

OFFICE OF INVESTIGATIONS



FY 1999 ANNUAL REPORT

March 2000

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EXECUTIVE SUMMARY

This report provides the Commission with the results of investigations completed by the NRC Office of Investigations (OI) (reference SRM COMJC-89-8, dated June 30, 1989). This is the 11th OI annual report and addresses fiscal year 1999 (FY 1999).

OI conducts investigations of alleged wrongdoing by individuals or organizations who are licensed by the NRC or are applicants for NRC licenses, or who are vendors or contractors of NRC licensees. OI is composed of four regionally based Field Offices reporting to OI Headquarters. OI reports to the Deputy Executive Director for Reactor Programs and is responsible for two NRC programs: Reactor Investigations and Materials Investigations. The average experience of an OI special agent in FY 1999 was approximately 20 years in Federal law enforcement.

The NRC received 730 allegations regarding potential violations of its rules, regulations, or requirements during FY 1999. Although the 730 allegations represented a 25% decrease from the total of 969 received in FY 1998, OI opened 195 cases, only 1 less than the 196 cases opened in FY 1998. Adding these 195 cases to the 98 carried over from FY 1998 gave OI an inventory during FY 1999 of 293 cases, of which 191, or 65%, were closed during FY 1999. A statistical summary of investigations opened and closed during FY 1999 is contained in the Appendix to this report.

In FY 1999 OI made significant strides toward increasing effectiveness, efficiency, and productivity in management, organizational, and process-related activities. Many of these achievements were the result of initiatives first identified through field office review visits and other aspects of the continuing OI self-assessment program.

The following are significant achievements during FY 1999:

- The OI goal was to close cases in 9 months. OI achieved this goal by completing cases in an average of 6.3 months.
- Another OI goal was to reduce the percentage of cases in the inventory open longer than 12 months to 9%. OI achieved 12.5%. However, this included several cases with extensive Department of Justice (DOJ) involvement which were held open and beyond the control of OI. When these cases are removed from the calculation, OI achieved a performance measure of 8%, below the 9% goal.
- OI established a goal of 75%, or above, of cases within the inventory which are brought to a full conclusion based on the merits of the case. OI met this goal, achieving 93% for substantive cases.
- OI revised its Investigative Procedures Manual to incorporate efficiencies gained through the Self-Assessment Program and lessons learned from cases worked during the year.
- In addition to the case work, OI processed 68 FOIA requests, the third largest number of requests processed within the NRC.
- OI succeeded in expending 93% of its authorized FTE ceiling, notwithstanding the fact that a full 18% of the OI workforce retired in FY 1999. Having anticipated the retirements, OI hired and trained sufficient replacements to continue production levels and maintain the time to complete cases at an average of 6.3 months.
- OI obligated 93% of its contract and bank card funds and 92% of its travel funds.

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INVESTIGATIONS

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Analysis of Case Inventory

Figure 1 shows the OI case inventory from FY 1997 to FY 1999. The total case inventory in FY 1999 was 293 cases. This is a combination of 98 cases carried over from FY 1998 and an additional 195 cases opened in FY 1999. Of the 293 cases in the inventory, OI closed 191, or 65%.

Case Inventory

(Cases Carried Over From Previous Year plus Cases Opened Current Year)

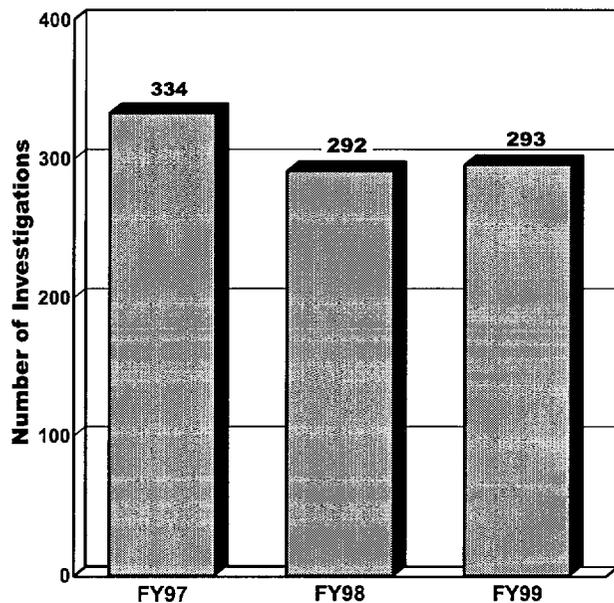


FIGURE 1

Analysis of Cases Opened

The 195 investigations opened are categorized in Figure 2 by major types of alleged wrongdoing as follows:

Material False Statements	38
Violations of Other NRC Regulatory Requirements	71
Discrimination	86

Figure 2 depicts the number of cases opened from FY 1997 through FY 1999. Discrimination cases continue to lead other categories of violations. The number of cases of suspected material false statements has continually decreased, while the number of cases which involve other NRC regulatory requirements has continually increased since FY 1997.

