

POLICY ISSUE NOTATION VOTE

August 22, 2000

SECY-00-0177

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: IMPLEMENTING THE ALLEGATION PROGRAM UNDER THE REVISED
REACTOR OVERSIGHT PROCESS

PURPOSE:

To inform the Commission of the stakeholder views on implementing the allegation program under the revised reactor oversight process (RROP) and request Commission direction on implementing the allegation program.

BACKGROUND:

On November 23, 1999, the staff forwarded SECY-99-273, "Impact of Changes to the Inspection Program for Reactors on Implementing the Allegation Program," to the Commission. There were two primary reasons the staff brought this issue to the Commission's attention. First, continuing the current allegation program results in issues with similar risk significance being treated differently depending on whether they are identified by an NRC staff member through the inspection process or identified to the NRC by an individual external to the agency. Second, continuing the current allegation program increases the likelihood that a licensee will be able to identify when an inspection is conducted in response to an allegation and thus the licensee may be able to identify the allegor.

SECY-99-273 discussed how changes made to the inspection program under the RROP impacted the allegation program, presented four options for implementing the allegation program, and recommended the Commission seek stakeholder comments before choosing an option. The paper also discussed the current approach toward handling allegations. The timeliness of follow-up of safety or risk significant issues is driven by the potential risk to workers or the public and the timeliness of follow-up of less significant issues is driven by the agency's goal of being responsive to the allegor. The staff requested guidance from the Commission on the balance to be struck between the potentially competing goals of increasing the efficiency, effectiveness, and realism of the inspection of allegations under the RROP and enhancing public confidence through continuing to conduct comprehensive reviews of all allegations.

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In a staff requirements memorandum (SRM) dated January 27, 2000, the Commission approved soliciting stakeholder views on the options presented in the paper. Additionally, the Commission requested that the staff conduct a more robust review of the use of the significance determination process¹ (SDP) and remain open to options suggested in the comments from the stakeholders. The request for comments was published in the *Federal Register* on February 9, 2000, and the comment period was closed on April 10, 2000. The staff received 19 comments on the options for implementing the allegation program. Comments were received from an industry interest group, ten utilities, three law firms, two public interest groups, a fuel manufacturer, and an industry consultant. Additionally, two private citizens submitted a single set of comments.

On June 1, 2000, a transcribed public meeting was held to discuss the comments received and the options. The public meeting was conducted as a panel discussion. Panel members included representatives from the law firm Clifford, Lyons, and Garde, Nuclear Information Resource Service, Nuclear Energy Institute, Public Service Electric and Gas, Tennessee Valley Authority, Union of Concerned Scientists, and the NRC staff. Other members of the public who attended the meeting were offered the opportunity to add to the discussion of each topic and to ask questions of the panel members.

DISCUSSION:

The intent of this paper is to assist the Commission in reaching a decision on risk informing the allegation program through a discussion of the insights derived from stakeholder comments on the options. To assist in determining how the allegation program should be implemented under the revised reactor oversight process, the stakeholder comments are discussed within the framework of the agency's performance goals, i.e., 1) maintain safety, 2) enhance public confidence, 3) increase efficiency, effectiveness, and realism of key NRC processes, and 4) reduce unnecessary regulatory burden. Within the NRC's strategic plan, the resolution of allegations is recognized as a contributor to maintaining safety and enhancing public confidence. From an historical perspective, the allegation program was developed to ensure that potential safety issues are addressed in a timely manner. However, the primary outcome is public confidence. This is reflected in the operating plan for the Office of Nuclear Reactor Regulation (NRR) for Fiscal Year (FY) 2000, which states that the primary purpose of the allegation program is enhancing public confidence and the secondary purpose is maintaining safety.

Stakeholder Comments

The comments received in writing and at the public meeting fit into two groups, an industry group and a public advocacy group. In general, the industry group endorses risk informing the allegation program through use of the SDP, Option 3 from SECY-99-273. The public advocacy group endorses continuing the current allegation program, Option 1 from SECY-99-273. Two additional options were proposed in the written comments and discussed at the public meeting. These options are discussed below and in Attachment 1.

¹ The significance determination process is described in Chapter 0609 of the NRC Inspection Manual, which is available on NRC's web site.

