44:9 45:3,6,20 46:4,7,13 47:4,10,17 48:4,7,10 49:12,14 50:17 51:8,22 52:3,11 54:13,21 55:7,12,14 56:2,15,19 57:8,11,21 58:2,9 60:15,18 62:10,16,19 63:3,7,9,14,17,20,22 64:4,11,13 65:12,15,21 66:11,16,22 67:3,9,12,16 68:5,12 69:22 70:3,6,11,19 71:3,5,8,11,21 72:8,18 73:11,22 74:4 76:16 78:7,15,19,22 79:9,19 80:13 81:11,17 82:3,7,20 83:3,8,17 84:4,9,14,16,19 85:2,6,8,15,17 86:1,6,13,22 87:5,7 88:3,10,21 89:4,9,12,18 90:3,9,14 91:7,11,21 92:3,7 93:6,16 94:2,7,12 95:3,8,11,21 96:7,12,15,20 97:4,9,13 98:3,9 99:3,12 100:15 101:6,16 102:1,14,19 103:6,9,15 104:14,20 105:13,16,20 106:1,6,14 107:18 108:14 109:5,11,16 111:2  
Edleman's [3] 5:2 36:8 43:10  
Education [1] 56:7  
Edwin [2] 2:9 4:4

Effect [1] 19:15  
Effective [5] 50:13-14 51:21 54:10,17  
Effort [1] 21:3  
Eight [1] 15:10  
Either [2] 19:5  
Elaborate [2] 59:11  
Element [1] 65:4  
Eleven [1] 91:8  
Employee [5] 52:15-17,21 57:17  
Employees [5] 50:14 53:6 57:12 60:18 107:16  
Employment [2] 4:19 107:22  
Encourage [1] 6:9  
End [6] 26:18 51:20 58:7 70:2,4 83:1  
Ended [1] 74:9  
Enforcement [17] 1:4,19-20 3:9,11,17-18 4:18 5:14 6:5,8,11,18 7:2,9 110:5,10  
Engineer [32] 8:7 10:7 11:1,12 12:2,4 17:15 26:13 29:17 31:4 37:22 39:18 41:19 69:19 72:6 74:6 75:16 76:5 78:6 79:21 86:11 87:16 88:1,8,14,16 96:5,8,14 98:7 99:21  
Engineering [3] 11:21 12:3 61:8  
Engineers [12] 30:8 31:6-7 32:4 69:10 72:2 73:14 74:22 78:3 84:12 87:19 96:17  
Ensure [1] 6:10  
Entirely [2] 10:106:13  
Especially [1] 104:8  
Essence [1] 45:16  
Essentially [2] 7:8 48:2  
Establish [1] 58:22  
Evaluate [5] 12:5 51:1 56:21 57:2 94:17  
Evaluates [1] 50:22  
Evaluating [2] 6:12 51:17  
Evaluation [17] 11:9 49:16 52:14,18,21 53:3,20 54:3 55:11 56:10,12 58:11 59:2 61:21 64:17 65:4 66:13  
Evaluations [1] 51:18  
Eve [2] 62:15 63:11  
Event [1] 35:21  
Events [1] 7:6  
Eventually [1] 8:10  
Evidence [1] 39:22  
Exact [3] 19:16 93:16,18  
Exactly [14] 20:2 21:19 23:6,9 31:14 62:22 70:6 77:10 80:20,22 91:3,6 93:11,18  
Example [7] 18:13 24:1 44:5 52:7 61:8 80:1 103:17  
Excellent [3] 5'  
Except [1] 17:11  
Excuse [4] 30:11 43:7 81:20 83:14  
Executive [3] 28:16 41:8 44:1  
Expect [3] 64:19 93:

<p>13 110:17  <b>Expectation</b> [5] 82:  21 93:20 94:4-5,9  <b>Experience</b> [6] 12:2  29:16 50:5 67:15 80:3  <b>Expert</b> [4] 22:1 45:8-  9 69:13  <b>Expertise</b> [1] 66:5  <b>Expires</b> [1] 112:21  <b>Explain</b> [10] 5:4 11:  14 22:12 28:14 49:8  52:11 58:9 59:15 61:5  106:14  <b>Explained</b> [9] 23:21  30:20 39:22 49:8 74:  16,21 95:12 99:13 105:  18  <b>Explore</b> [3] 14:2 24:  2 26:9  <b>Expressed</b> [6] 18:9  30:13 31:21 32:2 38:6  42:6  <b>Extraordinary</b> [4] 67:  14,16,19 68:1</p>	<p><b>Fired</b> [2] 59:18 76:3  <b>Firm</b> [2] 4:5 5:10  <b>First</b> [16] 16:1 17:6,  10 21:11 23:17 36:3  48:11 65:18 79:3 82:1  90:1,3,7 92:3,11 103:  17  <b>Fit</b> [3] 68:7 80:17-18  <b>Fits</b> [2] 6:7 49:16  <b>Five</b> [3] 33:4 35:6 50:  2  <b>Flagged</b> [1] 43:6  <b>Flashes</b> [1] 25:14  <b>Flavor</b> [2] 10:13 11:  18  <b>Flaw</b> [1] 93:14  <b>Floor</b> [1] 33:6  <b>Fluor</b> [1] 29:18  <b>Focus</b> [3] 10:5 93:11  104:11  <b>Focused</b> [2] 104:10  108:5  <b>Follow</b> [2] 47:6 86:19  <b>Followed</b> [1] 101:14  <b>Following</b> [1] 8:6  <b>Fore</b> [1] 46:1  <b>Foregoing</b> [1] 112:11  <b>Foregone</b> [1] 28:10  <b>Forgetting</b> [1] 93:7  <b>Forgot</b> [1] 90:7  <b>Form</b> [2] 52:14 53:6  <b>Formal</b> [3] 102:12,14,  16  <b>Formality</b> [1] 33:2  <b>Forms</b> [1] 52:13  <b>Fort</b> [1] 15:8  <b>Forth</b> [2] 92:9 112:13  <b>Four</b> [4] 6:15 33:8 61:  14 103:22  <b>Frame</b> [7] 32:17 49:17  69:4 81:6 93:3 100:9  104:12  <b>Full-time</b> [1] 48:2  <b>Fun</b> [1] 107:7  <b>Function</b> [6] 98:12,  18 99:14-15  <b>Functions</b> [2] 99:19  100:3  <b>Future</b> [6] 28:11 30:  22 31:18 44:14 59:10,  22</p>	<p>66:6,15,20 67:2,8,10,  13 68:11 81:18,21 89:  1,8,11,15 94:22 95:5,  9,19,22 97:10 104:12,  15 109:8,21 111:3  <b>Ground</b> [1] 109:21  <b>Group</b> [38] 8:7 10:6  11:1,12,21 13:1 17:15  26:12 30:8 31:6 32:4  35:5 39:18 69:9,18 72:  2,5 74:6,22 75:15 76:  4 78:2,6 79:21 83:10  84:11 86:11 87:16,18,  22 88:8 96:5,8,14,17  97:12-13 98:7  <b>Grow</b> [1] 80:6  <b>Guess</b> [17] 22:8,22 23:  5,13 41:12 47:13 48:7  50:18-19,21 57:4 64:  16 83:20 87:7 98:4  105:9 106:9  <b>Guy</b> [6] 46:19 71:14  72:22 79:5 106:18  <b>GWE</b> [2] 105:8 106:12</p>	<p><b>Hours</b> [1] 101:12  <b>House</b> [2] 47:9 99:10  <b>HR</b> [4] 34:8 35:18 53:  10 74:7  <b>Human</b> [3] 34:8 48:22  53:15  <b>Hundreds</b> [1] 61:9  <b>Hypothetical</b> [1] 65:8</p>
<p><b>F</b></p>	<p><b>H</b></p>	<p><b>I</b></p>	
<p><b>Face</b> [1] 44:22  <b>Facets</b> [1] 12:4  <b>Fact</b> [26] 17:13 19:10  20:6 25:4 26:4 30:17  37:22 38:11 39:19 40:  1 41:18 53:22 57:5 75:  15,22 76:10 77:3 79:1  90:15 91:3,5 92:19 94:  18 99:13 107:18 110:1  <b>Factor</b> [2] 19:9 59:8  <b>Facts</b> [4] 7:1,3 8:18,  20  <b>Failure</b> [1] 5:7  <b>Fair</b> [3] 29:15 59:4  63:9  <b>Fairly</b> [4] 19:8 28:  17 57:20 87:17  <b>Fall</b> [2] 50:18,20  <b>Fallacies</b> [1] 61:6  <b>Far</b> [10] 3:5,13 48:11  86:13 90:18 91:1-2 93:  9 101:21 104:6  <b>Fashion</b> [1] 23:15  <b>Favor</b> [1] 79:18  <b>Fax</b> [1] 24:3  <b>February</b> [3] 77:17  79:16 112:22  <b>Feedback</b> [6] 78:5 80:  8,11 108:11,15  <b>Felt</b> [4] 19:13 31:13  38:6 104:4  <b>Festering</b> [1] 76:1  <b>Few</b> [5] 53:16 60:21  65:7 95:1 101:11  <b>Field</b> [7] 1:22 4:15  18:9 39:10 41:20 57:  17 67:20  <b>Figure</b> [2] 30:5 91:14  <b>Figured</b> [1] 36:2  <b>File</b> [1] 109:2  <b>Files</b> [1] 23:1  <b>Fill</b> [1] 69:20  <b>Fills</b> [2] 52:20-21  <b>Final</b> [2] 81:3 110:5  <b>Finally</b> [2] 71:22  107:9  <b>Financial</b> [1] 69:10  <b>Findings</b> [9] 6:12 8:  1 38:1-2 42:18-19 43:  2-3 75:2  <b>Fine</b> [1] 43:15  <b>Fines</b> [1] 110:12  <b>Fire</b> [1] 60:4</p>	<p><b>G</b></p> <p><b>Garret</b> [6] 79:1,8-9,  14 80:5,15  <b>Garret's</b> [1] 80:15  <b>Gee</b> [1] 80:18  <b>General</b> [8] 1:18 3:  14 10:12 12:10 19:3  32:16 34:3 93:17  <b>Generally</b> [6] 25:18,  21 42:18 65:15 68:3  94:2  <b>Generator</b> [2] 8:4 46:  17  <b>Given</b> [5] 59:16 61:1,  3 79:20-21  <b>Gordon</b> [2] 22:14 24:4  <b>Grade</b> [2] 50:15 52:1  <b>Grades</b> [1] 50:2  <b>Graduate</b> [1] 12:1  <b>Great</b> [1] 73:11  <b>Greater</b> [1] 12:15  <b>Grobe</b> [47] 1:16 3:1-2  4:13 6:4 9:9 10:4 27:  8,19 33:12,16,22 34:4,  9 38:17 40:10,16 45:  22 62:6 63:2,12 65:17</p>	<p><b>Habit</b> [1] 53:17  <b>Half</b> [2] 37:19 62:21  <b>Hallway</b> [1] 70:13  <b>Hand</b> [2] 58:14,18  <b>Handle</b> [1] 13:7  <b>Handled</b> [3] 29:17 36:  1 45:17  <b>Handling</b> [2] 15:16  71:14  <b>Handout</b> [1] 10:12  <b>Hands</b> [2] 80:15-16  <b>Happy</b> [1] 108:18  <b>Hard</b> [3] 92:6 105:9  106:10  <b>Hartford</b> [9] 7:22 11:  5 37:18 40:5 42:10 49:  2 71:12 90:20 102:9  <b>Head</b> [1] 90:6  <b>Headed</b> [1] 97:14  <b>Headquarters</b> [3] 3:  11,15 110:9  <b>Hear</b> [6] 67:17,21-22  68:3 85:5 109:19  <b>Heard</b> [11] 17:6,16 18:  5 28:18 40:19 54:2 55:  16 58:11,20-21 108:15  <b>Hearing</b> [6] 1:6 9:14,  16 44:5 111:7 112:10  <b>Held</b> [1] 49:3  <b>Help</b> [3] 94:22 99:11  103:12  <b>Helpful</b> [1] 8:18  <b>Helping</b> [3] 58:22 88:  12 108:17  <b>Hereby</b> [1] 112:8  <b>Hereinabove</b> [1] 112:  13  <b>Hi</b> [1] 35:11  <b>Hickey</b> [16] 2:2 3:21  5:4,9 6:1 15:12 20:19  27:14 32:21 36:7 43:5,  11 51:4 103:12 104:18  <b>Hierarchy</b> [1] 41:6  <b>Highly</b> [1] 61:12  <b>Hills</b> [1] 25:13  <b>Himself</b> [1] 20:15  <b>Hire</b> [1] 31:3  <b>Hired</b> [1] 89:4  <b>Hold</b> [1] 48:1  <b>Holidays</b> [1] 54:1  <b>Home</b> [1] 79:13  <b>Honest</b> [3] 19:17 68:  7 88:4</p>	<p><b>Idea</b> [3] 44:15 56:9  66:4  <b>Identified</b> [2] 6:11  8:3  <b>Identify</b> [1] 9:2  <b>Ignore</b> [1] 107:10  <b>III</b> [7] 1:11,22 3:3,7,  9 4:16 110:8  <b>Illinois</b> [4] 1:12,14  112:1,8  <b>Immediate</b> [3] 3:8 56:  20 64:20  <b>Immediately</b> [5] 16:  13 30:17 44:19 74:6  101:9  <b>Impact</b> [2] 59:8 102:7  <b>Implementing</b> [1] 75:8  <b>Important</b> [3] 9:15  10:9 40:21  <b>Impression</b> [3] 30:1  31:17 42:9  <b>Improve</b> [1] 12:10  <b>Improvement</b> [2] 12:16  <b>Improvements</b> [1] 12:8  <b>Improving</b> [1] 56:1  <b>Incentive</b> [1] 60:13  <b>Include</b> [2] 103:13  110:14  <b>Included</b> [1] 64:7  <b>Including</b> [3] 27:3  33:9,13  <b>Increase</b> [1] 60:15  <b>Increases</b> [1] 60:19  <b>Independence</b> [3] 81:  19 97:11,20  <b>Independent</b> [2] 4:8  97:14  <b>Indicate</b> [4] 4:2 32:  21 46:9 110:2  <b>Indicated</b> [1] 100:16  <b>Indicating</b> [1] 17:9  <b>Indicator</b> [2] 17:6  18:22  <b>Individual</b> [10] 5:18  25:12 26:5 50:22 51:  14 67:11 83:9 89:1  100:4,6  <b>Individuals</b> [4] 89:  10-11 107:20 110:15  <b>Industrial</b> [15] 13:  19 14:6,10,15 27:3 31:  5 44:16 47:9 58:19 69:  6,17 75:17 77:12 78:  11 87:11  <b>Industry</b> [2] 13:18  <b>Inflation</b> [1] 60:20  <b>Informal</b> [2] 32:14  33:11  <b>Informality</b> [1] 33:2  <b>Information</b> [6] 7:11  10:17 15:22 19:2 22:9  92:22  <b>Inherit</b> [1] 60:1  <b>Initiatives</b> [1] 12:16  <b>Input</b> [6] 54:20-21 55:  1 57:2 67:19 70:15  <b>Inspection</b> [1] 6:13  <b>Instead</b> [1] 103:20  <b>Instructed</b> [1] 70:21</p>

<b>Instruction</b> [1] 101:14 <b>Insurance</b> [1] 7:22 <b>Intend</b> [1] 11:15 <b>Intent</b> [1] 52:19 <b>Intention</b> [3] 60:3-4 <b>Interaction</b> [3] 34:22 44:8 64:6 <b>Interest</b> [1] 5:18 <b>Interested</b> [1] 43:12 <b>Internal</b> [4] 7:14 41:22 42:1 58:15 <b>Interpret</b> [1] 20:11 <b>Interpretation</b> [2] 18:12 31:20 <b>Interrupt</b> [2] 8:19 36:8 <b>Intervene</b> [1] 57:19 <b>Interview</b> [1] 88:14 <b>Interviews</b> [1] 36:16 <b>Introduce</b> [2] 3:5 4:1 <b>Investigation</b> [8] 4:8,11 6:13 7:15 36:14,16 69:5 71:17 <b>Investigations</b> [3] 1:22 4:15 7:13 <b>Involuntarily</b> [1] 8:8 <b>Involve</b> [3] 91:19-20 110:13 <b>Involved</b> [28] 7:1 15:7,13,17 16:8,20 26:18 39:5-6 41:14 42:20-21 51:9,17 54:16 55:7 88:22 97:2,7 102:3,5,22 104:4 105:1,7 107:20 108:5,17 <b>Involvement</b> [5] 4:19 7:5 12:20 53:9 110:4 <b>Issue</b> [40] 3:19 7:15 9:17 10:1 16:1,8,15,20 17:1 18:13 20:2,5,8 23:20-21 24:11 26:1 29:2,6,21 39:15 41:17 59:4 70:16 75:8,19 87:15 91:3,6 92:2,4,16 93:9,12 95:10,12-13 101:3 104:2 110:8 <b>Issues</b> [36] 8:20 11:6 12:17 13:2,4 16:16 20:3,10 23:18 32:10 38:8 39:21 42:22 43:6 46:1 53:1 55:21 61:22 65:16 66:1,18,21 68:4 79:13 81:13 90:16 93:8 94:13 95:16,18 97:17 100:17 101:19 103:17 107:22	33:20 35:4 38:12 40:3-5 41:18-19 44:3 45:13 46:16 47:12 51:16 58:21 62:1 68:5 74:10 77:14 78:17 79:7 90:16,18 91:1,7,13,18 93:9 94:14,18-19 98:20 101:3 107:2 108:21 <b>Jobs</b> [4] 47:15 58:21 80:4 104:1 <b>Judgment</b> [1] 25:16 <b>Jump</b> [1] 46:6 <b>Jumping</b> [1] 92:9 <b>Justify</b> [2] 73:3 75:4	<b>Living</b> [1] 10:1 <b>Location</b> [1] 92:20 <b>Log</b> [1] 62:14 <b>Loggerheads</b> [1] 100:12 <b>Logical</b> [1] 108:22 <b>Look</b> [12] 12:14 14:13 32:3 33:3 51:2 52:17 55:15 56:11,16 57:12 77:2 88:13 <b>Looked</b> [7] 40:13 58:10 59:1 61:20 64:17 85:19 100:2 <b>Looking</b> [5] 7:4 16:9 84:12 85:10 88:11 <b>Lose</b> [2] 31:2 35:20 <b>Loss</b> [1] 39:17 <b>Lost</b> [5] 10:22 17:13 39:20 48:18 58:15 <b>Lou</b> [48] 10:21 11:3 17:11 18:8,13 24:12 28:8,17 29:11-12,20 30:1,20 31:15 32:2 34:6 37:14 39:8 44:7,11-12,14,22 48:16 54:4 65:22 66:2,11,19 68:14 70:14 71:6 72:9,20 74:4,14,16 75:21 77:21 83:14 86:4 88:11,21 89:16 96:4 97:21 102:8 <b>Louis</b> [1] 46:16 <b>Lower</b> [6] 52:1 54:12 55:18-19 57:19 58:6 <b>Lowered</b> [1] 59:20 <b>Luckily</b> [1] 36:14	<b>Meeting</b> [56] 3:16,18-19 6:7 8:16 10:19,21 11:2,6 16:21 19:2,19-20 23:2,17 25:5,7 26:2 28:4,9 29:1 32:9 39:16 40:20 44:11,20 45:18 48:16 49:1,6 55:5 62:1,7,10,11 18 70:20 71:19 76 13 78:4,22 79:6 81:11 85:9 90:8,10,22 92:14 106:4 110:1,22 <b>Meetings</b> [10] 17:4 32:6,11 44:9 65:17 66:9 70:9 81:2 83:7 110:7 <b>Member</b> [1] 3:9 <b>Memo</b> [2] 22:13 24:7 <b>Memphis</b> [4] 21:2 23:8 91:4 92:21 <b>Mentioned</b> [5] 4:17 10:19 27:14 39:15-16 <b>Merit</b> [1] 60:19 <b>Message</b> [2] 36:18 59:21 <b>Met</b> [7] 29:11 38:14 40:6 55:4 80:21 106:14 <b>Metrics</b> [1] 12:8 <b>Mid</b> [26] 10:20 17:8,17,19 19:2,20 22:20 24:11 25:7 32:17 34:6 44:3 48:16 62:7,12,20 63:18 65:17 75:21 90:9 95:10-11,17 105:17,21 106:15 <b>Middle</b> [1] 65:11 <b>Might</b> [9] 5:4 32:21 35:11 36:7 55:18 60:7 62:21 102:8 103:14 <b>Mike</b> [2] 1:19 3:10 <b>Mike's</b> [2] 3:10 27 <b>Mind</b> [8] 19:7 25 28:20 43:8 54:9 59:22 79:19 <b>Minds</b> [2] 53:1 55:5 <b>Mine</b> [1] 86:16 <b>Minimal</b> [1] 12:19 <b>Minutes</b> [4] 11:16 32:9 76:14 95:1 <b>Misunderstood</b> [1] 31:11 <b>MK</b> [11] 5:6 32:9 45:4,7 50:14 59:10 67:15 76:15 86:11 97:22 107:13 <b>Mole</b> [1] 25:13 <b>Monetary</b> [1] 110:12 <b>Month</b> [1] 110:18 <b>Monthly</b> [1] 35:8 <b>Months</b> [5] 8:11 34:17 74:11 75:7 76:9 <b>Morning</b> [2] 75:9 76:19 <b>Morrison</b> [15] 1:4 2:1,4,6 4:6 5:13,19 7:14 8:1,3 9:3 11:21 29:12 33:12 41:6 <b>Most</b> [6] 6:16 13:4 32:15 50:18 94:12 98:10 <b>Motivated</b> [1] 95:20 <b>Mountains</b> [1] 25:13 <b>Mouth</b> [2] 25:18 109:7 <b>Move</b> [6] 37:11 49:15 63:22 79:18,20 80 <b>Moved</b> [1] 100:7 <b>Moving</b> [4] 105:1-106:19 107:3 <b>Multiplied</b> [1] 61:10
<b>J</b> <b>Jack</b> [4] 1:16 3:1 81:20 82:10 <b>Jane</b> [2] 2:10 4:10 <b>January</b> [54] 1:6 4:21 8:2,8 9:4 11:2,11 37:11 39:16 44:4,11,20 49:1,10,18 62:3-4 63:22 65:18 67:6 68:12 70:8-9,20 71:8,19 72:6,17,20 73:9,19 74:5 77:4 80:22 81:6,11 82:17 83:14 84:21 86:21 87:3 89:22 90:10 96:3,10,13 100:9,20 101:19 106:20 107:3 <b>Jeffrey</b> [3] 1:12 112:6,19 <b>Jim</b> [6] 79:1,9,14 80:5,15 <b>Job</b> [51] 12:6 15:9 20:7,10,13 22:9 23:11,13,15 26:6-7,15 27:1,5	<b>K</b> <b>Kane</b> [1] 112:8 <b>Keep</b> [3] 25:18 31:4 82:1 <b>Kept</b> [2] 103:9 104:10 <b>Kevin</b> [5] 34:7 35:17 48:22 74:7 101:8 <b>Key</b> [1] 7:16 <b>Kind</b> [38] 10:10 13:12-13,21 26:13 28:10 32:14 35:5,11 38:2,4,7 39:22 44:8 48:11,14 49:6,9,15-16 52:10 56:1 64:15 65:7 66:3 67:18 70:14,18 76:10 79:13,20 80:16 93:14 94:17 98:17 104:22 108:4,22 <b>Kinds</b> [2] 33:21 68:4 <b>Knowing</b> [1] 43:12 <b>Knowledge</b> [7] 15:22 24:10 48:12 65:9 95:5 97:22 100:10 <b>Known</b> [2] 89:8-9 <b>Knudsen</b> [15] 1:4 2:1,5-6 4:6 5:14,19 7:14 8:1,3 9:3 11:22 29:13 33:13 41:6	<b>M</b> <b>Mad</b> [1] 29:20 <b>Main</b> [1] 36:11 <b>Major</b> [1] 19:8 <b>Majority</b> [1] 50:14 <b>Malone</b> [3] 2:9,11 4:6 <b>Man</b> [1] 29:15 <b>Manage</b> [4] 13:7 20:17 23:11 91:18 <b>Management</b> [13] 12:12,19 13:1,15 33:7 37:17 38:5 42:15 51:10 52:3 97:18 104:5 107:16 <b>Manager</b> [8] 16:6 50:22 52:12,15 59:22 80:1-2 100:1 <b>Managing</b> [3] 62:2 80:4 104:7 <b>Manual</b> [4] 94:3,8 98:1 102:22 <b>Marginal</b> [2] 52:2 59:21 <b>Marty</b> [1] 35:10 <b>Mary</b> [2] 2:10 4:10 <b>Maryland</b> [1] 3:12 <b>Material</b> [1] 91:14 <b>Matter</b> [8] 1:3 4:9 25:4 36:14 57:16 78:22 101:11 107:18 <b>Matters</b> [2] 5:15 33:2 <b>Max</b> [8] 16:5,22 22:21 48:13 75:19 92:13,16 <b>Mean</b> [13] 20:19 25:20 45:3 48:1 50:13 73:16 76:20 85:17 89:12 93:12 98:13 101:7 106:11 <b>Meaning</b> [1] 45:5 <b>Meant</b> [3] 19:9 59:11 103:2 <b>Measurements</b> [1] 12:8 <b>Meet</b> [2] 42:7 90:17	<b>N</b> <b>N.W.</b> [1] 2:3

Name [3] 3:1 4:4,10 Nature [1] 5:5 Necessarily [3] 20: 18 32:19 82:22 Necessary [4] 16:9, 21 40:10 107:1 Need [3] 30:8 69:19 103:1 Needed [5] 16:13 22: 7 69:12 72:10 103:19 Needs [1] 69:18 Negative [2] 58:17 108:14 Never [22] 9:18 17:16 18:5 29:20 36:6 40:19 47:4 51:3 58:2 59:17 60:3 78:15 80:13 86: 22 87:19 94:7,10 96:4 101:13 102:4,15 109:6 New [3] 22:11 88:8,13 Next [8] 17:8 30:16 37:12 41:1 46:20 62:5 72:13 85:10 Nine [1] 8:10 Non [6] 38:3,8 50:8 97:16 105:11 106:12 Non-administrative [1] 97:16 Non-nuclear [3] 13: 18 15:18 50:8 Non-power [2] 105:11 106:12 Non-technical [2] 38: 3,8 None [1] 18:3 Normal [2] 6:18 53:17 Notary [2] 1:13 112:7 Note [1] 24:5 Nothing [10] 16:10 17:1 24:22 27:11 31: 18 32:8 72:1 73:4 100: 16 106:11 Notice [1] 110:11 Noticed [1] 14:5 November [1] 45:15 NRC [6] 3:3-4 6:12 7: 8,10 8:21 Nuclear [38] 1:1,6, 10-11,15 4:13 13:17 14:17,20 15:4-5,7,11, 16 26:21 27:1,5 33:20 46:11,14 47:1,11 50:5, 8,11 72:13 89:7 97:18 98:2 102:5,21 104:9, 15,19 107:14 108:4,6 110:15 Number [10] 10:11 22: 6 33:14 53:22 61:10 77:8,10 103:21 107:21 Numbers [2] 48:1 50: 13 Numerous [1] 70:12	67:14 Occurring [1] 49:17 Office [18] 1:18-19, 22 3:6,14 4:15-16 7: 13 16:4 35:10 68:14 74:15 75:13-14 86:6 103:20 Offices [2] 3:11 110: 9 Official [1] 88:7 Officially [1] 88:7 Often [1] 79:12 Ohio [1] 8:9 OHR [1] 36:4 Old [1] 88:9 Once [7] 42:16 54:14 80:14 87:15 99:13 101: 7 110:1 One [47] 6:15 18:8,12, 16 20:1,10 23:18 29: 19 30:7 31:1,9 33:21 35:10 36:7 37:20 39: 21 41:12 43:6 44:2 45: 10 46:14 51:12 52:13 53:22 58:14 59:3-4 60: 6 61:6 62:4 63:16 64: 2 67:8 69:12 73:7 76: 17 87:17,20 88:7,9,18- 19 99:21 103:17 107:22 Ones [1] 91:11 Open [2] 62:15 74:9 Open-ended [1] 74:9 Opening [2] 8:21 9:9 Operation [2] 12:9-10 Operational [3] 12:7, 16 29:13 Operations [3] 13:16 82:8-9 Opinion [1] 70:14 Opportunity [3] 53:5 54:22 80:5 Opposed [1] 18:20 Orally [1] 110:19 Order [2] 10:8 80:2 Orders [3] 47:21 110: 12-13 Organization [4] 13: 14 68:7 98:8 99:2 Organizational [4] 68:8 98:10 99:16 103: 10 Organizationally [1] 97:11 Organize [1] 91:13 Organized [1] 13:12 Originally [1] 74:22 OSHA [1] 107:15 Otherwise [1] 51:16 Outline [1] 30:16 Outside [1] 68:2 Outstanding [3] 50: 16 51:2-3 Overall [1] 59:3 Oversight [1] 105:4 Overview [2] 38:4 104:22 Own [3] 7:13 54:19	5,13 44:11,14,22 46:2, 8 48:16 49:1 54:4 62: 7,11 65:22 66:2,11,19 67:10 68:14 70:8 71:6 72:10,20 74:4,14,16 75:21 77:21 80:21 81: 2-3,6,8 82:18,21 85: 12 86:5 88:12,21 89: 16 90:6,13 93:3,8 95: 9 96:4,8,16 97:21 98: 6 100:19 105:5 106:4,7 Pardi's [7] 19:6 23: 6 41:2,4 70:14 82:4 86:12 Pardon [2] 31:9-10 Parkersburg [10] 8:9 10:8 11:14 77:14 78: 14,16 79:7 108:16,20 109:4 Part [22] 12:13 20:7, 13,16 24:17 36:21 48: 8 51:9 56:5 59:6 61: 17 64:9 65:13 69:8 78: 8 81:22 87:13 98:9 102:18 104:3 108:19 109:20 Particular [12] 8:5 10:1,14,20 16:8 17:4 25:7 40:20 46:12 49:5 53:17 84:22 Parties [5] 5:15 38: 18 55:2 56:4 60:11 Partner [2] 4:5,11 Parts [2] 13:14 33:17 Passing [1] 70:18 Past [3] 67:11 79:22 99:18 Patrick [3] 2:2 3:21 5:9 Paul [2] 1:22 4:14 Pay [1] 104:22 Payroll [1] 47:19 Penalties [1] 110:12 People [45] 13:15 17: 17 18:3,21 25:13,15, 17 26:15 32:16 33:8, 10 35:14 42:1,3 48:19 50:18 51:2-3,10-11 55: 13-14 56:14 58:4 61:9, 14 64:19 68:3 77:8,11, 20 88:13,15,19 97:21 103:18,21-22 108:5,8, 11,21 Per [1] 79:12 Percent [15] 12:15, 17 14:14-15 47:7,9,12, 14 48:3 58:16 61:4,9, 15 103:16 Perception [1] 10:3 Performance [50] 2:6 7:20 8:13 9:7 10:18 11:9,19 12:9 16:1 37: 2,4 45:2 46:2 49:16, 20-21 50:11 51:15 52: 6,13,18,21-22 53:3,19 54:3,15 55:17 56:1,10, 12 57:6 58:8,11-12,16 59:1 61:20,22 64:2,9, 17,22 65:3 66:13 67: 11 81:12 104:21 108: 13 109:2 Performed [1] 8:2 Performer [1] 51:20 Performers [4] 61:12- 13,15-16 Performing [2] 26:7 94:15 Period [5] 9:8 17:9 39:12 48:3 74:9 Permission [2] 75:6 76:9	Permitted [1] 86:20 Perry [1] 89:7 Person [15] 31:3 37: 20 38:4 53:13-14 69: 12,20 72:8-9 73:3 88: 3 99:18-19,21 Personal [2] 56:8 65: 8 Personally [1] 109:12 Personnel [15] 10:22 12:19 17:13 18:10 32: 10 33:2,16,22 34:2 36: 11 47:19 48:18 55:22 62:3 64:7 Personnels' [1] 39:17 Perspective [2] 79: 17 80:7 Picture [1] 36:21 Piece [6] 56:3,9 102: 3,6,11 107:4 Pinpoint [2] 62:13,20 Pittman [2] 2:2 5:10 Place [6] 11:11 72:7 73:21 88:8 98:1 112:13 Placement [1] 8:4 Plan [4] 53:4 56:1 64: 8 72:6 Planning [1] 56:13 Plant [1] 89:7 Plants [4] 13:20 46: 22 107:14 Plus [1] 95:12 Point [46] 8:5 15:2,8, 17 16:6,18 17:2 18:21 20:8 22:5 24:14,16,22 28:19 30:11 31:16 36: 2 38:20 40:9,21 46:12, 14 47:11,14 48:2 54: 17 55:10 57:6 58:8 64: 6 67:22 70:1 74:2 78: 18 79:6 81:9 83:20,22 87:12 91:9 95:1,6 101: 6,20 105:8 106:13 Points [2] 7:16 27:21 Policy [1] 32:9 Poor [6] 45:1 51:15, 20 58:12,16 61:13 Portion [1] 61:22 Position [22] 8:7 9: 2-3,5 18:18 26:12 59: 11-12 60:5 69:19-20 72:7 73:10,12 74:13 76:6,12 77:13 87:16 89:3 98:6 100:7 Positive [3] 77:16 80:11 108:15 Possibilities [1] 76: 8 Possible [1] 7:4 Post [1] 72:7 Potential [2] 3:18 4: 19 POTTS [1] 2:2 Power [87] 10:21 11:8 13:16,18 14:14,17-18, 21 15:4-5 17:13,16 24: 19 28:9,11 30:4,21 31: 2-3,13,18,20 35:20 39: 17 40:22 41:9,14 44:2, 13,16 46:10,22 47:8, 12-13,15 48:17 49:5, 11-12 58:15 68:16,18, 22 69:6,16 70:22 71:2, 10 72:21 74:17,20 75: 16 77:4,21 78:10 81: 10,14 82:6,8 83:10,19, 22 84:6 86:2-3,15,20 87:4,8 93:4 96:11,18 97:3,7 100:21 105:7, 11-12,21 106:5,8,12,
<b>O</b>			
O'clock [1] 1:7 Object [1] 53:5 Objections [1] 56:17 Observations [1] 54: 19 Obvious [1] 77:2 Obviously [5] 25:11 29:4 33:20 58:18 89:19 Occasion [1] 57:22 Occur [3] 62:8 88:2, 110:4 Occurred [9] 7:6 23: 3 39:12 40:15 50:7 62: 11,20 71:19 73:21 Occurrence [2] 57:20			
<b>P</b>			
P.C. [1] 2:2 P.M. [1] 1:7 Paper [3] 102:3,6,11 Pardi [85] 5:12 10:21 11:3 17:12 18:8 19:1 21:16,19 23:2,10,16 24:12,14 25:9,20 28:8, 12,17 29:6,11,20 30:1, 12-13,20 31:12,15,19 32:2,7 34:18 37:14 43:			