Investigations Opened

(Major Types of Cases)

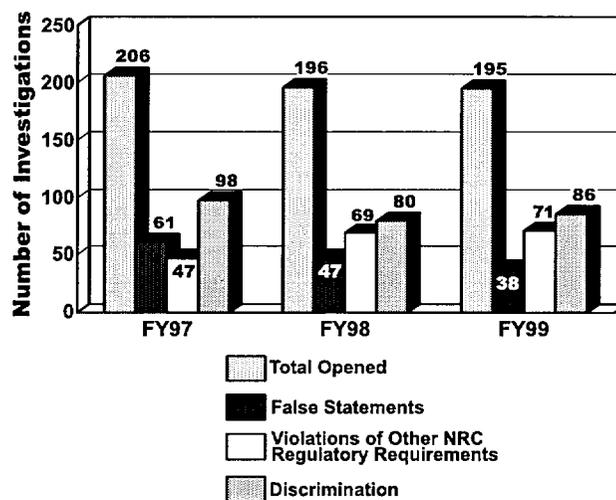


FIGURE 2

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Investigations Opened (Percent by Category)

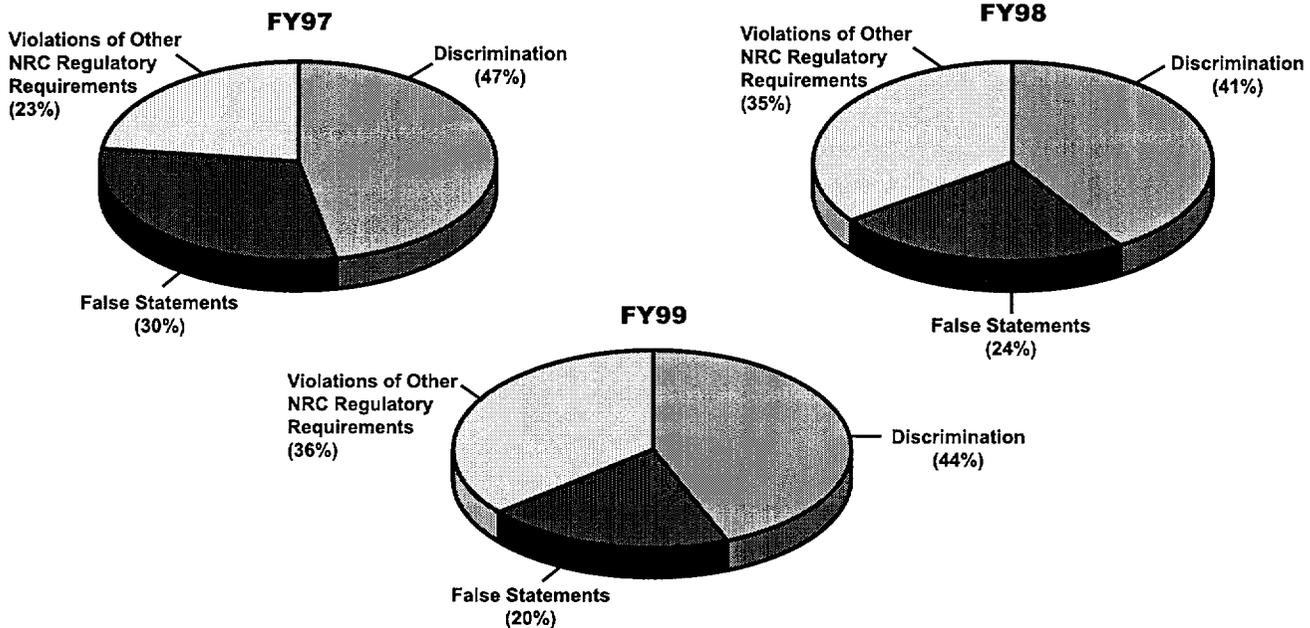


FIGURE 3

Figure 3 is a percentage representation of the category of cases opened from FY 1997 to FY 1999. The FY 1999 distribution shows discrimination cases representing 44% of the cases opened, material false statement cases accounting for 20%, and violations of other NRC regulatory requirements representing 36%.

The graph at Figure 4 depicts the distribution of cases opened from FY 1997 through FY 1999 by the Reactor Investigations and the Materials Investigations Program areas. Reactor-related cases experienced a modest decline, while the number of materials-related cases experienced a modest increase.