There is general agreement that the NRC should: 1) continue to independently review issues that are risk significant; 2) continue to independently evaluate wrongdoing issues; and 3) ensure that communications with allegeders are timely and comprehensive. While the areas of agreement help bound the issues that must be resolved within this paper, they do not help in choosing an option for implementing the allegation program because these activities are part of each of the options presented in this paper.

The areas of disagreement include, 1) the impact of continuing the current allegation program on maintaining safety, 2) the impact of risk informing the allegation program on maintaining safety, 3) the impact of risk informing the allegation program on public confidence, 4) the impact of risk informing the allegation program on efficiency and effectiveness, and 5) whether the SDP is suitable for screening technical allegations. Because all stakeholders agree that the NRC should independently evaluate issues that are risk significant, the disagreement in each of these areas hinges on the perceived impact of NRC action or inaction associated with issues that have low or no risk significance.

Maintain Safety

The industry group takes the position that continuing the current program is detrimental to safety because it requires that the NRC and licensees expend resources on issues that have low or no risk significance. The basis for the position is that evaluation of these issues diverts resources from issues with greater risk significance and this could adversely impact safety. The industry group further concluded that using the SDP to screen allegations improves safety because limited available resources are reserved for resolving issues that have risk significance.

The public advocacy group takes the opposite view and maintains that continuing the current allegation program is necessary to maintain safety. Their position is based on the premise that if the NRC does not fully evaluate all issues that are clearly within its regulatory purview, individuals will not have confidence in the NRC and will not bring forward risk significant issues² to the NRC in the future. This would adversely affect safety.

The public advocacy group also believes that there is a safety conscious work environment or an adequacy of corrective action component to each allegation that must be evaluated by the NRC. The contention is that individuals bring issues to the NRC because either their employer is not receptive to employees raising issues or, in the employee's opinion, the employer's corrective action program has not adequately addressed the issue. Therefore, regardless of the risk significance of the technical issue, the issue concerning the work environment or the corrective action program necessitates an independent evaluation by the NRC. Since it is not possible to evaluate these aspects of an issue without reviewing how the technical issue was addressed, it is appropriate and efficient for the NRC to evaluate issues that have low or no risk significance.

Neither group provided any evidence supporting its position that assisted the staff in weighing the relative merits of the positions. The staff is not aware of any information that would indicate

² For the purpose of this paper, risk significant allegations are defined as those that are categorized as "White", "Yellow", or "Red" by the significance determination process.

that the NRC staff or licensees have diverted resources from risk significant issues to respond to allegations with low or no risk significance. While the current allegation program does not have explicit objective criteria for assessing risk significance as does the SDP, the staff has used its judgment in determining an appropriate response to allegations. If the staff was presented with a situation in which either the staff or the licensee had to make a choice between completing a risk significant activity or resolving an allegation with low or no risk significance, the risk significant activity would receive a higher priority. The staff views the industry's argument more appropriately as an issue of efficiency and effectiveness or reduction of unnecessary burden, from a fee standpoint, rather than a factor in maintaining safety.

The staff does not have any tools to assess the public advocacy group's position that workers may no longer bring risk significant issues to the attention of the NRC, if the agency is no longer independently evaluating issues with low or no risk significance. Consequently, there is no objective evidence to support or refute the position at this time. The staff acknowledges the validity of the group's position that a portion of the allegations received do have a work environment or an adequacy of corrective action aspect to them. Approximately 18 percent of the concerns received in the first three quarters of FY 2000 included a stated concern involving these issues. However, the staff does not record the reason alлегers bring issues to the NRC and, therefore, it cannot support or refute the position that the remaining 82 percent of the concerns were brought to the NRC because of an unstated work environment or corrective action issue.

Public Confidence

In their comments, the industry group states that risk informing the allegation program could improve public confidence. Because the SDP treats issues with similar risk significance consistently, from their perspective it is more transparent and predictable and will enhance public confidence. The industry group also believes that alлегers, and therefore the public, will accept the NRC establishing a risk-informed threshold for initiating independent evaluation of allegations, if the NRC adequately explains the process and the basis for the decision to not independently resolve issues with low or no risk significance. No comments were provided by the industry group on the relationship between public confidence and maintaining the current allegation program or the other options proposed in SECY-99-273.

