PUBLIC MEETING ON THE NRC PROCESS FOR HANDLING DISCRIMINATION MATTERS

- Bill Borchardt
- Director, Office of Enforcement
  USNRC

Chattanooga Meeting
September 7, 2000

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WHAT ARE OUR GOALS TODAY?

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

Group Composition:

- Bill Borchardt, Director, Office of Enforcement, Group Leader
- Barry Letts, Office of Investigations Field Office Director, Region I
- Dennis Dambly, Assistant General Counsel for Materials Litigation and Enforcement, Office ofGeneral Counsel
- Ed Baker, Agency Allegation Adviser
- Cynthia D. Pederson, Director, Division of Nuclear Materials Safety, Region III
- Brad Fewell, Regional Counsel, Region I

AGENDA

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

TASK GROUP PURPOSE

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

Task Group Schedule

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

PUBLIC MEETINGS

- Washington - Sept. 5, 2000
- Chattanooga - Sept. 7, 2000
- San Luis Obispo - Sept. 14, 2000
- Chicago - Oct. 5, 2000
- Paducah - Oct. 19, 2000
- Millstone -Nov. 2, 2000
- Possible Second Round of Meetings Following Development of Recommended Changes

WHO IS THE NUCLEAR REGULATORY COMMISSION?

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

Elements of Discrimination

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

Protected Activities include:

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

Adverse Action Includes:

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

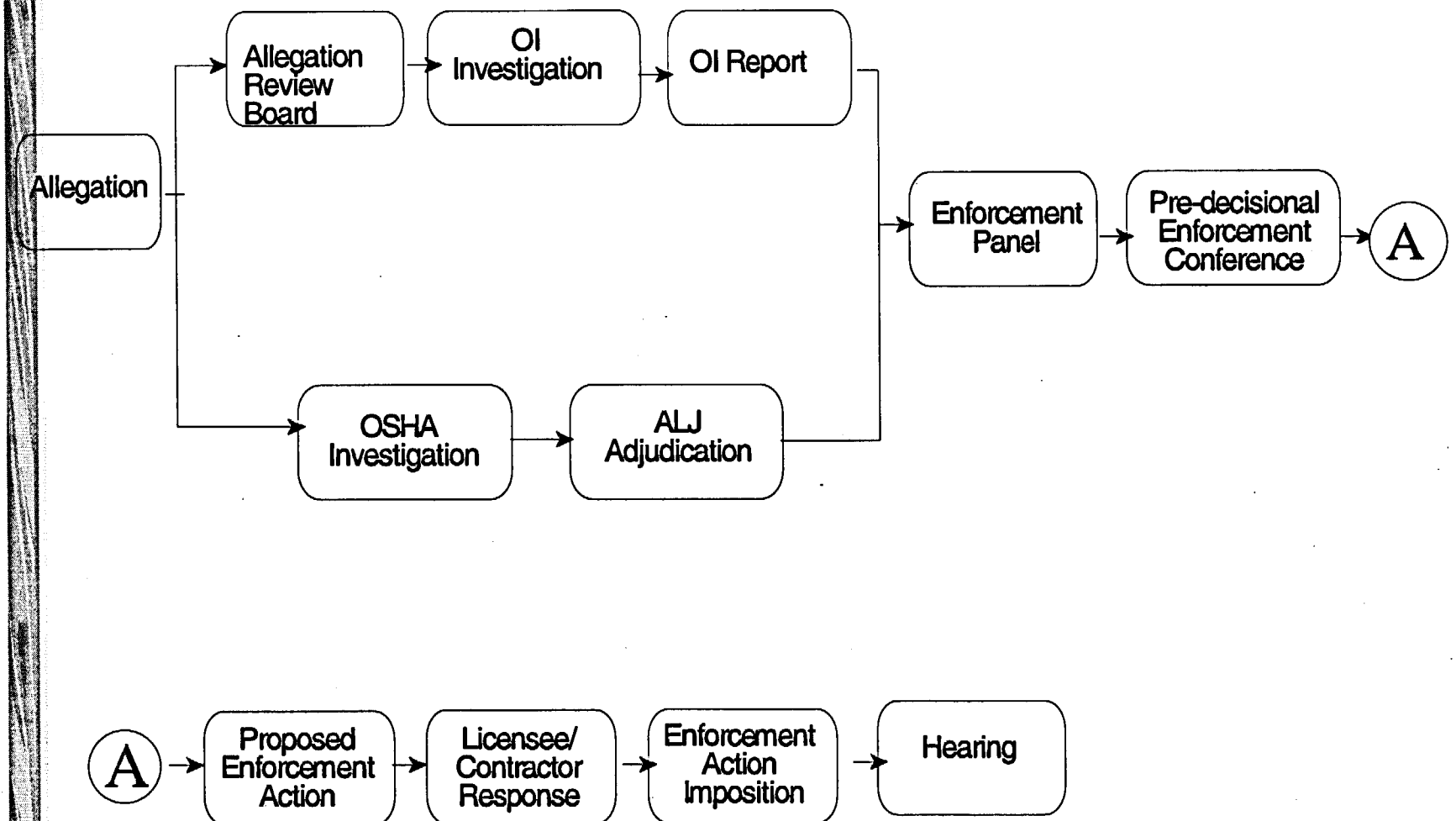
NRC Responsibilities regarding Discrimination

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

NRC's Role in the Processing of Discrimination Complaints

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

Simplified Discrimination Case Complaint



ISSUES FOR CONSIDERATION

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

NRC Review of Agency Processes for Handling Discrimination Cases

Comments of Art Domby, Troutman Sanders, LLP Atlanta, Georgia
September 7, 2000

Introduction

It is appropriate, and timely, for this NRC review of the agency's processes for handling discrimination claims. Much has changed for the better in the nuclear workplace in the last half dozen years, as reflected by the decrease in off-normal events and the increase in safe plant performance. Without exception, nuclear power plants recognize both the safety benefits and the productivity benefits of the early identification of problems or concerns by workers, and the value of a work environment that encourages employees to ask questions and raise issues.

Many of us have worked with clients in developing or enhancing programs which afford workers an alternate avenue to line management for the raising of concerns. We have investigated concerns. We have seen the value to these employee concerns programs, including early identification of potential conditions adverse to safety. Although the NRC – for valid and appropriate reasons – did not adopt a rule mandating a Safety Conscious Work Environment, power reactor licensees embrace the fundamental concept that workers must feel free to raise concerns. In short, the nuclear power industry's own self-interest, combined with the NRC's attentiveness to alleged discrimination claims, has resulted in substantial changes in the workplace environment over the past six years. We have added margin.

[As support, consider the NRC's observations in its 1998 Allegation Program Status Report:

> The total number of allegations received declined 21 percent [in FY 1998], number of allegations concerning reactor licensees declined 29 percent, number of allegations concerning material licensees increased 2 percent, number of discrimination allegations declined 23 percent, and number of open allegations declined 38 percent.
> In discussing the decline in numbers of allegations submitted to the NRC with the Allegation Coordinators, it appears a number of factors are contributing to it. The orders issued in response to concerns with SCWE [Safety Conscious Work Environment] at the Millstone and South Texas nuclear power plant sites, appear to have had a significant impact on the industry. Nuclear power plant licensees have improved and increased the training provided to managers and employees on the subject of SCWE and how to raise

and respond to employee concerns. In addition, licensees have improved their ECPs and increased employee awareness of the programs.

With the publishing of statistics on allegations received by the NRC, licensees are analyzing that data and comparing it with trends in corrective action programs and ECPs. To the extent the analysis indicates a problem, licensees are adjusting their programs to encourage employees to raise concerns through internal processes. Anecdotal information indicates these improvements are resulting in fewer concerns being submitted to the NRC. (emphasis supplied).