Investigations Opened (Reactor/Materials)

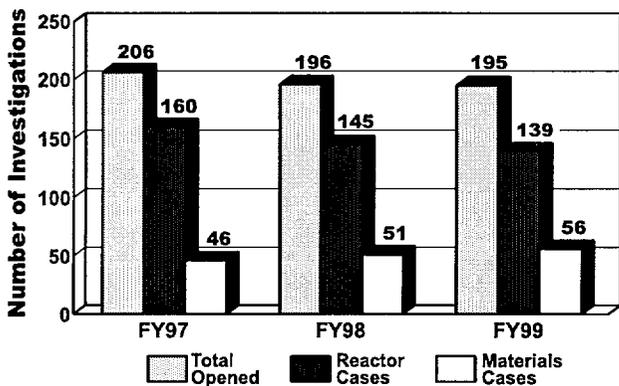


FIGURE 4

Analysis of Cases Closed

Figure 5 depicts the number of completed investigations in FY 1999, categorizes these cases by major types of alleged wrongdoing, and compares them to previous years from FY 1997 through FY 1999. For the 191 investigations completed in FY 1999, the major types of wrongdoing are as follows:

Material False Statements	37
Violations of Other NRC Regulatory Requirements	71
Discrimination	83

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Investigations Closed (Major Types of Cases)

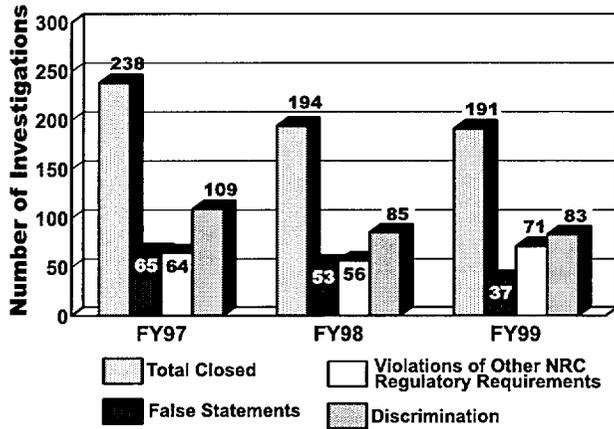


FIGURE 5

Of the 191 investigations completed in FY 1999:

- 60 cases were closed after investigation substantiated one or more of the allegations of wrongdoing.

- 118 cases were closed after investigation did not substantiate wrongdoing.
- 3 cases were closed after the evidence developed did not warrant further expenditure of OI resources.
- 4 cases were closed as deferred to the Department of Labor (DOL), in keeping with direction from the Commission regarding discrimination allegations (SRM 97-147).
- 6 cases were closed where OI provided assistance to technical staff inspections.

Figure 6 is a percentage comparison by category of investigations closed from FY 1997 through FY 1999. Discrimination cases accounted for 44% of the closed cases in FY 1999, material false statement cases accounted for 19%, and cases involving other violations of NRC regulatory requirements increased to 37%.

Investigations Closed (Percent by Category)

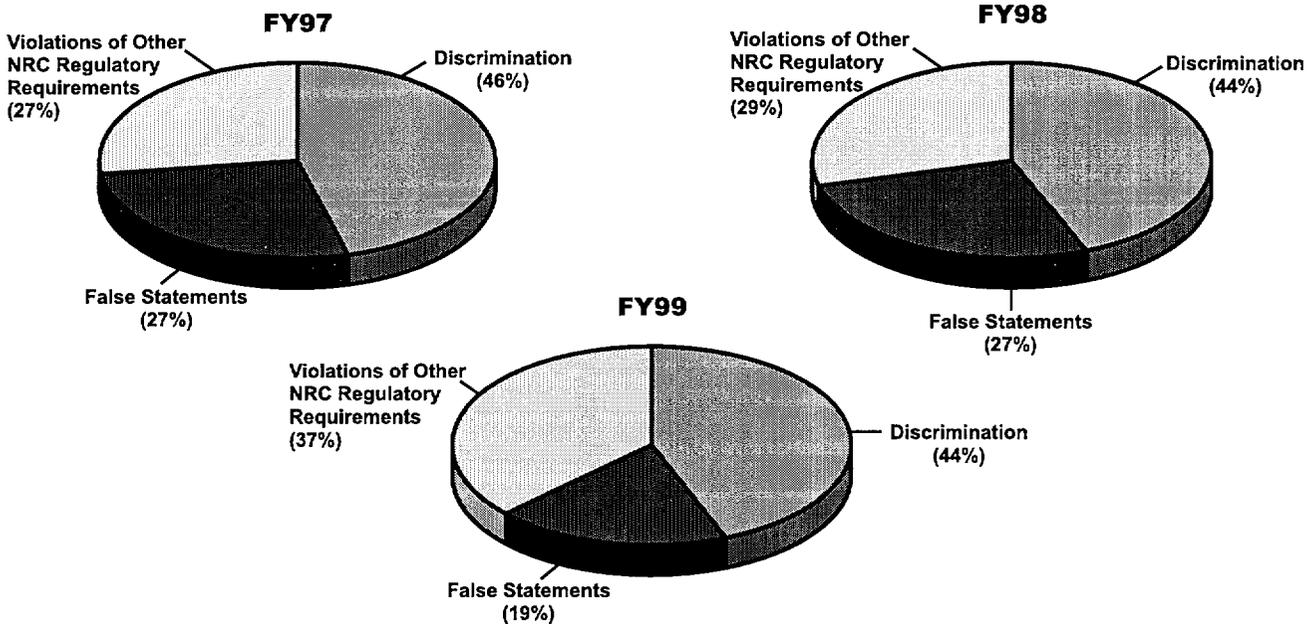


FIGURE 6

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Figure 7 demonstrates the high number of substantive (substantiated or unsubstantiated) cases closed in FY 1999, as compared to other closures. This trend continues to be reflective of improved resource usage through efficiencies gained in both the Allegation Review Board (ARB) and investigative processes in recent years.