The public advocacy group believes that most individuals who bring issues to the NRC believe that they are correct and that their issue is significant. Additionally, by the time the individual brings the issue to the NRC, there is usually an emotional component associated with the issue because the individual believes the licensee or employer has not adequately addressed the issue. Therefore, if the NRC does not evaluate issues that are within its regulatory purview, regardless of risk significance, the individuals will feel that the responsible regulatory authority has not been responsive to their issue. Given the emotional component associated with the issue, the public advocacy group believes it is likely the individual will then take the issue to their elected representatives, the public advocacy groups, or the media. It is their belief that this would then become a public confidence issue because the NRC will be portrayed as unwilling to address a "safety issue" without some intervention by an outside party.

The public advocacy group also does not believe that the SDP can be adequately explained to the public such that it will provide the improved public confidence claimed by the industry group. The public advocacy group position is based on their view that feedback from NRC staff that

the SDP can be a complex process to use and explain may lead to inconsistent application of the SDP. Therefore, the public advocacy group does not think using the process as a screening mechanism for allegations provides the consistency claimed by the industry group, and will not contribute to enhanced public confidence.

Neither group provided any evidence supporting their position that assisted the staff in weighing the relative merits of the positions. Additionally, the staff is unable to independently assess the contribution of the current allegation program to public confidence or how risk informing the allegation program will impact public confidence. If the Office of Management and Budget approves the staff's request to survey allegers, the staff may have a tool to assess the contribution to public confidence in the future.

Efficiency and Effectiveness

The industry group's position is that if the NRC risk informs the allegation process, it will be more effective because it will focus the available resources on risk significant issues. The resources no longer needed for evaluation of low or no risk significance allegations could be used to accelerate agency efforts to improve efficiency.

The public advocacy group's position is that if the NRC risk informs the allegation program and, consequently, loses the confidence of workers, the NRC will be much less effective because it will lose the eyes and ears of industry workers. From the public advocacy group's perspective, it is the insights of those industry workers that allows the NRC to maintain safety through inspection of a small sample of plant activities. Additionally, they contend that the NRC will expend far more resources reacting to issues raised in the public spotlight than will be saved by not conducting independent evaluations of the issues of low or no risk significance in the first place.

The allegation program is expensive; in the first three quarters of FY 2000, the NRC spent 35,992 hours in its efforts to communicate with allegers, evaluate reactor technical allegations, and manage the allegation process. The projected cost to licensees for this program for FY 2000, using the current billing rate of \$144.00 per hour, is approximately \$6.9 million . The cost for the program is almost equally split between the time expended to evaluate the issues and document the results and the time expended to communicate with allegers and manage the process.

During the first three quarters of FY 2000, the NRC evaluated and closed 358 allegations, involving 673 individual technical issues concerning reactor licensees. Of the 673 technical issues closed, 189 were substantiated (28%). Thirty-two of the substantiated issues involved violations of regulatory requirements (17% of the substantiated cases). These substantiated issues resulted in three severity level IV violations, three minor violations, and 26 non-cited violations. Based on the enforcement actions taken, the substantiated issues can be considered to have low or no risk significance.

The staff believes these facts tend to support the industry group's position that the allegation program is not an effective use of NRC resources with respect to the goal of maintaining safety. However, NRR's operating plan recognizes this fact and states that the primary purpose of the allegation program is enhancing public confidence. The allegation program contributes to public confidence by responding to concerns raised by various stakeholders. Unfortunately,

there is no objective measure for assessing the effectiveness of addressing the 673 issues mentioned above with respect to enhancing public confidence.

Reduce Unnecessary Burden

The industry group provided a general comment that risk informing the allegation program will reduce unnecessary regulatory burden by reducing the expenditure of resources on issues of low or no risk significance. The only comment offered by the public advocacy group on burden reduction was that the NRC was placing too much emphasis on burden reduction and that is what is driving the NRC to consider risk informing the allegation process.