In FY 1999, the trend observed by the Allegation Program continued. The Program was more certain that improved work environments at the various licensed facilities had resulted in fewer allegations to the NRC:

> After receiving increasing numbers of allegations in FY96 and FY97, the trend reversed significantly in FY98 and that reversal continued in FY99. The NRC received 21 percent fewer allegations and 26 percent fewer concerns in FY98 compared to FY97. Comparing FY99 and FY97, the staff received 41 percent fewer allegations and 46 percent fewer concerns. The staff believes the primary contributor to the decrease in the number of allegations submitted is the efforts of reactor licensees to improve the effectiveness of line managers in dealing with employee concerns and the effectiveness of employee concerns programs. This in turn has resulted in improvements in the work environment at most sites and fewer allegations being submitted to the NRC.]

Consistent with recent allegation data developed by the NRC's Allegation Program and the real success of the NRC and the industry, the NRC should reevaluate whether the extraordinary high priority assigned to discrimination allegations is prudent and cost-effective relative to other allegations with potential safety implications.

The Implicit Premise that A Discrimination Allegation Involves Wrong-doing Should Be Re-examined

The NRC's allegation review panels assign allegations of illegal discrimination to the Office of Investigations if a detailed examination is considered appropriate. Apparently, the premise behind this practice is that any "50.7" violation (or 30.7 or 40.7) involves wrongdoing. Assuming that was a valid premise in the past, it doesn't seem so today. Current enforcement cases more typically involve a lack of knowledge of the full dimensions of the law. For example, the scope of "protected activity" and the dimensions of "adverse action" have been set through various decisions – after the fact. We have recent cases in which the NRC itself had different views, at different times, on whether

counseling an employee about corporate policies constituted "adverse action", and found unlawful discrimination without determining the motivation of the employer.

In reality, not many discrimination cases today involve wrongdoing of the type that lead to the assignment of these cases to OI in the past.

The NRC's Investigatory Approach Negates Opportunities for Resolution and Settlement

The NRC is to be commended for its plans to interact with other agencies, including the Department of Labor, to understand their processes for handling discrimination claims. You should get many good, helpful ideas.

OI's investigators today are well-trained in their craft and, overall, are extremely dedicated and diligent. In contrast to years ago, the investigators are supported by an OI management that provides oversight but are not micro-managed. However, the context and methods of an OI investigation are markedly different than typical NRC inspections. OI frequently interviews witnesses under oath, occasionally issues subpoenas to compel testimony, excludes third parties from interviews, sometimes proposes the use of "polygraphs" or "lie detector" tests, and routinely refers findings to the Department of Justice for possible criminal prosecution. By its very nature, the current OI process is "closed", adversarial and disruptive.

The OI process itself may infuse an otherwise healthy organization with distrust and animosity, exacerbate conflicts and negate opportunities for an early resolution of differences. Indeed, OI investigations – seeking a definitive conclusion as to whether a violation occurred and, by doing so, finding one party right and the other party wrong -- frequently polarize the employee and the employer. In other words, the process does not help the work environment at licensed facilities. Consequently, serious consideration should be given to having OI investigations limited to civil, administrative purposes or drastically revising OI's methods.

DOL Reviews Seek Early Resolution; Advances Healthy Workplace Environment

The DOL handles complaints of unlawful discrimination under the ERA as administrative matters, without the specter of possible criminal repercussions. Informal interviews are the standard, subpoenas are unheard of, and full exchange of documents is commonplace. Early into the review, the parties are expected to explain their relative positions. On-going, open discussion between the OSHA investigator and the respective parties is standard practice. Furthermore, OSHA is quick, with a benchmark of 30 days for completing its investigation.

OSHA investigators are familiar with the real-world work environment, including supervisory relationships with employees. That familiarity comes, in part, from investigating complaints of discrimination filed under several employee protection statutes. In contrast to an OI investigator, OSHA investigators sound out both the complainant and the employer about compromise and settlement. In those discussions, OSHA investigators may indicate tentative or preliminary findings. These indications may provide further impetus for compromise. OI investigators, in comparison, studiously avoid affecting the relative positions of the parties.

Several years ago the DOL's Office of Administrative Law Judges implemented a "settlement judge" procedure, in which cases may be temporarily transferred from the presiding judge to another judge, whose role is to explore the possibility of settling the case. 58 *Fed. Reg.* 38498, July 16, 1993. Several NRC licensees have utilized this procedure with employees who allege unlawful discrimination under the ERA, saving both parties and the DOL financial resources and expediting a mutually-acceptable resolution. In a similar vein, the DOL has been conducting a pilot test in which the employee and employer are offered the option of mediation and/or arbitration, conducted by a settlement judge or by a private mediator or arbitrator. 62 *Fed. Reg.* 6693, February 12, 1997. These DOL initiatives have the potential to reduce agency expense and substantially shorten the time required to address these complaints. As significant, they tend to lessen the adverse, disruptive impact associated with a polarizing agency investigation.

Related to potential approaches to expedite resolution, the NRC should re-examine its current practice of inviting an employee or former employee to attend predecisional enforcement conferences. This practice sets the stage for increasing

tension between the employer and the employee, rather than resolving their differences. If the employer challenges an NRC tentative conclusion of unlawful discrimination, the employee will feel challenged. If the employee's statements are questioned, the employee may feel threatened. Furthermore, notwithstanding the NRC's efforts to explain the nature of these conferences, the employee understandably -- but incorrectly -- assumes that he/she is "winning" when enforcement conferences are held. If nothing else, the NRC should recognize that the employee's interests are not served by attendance and end this practice because, as the NRC acknowledges, it lacks jurisdiction to fashion a personal remedy for the worker. Other mechanisms can be used for assuring that the NRC obtains full and complete information about the matter.

The NRC Has Changed Its Enforcement Practices Recently

First, the NRC historically applied the DOL analytical framework for dual motive cases[1]. OI's Procedures Manual (1996), § 3.2.2.10.2 sets forth "Elements of Proof" in discrimination cases for OI investigators. It was a wholistic approach, with broad inquiry. A total of six (6) areas of inquiry are listed in the OI Procedures Manual -- not just the four elements applied by the NRC in recent pronouncements. With regard to the motivation of the employer (i.e. whether retaliatory animus for engaging in protected activity motivated adverse action against the employee), the Manual lists the following elements "necessary to substantiate a discrimination case":

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> 5. Whether or not the employer would have taken the same action even absent the employee's engaging in protected activity (dual motive), and, in spite of this.
>
> 6. Whether there is other evidence that proves the employer's arguments were pretextual and the employer's motives were indeed discriminatory, regardless of its arguments to the contrary.

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[1] The NRC Staff, in the past, took the position that the same burdens of proof that would apply in DOL proceedings under Section 211 of the ERA apply to NRC proceedings. "Reassessment of NRC's Program for Protecting Allegers Against Retaliation", January 7, 1994, Appendix B, page B-5.

The factual basis upon which the NRC must make enforcement determinations is the whole record of relevant, reliable, probative and substantial evidence, as mandated by the federal Administrative Procedure Act, 5 USC § 556 (d). As a matter of law, the proper legal standard requires multiple inquiries, of the whole record, to draw a factual conclusion, supported by the preponderance of the reliable, probative and substantial evidence, about the licensee's motivation. If the adverse action would have been taken in the absence of the protected activity, the licensee has provided reliable and probative evidence of permissible motivation. As a matter of policy, the NRC should not reject such evidence of lawful motivation without significant countervailing evidence to the contrary. The NRC should avoid second-guessing what may well be legitimate reasons for adverse action. Stated in a fashion that relates to the recent flurry of NRC enforcement cases, the NRC should not reject evidence of permissible motivation in favor of "reasonable inferences" based only on temporal proximity between the protected activity and the adverse action and the employer's knowledge of protected activity.