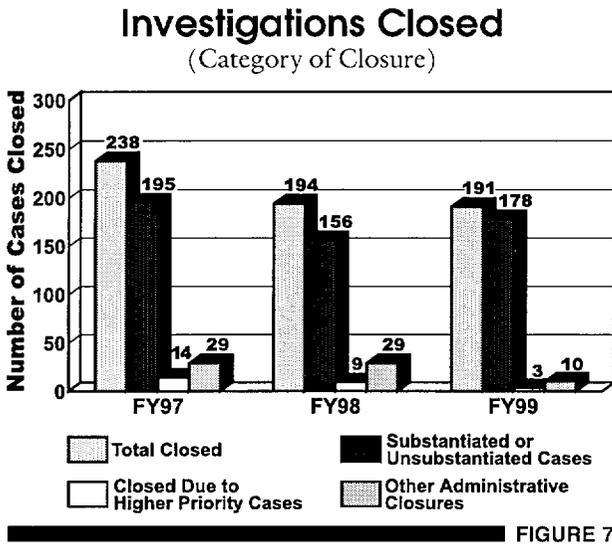
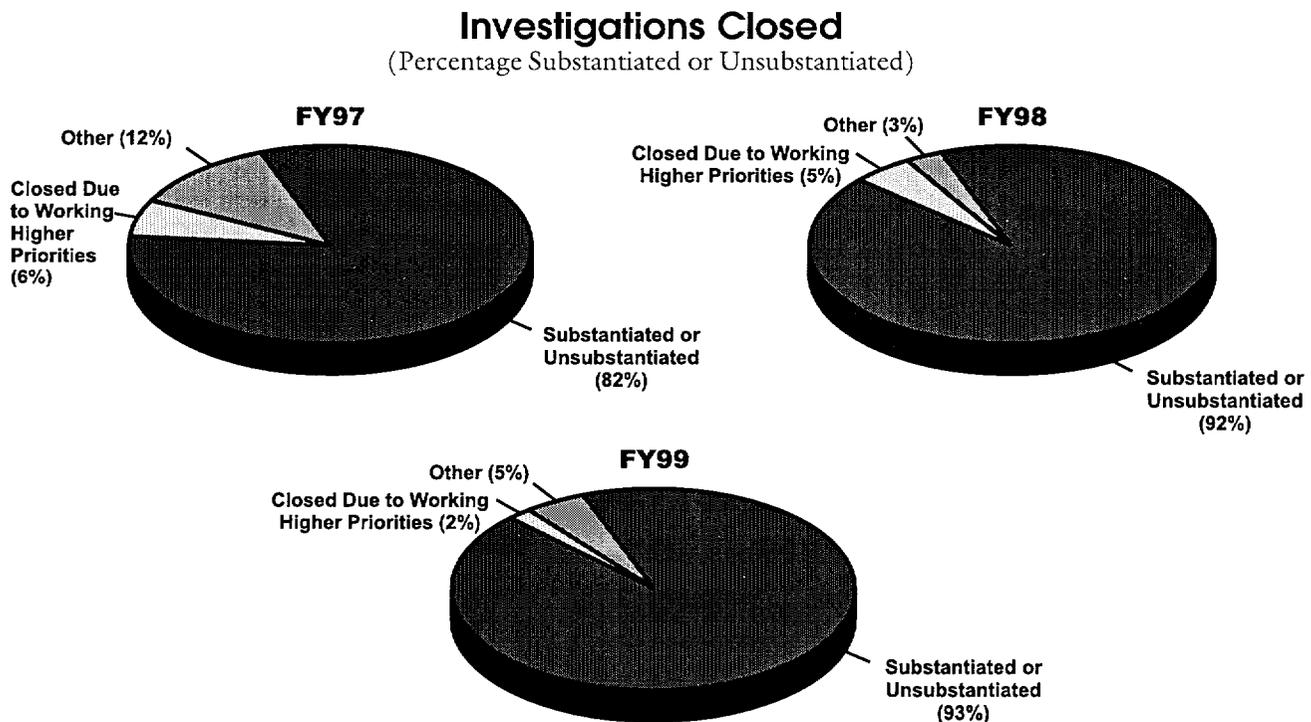


Figure 8 also depicts the disposition of closed cases. The percentage of substantive cases brought to conclusion on the merits as either substantiated or unsubstantiated increased slightly during this period. At 93%, this is well within the OI performance goal of 75%, or above. The evidence developed during this type of complex and lengthy investigation provides the information upon which the technical, legal, and enforcement staffs normally base regulatory decisions. This high percentage is indicative of efficiencies gained within the investigative programs and the ARB process.