In the staff's view, there are two sources of regulatory burden associated with the allegation program. The first is the financial burden associated with funding NRC's effort to resolve allegations and communicate with allegers. As noted above, the effort to resolve technical reactor allegations will cost about \$6.9 million for FY 2000, or approximately \$66,000 per operating reactor. The industry group commented that the NRC should continue to ensure that communications with allegers are timely and comprehensive, regardless of the risk significance of the allegation. The group also recommended that the NRC explain the significance determination process, how each issue was evaluated using the process, and the results of the process. Under the current program, approximately one half of the program's cost is related to managing the program and communicating with allegers. From the industry's perspective, this means that one half the cost, \$33,000 per operating reactor, would be incurred, even if all the allegations have low or no risk significance. Therefore, the maximum burden reduction under this approach would be approximately \$33,000 per reactor or \$3.45 million per year, based on FY 2000 data. If any of the allegations are risk significant, the burden reduction would be smaller. The remaining \$33,000 per reactor is attributable to inspection activities and preparation and documentation. The industry group believes that this cost can be reduced if all allegations, irrespective of risk, are referred to them for resolution.

The second burden is the additional effort licensees themselves expend in resolving allegations concerning their facilities that the staff refers to them for resolution and response. In the first three quarters of FY 2000, the staff referred 222 issues to licensees for resolution. Using the NRC's average regional labor rate for FY 2000 for individual issues, 31 hours per issue, and projecting the number of issues referred for the whole year, the staff estimates that licensees will expend approximately 9,176 hours to resolve allegation related issues. This breaks down to 88 hours, or \$12,700, per operating reactor. This number would increase to address the additional allegations, not currently sent to licensees, that would be referred if Option 3 is adopted. The industry group expects that it would still be less than the current amount expended by the NRC, due to a lower labor rate. The industry group also stated in their comments that issues that have low or no risk significance should, in any event, be provided to the licensees for evaluation. The industry group comments indicate that licensees think it is appropriate for them to conduct this review. The extent of the review conducted by the licensees would depend on their assessment of the risk significance and the requirements of their corrective action or employee concern program. Since licensees believe it is appropriate for them to conduct this review, the staff is not categorizing this burden as unnecessary.

Options

As noted above, the staff originally proposed four options in SECY-99-273. Comments from the industry group supported Option 3 and comments from the public advocacy group supported Option 1. Written comments from one utility and two public citizens supported Option 4 and other stakeholder comments recommended two new options. There was no support in the written comments for Option 2 and no support for Option 4 at the public meeting. In light of the staff's views on these options as presented in SECY-99-273, and the lack of support from either the industry or public interest groups, Options 2 and 4 from SECY-99-273 are not discussed in the following section.

During the public meeting, representatives for the industry and public advocacy groups proposed a number of additional options (see Attachment 1). While there are a number of pros and cons associated with these new options, the cons significantly outweighed the pros. Consequently, these options are not discussed in the body of this paper, but are discussed in Attachment 1 for completeness.

The section that follows discusses Options 1 and 3 from SECY-99-273, as modified based on incorporation of public comments and discussions at the public meeting. The pros and cons for each option are discussed below and are summarized in a table in the Attachment 2. The table displays the options with respect to the performance goals; maintain safety, enhance public confidence, increase efficiency, effectiveness, and realism of key NRC processes, and reduce unnecessary regulatory burden.

Option 1 - Maintain the Existing Allegation Program

The staff will continue to review and resolve all issues that meet the current definition of an allegation and will continue to refer allegations, as appropriate, to licensees and other agencies. Licensees and other agencies will be requested to complete their review in a time frame consistent with the timeliness goal and inform the staff of the results of their review. The staff will continue to review the response for adequacy and inform the allegor of the results.

For issues requiring inspection, the staff will continue to use safety and risk significance in determining how quickly the issues will be reviewed and resolved, within the existing timeliness goals. Issues involving lower safety or risk significance will still be resolved consistent with achieving the timeliness goal of 180 days, on average. Individuals bringing issues to the NRC will be informed that if resolution of the issues requires inspection by someone other than the resident inspectors and an inspection in the appropriate area is not on the published schedule, there is an increased likelihood that the licensee will conclude the inspection is related to an allegation. These individuals will also be informed that this may increase the likelihood that the employer will be able to determine who provided the issue(s) to the NRC.