Second, the NRC's Office of General Counsel has a somewhat revised role in these employee protection matters. Generic Recommendation No. 5 of the Millstone Independent Review Team report suggested that OGC enforcement lawyers "take a more proactive role in the investigation process from its inception, with the expectation that, to the extent practicable, the attorney assigned to the case would be responsible for handling the case if it is adjudicated." Apparently in response to this Recommendation OGC has changed some of its responsibilities and processes, as indicated by an April 6, 1999, Staff Requirements Memorandum. While I do not know the specific changes that were made, they should be examined to determine if they have resulted in a different frequency of enforcement.

Third, the Office of Enforcement historically focused on the implications on the licensee's organization when unlawful discrimination was found. The relevant focus was on the licensee's policies and programs, and corrective action on those levels. Enforcement was more proportional to the organizational deficiencies identified in the NRC's review and, indirectly, more "safety-related." Recent cases seem overly focused on isolated incidents, interjected with debatable legal issues of the scope of protected activity and adverse action. Enforcement is not the appropriate mechanism to provide guidance for the employee protection rule.

The NRC's "In Part" Discriminatory Standard May Conflict With Enforcement Policy

As others have noted also, alleged violations of employee protection regulations have great consequence to the employees who are alleged to have retaliated against co-workers. They go to the integrity of the employees, and may have long-lasting impacts on their lives and careers. Even when the NRC does not issue a Notice of Violation to the individual or an Order amending an operating license banning the employee from licensed activities, the impact may be of similar magnitude. The NRC Enforcement Policy clearly places non-licensees on notice that their actions in contravention of the law are subject to enforcement sanctions. But the Policy also articulates a responsible application of such sanctions, i.e., "closely controlled and judiciously applied" and taken only in situations when the NRC is satisfied that the individual fully understood his or her responsibility; knew or should have known the required actions; and knowingly or with careless disregard failed to take the required action. If a "reasonable inference" standard is tolerated for discrimination cases, the NRC may visit severe adverse consequences on managers and supervisors who, in good faith, attempted to make personnel decisions based on legitimate reasons. I would urge you to "closely control and judiciously apply" enforcement actions against facility licensees in these cases; frequently they are tantamount to an enforcement action against the individual.

As a matter of policy, the question in your enforcement deliberations should not be whether the enforcement action, if challenged, will be sustained. The enforcement question on causation should be, "after weighing all of the reliable and probative evidence, do we conclude that the employer had retaliatory animus, that is, the determinative motivation was the employee's protected activity?" The question should be answered by NRC line management, with support from OI and OGC.

Suggestions:

1. The NRC should **refine its criteria for screening allegations** of unlawful discrimination. The NRC should consider referral to the licensee, deferral to on-going DOL investigations or proceedings and inspector follow-up in lieu of potentially disruptive and costly investigations. Criteria might include the safety significance of the underlying protected activity, the safety significance of the

alleged adverse action, the impact of the alleged discrimination (for example, limited to the individual or applicable to a group) and, in appropriate circumstances, the probative weight of the allegation's factual basis (e.g. whether the allegation is based on hearsay, speculation or inference or documentation).

2. **Incorporate opportunities and approaches** into the NRC investigation and enforcement processes **to encourage resolution** of these employment-related disputes. As you meet with other agencies, consider the following question: How can we revise the NRC's processes to bring about a speedy resolution of an allegation of illegal discrimination, and in doing so enhance the work environment at a plant, rather than contribute to a polarization between a worker and his or her employer?

The NRC Office of Investigations should revise its investigation practices to minimize the unintended consequences of contributing to a distrustful work environment.

Consideration should be given to, in the normal course, using OI investigation results for civil enforcement only.

Make OI reports available to the accused and the licensee prior to predecisional enforcement conferences.

The NRC should examine the benefits of mediation, settlement judges and management meetings during each of the various phases of enforcement (e.g., predecisional enforcement conferences, after issuance of a Notice of Violation, during challenges to Orders imposing Civil Penalties).

Discontinue the practice of inviting complainants to predecisional enforcement conferences. The practice does not provide the NRC with additional meaningful information, as the employee already has provided information to the investigators. It really pits the two parties against each other.

3. The NRC needs to **examine the contributors to the recent increase in employment protection enforcement cases.**

If a contributor is the unclear dimensions to the employment protection rule, then NRC guidance – not enforcement actions – is the proper mechanism to inform licensees.

If a contributor is the implicit adoption of a "reasonable inference" standard of proof for retaliatory intent, then as a matter of policy the NRC should require more: enough reliable and probative evidence to demonstrate to the enforcement panel and Regional Administrators that the determinative motivation for the adverse action taken against an employee was "because of" the employee's protected activity. Evidence that the employer would have taken the same adverse action in the absence of protected activity should be given considerable weight. Fundamentally, the "weight of the evidence" should be a determination made by the NRC line management as it is a factual determination, not a legal one.

If a contributor is changes in OGC processes implemented in 1999, following the MIRT report, then refinement of those changes is needed.

I appreciate the opportunity to comment on your review. Thank you.

September 7, 2000

NRC Task Force Members:

I am Ann Harris, Director of We The People, of Tennessee. We The People actively supports nuclear industry employees that discover themselves in trouble for identifying safety issues in the workplace. You call us whistleblowers, we say safety advocate.

Wanting to soften the atmosphere here a bit, I was going to tell a joke about how I just survived the wedding from hell. I came home from vacation in the middle of July to the announcement that my granddaughter wanted my checkbook so she could have a grand and unforgettable wedding within 4 weeks. As Queen Victoria said: "I am not amused." First of all, my checkbook is not unlimited. Second, marrying off my granddaughter took some humor, tears, anger and love.

And just as I watch my granddaughter and hope that she will grow and prosper I have hope that this industry will right its self and the NRC will again become the regulator and enforcer rather than the patsy and supporter of criminal wrongdoing and illegal activities. And now you want me to be kind, funny and interesting and tell you what a good job the Office of Enforcement is doing.

The past weeks have not been humorous. But instead of a joke I am going to tell you about some news that I found in the paper this past week. If you have already heard it bear with me for the uninformed.

Up in NRC's Region III, at the ConEd's Braidwood plant, there is an ongoing union dispute. Unit operators began to wear washable tattoos on their hands in the control room. The NRC, at the request of the utility, came charging in and sided with the utility as the utility determined to fire those that refused to wash their hands! Freedom of speech down the drain! You boys need to get the significance of a tattoo versus the safety of a nuclear plant in priority order.

The NRC could take a few lessons from my grandmother who could teach Ms. Manners a thing or two. Grandmother said, " Do not give credence to something that has no significance." In other words ignore that which is not important and work on the important stuff. But what is worse the NRC took a stand at the utility that is a personnel problem and attempted to fix it. Down here in Region II we can't get the boys to respond when death threats are made at the work site.

Lets examine a case of how enforcement works here in Region II:

In the Curtis Overall case, several managers were named by the DOL Administrative Law Judge as schemers in a plot to get Overall off the job site at WBN for identifying safety problems with the Ice Condenser. On April 1, 1998 the ALJ sent him back to the work place. He was to report in May.

On May 28, WBN Site VP Rick Purcell asks the NRC to delay enforcement action in the Overall Case. TVA said new evidence existed.

On June 18, the NRC says it will let TVA know its decision later.

On July 17, NRC asks TVA to submit description of basis for appeal on Overall. (TVA appealed DOL decision to Secretary of Labor.)

On August 7, TVA sent its position for appeal to you. (NRC already had the copy of decision from DOL as part of procedure in MOU)

On August 24, , Region II got more propaganda from TVA in the Overall case. AND what is worse TVA will monitor Overall and keep the NRC informed. Now TVA sends letters to the Region II boys each time that ANYTHING happens in the Overall case. GOOD –BAD—INDIFFERENT!! Everything.

And on September 4, TVA sent a letter with their position for the enforcement delay and making the request a formal one.