16,21 108:12  
**Practical** [1] 57:15  
**Practices** [3] 33:17  
 34:1-2  
**Predecisional** [4] 1:  
 4 3:17 4:18 6:18  
**Preparation** [1] 22:15  
**Prepare** [2] 52:7,18  
**Prepared** [3] 45:15  
 49:21 54:18  
**Present** [4] 1:15 2:1,  
 8 68:5  
**Presentation** [1] 10:  
 14  
**President** [7] 11:20  
 28:17 33:5 41:15 77:  
 13 78:20 79:1  
**Pretty** [5] 53:7 60:  
 22 77:15 94:20 105:20  
**Previous** [5] 43:2-3,  
 20 49:22 106:4  
**Primarily** [3] 14:1  
 38:16 91:18  
**Primary** [4] 6:21 12:  
 7 22:9 98:17  
**Problem** [29] 16:12  
 17:7,11,18 18:4,6 20:  
 8 21:13 24:13 29:22  
 30:5 37:1 48:15 50:8  
 57:3 60:2 67:20 68:10  
 72:22 75:22 77:22 83:  
 4 92:13,17 98:10 103:  
 10 106:17  
**Problems** [11] 8:3 16:  
 5 38:3,7,10 40:2,8,13  
 54:15 85:15-16  
**Procedural** [1] 38:9  
**Procedure** [2] 22:2,4  
**Procedures** [51] 8:4  
 12:6 16:17-18 20:20-  
 22 21:4,18 22:5-6,16  
 32:13 33:17,21 38:13-  
 14,22 39:4,7,9,13 40:  
 2,6 41:20 42:6 45:11-  
 12 58:22 62:1 66:8,14  
 68:15-16 71:15 83:19  
 90:19,21 91:2,9-10,12,  
 20 92:18 93:21-22 94:  
 1,20 95:6 102:7  
**Proceeding** [3] 4:9 5:  
 11-12  
**Proceedings** [3] 1:9  
 5:21 111:6  
**Process** [43] 6:5-8,  
 12 9:15-16 10:10 11:  
 14 13:19 14:6,10 20:  
 16-17 27:4 28:3 30:9  
 31:5 32:19 39:6,12 44:  
 16 45:18 52:6 56:15-  
 16 58:5,10,19 60:8 62:  
 2 68:2 69:7 73:18 74:  
 21 75:17 77:12 78:11  
 87:11 88:1,5 91:17  
**Process-type** [1] 27:4  
**Processing** [2] 14:15  
 69:18  
**Produced** [1] 107:21  
**Production** [2] 97:12  
 99:6  
**Program** [12] 22:10  
 42:21 45:4,7,12 77:16  
 91:8 97:18-19 102:21  
 108:18  
**Programs** [7] 12:21  
 13:6,9-10 102:4 104:8-  
 9  
**Project** [31] 15:6-7  
 16:6 18:18 20:9 22:3-  
 4 26:21 35:5 39:7 40:  
 17 45:11 46:15,20 51:  
 16 59:4 70:1 72:13 80:

1-2 83:19-20 89:7 91:  
 12 95:2,6 97:21 98:11  
 101:21 108:7,16  
**Project-specific**  
 [2] 22:3-4  
**Projects** [10] 8:5 14:  
 7 27:3 41:20 89:5 97:  
 15 98:21 103:19 104:  
 16,19  
**Promptly** [1] 6:11  
**Pronouncing** [1] 35:1  
**Properly** [1] 22:11  
**Proposed** [2] 79:6  
 110:10  
**Proposes** [1] 7:8  
**Protection** [1] 107:17  
**Proved** [1] 40:7  
**Provide** [1] 9:12  
**Provided** [1] 76:22  
**Public** [2] 1:13 112:7  
**Purely** [1] 105:4  
**Purpose** [2] 6:8,21  
**Purposes** [1] 3:17  
**Put** [11] 10:9 53:5 56:  
 1 59:14 69:19 72:1 77:  
 9 88:7 91:7 99:17  
**Putting** [1] 107:6

**Q**

**QA** [4] 12:20 23:1 98:  
 12 100:3  
**QFR** [1] 102:2  
**Qualification** [12]  
 16:18 21:13 22:7,16  
 23:8,12 39:13 45:18  
 66:13 91:2 92:18 93:10  
**Qualifications** [2]  
 29:7 100:13  
**Qualified** [13] 1:14  
 12:5 21:4 22:2,11 39:  
 9 40:2 88:14 90:16 91:  
 9,15 95:7 112:7  
**Qualify** [6] 20:7,13,  
 15 21:17 91:8 94:19  
**Qualifying** [5] 20:22  
 41:20 62:1 66:8 90:18  
**Qualitative** [1] 47:22  
**Quality** [36] 12:9,12,  
 18,20 13:1,5,8 33:7  
 42:4,21 51:9 52:3 82:  
 8,11 85:3,6 94:3 97:  
 12-13,17-19 98:1,8,18  
 99:1-2,10,14,20 102:3,  
 21 103:5,18 104:5,8  
**Questioned** [1] 86:22  
**Questioning** [1] 26:15  
**Questions** [7] 8:20 9:  
 9 27:9 53:12 82:11  
 109:8 110:22  
**Quickly** [1] 53:21  
**Quite** [6] 19:5 26:17  
 29:3 53:18 59:7 76:1

**R**

**Raise** [7] 20:3 54:14  
 57:19 60:20 61:1-2  
 101:2  
**Raised** [8] 23:16,18  
 27:12 36:9 46:3 90:13  
 93:8 101:19  
**Raises** [1] 104:22  
**Raising** [2] 100:11  
 101:22  
**Range** [2] 60:22 110:11  
**Rare** [1] 57:20  
**Rated** [2] 49:22 50:4  
**Rating** [19] 50:21 51:  
 13-14 53:4-5 54:6,10,  
 17 55:6,18-19 57:18  
 59:7,19-20 60:6,10

**Ratings** [1] 51:5  
**RE** [1] 1:3  
**React** [1] 53:21  
**Reaction** [10] 34:10,  
 13 78:8 86:12,16,18  
 91:22 105:7 106:9,11  
**Reactor** [2] 1:17 3:2  
**Read** [2] 60:12 85:19  
**Real** [5] 17:7 24:18  
 41:17 53:21 64:15  
**Realize** [1] 43:9  
**Realized** [1] 71:22  
**Really** [69] 12:19 13:  
 6,13 15:9-10 16:10 17:  
 5,7,10 18:11,15 20:9-  
 10,12 24:10,13 26:20  
 38:4,10-11 40:3-4 42:  
 4 43:8 48:4-5 50:2,8  
 51:12 54:5,8 56:2-3  
 57:3,16 59:2,8,13 60:  
 20 62:22 64:9,16,19,  
 21 65:4 67:17,21 69:8,  
 11 72:12,18 77:18 80:  
 3,13,15 83:10 86:22  
 87:7 88:11 95:3,14 98:  
 4,11-12,18 102:7 103:  
 1,19 109:12  
**Reason** [3] 99:17 104:  
 4 108:19  
**Receive** [1] 53:12  
**Received** [12] 7:19  
 11:4 36:19 37:16 53:  
 19 55:12 60:14 68:15  
 81:7 83:18 108:10,14  
**Receives** [1] 52:13  
**Recently** [1] 54:3  
**Recognize** [2] 16:2  
 18:16  
**Recollect** [3] 10:3  
 62:11 95:8  
**Recollection** [1] 85:  
 18  
**Recommended** [1] 74:8  
**Reconsider** [1] 55:11  
**Record** [4] 5:3 9:2  
 23:1 62:14  
**Records** [1] 47:20  
**Reduced** [4] 51:13,22  
 54:14 60:6  
**Referring** [2] 21:5  
 60:16  
**Refineries** [1] 13:21  
**Reflected** [2] 28:22  
 61:21  
**Regarding** [8] 5:2 27:  
 9 66:7 67:11 101:20  
 110:2-3,5  
**Region** [7] 1:11,22 3:  
 3,7,9 4:16 110:8  
**Regional** [3] 1:21 3:6  
**Regular** [2] 35:9 108:  
 6  
**Regulatory** [7] 1:1,6,  
 10-11,15 4:14 50:12  
**Reiterate** [2] 27:8  
 90:11  
**Related** [16] 9:14 10:  
 15,18 12:17 13:8 27:  
 16 38:2 45:12 59:7 68:  
 15 83:18 86:3 95:15  
 97:16 110:15  
**Relates** [2] 33:1 102:  
 20  
**Relative** [1] 7:16  
**Relevant** [1] 7:7  
**Remedy** [1] 64:10  
**Remember** [14] 19:16  
 34:12-14 66:16,22 67:  
 4 83:11 92:2,6-7 93:

15-16 101:17  
**Remembers** [1] 36:20  
**Removal** [7] 10:6 11:  
 12 76:14,16 78:11 99:  
 9 110:14  
**Remove** [13] 71:9,20  
 74:5 77:21 78:1 9:  
 10,14 105:8,11 1  
 13,20  
**Removed** [21] 8:7 30:  
 4 31:16 49:4,11 56:6  
 69:18 74:17 75:15 78:  
 9 82:6 86:11 87:4,8,  
 15 93:4 96:4,18 98:6  
 101:7 106:16  
**Replace** [1] 73:5  
**Replacement** [1] 46:17  
**Report** [12] 11:20 68:  
 15 71:12 83:18 85:1,3,  
 6,13,19 100:22 102:9  
 112:12  
**Reported** [7] 13:1,3,  
 7 97:15,19 99:3 112:9  
**Reporting** [1] 13:5  
**Represent** [5] 5:6,10,  
 12-13 43:9  
**Representation** [4] 3:  
 21 5:2,5,16  
**Representing** [1] 6:1  
**Request** [1] 9:11  
**Required** [2] 94:3  
 105:3  
**Requirements** [4] 6:9-  
 10 8:15 38:15  
**Requiring** [1] 110:13  
**Research** [1] 69:7  
**Resource** [1] 53:15  
**Resources** [2] 34:8  
 48:22  
**Respect** [2] 20:3  
**Respected** [1] 7:  
**Response** [8] 11:  
 11 66:21 67:1 93:14-  
 16,18  
**Responsibilities**  
 [4] 34:22 66:7 103:13,  
 15  
**Responsibility** [8]  
 10:15 12:6-7,12,22 13:  
 7 38:16 103:6  
**Responsible** [9] 20:  
 22 45:1,4,7 49:4 82:7  
 90:21 99:19 103:4  
**Rest** [1] 27:2  
**Result** [1] 40:16  
**Results** [4] 43:16,19  
 49:3 77:16  
**Resume** [1] 77:9  
**Retained** [1] 4:6  
**Retaliated** [2] 109:  
 12,16  
**Retired** [1] 100:6  
**Retrospect** [3] 17:5,  
 11 48:12  
**Revenue** [1] 14:7  
**Review** [9] 8:2 11:9  
 37:17 38:5 42:15 49:  
 20-21 53:9 93:21  
**Reviewed** [2] 57:1,7  
**Reviewing** [4] 7:11  
 38:21 39:3 91:20  
**Reviews** [1] 104:22  
**Reward** [3] 61:12  
**Rich** [1] 4:14  
**Richard** [2] 1:22  
**Rid** [1] 83:3  
**Rigorous** [2] 27:4 36:  
 11  
**Risen** [1] 28:16

Road [1] 1:12	77:7	Spend [1] 76:6	19
Rockville [1] 3:12	Showed [1] 102:9	Spending [3] 73:12, 14 105:1	Suddenly [1] 105:10
Room [1] 4:1	Shrunk [2] 103:21 104:10	Spent [7] 7:10 9:21 12:14 47:13-14 103:16	Sufficient [1] 96:19
Rude [1] 43:8	Shut [1] 25:18	Spoken [1] 16:11	Suggest [1] 24:20
Run [1] 13:15	Side [5] 47:8,12 99:6-7,10	Spread [1] 61:15	Suggested [2] 74:10-11
Rusty [3] 22:14 24:4 100:12	Sign [4] 53:6,14 57:12 58:7	SS [1] 112:2	Suggesting [1] 63:11
<b>S</b>	Signature [1] 45:16	St [2] 15:9 46:16	Summaries [1] 51:6
Safety [6] 1:17 3:3 42:4 82:8 100:11,17	Signed [9] 53:20 55:1,13-14 57:5 62:2 63:13-15	Staff [7] 3:9,11 7:10 8:21 32:22 33:10	Summarize [1] 7:16
Salaries [1] 61:11	Significance [2] 6:20 16:2	Stage [1] 7:17	Summer [12] 16:3 18:1-2 21:14-15 29:1,4 48:12 75:19 90:4 92:12 93:1
Salary [2] 60:15,19	Significant [4] 7:11 17:4 87:18,21	Standpoint [2] 53:19 69:11	Summer-fall [1] 39:12
Sat [1] 55:20	Sikofis [1] 35:2	Start [1] 36:5	Supervisor [9] 50:22 52:12,20 55:4 56:20 57:17-18 64:20 93:13
Satisfactory [2] 7:20 8:13	Similar [3] 19:12 43:3 50:10	Started [5] 26:19 50:6 72:13 88:4 90:1	Support [15] 24:19 30:7 31:3 41:19 42:1 59:3 69:10,17 87:10 88:12 96:22 98:11,15 99:15 108:16
Satisfied [3] 96:17,21	Simplistic [2] 98:22 99:5	Statistical [1] 22:8	Supported [2] 13:22 77:15
Saw [7] 31:21 38:12 90:9 99:15 102:8 109:6	Sit [4] 33:5-6 65:3 79:3	Statistically [1] 50:17	Supporting [9] 39:6 41:18 51:16 58:20 69:16 83:10 89:20 98:16,20
Scheduled [1] 52:18	Sit-down [2] 16:22 65:3	Stay [3] 44:13 68:22 84:6	Supports [1] 13:17
School [2] 26:22 50:3	Site [15] 17:17 18:3 22:3 35:1,4,14 38:21 39:4 64:6 68:3 88:18-19 91:4,20 93:22	Steam [11] 7:22 8:4 11:5 37:18 40:5,11 46:16 49:2 71:12 90:20 102:9	Supposed [12] 21:20 45:8-10 52:16 68:18 84:1,6 86:2 101:1,4 104:11
Schooling [1] 56:7	Site-specific [3] 39:4 91:20 93:22	Stein [63] 1:19 3:10 14:2,5,9 15:1 17:16,21 18:7 22:13,21 24:2,9 26:9,12 32:6 36:4 37:1 41:5,8,11 50:10 51:20 52:1 54:10 55:22 60:12,17 64:2,5,12 65:6 68:2 70:1,5 72:5 73:8,19 74:3 76:13 78:4,13,18,21 79:8,17 80:8 84:13,17 86:4,10 87:22 88:6,18 89:16 96:1,10,13 100:9 101:18 102:12 107:12 109:2	Supposedly [1] 55:4
Scope [2] 104:6 110:10	Sites [1] 35:6	Step [3] 7:8 9:15 11:17	Surprised [1] 34:18
Scramble [1] 20:9	Sitting [2] 73:4 103:20	Stick [1] 104:7	Susan [3] 1:18 3:13 82:10
Second [12] 11:17 14:3 20:12 24:2 25:6 26:10 31:9 56:5 57:18 59:6 81:20 92:19	Situation [5] 4:3 5:8 7:5 49:9 74:8	Stier [7] 2:9-10 4:4-5 76:22	Susan's [1] 3:14
See [16] 9:13 10:2 29:20 30:12 34:7 35:10 47:20 51:2 52:1 56:16 57:14 76:14 80:16 87:14 90:6-7	Situations [1] 47:3	Stier's [2] 36:16 71:17	System [7] 38:5 59:8 60:13 61:7,17-18 97:18
Seeing [2] 36:22 105:9	Size [3] 32:22 33:12 69:12	Still [18] 15:17 32:18 44:15 61:9 69:2-3 80:6 83:21 84:11 85:21 86:1 87:9-10 100:2,21 101:3 105:7 106:8	Systems [4] 2:6 9:7 11:19 50:11
Seem [1] 57:15	Slightly [1] 26:18	Stop [1] 40:16	
Selecting [1] 88:6	Snuff [2] 42:7 45:13	Story [1] 44:6	
Selection [1] 88:2	Solely [1] 96:13	Straw [1] 71:17	
Seminars [1] 105:2	Solve [1] 29:22	Street [1] 2:3	
Send [1] 53:14	Someplace [1] 73:2	Strong [3] 29:13 99:9 100:8	
Sending [1] 59:21	Sometime [2] 36:3 39:12	Structure [7] 50:10 61:2 68:7-8 98:10 99:16 103:11	
Sense [15] 47:16,22 50:12 56:20,22 57:3 64:15 67:16 69:11 75:3 78:3 88:16 99:22 107:6 108:20	Sometimes [1] 98:15	Struggled [2] 59:6 67:3	
Sent [2] 53:10 62:2	Somewhat [5] 9:15 32:13 68:1 102:14 107:8	Stupak [3] 1:13 112:6,19	
Separate [4] 33:16 44:9,16 100:2	Somewhere [5] 59:12 60:12 70:3,5 78:12	Subject [1] 4:9	
Separates [1] 100:3	Soon [1] 75:13	Subordinates [1] 44:3	
September [2] 21:11,14	Sorry [14] 15:1 21:15 22:6 29:5 31:9 34:9 43:18 45:6 47:19 82:2 84:20 92:14 105:15 109:19	Subsequence [1] 74:1	
Sequence [3] 80:20 82:14 109:1	Sort [2] 52:8 107:20	Subsequent [3] 24:8 27:18 77:11	
Series [1] 82:11	Sorts [2] 9:19 42:8	Substantially [1] 10:7	
Serious [7] 9:17 17:11 25:21 26:1 28:18 38:9 100:17	Sounds [1] 44:21	Substantial [1] 9:21	
Seriously [1] 9:20	Special [2] 22:7 105:3	Succeeding [1] 5:12	
Set [5] 7:3,17 47:3 108:17 112:13	Specialist [2] 1:20 98:19	Such-and-such [1] 52:	
Several [4] 3:22 8:1 81:1 83:7	Specific [11] 8:19-20 20:3 22:3-4 38:22 39:4 91:10,20 93:22 104:7		
Severe [2] 6:16-17	Specifically [16] 3:19 10:19 12:18,20 13:5 15:1,4 16:17 20:6 28:2 34:12 40:15 46:11 51:5 65:19 94:19		
Severity [4] 6:15-16,19	Specifications [1] 23:13		
Shaped [2] 50:19-20	Spectrum [1] 110:16		
Share [3] 24:6 86:4 95:9	Speculation [1] 65:12		
Shared [1] 75:20			
Shaw [2] 2:2 5:10			
Shocked [2] 34:13 78:10			
Short [4] 28:1 81:2,4			
Shorthand [1] 112:9			
Shortly [10] 7:20 8:12 26:19 30:4,18 44:10 48:20 53:15 70:20			

**T**

Tape [6] 76:20,22 77:2 78:12 107:19,21  
Taped [1] 76:18  
Target [1] 61:3  
Task [1] 104:7  
Technical [16] 13:3, 5 29:16-17 38:3,8 65:10,16,19,22 66:9,12 74:18 88:11 94:13 100:8  
Technically [2] 88:15 95:14  
Temporary [3] 72:8 88:3 89:5  
Ten [2] 51:11 91:8  
Term [1] 99:7  
Terms [2] 45:1 79:10  
Testimony [5] 1:9 14:5 71:16 112:9,12  
Testing [11] 18:14, 19 24:1,5 27:17 39:15, 21 66:3 90:17 94:16 95:15  
Thinking [4] 9:22 50:3 55:17 73:17  
Third [1] 40:4  
Thorough [1] 110:7  
Thoughts [1] 35:19  
Three [8] 33:8 38:1 40:8,13 48:19 74:11 75:7 76:9  
Tickler [1] 107:4  
Timely [1] 23:15  
Title [2] 9:8 11:19  
Tobin [5] 34:7 35:18

48:22 74:7 101:8  
**Today** [10] 3:4 4:13,  
 22 5:11 7:4 21:9 45:  
 21 85:2,8 110:7  
**Today's** [2] 3:16 6:7  
**Together** [4] 33:5 77:  
 9 79:10 91:7  
**Tom** [18] 11:20 12:11  
 13:8 33:4 73:3 74:11,  
 15,19,21 75:6-7 76:8  
 87:12,20 97:16,20 101:  
 9 104:2  
**Tomorrow** [3] 5:13  
 107:13 110:7  
**Took** [10] 11:11 25:21  
 26:1 37:19 54:1,7 74:  
 13 88:9 103:17,20  
**Top** [1] 23:9  
**Topic** [1] 82:15  
**Topics** [2] 10:11  
**Total** [3] 33:8,14 61:  
 10  
**Totally** [3] 78:2 87:  
 15 96:5  
**Touched** [1] 66:17  
**Toward** [1] 105:16  
**Towards** [3] 70:3 105:  
 13 106:19  
**Traditionally** [1]  
 100:5  
**Training** [10] 56:7  
 102:13,16-17,19 105:3  
 107:16,19 108:3-4  
**Transcript** [2] 77:2  
 112:11  
**Transfer** [6] 8:12 10:  
 7 11:13 79:15 80:12  
**Transferred** [5] 8:8  
 77:17 78:14,16 107:1  
**Transpired** [6] 9:13,  
 22 28:21 44:19 67:7  
 76:3  
**Trouble** [1] 103:7  
**TROWBRIDGE** [1] 2:2  
**True** [3] 14:8 45:3  
 112:11  
**Trust** [1] 71:14  
**Truth** [1] 50:21  
**Try** [9] 9:12,20 10:2  
 21:3 27:22 28:6 32:3  
 66:1 79:4  
**Trying** [11] 11:15 12:  
 10 26:20 44:15 48:10  
 63:12 67:4 73:13 76:  
 11 92:7 104:6  
**Turn** [2] 8:16,22  
**Twelve** [1] 51:11  
**Twice** [1] 36:10  
**Two** [29] 9:22 13:13  
 14:7 20:10 22:19 30:7  
 31:5 32:4 52:13 56:4  
 60:10 62:21 69:4,9 72:  
 2,18 73:7,13,17 74:10,  
 22 77:18 78:2 79:9 84:  
 11 95:17-18 96:17 110:  
 6  
**Two-week** [1] 73:17  
**Type** [7] 25:12 27:4  
 40:10 46:16 50:8 98:  
 11 107:22  
**Types** [5] 22:7,11 27:  
 3,6 32:15  
**Typical** [1] 53:7  
**Typically** [2] 53:11  
 64:17

**U**

**Ultimately** [1] 11:13  
**Unbeknownst** [1] 76:17  
**Under** [5] 22:16 45:16

79:11 99:21 100:1  
**Understood** [9] 18:11  
 19:7,11,13 24:13 29:  
 18 74:20 79:16 99:20  
**Unfortunate** [3] 36:  
 10 61:17 99:16  
**United** [3] 1:1,10-11  
**Unless** [4] 8:20 57:  
 16 65:8 110:21  
**Unsatisfactory** [2]  
 52:2 59:16  
**Untransferable** [1]  
 60:3  
**Up** [26] 20:6 21:17 25:  
 6,15,20 26:14 28:16  
 29:2 36:1 41:15 42:7  
 45:13 46:16 47:6 51:  
 20 54:17 55:14 57:9,  
 11 61:13 75:1 86:19  
 95:10,20 100:9 108:17  
**Upset** [1] 100:20  
**Usage** [1] 75:2  
**Useful** [2] 5:4 32:21

**V**

**Vacation** [4] 35:22  
 37:13-14 54:1  
**Vacuum** [1] 52:8  
**Value** [1] 44:22  
**Various** [1] 51:11  
**Verbal** [3] 11:4 37:  
 16 71:12  
**Verbally** [1] 49:14  
**Verified** [1] 76:22  
**Version** [3] 18:20 52:  
 15-16  
**Versus** [1] 47:15  
**Vice** [4] 28:17 77:12  
 78:20 79:1  
**Vice-president** [2]  
 28:17 44:1  
**View** [1] 83:1  
**Views** [1] 43:10  
**Violation** [5] 6:17 8:  
 14 110:3-4,11  
**Violations** [4] 6:10,  
 14,19  
**Virginia** [5] 8:9 10:  
 8 11:14 77:14 79:7  
**VP** [1] 41:8  
**Vrain** [1] 15:9

**W**

**Wait** [1] 84:16  
**Walcott** [60] 12:22  
 13:3 16:9,14 17:21 22:  
 22 30:13,19 31:7,10,  
 12,14,22 32:7 36:15,  
 22 40:13 44:6,10 45:  
 22 48:14,21 49:8,21  
 52:7 54:5,18 56:13 62:  
 8 65:9 66:10 67:21 70:  
 21 75:11,13 86:19 88:  
 22 89:12,22 90:1,4,7,  
 12 92:1,3,15,22 93:5,  
 11-12 94:6 97:14 98:  
 15 99:3,22 100:7,14  
 101:2,10  
**Walcott's** [6] 13:6  
 34:10 45:16 91:22 94:  
 5,8  
**Walking** [1] 70:13  
**Wants** [2] 51:1 106:8  
**Warrenville** [1] 1:12  
**Washington** [2] 2:3 5:  
 10  
**Week** [5] 53:16 62:21  
 65:18 73:17  
**Weeks** [2] 62:22 68:19  
**Weigh** [2] 58:13 59:2

**Weighed** [1] 61:19  
**Weight** [11] 18:14,19  
 24:1,5 27:17 39:15,21  
 66:3 90:17 94:16 95:15  
**Weil** [18] 1:20 3:8 9:  
 1 46:6,8,21 47:5 82:  
 10 97:22 98:4,22 99:4  
 102:17 103:4,7,14 109:  
 15,19  
**Welded** [1] 21:3  
**Welding** [105] 8:4,7  
 10:6 11:1,6,12 12:4-5  
 15:7 16:16,18 17:14-  
 15 20:18-19,21-22 21:  
 4,18 22:2,4,7,16 23:  
 12 26:13 29:17 30:8  
 31:4,6 32:4 37:22 38:  
 1,3,13-14 39:7,9,18  
 40:2,6 41:19-20 45:4,  
 7-8,12,18 58:22 62:1  
 65:11 66:14 68:16 69:  
 9,18 71:14 72:2,5 73:  
 13 74:6,22 75:16 76:5  
 77:16 78:2,6 79:21 83:  
 10,19 84:11 85:15-16  
 86:11 87:16,18,22 88:  
 8,13,16 89:20 90:18,  
 21 91:2,8,14 92:18 94:  
 19 95:6 96:5,8,14,17  
 98:7,14,19 99:21 100:  
 3,13 102:6 104:19-20  
 108:18  
**Welds** [6] 20:7,14-15  
 21:17 22:12 93:10  
**West** [5] 8:9 10:8 11:  
 14 77:14 79:7  
**Whistle** [2] 107:17  
 108:1  
**Whistle-blower** [1]  
 107:17  
**Whole** [16] 21:3 24:11  
 26:5 29:6 30:3 33:7  
 39:11 45:4 51:6 59:8  
 61:16 62:17 64:18 65:  
 2 75:7 91:17  
**Wondered** [1] 101:14  
**Wondering** [1] 51:4  
**Word** [2] 99:9 109:7  
**Words** [3] 19:12,16 93:  
 19  
**Workafter** [1] 86:21  
**Workany** [3] 41:1 72:  
 21 77:4  
**Workat** [2] 28:9 49:5  
**Workin** [3] 28:11 31:  
 18 44:13  
**Works** [3] 6:6 41:11  
 52:6  
**Worse** [1] 25:17  
**Writing** [1] 110:20  
**Written** [3] 22:14 52:  
 10 100:21

**Y**

**Year** [10] 36:3 42:13,  
 16,18 60:18 61:3 65:2  
 70:4 74:20 104:12  
**Yearly** [3] 37:17 60:  
 13 98:17  
**Years** [10] 10:1 12:2  
 15:10 22:19 35:6 42:  
 11 43:3 49:22 60:21  
 67:4  
**Yourselves** [1] 4:1

**Z**

**Zarges** [14] 11:20 12:  
 11 13:8 33:4 73:3 74:  
 19,21 87:2,20 97:16,  
 20 101:9 104:2 107:13  
**Zarges'** [4] 74:12,15