This option maintains the current level of public responsiveness and confidence and addresses the identity protection issue to the extent possible, while achieving timely resolution. During the public meeting, representatives of the public advocacy group were asked to comment on the potential increase in the probability that licensees may be able to identify the allegor. The representatives stated that the NRC staff's effort to explain the limitations of its ability to protect the identity of allegors has provided individuals with sufficient information to make an informed decision. If an individual believes that raising an issue to the NRC presents an unacceptable risk of retaliation, the individual can choose an alternate path, such as bringing the issue to the NRC through a third party. Consequently, the public advocacy group does not believe that the

incremental increase in the likelihood that a licensee will be able to determine who raised the issue to the NRC is a deterrent to continuing the current allegation program.

This option treats issues with similar risk significance differently, depending on whether the issues are raised as a result of an allegation, are licensee-identified, or are identified as a result of an NRC inspection that is not related to an allegation, because of the different internal processes associated with allegation and inspection findings. While the different treatment may not be consistent with NRC's goals of maintaining safety and improving efficiency and effectiveness, it is consistent with NRC's goal of enhancing public confidence. If the Commission chooses this option, agency management will have to ensure that the staff understands that issues with low or no risk significance raised by allegeders are being treated differently to address the goal of enhancing public confidence. This option will cause licensees and the NRC to spend resources to resolve low or no-risk issues more quickly than warranted if only the risk significance were considered. Timely response to the allegeder will still drive some NRC and licensee resources in resolving allegations.

Option 3 - Risk-Informed Allegation Program

Under this option, all allegations provided to the NRC will be assumed to be valid and the SDP will be used to determine the risk significance of these allegations, assuming sufficient information is provided by the allegeder. If the allegeder does not provide sufficient information, the staff will gather additional information through further discussions with the allegeder, an inspection, or requesting information from the licensee, as appropriate. In attempting to gather enough information to evaluate the issue using the SDP, the staff may gather enough information to resolve the allegation. If this were to occur, the staff would provide the resolution to the allegeder.

Communications with the allegeder will continue as described in the current allegation program. The allegeder will receive a letter acknowledging NRC's receipt of the allegation and reiterating NRC's understanding of the issues. The letter will also describe any actions planned by the staff. If sufficient information has been received, the letter will include a description of the SDP analysis and the risk categorization.

For issues determined to have risk significance, either the NRC staff will conduct an independent evaluation or, following existing guidance, the staff will refer the issues to the licensee for evaluation and review that evaluation. If the issue can be provided to the licensee without identifying the allegeder, or if the allegeder does not object to the referral, the issues will be referred to the licensee for entry in either the employee concerns program or the corrective action program, as appropriate. The licensee will be asked to provide a response within a time frame consistent with the timeliness goals of the allegation program. Upon completion of the review, the staff will inform the allegeder of the results.

Based on comments received from the industry group, licensees would also like to be informed of issues that are determined by the staff to have low or no risk significance. For issues with no risk significance, the staff will follow existing guidance to determine whether it is appropriate to refer the issue to the licensee. For issues that are referred, the licensee can determine whether it is appropriate to enter the issues in the employee concerns program or the corrective action program. The allegeder will be informed that no additional action is planned by the NRC staff concerning the issue.

Issues with little risk significance (Green) will be referred to the licensee for review and inclusion in either the employee concern program or the corrective action program, as appropriate. Because there is some risk significance associated with "Green" issues, the referral to the licensee will occur regardless of the wishes of the allegor. However, if the allegor is concerned with being identified as having brought the issue to the NRC, the staff will request that the licensee enter the issue in the employee concerns program, rather than the corrective action program. The allegor will be informed of the referral and that the issue will not receive any additional specific follow-up by the NRC staff.

This option treats issues with low or no risk significance the same as does the revised reactor oversight process. From that perspective, the option is more efficient. However, this option may be perceived as unresponsive by the allegor and other external stakeholders and the lack of independent agency resolution of issues with no or low risk significance could adversely impact public confidence. Additionally, if industry workers lose confidence in the NRC to the extent that they no longer report issues to the NRC, this option may be less effective because of the loss of insights from those workers.

Review of Significance Determination Process

In a staff requirements memorandum (SRM) dated January 27, 2000, the Commission requested that the staff conduct a more robust review of the use of the significance determination process. The staff started with the technical concerns that involved reactor licensees or their contractors and that were closed in the first three quarters of FY 2000. The staff then reduced the population to those concerns that were substantiated and involved an enforcement action. The reason for this approach is that if the concern was found to not be valid, it cannot have any safety significance and limiting the review to concerns that involved enforcement ensured that the substantiated concern involved a regulatory requirement.