On September 4, Region II says that they will withhold enforcement action pending a decision from the DOL. Same day service from the NRC.

Overall received the NRC decision on the day that he received the fake bomb in his truck in Cleveland. September 9, 1998.

During these entire love letter writings, Overall was never advised about what was going on nor was he given a chance to respond until Region II boys made their decision and finally put Overall on the distribution of the decision. How nice!

And during all of these antics by the Region II boys , Region II OI wandered up to Knoxville to TVA's OIG and obtained TVA's report and copied it on NRC paper and stated that all is right with the world. TVA's OIG has taken great care of the Overall case to this point! They went around to all the other law enforcement agencies and gathered up all the evidence surrounding the fake bomb and put it in the hallowed towers in Knoxville and determined that Overall did all these things to himself! Never a look at another TVA employee. Never a glance at another soul. How convenient for TVA and Region II. It is over. Done! How sad.

Now for those of you that have no knowledge of TVA's OIG, it is not independent! I ask that members of this panel read the entire copy of this GAO that I have provided to you. You will have to make your own extra copies. (The report number is OSI-00-6, Feb. 29, 2000 (23 pages). Tennessee Valley Authority : Problems with Irrevocable Trust Raise need for Additional Oversight.)

You continue to hide the savagery and deadly actions of utilities while lazily leaning on your policies and procedures as you ignore federal laws and statutes. You delay action against utilities after federal judges identify and call utility managers liars and schemers. Our local utility has boiler plate answers to your request for dealing with the chilling effect at the plant site and has used the same words for over 18 years. I cannot determine if you are ignorant or apathetic. Again, as Queen Victoria stated: "I am not amused."

Supporting criminals so openly as you do must stop! When utility managers refuse to inform you that an illegal action of abuse has occurred against a utility employee for raising safety issues at the job site a VIOLATION of FEDERAL LAW has occurred! That is deliberate misconduct. When a federal employee is impeded and interfered with while performing assigned job duties it is a criminal VIOLATION OF FEDERAL LAW. You ignore the obvious!

Facts do not cease to exist just because you choose to ignore them. For example:

1. Curtis Overall vs TVA: The DOL ALJ named Dennis Koehl, now plant manager at Sequoyah, Landy McCormick, still at Watts Bar, James Adair, Terry Woods, Larry Katchum, Tom McCollum. And let us not forget the Westinghouse people the judge named.

2. Bill Jocher vs TVA: Wilson McArthur, head of chemistry, Sam Harvey—he got away absolutely free! Joe Bynum got off free. He never missed a TVA pay check and collected a bonus in the meantime. Ike Zeringue lied to the judge or TVA OIG, so did Dan Kueter, Charles Kent, David Sorrel, Mike Pope, Ben Easley. Either way it is criminal.

3. Robert Klock vs TVA: Masoud Bajestani was hid out from the WBN site for six months while you gave TVA the license to startup an unsafe plant.

4. Ann Harris vs. TVA: Floyd Smith is still hanging around. That was back in 1989!! I have prevailed in six (6) DOL complaints. Never one time, for any reason have you ever investigated the charges of intimidation and harassment. The actions went on for twelve (12) years. All of those complaints identified criminal activities according to federal law. And what is even worse these criminal activities are a matter of public record, court records and other sources too easy for the boys in Region II to deal with.

RII OE sends a regular boiler plate letter to my attorney in DC saying that they continue to follow my complaint with TVA. TVA and I signed an agreement in June 1998. TVA appealed certain aspects of the agreement as the law provides. What is RII OE following? Someone needs to explain the way the process works to RII OE.

And I ask you to seek reading lessons for the boys in Atlanta so that they will stop looking as silly as I do when I keep repeating the obvious at these hearings. Before you get your Hanes in a knot and begin to walk funny while nothing gets resolved let's look at the problems so that they can be solved. To see what is in front of your nose is a constant struggle for the NRC. Why? The utilities will not reform. It must come from you the so-called regulator.

I stood before a body such as this in October of 1993. How here we are 7 years later and you want to know thoughts on how you are not working. Now where is the NRC's office of enforcement while nuclear managers are named and given bonuses for just such violations. How long will you ignore federal law? Don't come at me with the word "intentional". That dog still won't hunt.

The NRC must understand that you cannot settle disputes by eliminating public debate. The idea of holding open and public enforcement meetings would be a new and different method of getting the utilities attention. No one seems to mind that my reputation, career, and all my warts were open for public consumption. Why not the abusers?

The industry will be a better place when the NRC devises a system in which saving public health and safety will be more rewarding than deregulation of safety, lack of enforcement actions and sleeping in the hip pocket of the very people that you are to be regulating. The NRC can tell its self anything, sell any bill of goods, which is why you have so often become the nuclear industry patsies. Regardless of how soft or big your warm industry bed is someday you are going to have to get out of it. The revolving door of management between the utilities and the NRC does not do your job.

It is time that the Office of Enforcement took time out to look at how often you perform such grand and lovely chilling effect acts as happened in the Overall case. And let us not forget the tattoos. Take out the unrealistic position that the utility can do no wrong. Quit taking the word of the Region people as the gospel. Not one of them can claim their mouth is a prayer book. Intentional? Certainly. Unless the manager is mentally challenged.

All acts of abuse are intentional when their pay check and career is on the line. There are many more cases just like the Overall case. Jocher, Klock, Harris, etc. But as long as you rely on Region II to do your job you are going to have to listen to me every seven years when you grace us with your presence in the South.

It is time that OE goes beyond the wall of apathy and stop using the regions to hide behind when there is clear evidence that the region's agenda is to support and cover up for the utility. I would like to hear from you again in less than 7 years. It always reminds me of the destructive locust swarms.

Thank you.

Ann Harris
We The People, Inc.
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Ten Mile, TN 37880

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E-mail: apickel@aol.com

I am submitting a copy of this statement to be made a part of the official record.

Abstracts of GAO Reports and Testimony, FY00

OSI-00-6, Feb. 29, 2000 (23 pages). Tennessee Valley Authority: Problems With Irrevocable Trust Raise Need for Additional Oversight. [Text] [PDF]

The Tennessee Valley Authority (TVA) established the Center for Rural Studies in 1994 to conduct studies and programs on the needs of rural communities. TVA endowed the center with $30 million. An investigation by TVA's Office of Inspector General led to the revocation of the Center's trust agreement in 1995, and the endowment money was returned to TVA. The trust agreement initially included provisions to ensure the Center's accountability to TVA. At the direction of TVA Chairman Craven Crowell, however, these safeguards were stricken, and Crowell named himself as the Chair of the Center's Management Committee for an unlimited term. After a result of press criticism, Crowell later had the trust agreement amended. The U.S. Attorney's Office for the Eastern District of Tennessee opened an investigation but excluded TVA's Office of Inspector General because of concerns about its ability to be independent in investigating senior TVA managers. Officials at the U.S. Attorney's Office concluded that there was a prima facie case that Crowell violated the conflict-of-interest statute and that further investigation was warranted. Because the U.S. Attorney was a personal friend of Crowell, however, the matter was referred to the Justice Department. The Justice Department ultimately concluded that Crowell should not be prosecuted because he had relied upon a good faith opinion from the agency's ethics official. In Justice's view, this opinion was incorrect. The problems GAO found with the creation and operation of the Center raise concerns about the need for better oversight of TVA. For example, the Board allowed the creation of an irrevocable trust with a $30-million endowment that had little accountability to TVA. Also, TVA's Inspector General can be fired by the Board, thus limiting the Inspector General's independence. GAO has reviewed the adequacy of TVA's oversight in the past, concluded that it needed more attention, and identified ways to improve oversight and accountability. Also, proposals have come before Congress that would have created a larger Board of part-time directors responsible for policymaking and oversight of TVA management.