High priority substantiated or unsubstantiated cases are the most time-consuming and routinely the most complex cases in OI's inventory. Figure 9 depicts the average time cases were in process from FY 1997 through FY 1999 and compares the average times in process for the most complex investigations and for all investigations. The overall number of months to complete cases decreased 10%



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from FY 1997 to FY 1999. Also noteworthy is the 17% decrease in the completion time for OI's most complex (substantiated or unsubstantiated, high priority) cases.

Figure 10 depicts the number of cases referred to DOJ from FY 1997 through FY 1999.

Management of Investigations

Figure 11 shows the percentage of monthly inventory of cases open longer than 12 months from FY 1997 through FY 1999.

The percentage has remained constant during this period, and OI achieved its goal of 9%, or less, in FY 1999.

Case-specific staff hours are shown in Figure 12, indicating a 9% increase from FY 1997 through FY 1999 (from 45,000 up to 49,000 investigative hours). The FY 1999 ratio of investigative activities (field work, investigative travel, etc.) to administrative activities (allegation review process, writing the final report of investigation, management review of the case, etc.) is approximately 63:37, which is in keeping with OI's standard of 60:40.

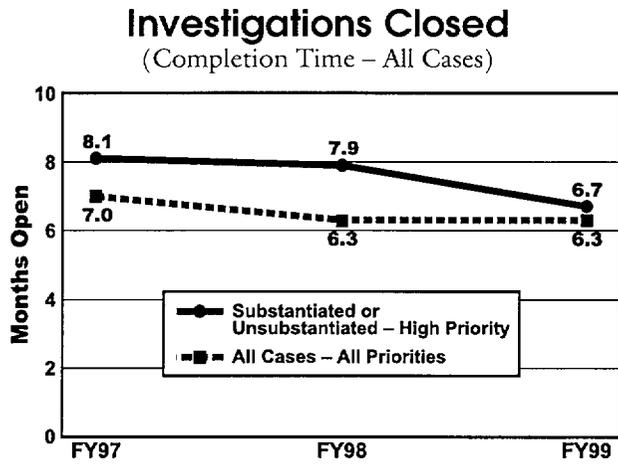


FIGURE 9

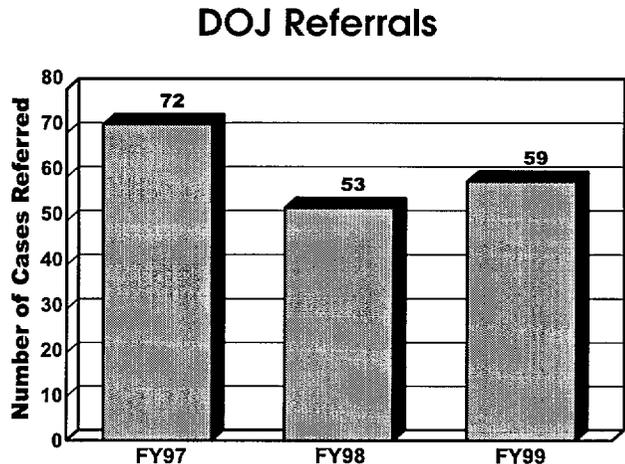
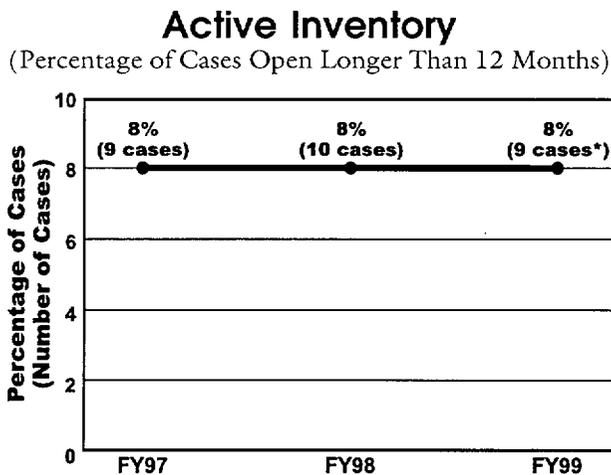


FIGURE 10



*Adjusted number excluding several cases with extensive DOJ involvement that were held open and beyond the control of OI.

FIGURE 11

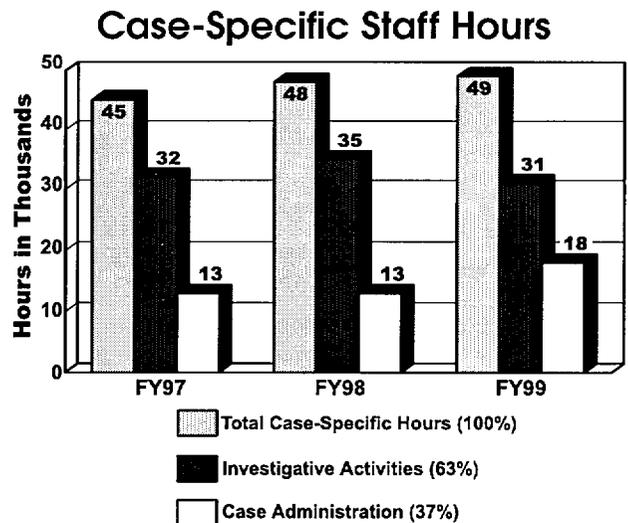


FIGURE 12

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In addition to the case work, OI processed 68 FOIA requests, the third largest number of requests processed within the NRC in FY 1999.