NRC

*Enforcement Conference*

*January 27, 1999*

*Docket Nos. 50-266; 50-301*

E/24

(11)

## Fort St. Vrain

MR. MALONE'S INVESTIGATION OF L.P.M.A.'S VIOLATION  
WITHOUT PENALTY, 10/29/74, 11/1/74, 11/25/74  
VIOLATION COMMITTED BY A FIRM THE SUPERVISOR  
KELLY'S VIOLATION WAS WITHOUT PENALTY BECAUSE  
OF THE LACK OF MR.'S THOROUGH INVESTIGATION AND  
THOROUGH AND PROMPT CORRECTIVE ACTION  
PSC COMMISSIONER GILBERT ANDERSON MALONE TO  
PERFORM AN INDEPENDENT INVESTIGATION



## *Fort St. Vrain*

Lou Pardi was not directly involved in Fort St Vrain violation

Recognized seriousness of a 50.7 violation and personally got involved in the investigation and led the development of all of MK's corrective actions



## *Corrective Actions Resulting from Fort St. Vrain*

Tom Zarges issued company-wide "Safety Alert Bulletin" stating MK policy towards protecting employees

Company drafted Project Management Bulletin #4 (effective 8/24/95) requiring:

- Each project must have procedure to address harassment and intimidation
- Training of all MK project personnel
- Indoctrination of all employees regarding expression of safety concerns
- A method of collecting and dispositioning concerns



## *Corrective Actions*

Implement comprehensive programs at Pt. Beach, St. Lucie, and Waltz Mill including:

- Required reading of Fort St. Vrain violation and corrective actions
- Procedures prohibiting harassment of protected personnel
- Employee open communication procedures
- Procedures requiring exit interviews to assure employees do not have any unreported safety concerns
- Training and indoctrination of all MK and subcontractor personnel
- Copies of most of these procedures are included in my letter to J.A. (encl) dated April 21, 1998



# Corrective Actions

List of policies/procedures developed and implemented by MK or MK/SGT:

- Safety Alert Bulletin June 6, 1995
- Project Management Bulletin No. 2.9 August 24, 1995
- Pt. Beach Equal Employment Opportunity Policy September 1995
- Pt. Beach "Rules of Conduct on the Job" Aug.-Sept. 1995
- Pt. Beach Procedure MSP 2.5 "Management of Operational Personnel", final revision Sept. 11, 1996
- St. Lucie Procedure MCP 1.1 "Management of Operational Personnel", final revision July 17, 1997
- Pt. Beach Procedure MSP 1.5 "Employee Open Communication and Condition Evaluation Requests", final revision May 9, 1996
- St. Lucie Procedure MCP 1.2 "Employee Open Communication and Condition Evaluation Requests", final revision July 17, 1997
- Pt. Beach "Exit/Termination Process" Sept. 25, 1996
- St. Lucie "SGRP Personnel In Processing and Out-Processing", final revision Oct. 14, 1997
- Similar programs at Waltz Mill and Calvert Cliffs



# *Corrective Actions*

*2000*

Employment and termination of over 1,500 employees on two demanding projects

No concerns regarding safety in the work environment at St. Lucie

One concern at Pt. Beach

Quickly and effectively dealt with

Described in detail in letter of April 21, 1998

Additional recent employee concerns at Waltz Mill also effectively dealt with

Personnel who filed concerns at both Pt. Beach and Waltz Mill were not MK employees, but they utilized MK's program to bring forth their concerns



## *Current Apparent Violation*

Surprised by filing of complaint

- Sensitivity caused by Fort St.Vrain
- Home office employee

Small nuclear staff (3-5 people)

All ten year or greater employees

Informal office atmosphere with access to all senior management

Initial DOL investigation provided some comfort

No retaliation

Dismayed at ALJ decision

Commissioned Stier to do independent investigation

Stier investigation provided detailed and compelling evidence that MK did not commit a 50.7 violation

# Current Apparent Violation

Careful consideration of conflicting results of Stier conclusion and the ALJ decision

- ALJ decision is flawed

- Stier investigation extremely detailed

- Stier investigation provided facts and insights not available to ALJ

- Stier established four critical points

- Alainot was not capable of performing his job

- Even DWT not available to ALJ

- Led judge to think MK's removal was pretextual

- Jan Pardi decided on Jan. 2 to remove Alain from Power projects, based on Alain's performance and not pretextual

- Decision to remove Alain from work was made two weeks before QFR

- January 2 decision made January 15 decision inevitable

Chilling did not occur

- Stier did not find any evidence of chilling

- Work at Pt. Beach basically complete, DOL notice Feb. 1997

- Small, long-term contractor, 25 team staff with direct access to management

(1/15)

# *Organizational Inadequacies and Corrective Action*

Inadequate supervision of Group Welding Engineer

- GWE now reports to Lou Pardi who has technical knowledge; can monitor performance and provide support for the GWE when needed

To assure enhanced visibility and support of QA organization.

- Group QA Director reports directly to me
- Daily work activities directed and supported by Lou Pardi



# *Program to Encourage a Safety Conscious Work Environment is Operating Effectively*

Thoroughness of our systems and procedures  
Effective implementation at Pt. Beach, St. Lucie, and Waltz Mill

Recent review at BG&E Calvert Cliffs

- Systems in place

- No incidents to date

Recent outside audit of CHO "hotline" implementation

- System is adequate

- No incidents to date

We believe our program has and will continue to prevent any possible "chilling effect" from developing at our field sites and in our home office



## *Improved Quality and Welding Program*

Refinements in Quality Program as a result of internal and external audits

- DE&S contracted to do two in-depth audits
- "Best practice" recommendations implemented
- Improvement in Part 21 Procedure implemented

Improvements in Welding Procedure Specifications

- Previous procedures complex with widely ranging applications
- Revised procedures are/will be simplified
  - Very limited applications of each procedure



## ***Enforcement Is Not Warranted***

MK did not retaliate against Alain Artayet

Decision to remove Alain from Power Division work was the decision that ultimately led to employment action taken

Lou Pardi decision was made strictly on performance issues and was not pretextual

Decision made on January 15 was not in retaliation for Artayet having written the QFR



BEFORE THE UNITED STATES  
NUCLEAR REGULATORY COMMISSION

IN RE THE MATTER OF: )  
 )  
Predecisional Enforcement Conference ) CONFIDENTIAL  
Morrison Knudsen )  
Mr. Thomas Zarges )

NUCLEAR REGULATORY COMMISSION HEARING  
January 27, 1999  
9:00 o'clock A.M.

PROCEEDINGS HAD and testimony taken  
before the UNITED STATES NUCLEAR REGULATORY  
COMMISSION, taken at the United States Nuclear  
Regulatory Commission, Region III, 801 Warrenville  
Road, Lisle, Illinois, before Marlane K. Marshall,  
C.S.R., License #084-001134, a Notary Public  
qualified and commissioned for the State of  
Illinois.

PRESENT FOR THE NUCLEAR REGULATORY COMMISSION:

MR. JACK GROBE, Director of the Division  
of Reactor Safety, Chairman

MR. JAMES CALDWELL, Deputy Regional  
Administrator



**County Court Reporters, Inc.**

Oak Brook Office  
(630) 654-1121

County View Centre, Suite 200  
600 South County Farm Road  
Wheaton, Illinois 60187  
(630) 653-1622 • FAX (630) 653-4119

REC'D FEB 01 1999  
Kane County Office  
(630) 897-8852

EA 98-081

1       PRESENT FOR THE NRC: (continued)

2                   MR. CHARLES WEIL, Enforcement Specialist  
3                   MR. H. BRENT CLAYTON, Enforcement Officer  
4                   MR. JAMES A. GAVULA, Reactor Inspector  
5                   MR. MICHAEL STEIN, NRC Office of  
6                                Enforcement  
7                   MS. SUSAN CHIDAKEL, Office of General  
8                                Counsel  
9                   MR. BRUCE BERSON, NRC Regional Counsel

10       PRESENT FOR MORRISON KNUDSEN CORPORATION:

11                   SHAW, PITTMAN, POTTS & TROWBRIDGE, by  
12                   MR. J. PATRICK HICKEY, P.C.  
13                   2300 N Street, N.W.  
14                   Washington, D.C. 20037-1128,

15                                appeared on behalf of Morrison  
16                                Knudsen Corporation

17                   MR. THOMAS ZARGES, President, Engineering  
18                                and Construction Group

19                   MR. RICHARD R. EDMISTER, Associate  
20                                General Counsel

21                   MR. LOUIS E. PARDI, Executive  
22                                Vice-President, Energy Division

23                   MR. DREW T. EDLEMAN, Director,  
24                                Performance Systems



1           CHAIRMAN GROBE: Good morning. My name is  
2 Jack Grobe. I am the director of the Division of  
3 Reactor Safety for the Nuclear Regulatory  
4 Commission in Region III. I would like to  
5 introduce the NRC staff that are here with me  
6 today. Jim Caldwell is the deputy regional  
7 administrator for Region III. Susan Chidakel is  
8 an attorney from our Office of General Counsel at  
9 our headquarters. Next to Susan is Mike Stein.  
10 Mike is a member of the enforcement staff at  
11 headquarters. On my immediate left is Chuck Weil.  
12 Chuck is a member of our enforcement staff at  
13 Region III. Brent Clayton next to Chuck is the  
14 director of our enforcement staff in Region III.  
15 Bruce Berson is our regional counsel. And Jim  
16 Gavula is one of my engineering managers with  
17 particular knowledge in the area of welding and  
18 codes. Why don't you introduce your staff.

19           MR. ZARGES: To my left is Pat Hickey who I  
20 think you saw yesterday. Pat represents us in this  
21 proceeding. And to my right and my presentation  
22 assistant today is Dick Edmister who is our legal

1 counsel at MK's engineering and construction  
2 group. And sitting behind me are two gentlemen  
3 that you heard from yesterday, Lou Pardi managing  
4 our power division and Drew Edleman who managed our  
5 performance systems. And over on the back wall our  
6 back benchers are Ed Stier and Mary Jane Cooper of  
7 the firm Stier, Malone. And I am Tom Zarges, the  
8 president of MK's engineering and construction  
9 group.

10 CHAIRMAN GROBE: Today's meeting is what we  
11 call a Predecisional Enforcement Conference. We're  
12 here specifically to discuss with MK management a  
13 potential violation of our requirements involving  
14 employment discrimination associated with actions  
15 against an individual named Alain Artayet. And  
16 this occurred in January of 1997.

17 I would like to briefly describe our  
18 enforcement process to put this meeting in context.  
19 You don't have the opportunity to interface with us  
20 as much as some within the context of our enforcement  
21 process, so I would like to just briefly go through  
22 that. The purpose of our enforcement process is to

1 encourage compliance, early identification of  
2 problems of compliance with our regulations and  
3 prompt, comprehensive corrective action of those  
4 deficiencies. The enforcement process begins with  
5 the NRC evaluating data -- and that data can be gained  
6 through inspections or investigations -- and we  
7 identify violations -- apparent violations. Those  
8 violations could be categorized at any of four levels,  
9 a Severity Level I being the most significant,  
10 Severity Level IV being the least. Normally for  
11 Severity Level I, II and III apparent violations we  
12 conduct a Predecisional Enforcement Conference.  
13 The primary purpose of the conference is to ensure  
14 that we have as complete an understanding of the  
15 facts supporting the situation as we can prior to  
16 making the final decision. So no decision has been  
17 made at this time regarding whether there has been  
18 a violation or the significance of that violation.  
19 This conference is part of that decision-making  
20 process. We have identified what we believe is an  
21 apparent violation, and our purpose here today is  
22 to fully understand your perspective on that

1     apparent violation. This meeting is essentially  
2     the last step before we make a decision on what  
3     enforcement action we would propose and whether or  
4     not there is a violation that occurred.

5             I would like to briefly summarize some of  
6     the key points involved in this case just to set  
7     the stage for our discussion, and then what I would  
8     like to do is turn it over to you, Mr. Zarges. In  
9     December of '96 Mr. Alain Artayet received a  
10    satisfactory performance appraisal. Shortly after  
11    that appraisal there was an assessment of Morrison  
12    Knudsen by the Hartford Steam Boiler Insurance  
13    Company, and they made several audit findings. In  
14    early January of 1997 Mr. Artayet performed a  
15    review which identified some problems with MK  
16    welding procedures used for steam generator  
17    replacement at Pt. Beach. Following Mr. Artayet's  
18    review and identification of some concerns he was  
19    removed from his position as group welding engineer  
20    in January of '97 and involuntarily transferred  
21    from Cleveland to Parkersburg, West Virginia  
22    eventually leading to a layoff approximately nine

1 months later. The transfer of Mr. Artayet so  
2 shortly after a satisfactory appraisal and shortly  
3 after he had identified some safety concerns  
4 appears to be a violation of our requirements  
5 regarding discrimination against individuals  
6 raising concerns.

7 We have spent a great deal of time and we  
8 appreciate the cooperation that MK has provided us  
9 with a great deal of documentary evidence as well  
10 as investigation interviews. We spent a great deal  
11 of time reviewing that material as well as the  
12 information that came from the Department of Labor  
13 and our Office of Investigations. We're here today  
14 to hear your views on the case and your assessment  
15 of the situation. As Mr. Hickey has acknowledged  
16 we may ask some questions during the course of your  
17 presentation. We're here to understand as much as  
18 we can prior to making our final decision. At this  
19 point I would like to turn the floor over to you  
20 for your presentation.

21 MR. ZARGES: Well, thank you. And you're  
22 right, there are a mountain of facts that we have

1 gone through, and I appreciate your indulgence and  
2 attention in going through them all with us.

3 Ladies and gentlemen, first what I would  
4 like to do is to express what I hope you have picked  
5 up from both the presentations and the attitudes of  
6 our managers yesterday, which is that I and all of  
7 us at MK regard every inference or allegation of  
8 incorrectly handling a safety-related event or an  
9 allegation of violating NRC procedures as serious  
10 matters that take priority with us. Furthermore, I  
11 would like you to know that it's my personal  
12 approach to welcome criticism. And I know given  
13 the surroundings that may sound perverse, but my  
14 view is that it is fundamental to maintaining  
15 operating standards and improvement in our company.  
16 Therefore, we do not tolerate defensiveness or  
17 anything less than a proactive pursuit of the facts  
18 and the circumstances whenever criticism is brought  
19 forward whether that criticism is generated  
20 internally or externally.

21 We're also acutely aware of the high  
22 standards of operating competence and safety

1 required of those of us serving the nuclear  
2 industry. Although my company's portfolio of  
3 clients and construction resume is broad, my own  
4 background at construction sites and in the office  
5 is decisively on nuclear projects. I am especially  
6 sensitive to the importance and the practical  
7 rigorous application of conduct, judgment and  
8 discipline that's fundamental to working in a  
9 nuclear environment.

10 If you will permit me I would like to  
11 first begin by characterizing the skills and the  
12 work practiced by MK in the nuclear arena. We are  
13 a field- and construction-oriented company, and we  
14 are of relatively modest size. Our office management  
15 staff is small, essentially three operating managers  
16 in our power division and a total corporate QA  
17 department that's ranged from three to five people.  
18 All these people are in the same office so the  
19 atmosphere and the structure is nonbureaucratic,  
20 and there is strong daily interaction among our  
21 staff. We emphasize open communication and  
22 seamless collaboration.

1           The majority of our work and work force  
2 is in the field at construction sites. MK does no  
3 engineering in the nuclear power industry. Our  
4 field supervisors are generally long-term,  
5 experienced and proven employees. The bulk of our  
6 direct hire staff are building trades. We are a  
7 union constructor with site support personnel. Our  
8 support teams in the field, our project teams in  
9 the field are complete, comprehensive and  
10 self-contained. They are much like small companies  
11 run by a project director with a full complement of  
12 support personnel. On Pt. Beach, for example, our  
13 site team included not only operations people but  
14 business managers, procurement people and over  
15 thirty site-assigned, project-assigned QA, QC  
16 personnel.

17           We are in an environment where those who  
18 are brought to work on our sites must be trained,  
19 and the attitudes, standards and discipline for  
20 nuclear work inculcated in a work force whose work  
21 on the job will be of limited duration. It's  
22 fundamental to our business that the bulk of our

1 employees work themselves out of a job; that is,  
2 they are laid off as the project progresses. We  
3 understand the special requirements and the  
4 attention that's needed to operate in such an  
5 environment. Typically we have a single nuclear  
6 project in progress, but on some occasions we have  
7 had two operating concurrently. At times there are  
8 long lapses between nuclear construction assignments.  
9 However, since this is our most rigorous operating  
10 and construction discipline, our staff both in the  
11 office and in the field has been assembled with  
12 extraordinary nuclear qualifications in mind and is  
13 maintained even between assignments. Our power  
14 division executive management headed by Mr. Pardi  
15 is responsible for all aspects of our conduct,  
16 reputation and services in the power industry. Our  
17 home office staff is well qualified and has a work  
18 load that allows complete concentration on our  
19 nuclear activities. The principal duties of our  
20 quality support department are to provide oversight  
21 on nuclear work, although they also fill in with  
22 services to other operating groups, most notably

1 our industrial group. With this background I would  
2 like to move to several of the specifics that you  
3 asked us to address.

4 CHAIRMAN GROBE: Before you get on to that,  
5 you have identified a number of your operating  
6 philosophies and company characteristics. I would  
7 like to pursue that just a little bit if you don't  
8 mind. Several years ago you had an enforcement  
9 action regarding a discriminatory action in a  
10 different nuclear facility than the one we're  
11 talking about today. Could you describe your  
12 organization and what actions you took to change  
13 the environment that you had in your organization?

14 MR. ZARGES: We will. Our presentation will  
15 go into that in some fundamental detail.

16 CHAIRMAN GROBE: You indicated that you had an  
17 emphasis on the importance of an open environment  
18 where everybody raises concerns and that that was  
19 critical to your goal of operating excellence. Are  
20 you planning on describing how you communicate  
21 those values of your corporation to your direct  
22 reports?

1           MR. ZARGES: We can. We have obviously  
2 mission statements as most people do these days and  
3 vision statements and operating practices which are  
4 broadcast in a series of project management  
5 bulletins and in individual employee meetings and  
6 group employee meetings.

7           CHAIRMAN GROBE: And included in your  
8 presentation is going to be a discussion of the  
9 training and --

10          MR. ZARGES: Yes, we will discuss that. Sure.

11          CHAIRMAN GROBE: You indicated that your home  
12 office staff is very small relative to your field  
13 operations and that you had extraordinary nuclear  
14 credentials in the home office because that is your  
15 most rigorous business area. Could you help me  
16 understand? The two primary individuals that were  
17 involved in this activity were Mr. Pardi in his  
18 role as power division manager and Mr. Edleman from  
19 his role in the quality organization. You  
20 characterized those individuals as having strong  
21 credentials in the nuclear area?

22          MR. ZARGES: Well, I say that's most true in

1 our operating practice in the power division where  
2 Mr. Pardi who was brought into our company in '92  
3 was brought in specifically because he had a fine  
4 nuclear resume and background. Even though nuclear  
5 work in our power division alone is only, oh,  
6 perhaps 25% of our total volume, it is, as I said,  
7 the most important and rigorous part of our business.  
8 So we want line supervision coming up to the top  
9 executive responsible for all of that work that  
10 understands the special requirements that you get  
11 into in conducting nuclear operations. Both Lou  
12 and his operating reports who work in the office  
13 are experienced nuclear construction people.

14 CHAIRMAN GROBE: How about on the quality  
15 side?

16 MR. ZARGES: On the quality side the quality  
17 assurance supervisor, Mr. Walcott, had a nuclear  
18 background and served previously at a nuclear  
19 site. Mr. Artayet's nuclear credentials are  
20 probably less -- not probably, they are less  
21 forthcoming in the nuclear arena than  
22 Mr. Walcott's.

1           CHAIRMAN GROBE: How about Mr. Edleman?

2           MR. ZARGES: Mr. Edleman was brought in as the  
3 administrative head at quality, and he  
4 fundamentally is not an operating person and  
5 doesn't have an operating background although he  
6 has a technical background. He hasn't worked on  
7 nuclear plants of the --

8           CHAIRMAN GROBE: Thank you. Go ahead.

9           MR. ZARGES: And I have as well I might say.  
10 We will get into some of the specifics as a result  
11 of Fort St. Vrain and what we implemented in terms  
12 of practices, procedures and training, much of it  
13 emanating from Fort St. Vrain.

14           Fort St. Vrain as you probably know was a  
15 decommissioning project. We were deconstructing  
16 not constructing the plant. And so it did not  
17 involve many of the quality rigors -- welding  
18 procedures, for example -- that were subsequently  
19 used, builder modified. This was a 330-megawatt  
20 gas cooled reactor owned by Public Service Company  
21 in Colorado that had been shut down for some time.  
22 And our task was to work in partnership and

1 collaboration both with Public Service of Colorado  
2 and with Westinghouse to deactivate it, decommission  
3 and dismantle the plant.

4 In August of 1995 we received a Level IV  
5 violation of 10 CFR 50.7, and the violation there  
6 was without penalty. This infraction arose from a  
7 conflict in the field among building tradesmen,  
8 radiation technicians and first line construction  
9 supervision.

10 MR. STEIN: Are you sure that was a Level IV  
11 not a Level III?

12 MR. ZARGES: Yes. MK and our partner and  
13 client Public Service of Colorado responded to this  
14 incident very aggressively, objectively and  
15 proactively, and we took prompt and decisive  
16 corrective actions. We, in fact, believe the  
17 violation was without penalty because of our  
18 forthright and comprehensive response.

19 As part of this response both we and  
20 Public Service Company commissioned Stier, Anderson  
21 & Malone to perform an independent investigation.  
22 They were selected precisely because of their

1 demonstrated thoroughness and complete objectivity  
2 on such investigations. I will point out as well  
3 that Mr. Pardi was not directly involved in the  
4 Fort St. Vrain violation. Although that project  
5 was already in progress, Fort St. Vrain was the  
6 first nuclear program undertaken by MK since  
7 Mr. Pardi had joined the company in 1992. So it  
8 also serves as an important yardstick to judge the  
9 company's reaction and the intensity of Mr. Pardi's  
10 personal responsiveness to the infraction. He  
11 immediately recognized the seriousness of the event  
12 as a 50.7 violation, personally got involved in the  
13 investigation and led the development of all MK's  
14 corrective actions. We, in fact, were all involved.  
15 I issued a company-wide bulletin emphasizing our  
16 policy towards protected employees. And although,  
17 Mr. Grobe, we did have an open door policy that was  
18 expressed verbally at the meetings, it was not in  
19 writing and proceduralized. This bulletin  
20 proceduralized and put forward in distribution to  
21 all employees the operation of the open door  
22 policy. It also encouraged all of our employees to

1 report any apparent infractions or violations  
2 directly into the company and into their supervisors  
3 and told those supervisors that we have a strict  
4 nondiscrimination policy to those who would bring  
5 such incidents forward.

6 CHAIRMAN GROBE: The Fort St. Vrain project  
7 was handled under the power division?

8 MR. ZARGES: Yes, it was.

9 CHAIRMAN GROBE: Mr. Pardi? And was there a  
10 quality involvement -- quality assurance department  
11 involvement in the project?

12 MR. ZARGES: There was a radiation technician  
13 involvement.

14 MR. PARDI: Westinghouse.

15 MR. ZARGES: Our partners ran the quality  
16 program. So we didn't have our own quality  
17 department.

18 CHAIRMAN GROBE: So Mr. Edleman and  
19 Mr. Walcott, the corporate quality organization,  
20 was not involved in this project?

21 MR. ZARGES: That's correct.

22 MR. STEIN: Is this standardized? Do you have

1 a central employee concern manager that goes out  
2 and --

3 MR. ZARGES: We have a hotline that serves to  
4 gather all of the issues or infractions. And as we  
5 will see in a moment we have a procedure which  
6 particularly on our field sites when employees are  
7 terminated part of their exit procedure involves  
8 filling out of a form which indicates that they  
9 have no unreported safety concerns.

10 MR. STEIN: What I am getting to is each  
11 project develops its procedure and you have a  
12 hotline, I guess, that comes to corporate?

13 MR. ZARGES: Yes.

14 MR. STEIN: And you have somebody in corporate  
15 that --

16 MR. ZARGES: Monitors the hotline.

17 MR. STEIN: -- monitors it and takes  
18 information?

19 MR. ZARGES: Yes.

20 MR. STEIN: And then it's shared with all the  
21 other projects if you have some issue?

22 MR. ZARGES: Yes, indeed. These procedures

1 are outlined in this project management bulletin.  
2 And I think, Mr. Grobe, we sent you a copy of -- a  
3 detailed listing of everything that was entailed of  
4 those procedures and response to those procedures.  
5 It was quite a book.

6 CHAIRMAN GROBE: You sent us plenty of paper.

7 MR. ZARGES: I understand. But each one of  
8 these elements was part of that responsiveness. We  
9 required each project to have a daughter procedure  
10 as a result of this which would address specifically  
11 on site and bring up into our office environment  
12 any elements that would concern harassment and  
13 intimidation and explicitly talk about our policy  
14 to prevent harassment and intimidation.

15 We also trained all of our MK project  
16 personnel involved in nuclear work. And, in fact,  
17 both Mr. Pardi and Mr. Edleman were trainers in  
18 that program. We indoctrinated all of our  
19 employees about reporting safety concerns. We not  
20 only taught the supervisors how to react when  
21 concerns were brought to them, we told them that no  
22 harassment or intimidation was tolerated as a

1 result of that. But we also directly encouraged  
2 those involved in the work to bring those concerns  
3 forward and told them that there would be freedom --  
4 absolute freedom from harassment and intimidation.

5 MR. CLAYTON: That would be the craft people?

6 MR. ZARGES: Yes.

7 MR. BERSON: Mr. Zarges, do Mr. Pardi and Mr.  
8 Edleman go from project to project to do this  
9 training? You mentioned they were trainers.

10 MR. ZARGES: Some of it was on video and some  
11 of it was in person. And then finally the  
12 procedures delegated to the job site prescribed a  
13 method for both collecting and disposition of  
14 concerns so that they came up through the  
15 organization.

16 All of the elements of our response as  
17 well as the attitude and intensity about  
18 disciplined and correct conduct have, we believe,  
19 been well institutionalized in our company in  
20 subsequent nuclear programs including particularly  
21 Pt. Beach, St. Lucie and Waltz Mill. And among  
22 those elements are these: The required reading by

1 our supervisory personnel of the Fort St. Vrain  
2 violation and the corrective actions that resulted  
3 from that violation, quite a detailed report.  
4 Procedures at each job site were implemented  
5 prohibiting the harassment of protected people.  
6 The open communication procedures were described  
7 specifically at each site and procedures that  
8 require exit interviews of all personnel hired on  
9 the job site even though they are of limited  
10 duration obviously involving a massive amount of  
11 people. Those exit interviews also include specific  
12 questions and questionnaires that must be filled  
13 out as part of a termination process to disclose  
14 any unreported safety concerns. All of not only  
15 the MK personnel but also subcontractor personnel  
16 working on these jobs were involved in the training.  
17 And finally again copies of these procedures as  
18 well as our specific responses to Fort St. Vrain  
19 were included in the 3-ring binder that was sent  
20 you back in spring. And here, in fact, is a  
21 listing of many of the policies and procedures that  
22 have been implemented on our projects just for

1 further illumination. As you can see the program  
2 was comprehensive, it was followed up, it's  
3 intense, it's enforced and it's active.

4 CHAIRMAN GROBE: You have talked quite a bit  
5 about the actions that you have taken at project  
6 locations. I would like to focus just a little bit  
7 on the small central office staff that you have.  
8 Is it your expectation that everyone in the central  
9 office has a clear understanding of these  
10 expectations?

11 MR. ZARGES: Everybody in the central office  
12 has also been issued all of our project management  
13 bulletins and is involved in the training of all of  
14 our supervisory personnel. So the answer is yes,  
15 they're all engaged, involved in that.

16 CHAIRMAN GROBE: Thank you.

17 MR. STEIN: Who manages the program?

18 MR. ZARGES: Our division manager, Mr. Pardi,  
19 enforces the application through his organization  
20 of these project management bulletin requirements  
21 on each and every job.

22 MR. STEIN: So one of the other hats that

1 Mr. Pardi wears as well is your employee concerns  
2 management?

3 MR. ZARGES: He's responsible for the entire  
4 sweep of our business conduct.

5 MS. CHIDAKEL: When was he given that  
6 responsibility?

7 MR. ZARGES: When he joined the company.

8 MS. CHIDAKEL: From the beginning he was in  
9 charge of employee concerns?

10 MR. ZARGES: He's in charge of the conduct and  
11 application of company procedures at the jobs that  
12 he's responsible for including bubbling up employee  
13 concerns ultimately to him.

14 MS. CHIDAKEL: Including the policy about no  
15 harassment or intimidation for employees who raise  
16 concerns?

17 MR. ZARGES: That policy emanates from me.

18 MS. CHIDAKEL: But Mr. Pardi was responsible  
19 for seeing that that was complied with, is that  
20 correct, from the beginning?

21 MR. ZARGES: Yes, that's correct. Just to  
22 explain our operating divisions in different

1 industry areas, there is, for example, a power  
2 division and there is an industrial division. And  
3 those divisions are set up as though they were  
4 small companies essentially. And the executives in  
5 charge of them have complete responsibility for the  
6 conduct of all aspects of that business, reputation,  
7 job performance, client satisfaction, regulatory  
8 compliance, procedural compliance. They in essence  
9 are executors overseeing the whole conduct of that  
10 and responsible for it.

11 CHAIRMAN GROBE: From an organizational point  
12 of view could you briefly describe your expectation  
13 for the quality organization?

14 MR. ZARGES: As I have said the quality  
15 organization is organized principally to support a  
16 nuclear project although that work is a modest part  
17 of our total corporate work or even a minority of  
18 our power division's work. But that is their  
19 principal charter and that is why they exist. They  
20 also service some of our other programs where there  
21 is a customer quality control or quality assurance  
22 program. Typically they are very different from

1 the quality programs that have been implemented on  
2 a nuclear program and that deal with change order  
3 procedures or other aspects that a client company  
4 will identify as his quality program. And they  
5 will get involved peripherally in the setting up of  
6 those programs and in providing an internal level  
7 of inspection. But principally its mission is to  
8 make sure of our nuclear work, our procedures, our  
9 protocols, our inspections at the nuclear end.

10 MR. BERSON: Where organizationally do hotline  
11 concerns come to your central office? Is there  
12 some designated individual or organization that  
13 receives these?

14 MR. ZARGES: The hotline is monitored by our  
15 quality department and our personnel department.  
16 Then anything that comes on the hotline is  
17 distributed to the appropriate people including me  
18 to make sure that it's handled.

19 MR. BERSON: So the quality department may  
20 receive these initial concerns?

21 MR. ZARGES: Yes.

22 CHAIRMAN GROBE: Is that a very active

1 program?