Tennessee Valley Authority: Problems With Irrevocable Trust Raise Need for Additional Oversight (Letter Report, 02/29/2000, GAO/OSI-00-6).

Pursuant to a congressional request, GAO provided information on the Tennessee Valley Authority's (TVA) creation of the Center for Rural Studies (CRS) Trust, focusing on: (1) the significant events pertaining to the creation, funding, and operation of CRS as well as any investigations of CRS; (2) how TVA accounted for the funds returned to TVA; and (3) the oversight of TVA activities.

GAO noted that: (1) the trust agreement drafted to create CRS included safeguard provisions to ensure CRS was accountable to TVA; (2) at Chairman Craven Crowell's direction, the structure of the trust was changed and all the safeguard provisions eliminated in a revised trust agreement; (3) Chairman Crowell named himself the Chair of CRS' Management Committee for an unlimited term; (4) the TVA Office of the Inspector General (OIG) initiated an audit of CRS after receiving an allegation concerning Chairman Crowell's role in creating CRS; (5) three days after the Inspector General (IG) notified CRS Management Committee that the audit revealed possible criminal violations, CRS was terminated; (6) the U.S. Attorney's Office (USAO) for the Eastern District of Tennessee opened an investigation and decided the IG could not be independent in investigating senior TVA managers and excluded the OIG from the investigation; (7) after an 8-month investigation, USAO officials determined that there was a prima facie case that Chairman Crowell violated the conflict-of-interest statute and further investigation was warranted; (8) USAO officials felt that USAO should not continue its investigation because the U.S. Attorney was a personal friend of Chairman Crowell, and referred the matter to the Department of Justice's (DOJ) Public Integrity Section; (9) after reviewing the evidence and holding 1 day of grand jury testimony, DOJ concluded Chairman Crowell's actions as a TVA official benefited CRS and demonstrated that he had committed a technical violation of the statute, but should not be prosecuted because he had relied upon a good faith opinion from the designated agency ethics official; (10) according to DOJ, the opinion of this official was incorrect; (11) finally, DOJ reviewed information concerning double billing by CRS' President/Chief Executive Officer (CEO); (12) it declined to prosecute this matter after it concluded there was no evidence that the President/CEO had personally profited; (13) GAO determined that CRS funds were transferred to TVA after CRS was terminated, including the $30 million endowment, which was deposited into TVA's operating account and commingled with other TVA funds; (14) the problems GAO found with CRS creation and operation raise concern about the need for better oversight of TVA's activities; (15) TVA's IG can be fired by the Board, thus limiting the IG's independence; and (16) earlier GAO reviews of TVA oversight had concluded it needed greater attention, and identified options for improving oversight and accountability.

---------- Indexing Terms ----------

REPORTNUM: OSI-00-6
TITLE: Tennessee Valley Authority: Problems With Irrevocable Trust Raise Need for Additional Oversight
DATE: 02/29/2000
SUBJECT: Inspectors general
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Investigations by federal agencies
Internal audits
Federal corporations
Funds management
Corporate audits
Information leaking

Barkley raising any concerns about the revised trust agreement.

In July 1994, Chairman Crowell and Director Hayes approved the revised trust agreement through the sequential approval process.10 However, Director Kennoy disapproved of some of the terms in the trust agreement and thus refused to sign it. Specifically, Director Kennoy expressed concerns that TVA lacked the authority to hold the CRS Management Committee accountable and that the Chair of the Management Committee had too much control.

Although he knew about Director Kennoy's concerns, Chairman Crowell concluded that the structure of CRS would remain the same. However, Chairman Crowell directed that the trust agreement name Directors Hayes and Kennoy to the Management Committee in place of Mr. Zigrossi and the Senior Vice President. Director Kennoy continued to raise concerns that the Management Committee lacked accountability to TVA. As a result of Director Kennoy's disagreement with the proposed CRS trust agreement, the Board was forced to vote on the matter at a public hearing.

Prior to the TVA Board voting on the proposal to establish CRS, Chairman Crowell met with Director Kennoy. Director Kennoy described the meeting as an attempt by the Chairman to coerce him into voting for the proposal when it came before the Board. Director Kennoy stated that shortly after the meeting, the TVA IG informed him that the OIG had received allegations from a Member of Congress concerning improper conduct on his part. Director Kennoy told us that he believes that Chairman Crowell used his contacts to initiate this matter. The IG told us that his office completed its investigation of the matter and issued a report, concluding that there were no violations on the part of Director Kennoy. Chairman Crowell reviewed the investigative report and prepared a written response, which was critical of the OIG investigation of Director Kennoy.11

On October 26, 1994, the trust agreement was formally presented to TVA's Board. The proposal passed with the Chairman and Director Hayes voting "yes" and Director Kennoy voting "no." Director Hayes told us that this vote was the only one that had not been unanimous during the time he served on the Board. He said that normally any disagreements between the Board members are resolved before an issue is presented at a public Board meeting. The Board resolution stipulated that only the earnings from the $30 million endowment could be expended by the trust and if the trust terminated, the endowment would be returned to TVA. In addition, the Board authorized $300,000 of federal appropriated funds for CRS' s initial operating expense. In addition, the resolution authorized TVA to loan its employees to CRS.

The June 22, 1995, Metro Pulse (a local newspaper) reported that regardless of how long he remained in office, Chairman Crowell had assured himself lifetime personal control of over $30 million in TVA funds that were delivered in October 1994 into the establishment of the autonomous CRS.

On September 27, 1995, the trust agreement was amended as follows:

"The Chair of the Management Committee shall hold office for a term to expire on May 18, 2002. The terms of office for the Chair of the Management Committee and other two members of the Management Committee shall coincide with the expiration of their present terms as members of the Tennessee Valley Authority Board of Directors. After these limited terms expire, all subsequent appointees serve six-year terms. The Chair of the Management Committee shall have the power to appoint members of the Management Committee."

Total funding for CRS during the approximately14 months it was in existence was $33,222,297. On November 23, 1994, Chairman Crowell signed the trust agreement and had $30 million transferred to the trustee.12 On November 28, TVA transferred an additional $617, 091--the interest earned on the $30 million endowment from the date TVA received it on June 22, 1994. The TVA

OIG audit of CRS was unable to locate any documentation of the Board authorizing this transfer.

On January 13, 1995, TVA and the Electric Power Research Institute (EPRI)13 entered into an agreement that provided for EPRI to provide CRS initial funding for operating expenses and to conduct research and development projects. At the time, Mr. Crowell was the Chairman of TVA's Board, the Chair of CRS's Management Committee, and a member of EPRI's Board of Directors. Further, TVA paid EPRI annual dues of $25 million, representing approximately 10 percent of EPRI's total annual revenue.

EPRI was to provide CRS at least $600,000 per year for 1995, 1996, and 1997 by using $300,000 of its funds plus $300,000 that TVA would provide EPRI. The funding for 1995 was to be used for the development of a 5-year plan and for CRS's start-up phase. In May 1995, TVA transferred to EPRI the $300,000 in funds authorized by the Board in October 1994. EPRI paid CRS a total of $505,250 during the period that CRS was in operation.

On August 14, 1995, TVA transferred another $300,000 directly to CRS to pay for a CRS survey conducted by Roper Starch Worldwide, a nationally recognized pollster. The project director, under contract with CRS, described the survey as an in-depth survey of rural areas in the Southeast United States on attitudes about such things as politics and economic opportunity. He added that it was his understanding that Chairman Crowell would be using the data for his book on the rural south.

The survey funds came from the interest earned on federally appropriated funds associated with TVA's Technology Brokering Program.14 Prior to the funds transfer, Lawrence Stein, CRS's President and Chief Executive Officer15 requested that TVA's Vice President for Economic Development release the funds to CRS, but she refused because no contract or agreement existed between TVA and CRS for the release of the funds. She subsequently refused to release the funds even when the Chairman requested that she do so. Chairman Crowell then directed the Vice President for Economic Development to transfer the funds to Mr. Zigrossi, which she did. Mr. Zigrossi subsequently released the funds to CRS.