OI succeeded in expending 93% of its authorized FTE ceiling, notwithstanding the fact that a full 18% of the OI workforce retired in FY 1999. Having anticipated the retirements, OI hired and trained sufficient replacements

to continue appropriate investigative activity levels. OI was also able to maintain the time to complete cases at an average of 6.3 months, matching FY 1998.

The overall statistical results of FY 1999 indicate that OI is using its resources in an effective, efficient, and timely manner to assist the NRC regulatory process.

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SIGNIFICANT ACTIONS

NRC Enforcement Actions

There were 101 escalated enforcement actions taken by the NRC in FY 1999, which included civil penalties, orders, and notices of violation at or above Severity Level III. In 18 (18%) of these actions, the OI investigative findings were factored into the decision to take escalated enforcement action. The following are examples of significant cases, the results of which were factored into enforcement action taken by the NRC in FY 1999:

Millstone 3

An investigation determined that during the summer of 1997 two contract supervisors in the Millstone Unit 3 Motor Operated Valve (MOV) program discriminated against two contract MOV engineers, by terminating their employment, after the engineers raised concerns regarding the MOV program's manual and the manner in which it was being reviewed in preparation for restart of Unit 3. The NRC issued a civil penalty in the amount of \$88,000 to the licensee, Northeast Nuclear Energy Company (NNECo), in March 1999. The individuals responsible for the discrimination were sent letters admonishing them that their actions contributed to a violation of 10 CFR 50.7 (employee protection) and that similar conduct in the future could result in significant enforcement action being taken against them.

Seabrook Nuclear Power Plant

An investigation determined that an acting contractor supervisor, employed by the Williams Power Company, discriminated against an electrician for having raised safety concerns at the Seabrook Nuclear Power Plant. The NRC subsequently fined the plant operator, North Atlantic Energy Service Corporation (NAESCo), \$55,000 for a violation of the employee protection provisions of the Atomic Energy Act (10 CFR 50.7).

Millstone Nuclear Power Station

Two separate OI investigations determined that discrimination occurred when two supervisors were demoted as a result of a 1993 reorganization and another supervisor's employment was terminated in 1995. Enforcement action was taken against the licensee for three violations of the employee protection provisions of the Atomic Energy Act and a Vice-President was cited for a violation of the deliberate misconduct rule. Because the licensee had taken substantial actions to address and correct the general and widespread employee concerns and discrimination problems that existed at the time of the above-referenced violations, the Commission authorized the staff to exercise discretion and refrain from issuing a civil penalty. As stated in the notification to the licensee, "But for those broad corrective actions, a substantial civil penalty would have been issued."

Special Testing Laboratories, Inc.

An investigation determined that the director/owner of Special Testing Laboratories, Inc. (STL), deliberately (1) allowed untrained individuals to use nuclear gauges, (2) failed to provide individuals with the necessary dosimetry while they were using gauges, (3) provided false information to the NRC, and (4) used nuclear gauges without a license. Based on the investigative findings, the NRC issued a Confirmatory Order Modifying License to STL. The director/owner was banned from engaging in NRC-licensed activities for a period of 5 years.

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Alfonso DeLeo, Jr.

An investigation determined that DeLeo, an independent contractor and NRC-licensed radiation safety officer, had, since October 1998, deliberately violated NRC requirements concerning the proper disposal/transfer of licensed radioactive material contained in two portable nuclear density gauges. The license had been suspended in February 1996 for non-payment of fees, and the licensee was then ordered by the NRC to properly transfer or dispose of the licensed material by October 1998. The NRC has proposed escalated enforcement action in the form of a \$20,500 civil penalty.

Metorex Inc.

An investigation determined that the former vice president (VP)/radiation safety officer (RSO) of Metorex Inc. (MI) deliberately failed to stop the shipment of devices that contained radioactive material, knowing that MI was not authorized by the NRC to distribute those devices. In addition, the investigation determined that MI's former VP/RSO deliberately failed to submit quarterly reports to the NRC regarding the transfer of the devices containing the radioactive material. The NRC issued a Confirmatory Order to the former VP/RSO banning him from NRC-licensed activities for 3 years.

Perry Nuclear Power Plant

An investigation determined that a radiation protection supervisor (RPS) at FirstEnergy's Perry Nuclear Power Plant was discriminated against by the radiation protection manager (RPM) after the RPM counseled the RPS on the day before he was subpoenaed to appear and provide testimony at a co-worker's Department of Labor hearing against FirstEnergy. A letter documenting that counseling session was placed in the RPS's personnel file several days later. Enforcement action resulted in the licensee's being assessed a \$110,000 civil penalty for a Severity Level II violation.