During the first three quarters of FY 2000, the NRC evaluated and closed 358 allegations, involving 673 individual technical issues concerning reactor licensees. Out of the 673 technical issues closed, 189 were substantiated (28%). Thirty-two of the substantiated issues involved violations of regulatory requirements (17% of issues substantiated). The enforcement actions included three severity level IV violations, three minor violations, and 26 non-cited violations. It is noteworthy that none of the concerns closed in the first three quarters involved escalated enforcement.

The staff reviewed the concerns that resulted in enforcement actions and selected concerns that were closed in the third quarter of FY 2000 for further review. The ten concerns closed in the third quarter involved issues in the areas of radiation protection, operations, and maintenance. The staff determined that these concerns were a representative sample. These concerns were assessed using the SDP. The staff determined that there was insufficient information to categorize the concerns using the significance determination process based on the initial information provided by the allegor. The issues presented were not suited to the SDP because either they were procedural compliance and programmatic in nature or the allegor did not provide the information needed to use the process, e.g., the amount of radiation exposure received by individuals involved.

The staff then tried to process the concerns through the SDP based on the information available upon completion of the staff's inspection of the issues. In all cases, the issues either

screened out of the process or were categorized as a “Green” issue. Additionally, there was no indication that the staff discovered any new risk significant issues during the inspections.

The staff then extended the scope of the review to include concerns closed since January 1, 1998. The purpose of expanding the scope was to gain insights from any closed concerns that resulted in escalated enforcement. The staff found two escalated enforcement actions that were issued, at least in part, as a result of inspections conducted as follow-up for allegations. The enforcement actions involved issues concerning the ice condensers at DC Cook and fire protection issues at Quad Cities. Severity Level II violations were issued to both licensees.

The staff then reviewed the initial information received from the allegor and the information available at the completion of the staff’s review. In both cases, the information received from the allegor was not sufficient to use the significance determination process. For the ice condenser issue at DC Cook, the staff needed much more design information to assess the impact of the allegation than was presented by the allegor. However, in conducting the inspection associated with the concerns, the staff discovered a significant number of other issues concerning the ice condensers, including inadequacies in the licensee’s ice condenser surveillance procedures (e.g., weighing the ice baskets, flow passage inspection criteria, and door opening force acceptance criteria), inadequate control of the ice condenser design, missing segments of ice, damaged ice baskets, fibrous material in the ice condenser, and blocked ice bed flow passages.

The risk significance of the ice condenser issues was very complicated to assess due to the large number of diverse issues that were difficult to integrate. However, twelve of the issues were reported in Licensee Event Reports (LERs) and were reviewed by the Office of Nuclear Regulatory Research using the Accident Sequence Precursor program. Based on review of those issues, the Office of Nuclear Regulatory Research could not conclude that those issues were risk significant. While the issues were not risk significant, either individually or as a group, the inspection findings contributed significantly to the staff’s understanding of the licensee’s actual performance.

With respect to the fire protection issues at Quad Cities, the issues that were initially presented to the staff were programmatic in nature and also involved some procedure compliance issues. Quad Cities Unit 1 had been shut down due to decreased confidence in the adequacy of the post-fire safe shutdown procedures. The procedures were based on a Safe Shutdown Analysis which had not been updated to incorporate fuse and breaker coordination for 480VAC and other loads. The allegations questioned the basis for continued operation of Unit 2. The allegations helped focus the NRC inspection and review efforts and issues were identified on Unit 2 that were similar to those on Unit 1. The licensee subsequently shut down that unit also.

This analysis, taken in conjunction with the analysis conducted in SECY-99-273, indicates that most of the discrete technical issues submitted to the allegation program are not risk or safety significant. Additionally, for a large portion of the issues submitted, the allegor does not provide the detailed kind of information that facilitates using the SDP. Consequently, if the Commission chooses to risk inform the allegation process using the SDP, in most cases the staff will have to gather additional information before the concerns can be categorized using the significance determination process.