From November 1994 through January 1996, CRS received a total of $1,798,956 in investment income.

Table 1: Center for Rural Studies Trust, Summary of Cash Receipts and Investment Income Earned November 23, 1994, through January 31,1996

Description	Amount
Funds received from TVA	
Initial endowment (November 23, 1994)	$30,000,000
Interest earned on initial endowment (November 28, 1994)	617,091
Rural attitudes survey	300,000
Total received from TVA	$30,917,091
Other sources of revenue	
Funds received from EPRI (1995)	505,250
Funds received from the Center for New Westa	1,000
Total funds received, November 1994-January 1996	$31,423,341
Total investment income	$1,798,956
Total funds received and investment income	$33,222,297

aMr. Stein told us that the Center for New West made this payment to CRS to offset his costs for travel to a conference that the Center for New West sponsored.

Source: TVA OIG Draft Report

According to TVA's OIG analysis of CRS's expenditures for the period

November 1, 1993, through January 31, 1996, the total cost incurred was $1,410,747, of which TVA paid $829,691 directly. Of the $1.4 million cost incurred, $680,790, or 48 percent, was paid for salaries and benefits of the three TVA employees on loan to CRS, including relocation costs. Of the $680,000, $377,388 was associated with Mr. Stein.

Prior to entering into the contract with CRS, EPRI requested that Mr. Stein provide CRS's proposed General and Administrative (G&A) rate. The contract required EPRI to reimburse CRS for costs incurred, including a pro rata share of the overhead rate or G&A. Mr. Stein informed EPRI that CRS had an 81.82 percent G&A rate. Because EPRI's auditors typically review cost proposals prior to signing a contract, EPRI officials requested that they audit CRS to substantiate the 81.82 percent G&A rate. Mr. Stein would not provide the support necessary to conduct the audit. He subsequently contacted Chairman Crowell who in turn contacted the President of EPRI and expressed his dissatisfaction and concern about the EPRI/CRS contract not being signed. As a result of this contact, the audit was not conducted and the contract was signed on March 1, 1995.

and Chairman Crowell

Based on an anonymous complaint concerning Chairman Crowell's creation of CRS, TVA's OIG initiated an audit of CRS in November 1995. Three days after the IG informed CRS's Management Committee that the audit revealed possible criminal violations, the Management Committee terminated CRS, moving its activity under the aegis of TVA. Less than a month later, Mr. Stein resigned. After receiving the same complaint, the USAO for the Eastern District of Tennessee opened an investigation with the Federal Bureau of Investigation (FBI). After an 8-month investigation, the USAO decided that the Eastern District should be recused from any further investigation, citing the U.S. Attorney's personal relationship with Chairman Crowell. However, the USAO felt further investigation was warranted because there was a prima facie case that Chairman Crowell had violated the conflict-of-interest prohibitions in 18 U.S.C. section 208. The investigation was transferred to the Public Integrity Section of Justice, which declined prosecution of Chairman Crowell. Justice also reviewed the information concerning the double billing by Mr. Stein and declined to prosecute this matter.

In September 1995, an anonymous source sent letters to two congressional offices containing allegations about Chairman Crowell. The source claimed, among other things, that Chairman Crowell had made financial arrangements to benefit his personal friends and political cronies by way of CRS.

One of these congressional offices forwarded the letter to the GAO FraudNET, which referred the matter to TVA's OIG on October 16, 1995. The other office forwarded the letter to the FBI. During October 1995, the TVA OIG received letters from both the FBI and GAO, conveying the allegations from the anonymous source regarding Chairman Crowell. Independently, the FBI's Knoxville office initiated a public corruption investigation in November 1995. On November 28, 1995, the IG provided Chairman Crowell a copy of the anonymous letter containing the allegations and requested that Chairman Crowell, as Chair of CRS's Management Committee, authorize a financial audit of CRS by the OIG. The OIG did not have audit rights.

After Chairman Crowell authorized the audit of CRS, the OIG immediately initiated the audit to trace all CRS funds received and disbursed. An initial review of CRS's financial records determined that there was no accounting system and CRS's internal controls were "absolutely" inadequate.

As a result, the auditors interviewed Mr. Stein to determine the basis for CRS's billings to EPRI. During an interview on November 30, 1995, Mr. Stein admitted that he directed a TVA employee on loan to CRS to "concoct the EPRI bills out of nothing." He also stated that the bills were

"contrived" and EPRI was billed for "presumed" costs. In subsequent conversations with the OIG, Mr. Stein said his intent was to acquire as much money as possible for CRS before TVA's 3-year commitment expired. Mr. Stein said he sought EPRI moneys to move funds quickly into CRS accounts in anticipation of full operations. Mr. Stein had informed the Internal Revenue Service (IRS) that he intended to accumulate funds in the trust for 3 years and use the interest to provide salary/compensation for himself, other staff, and operations.

The OIG audit of CRS records determined that CRS overbilled EPRI by $361,045, of which $257,034 appeared to have been falsified and determined that the balance was not in compliance with the contract. $227,366 in G&A expenses billed to EPRI was entirely unsupported by actual CRS expenditures. Further, the OIG found that CRS submitted other budget proposals to a vendor and IRS, that indicated the G&A rate was 10.4 percent or 5.4 percent, respectively. These G&A rates were not shared with EPRI, nor was the fact that TVA was paying for most of CRS's expenses. In effect, CRS billed EPRI as if all its costs were direct costs, and added overhead costs even though it never incurred such costs. Mr. Stein told OIG auditors that he was not aware of any double billing or overbilling.

On December 4, 1995, following the CRS audit fieldwork, the IG notified the CRS Management Committee16 of potential violations of law surrounding CRS billings to EPRI. The OIG opened two investigations involving CRS based on the questionable billings and other indications of financial irregularities found during the audit.

On December 7, 1995, the CRS Management Committee signed a resolution to initiate termination of CRS and transfer its activities into TVA. It was reported in the media that Chairman Crowell announced that CRS--charged with enhancing Tennessee Valley economic growth, creating rural jobs, and making the power system more competitive--would be moved beneath TVA's corporate umbrella.17 TVA also entered into a contract with the University of Kentucky Research Foundation to continue the contractual relationship initiated between CRS and the foundation.18 The contract tasked the foundation to perform or supervise studies related to issues and problems of rural communities and to benefit rural inhabitants of the Tennessee Valley Region.

On January 5, 1996, Mr. Stein resigned from TVA, effective January 22, 1996. He agreed not to disclose the terms and arrangements surrounding his resignation or make comments or statements to the news media that were adverse to or critical of TVA, its management, its employees, or its programs. TVA also agreed not to disclose the terms of Mr. Stein's resignation, except as required by applicable law.

During the 14 months CRS operated, a 5-year plan was developed and two activities--the Roper Starch Survey and preparation to publish an Internet guide for farmers--were undertaken.

In late 1995, after receiving a copy of the anonymous complaint from the FBI, an Assistant U. S. Attorney (AUSA) for the Eastern District of Tennessee reviewed the allegations and concluded that the FBI was not actively investigating the matter and that additional investigation was warranted. As a result, the USAO began supervising the investigation and the FBI began serving subpoenas for records. The AUSA was aware that TVA's OIG was conducting an audit of CRS and concluded that the TVA OIG could not be entirely independent in investigating Chairman Crowell and other senior managers at TVA because TVA's Board could fire the IG. Therefore, the OIG was excluded from the investigation.

The IG first learned of the FBI and USAO investigation of CRS in February 1996. After a meeting with the AUSA, the IG suspended all audit and investigative efforts and provided the FBI all OIG files regarding the allegations concerning CRS and Chairman Crowell, including summaries it had

prepared.