2 MR. ZARGES: It's an active program. We have  
3 no complaints or infractions that have been reported.

4 CHAIRMAN GROBE: Thank you.

5 MR. ZARGES: The practical proof of these  
6 policies and attitudes is, of course, indicated in  
7 our results. They have to be proved as effective  
8 and reliable, and the intensity of their application  
9 has to be consistent. Here, in fact, are the results.  
10 As we have said we have complete exit interviews  
11 including a mandatory recording of any safety  
12 concerns upon exit. We have done that for over  
13 1500 craft and supervisory personnel on two projects  
14 that we have had since these procedures were  
15 implemented and completed. They are St. Lucie and  
16 Pt. Beach. We had no concerns throughout the  
17 program regarding safety in the work environment at  
18 St. Lucie. We did have one concern at Pt. Beach  
19 which was quickly and effectively dealt with within  
20 our procedural framework. We described that in our  
21 April 21st letter. We had other employee concerns  
22 that came up through this system at Waltz Mill that

1 were effectively and immediately dealt with. And,  
2 in fact, the people who filed concerns both at Pt.  
3 Beach and at Waltz Mill were not MK employees.  
4 They were on site, but they were aware of our system  
5 and they utilized our program to bring their concerns  
6 forward. So the proof is in the pudding as to  
7 whether or not this system is active, used, useful  
8 and responsive. I am convinced that our program is  
9 in place and that it is adequately and very effective-  
10 ly engraved in our fundamental approach to nuclear  
11 power.

12 Let's now move to the enforcement action  
13 that we're here to talk about, Fort St. Vrain.  
14 There are obviously several specific elements of  
15 our business practices that I deemed inconsistent  
16 with the filing of this complaint. I was, therefore,  
17 completely blindsided by it and had detected no  
18 atmosphere and no attitude that would have supported  
19 it.

20 First, we certainly have an extreme  
21 sensitivity to harassment, retaliation that was  
22 engendered throughout our organization as a result

1 of Fort St. Vrain. I felt strongly that any  
2 activity coming close to this sensitivity would  
3 have been instantly perceived and not tolerated.

4 MS. CHIDAKEL: Can I interrupt with a question?  
5 If you did have certain awareness as a result of  
6 the Fort St. Vrain situation, wouldn't you have  
7 realized just in the appearance the reaction that  
8 occurred with regard to Mr. Artayet, specifically  
9 the fact that the QFR came out on the 14th and on  
10 the 15th the decision was made to remove him?

11 MR. ZARGES: I wish we had been more sensitive  
12 to the appearance rather than the facts. I think  
13 we probably -- I probably should have. I was not  
14 aware that QFR was filed prior to this but probably  
15 should have had our antenna up higher.

16 MS. CHIDAKEL: You were not aware at the time  
17 that Mr. Edleman and Mr. Pardi came to you and told  
18 you about what happened to Mr. Artayet?

19 MR. ZARGES: I was subsequently aware of that.

20 MS. CHIDAKEL: At that point they did not  
21 mention QFR findings to you?

22 MR. ZARGES: No.

1 MS. CHIDAKEL: Not to get off the subject, but  
2 on that line of questioning did they raise any  
3 issues with you when they came to see you that day  
4 as to why the action had been taken?

5 MR. ZARGES: Oh, yes, indeed.

6 MS. CHIDAKEL: And what specifically did they  
7 say?

8 MR. ZARGES: There were areas of technical  
9 competence, of dysfunction between the advice he  
10 was providing to our project team and our project  
11 team's reading of that advice. But primarily it  
12 was dysfunction and lack of performance and the  
13 lack of technical competence.

14 MS. CHIDAKEL: They didn't say anything about  
15 the QFR at that time?

16 MR. STEIN: In hindsight does it bother you  
17 that it really isn't documented after what you just  
18 said about performance in the personnel file? It  
19 seems that you're operating in a very informal  
20 environment, meetings -- that performance meetings  
21 were not written down, minutes are not there,  
22 performance appraisals seem to be fairly good when

1 there were performance problems, there are no  
2 letters of censure, there are no letters of -- I  
3 mean there's nothing in the jacket to indicate --

4 MR. ZARGES: Well, I think in hindsight I wish  
5 we had documented this obviously to a fare thee  
6 well. But we are a pretty close knit and collabora-  
7 tive organization, and we all see each other every  
8 day. We have formal and informal discussions about  
9 all aspects of our business. We tend to manage our  
10 work that in a way we know what each other is doing  
11 and thinking and contemplating. And we don't do  
12 much and maybe we should do more of recording of  
13 memoranda and concerns to the files. So I guess I  
14 would agree with you obviously in retrospect.

15 MS. CHIDAKEL: Had you heard of any problems  
16 around Mr. Artayet before the final decision was  
17 made?

18 MR. ZARGES: Yes, from Mr. Pardi, from people  
19 at the job site. There was not the level of detail  
20 obviously that we and all of us are now aware of  
21 that I was aware of, but I was certainly aware that  
22 there was a dysfunctional relationship that went

1 beyond the normal give and take of the subject  
2 matter of a responsible party in a project team.  
3 Part of that had to do with the performance in the  
4 delivery of certain production documents as to  
5 relevant procedures in the field to support the  
6 project team and their requirements. Part of it  
7 had to do with arguments on the technical merits of  
8 various instructions that was given. So there was  
9 a general feeling that this was more than the  
10 ordinary friction that you sometimes get when  
11 people seem to disagree and there are shades of  
12 right or wrong. It was an inference that I had  
13 picked up.

14 MR. STEIN: Is there a management directive in  
15 your personnel or human resources where there is a  
16 hierarchy of actions that you take when you are  
17 dealing with performance rather than removal or  
18 termination, putting them into like a performance  
19 improvement plan, doing activities to raise that  
20 person's performance before you have to take a more  
21 drastic step?

22 MR. ZARGES: I guess I would say that removal

1 wasn't contemplated at the time; a transfer in job  
2 responsibilities was contemplated at the time. And  
3 typically people are moved around in our company.  
4 It is a project-oriented company, and people move  
5 from support functions to job functions back and  
6 forth between jobs. So to transfer people and  
7 their responsibilities is a fairly commonplace  
8 activity in our company, and there is no specific  
9 protocol that goes along with that. So at the time  
10 it was more viewed, frankly, as a transfer of  
11 responsibility than it was any kind of termination  
12 that would require the several steps that you might  
13 take to remediate an employee.

14 MR. STEIN: It wasn't viewed as a demotion?

15 MR. ZARGES: No, it was viewed as a lateral  
16 transfer.

17 Let me also point out that the other  
18 inconsistency I felt existed as we were just  
19 discussing was that our home office employee base,  
20 those involved are relatively small; the nuclear  
21 staff is small. Our quality assurance support  
22 organization is small. They are long-term

1 employees. They have worked together frequently  
2 and often. We operate, as we have said, in a  
3 somewhat collegial, nonformal, nonbureaucratic  
4 atmosphere. There is adequate access to all senior  
5 management including me to discuss any relevant  
6 disappointments or problems that might occur.

7           And finally I would say that it just  
8 didn't square with my read of the character or the  
9 motives or the attitudes of the people involved.  
10 My read on this issue was strictly that it was a  
11 judgment of competence, that the procedures and the  
12 deliberation to reassign Mr. Artayet seemed to me  
13 well considered and properly motivated. So the  
14 filing, therefore, was disappointing but it would  
15 be appropriately addressed. The initial Department  
16 of Labor investigation seemed to provide support  
17 for this finding no discrimination.

18           MR. STEIN: I have a question about that.  
19 Usually in the OSHA or I think this might have been  
20 Wage and Hour before that there is some attempt to  
21 reach a settlement before they make a decision.  
22 Was any attempt made between you or Mr. Pardi to

1 reach a settlement with Mr. Artayet before it  
2 reached a level where they had to make a decision?

3 MR. ZARGES: I don't believe so. It was all  
4 after this, wasn't it?

5 MR. EDMISTER: We didn't get a copy of the  
6 complaint. And the OSHA DOL investigator came over  
7 and talked to me, asked me certain questions, I  
8 answered, he agreed with our position and that was  
9 kind of the extent. I formally answered his  
10 questions.

11 MR. STEIN: But he didn't try to get you two  
12 sides to reach a settlement?

13 MR. EDMISTER: No, he didn't.

14 MR. CLAYTON: You talked earlier about the  
15 reason for removing Mr. Artayet from the group  
16 welders position. It included competence problems,  
17 dysfunction I think you mentioned, communications  
18 with the site, quality of performance. If there is  
19 someone that is incompetent or dysfunctional, why  
20 would you consider moving them to another job as a  
21 lateral transfer? Why would you give him a transfer  
22 to another job with the same level of responsibility

1 or same compensation at least?

2 MR. ZARGES: Sure, that's a good question.  
3 Our discussion was that the rigors of the nuclear  
4 environment were a bit over his head. He lacked  
5 experience working in that environment, had diffi-  
6 culty in the interpretation of the codes and the  
7 relationship in the job site with experienced  
8 people applying the codes but that the work in the  
9 industrial side of our business is considerably  
10 less rigorous. I mean fundamentally it involves  
11 fairly fundamental welding solutions, you know,  
12 where the rigors and the upset conditions and the  
13 special materials and the code and the documenting  
14 requirements simply don't exist. All that's  
15 required is competent work, in some cases complete  
16 centration, in other cases you will have a material  
17 or two that are part of a job that need some special  
18 consideration. But the rigor is considerably  
19 different, more a mechanical application of welding  
20 technique than an engineered solution and a  
21 proceduralized protocol for welding as it exists in  
22 the nuclear field.

1 MS. CHIDAKEL: He had worked many years  
2 previously, as I understand it, in a project and  
3 that was a nuclear project.

4 MR. ZARGES: Well, we speak to the experience  
5 of working in Section III and adjudicating the code  
6 requirements particularly, sorting out the code  
7 requirements.

8 MS. CHIDAKEL: Hadn't he done that previously?

9 MR. ZARGES: He had not set up the welding  
10 procedures, no. His experience was at a very low  
11 level. And he was supervised by a welding  
12 supervisor who has since retired but had done a lot  
13 of the fundamental work that we now expected Alain  
14 would have done.

15 MS. CHIDAKEL: Given that lack of experience,  
16 why was he initially put on that Pt. Beach project?

17 MR. ZARGES: Well, he was our corporate welding  
18 engineer. And it was true that he was untried in a  
19 similar position. We were not aware that he would  
20 not be able to handle it. It was his first cut at  
21 coming into the rigors of setting up a nuclear job,  
22 nuclear welding procedures.

1 MS. CHIDAKEL: And what was the date of that  
2 when he got that responsibility approximately?

3 MR. ZARGES: It came when we won the job which  
4 was '95?

5 MR. PARDI: '94, '95.

6 MR. BERSON: Mr. Zarges, you described the  
7 home office atmosphere as informal and nonbureau-  
8 cratic, easy access to individuals at all levels.  
9 I guess I have come to understand that basically  
10 there was no discussion with Mr. Artayet by his  
11 management or Mr. Pardi about his performance  
12 problems prior to, you know, the decision being  
13 made in January or essentially none. And given  
14 this open atmosphere, what would have been your  
15 expectation in terms of counseling the employee and  
16 talking to him?

17 MR. ZARGES: Well, good question. I think it  
18 was communicated through, if you want to say, the  
19 chain of command. I am sure Drew and Lou had  
20 conversations about Artayet's sufficiency. I know  
21 the field and the project team had conversations  
22 with Lou about Artayet's sufficiency, I know they

1 had conversations with Artayet, I know they had  
2 conversations with his direct-supervisor, Andy  
3 Walcott. So it is clear that he was aware that  
4 there was dissatisfaction among many elements of  
5 our work force with what he was doing, the advice  
6 he was giving and his interface with the project  
7 team.

8 MR. BERSON: Wouldn't one expect, though, that  
9 his direct supervisor or somebody would come and  
10 talk to him directly about these problems --

11 MR. ZARGES: I assume that happened.

12 MR. BERSON: -- and steps to correct?

13 MR. ZARGES: I assume that he and Mr. Walcott  
14 had those conversations. And I think the way he  
15 behaved indicated that he knew that there was a  
16 level of dissatisfaction. So I wouldn't  
17 characterize him at all as being unaware that the  
18 problems existed.

19 MR. CLAYTON: Can you expand on how he behaved  
20 that indicated that he was aware of that dissatis-  
21 faction?

22 MR. ZARGES: I think he was maybe aggressively

1 defensive about some of the positions that he had  
2 taken -- that's a fair characterization -- in a way  
3 that you wouldn't anticipate if the circumstances  
4 were normal and there was the usual give and take  
5 between the support element and the project team.

6 MR. GAVULA: I will just ask a question about  
7 Mr. Artayet's abilities. If you had concerns about  
8 his nuclear background, can you give me your  
9 thoughts on why he was asked to do the follow-up  
10 audit after Hartford came up with their findings?  
11 If you were worried about his technical concerns  
12 wouldn't it have been more appropriate to use  
13 somebody else to do that?

14 MR. ZARGES: It probably would have, yes.

15 MR. GAVULA: So were his findings --

16 MR. ZARGES: Mr. Walcott, I am sure, was given  
17 that charter, and I think he enlisted Mr. Artayet  
18 in doing that. I would say that Mr. Walcott  
19 probably should have also enlisted a third party  
20 instead of reflexively using Mr. Artayet.

21 MR. GAVULA: Were Mr. Artayet's findings valid  
22 or invalid with respect to his audit?

1           MR. ZARGES: I am not sure I can answer that.  
2 Do you know?

3           MR. PARDI: I am sorry? Were Artayet's  
4 findings valid or invalid? I think for the most  
5 part they were valid.

6           MR. GAVULA: So there seems to be some  
7 dichotomy, I guess, with respect to his actual  
8 knowledge or technical expertise. In one way he's  
9 viewed as not having it, but in other ways he's  
10 demonstrating it based on his -- by doing the audit  
11 and finding the facts valid.

12           MR. ZARGES: Asking him to audit his own work  
13 was probably the incorrect thing to do -- to have  
14 done. We should have perhaps enlisted a third  
15 party.

16           MR. GAVULA: And yet he found his own problems.

17           MR. ZARGES: Well, yes.

18           MR. PARDI: Let me rethink what I said. Some  
19 of his findings were valid, but there were some of  
20 them -- In fact, I believe that the more technical  
21 ones relative to input were not valid. And looking  
22 back on it now, a lot of the findings were things

1 that he created by making our procedures so  
2 difficult to understand. If you look at one of our  
3 corporate procedures, I mean it is really extremely  
4 difficult to understand. When the site tried to  
5 develop site-specific procedures from those very  
6 complex corporate procedures, that contributed in  
7 my mind a lot to the difficulties that we had  
8 there. So I change what I said. Some of his  
9 findings if I recall were valid, but there were  
10 some that were not valid. There were some that  
11 were distinctly not valid. I think the technical  
12 ones relative to heat input were not right.

13 CHAIRMAN GROBE: When you refer to heat input  
14 we're specifically talking about the issue with the  
15 girth welds at Pt. Beach?

16 MR. PARDI: I can't remember which that was  
17 specific to. Was it the girth welds particularly  
18 or the carbon steel main steam?

19 MS. COOPER: I don't recall myself. But the  
20 problem was that on the corporate procedure that  
21 was the model for the site procedure, the corporate  
22 procedure was incorrect in a couple of instances

1 and the site relied, as they were directed to, on  
2 the corporate procedure and carried over the  
3 mistake to the site procedure. And then in the  
4 final analysis when Artayet was reviewing all the  
5 procedures and comparing them, he did pick this up  
6 that the site was wrong and he was wrong. And in a  
7 couple of cases the site actually corrected his  
8 error.

9 CHAIRMAN GROBE: So his finding was valid  
10 then?

11 MR. PARDI: The finding about heat input was  
12 valid, but it was something that he created.

13 MS. COOPER: It was valid, not a code violation.  
14 It was the procedures within the company -- An  
15 internal company procedure set up by Artayet was  
16 that the site WPSs were to be bound by a corporate  
17 WPS which had wider parameters. So in some instances  
18 his corporate WPS, which is supposed to be based on  
19 data taken from mechanical testing, was incorrect.  
20 And, therefore, the site followed his corporate WPS  
21 and picked up on the error. They don't necessarily  
22 see the data. If they are given his WPS they should

1 be able to bound their requirements by his corporate  
2 WPS.

3 CHAIRMAN GROBE: I understand. I am trying to  
4 understand Mr. Pardi's comments that some of the  
5 findings of his audit in early January were not valid.

6 MR. PARDI: Right.

7 CHAIRMAN GROBE: Is what you are saying some  
8 of the findings in his audit in early January  
9 pointed out errors that had previously been made or  
10 were there invalid findings?

11 MR. PARDI: There were invalid findings.

12 CHAIRMAN GROBE: Could you describe one of  
13 those?

14 MR. PARDI: The one I remember most was relative  
15 to heat input. And there were two issues about the  
16 heat input. One was that heat input is derived at  
17 multiplying the amps times the volts and divided by  
18 the travel speed and you come up with a number.  
19 Ordinarily the higher the heat input the more critical  
20 the welding is. And so Alain, despite the fact that  
21 he qualified the procedure using a set of amps and  
22 volts and travel speed that would give, let's say,

1 100 joules per inch as the heat input, just decided  
2 to be conservative and say the maximum heat input  
3 in this procedure shall be 80 joules per inch. But  
4 he left the amps and volts and travel speeds such  
5 that if you welded at the top end of the procedure  
6 you could exceed the heat input, and that  
7 invalidated that welding procedure.

8 CHAIRMAN GROBE: So his finding was valid? It  
9 pointed out an error in the welding procedure that  
10 had previously been made?

11 MR. PARDI: But it was his error.

12 CHAIRMAN GROBE: I understand. We're trying  
13 to differentiate --

14 MR. PARDI: I can't remember, Jack, exactly  
15 how that came up. But I remember in resolving the  
16 problem we went back and saw that it was his error  
17 and in his being conservative he produced a procedure  
18 that didn't work. If you looked at the amps and  
19 volts and travel speed, you couldn't come up with  
20 the heat input that he allowed.

21 MR. BERSON: But Jack's drawing a distinction  
22 between his findings, you know, looking back at

1 what he had done previously. Were those findings --  
2 You know, if he, for example, said procedure XYZ is  
3 in error because of heat input problems, was that  
4 finding correct or not correct? That's the general  
5 question.

6 MR. PARDI: I understand what you are saying.

7 MR. HICKEY: Wasn't there, Lou, a specific  
8 evaluation and close-out of each of his findings?

9 MR. PARDI: Yes.

10 MR. HICKEY: That's documented. And he's  
11 having a hard time remembering from memory.

12 MR. PARDI: We went through these things a  
13 number of times. We even got Webco involved and  
14 went through them again. There were clearly -- To  
15 the best of my recollection there were findings  
16 that were correct, there were some findings that  
17 were incorrect, and there were some findings in my  
18 opinion that he caused. And the way he caused them  
19 was that the corporate procedures were incorrect  
20 and that trickled down to get into the site-specific  
21 procedures. That's to the best of my recollection  
22 right now.

1           CHAIRMAN GROBE:   And when was this evaluation  
2 of his findings done?   This was after January 15th.

3           MR. PARDI:   Oh, yes.   After I saw the QFR --  
4 No, I am sorry, after Andy debriefed me at the  
5 audit finding.   Then I told Andy let's go back and  
6 do a top to bottom review of our welding procedures.  
7 When we got the QFR we then continued to review our  
8 welding procedures.   We had numerous reviews of our  
9 welding procedures including even some outside people.  
10 Webco brought in some experts.   Those procedures  
11 were reviewed and a series of reports were  
12 developed over the next six or eight months.   We  
13 continued to look at them.

14           CHAIRMAN GROBE:   But no evaluation of the  
15 findings was done before action was taken with  
16 respect to Mr. Artayet?

17           MR. PARDI:   No, no.   Except the Hartford Steam  
18 Boiler ones were the ones I evaluated in my mind  
19 and knew they were valid findings.

20           CHAIRMAN GROBE:   The specific finding on the  
21 Hartford Steam Boiler that had potential hardware  
22 ramifications indicated was a heat input issue with

1 respect to the steam generator girth weld?

2 MR. PARDI: That's what I am having trouble  
3 remembering, if it was the girth weld or main steam  
4 feed water welds.

5 CHAIRMAN GROBE: Had that issue been  
6 previously raised and resolved on site?

7 MR. PARDI: No, I don't believe so. I don't  
8 believe so.

9 MS. CHIDAKEL: Are you finished, Jack? I am  
10 sorry.

11 CHAIRMAN GROBE: Did that finding -- What  
12 action was taken by you as a result of that ANI  
13 finding specifically with respect to the work done  
14 at Pt. Beach?

15 MR. PARDI: Well, that's when I told Andy  
16 Walcott we had to do a top to bottom review of our  
17 welding procedures and obviously including that  
18 finding. And we went back and looked at all of our  
19 welding procedures and we resolved that heat input  
20 question to everybody's agreement without removing  
21 any welds or making any repairs.

22 CHAIRMAN GROBE: And you're not aware that

1 that issue had already been raised and addressed on  
2 site?

3 MR. PARDI: I don't remember being aware of  
4 that, Jack.

5 MS. CHIDAKEL: This question is either for  
6 Mr. Zarges or for Mr. Pardi or both of you, whoever  
7 chooses to answer it. And I realize this is  
8 hindsight now. But just going over the situation  
9 as I am understanding it, you have Mr. Artayet who  
10 had in your words very little experience with nuclear,  
11 certainly not the level of experience, you know,  
12 that meets the code. He was put into Pt. Beach.  
13 He first becomes involved in 1995 with Pt. Beach.  
14 Mr. Zarges, apparently you're aware, you said earlier,  
15 that there were problems with him and with his  
16 performance. And yet -- And you have this height-  
17 ened sensitivity about raising safety concerns and  
18 not discriminating against employees who raise  
19 concerns. And yet you don't document any of these  
20 performance problems with Mr. Artayet and you know  
21 he hasn't got the experience yet you keep him on  
22 the Pt. Beach project. And then he's not removed

1 as GWE until right after he finds these findings,  
2 the QFR findings. Can you give us an explanation  
3 of this looking at this? I mean again I know this  
4 is hindsight. But looking at this, you know, what  
5 logical explanation could you provide for this  
6 whole scenario?

7 MR. ZARGES: I will go through a couple of  
8 points. One is that I joined the company at the  
9 end of '91. Alain was already in the position that  
10 he currently occupies and was represented as having  
11 nuclear experience. I fundamentally accepted his  
12 credentials as he presented them and took it that  
13 he was prepared to execute responsibilities in the  
14 nuclear welding arena. Perhaps I shouldn't have,  
15 but I did. I accepted the organization as I found  
16 it, and I accepted his credentials as I thought  
17 they were.

18 On Pt. Beach and on all steam generator  
19 replacements for that matter it's kind of an  
20 escalating involvement. Typically when we say we  
21 started in '95, there is a long lead time before  
22 actual work is mobilized in the field and outage

1 work begins. And so it's a gradual ramp-up of  
2 activity and involvement. So it's not a job that's  
3 booked and boom, you know, everybody is mobilized  
4 and all ready -- where you're all ready, you're at  
5 a pitch of activity and where items, performance,  
6 technical issues are in bold relief. It's kind of  
7 a slow, steady build-up, I guess. In the case of  
8 Pt. Beach a year and a half lead time --

9 MR. PARDI: Yes.

10 MR. ZARGES: -- before we actually got to the  
11 point of mobilizing in the field and preparing for  
12 the outage. So it's kind of a slower build-up to  
13 the point where you get to the more intense level  
14 of activity as you prepare for the outage and you  
15 review the levels of interaction, preparedness and  
16 so forth. And it's then that you begin to get the  
17 kind of feedback that would come to my level that  
18 this is a little more difficult than a normal give  
19 and take between a support group and a building  
20 project team.

21 MS. CHIDAKEL: Yet you kept Mr. Artayet on  
22 without documenting any of these problems?

1           MR. ZARGES: From our point of view the level  
2 of dysfunction didn't arise to the level where you  
3 would have concluded immediately that he was  
4 incompetent.

5           MS. CHIDAKEL: What made you decide then when  
6 Mr. Pardi and Mr. Edleman came to you on the 15th  
7 that they were right, that at that point he should  
8 be transferred?

9           MR. ZARGES: Well, at that point I think there  
10 was a long -- a longer and more intense body of  
11 experience that had to do with the outage. The  
12 outage had just been completed about Christmastime.  
13 So this was a more current event that they may have  
14 seen. When they came and started talking about  
15 this over the holidays, it was really in light of  
16 the experience they had gained going through this  
17 outage and through the intense give and take that  
18 occurs actually in the field doing the work. So it  
19 had reached kind of a crescendo.

20                   I also have and do have a high regard for  
21 several of Mr. Pardi's attributes. As I have said  
22 he is not just responsible -- he's not just a

1 production person. He's responsible for the full  
2 sweep of our conduct in this arena including our  
3 reputation, service to clients, our compliance,  
4 everything. So he has got some pretty good ballast  
5 before he is going to make a conclusion and a  
6 decision. I felt he was in a position to weigh  
7 evidence maybe for a considerable period of time  
8 before he would come to such a blunt conclusion.  
9 And I also knew that his personal background not  
10 only included a lot of nuclear construction himself,  
11 but also experience in welding specifically and  
12 then the rigors of nuclear. So he was probably the  
13 person in our organization who was in the best  
14 position to make a conscientious, balanced  
15 technical judgment on this situation. That weighed  
16 very heavily.

17 I also didn't hear any disagreement from  
18 any quarter in our project environment or in our  
19 support environment or home office environment with  
20 the conclusions that were reached. It seemed to  
21 square up with the things that I had been hearing  
22 and some of the things that I knew first-hand, not

1 necessarily about technical performance but opera-  
2 tional performance, late delivery, for example, of  
3 procedures and inattention to resolving some of  
4 these conflicts. So as we came to the point where  
5 we finally had a body of work that was reviewed,  
6 considered and judged by people I regard to be fair  
7 and technically competent and whose judgment I find  
8 lines generally up with what I have been hearing  
9 although not necessarily at that level of detail,  
10 it all rang very true to me. And I found their  
11 arguments, their persuasiveness and their  
12 presentation of the facts quite persuasive.

13 MR. STEIN: Are you finished, Susan?

14 MS. CHIDAKEL: Yes.

15 MR. STEIN: I have some questions on strategy  
16 that you had during the Department of Labor  
17 proceeding. I noticed on one of the bullets you  
18 were surprised by the ALJ's decision. Our  
19 enforcement policy and enforcement manual that  
20 Brent has in front of him emphasizes early settle-  
21 ment of these type of issues, to make the employee  
22 whole, to limit the chilled environment at the

1 facility by early disposition of these issues.  
2 From what I just heard there wasn't settlement talk  
3 at the OSHA stage and then there was an appeal to  
4 the ALJ. And I am not clear whether you started  
5 discussing settlement or you made a strategic  
6 decision to go into litigation and to complete the  
7 process. And then I know that you settled with him  
8 finally after the ALJ decision. Can you work -- I  
9 am glad you brought your in-house counsel. Can you  
10 work through your strategy at the ALJ stage?

11 MR. ZARGES: Well, I suppose that one of our  
12 shortcomings in our dealings with the ALJ was that  
13 we were convinced that this wasn't an item that  
14 would rule against us. I mean maybe we were too  
15 much not appreciating the other side of the  
16 arguments.

17 MR. STEIN: You had an unhappy employee in  
18 West Virginia. I mean his family was in Cleveland.  
19 He had some real issues that it didn't seem you  
20 were addressing that maybe could have settled this  
21 at an earlier stage.

22 MR. ZARGES: Well, I think we had willingness

1 to settle. But I also think that there was a --  
2 It's not a punitive element in our company to take  
3 a job in the field as a supervisor. That's where  
4 the action is in our company. And anybody who  
5 aspires to having a fulfilled career with a  
6 position of responsibility needs to go into the  
7 field and get supervisory experience. So I  
8 wouldn't altogether characterize being assigned to  
9 a job in a construction company as something that's  
10 detrimental or something that seems on the face of  
11 it oppressive.

12 MR. STEIN: Was there ever an effort made  
13 before the ALJ's decision to settle this?

14 MR. ZARGES: I don't think we did anything  
15 before the ALJ's decision. I may have asked if  
16 there was a willingness to settle.

17 MR. EDMISTER: All I think he wanted to be was  
18 group welding engineer in charge of nuclear. And  
19 that was the big thing. He wanted to get back and  
20 be in charge of nuclear welding. And we had a  
21 situation of competence -- a question of competence  
22 at that time. And I didn't really look at -- I

1 guess like Tom I didn't really look at it as though  
2 he was demoted. He had a lateral transfer. And  
3 all of us spend time in the field at one time or  
4 another for varying lengths of time on various  
5 projects. This was fairly close to home.

6 MS. CHIDAKEL: You do realize that an involun-  
7 tary transfer even if you don't think it's  
8 detrimental or it doesn't lower his salary or  
9 anything else, you realize that that still can be a  
10 violation.

11 MR. EDMISTER: It wasn't involuntary in that  
12 we didn't direct him to go there. It was a -- The  
13 opportunity came up and he took it.

14 MS. CHIDAKEL: Well, he had at that point been  
15 removed as GWE, right?

16 MR. EDMISTER: Right.

17 MS. CHIDAKEL: Let me follow up my last question  
18 though on another tack. And I think Mike may have  
19 been getting to this or may have meant this to be  
20 part of his question. The ALJ decision came out  
21 and you were surprised by it. Did the company  
22 appeal that decision?

1 MR. EDMISTER: Yes.

2 MR. ZARGES: We did file an appeal, yes.

3 MS. CHIDAKEL: At that point what happened?  
4 Was there a settlement?

5 MR. ZARGES: We subsequently settled, I guess,  
6 before the appeal came up.

7 MR. EDMISTER: Yes.

8 MS. CHIDAKEL: You settled after you filed an  
9 appeal?

10 MR. EDMISTER: We filed an appeal and we settled.  
11 He was directed to come back to work and there were  
12 difficulties, and we reached a settlement with him.

13 MS. CHIDAKEL: I didn't hear you.

14 MR. EDMISTER: We were directed to take him  
15 back by the ALJ. We took him back. There were a  
16 lot of difficulties. We reached a settlement  
17 agreement and he left the company, and the appeal  
18 was never resolved.

19 MS. CHIDAKEL: Okay. Thank you.

20 MR. WEIL: If you could, Mr. Zarges, could you  
21 explain Mr. Artayet's duties as the group welding  
22 engineer vis-a-vis what position he occupied in

1 West Virginia?

2 MR. ZARGES: He was supervisor of piping  
3 systems and provided consultation on welding for  
4 all systems peripherally while he was there, piping  
5 systems being the most welding intensive part of  
6 our work.

7 MR. WEIL: So that somehow sounds like he was  
8 in charge of the welding procedures, the products  
9 at that West Virginia construction site.

10 MR. ZARGES: That was part of his duties, yes.  
11 But it included more general field supervision as  
12 well.

13 MR. WEIL: Did he supervise people in that  
14 position?

15 MR. ZARGES: Yes, a modest staff.

16 MR. STEIN: And he retained pay, the same pay  
17 he had in Cleveland?

18 MR. ZARGES: Yes.

19 MR. BERSON: How did he perform?

20 MR. ZARGES: Adequately.

21 MS. CHIDAKEL: When he was group welding  
22 engineer before he was taken out of that position

1 and transferred, what was your understanding --  
2 your own understanding of the responsibilities of  
3 the GWE as opposed to the PWE?

4 MR. ZARGES: Well, the group welding engineer  
5 is the custodian of our corporate standards for  
6 welding. And what he does is prepare protocol for  
7 our welding procedures and prepares the general  
8 procedures that the site procedures then must  
9 conform to. He writes the protocol that the sites  
10 follow, in other words. They write the implementing  
11 documents; he writes the master documents.

12 MS. CHIDAKEL: Well, after they did that would  
13 you have expected him to review or approve --

14 MR. ZARGES: Absolutely. It's his responsi-  
15 bility to ensure that the procedures that are being  
16 used and developed on site conform back to the  
17 corporate mother documents if you will.