Pilot Programs

The Commission requested in the SRM that the staff address opportunities for piloting the staff's recommendation or other options and solicit stakeholder views on conducting a pilot program. The industry group endorsed implementing a risk informed allegation program across the industry without waiting to conduct a pilot program. The public advocacy group endorsed the existing program and, therefore, did not see the need for a pilot program.

The staff recommends that a pilot program be conducted to obtain additional data on how the process would work in practice. In order to obtain a sufficiently large population of allegations such that the results of the pilot program are meaningful, the staff recommends that the option selected by the Commission be implemented for all reactor licensees in a given region for at least six months. This approach should minimize the potential for mistakes that could occur if an organization was implementing the current program and the pilot program for reactor-related allegations. Additionally, under this approach the staff can more easily measure the outcome of the pilot. Any efficiencies or burden reduction associated with using the pilot can be assessed by comparing the piloting region to the other regions and historical data. Potentially, the staff could develop measures for assessing the impact on public confidence in the region, e.g., responses from alлегers, press coverage on issues not independently reviewed by the NRC, inquiries from Congress, decline in the number of allegations received.

RESOURCES:

All of the options can be accomplished within currently budgeted staff resources. Additionally, Option 3 has the potential to save some resources depending on the completeness of the information provided by the alлегer. However, under this option, if the staff has to perform follow-up activities to develop sufficient information to use the significance determination process, any savings would be reduced.

RECOMMENDED OPTIONS:

At this time, a clearly beneficial option judged against the performance goals is not evident. In weighing the potential for efficiencies in the allegation process and reducing unnecessary regulatory burden (potentially \$3.45 million per year) for the industry against the potential to negatively affect public confidence, more information is needed to quantify the outcome. A limited pilot of Option 3 is proposed to gain those insights. The staff recommends that the pilot be conducted following the RROP initial implementation period in FY 2002. This schedule allows the staff to complete the assessment of the RROP and correct any weaknesses identified in the SDP. The schedule also allows the staff time to develop and implement a communication plan on the approach being piloted.

COORDINATION:

The Office of the General Counsel has no legal objection to this paper, and the Chief Financial Officer has reviewed this paper for resource implications and has no objections.

/RA by Frank J. Miraglia Acting For/

The Commissioners

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William D. Travers
Executive Director
for Operations

Attachments: As stated

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/RA by Frank J. Miraglia Acting For/

William D. Travers
Executive Director
for Operations

Attachments: As stated

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*See previous concurrence

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ATTACHMENT 1
DISCUSSION OF STAKEHOLDER-PROPOSED OPTIONS

Refer Allegor to Licensee if Corrective Action Program Acceptable

This new option was proposed by the Tennessee Valley Authority in their written comments. Under this option, the NRC will categorize the risk significance of issues using the SDP. For issues determined to have risk significance (White, Yellow, or Red), the NRC staff will either conduct an independent evaluation or, following existing guidance, the staff will refer the issues to the licensee for evaluation and will perform a review of the licensee's evaluation.

For allegations with low or no risk significance, the NRC would refer the allegor, not the issues, to the licensee's corrective action program provided, 1) the NRC found the licensee's corrective action program acceptable following the last inspection and 2) the allegor had not previously submitted the issues to the corrective action program. If either of these criteria is not met, the NRC would conduct an independent evaluation or refer the issue to the licensee for evaluation by an individual or group independent of anyone involved in prior reviews of the issues.

During the public meeting, representatives for the industry, public advocacy groups, and the NRC staff recognized a number of strong pros and cons associated with this option. The pros were 1) licensees would know more about the allegations and would address safety issues in a more timely manner, 2) licensees would have more opportunities to correct problems or perceptions of problems concerning internal problem reporting and corrective action systems, 3) potentially, allegors would get a more timely response, and 4) allegors would be directed back to licensee programs if they had not previously used those programs and it is anticipated this would be a positive experience and encourage use of the internal programs in the future.

There were also a number of strong cons. The industry representatives were concerned with developing criteria by which the NRC would judge the "adequacy" of licensee corrective action programs. The public advocacy representatives were concerned that the NRC would be identifying allegors to the licensee and that there is not a real time indicator of the "adequacy" of a licensee's corrective action program. Identifying allegors to the licensee could have a significant chilling effect. Additionally, NRC inspections represent a snapshot in time of the performance of the area inspected and performance could degrade after the inspection. The public advocacy representatives also raised the issue that all allegations have a work environment or adequacy of the corrective action program aspect to them and it is inappropriate for the NRC to refer these issues back to the licensee for review.