The FBI/USAO investigation focused on whether Chairman Crowell's participation in the creation of CRS constituted a violation of 18 U.S.C. section 208. The investigation did not address CRS's questionable billing practices. The FBI conducted a number of interviews with TVA employees, including Mr. Zigrossi.

Mr. Zigrossi told us that he had conversations with Virgil Young, at the time the Special Agent in Charge (SAC) of the Knoxville, Tennessee, FBI office. Prior to becoming TVA's Chief Administrative Officer, Mr. Zigrossi had been TVA's first IG and previously served as the SAC of the FBI Washington, DC, field office. He asked SAC Young about the status of the FBI investigation of Chairman Crowell. However, SAC Young told us that while he did have conversations with Mr. Zigrossi during the FBI's investigation of Chairman Crowell, they did not discuss the investigation.

On August 22 or 23, 1996, at the request of SAC Young, a meeting was held at the USAO with the AUSA, the Chief Assistant, the FBI supervisor, the FBI case agent, and SAC Young attending this meeting. At that time, SAC Young attempted to convince the USAO that there was insufficient evidence to proceed with a case against Chairman Crowell. SAC Young told us that this was the first time he ever attempted to convince a U.S. Attorney not to pursue a prosecution. According to the FBI case agent, the arguments presented by SAC Young at the meeting were identical to those used by Mr. Zigrossi when the case agent interviewed Mr. Zigrossi. The FBI case agent stated that he believed that SAC Young presented Mr. Zigrossi's views as his own.

The Chief Assistant stated that he had had many dealings with SAC Young and it was unusual for him to have a working knowledge of an ongoing investigation. A senior FBI official in the Knoxville FBI office told us that SAC Young did not involve himself in operational matters, including the details of ongoing investigations. The AUSA told us that it was highly unusual for any investigative agency to argue against proceeding with a prosecution, because the agency normally pushes for prosecution. The FBI case agent stated that the AUSA was so incensed about SAC Young's argument against prosecution that he provided the SAC a copy of the section of the U.S. Attorney's handbook that clearly states that the USAO will determine what warrants prosecution.

The U.S. Attorney said that he had attended both professional and social functions with Chairman Crowell, including having lunch with Chairman Crowell during the course of the investigation of the Chairman. He also said that Chairman Crowell had telephoned him to ask about the status of the investigation, but the U.S. Attorney denied providing any information to Chairman Crowell about the investigation. We attempted to interview Chairman Crowell about his contacts with the U.S. Attorney and other matters. However, he declined to be interviewed.

Eight months after it began its investigation, the USAO held a meeting to review the status of the investigation and to determine what actions needed to be taken. The U.S. Attorney, Chief Assistant, Chief of the Criminal Section, and the AUSA attended. They agreed that Chairman Crowell's actions warranted further investigation by the grand jury to determine if an indictment could be returned. However, they also decided that the Eastern District of Tennessee should not pursue the grand jury indictment because of the relationship between the U.S. Attorney and Chairman Crowell, as well as the relationship between the USAO, TVA management, and TVA OIG. It was decided that the USAO would request Justice to assume responsibility for the investigation and recuse the Eastern District.

Accordingly, on October 2, 1996, the USAO's First Assistant met with Justice's Public Integrity Section and the Associate Attorney General.

During the meeting, the First Assistant discussed the status of the investigation and provided the following as reasons warranting the recusal of the U.S. Attorney and USAO: (1) the U.S. Attorney was a close personal friend of a former U.S. Senator and, as a result, has known Chairman Crowell for years; (2) the Eastern District of Tennessee had daily contact with individuals involved in the investigation; and (3) TVA's General Counsel's office worked closely with the Eastern District on civil and other TVA-related matters. The U.S. Attorney and members of his supervisory staff concluded that it would be difficult for the Eastern District to maintain an impartial posture in the investigation and prosecution of the allegations against Chairman Crowell.

On October 16, 1996, the U.S. Attorney wrote a memorandum to Justice requesting the District's recusal from the investigation. The memorandum referred to the pending investigation involving TVA, Chairman Crowell, and, potentially, others who might have been involved with Chairman Crowell's apparent violation of the federal conflict-of-interest statutes. In addition, the U.S. Attorney recommended that the companion wire fraud investigation of double billing by Mr. Stein be referred to the appropriate USAO.

The AUSA assigned to the investigation told us that he felt that SAC Young's attempt to convince him to drop the case and the U.S. Attorney's recusal of the entire USAO were successful attempts to deter him from proceeding with the investigation. The First Assistant told us that as long as the current U.S. Attorney is in office, the USAO for the Eastern District of Tennessee would not be able to pursue a case against Chairman Crowell.

Public Integrity accepted the case from the U.S. Attorney and assigned a trial attorney in November 1996 to assume responsibility for the investigation. In December 1996, the Public Integrity trial attorney19 told the FBI that he would probably recommend declining prosecution after he had reviewed the summary of interviews conducted by the FBI; reviewed documents collected by the FBI, USA, and OIG; and held 1 day of grand jury testimony. According to the FBI case agent, the investigation was about 50 percent complete at the time it was transferred to Public Integrity and that no further investigation was conducted after the 1 day of grand jury testimony in December 1996. Over a year later, on January 6, 1998, Public Integrity officially notified the FBI in writing that it declined to prosecute the case.

The Chief of the Public Integrity Section told us that the scope of the Public Integrity investigation was limited to two questions that concerned whether Chairman Crowell violated the conflict-of-interest prohibitions in 18 U.S.C. section 208. The first question focused on whether the creation of the trust resulted in a predictable financial benefit to Chairman Crowell at the time he had established it. Justice concluded that there was no concrete evidence that Chairman Crowell would have received a financial gain at the time the trust was created. It further concluded that even if Chairman Crowell created CRS for his future benefit or the benefit of friends or associates, there would be no criminal violation because that is not a predictable financial gain as defined by the statute.

The second question focused on whether any of Mr. Crowell's official acts as TVA's Chairman would have financially benefited CRS. Justice concluded that CRS financially benefited from Chairman Crowell's actions as TVA Chairman. As a result, Justice concluded that Chairman Crowell's actions on behalf of CRS constituted a technical violation of the conflict-of-interest statute. However, citing the good faith opinion by the designated agency ethics official that Chairman Crowell could simultaneously sit on the Boards of TVA and the CRS Management Committee, Justice declined to prosecute Chairman Crowell.20 The Chief of the Public Integrity Section told us that he believed Mr. Osteen's opinion was erroneous because Chairman Crowell's actions "clearly" constituted a technical violation of the

conflict-of-interest statute. For example, Mr. Crowell made decisions as Chairman of TVA authorizing the transfer of funds from TVA to CRS. Nevertheless, the Chief of Public Integrity advised us that Justice does not typically prosecute such technical violations.

In order to determine whether this technical violation should be prosecuted, Justice's investigation focused on determining whether Mr. Osteen's ethic opinion was coerced. Justice concluded that there was no evidence of coercion and that the opinion was prepared in good faith.

With regard to the double billing, Public Integrity reviewed the information concerning the double billing by Mr. Stein and determined that there was "no harm no foul" in that (1) there was no evidence that Mr. Stein personally profited; (2) the transaction was between two nonprofit organizations; and (3) TVA had reimbursed the other entity, EPRI, for the amount of the erroneous billings. Justice further stated that it believed a principal witness against Mr. Stein would not have been credible. This witness, a convicted felon hired by Mr. Stein, had testified that Mr. Stein directed him to over bill EPRI.

The AUSA assigned to the investigation said that Justice informed him that it declined to prosecute the case, citing TVA's designated agency ethics official's opinion that there was no conflict of interest as a defense for Chairman Crowell. The AUSA stated he believed that he was prepared to overcome that defense.