18 CHAIRMAN GROBE: If there is a question  
19 developing regarding Mr. Artayet's competence in  
20 that role as provided your oversight assurance of  
21 quality welding and your company was engaged in a  
22 very welding-intensive project like the steam

1 generator replacement project at Pt. Beach, why was  
2 action with respect to this incompetent employee  
3 deferred until after the completion of the project?

4 MR. ZARGES: I think for me the key word in  
5 your question is developing because it really did  
6 develop over the course of the project. We weren't  
7 intensely aware of these issues. And, in fact, and  
8 quite honestly I think the project solved a lot of  
9 these issues and corrected many of the procedures in  
10 -- the procedural inadequacies that may have existed  
11 and in doing so provided cover if you will for the  
12 group welding engineer. That was not the intent of  
13 the group welding engineer's job. It was his job to  
14 do that, not the project's job to ensure compliance.  
15 So I think that the project in some sense stepped into  
16 the vacuum and fulfilled some of those roles and  
17 responsibilities. And that may have shielded us  
18 from the consequences of following decisions unilaterally  
19 and without questioning decisions that he may  
20 have made about conduct of his work on the job.  
21 And I also think that he colored some of the  
22 events, quite frankly, when he was in the home office

1 and had an opportunity to and took the opportunity  
2 to present his spin, if that's the right word, on  
3 some of this dissention and some of the controversy  
4 that existed between him and the site and got his  
5 side of the case a good hearing.

6 MR. BERSON: Did he ever talk to you directly  
7 prior to the 15th of January?

8 MR. ZARGES: Yes, but not about any of these  
9 specific issues or welding competence or his  
10 relationship with the field.

11 MR. BERSON: I take it you didn't raise with  
12 him any of the feedback you had been receiving --

13 MR. ZARGES: I did not.

14 MR. BERSON: -- that was negative?

15 MR. STEIN: We asked you to describe the  
16 corrective actions taken by MK following the Fort  
17 St. Vrain incidents. I would like to push the  
18 envelope a little bit and ask you have you put any  
19 thoughts into corrective actions resulting from  
20 lessons learned in this incident?

21 CHAIRMAN GROBE: Before we get there do you  
22 have additional presentation you want to go through

1 and is that included in your presentation?

2 MR. ZARGES: Yes, I will.

3 MR. WEIL: I have got a line of questioning  
4 first. In yesterday's testimony from Mr. Pardi, I  
5 believe, he talked about a section of the quality  
6 assurance manual dealing with the group welding  
7 engineer's responsibilities. What were your  
8 expectations of the group welding engineer in terms  
9 of reviewing and approving welding procedures?

10 MR. ZARGES: He was expected to do exactly  
11 that, review and approve welding procedures.

12 MR. WEIL: Thank you. Unfortunately we don't  
13 have the document. Maybe Mr. Hickey does. But the  
14 quality assurance manual, I believe, says that the  
15 group welding engineer was only responsible for  
16 reviewing. And I believe the word approving was  
17 absent from that procedure.

18 MR. ZARGES: Well, the intent of the review  
19 was to assure that any project procedure was in  
20 compliance with the requirements of the company per  
21 the corporate welding procedures. If there was any  
22 inconsistency his clear understanding and my clear

1 understanding was that through that review he would  
2 resolve that inconsistency. If he had to come to  
3 Lou or to me or to anybody to make sure that it was  
4 resolved in a way that was consistent with our  
5 corporate standards, then that was clearly the  
6 expectation. I think that was his expectation as  
7 well as mine. I don't know what was in his mind.

8 MR. WEIL: By any chance did you have an  
9 opportunity to communicate that expectation to  
10 Mr. Artayet when he was hired or later?

11 MR. ZARGES: I may have when I first came in  
12 and we talked about job responsibilities back in  
13 '91 or '92, but I can't recall.

14 MR. WEIL: I understand it's a long time ago.

15 MR. ZARGES: But I saw nothing inconsistent  
16 with my expectation either from him or from them.

17 MR. STEIN: For my own clarification of your  
18 expectations were you aware before January 15th  
19 when the adverse action occurred of the memo dated  
20 August 1st, 1996, from Artayet to Rusty Gordon  
21 delegating his authority for the Pt. Beach --

22 MR. ZARGES: I certainly wasn't aware of it at

1 the time. I am aware of it now, but it wasn't --

2 MR. STEIN: Up to January 15th you were not  
3 aware of it?

4 MR. ZARGES: No.

5 MR. HICKEY: I could let you have the language  
6 if that's what you would like. It's Section 2.2 of  
7 QAI 11.2. I don't have the actual document but it's  
8 quoted here in the materials from the investigation.  
9 And it says, "The group welding engineer is  
10 responsible for the procedure qualification process  
11 which includes preparation and approval of corporate  
12 WPSs and supporting PQRs. The GWE is responsible  
13 for the review of all project-specific ASME and AWS  
14 welding procedure specifications."

15 MR. WEIL: I believe that is new information  
16 as opposed to yesterday. We don't have the  
17 transcript obviously.

18 MR. BERSON: Chuck, I think you're referring  
19 to the quality assurance manual. That's a quality  
20 assurance instruction.

21 MR. HICKEY: That's the one Mr. Pardi cited  
22 yesterday.

1 MS. CHIDAKEL: There was a discrepancy  
2 though. I remember reading in the Stier report or  
3 one of the transcripts there was a discrepancy. It  
4 wasn't clear. As I recall something about there  
5 was a discrepancy between that and the quality  
6 manual and which one applied. I mean it wasn't all  
7 real clear. Isn't that correct? It may have been  
8 specified.

9 MR. HICKEY: I think it was real clear to  
10 Mr. Artayet. That's what he said. And I think it  
11 was clear to Mr. Pardi which is what he said  
12 yesterday.

13 MS. CHIDAKEL: There was another document that  
14 conflicted with that, wasn't there?

15 MR. HICKEY: There is another document. And  
16 my recollection -- I don't have it in front of  
17 me. In my recollection it is less precise and less  
18 clear. But I think the issue that this all goes to  
19 is whether or not Mr. Artayet understood his  
20 responsibilities. And as to that Mr. Artayet  
21 testified that he did understand and that's what he  
22 understood they were.

1           MR. WEIL: Not to belabor this point because I  
2 may well have been wrong, but just for clarification  
3 you're reading from a quality assurance instruction,  
4 correct?

5           MR. HICKEY: Yes, 11.2.

6           MR. WEIL: I will direct this to Mr. Zarges or  
7 Mr. Pardi. Is the quality assurance instruction a  
8 sub document to the quality assurance manual?

9           MR. PARDI: Yes.

10          MR. WEIL: And is the quality assurance  
11 instruction site specific or corporate wide?

12          MR. PARDI: We have both corporate QAIs and  
13 site QAIs.

14          MR. WEIL: Mr. Hickey, are you reading from a  
15 corporate QAI or a site QAI?

16          MR. HICKEY: It's not identified other than by  
17 a number.

18          MS. COOPER: It's corporate.

19          MR. WEIL: Thank you.

20          MS. CHIDAKEL: Mr. Zarges, you said, I  
21 believe, that you had spoken to Mr. Walcott about  
22 your concerns about Mr. Artayet?

1 MR. ZARGES: No, I said that I believe that  
2 Mr. Walcott had spoken to Mr. Artayet.

3 MS. CHIDAKEL: But you didn't speak to  
4 Mr. Walcott?

5 MR. ZARGES: Not specifically about him.

6 MS. CHIDAKEL: About any of your concerns?

7 MR. ZARGES: No.

8 MS. CHIDAKEL: Had you heard anything from  
9 Mr. Walcott or did you have any impression from  
10 Mr. Walcott about whether Artayet was actually  
11 reviewing the procedures according to your  
12 expectations of the position? Was there any  
13 discussion about that ever or --

14 MR. ZARGES: No.

15 MS. CHIDAKEL: Nothing ever was said about  
16 that?

17 MR. ZARGES: No.

18 MS. CHIDAKEL: Mr. Walcott was one of your  
19 staff there at headquarters, though?

20 MR. ZARGES: Yes.

21 MS. CHIDAKEL: And you said the office was  
22 fairly small.

1 MR. ZARGES: Right.

2 MS. CHIDAKEL: So that you saw each other  
3 every day. Wouldn't it be rather obvious that you  
4 might have mentioned something to Mr. Walcott since  
5 the office was small about the fact there were  
6 these problems with Mr. Artayet who actually  
7 reported to Walcott particularly? You saw each  
8 other all the time and you discussed things on an  
9 informal basis.

10 MR. ZARGES: I presume whatever problems there  
11 were were problems that were being handled at his  
12 level and at Alain's level. I didn't push to get  
13 involved in those. So I did not; I did not mention  
14 that.

15 MR. STEIN: Do you ever get involved in  
16 personnel performance-type issues of this type for  
17 other employees?

18 MR. ZARGES: Occasionally.

19 MR. STEIN: Does this happen often?

20 MR. ZARGES: No, only fundamentally when  
21 they're brought to me or I see some situation that  
22 I believe I have to intervene in. It's not a

1 standard routine for me.

2 MS. CHIDAKEL: When did you become aware of  
3 the QFR filings, do you recall?

4 MR. ZARGES: It wasn't long after the 15th. I  
5 think I just got them in the mail, in the regular  
6 company mail. So it would probably be about two  
7 days after they were put into the record or sent.

8 MR. BERSON: And that didn't bother you at  
9 that point even though it was after the fact in  
10 terms of his removal that maybe we have got some  
11 protected activity here?

12 MR. ZARGES: No. No, it didn't.

13 MR. BERSON: How often -- In the timeframe  
14 the Summer of '96 through January of '97 how  
15 frequently would you speak to Alain on an informal  
16 basis?

17 MR. ZARGES: Oh, on a very informal basis I  
18 would probably see him once every three weeks or  
19 four weeks. Obviously we both had travel schedules.  
20 I am probably in the office a day a week and he's  
21 got a travel schedule too. So while we're both  
22 based there, we are not there every day.

1           MR. WEIL: You bring up travel schedules.  
2           That brings up a line of questioning. What other  
3           projects at that time was Mr. Artayet involved with,  
4           and what amount of his travel if you know was spent  
5           on those projects versus amount of time he would  
6           have spent overseeing nuclear programs?

7           MR. ZARGES: I know that now better than I did  
8           then because we have some record of what he was  
9           doing during the period of all this. I can give  
10          you first my general ground rules which I think  
11          everybody agreed to, which is that the nuclear  
12          programs take priority. And there was no question  
13          of that, that their requirements and their  
14          production needs were the fundamental responsibility  
15          of the group welding engineer and of our quality  
16          assurance department for that matter. He was  
17          involved in other projects on an as requested  
18          basis, essentially was a consultant that people  
19          availed themselves of if they had a problem or if  
20          they had a situation or troubleshooting. So his  
21          work in industrial work principally was sporadic  
22          and on request. He also from time to time would

1 assist Andy because Andy needed help doing certain  
2 things. Andy was -- Obviously it was a small  
3 department, so he operated as kind of an assistant  
4 every once in a while to Andy Walcott.

5 MR. WEIL: So from what you have learned more  
6 than likely since the period of time we're really  
7 reviewing, do you have a ballpark figure of how  
8 much time Mr. Artayet spent supporting or traveling  
9 in support of the industrial side of your operation?

10 MR. ZARGES: I would think that during this  
11 period he spent too much time doing that, which was  
12 probably, oh -- and I am going to surmise -- on the  
13 order of 40% perhaps.

14 MR. WEIL: I assume this travel had to be  
15 approved.

16 MR. ZARGES: By his supervisor, Mr. Walcott.

17 MR. WEIL: Okay. So Mr. Walcott was obviously  
18 aware -- Well, that's an unfair question, I guess.

19 MR. HICKEY: Just for your information his  
20 travel schedule and his participation in other  
21 projects is discussed in some detail. I will give  
22 you the page cites. It's 332 and following of the

1 Stier materials. It talks about his travel to  
2 represent other projects.

3 MR. WEIL: Yes. Yes, I recognize that. I  
4 just wanted to bring it out for the record here.

5 CHAIRMAN GROBE: Could you just briefly  
6 summarize the topics that you plan to cover in the  
7 remainder of the presentation?

8 MR. ZARGES: Absolutely. I have some very  
9 important subjects that I would like to cover.

10 CHAIRMAN GROBE: I am trying to decide when to  
11 take a break.

12 MR. ZARGES: I want to discuss the ALJ  
13 decision and the subsequent decision to hire Stier,  
14 Malone. I want to talk bluntly about the findings  
15 in the Stier report and where they led me and what  
16 my conclusions are based on those findings. I do  
17 want to talk about after action, corrective actions  
18 if you will and some of the things that we have  
19 nevertheless done as a response to this alleged  
20 violation and to the Stier report. And then  
21 finally I want to give you a conclusion. So it's  
22 probably the bulk of my presentation yet to go.

1           CHAIRMAN GROBE:  Would this be an appropriate  
2  time for a break?

3           MR. ZARGES:  It would.

4           CHAIRMAN GROBE:  Let's take a break until  
5  quarter to 11:00.

6                               (Following an interruption the  
7                               hearing was continued as follows:)

8           CHAIRMAN GROBE:  Why don't we get started.  
9  Before you get started a couple of questions came  
10 up just to clarify where we're at, and then we'll  
11 get back into your presentation.

12                              First on the procedure approval process.  
13 And I think, Lou, you want to talk a little bit  
14 about welding procedure approval, the corporate  
15 procedure review and approval process for welding  
16 procedures and standards.  Other than Mr. Artayet,  
17 is there another technically competent welding  
18 engineer that reviews those procedures?

19           MR. ZARGES:  He's the last stop on our review  
20 and approval.

21           CHAIRMAN GROBE:  So he prepares them and he's  
22 the only technical reviewer of those procedure?

1 What is the approval process?

2 MR. PARDI: There was no approval process for  
3 the corporate procedures. Now, the corporate  
4 procedures are not used in the field; site-specific  
5 procedures are developed and used. But the  
6 corporate welding procedures are used to determine  
7 the format and what our procedures look like.

8 CHAIRMAN GROBE: Do the corporate welding  
9 procedures provide for many welding applications,  
10 normal welding applications as well as bounding  
11 criteria for the site procedures?

12 MR. PARDI: I am sorry, Jack, what is that?

13 CHAIRMAN GROBE: There are two different kinds  
14 of welding that you would engage in. One would be  
15 more routine kind of welding activities and then  
16 there's much more specialized type welding  
17 activities that you would occasionally engage in.

18 MR. PARDI: Right.

19 CHAIRMAN GROBE: Do the corporate welding  
20 procedures provide bounding criteria for the site  
21 procedures as far as approved protocols for  
22 accomplishing welds of varying natures?

1           MR. PARDI: The corporate welding procedures  
2 provide guidelines. I mean they are actually  
3 welding procedures and they provide guidelines and  
4 a format by which the site-specific procedures  
5 should be put together. Now, sometimes if the  
6 corporate welding procedure -- the qualification  
7 evidence for the corporate welding procedure meets  
8 the qualification evidence of the procedure at the  
9 site, then the corporate welding procedure  
10 qualification evidence will be used. And in that  
11 case the amps and volts and the bounding things are  
12 used.

13           CHAIRMAN GROBE: Okay. And it's only when you  
14 get outside of already qualified corporate welding  
15 procedures that you would have to then go and  
16 qualify a specific job-related procedure.

17           MR. PARDI: Right. But even if we had the  
18 qualification parameters in a corporate procedure  
19 to support what we wanted to do, we would write a  
20 site-specific procedure.

21           CHAIRMAN GROBE: Right, I understand that.  
22 Now, again just so I am clear, in the corporate

1 welding procedure approval process did Mr. Artayet --  
2 is he the only signatory on those procedures?

3 MR. PARDI: I can't remember. I do know that  
4 Andy Walcott read and reviewed the corporate  
5 procedures, but I don't remember if he signed them  
6 or not. Do you, Mary Jane?

7 MS. COOPER: Yes.

8 MR. PARDI: Did he sign them?

9 CHAIRMAN GROBE: Anybody above Mr. Walcott?

10 MR. PARDI: No.

11 CHAIRMAN GROBE: Mr. Walcott's expertise is  
12 not in welding, is that correct?

13 MR. PARDI: That's correct. But he knows the  
14 ASME code and he knows what a welding procedure  
15 should contain, for example. But yes, he is not a  
16 welding expert. Keep in mind those procedures are  
17 not used in the field.

18 CHAIRMAN GROBE: I understand. One other  
19 question if you don't mind regarding the transfer  
20 of Mr. Artayet from Cleveland to West Virginia.  
21 Were there other options provided to Mr. Artayet  
22 other than the assignment to West Virginia?

1           MR. ZARGES: That was the first option, so it  
2 concluded there.

3           CHAIRMAN GROBE: Were you aware of other  
4 options that might be available to him?

5           MR. ZARGES: No, I wasn't involved in his  
6 reassignment.

7           CHAIRMAN GROBE: Were there other options that  
8 you were considering?

9           MR. EDLEMAN: What I had done was I had spoken  
10 with Jim Garrett, the vice-president of industrial  
11 process divisions, construction, and he talked to  
12 Alain Artayet and offered this job in Parkersburg.  
13 There was an agreement between the two of them that  
14 was the job -- that was the only one that I knew  
15 about at the time that was active. In the  
16 industrial division Jim Garrett would have been the  
17 person to speak to to know where all the jobs are.

18           CHAIRMAN GROBE: At the time Mr. Artayet was  
19 assigned to West Virginia, were you aware that that  
20 job would only remain in existence for a short  
21 period of time, approximately nine months?

22           MR. EDLEMAN: I knew it had a limited

1 duration.

2 MR. ZARGES: But that was our biggest and most  
3 substantial job at the time under construction. It  
4 was a large scale assignment for us.

5 CHAIRMAN GROBE: I understand.

6 MR. STEIN: Nine months after when that job  
7 terminated, was there an effort made to locate him  
8 another position?

9 MR. ZARGES: He told us he -- Maybe you can  
10 respond to this. But he told us that the only  
11 position he would accept is reassignment as GWE,  
12 period. We obviously did not think under these  
13 circumstances that that was in the best interests  
14 of running our business.

15 MR. PARDI: I wasn't involved in any  
16 employment action with Alain after my discussion  
17 with Drew. But I happen to know because the  
18 vice-president of industrial process told me that  
19 when Alain was finished at the Parkersburg, West  
20 Virginia job they told him that they wanted him to  
21 come to Cleveland and work on a proposal for two  
22 weeks to a month, which is very much our standard

1 practice, and then go on -- if we won that job go  
2 on to that job he's working on the proposal for.  
3 That's the way we move almost every one of our  
4 people. If you are available come to Cleveland and  
5 work on the proposal. And my understanding was  
6 that Alain turned that down. But again this was  
7 just -- I was not involved in that. The VP of  
8 construction of industrial process knew that Alain  
9 was a group welding engineer and --

10 MR. CALDWELL: Was there any expectation when  
11 you talked about the Parkersburg job that he would  
12 be coming back to the group welding engineer  
13 position or a position in corporate, that this was  
14 to go out to gain experience and come back?

15 MR. ZARGES: Not as the group welding engineer.

16 MR. CALDWELL: So he knew going to Parkersburg  
17 that he wasn't coming back?

18 MR. ZARGES: I don't know if he knew that. I  
19 knew that.

20 MR. STEIN: How did you fill the position  
21 afterwards? He was transferred in late January. I  
22 understand that you didn't start your St. Lucie

1 project for a while after that, and in the process  
2 you were looking for a new group welding engineer.  
3 Can you go through that?

4 MR. ZARGES: We did bring in a new hire and  
5 built a new position.

6 MR. STEIN: Was that your decision?

7 MR. ZARGES: Well, I and Lou, yes.

8 MR. CLAYTON: Speak to the qualifications of  
9 the new employee that filled the welding engineer.

10 MR. PARDI: His name is George Hlifka, and he  
11 is a qualified individual. I know that not just by  
12 reading his resume, but I have worked with him  
13 pretty closely over the last year or so. He was a  
14 welder, a skilled tradesman. And while he was  
15 going to school he got an associate's degree and  
16 then went on and got a bachelor's degree at Ohio  
17 State, and he worked in a number of welding shops  
18 in the Cleveland area. The thing that caught my  
19 attention and ultimately led me to bring -- to  
20 interview him and hire him was that he had a year  
21 or two years as a welding engineer in Babcox &  
22 Wilcox's nuclear fab shop in Barberton. I knew

1 they were working to nuclear standards and I knew  
2 Babcox & Wilcox knew how to do things. They had a  
3 fair amount of automatic welding equipment there.  
4 They were welding on heavy carbon steel and alloy  
5 steel. So that gave me confidence that here was a  
6 fellow who knew Section III of the code.

7 MR. CLAYTON: At that job was he just a welder  
8 or was he an engineer?

9 MR. PARDI: He was an engineer.

10 CHAIRMAN GROBE: Okay.

11 MR. WEIL: One line of questioning, please.  
12 Mr. Hlifka was his name?

13 MR. PARDI: Pat Hlifka.

14 MR. WEIL: He was the group welding engineer  
15 obviously from what you said when Mr. Artayet  
16 returned to Cleveland. Now, would you help me  
17 here.

18 CHAIRMAN GROBE: Is that correct? Was  
19 Mr. Hlifka already hired by August?

20 MR. PARDI: Yes.

21 MR. WEIL: The administrative law judge in his  
22 order directed MK to do what with Mr. Artayet?

1           MR. ZARGES: Reinstated him in his prior  
2 position.

3           MR. WEIL: And he was reinstated as a group  
4 welding engineer. So at that point you had two  
5 group welding engineers.

6           MR. ZARGES: It was quite awkward.

7           MR. WEIL: It was quite awkward. And also if  
8 I understand correctly there was only one position  
9 in your budget, that there was no --

10          MR. ZARGES: Well, that's true.

11          MR. WEIL: Okay. I also understand that  
12 Mr. Hlifka was assigned to the Stier folks as your  
13 technical representative. And did you feel that he  
14 was independent?

15          MR. ZARGES: I do. I can ask Mr. Stier to  
16 answer that maybe.

17          MR. STIER: Artayet specifically recommended  
18 him to us as somebody we should rely on. So he was  
19 satisfied with him, and we found no basis not to be  
20 satisfied with him during the course of our  
21 investigation. And all of the technical -- He  
22 only worked on the technical issues that we had to

1 deal with. All those technical issues were  
2 presented to Artayet and other witnesses in the  
3 course of the investigation for their reactions and  
4 comments and corrections. So I think that there  
5 was an internal checks and balances system that  
6 assured that whatever support he provided was  
7 scrutinized by people with conflicting interests.

8 MR. WEIL: But, in fact, only one person at  
9 some point in time, be it Mr. Artayet or Mr. Hlifka,  
10 would hold that position of group welding engineer.

11 MR. ZARGES: That's the normal circumstance,  
12 that's true.

13 MR. WEIL: So I assume then although there  
14 might be internal checks and balances, they could  
15 be viewed as competitors for the same position.

16 MR. ZARGES: Yes. We defined duties so that  
17 the duties obviously didn't overlap. But if we  
18 could talk about what their activities were during  
19 the period when they were both there? Obviously  
20 when the administrative law judge rendered his  
21 decision we complied and we brought Alain in to  
22 occupy a position in the welding department. But

1 fundamentally we assigned him, I think, first to a  
2 proposal. And secondarily he spent most of his  
3 time, I think, working on the Stier report. We  
4 asked both he and George in their activities in  
5 investigating this to be thoroughly impartial,  
6 objective, that we were seeking the truth and that  
7 we were looking for it wherever it lay. I think  
8 Alain spent a considerable amount of time research-  
9 ing, interacting with Stier, reviewing transcripts,  
10 and George spent a fair amount of time just  
11 providing technical overview on certain aspects  
12 that were uncovered during that investigation that  
13 really required somebody with a technical background  
14 to adjudicate or explain. So they spent a fair  
15 amount of their time, quite frankly, working on  
16 this final report that we commissioned Stier to do  
17 in an objective -- with objective instructions.

18 MR. WEIL: Thank you.

19 CHAIRMAN GROBE: Proceed with your  
20 presentation.

21 MR. ZARGES: Surely. Back to the same slide.  
22 As you said it's been up for a while. We're to the

1 point where we had discussed the Department of  
2 Labor investigation and the fact that it seemed to  
3 provide initial comfort to our and my point of  
4 view. But then, of course, came the administrative  
5 law judge's decision from the Department of Labor  
6 which was certainly completely unanticipated and to  
7 me I must say startling both in its conclusion and  
8 its logic. I prepared to comply and did comply  
9 with that ALJ decision, but now I and the rest of  
10 the organization but I particularly was completely  
11 activated to get a thorough and a no-holds-barred  
12 account. If the ALJ nevertheless and notwith-  
13 standing our prior views had some wisdom, had some  
14 intuition, had some unshakable facts that formed  
15 the basis of his judgment, I was certainly  
16 determined to discover it and to use it to drive  
17 correction into our program at once. I independently  
18 commissioned Stier, Malone to thoroughly investigate  
19 this matter for us. Neither Mr. Pardi nor  
20 Mr. Edleman were involved in my briefing and my  
21 commissioning of Stier.

22 The ground rules for their commission was

1 clear. First that this was to be an objective and  
2 detailed investigation strictly on the merits. The  
3 assignment was a let-the-chips-fall-where-they-may  
4 investigation. There was to be no favoritism, only  
5 critical thinking. They were told to follow the  
6 trail wherever it leads. This was an assignment to  
7 objectively investigate and reach honest substanti-  
8 ated conclusions. It was not an assignment to  
9 defend the company. There is no claim of privilege  
10 in this commission. And we told Stier that there  
11 would be no turning off or influencing this  
12 investigation by me or by anyone at MK regardless  
13 of its course. We also agreed up front that the  
14 NRC would be a party to all of the information  
15 developed. And I enlisted Mr. Artayet to participate  
16 completely telling him as I told Stier that this  
17 was to be an honest, open, objective pursuit of all  
18 allegations and that my sole interest was in shaking  
19 out all the facts and the roles of all of the  
20 participants. Mr. Artayet agreed to participate.

21 As you know from your reading and the  
22 prior presentation of the Stier report, the

1 investigation is complete in its pursuit of facts,  
2 technical issues, procedural conduct and the  
3 behavior of all concerned. I have been fully and  
4 completely prepared to evaluate their findings  
5 wherever they lay and to ensure prompt and correct  
6 follow-up to their report.

7           When Stier, Malone's investigation was  
8 completed Ed Stier and Mary Jane Cooper reported  
9 their findings directly to me. Neither Pardi,  
10 Edleman nor Walcott was present until after I was  
11 satisfied that the unbiased conclusion of the  
12 investigation cleared our operating management of  
13 personal wrongdoing. I understand Stier has  
14 likewise met with most of you and candidly shared  
15 his investigation and answered your questions  
16 without anyone present from MK. This investigation  
17 yielded detailed --

18           MR. WEIL: Excuse me for a minute. I believe  
19 Mr. Hlifka was at that presentation, so MK was  
20 represented.

21           MR. ZARGES: To the NRC?

22           MR. WEIL: Correct.

1           MR. ZARGES: This investigation yielded  
2 detailed and compelling evidence that MK did not  
3 commit a 50.7 violation. It, in fact, verified  
4 conclusively that our personnel acted appropriately  
5 in reassigning Mr. Artayet in view of his job  
6 performance, his technical shortcomings which came  
7 into focus as his nuclear work on Pt. Beach  
8 progressed. So we are now left to reconcile the  
9 ALJ decision with the Stier report and its  
10 conclusions. We and I are drawn to the view that  
11 the ALJ decision is in fact flawed. This was a  
12 very summary hearing, especially so when compared  
13 to the magnitude and the scope of the more detailed  
14 Stier investigation.

15           MR. STEIN: Why was that? You had the  
16 opportunity to put on as many witnesses as you  
17 needed to prove your case. Why wasn't your case --

18           MR. ZARGES: We will get to some of the points  
19 in a moment of why we believe the case was not  
20 adequately heard by the ALJ. Obviously the format  
21 and the subject matter of the case is difficult.  
22 The question and answer format made logical

1 presentation awkward and disjointed, and the  
2 evidence of Mr. Artayet's questionable or incorrect  
3 technical calls are not apparent. And facts and  
4 insights which are more completely developed in the  
5 Stier report were not available to the ALJ.

6 The inescapable conclusion from the Stier  
7 investigation is that Mr. Artayet during his  
8 employment attempted to conceal the deficiencies in  
9 his job performance. He misled his supervisor,  
10 Mr. Walcott, about his knowledge of welding  
11 requirements and the nature of his disagreements  
12 with our project team encouraging Mr. Walcott to  
13 unwittingly defend his poor performance. Then  
14 after he was removed from his group welding  
15 position on January 2nd, 1997, he offered false  
16 evidence at the DOL hearing both through his own  
17 testimony and through Mr. Walcott leading the ALJ  
18 to find in his favor.

19 CHAIRMAN GROBE: I am sorry, how did he --  
20 Could you repeat that statement you just made?

21 MR. ZARGES: He offered false evidence at the  
22 DOL hearing in his own testimony.

1           CHAIRMAN GROBE:  And through Mr. Walcott?

2           MR. ZARGES:  Through his assertions to  
3  Mr. Walcott.

4           MS. CHIDAKEL:  And that evidence was --

5           MR. ZARGES:  Well, there's a long body of  
6  elements, but I will point out three of them that I  
7  think are most compelling.  First of all  
8  Mr. Artayet asserted that he had a 2 1/2-hour  
9  meeting with Mr. Pardi in which he disclosed  
10  deficiencies in welding performance prior to filing  
11  the QFR.  Stier documented that never happened, and  
12  it was our assertion that it never happened.

13                   Secondly, he asserted that he had always  
14  understood and represented correctly the require-  
15  ments of drop weight testing.  That was clearly  
16  controverted in the detailed analysis and evaluation  
17  of the Stier report.

18                   And finally, he claimed he was not  
19  responsible for any deficiencies in the WPSs.  And  
20  it is clear that he recognized that responsibility  
21  as did others commonly in the Stier report.

22           MR. STEIN:  Are you alleging he perjured

1 himself?

2 MR. ZARGES: Well, I am certainly alleging  
3 that he misled in his testimony through misleading  
4 statements those conclusions. And I will leave it  
5 at that.

6 MR. STEIN: The Department of Labor has a  
7 process where if you believe, you know, through the  
8 testimony that the other side is misleading or  
9 worse, willfully perjuring themselves --

10 MR. ZARGES: We'd like to put that incident  
11 behind us. We are not interested in carrying it on  
12 or continuing it.

13 MR. STEIN: When did you come to that  
14 conclusion that these statements made at the  
15 Department of Labor were --

16 MR. ZARGES: We believed it was true at the  
17 time they were made. But the conclusive and  
18 corroborative evidence was developed, I think,  
19 decisively in the Stier report. For example, his  
20 assertion that he had a 2 1/2-hour meeting with  
21 Mr. Pardi was made at the hearing for the first  
22 time. And the dates changed. The first date he

1 gave conclusively by travel records Mr. Pardi was  
2 not even in town. So he changed the date again to  
3 a second date. Mr. Pardi wasn't in town on that  
4 date either. Mr. Pardi certainly doesn't recall --  
5 has no memory and denies that that meeting ever  
6 took place. That's an important event prior to the  
7 QFR. Obviously if he brought these deficiencies to  
8 his attention they would have been reacted to. His  
9 allegation that he did and they weren't are false.

10 CHAIRMAN GROBE: We appreciate your point of  
11 view in bringing these issues to our attention.  
12 But I will just point out that there was important  
13 information that was shared yesterday with different  
14 dates and different information than had appeared  
15 in prior testimony.