Zion Generating Station

An investigation determined that a senior reactor operator (SRO) at Commonwealth Edison Company's Zion Generating Station was discriminated against by the shift operating supervisor by being deselected as a candidate for promotion to shift manager and receiving an inferior performance evaluation after raising safety concerns on two separate occasions. Enforcement action resulted in the licensee's being assessed a \$110,000 civil penalty for a Severity Level II violation, while the shift operating supervisor received a Severity Level II violation.

MidMichigan Medical Center (MMC)

An investigation disclosed that a supervisory nuclear medicine technologist treated a cancer patient with an underdose of iodine-131 after deliberately failing to check the physician's prescription. He later discovered the misadministration to the patient and attempted to conceal the error by altering the doctor's prescription to reflect the dosage that he administered. The doctor discovered the misadministration and brought it to the hospital's attention. The hospital conducted an internal investigation in which the supervisory nuclear medicine technologist lied and denied any knowledge of altering the physician's prescription. In a subsequent NRC inspection, the supervisory nuclear medicine technologist also lied to the NRC inspector and denied any knowledge of the prescription alteration. He later admitted that he changed the prescription. The investigation and enforcement action resulted in a Severity Level III violation being issued to MMC. In addition, a 2-year Confirmatory Order was given to the nuclear medicine technologist, placing him in a probationary status with monitoring and indicating that he must inform any new employer of this status and the circumstances so that the new employer can monitor his work.

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Testing Engineers & Consultants, Inc.

While conducting an inspection of the field office of Testing Engineers and Consultants, Inc. (TE&C), an NRC inspector discovered that a nuclear gauge had been signed out by a licensee's employee and had never been returned. The NRC inspector visited a temporary job site and found the gauge in question unattended. Subsequently, the inspector located the licensee's employee who had signed the gauge out; however, the employee maintained that the gauge was returned nightly to the Lansing office. OI interviewed the employee who admitted that he was not truthful to the NRC inspector and that he did not return the gauge nightly to the Lansing office, but rather took the gauge home with him each night. The employee also admitted that he did leave the gauge unattended.

The NRC issued Severity Level III violations and imposed a total fine of \$5,500 against TE&C. A Severity Level III violation was imposed against the employee, who was required to submit a written explanation for his actions to the NRC.

River Bend Station

An investigation determined that the superintendent of radiation control at River Bend Station deliberately provided false/inaccurate information to the NRC regarding the violation of radiation protection procedures. On January 5, 1999, a Notice of Violation and Proposed Imposition of Civil Penalty for \$55,000 was issued. Also, on January 5, 1999, a Notice of Violation was issued to the superintendent of radiation control for providing inaccurate/incomplete information to the NRC.

International Radiography and Inspection Services, Inc.

An investigation determined that a radiographer and radiographer's assistant deliberately violated numerous NRC regulations and license conditions resulting in a radiation exposure in excess of NRC limits. A Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$17,600 was issued to the company. An Approved Settlement Agreement Concerning Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$13,200 was reached with the licensee. Additionally, the radiographer was issued an Order Prohibiting Involvement in NRC-Licensed Activities for a period of 5 years. The radiographer's assistant was also issued an Order Prohibiting Involvement in NRC-Licensed Activities for a period of 3 years.

Anvil Inspection Corp.

An investigation determined that a radiographer and radiographer's assistant willfully violated NRC regulations and license conditions while conducting radiography. On June 28, 1999, a Severity Level II Notice of Violation and Proposed Imposition of Civil Penalty in the amount of \$8,800 was issued to the licensee.

Sierra Nuclear Corp.

An investigation determined that March MetalFab Inc. (MMI), a subcontractor to Sierra Nuclear Corporation, an NRC certificate holder and prime contractor for the fabrication of multi-assembly sealed basket spent fuel storage casks, provided false and incomplete information to the NRC regarding undocumented weld repairs. The NRC issued to MMI a Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities for a period of 5 years. Also, a Confirmatory Order Prohibiting Involvement in NRC-Licensed Activities for a period of 5 years was issued to the MMI project manager and the quality assurance manager.

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Interaction with the Department of Justice

Of the 191 investigations closed in FY 1999, 59 substantiated cases were referred to the Department of Justice (DOJ) for prosecutorial review. During FY 1999, OI supported five Federal grand juries. In addition, OI investigations resulted in one guilty plea in Federal court.

Millstone Units 1, 2, and 3

In December 1996, six of seven Millstone Unit 1 licensed operator applicants (LOAs) failed an NRC licensing examination. Subsequently, it was discovered that they had failed to complete the requisite LOA training. In conjunction with the United States Attorney's Office, District of Connecticut, OI initiated multiple investigations covering all three Millstone units. The investigations substantiated that the personal qualification statements (NRC Form 398) of the LOAs submitted to the NRC by the licensee, Northeast Nuclear Energy Company (NNECo), contained false training information. On September 27, 1999, NNECo pleaded guilty to 19 felony counts of providing false statements to the NRC and was fined \$5,000,000. This is the largest monetary penalty in the history of the commercial nuclear power industry.