The NRC staff acknowledges that there is not a performance indicator for licensee corrective action programs. However, under the RROP, reviewing aspects of the corrective action program is part of each inspection. Additionally, a comprehensive review of the corrective action program is conducted each assessment period. Therefore, the staff believes that it has a sense of the adequacy of the licensee's corrective action program throughout the assessment period. If this option were chosen by the Commission, the challenge for the staff would be to understand the perspective of the allegor and to be able to provide convincing evidence that the corrective action program is effective.

Based on the issues raised concerning this option by the industry and public advocacy representatives, the staff is not recommending this option for consideration by the Commission.

Refer Allegation to Licensee if Safety Conscious Work Environment Is Acceptable

This option was submitted by the law firm Clifford, Lyons, and Garde. This option would give the licensee the option of demonstrating that it has a safety conscious work environment (SCWE). If a licensee could demonstrate such an environment, the NRC would refer all technical issues to the licensee for evaluation and resolution. If a licensee does not meet the criteria for an acceptable SCWE, the NRC would conduct independent evaluations of the issues, unless the allover agreed to have the issues referred to the licensee. In that case, the NRC would review the licensee's evaluation and response.

Under this option, the elements of an SCWE would include, 1) a high quality alternative employee concerns program with sustained demonstrable independence, high employee confidence, and timely responses to employee concerns; 2) zero tolerance for retaliation based on training for management and supervisors on employee rights to raise concerns, appropriate discipline for retaliation, and timely reaction to incidents of potential "chilling effect"; and 3) a strong corrective action program.

This option has a number of the pros and cons associated with the previous option. The pros include 1) licensees would know more about the allegations and would address safety issues in a more timely manner, 2) potentially, allover would get a more timely response, 3) licensees would have more opportunities to correct problems or perceptions of problems concerning internal problem reporting and corrective action systems, and 4) licensees would be required to establish and maintain an SCWE.

The most significant cons identified were the need for the NRC to establish a requirement that licensees have and demonstrate a sustained SCWE and a lack of criteria for judging the acceptability of the elements of an SCWE. While the proposal for this option described the elements, it did not discuss the acceptance criteria. Additionally, industry representatives stated they are not in favor of developing a requirement or acceptance criteria. At the end of the discussion of this option, everyone agreed that this could be the best approach in terms of outcomes, but it would also be the most difficult to implement. In order for this option to be useful, real time performance indicators for the work environment would be needed. The majority of the participants did not believe that development of such indicators is a realistic goal. The staff agrees with the majority view. Based on these concerns regarding implementing this option, the staff is not recommending this option for consideration by the Commission.

ATTACHMENT 2
SUMMARY COMPARISON OF OPTIONS

	MAINTAIN SAFETY		ENHANCE PUBLIC CONFIDENCE		EFFICIENCY, EFFECTIVENESS, AND REALISM		REDUCE UNNECESSARY REGULATORY BURDEN	
	PRO	CON	PRO	CON	PRO	CON	PRO	CON
Option 1 Maintain the existing allegation program	Maintains level provided by current program, the current program works	N/A	Maintains level provided by current program, each concern evaluated, allexer receives timely response from NRC	Licensee more aware inspections involve allegations	If workers maintain trust in NRC, NRC inspection resources are supplemented by industry workers' observations	Resources expended on issues with low risk significance, low risk issues treated differently depending on source, some inspections scheduled just for allegation follow-up	N/A	The regulatory burden associated with the allegation program remains at about \$66,000 per reactor
Option 3 Risk-Inform Allegation Program	Maintains level provided by current program	Workers may not inform NRC of risk significant issues if NRC does not address low risk issues	More consistent treatment of issues with similar risk significance, more transparent process	Longer review time for low risk issues, no independent review of low risk issues by NRC, lack of review may be considered unresponsive	Allegation Program focused on risk significant issues, fewer changes to inspection schedule, less inspection related travel specifically to look at allegations	If workers lose trust in NRC, NRC inspection resources may no longer be supplemented by industry workers' observations	Creating a risk threshold reduces the inspection workload	More issues referred to licensees for review, more licensee effort expended on issues