16 MR. ZARGES: I am not aware of that.

17 CHAIRMAN GROBE: Let's move on. If there is  
18 any other specific information that you believe is  
19 in the records inaccurate or false, please bring it  
20 up.

21 MS. CHIDAKEL: You said you believe these  
22 things were true at the DOL hearing and it was

1 confirmed by the Stier report that these things  
2 were not true; for example, the 2 1/2-hour meeting  
3 with Mr. Pardi. Mr. Pardi was a witness at the DOL  
4 hearing. As I recall he testified at that time  
5 that there had not been a meeting. I mean I have  
6 read a lot of these transcripts many times, and I  
7 seem to remember that he testified to that. So  
8 there's one thing that you were aware of at the  
9 DOL.

10 MR. ZARGES: Sure.

11 MS. CHIDAKEL: I mean that there was a conflict  
12 there. So that's at least one issue that was not --  
13 you know, that you were aware of. Given that, I  
14 mean -- And you may or may not have known at the  
15 time regarding the other evidence. But in any  
16 event, why did you settle with Mr. Artayet when you  
17 thought that he had flatly lied at the DOL hearing?  
18 Why didn't you pursue the appeal? Or was it  
19 Mr. Artayet that -- I believe Mr. Artayet withdrew  
20 his complaint as I think about it, but that was  
21 because of the settlement. What prompted you to  
22 settle with Mr. Artayet instead of pursuing this

1 vigorously?

2 MR. ZARGES: We did not at the time believe  
3 that we wanted to engage in a long-term fight over  
4 this issue, that we would be just as well dismissing  
5 it and getting on with the rest of our business.  
6 We are not vituperative. We recognize that people  
7 do things that are unfortunate. It's not our intent  
8 to pursue them and hound him after the settlement.  
9 We'd just as soon have the settlement and go on  
10 rather than unearth all this again if it's  
11 unnecessary. It's always obviously kind of an  
12 internal struggle about whether you follow the path  
13 of ultimate righteousness however difficult and  
14 whatever cost and whatever rubble you may need or  
15 whether you just simply get on with life. And I  
16 will tell you quite frankly I decided to just  
17 simply get on with life.

18 MR. HICKEY: Where was Mr. Artayet working at  
19 the time you settled this?

20 MR. ZARGES: I think he was in the office; he  
21 was in the Cleveland office. It was also fairly  
22 apparent that this was not a workable situation.

1 Because of all the things that we had discussed  
2 about his competence reinstating him in the same  
3 position was totally inconsistent with our view of  
4 the matters and view of his work performance and  
5 our view of safety on jobs.

6 CHAIRMAN GROBE: Let's move on.

7 MR. ZARGES: It is our contention that after  
8 he was removed from the group welding position on  
9 January 2nd he offered false evidence at the DOL  
10 hearing both through his own testimony and through  
11 Mr. Walcott. We believe he continued to misrepre-  
12 sent the facts during the Stier investigation. And  
13 we are, therefore, also concerned that he may have  
14 attempted to mislead NRC's investigators. But  
15 finally we believe the true facts have been  
16 unearthed, and they are fully documented in the  
17 Stier materials.

18 MR. WEIL: I kind of think we ought to stop  
19 here. There would be obviously criminal considera-  
20 tions by the government if he misled the NRC during  
21 their investigation. Could you elaborate on those  
22 issues?

1           MR. ZARGES: We can point out the inconsis-  
2           tencies obviously between what we think is  
3           conclusive evidence during our investigation.

4           MR. WEIL: Why don't you cover that after you  
5           finish your presentation please.

6           MR. ZARGES: Yes, indeed.

7                     In support of this I would like to draw  
8           you to four critical points that are substantiated  
9           in the Stier report.

10                    First, the Stier report confirmed what  
11           was a common understanding, that Mr. Artayet was  
12           absolutely responsible for the adequacy of our  
13           welding procedures and their conformance to codes.  
14           Mr. Artayet was not up to the technical requirements  
15           of the job. This was his first real experience in  
16           the rigors of a nuclear project, and it simply  
17           disclosed that he was in over his head.

18                    One of the flash points in the hearing  
19           and the ALJ's determination was the fax concerning  
20           drop weight testing which was strong and decisive  
21           evidence of Mr. Artayet's technical inadequacy.  
22           When we could not locate it prior to the hearing

1 and Mr. Artayet then claimed there was no such fax,  
2 our inability to produce it led the judge to  
3 question our credibility and to conclude MK's  
4 reassignment of Mr. Artayet was pretextual.  
5 Stier's report uncovered conclusive corroborative  
6 evidence of this technical inadequacy even in the  
7 absence of the fax. But in addition the fax was  
8 found after the ALJ decision, and it substantiates  
9 MK's voracity and conduct. Lou Pardi, in fact,  
10 determined on January 2nd to remove Mr. Artayet  
11 from nuclear power work, and this decision was  
12 clearly based on performance. Mr. Artayet was  
13 immediately aware of this decision. The decision  
14 to remove Alain from power work was, therefore,  
15 made two weeks before the QFR.

16 MR. BERSON: Excuse me. Did you know of that  
17 decision to remove him on January 2nd?

18 MR. ZARGES: Yes.

19 CHAIRMAN GROBE: How did you become aware of  
20 it?

21 MR. ZARGES: Just through hallway conversa-  
22 tions that people believed that he was not correct

1 or proper to be working in power.

2 CHAIRMAN GROBE: How was that decision carried  
3 out?

4 MR. ZARGES: It was carried out -- Well, let  
5 me say it was not a formal decision. It was  
6 conversation that Mr. Pardi had with Mr. Edleman  
7 where he informed Drew that because of the problems  
8 and the technical issues and the technical  
9 competence in question that he suggested that  
10 Mr. Artayet no longer support the power division.  
11 Mr. Edleman thereafter talked with, I guess, both  
12 Walcott and Artayet and informed them that the way  
13 this was going was that in the future it would  
14 likely be that Artayet would no longer support  
15 power division work.

16 CHAIRMAN GROBE: I am confused. This was a  
17 decision made on the 2nd?

18 MR. ZARGES: That was a discussion. And  
19 Artayet was informed of the discussion.

20 CHAIRMAN GROBE: That it may likely be  
21 sometime in the future that he would not be working  
22 on power activities -- power division activities?

1 MR. ZARGES: I believe that's the case, but  
2 Lou and Drew can talk to that clearly.

3 MR. BERSON: Hold it. I need to have it  
4 clarified, but I would like to ask a little more  
5 about this. Did Mr. Pardi tell you prior to  
6 January 15th that he had removed him?

7 MR. ZARGES: No, he told me that he had  
8 questions about him continuing to perform in power.

9 MR. BERSON: Had Mr. Edleman -- I am sorry, I  
10 will let you finish.

11 MR. ZARGES: No, and that was the extent to  
12 which I was personally aware of it. But my  
13 assumption is that Messrs. Pardi and Edleman's  
14 conversation was more involved and perhaps more  
15 rigorous.

16 CHAIRMAN GROBE: Bruce, do you have any  
17 further questions for Mr. Zarges?

18 MR. BERSON: I take it Mr. Edleman also did  
19 not inform you prior to January 15th that  
20 Mr. Artayet had been removed or may have been  
21 removed from power work?

22 MR. ZARGES: What was the date? I am sorry.

1 MR. BERSON: Prior to January 15th. Prior to  
2 his meeting with him.

3 MR. ZARGES: No.

4 MR. BERSON: If an actual decision had been  
5 made to remove Alain from power work on January  
6 2nd, would you have expected to have been informed  
7 of that by either Mr. Pardi or Mr. Edleman or  
8 Mr. Walcott?

9 MR. ZARGES: I would have been informed  
10 immediately if there was disagreement with it. If  
11 there was agreement with it I would expect that I  
12 would have been informed but probably later.

13 MS. CHIDAKEL: What do you mean agreement?  
14 Agreement by whom?

15 MR. ZARGES: Well, agreement or acquiescence --  
16 maybe agreement is the wrong word -- with the  
17 discussion to remove Mr. Artayet. If Mr. Edleman  
18 and Mr. Walcott acquiesced to that and believed  
19 that there was credibility in that decision and it  
20 may be the right thing to do, I am sure that they  
21 would have either discussed how to implement it  
22 because they in essence had no objection to it or

1 discussed what to do about it. But if there was an  
2 immediate and violent objection, I am sure they  
3 would have been up in my office immediately.

4 MS. CHIDAKEL: I still don't understand  
5 objection. Who's objecting to what?

6 MR. ZARGES: Nobody objected to it.

7 MR. BERSON: The question is perhaps -- I  
8 will leave it as a perhaps. Perhaps a decision was  
9 made on January 2nd to remove Alain from power work.  
10 If such a decision had been made that as of January  
11 2nd Alain was no longer going to be doing power work  
12 would you have expected Mr. Pardi or Mr. Edleman or  
13 Mr. Walcott to have informed you of that decision  
14 in that you would now no longer have a GWE doing  
15 work for the power division?

16 MR. ZARGES: Eventually, yes.

17 MR. BERSON: And how much time would have been  
18 reasonable?

19 MR. ZARGES: Oh, it's hard to tell given  
20 travel schedules, but I would say a week or so.

21 MR. BERSON: Would it be a big deal in your  
22 mind to have removed the GWE from power work?

1           MR. ZARGES: It would if there was an active  
2 job in progress. And, you know, it was clearly an  
3 essential and immediate service and position that  
4 needed to be filled. It would obviously be less  
5 critical if there was no job, which was the case in  
6 this decision -- when this decision and discussion  
7 took place.

8           MR. BERSON: Thank you.

9           CHAIRMAN GROBE: What was the approximate  
10 value of the contract with Pt. Beach to Morrison  
11 Knudsen?

12          MR. ZARGES: I think it was about a \$50  
13 million contract in total split 50/50. So it was  
14 half of that value. It was 25 to \$30 million to  
15 Morrison Knudsen.

16          CHAIRMAN GROBE: Was there any further  
17 clarification that you needed to add to this  
18 conversation?

19          MR. BERSON: I cut Mr. Edleman off. I am  
20 sorry.

21          MR. EDLEMAN: No, I think the clarification  
22 was that I did not speak directly with Tom.

1           MR. ZARGES: Directly after the January 2nd  
2 meeting because I thought that it was still the  
3 issue of what I was going to do with Alain that  
4 hadn't been resolved. It wasn't the point of  
5 making a decision on what to do with the GWE  
6 position for me to talk to Tom about that.

7           CHAIRMAN GROBE: Was it clear to Mr. Walcott  
8 on January 2nd that Mr. Artayet should no longer be  
9 involved in power division activities?

10          MR. EDLEMAN: Absolutely. I talked to him and  
11 Alain both after my meeting with Lou, shortly after  
12 that, and told them both Alain Artayet was to stay  
13 away from power work.

14          CHAIRMAN GROBE: And is it normal that  
15 Mr. Walcott carries out your direction?

16          MR. EDLEMAN: I would have expected him to.

17          CHAIRMAN GROBE: Is there some reason that he  
18 did not in this case?

19          MR. EDLEMAN: I don't know why.

20          CHAIRMAN GROBE: You appreciate the situation  
21 we find ourselves in where clearly some direction  
22 and meeting that you say occurred, which there is

1 no documentation of, was clearly not carried out by  
2 your staff, and the clear indication is that he was  
3 not removed from power work.

4 MS. CHIDAKEL: And Mr. Zarges was unaware  
5 apparently. Apparently from what we're hearing  
6 right now Mr. Zarges was also unaware at that point  
7 that Alain had been removed from power. That's  
8 what I am hearing. That's what we have heard from  
9 Mr. Zarges.

10 CHAIRMAN GROBE: Do you have any further  
11 clarification of this?

12 MR. EDLEMAN: Well, I believe -- Now, I  
13 probably can't answer this because I don't know all  
14 the details of the evidence. My understanding of  
15 looking at the other evidence is that verifies the  
16 fact. One, for example, was the tape that Alain  
17 made of me on the 15th was very clear that he knew  
18 he was removed from power work prior to the 15th.

19 CHAIRMAN GROBE: It's clear that he was  
20 removed or that there was a significant issue?

21 MR. EDLEMAN: No, it was very clear on the  
22 tape that Alain knew he was off of power work prior

1 to January 15th when I told him he was no longer  
2 GWE for both power and process or the industrial  
3 area.

4 CHAIRMAN GROBE: What portion of MK's annual  
5 income did the Pt. Beach project represent during  
6 1996?

7 MR. ZARGES: It was a fraction. The whole  
8 contract value at 50 to \$60 million would have  
9 been -- At that point we probably did \$670 million  
10 in revenue.

11 CHAIRMAN GROBE: So a little bit less than  
12 10%?

13 MR. ZARGES: Yes.

14 CHAIRMAN GROBE: The other dichotomy that  
15 we're faced with is a project in the amount of \$50  
16 million which is clearly contingent -- the success  
17 of the project is contingent upon quality welding.  
18 And you have shared with us over and over again  
19 that you lacked the confidence in a single  
20 individual that was there to provide assurance of  
21 quality welding and no action was taken until the  
22 project was terminated. Is there any more that you

1 can add to this in that you did not have confidence  
2 in the single point of contact that would provide  
3 assurance of success in this project from a welding  
4 perspective and that lack of confidence existed for  
5 a period time and no action was taken?

6 MR. PARDI: Are you asking me?

7 CHAIRMAN GROBE: Yes.

8 MR. PARDI: You know, if you sit here today  
9 and you look back at all of the performance  
10 indicators that we had and further you add to that  
11 the Stier report that concluded that they were not  
12 just indicators, they were, in fact, breakdowns in  
13 Alain's performance, it's easy to come to the  
14 conclusion and ask the question that you are. How  
15 did you have this incompetent person be the heart  
16 of your welding program and not take any action on  
17 it? But having lived through each one of those  
18 performance indicators -- And what I tried to make  
19 clear to you yesterday was that it wasn't any  
20 single action that got me to the point on January  
21 2nd where I lost confidence in him. It was a  
22 build-up of a single action one at a time some of

1     which were questionable in my mind whether or not  
2     he was right or the set was wrong. So it was an  
3     accumulation of things that finally with the  
4     Hartford Steam -- the Hartford audit that caused me  
5     to lose my confidence in him. It's easy to sit  
6     here today and look back and say oh, my God, there  
7     were these things. But they developed piece by  
8     piece by piece.

9             MR. HICKEY: You might also mention the  
10     testimony you gave yesterday about remedial actions  
11     at the site.

12            MR. PARDI: Yes, that was important. And I  
13     mentioned this yesterday too that a lot of the  
14     problems that he created were mitigated especially  
15     in my mind because of at exactly the same time I  
16     found out the problem I found out the site had made  
17     a solution. This was particularly relative to the  
18     readiness to remove thing. When I went to the site  
19     and found of their thorough in-depth investigation  
20     of our welding procedures, there were no welding  
21     procedures. But immediately Max and Marty said we  
22     know this problem, come into my office, we have got

1 a recovery plan and we're going to have our  
2 procedures ready, and they gave me the specific  
3 dates. So that, you know, really lessened the  
4 impact in my mind of that particular problem. The  
5 same thing with the drop weight testing.

6 CHAIRMAN GROBE: This was in August just to  
7 make sure I'm clear? This was in August?

8 MR. PARDI: Yes, the first week of August was  
9 the readiness report. At this same telephone  
10 conversation where Marty sent me the fax and called  
11 me he told me that, you know, our group welding  
12 engineer does not realize that drop weight tests  
13 have to be performed; but don't worry, we're having  
14 them performed. And that's a heck of a lot less  
15 impact to me than the phone call that says our  
16 group welding engineer didn't tell the lab to do  
17 drop weight testing and now we have got the girth  
18 welds made and the welds are not qualified. So  
19 it's kind of -- This thing took place in real  
20 time, and that's the way I developed my decision,  
21 in real time.

22 CHAIRMAN GROBE: The catalyst for your decision

1 on January 2nd was the ANI report?

2 MR. PARDI: Yes.

3 CHAIRMAN GROBE: And the one specific technical  
4 issue that was raised by the ANI report, not  
5 administrative but an issue that has potential  
6 financial ramifications for a company relating to  
7 the quality of the work is an issue that had  
8 already been raised months earlier and resolved on  
9 site.

10 MR. PARDI: I did not know that at that time,  
11 Jack, or certainly to the best of my memory sitting  
12 here today I do not remember that. But again I  
13 know there are issues and issues. And the hardware  
14 issues strike at the heart of all this, but  
15 administrative and programmatic issues are very  
16 important as well. So the fact there was only one  
17 hardware issue is not all that important. I worry  
18 whenever we have got procedures that do not meet  
19 the code or our QA program in any way, shape or  
20 form. So the three issues -- I can tell you the  
21 hardware one is the one I took most seriously, but  
22 the fact that there were three issues is what

1 really got my attention.

2 MR. ZARGES: Our point in this obviously was  
3 that the decision to remove Alain from power work  
4 was made two weeks before the QFR. And that  
5 discussion and decision on January 2nd  
6 fundamentally made the January 15th follow-up  
7 inevitable.

8 The Stier report also came to the  
9 conclusion that chilling was nowhere in evidence.  
10 The report did investigate and do a 360 degree  
11 evaluation of people there and other staff involved  
12 but found no basis of it. In fact, the work at Pt.  
13 Beach was completed prior to the Department of  
14 Labor notice in February of '97. And our other  
15 finding was that our small and long-term nuclear  
16 staff in our home office maintains that direct and  
17 effective access and interaction with management.  
18 But the findings of the Stier report did, however,  
19 corroborate the need for organizational changes to  
20 improve and to correct our operating deficiencies.  
21 And here we will get into some of the after action,  
22 and these specifically concerned the fundamentals

1 of our structure and organization.

2 Our group welding engineer -- And as we  
3 have said the key critical work here is power  
4 related. Now, as part of the power division it  
5 reports directly to Mr. Pardi. Our previous  
6 structure reporting to our QA supervisor did not  
7 bring leadership or technical understanding of the  
8 code requirements or operating procedures.  
9 Mr. Pardi obviously has strong credentials.

10 MR. STEIN: How does the group welding  
11 engineer do work for the other division, your  
12 industrial division?

13 MR. ZARGES: Simply charges cross division.

14 MR. STEIN: Split the <sup>FTE</sup>~~FTE~~?

15 MR. ZARGES: There's adequate allowance for  
16 him to charge out his service if you will to our  
17 requesting organizations.

18 MR. STEIN: Your industrial process division  
19 has to make the request to Lou to borrow his --

20 MR. ZARGES: It's not that formal. They just  
21 grab him and he makes an allocation of time if  
22 there is a conflict in priority.

1                   Similarly our group QA director now  
2 reports to me for organizational advisability and  
3 support and to ensure operating independence,  
4 integrity and enforceability. Mr. Pardi who is  
5 responsible for all aspects of our operating  
6 performance and reputation in our industry will  
7 work with him on a daily basis.

8                   CHAIRMAN GROBE: Before you take that slide  
9 off, it says daily work activities directed by Lou  
10 Pardi. Help me understand what that means.

11                  MR. ZARGES: Well, I think the normal routine  
12 of the job -- Let me explain our quality and how  
13 it works on projects. We do have a project quality  
14 site organization which is set up on every job. That  
15 organization reports two ways. That reports in  
16 through the project director directly to Mr. Pardi,  
17 and on a matrix basis it reports in to our director  
18 of QA. So there is a matrix of direction and  
19 responsibility for site QA activities. I think on  
20 a working basis the fundamental routine work  
21 relationship -- that is, project routine -- is an  
22 object of interaction between Lou and between the QA

1 director. But in matters of any conflict,  
2 enforceability, of adjudicating technical or  
3 procedural conflict, that comes directly to me.  
4 And that direct reporting line to me obviously  
5 gives me the ability and the QA manager to write  
6 and to get any difference in opinion immediately  
7 recognized and arbitrated.

8 CHAIRMAN GROBE: Is there any technical  
9 competence in the QA organization in welding and  
10 metallurgy?

11 MR. ZARGES: We have replaced our QA director,  
12 Mr. Walcott, and we now have the QA director in  
13 fact who is responsible for QA at Pt. Beach. He's  
14 got I think -- Lou, can you speak to this?

15 MR. PARDI: Well, Mike started out in the QA  
16 business if I remember correctly as a ND inspector.  
17 So he's familiar with welding and nondestructive  
18 testing. He is not a welding engineer, but he's  
19 very savvy about the welding processes and how  
20 they're applied in the nuclear business.

21 MS. CHIDAKEL: Why was Walcott replaced?

22 MR. ZARGES: He was given a field assignment

1 at his request, a managing job, which again is part  
2 of our routine career path of people who want to  
3 progress in our company.

4 MR. PARDI: Andy had an opportunity when he  
5 came to us to get from a staff QA function into a  
6 line organization and an international assignment.  
7 And he had wanted to do both; he wanted an  
8 international assignment and he wanted to bridge  
9 the gap from a staff type of function to a line  
10 function. And Tom and I discussed that with him.  
11 We told Andy that he had to stay in that position  
12 for three months or so until we finished St. Lucie,  
13 and then at his request we let him take that other  
14 job.

15 CHAIRMAN GROBE: How is the performance  
16 assessment of the adequacy of the quality  
17 organization established?

18 MR. ZARGES: It's still the QA director is  
19 assessed by me, and I generally will pulse -- In  
20 fact, I will and do pulse our operating division  
21 executives on the sufficiency and quality of  
22 service that they get out of our QA department.

1 Now, this line-up is obviously different than the  
2 line-up that we had when we were going through the  
3 Artayet issue. I think it's clear we have got some  
4 well-qualified people reporting, I think, in a  
5 concise way, and I think it will be the right  
6 approach for us in the future as outlined.

7 CHAIRMAN GROBE: What is the total quality  
8 organization now in the corporate office?

9 MR. ZARGES: It's three people.

10 MR. PARDI: Jack, there is another important  
11 element that I think is coming up in our slide  
12 about how we assess the performance of our quality  
13 group. I don't know if you want to talk to that in  
14 your next slide, Tom, but the Hartford management --  
15 In the Hartford audit one of the things that they  
16 did was to assess the viability of our QA group.  
17 This year we wanted to have a more in-depth audit,  
18 and Tom hired Duke Engineering Systems to come in.  
19 They have been in twice and they have done a  
20 thorough, thorough audit both times. And that's  
21 how we assess the effectiveness of our quality  
22 program.

1           MR. STEIN: I am curious to know how about  
2 Mr. Hlifka -- I guess he is now still your GWE --  
3 how his performance is evaluated. He reports to  
4 Mr. Pardi, so you prepare his performance appraisal  
5 getting input from the other divisions where he's  
6 working?

7           MR. PARDI: Right. And from my projects where  
8 he spends the bulk of his time.

9           MR. STEIN: That was a breakdown in communica-  
10 tion for Mr. Artayet's performance.

11          MR. PARDI: Yes, it was.

12          MR. ZARGES: Our evaluations were much more  
13 linear.

14          MR. PARDI: I am in the process of doing  
15 George's performance evaluation right now. It's  
16 that time of year.

17          MR. STEIN: Do you have some kind of  
18 management director that goes out to your managers?  
19 How do they do performance appraisals and how do  
20 they get the input currently?

21          MR. ZARGES: We have an input sheet and we  
22 have general instructions, but they're not detailed

1 to that extent.

2 MR. STEIN: But it's the same instructions as  
3 existed back in '96?

4 MR. ZARGES: Fundamentally people who work in  
5 multiple division environments and provide support  
6 to a wide range of projects, their supervisor will  
7 survey whether their services were sufficient or  
8 not on the jobs. Anybody who's project assigned  
9 even though it may be in a support department gets  
10 evaluated by the project director in addition to  
11 his direct supervisor.

12 MR. STEIN: Why do you think that failed to be  
13 the case with Mr. Artayet?

14 MR. ZARGES: I think Mr. Walcott did not -- he  
15 probably defended him rather than sought external  
16 opinion of his performance. So I think it was a  
17 procedural and perhaps an individual breakdown in  
18 the way subordinates are appraised when they  
19 provide service to multiple parties outside the  
20 line organization.

21 MR. WEIL: Going back to the new structure  
22 with the quality assurance manager, you may be

1 covering this later in your corrective actions, I  
2 don't know, but it seems like the right time to ask  
3 the question. You said something to the effect  
4 that the position reported to you and that -- maybe  
5 I am mischaracterizing -- that the quality assurance  
6 manager could come to you with -- I forget the  
7 exact wording -- but come to you if there were  
8 significant questions or differences of opinion.  
9 The question I have with that framework laid is in  
10 your nuclear work does the quality assurance  
11 manager independently have the authority to order  
12 stop work?

13 MR. ZARGES: Yes.

14 MR. WEIL: And is that proceduralized?

15 MR. ZARGES: I believe so.

16 MR. WEIL: Okay. Thank you.

17 CHAIRMAN GROBE: These questions obviously  
18 have less to do with the investigation and more to  
19 do with antenna that you raised on this side of the  
20 table regarding the independence of your oversight  
21 as required by Appendix B.

22 MR. ZARGES: Yes, I understand.

1 CHAIRMAN GROBE: Let's go on with your  
2 presentation.

3 MR. ZARGES: We do now have a strong basis to  
4 conclude that our program to encourage a safety  
5 conscious work environment is operating and  
6 operating effectively. First I would point out the  
7 thoroughness of the systems and the procedures that  
8 we now have in place, the fact that these practices  
9 interlock and there's a compliance which we have  
10 verified and will talk about in a moment with  
11 internal and external audit. We do have a proven,  
12 effective implementation of these practices at Pt.  
13 Beach, St. Lucie and Waltz Mill, the three  
14 subsequent nuclear projects from Fort St. Vrain.  
15 We have conducted internal reviews recently at  
16 Baltimore Gas and Electric, and we have confirmed  
17 that the system is in place, installed and  
18 operating effectively.

19 MR. WEIL: Out of curiosity has the Calvin  
20 Cliffs organization reviewed your quality concerns  
21 program?

22 MR. ZARGES: The quality concerns program?

1 MR. WEIL: Well, maybe this is the wrong  
2 phrase, but the programs you now have in place you  
3 say were in place at Calvin Cliffs. The question I  
4 am asking is did the Calvin Cliffs organization  
5 review your process at all?

6 MR. ZARGES: The procedure is followed by them  
7 as implementing procedures. Is that what you  
8 mean?

9 MR. WEIL: That does <sup>NOT</sup> answer my question.

10 MR. ZARGES: I was going to say we do have  
11 copies of their procedures if that would assist  
12 you.

13 MR. WEIL: I just wondered if they had audited  
14 or reviewed in any way.

15 MR. PARDI: You're talking about BG&E?

16 MR. WEIL: Yes.

17 MR. PARDI: Yes, they approve all of our site  
18 procedures.

19 MR. ZARGES: I am sorry, I misunderstood.

20 MR. STEIN: In the area of the employee  
21 concerns program we wrestle with the fact if you  
22 don't get incidents, if you don't get calls into

1 the employee concerns program it can either mean  
2 that the program is a success and that things are  
3 being addressed before it has to go to ECP or that  
4 the sites are so chilled that nobody trusts the ECP  
5 program to actually pick up the phone and call the  
6 hotline versus reporting it to the NRC or some other  
7 avenue. Do you have a feel for the actual success  
8 of your program versus the other alternative?

9 MR. ZARGES: I think one of the things that we  
10 do that's somewhat unique is our system of exit  
11 interviews where everybody when they're leaving the  
12 job site as they process out is required to fill  
13 out a form and answer questions about whether there  
14 are any unresolved safety concerns. Obviously  
15 since people on our sites are laid off, they have  
16 got no stake in the company at that point and there  
17 is no reason for them to be anything but candid on  
18 their way out the door. And they must fill out  
19 this form as they leave. And we in that process  
20 have, of course, 100% compliance but no incidents  
21 that have arisen through them. So I think it is a  
22 more proactive approach in that regard in that

1 everybody who leaves the site gets surveyed. And  
2 so we know that they are A, aware and B, proactively  
3 questioned about safety concerns. And it's not at  
4 a time in their life or their employment with the  
5 company when chilling could be a concern. So we  
6 take that as another piece of corroboration that  
7 the systems are, in fact, working.

8 MR. PARDI: We do get a lot of dialogue going  
9 on through our program. When I talked about there  
10 was one incident at Pt. Beach and one incident at  
11 Waltz Mill, I meant one relative to harassment and  
12 intimidation. I remember reviewing some of these.  
13 Somebody asked about if we were using the right  
14 insulation for this material, you know. That came  
15 through the same program, and we respond through  
16 the same program. So we have had numerous questions.

17 MR. ZARGES: Those aren't incidents. People  
18 ask should they wear a respirator in this  
19 environment or no. It also provides an avenue for  
20 those kinds of dialogues that are extra-supervisory  
21 dialogues, I guess.

22 CHAIRMAN GROBE: It is not clear to me what

1 you are referring to, Mr. Pardi. You said we get a  
2 lot of these.

3 MR. PARDI: At Pt. Beach and St. Lucie we had  
4 employee concern programs where any time an  
5 employee had a question -- not just at the exit  
6 interview but any time during the project an  
7 employee had a question or concern, they could fill  
8 out one of these forms and give it to their super-  
9 visor. And when I said we only had one concern at  
10 Pt. Beach and one concern at Waltz Mills I meant  
11 relative to harassment and intimidation, which is  
12 the subject here. But we did have other questions,  
13 not necessarily concerns, that showed our program  
14 is working. It wasn't just two things came in from  
15 1500 employees.

16 CHAIRMAN GROBE: Please correct me if my  
17 understanding is incorrect. What I understand is  
18 that you have an ongoing program where people can  
19 raise concerns and that program is actively used by  
20 people.

21 MR. PARDI: That's exactly right.

22 CHAIRMAN GROBE: You have a hotline where if

1 they feel that they need to use that hotline to get  
2 a concern resolved that's available to them. But  
3 that hotline is essentially not used?

4 MR. ZARGES: It's fundamentally for our home  
5 office employees.

6 CHAIRMAN GROBE: That's not advertised?

7 MR. PARDI: No.

8 MR. ZARGES: Well, I guess I would say as one  
9 of our best practices findings from Duke they have  
10 suggested that we extend and advertise the hotline  
11 as an additional feature to our sites. And we have  
12 agreed to do that although I can't tell you that  
13 that's in place right now. But that is a practice  
14 that we have accepted and we are adopting.

15 CHAIRMAN GROBE: And the third part of the  
16 component is the exit interview. And you feel that  
17 that's evidence that the employee concerns program  
18 is functioning because you don't get a lot of  
19 concerns at that point that haven't already been  
20 raised, is that correct?

21 MR. ZARGES: Yes.

22 CHAIRMAN GROBE: Okay. Thank you.

1           MR. ZARGES: We mentioned the office hotline  
2 which is also in place. There are no incidents  
3 that have come through that hotline. It is up and  
4 operating. That is verified by the audit. We  
5 believe adhering to our program and maintaining it  
6 in force and effect will prevent any possible  
7 chilling effect from developing either at our field  
8 sites or in our home office.

9           We have also strengthened our QA and our  
10 welding programs based on the results of external  
11 audits. And this alludes to the prior discussion.  
12 I had retained Duke Engineering Services to conduct  
13 two in-depth audits for us in '98, one in April and  
14 one in December, and we have implemented a number  
15 of their best practice recommendations. And we  
16 have reacted to and improved our 10 CFR Part 21  
17 review in reporting of incidents and response to  
18 some of their observations. We have also  
19 dramatically, I think, improved our welding  
20 procedure specifications. Our previous system of  
21 procedures as Lou alluded was very broad and very  
22 complex. It was extraordinarily difficult for a

1 supervisor in the field to follow. I have seen  
2 some of these procedures specifications with forty  
3 footnotes covering different conditions and then  
4 with a footnote at the bottom saying please conduct  
5 and assess your local examination of the codes  
6 anyway. So it was a very -- It was meant to be a  
7 comprehensive system, but it was quite difficult to  
8 use in the field. We have now undertaken a program  
9 to simplify those procedures and limited the  
10 applications and limited the applications that can  
11 be taken on these procedures.