Milwaukee County Medical Complex

In 1989, OI conducted an investigation at the Milwaukee County Medical Complex (MCMC) which involved an allegation that a doctor had directed the hospital staff to provide false information to NRC inspectors regarding the activities of a nuclear medicine instructor who was an unlicensed physician. The OI investigation did not substantiate the allegation. However, subsequent to the OI investigation, the Department of Health and Human Services (HHS) investigated the same doctor for Medicare fraud and found that he had billed Medicare for nuclear medicine scans read by this unlicensed physician.

OI assisted HHS and DOJ in their prosecution of the doctor for Medicare fraud by sharing the information developed during the OI investigation. In October 1998, the doctor pleaded guilty to Medicare fraud, false statements, and conspiracy. In February 1999, the doctor was sentenced in Federal court to serve 5 months' incarceration, 150 days' home electronic monitoring, and was placed on 2 years' probation. In addition, he was fined \$20,000, assessed a penalty of \$100,000, and excluded from Medicare and/or Medicaid reimbursement programs for a period of 5 years.

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INITIATIVES

- On January 28, 1999, the Commission established the Millstone Independent Review Team (MIRT). The purpose of the MIRT was to assess the merits of three cases of alleged discrimination at Millstone. It also was to formulate lessons learned from the NRC staff's handling of the cases and offer recommendations for improving investigative and enforcement procedures. The findings of the team were published in the MIRT Report dated March 12, 1999. In this report the team reaffirmed the importance of investigative thoroughness and the professionalism of the NRC investigations program. The MIRT agreed with the OI investigative conclusions in all three of the cases they reviewed. Regarding the quality of the OI investigations, Judge Alan S. Rosenthal, advisor to the MIRT, commented, "There doubtless is no investigation that could not be taken a step further if time and resources permitted. In the three cases before the review team, however, the investigation was conducted by one or more OI Special Agents with considerable thought and consummate thoroughness." Regarding the OI Reports of Investigation and attached exhibits, Judge Rosenthal stated, "In almost 40 years of federal service in three separate agencies, I had occasion to consider and to act upon innumerable investigation reports and their underlying documentation. None surpassed in quality what I encountered here."
- The OI self-assessment program continued in FY 1999 through visits to OI field offices and meetings with senior regional staff. These visits focused on OI performance measures related to general operational and administrative matters, compliance with policy and procedures, timeliness, and outcomes of our work with regard to effectiveness, efficiency, productivity, and client satisfaction. Each field office was visited by a team composed of senior OI Headquarters personnel and a Field Office Director from another office. The visits determined that the field offices were operating satisfactorily within OI requirements, and, more importantly, that OI's clients in senior staff management at the regions were well satisfied with the effectiveness, efficiency, and productivity of OI.
- In FY 1997, OI commenced an initiative to identify and formally report programmatic issues which are developed during investigations but are not directly related to specific wrongdoing, such as weaknesses in management oversight, training deficiencies, workplace culture/climate, and potential areas for improving or clarifying NRC regulatory requirements. In FY 1999, through close coordination with the technical, legal, and enforcement staffs, OI continued this initiative to enhance the overall NRC mission regarding licensee oversight and regulatory effectiveness.
- In August 1999, the OI Investigative Procedures Manual was revised to incorporate numerous efficiencies identified during the self-assessment program visits in management, the investigation process, and administration.
- For the past several years OI has been working with the Office of the Chief Information Officer (OCIO) and its contractors to upgrade the OI Management Information System (OIMIS). This upgrade was completed and initially deployed during the first quarter of FY 1999. All OI users of the system, nationwide, were trained in its operation. It is anticipated to be fully operational in the second

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quarter of FY 2000. This system has enhanced OI's ability to track, monitor, and manage investigative case inventories at both the individual field office level and nationwide. In addition, it has increased the overall accountability and reporting capability, while decreasing administrative requirements.

- OI is participating in the development of an interface between the information management systems of OI, the Office of Enforcement (OE), and the Allegation Management System (AMS), to track allegations through investigation and enforcement, as well as assisting in analyzing licensee performance. The upgraded OIMIS is compatible with this goal and was partially linked to the AMS in FY 1999. The data base of OE was upgraded in FY 1999. The OIMIS is partially linked with the current enforcement data base. Full linkage should be accomplished in FY 2000.

- OI has been an active partner in the project to implement the new Agencywide Documents Access and Management System (ADAMS). When ADAMS is implemented, it will be linked and integrated with the new OIMIS.
- OI developed Operating Plans for the Reactor Investigations Program and the Materials Investigations Program. These plans describe the strategies and performance measurements OI will use to support the NRC Strategic and Performance Plans and to adjust budgetary requirements.

In summary, OI successfully met its goals in FY 1999. We will continue to conduct objective, thorough, and timely investigations. Our newly developed management information system will improve our ability to accomplish our mission. Review teams will again visit each field office, and the data obtained will be analyzed and addressed with a view toward continuing to explore methods to increase efficiency, effectiveness, and productivity.

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APPENDIX

STATISTICAL SUMMARY REPORT

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