12 CHAIRMAN GROBE: What precipitated the changes  
13 in the program?

14 MR. ZARGES: Part of it was the Duke audit and  
15 some of it was our response to the 10 CFR Part 21  
16 review.

17 MR. CALDWELL: These were the procedures that  
18 were developed by Mr. Artayet?

19 MR. ZARGES: Yes.

20 MR. CALDWELL: Is that the first time you  
21 conducted an evolution like this in a power sense  
22 with your procedures?

1           MR. ZARGES: Well, Mr. Artayet had been  
2           developing new procedures over time, and we are now  
3           revising them.

4           MR. CALDWELL: Those were the first set?

5           MR. ZARGES: Well, I believe so. I think he  
6           overhauled, in fact, the system that may have  
7           existed when he took over the office and converted  
8           them to a system of procedures that were of his own  
9           design.

10          MR. PARDI: And we have now determined that's  
11          too difficult for our supervisor to work with and  
12          we're reworking them.

13          MR. PARDI: One of the problems that we had  
14          was that Alain from early on, I think '92 or so,  
15          overhauled all of our welding procedures. And the  
16          approach that he took was to have as few a number  
17          of different procedures as possible. He thought  
18          that was a good way to go. But what happened is  
19          the procedures became very comprehensive. We had  
20          one procedure for welding carbon steel that applied  
21          to everything from material of limited thickness to  
22          unlimited thickness. To do that you have a

1 qualification that requires post ~~oil~~<sup>WELD</sup> heat treat,  
2 non-drop weight tear test, then explain to the site  
3 so they could use all of it. This wide band of  
4 application was cumbersome. That's what we have  
5 done away with. We have simplified procedures.  
6 Each procedure is going to have a very limited  
7 application. Two different procedures for carbon  
8 steel, one when post ~~oil~~<sup>WELD</sup> heat treat is required,  
9 one when it isn't.

10 MR. CALDWELL: He did that unilaterally?

11 MR. PARDI: Yes.

12 MR. CALDWELL: So he didn't have to ask  
13 permission to overhaul the procedures or get some  
14 sort of other independent review to verify that  
15 they were accurate and adequate?

16 MR. PARDI: The independent review that was  
17 done was done by Andy Walcott.

18 MR. CALDWELL: And he found them acceptable?

19 MR. PARDI: Yes, he did.

20 MR. STEIN: Before you get there, could you  
21 discuss training, what training you're going to  
22 have or have given to your management to sensitize

1       them to 50.7?

2               MR. ZARGES: We have trained essentially all  
3 of our nuclear people.

4               CHAIRMAN GROBE: Is that included?

5               MR. ZARGES: We provided that, I think, in a  
6 prior slide of where we spelled out the corrective  
7 actions specifically that resulted from Fort St.  
8 Vrain. And we do train all of our supervisors and  
9 all of our employees on site.

10              MR. STEIN: Well, you mentioned that Mr. Pardi  
11 was one of your trainers. And Mr. Pardi is  
12 involved here with this issue and the decision to  
13 move him from power. Mr. Edleman is another  
14 trainer involved in the January 15th decision after  
15 the January 14th paper was given. So my question  
16 is are you planning to reevaluate your training or  
17 to improve it to sensitize management?

18              MR. ZARGES: I am sure we will as a result of  
19 our conclusions here and the Stier report. We will  
20 be racking up another list of things that we want  
21 to do better, and we believe the training will  
22 allow us to do better.

1           MR. STEIN: So you are open for improvement in  
2 training in this area?

3           MR. ZARGES: Absolutely. Absolutely.

4                   This is our summation slide which you  
5 will be glad to know. We ask, therefore, that you  
6 consider the extraordinary evidence and support  
7 that's been developed here along with the strong  
8 demonstrated attitude and character of our staff.  
9 We have approached this enforcement hearing with a  
10 willingness and an adamance that the facts be  
11 pursued aggressively and accepted with a forthright  
12 attitude about our work and the attitudes of our  
13 personnel. This is precisely why we brought Stier  
14 into this investigation. Objectivity was our sole  
15 requirement. And I believe after thoroughly going  
16 over this investigation and this information that  
17 is what we achieved.

18                   His findings, I believe, completely  
19 undermine Artayet's assertions and the conclusions  
20 of the administrative law judge which rely upon  
21 them. MK did not retaliate against Alain Artayet.  
22 The decision to remove him from power work was

1 based on the merits and made with proper objectivity  
2 and judgment. The decision made in escalating steps  
3 was, in fact, made January 2nd and quickly communi-  
4 cated to Alain. This decision led to Alain's removal  
5 as GWE on January 15th and his ultimate reassignment.  
6 The performance issues here are substantial and  
7 decisive. The decision to reassign Alain Artayet  
8 was not pretextual. The reassignment made to  
9 Alain on January 15th was not in retaliation for  
10 Alain having written the QFR. That's the end of my  
11 presentation.

12 CHAIRMAN GROBE: Additional questions on the  
13 presentation?

14 MR. STEIN: Could you leave that up for one  
15 more minute, please?

16 MR. ZARGES: We will give you copies.

17 MR. WEIL: Yes. If we could go back to the  
18 statement about the misleading information?

19 CHAIRMAN GROBE: We'll get there. I was  
20 wondering if there was any other questions  
21 regarding the substance of this case. You  
22 mentioned a while ago that there are specific

1 issues where Mr. Artayet misled the NRC  
2 investigators. If you could explain that we'd  
3 appreciate it.

4 MR. HICKEY: That's not what he said.

5 MR. ZARGES: I have no knowledge what he told  
6 the investigators.

7 MR. HICKEY: I think it makes a difference.  
8 What he said was that there was a concern about  
9 whether Mr. Artayet misled the NRC investigators  
10 because we have no knowledge of what Mr. Artayet  
11 said to the NRC investigators. What we do know is  
12 what Mr. Artayet said to other forums, one to the  
13 ALJ and one to the Stier interview process. That's  
14 all we know about what Artayet said. That's what  
15 raised the question about whether he was providing  
16 misleading information.

17 CHAIRMAN GROBE: Okay.

18 MR. HICKEY: But we don't have any idea what  
19 he told you.

20 CHAIRMAN GROBE: I never know what you know,  
21 Pat.

22 MR. CLAYTON: You mentioned earlier the three

1 items that you thought were misleading information  
2 that he provided at the ALJ hearing. Are there  
3 other examples?

4 MR. ZARGES: There are. Those are the three  
5 that I can quickly recall and seemed most impactful  
6 to me, but I think there is a much longer litany of  
7 misstatements.

8 MR. HICKEY: We will submit it in writing if  
9 you would like it.

10 MR. CLAYTON: If you think they bear on this  
11 case and you want us to consider it in our  
12 enforcement action, we need to know those.

13 MR. HICKEY: They're all identified in the  
14 Stier report, but they are scattered throughout.  
15 Perhaps it would be most convenient for you if we  
16 pulled it together out of that and submitted it on  
17 one sheet because otherwise you have to look  
18 through different pages.

19 MR. STEIN: And with the citations to documents.

20 MR. HICKEY: Sure. But you have the  
21 documents, right?

22 MR. STEIN: Yes.

1 MR. CALDWELL: We have all the documents.

2 MR. HICKEY: Were you going to say something  
3 about timetable? Because that relates to the  
4 statement I just made.

5 CHAIRMAN GROBE: Yes. Any other questions?

6 MR. WEIL: Just one administrative question.  
7 Could somebody please help the court reporter on  
8 the spelling of Mr. Hlifka's last name?

9 MR. PARDI: This is one I know how to spell.  
10 It's H-l-i-f-k-a.

11 MR. WEIL: I'm finished.

12 CHAIRMAN GROBE: Any other questions? I just  
13 want to reemphasize that this was what we call a  
14 Predecisional Enforcement Conference. No decision  
15 has been made with respect to whether a violation  
16 occurred or what sanctions may be appropriate.  
17 That is the task we have before us right now. I  
18 appreciate you responding to all of our questions  
19 and I appreciate that it's been difficult. You  
20 have been very eloquent in your responses and you  
21 provided us a substantial amount of information  
22 that will be useful to us. Pat, you made a

1 commitment to provide some additional information.  
2 When do you think that will be available to us?

3 MR. HICKEY: The next two weeks.

4 CHAIRMAN GROBE: Two weeks would be  
5 outstanding.

6 MR. HICKEY: Two to three.

7 CHAIRMAN GROBE: When I say something like  
8 that my boss never gives me the three weeks.

9 MR. ZARGES: Sounds like two weeks to me.

10 CHAIRMAN GROBE: We'd appreciate that. I just  
11 want to describe for you a little bit of the  
12 process that we go through from here. Then if we  
13 decide there is a violation sanctions associated  
14 with that violation could range anywhere from a  
15 notice of violation, which is strictly a document  
16 we issue you need to respond to, through escalating  
17 sanctions which could involve civil monetary fines  
18 or orders to the company to take specific actions.  
19 So should we decide that there would be any civil  
20 fines, monetary fines to be ordered, then we would  
21 issue a press release. You would be notified in  
22 advance of that action by me telephonically. I

1 expect that we should be able to bring this case to  
2 closure in approximately two months. I had  
3 previously spoken with Mr. Edleman yesterday  
4 indicating thirty days. I neglected to consider  
5 the fact that we are going to provide this transcript  
6 to Mr. Artayet to give him an opportunity to respond  
7 to the specific information in the transcript. So  
8 that will extend our decision-making process a  
9 little.

10 MR. HICKEY: Can I ask one thing about that?

11 CHAIRMAN GROBE: Sure.

12 MR. HICKEY: Well, the original format as I  
13 understood it was going to be that Mr. Artayet  
14 would be invited to attend this meeting today, that  
15 he would be given after Mr. Zarges finished his  
16 presentation an opportunity to make a presentation  
17 of his own, and then we would have a brief oppor-  
18 tunity to respond to whatever Mr. Artayet said.  
19 And I don't know whether Mr. Artayet will be  
20 responding now to the transcript in writing to you  
21 or through a telephone call, but if there is a way  
22 that we could be advised of what he says?

1           CHAIRMAN GROBE: It will be a documented  
2 response. It will either be a written response or  
3 if he wants to come in and discuss the issues we  
4 will transcribe that. I don't anticipate that.

5           MR. HICKEY: We would like to have an  
6 opportunity to see what he says and see if there is  
7 some need for us to respond as we would have done  
8 depending on what he says had he been here today.

9           CHAIRMAN GROBE: If Mr. Artayet responds I  
10 will take that under consideration. I will let you  
11 know, Pat.

12                   I want to make sure that you understand  
13 that if we made any statements or expressed  
14 opinions, individual members of the NRC during this  
15 meeting, that those are not the opinion of the  
16 agency or a decision having been made. It is  
17 simply our effort to clarify issues and get the  
18 facts as best we can understand them.

19           MR. STEIN: Jack, one second. I just want to  
20 add to what you just said, Pat. This transcript  
21 will be on the docket, and any written response  
22 that he makes will also be on the docket.

1           MR. BERSON: I don't think so. This is a  
2 closed conference.

3           MR. WEIL: This is a closed conference.

4           MR. STEIN: Oh, no, you're right.

5           CHAIRMAN GROBE: We need to talk separately  
6 about this. If Mr. Artayet provides a written  
7 response, I will be in touch with you to arrange  
8 for some sort of an opportunity for you to review  
9 that.

10          MR. CLAYTON: I spoke with Mr. Artayet two  
11 days ago. He told me he would not be attending. I  
12 informed him we would send him a copy of the  
13 transcript and request a written response from him,  
14 and he said he would reply that way.

15          CHAIRMAN GROBE: Any other questions or  
16 comments at this point? We appreciate you coming  
17 in. It's been very informative. Thank you very much.  
18                            (Which were all the proceedings had  
19                            at the hearing of the above-entitled  
20                            cause.)

21

22

1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF DU PAGE )

4  
5 I, MARLANE K. MARSHALL, C.S.R., a Notary  
6 Public duly qualified and commissioned for the  
7 State of Illinois, County of DuPage, do hereby  
8 certify that at the request of United States  
9 Nuclear Regulatory Commission, subject to the usual  
10 terms and conditions of County Court Reporters,  
11 Inc., reported in shorthand the proceedings had at  
12 the hearing of the above-entitled cause, and that  
13 the foregoing transcript is a true, correct, and  
14 complete report of the entire testimony so taken at  
15 the time and place hereinabove set forth.

16  
17 Marlane K. Marshall

18 MARLANE K. MARSHALL  
19 Notary Public  
20 CSR License #084-001134

21 My commission expires:  
22 January 23, 2000





MK-FERGUSON PLAZA  
1500 WEST 3RD STREET  
CLEVELAND, OHIO U.S.A. 44113-1406  
PHONE: (216) 523-5606  
FAX: (216) 523-8147  
E-MAIL: richard\_edmister@mk.com

**RICHARD R. EDMISTER**  
ASSOCIATE GENERAL COUNSEL  
ENGINEERS & CONSTRUCTORS

TRANSMITTED BY FAX WITH  
CONFIRMING HARD COPY MAILED

January 28, 1999

Mr. Charles Wyle  
U.S. Nuclear Regulatory Commission  
Office of Investigations Field Office  
Region III  
801 Warrenville Road  
Lisle, Illinois 60532-4351

SUBJECT: MORRISON KNUDSEN CORPORATION

Dear Mr. Wyle:

Enclosed is a copy of the overheads used by Mr. Thomas Zarges in the presentation on January 27, 1999.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Richard R. Edmister', written over the typed name.

Richard R. Edmister

RRE:fyb  
Enclosures

E/28

# **NRC Enforcement Conference**

*January 27, 1999  
Docket Nos. 50-266; 50-301*



POWERL-692401.PPT

## **Fort St. Vrain**

- ▶ MK received Level IV 10CFR50.7 violation without penalty (Aug. 14, 1995)
- ▶ Violation committed by a first line supervisor
- ▶ Believe violation was without penalty because of PSC and MK's thorough investigation and thorough and prompt corrective action
- ▶ PSC commissioned Stier Anderson Malone to perform an independent investigation



POWERL-692401.PPT

## ***Fort St. Vrain***

---

- ▶ Lou Pardi was not directly involved in Fort St. Vrain violation
- ▶ Recognized seriousness of a 50.7 violation and personally got involved in the investigation and led the development of all of MK's corrective actions



POWER-0972490.PPT

## ***Corrective Actions Resulting from Fort St. Vrain***

---

- ▶ Tom Zarges issued company-wide "Safety Alert Bulletin" stating MK policy towards protected employees
- ▶ Lou Pardi drafted Project Management Bulletin 2.9 (effective 8/24/95) requiring:
  - Each project must have procedure to address harassment and intimidation
  - Training of all MK project personnel
  - Indoctrination of all employees regarding expression of safety concerns
  - A method of collecting and dispositioning concerns



POWER-0972490.PPT

## **Corrective Actions**

- ▶ Implement comprehensive programs at Pt. Beach, St. Lucie, and Waltz Mill including:
  - Required reading of Fort St. Vrain violation and corrective actions
  - Procedures prohibiting harassment of protected personnel
  - Employee open communication procedures
  - Procedures requiring exit interviews to assure employees do not have any unreported safety concerns
  - Training and indoctrination of all MK and subcontractor personnel
  - Copies of most of these procedures are included in my letter to J.A. Grobe dated April 21, 1998



## **Corrective Actions**

- ▶ List of policies/procedures developed and implemented by MK or MK/SGT:

– Safety Alert Bulletin	June 6, 1995
– Project Management Bulletin No. 2.9	August 24, 1995
– Pt. Beach Equal Employment Opportunity Policy	September 1995
– Pt. Beach "Rules of Conduct on the Job"	Aug.-Sept. 1995
– Pt. Beach Procedure MSP 2.0 "Harassment of Protected Personnel", final revision	Sept. 11, 1996
– St. Lucie Procedure MCP 1.1 "Harassment of Protected Personnel", final revision	July 17, 1997
– Pt. Beach Procedure MSP 1.0 "Employee Open Communication and Condition Evaluation Requests", final revision	May 9, 1996
– St. Lucie Procedure MCP 1.2 "Employee Open Communication and Condition Evaluation Requests", final revision	July 17, 1997
– Pt. Beach "Exit/Termination Process"	Sept. 25, 1996
– St. Lucie "SGRP Personnel In-Processing and Out-Processing", final revision	Oct. 14, 1997
– Similar programs at Waltz Mill and Calvert Cliffs	



## ***Corrective Actions***

### ***Results***

- ▶ Employment and termination of over 1,500 employees on two demanding projects
- ▶ No concerns regarding safety in the work environment at St. Lucie
- ▶ One concern at Pt. Beach
  - Quickly and effectively dealt with
  - Described in detail in letter of April 21, 1998
  - Additional recent employee concerns at Waltz Mill also effectively dealt with
  - Personnel who filed concerns at both Pt. Beach and Waltz Mill were not MK employees, but they utilized MK's program to bring forth their concerns



POWER-887450.PPT

## ***Current Apparent Violation***

- ▶ Surprised by filing of complaint
  - Sensitivity caused by Fort St. Vrain
  - Home office employee
    - Small nuclear staff 3-5 people
    - All ten year or greater employees
    - Informal office atmosphere with access to all senior management
- ▶ Initial DOL investigation provided some comfort
  - No retaliation
- ▶ Dismayed at ALJ decision
- ▶ Commissioned Stier to do independent investigation
- ▶ Stier investigation provided detailed and compelling evidence that MK **did not** commit a 50.7 violation



POWER-887450.PPT

## ***Current Apparent Violation***

- ▶ Careful consideration of conflicting results of Stier conclusion and the ALJ decision
  - ALJ decision is flawed
    - Stier investigation extremely detailed
    - Stier investigation provided facts and insights not available to ALJ
  - Stier established four critical points
    - Artayet was not capable of performing his job
    - FAX re: DWT not available to ALJ
      - Led judge to think MK's removal was pretextual
    - Lou Pardi decided on Jan. 2 to remove Alain from Power projects, based on Alain's performance and not pretextual
    - Decision to remove Alain from work was made two weeks before QFR
      - January 2 decision made January 15 decision inevitable
- ▶ Chilling did not occur
  - Stier did not find any evidence of chilling
  - Work at Pt. Beach basically complete; DOL notice Feb. 1997
  - Small, long-term corporate nuclear staff with direct access to management



POWER.LOUPARDI.PPT

## ***Organizational Inadequacies and Corrective Action***

- ▶ Inadequate supervision of Group Welding Engineer
  - GWE now reports to Lou Pardi who has technical knowledge; can monitor performance and provide support for the GWE when needed
- ▶ To assure enhanced visibility and support of QA organization
  - Group QA Director reports directly to me
  - Daily work activities directed and supported by Lou Pardi



POWER.LOUPARDI.PPT

## ***Program to Encourage a Safety Conscious Work Environment is Operating Effectively***

---

- ▶ Thoroughness of our systems and procedures
- ▶ Effective implementation at Pt. Beach, St. Lucie, and Waltz Mill
- ▶ Recent review at BG&E Calvert Cliffs
  - Systems in place
  - No incidents to date
- ▶ Recent outside audit of CHO “hotline” implementation
  - System is adequate
  - No incidents to date
- ▶ We believe our program has and will continue to prevent any possible “chilling effect” from developing at our field sites and in our home office



## ***Improved Quality and Welding Program***

---

- ▶ Refinements in Quality Program as a result of internal and external audits
  - DE&S contracted to do two in-depth audits
  - “Best practice” recommendations implemented
  - Improvement in Part 21 Procedure implemented
- ▶ Improvements in Welding Procedure Specifications
  - Previous procedures complex with widely ranging applications
  - Revised procedures are/will be simplified
  - Very limited applications of each procedure

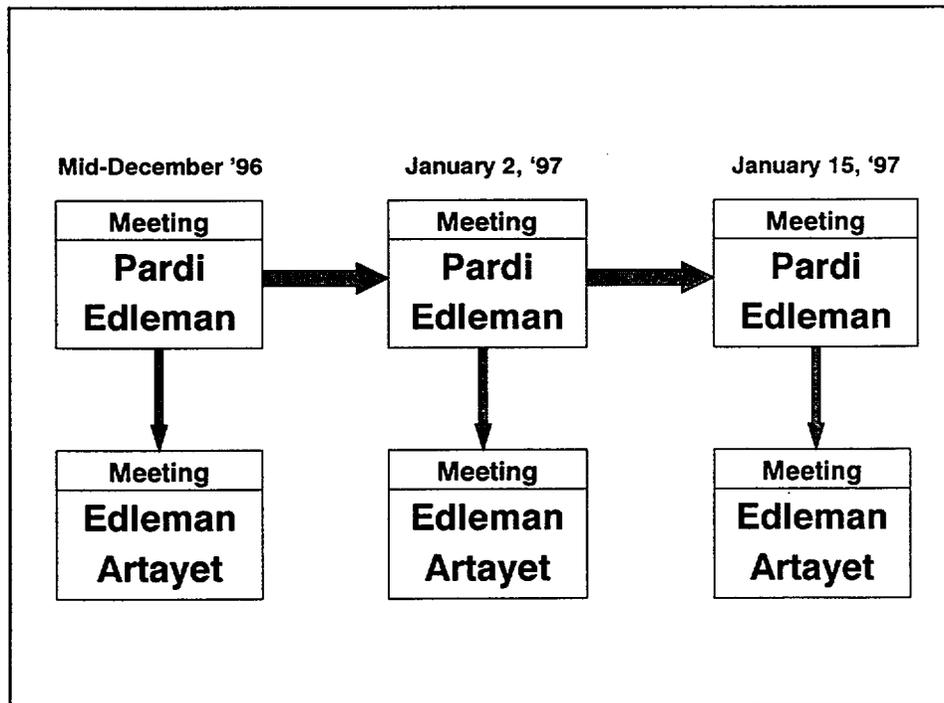


## **Enforcement Is Not Warranted**

- ▶ MK did not retaliate against Alain Artayet
- ▶ Decision to remove Alain from Power Division work was the decision that ultimately led to employment action taken
- ▶ Lou Pardi decision was made strictly on performance issues and was not pretextual
- ▶ Decision made on January 15 was not in retaliation for Artayet having written the QFR



POWER/ED/PARDI.PPT



**From:** C. H. Weil *PH*  
**To:** Michael Stein *OE*  
**Date:** Fri, Jan 29, 1999 10:43 AM  
**Subject:** LETTER SENDING TRANSCRIPT TO COMPLAINTANT IN MK CASE (EA 98-081)  
**Place:** OEMAIL

Mike, I've attached a draft letter to the complainant in the Morrison Knudsen case. The letter transmits the predecisional enforcement conference (PEC) transcript to him for review and comment.

The letter also informs him that his comments will be provided to MK for review/rebuttal. Since this part of the letter involves a *policy decision*, I believe the letter should be considered and reviewed by OE with an eye towards a potential clarification of the enforcement policy.

Also, the letter needs a very short turn-around time as we'll be mailing the letter to the complainant about the middle of the week of 2/1/99.

Chuck

**CC:** Bruce Berson, H. Brent Clayton, James Gavula, O...

*E/hg*

1/29/99 DRAFT

EA 98-081

Mr. Alain Artayet  
[HOME ADDRESS DELETED  
UNDER 10 CFR 2.790(a)]

Dear Mr. Artayet:

This letter concerns the predecisional enforcement conference (PEC) held on January 27, 1999, with the Morrison Knudsen Company (MK) pertaining to an apparent violation of 10 CFR 50.7, "Employee Protection." You were invited to participate in the PEC; unfortunately your personal schedule prevented your attendance. Enclosed is a copy of the PEC transcript for your review and comment. Also, you should be aware that MK will be provided an opportunity to review and comment on your written response.

Please return your reply to us as soon as possible, but not later than 15 days from the date that this letter is received. You are welcome to have counsel or a personal representative to assist you in preparing your response. However, the cost of such counsel or personal representative must be borne by you. Should you need additional time to prepare your response, please contact Mr. Charles H. Weil of the NRC Region III Enforcement Staff at toll free telephone number 1-800-522-3025 or 1-630-810-4372.

Your response should be marked as a "Reply to EA 98-081," and addressed to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, IL 60532-4351. At the same time, a copy of your reply should be sent to Mr. H. Brent Clayton, NRC Region III Enforcement Officer, at the same address. A copy should also be sent to U.S. Nuclear Regulatory Commission, ATTN: Mr. James Lieberman, Director, Office of Enforcement, Mail Stop OWFN/7-H-5, Washington, DC 20555-0001.

The NRC normally places documents pertaining to an escalated enforcement action in the NRC Public Document Room (PDR), where the information is available for public inspection. However, we have decided to withhold this letter and your response from placement in the PDR due to personal privacy considerations. While the documents will not be placed in the PDR, you should be aware that the documents are subject to release under the provisions of the Freedom of Information Act (FOIA). Should we receive a FOIA request for the documents, the documents will be released with the exception of your home address or other personal privacy information. Therefore, your response, to the extent possible, should not include any personal privacy, proprietary or safeguards information so that it can be released without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such information, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases of

your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.790(b) to support a request for withholding confidential commercial or financial information.

Please feel free to contact Mr. Weil, or in his absence Mr. Clayton, if you have any questions. Mr. Clayton can also be reached at toll free telephone number 1-800-522-3025 or 1-630-810-4373.

Sincerely

John A. Grobe, Director  
Division of Reactor Safety

Docket No. 50-266; 50-301  
License No. DPR-24; DPR-27

Enclosure: As stated

cc w/enclosure:  
S. Bell, Esq.

cc w/o enclosure:  
Office of Enforcement  
S. Chidakel, OGC  
B. Berson, RIII

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

FILE NAME: G:\EICS\98-081.COP

To receive a copy of this document, indicate in the box: "C" = Copy w/o att/encl "E" = Copy w/att/encl "N" = No copy

OFFICE	RIII	C	RIII	C	OE:D <sup>1</sup>	C	RIII	C				
NAME	Weil		Clayton		Lieberman		Grobe					
DATE	2/ /99		2/ /99		2/ /99		2/ /99					

OFFICIAL RECORD COPY

**From:** C. H. Weil *HW*  
**To:** Michael Stein *DE*  
**Date:** Mon, Feb 1, 1999 3:28 PM  
**Subject:** MORRISON KNUDSEN (EA 98-081)  
**Place:** OEMAIL

Mike, attached is a note documenting our conversation about Morrison Knudsen's review of the complainant's written comments on the predecisional enforcement conference. Please let me know if changes are needed. Chuck

**CC:** H. Brent Clayton, OEMAIL, Stanley Rothstein

*E/30*

February 1, 1999

EA 98-081

NOTE TO: Michael Stein, Enforcement Specialist, OE

FROM: Charles H. Weil, Enforcement Specialist, RIII 

SUBJECT: PROVIDING COMPLAINANT'S COMMENTS ON CLOSED  
ENFORCEMENT CONFERENCE TRANSCRIPT TO THE EMPLOYER  
IN AN EMPLOYMENT DISCRIMINATION ENFORCEMENT ACTION

On January 27, 1999, a predecisional enforcement conference (PEC) was conducted with Morrison Knudsen (MK) Corporation concerning an apparent violation of 10 CFR 50.7, "Employee Protection." The complainant in that matter had originally planned to attend the PEC and make a statement following MK's presentation. Following which, MK would have the opportunity to respond to the complainant's presentation. (See Section V of the Enforcement Policy). However, the complainant's personal schedule prevented his attendance.

At the conclusion of the PEC, NRC representatives informed MK that the complainant would be furnished a copy of the PEC transcript for review and comment. MK representatives requested an opportunity to review the complainant's written comments and respond, as though he had been present at the conference.

On February 1, 1999, you and I discussed MK's request as it applied to the Enforcement Policy. We noted, as provided by the Enforcement Policy, MK would have had the opportunity to present comments following the complainant's presentation, had the complainant been present at the PEC on January 27, 1999. We also noted that the policy permitted a complainant who could not attend a PEC, be given the opportunity to review the transcript and provide written comments. However, the Enforcement Policy did not specifically provide a opportunity for an employer, such as MK, to review and comment on the complainant's written comments. We decided that allowing MK to review and comment on the complainant's written presentation would be analogous to allowing the employer, MK, to provide a verbal response to a complainant's oral presentation. Therefore, we concluded that MK should be allowed to review the complainant's written response in this case.

Please contact me as soon as possible if your understanding of our February 1, 1999 conversation is different from the above.

CONTACT; Charles H. Weil  
(630) 810-4372

FILE NAME: G:\EICS\98-081.TRN

*Kestli*  
*DE*  
**From:** Bruce Berson  
**To:** C. H. Weil, H. Brent Clayton, James Lieberman, ...  
**Date:** Tue, Feb 2, 1999 1:59 PM  
**Subject:** MK Transcripts

Pat Hickey will have each original transcript and the two copies they made for their client ( but which have not been sent out yet) destroyed. He will also send me a letter certifying that this has been done.

Note: I spoke to an associate of Hickey's who's also working on this case, a Benjamin Dean. Hickey was in New York. Dean spoke to him by phone and informed me of the above.

Bruce

**CC:** James Caldwell, Jim Dyer, John Grobe

*F/31*

**From:** H. Brent Clayton  
**To:** James Caldwell  
**Date:** Tue, Feb 2, 1999 11:16 AM  
**Subject:** Fwd: MK transcript

*RM*

Jim - Please let me know if you concur. If so, I'll ask Bruce Berson to call Mr. Hickey.

---Brent

**CC:** Bruce Berson, C. H. Weil

**From:** Richard Borchardt  
**To:** H. Brent Clayton  
**Date:** Tue, Feb 2, 1999 11:05 AM  
**Subject:** MK transcript

I talked with Jim L. and he agrees with what we discussed:

- The MK attorney should be informed that the court recorder should not have provided him with a copy of the transcript. We should ask the attorney to destroy or return (or send to us) the transcript.
- If he refuses to cooperate, we'll have to work with OGC re: putting a copy of the transcript in the PDR

**CC:** Michael Stein

From: Charles H. Weil *leg III*  
 To: Bruce Berson, Michael Stein, Susan Chidakel *DE*  
 Date: Tue, Feb 23, 1999 2:34 PM *ooc*  
 Subject: COMPLAINANT'S REVIEW OF MORRISON KNUDSEN TRANSCRIPT (EA 98-081)  
 Place: OEMAIL

On February 22, 1999, I was informed by Federal Express that the package we sent to the complainant (the package was the interview transcript) was not deliverable because the home was vacant. I contacted the complainant's attorney on February 23, 1999, and was provided with a new home address and telephone number for the complainant. I then contacted Federal Express and provided the new home address and work telephone numbers. Federal Express will forward the package to the complainant at the new address.

Chuck

CC: H. Brent Clayton, James Gavula, John Grobe, OEM...

RE: ALAIN ARTAYET  
~~9676 CLAYTON~~

2/22

FEDERAL EXPRESS  
 800689675546  
 1-800-FED EXPRESS

GO FED EX  
 1-800-463-~~3944~~  
 3339

2/22  
 TELEPHONE IS DISCONNECTED. ~~THE~~ "NFI"  
 IS QUARANTINE. "

E/32

**From:** Charles H. Weil *CSM*  
**To:** Bruce Berson, H. Brent Clayton, James Gavula, J... *CSM*  
**Date:** Fri, Feb 26, 1999 10:08 AM  
**Subject:** CONTACT WITH COMPLAINANT IN MORRISON KNUDSEN CASE (EA 98-081)  
**Place:** OEMAIL

I had a brief conversation this morning with the complainant in the Morrison Knudsen discrimination case. He provided the following information:

He has moved from the Cleveland area and is settling in at his new job. An interesting point during the conversation is that he is preparing his new employer for an ASME audit during March 1999, and the audit is for the renewal of his company's "ASME N Stamp."

**CC:** OEMAIL

E/33

Res III  
From: Charles H. Weil Res III  
To: Bruce Berson, Michael Stein -OE  
Date: Thu, Feb 25, 1999 6:02 PM  
Subject: Re: MK Analysis

Just a reminder about my E-Mail earlier this week. The complainant has not received the transcript yet. His attorney gave me a new address on Wednesday and FedEx was to forward it. I also call the complainant at his work number on Wednesday, left a message, and as of this minute have not received a return call. Chuck.

>>> Michael Stein 02/25 4:37 PM >>>

My apology. I was on the Hill for 3 days this week getting us a pay raise and dealing with other issues. I have not had a chance to closely review the MK material before today but did so on your call. I have Susan's comments as well.

The 2 of you are to be commended-Great job and a very balanced assessment. I wouldn't add thing. Susan's discrepancy certainly clinched it for me-not that I walked away from the PEC doubting we had a case. I think we have a moderate case and should push forward. Please call Chuck and lets plan to reconvene after we get all the rocks from all the parties.

After Susan's material is incorporated, please send me a copy for our files.

Much Thanks and have a nice weekend,

Mike

>>> Bruce Berson 02/25 4:24 PM >>>

Mike, I left a voice mail for you on Monday about the above. Do you have any comments on it or on Susan's comments? I believe the game plan was for you to attach it to the EA understands memo from our conference call a couple weeks ago. I'd like to try to move it along.

Bruce

CC: James Lieberman, Susan Chidakel

*ls III*  
*OEM*  
*Doc*

**From:** Charles H. Weil  
**To:** Bruce Berson, Michael Stein, Susan Chidakel  
**Date:** Tue, Feb 23, 1999 2:34 PM  
**Subject:** COMPLAINTANT'S REVIEW OF MORRISON KNUDSEN TRANSCRIPT (EA 98-081)  
**Place:** OEMAIL

On February 22, 1999, I was informed by Federal Express that the package we sent to the complainant (the package was the interview transcript) was not deliverable because the home was vacant. I contacted the complainant's attorney on February 23, 1999, and was provided with a new home address and telephone number for the complainant. I then contacted Federal Express and provided the new home address and work telephone numbers. Federal Express will forward the package to the complainant at the new address.

Chuck

**CC:** H. Brent Clayton, James Gavula, John Grobe, OEM...



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
REGION III  
801 WARRENVILLE ROAD  
LISLE, ILLINOIS 60532-4351

April 1, 1999

EA 98-081

Mr. Thomas H. Zarges  
President and CEO  
Morrison Knudsen Corporation  
MK Ferguson Plaza  
1500 West Third Street  
Cleveland, OH 44113-1406

SUBJECT: PREDECISIONAL ENFORCEMENT CONFERENCE

Dear Mr. Zarges:

This refers to the predecisional enforcement conference (PEC) held with the Morrison Knudsen Corporation (MK) on January 27, 1999, concerning an apparent violation of 10 CFR 50.7, "Employee Protection." During the PEC, representatives of MK requested that MK be afforded an opportunity to review the complainant's comments following his review of the PEC transcript. That information is enclosed.

MK is not required to respond to this letter. However, should you choose to provide a written response, please return your comments to us within 15 days of receiving this letter.

While this letter, and its enclosure, have not been placed in the NRC's Public Document Room (PDR), you should be aware that the letter and the enclosure are subject to release under the Freedom of Information Act (FOIA) following the completion of the NRC enforcement process. Should a FOIA request be received for these documents, the documents will then be placed in the PDR with any personal privacy information removed.

Should you have any questions or comments, please feel free to contact Mr. Charles H. Weil of the NRC Region III Enforcement Staff. Mr. Weil can be reached at telephone number (630) 810-4372. In Mr. Weil's absence, please contact Mr. H. Brent Clayton, NRC Region III Enforcement Officer at telephone number (630) 810-4373.

Sincerely,

*John A. Grobe*  
for John A. Grobe, Director  
Division of Reactor Safety

Enclosures:

1. Complainant's 3/25/99 Letter
2. Complainant's 3/26/99 Letter

cc w/encls: P. Hickey, Esq.

cc w/o encls: A. Artayet  
S. Bell, Esq.  
S. Chidakel, OGC  
M. Stein, OE  
B. Berson, RIII

E/34

March 25, 1999

Regional Administrator  
U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, IL 60532-4351

Subject: REPLY TO EA 98-081

Dear Regional Administrator:

I was unable to attend the predecisional conference with Morrison Knudsen, due to work commitments. This letter is being sent to state my perspective and clarify some issues brought up during the predecisional conference without repeating statements made by all parties during the DOL hearing process.

In early January 1997, after MK's annual nuclear audit performed by The Hartford Steam Boiler (HSB) Inspection and Insurance Company, my supervisor (Mr. Walcutt, Director of Quality Assurance) requested that I review all of the Point Beach Steam Generating Team, Ltd. (SGT) project WPS and provide him with a report. All of the SGT Ltd. Point Beach (PB) WPSs had been prepared and approved per MK's QA program by Mr. Rusty Gorden, Project Welding Engineer at PB, and Mr. Mike Hendricks, Project Quality Manager at PB who currently is the Corporate Quality Director at MK. My approval of these site-specific welding procedures was not required by MK's QA program, but on November 6, 1996 I had informed Mr. Gorden of deficiencies with the SGT Ltd. project specific PB-WPSs via facsimile. These PB-WPSs were obtained from one of the first distributions to the corporate office. I was surprised to get these first WPSs because Mr. Gorden had previously indicated to me that he would only send PB-WPSs to me as a courtesy. Contrary to Mr. Gorden's comments to me via a follow-up phone call at that time, he elected to ignore my concerns. I discovered this at a later date with further PB-WPS distribution(s) in December within a couple weeks before the HSB audit.

I do not recall a meeting on January 2, of 1997 with Mr. Edleman, nor was I aware of any activities by upper management (including by Mr. Walcutt) to remove me from all Corporate/Group Welding Engineer responsibilities before January 14, 1997. It is important to note that although Mr. Edleman oversaw our department administratively, he was not part of MK's organizational chart for the nuclear QA programs, and he never participated in any nuclear audits. After I finished my report on January 14th, Mr. Walcutt gave it to Mr. Pardi. A few hours later Mr. Walcutt informed me that Mr. Pardi had stated that I "was expendable and Mr. Bingham and Mr. Cepkauskas were not." On that same day my report was also faxed to Mr. Bingham, who was the Project Manager at Point Beach for the SGT Ltd. On January 15, 1997, within 24 hours of releasing my report, I was removed from my Corporate/Group Welding Engineer position and all associated responsibilities. I was not issued a transfer to another project on January 15, 1997. I felt I was being retaliated against because of this report.

Although I filed an affidavit with Mr. Medlock, the initial OSHA-DOL investigator, he was unable to attend the meeting he had set up with my attorney and me, and never spoke to me in person. He did speak with MK and ruled in their favor. At that point I appealed to present my case.

On February 7, 1997, I was offered a transfer to the Washington Works project in Parkersburg, West Virginia. This was DuPont's largest chemical facility in the country that MK has had since I believe it was 1989 with a maintenance contract. MK currently still has a contract on this DuPont project. I felt I had no other work choices at MK at that time, so I accepted the position, which meant being away from my family during the week. My position there was Area Field Engineer reporting to the Area Project Engineer. Mr. Zarges stated during the conference that while I worked in WV, I was a supervisor of piping systems, provided consultation on welding, and I had a modest staff. This was not true. As you will see in the enclosed organization chart and job description, I was transferred as an Area Field Engineer. I had no staff, was not involved with welding (because 95+% of prefabricated piping systems were mechanically assembled), and was not in a supervisory position. No one reported to me on that project. There was another person in the same position, who worked the night shift. During November 11-22, 1996, I temporarily replaced the MK Welding Supervisor (who was in training) on this DuPont Washington Works project, as I testified during the DOL hearing, but that was not the position I occupied upon my transfer.

On Thursday September 25, 1997, Mr. Garrett (V.P. of Construction in the Industrial/Process Division) called me to ask if I wanted my name to be added to an organizational chart, as a project QC manager, for a bid proposal. This proposal was near completion and was supposed to be submitted by MK to the DuPont Chattanooga project located in Tennessee on Monday, September 29, 1997. No mention was made of bringing me to the Cleveland office because the proposal was due on Monday. My last day at DuPont was Tuesday September 30, 1997. On my last day, no one was available on the project from human resources (and I looked everywhere) to let me know if I was laid-off, fired, or being considered for another transfer. With assistance from my attorney who talked to MK's law firm and my phone call on October 7, 1997 with Mr. Kevin Tobin, Corporate Director of Human Resources, I was finally informed that I was laid-off.

On November 4, 1997 the Administrative Review Board from the U.S. Department of Labor issued the Preliminary Order to reinstate me to my former position as Corporate/Group Welding Engineer with the same terms, conditions and privileges I previously enjoyed. I soon found out that this new situation was not only awkward, but also hostile. I was given my title back, but none of the terms, conditions and privileges was the same. When I returned, MK had two other persons performing my prior job duties, and I was told my new boss was Mr. Pardi, the same person who at the DOL hearing had admitted he was responsible for removing me from my position in the first place. This action alone felt to me like harassment and intimidation, because at that time the other two welding engineers reported to Mr. Walcutt, Group Quality Director, who at that time was still in his same position. When I mentioned this change in my job terms and conditions, the other two welding engineers were both then asked to also report to Mr. Pardi. On November 21, 1997, the QA manual was revised to show this organizational change.

My job duties also were definitely not the same that I previously held. The immediate focus on one of my first assignments given by Mr. Pardi also left me with feelings of further harassment and intimidation by him. This assignment was developing a dissertation on linking inconsistencies and providing insights associated with impact testing under the ASME Nuclear Codes. The same issues had surfaced as a means of contention during the DOL hearing, which showed insensitivity by Mr. Pardi.

MK also contends that my work lacked technical competence. However, I worked for MK for over 9+ years and my annual performance evaluations and feedback from other nuclear and non-nuclear project managers do not reflect this contention. During the hearing, my supervisor, a client representative, and several other co-workers also testified that I was competent at my job. Even after I was removed as corporate/group welding engineer, Mr. Walcutt contacted me at the DuPont site on several occasions for technical welding advice involving a procedure qualification for the Washington Works project. During the Stier, Anderson and Malone (S.A.M) interrogation, a memo written by Mr. Walcutt to Mr. Pardi, was presented to me by S.A.M showing MK withheld favorable information during the DOL hearing about my performance at MK. This was information sent to Mr. Walcutt by one of several MK project managers during an inquiry Mr. Walcutt made in late 1996, as part of my overall evaluation.

I have spent over 23 years dealing with many different aspects of welding. I would like to note that I have a degree in welding engineering from the Ohio State University and that I have been a member of the ASME Section IX subgroup on brazing (including participating in welding procedure/performance qualification and strength of materials code committees) since February 1992.

Mr. Zarges and Mr. Pardi also note during the conference that I have a very limited nuclear background. For the record, I have nuclear experience working hands-on as a pipefitter-welder at several nuclear power plants including Zimmer, Fermi II, Midland, and Perry Unit 1 Nuclear Power Plants while they were under construction during 1978 and 1984 working closely with engineers, supervisors, and inspectors. I worked as an intern for the Test & Operations Support Group of the Nuclear Engineering Department during the start-up phase of the Perry Unit #1 Nuclear Power Plant for the Cleveland Electric Illuminating Company during the summer of 1986. I was responsible for the development of work packages, field engineering, and coordination of craft workers to perform design modifications and corrective maintenance on nuclear systems and components. I worked as a welding engineer trainee for TVA in the Department of Codes, Standards, Welding & NDE in the Division of Nuclear Engineering during the summer of 1987.

As indicated during the S.A.M interrogation, in late 1993 I was responsible for overseeing the MK and Babcock Wilcox Nuclear Technologies (BWNT) first demonstration of the GTAW narrow groove process on carbon steel to verify the ability to comply with ASME Section III welding requirements (including charpy-V notch and weld metal drop-weight testing) as part of the early phase of the Florida Power & Light (FPL) St. Lucie steam generator replacement project. Because of complications (such as unacceptable drop-weight nil-ductility transition temperature selections and noncompliance to several purchase order requests), I declined accepting this demonstration as an

official welding procedure qualification for MK and an official WPS+PQR was never prepared and certified by me.

In 1992, I also developed the "MK & Westinghouse Project Welding Manual" (see enclosure) for use at the Fort St. Vrain Decommissioning Project and I provided many hours of services during the duration of this project. The Westinghouse QA department and the MK project manager were also very happy with my performance and the welding program at the Fort St. Vrain project.

There are several "chilling" events that I feel occurred during this whole process showing MK's insensitivity to 10 CFR 21. I feel dealing with a large corporation, government organizations, and investigative prosecuting attorneys (i.e., NRC and Stier, Anderson and Malone) intimidated many people both in the nuclear and non-nuclear environments at MK. I am aware that many people I knew did not want their names involved in this case for obvious reasons. One witness I had planned to bring in as a character witness from a DuPont project was called by the secretary of MK's legal department and told he was not required to appear as a witness if subpoenaed. When this same person questioned the impact testifying would have on his MK position at the DuPont project, the legal secretary replied "I don't know" and hung up on him. He backed out as one of my witnesses. Another potential witness who had previously worked at Point Beach submitted his resume for a position at MK shortly around the time of the DOL hearing. A friend happened to run into a recruiter that he knew, and was told that this witness would not be considered for employment by an MK executive who reported to Mr. Pardi. In addition, some other people later felt intimidated when they interviewed with Stier, Anderson, & Malone. First, they were contacted by MK's legal department and not directly by the Stier agency. Second, the interviews were performed just two doors down from Tom Zarges' office and around the corner from Mr. Pardi's office, where they were exposed for identification by upper management. In one instance, Mr. Pardi called the other welding engineer up to his office to ask him the name of the person who was sitting in the interrogation room with Ms. Mary Jane Cooper, and unfortunately the person's name was given to Mr. Pardi by this individual.

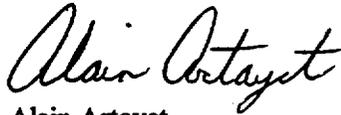
Mr. Walcutt told me that one of the reasons he was leaving for the Ukraine project was because he did not have the "authority and organizational freedom to perform his duties" as the Director of Quality responsible for the nuclear program under 10 CFR 50 Appendix B. Based on unlawful actions taken against me and statements made during the predecisional conference by Mr. Zarges and Mr. Pardi, MK's upper management violated 10 CFR 50 Appendix B by not allowing me to perform QA functions with sufficient authority and organizational freedom to identify quality problems.

During the S.A.M. investigation I was left with the impression that they did not understand a lot of the technical issues I was trying to explain, especially drop-weight and charpy-V notch impact testing.

Concerning the heat input debate, my clear observations indicated that the SGT Ltd. PB WPS-No. GT-SM/3.3-2PB exceeded the maximum heat input of 64.7 kJ/in for the GTAW process that I had specified on corporate WPS-No. GT-SM/3.3-3. The test data recorded on the supporting PQR-No. GT-SM/3.3-Q2 reflected the actual ranges monitored during welding of the test coupon, and the

64.7 kJ/in. value was actually recorded for bead numbers 32-43 on this PQR. The maximum heat input that I specified on corporate WPS-No. GT-SM/3.3-3 for the GTAW process was based on the actual heat input applied during welding at the location where the Charpy-V notch specimens were removed from the test weldment. Project personnel apparently did not agree with this engineering judgement, and elected to use higher heat input values of 67.2 and 73.3 kJ/in recorded on the SGT Ltd. approved PB WPS-No. GT-SM/3.3-2PB. The higher heat input values selected by the SGT Ltd. were not recorded on supporting PQR-No. GT-SM/3.3-Q2. My observation was classified as a Level - IV violation by the NRC in the WEPCO NRC Notice of Violation EA 97-347 "for the failure to perform the steam generator girth weld with a qualified procedure." The NRC added "this is a concern because unqualified welds could result in the subsequent degradation of related pressure boundaries." A letter reflecting these statements was sent by WEPCO to MK and received on April 3, 1998. Shortly thereafter, MK initiated settlement proceedings and requested that I no longer report to the office.

Sincerely,



Alain Artayet

Cc w/enclosure:

Mr. S. Bell, Esq.

Mr. H. Brent Clayton

Mr. James Lieberman

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

## RESPONSIBILITIES

The first responsibility of the individuals listed below is to ensure all personnel have the required knowledge, skills and attitude required for a safe working environment.

PROJECT SUPERINTENDENT - Reports to the Project Manager. Directs operations of all Superintendents. Ensures performance of their work. Monitors field performance against Cost / Schedule / Productivity requirements. Leads actions with trade unions in regards to manpower requirements, organization and ensuring quality.

LEAD SUPERINTENDENT - Reports to the Project Superintendent. Helps Assistant Supt. plan work within discipline areas. Reviews design and assists with schedule development in conjunction with the Area Project Engineer. Directs Assistant Superintendents in performance of their weekly tasks and supplies them with design and coordination input. Ensures manpower and tool availability for the Assistant Supt..

ASSISTANT SUPERINTENDENT - Reports to the Lead Superintendent with matrixed responsibility to the Area Project Engineer. Plans and directs day to day activities of manpower and materials in field operations. Directs field operations of crafts through interactions with Foreman and General Foreman. Coordinates activities of Subcontractors with area requirements. Ensures adherence to current quality and project design requirements. Marks-up drawings for existing conditions and progress. Submits daily field reports to Area Team. Assembles Critical Task plans. This position has the primary responsibility for field craft direction and is intended to be in the field as much as possible.

ECU LEAD FIELD ENGINEER - Reports to the Project Manager. Ensures all Field Engineers are working in a consistent manner and meeting project objectives. Reports to and acts as liaison with the Project Manager for all Field Engineers. Has responsibilities as the Field Engineer for his specific area. Assembles Critical Task Plans as required.

ECU FIELD ENGINEER - Reports to the ECU Lead Field Engineer. Responsible for coordination and management for all small projects and Work Orders relating to his area. This includes working with cost & schedule engineer in developing specific controls. Ensures adherence to current quality and project design requirements. Initiates, monitors and controls Field Change Requests and Requests For Information's relating to the area.

AREA PROJECT ENGINEER Responsible for overall coordination of area construction. Maintains continuous dialogue with plant personnel to ensure required plant / construction coordination. Manages lump-sum contracts with assistance of contracts manager. Responsible for establishing and maintaining project schedule with assistance of project controls scheduler. Ensures adherence to current quality and project design requirements. Coordinates efforts of area superintendents and subcontractors.

Issues all RFI's & FCR's pertaining to the area. Maintains control of the project budget with assistance of the area cost engineer.

AREA FIELD ENGINEER - Reports to the Area Project Engineer. Assists Area Project Engineer in coordinating area construction. Resolves design and construction issues occurring in the field. Ensures project design and quality requirements are being maintained. Formulates plan for specific critical tasks i.e. shut downs and tie in's with assistance from project coordinators, area schedulers, supt.'s and client interfaces.

NIGHT AREA FIELD ENGINEER - Reports to the Area Project Engineer. Assists Area Project Engineer. Resolves design and construction issues occurring in the field. Ensures project design and quality requirements are being maintained. Formulates criteria plan for specific critical tasks, i.e. shut downs and tie in's with assistance from project coordinators, area schedulers, supt.'s and client interfaces.

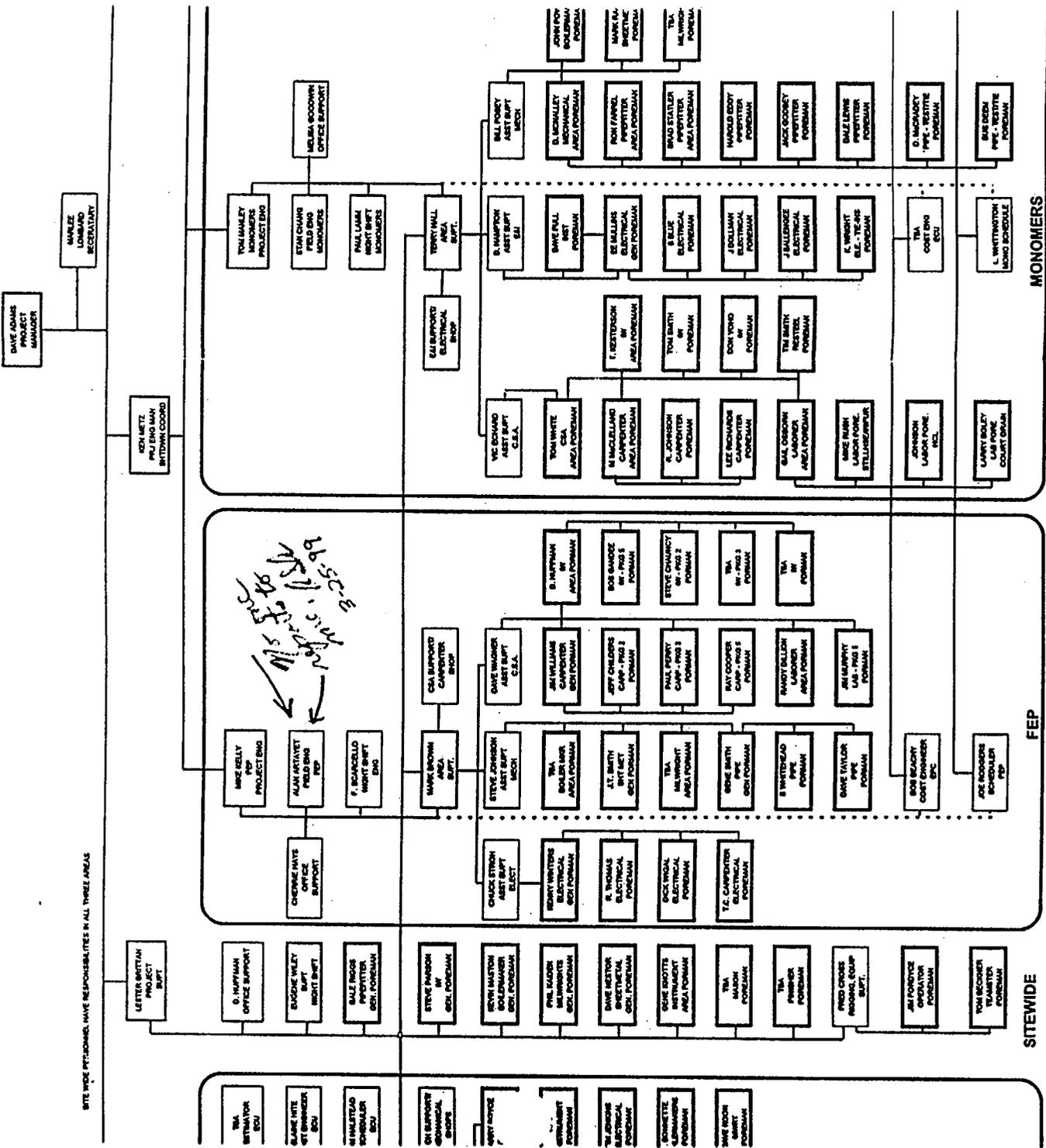
PROJECT COORDINATOR - Reports to the Project Engineering Manager. Assists and Directs area teams, supt. and schedulers in the establishment and control of critical project tasks (i.e. tie in's and shutdowns and start-ups). Works closely with start-up scheduler and Area Teams in determining shut down and start up inter-relationships and sequence. Ensures coordination of project controls with field operations by reviewing and directing project controls for accuracy and relevance to field construction requirements.

PROJECT CONTROLS MANAGER - Reports to the Project Engineering Manager. Responsible for developing work breakdown structure. Providing master and detailed construction schedules. Provides and maintains cost control system; monitoring and analyzing project planning cost and schedule performance, issues weekly field information on status of cost and schedule along with monthly narratives for deviations from schedule. Assumes the lead in preparation of the monthly monitor report.

FIELD DESIGN ENGINEERS - Reports to the Project Engineering Manager. Reviews all home office design for constructability and compliance with field requirements. Takes a lead role in coordinating and informing field supt. and area managers at all design aspects. Reviews all discipline specific RFI's and answers or follow resolution of answers through the Home office design team. Participates in area schedule and coordination efforts. Input to and coordination of site generated POs and contracts along with overseeing specific procurement requirements. Keeps area project engineers aware of design changes for FCR's and schedule maintenance.

PROJECT ENGINEERING MANAGER - Reports to the Project Manager. Maintains and ensures compliance with the functional aspects of the project management program. Has responsibility for the project controls function, major capital project work and the field design engineers. Provides leadership for the Area Project Engineers insuring that we deliver the projects with care, custody and control. The Project Engineering Manager is responsible for problem solving and providing solutions for the Project Manager as opportunities present themselves.

# WASHINGTON WORKS CONSTRUCTION ORGANIZATION



SITE WIDE PERSONNEL HAVE RESPONSIBILITIES IN ALL THREE AREAS

*Handwritten notes:*  
 66-55-5  
 11/15/96  
 (Arrows pointing to specific roles in the FEP section)

*Handwritten note:*  
 MODIFIED TO FIT PAGE 11/30/99

March 26, 1999

Regional Administrator  
U. S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, IL 60532-4351

Subject: REPLY TO EA 98-081 (ADDITIONAL ATTACHMENT)

Dear Regional Administrator:

I have enclosed a copy of the cover page from the Fort St-Vrain Welding Manual, which I had listed as an enclosure on page 4 of my March 25, 1999 reply to EA 98-081. I inadvertently left this out with my original reply. Please include this with the Washington Works job description and organizational chart attachments of the subject reply. If you have any further questions, please contact me.

Sincerely,



Alain Artayet

Cc w/enclosure:

Mr. S. Bell, Esq.

Mr. H. Brent Clayton

Mr. James Lieberman

CERTIFIED MAIL

RECEIPT ACKNOWLEDGMENT OBTAINED VIA INTERNET

COVER PAGE

MORRISON KNUDSEN CORPORATION  
MK-Ferguson Group

AND

WESTINGHOUSE ELECTRIC CORPORATION  
Nuclear & Advanced Technology Division

WESTINGHOUSE TEAM DECOMMISSIONING PROJECT  
WELDING MANUAL

First Issue  
9-10-92

Prepared by: *Alain Artayet*  
A. S. Artayet  
MK-Ferguson Group Welding Engineer

Approved by: *W. J. Hudg*  
W. J. Hudg  
Westinghouse Team Operations Manager  
(MK-Ferguson Group Project Manager for FSV)

*M. S. Kachun*  
M. S. Kachun  
Westinghouse Team Lead Site QA Engineer

SHAW PITTMAN  
POTTS & TROWBRIDGE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2300 N Street, N.W.  
Washington, D.C. 20037-1128  
202.663.8000  
Facsimile 202.663.8007

J. PATRICK HICKEY, P.C.  
202.663.8103  
patrick\_hickey@shawpittman.com

New York  
Virginia

February 3, 1999

By Federal Express

Bruce Berson, Esquire  
NRC Regional Counsel  
U.S. Nuclear Regulatory Commission  
Region III  
801 Warrenville Road  
Lisle, Illinois 60532-4351

Dear Mr. Berson:

This will confirm that in accordance with your request, we have destroyed all copies of the transcripts we received of the Enforcement Conferences held at Region III on January 26 and 27, 1999.

Very truly yours,



J. Patrick Hickey

Counsel to Morrison Knudsen Corporation

**From:** C. H. Weil   
**To:** Michael Stein  
**Date:** Mon, Feb 1, 1999 3:28 PM  
**Subject:** MORRISON KNUDSEN (EA 98-081)  
**Place:** OEMAIL

Mike, attached is a note documenting our conversation about Morrison Knudsen's review of the complainant's written comments on the predecisional enforcement conference. Please let me know if changes are needed. Chuck

**CC:** H. Brent Clayton, OEMAIL, Stanley Rothstein

February 1, 1999

EA 98-081

NOTE TO: Michael Stein, Enforcement Specialist, OE

FROM: Charles H. Weil, Enforcement Specialist, RIII 

SUBJECT: PROVIDING COMPLAINANT'S COMMENTS ON CLOSED  
ENFORCEMENT CONFERENCE TRANSCRIPT TO THE EMPLOYER  
IN AN EMPLOYMENT DISCRIMINATION ENFORCEMENT ACTION

On January 27, 1999, a predecisional enforcement conference (PEC) was conducted with Morrison Knudsen (MK) Corporation concerning an apparent violation of 10 CFR 50.7, "Employee Protection." The complainant in that matter had originally planned to attend the PEC and make a statement following MK's presentation. Following which, MK would have the opportunity to respond to the complainant's presentation. (See Section V of the Enforcement Policy). However, the complainant's personal schedule prevented his attendance.

At the conclusion of the PEC, NRC representatives informed MK that the complainant would be furnished a copy of the PEC transcript for review and comment. MK representatives requested an opportunity to review the complainant's written comments and respond, as though he had been present at the conference.

On February 1, 1999, you and I discussed MK's request as it applied to the Enforcement Policy. We noted, as provided by the Enforcement Policy, MK would have had the opportunity to present comments following the complainant's presentation, had the complainant been present at the PEC on January 27, 1999. We also noted that the policy permitted a complainant who could not attend a PEC, be given the opportunity to review the transcript and provide written comments. However, the Enforcement Policy did not specifically provide a opportunity for an employer, such as MK, to review and comment on the complainant's written comments. We decided that allowing MK to review and comment on the complainant's written presentation would be analogous to allowing the employer, MK, to provide a verbal response to a complainant's oral presentation. Therefore, we concluded that MK should be allowed to review the complainant's written response in this case.

Please contact me as soon as possible if your understanding of our February 1, 1999 conversation is different from the above.

CONTACT; Charles H. Weil  
(630) 810-4372

FILE NAME: G:\EICS\98-081.TRN

**From:** Charles Weil  
**To:** Brent Clayton, Bruce Berson, James Gavula, John...  
**Date:** Thu, Apr 8, 1999 9:07 AM  
**Subject:** MORRISON KNUDSEN (EA 98-081)

Reg III

There was a message on my voice mail this morning, April 8, 1999, from the complainant in the Morrison Knudsen (MK) employment discrimination case. The essence of his message was that he will *not* provide comments on the additional information sent to him by Region III on March 25, 1999. That information concerned his job performance at MK and his testimony at the DOL hearing and was provided to the NRC by MK. He also stated that he had coordinated his decision with his attorney, and they agreed that a response to the NRC's March 25, 1999 letter was unnecessary.

Chuck

E/35

**From:** Charles Weil Peg III  
**To:** Brent Clayton, Bruce Berson, John Grobe, Michae...  
**Date:** Tue, Aug 10, 1999 3:40 PM  
**Subject:** MORRISON KNUDSEN (EA 98-081; EA 98-540; EA 98-541)  
**Place:** OEMAIL

Mike Stein, OE, is in the process of drafting a confirmatory order to Morrison Knudsen (EA 98-081). It is my understanding that we would not be taking enforcement action against either of the individuals involved, so I drafted the attached closeout letters. Please review and send me your comments. The letters to the individuals will be released the same day that the confirmatory order is sent to MK. Chuck

**CC:** OEMAIL

EB6