The Chief of the Criminal Section told us that he was very upset when Justice sent a letter stating that it had declined the case claiming it did not meet prosecutive guidelines. He felt that there was a prima facie case against Chairman Crowell that needed further investigation, but no such follow-up was done.

We discussed with the Chief of the Public Integrity Section the USAO's view that there was a prima facie case that Chairman Crowell violated the conflict-of-interest statute and that there was a need for further investigation. The Chief of the Public Integrity Section stated that it is his interpretation as an expert on conflict-of-interest issues that Chairman Crowell's control over the trust was not enough to result in a violation of the conflict-of-interest statute. He said the USAO for the Eastern District of Tennessee does not normally prosecute these types of cases and lacks expertise in this area.

On January 3, 1996, the CRS Management Committee decided to transfer all CRS programs, functions, and operations to TVA. The actual dates the funds were transferred to TVA were May 24 and 29, 1996, when $33,356,109.69 was transferred from CRS trust accounts to TVA's Rural Studies Agency Account. The funds returned to TVA by CRS are in TVA's name and not in a trust. In addition, $521,923.6921 from CRS's accounts was transferred to EPRI on May 2, 1996.

In February 1997, a $1.5 million endowment was made from the Agency Account to the University of Virginia's Darden School Foundation for the development of a public-private partnership institute. During March 1997, $30 million was transferred from the Agency Account to TVA's general operating account with the U.S. Department of the Treasury. Between 1996 and October 1999, $2,611,541.52 was paid to continue the rural studies research programs at the University of Kentucky Research Foundation. The Foundation has produced about 30 publications related to rural economics and maintains an Internet web site about rural studies. The value of the Rural Studies Agency Account as of October 31, 1999, was $1,585,866.93.

The problems we found with the creation and operation of CRS exemplify the need for better oversight of TVA activities. The issue of TVA's oversight has been examined several times in the past. In a 1982 report, we pointed to

a growing concern with TVA's activities and identified options for improving oversight and accountability.22 These options included periodic congressional oversight hearings. In a 1983 report, we discussed our concerns about TVA's management and concluded that the issue of the adequacy of TVA's oversight needed greater attention.23 In a 1987 report entitled TVA−A Path to Recovery, the Southern States Energy Board concluded, "additional mechanisms are needed to ensure that TVA is accountable for its actions to its ratepayers, Congress, and the American public."24 The report further stated that a larger Board--comprised of part-time directors who would be responsible for policymaking and oversight of TVA's management--should be established. In 1995 and 1998 reports, we raised these same concerns about a lack of oversight of TVA.25

In 1997, TVA's oversight was a topic of debate in the Congress and in October 1997 a bill was introduced in the Senate to expand TVA's Board from three full-time members to nine part-time members who had strong backgrounds in corporate management or strategic decisionmaking. Under this proposal, the expanded Board would establish long-range goals and policies for TVA and the day-to-day management would be handled by an independent chief executive officer. This proposed legislation was not enacted into law.

Currently, there are efforts in the Congress to ensure that TVA's IG is independent of the TVA Board and therefore can conduct effective oversight of TVA. Some concerns are that TVA's Board can hire and fire the IG and TVA's OIG is currently being managed by an interim IG on detail from TVA. As a result, there are two bills pending in the Congress to make tthe TVA IG a statutory IG, nominated by the President and confirmed by the Senate.

We conducted our investigation from September 1999 through February 2000. We interviewed TVA officials involved with the creation of CRS. We also interviewed TVA OIG employees who were involved in the audit and investigations of Chairman Crowell and Lawrence Stein and reviewed OIG supporting documentation. We met with Justice officials and reviewed documents from the Knoxville office of the FBI, USAO for the Eastern District of Tennessee, and the Public Integrity Section. We also reviewed the records from the DOD OIG pertaining to its audit and investigation of TVA's Technology Brokering Program, which partly funded CRS. We also reviewed and analyzed TVA Rural Studies financial records, contracts, and other documents.

We attempted to interview Chairman Crowell and Mr. Zigrossi, but both declined our request. We also attempted to interview the Public Integrity Section trial attorney who was assigned to the investigation of Chairman Crowell; however, Justice declined our request. We previously interviewed the AUSA assigned to the investigation of Chairman Crowell during our 1999 investigation of TVA. We attempted to interview the AUSA during this investigation; however, Justice declined our request.

As discussed with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send letters to interested congressional committees and members and make copies available to others upon request. If you have questions about our investigation, please contact me or Deputy Director for Investigations Donald Fulwider at (202) 512-7455. Assistant Director John Ryan was a key contributor to this investigation.

Sincerely yours,
Robert H. Hast
Acting Assistant Comptroller General
for Special Investigations

(600578)

1. Craven Crowell was appointed to the Board and designated as TVA's Chairman in May 1993; his term expires May 2002. During the period covered by this investigation, the other two Board members were William Kennoy and Johnny Hayes who were appointed to the Board in 1990 and 1993, respectively. Director Hayes resigned on February 1, 1999, and Director Kennoy's term expired on May 18, 1999.

2. Tennessee Valley Authority: Facts Surrounding Allegations Raised Against the Chairman and the IG (GAO/OSI-99-20, Sept. 15, 1999).

3. TVA employees are subject to the executive branch-wide standards of ethical conduct at 5 C.F.R. part 2635. 18 C.F.R. sect. 1300.101. Pursuant to 5 C.F.R. part 2635, the designated agency ethics official's responsibilities include coordinating and managing the agency's ethics program, counseling agency personnel concerning ethics standards, as well as assisting managers in understanding and implementing agency ethics programs. 5 C.F.R. sect. 2635.101 provides that criminal conflict of interest statutes, e.g. 18 U.S.C. sect. 208, must be taken into consideration in determining whether conduct is proper.

4. Among other things, 18 U.S.C. sect. 208 prohibits an executive branch officer or employee from participating personally and substantially in a matter in which he or an organization in which he is serving as an officer has a financial interest.

5. TVA executed a contract with Thomas Seigenthaler's firm, Seigenthaler Public Relations, effective October 1, 1993, to advise on the planning of TVA's rural economic development programs. Part of the work involved establishing the rural development center concept and planning the organization of CRS. Effective December 1, 1994, Mr. Seigenthaler began performing work for CRS under a retainer agreement executed directly with CRS. On September 1, 1995, this agreement was replaced by an agreement that Seigenthaler Public Relations would bill CRS on an hourly basis.

6. The funds were the proceeds of the settlement of a 1984 antitrust lawsuit.

7. The proposed composition of the Management Committee included Mr. Crowell as the Chair, with Mr. Zigrossi and a TVA Senior Vice President as the other Management Committee members.

8. 18 U.S.C. sect. 208.

9. Mr. Barkley made these statements in response to questions by the Federal Bureau of Investigation during its investigation of Chairman Crowell.

10. Mr. Christenbury explained that there are two methods employed to gain Board approval of various proposals. The first, the sequential approach, is typically used when TVA management desires not to release information to the public. The second, the open Board meeting, is used when the release of information will not detrimentally affect TVA and when the time demands for the action falls within the Board's next scheduled meeting.

11. On September 13, 1994, the OIG received allegations against Director Kennoy from a Member of Congress. The Member informed the OIG that the allegations came from a credible source, but declined the OIG's request to identify the source. Prior to issuing a report in June 1995, the IG requested that the Department of State OIG perform a quality review to ensure the adequacy of the investigation. The State Department concurred with the final report and stated that under its own operating policies and procedures, the findings would have been referred to Justice's Public Integrity Section for a definitive prosecutive opinion. In the TVA IG's opinion, such a referral was not warranted. In July 1995 Chairman Crowell wrote his response to the OIG report.

12. On November 16, 1994, the CRS Management Committee selected Union Planters National Bank as the trustee.

13. EPRI was formed in 1972 to conduct a coordinated research and development program for the U.S. electric utility industry. EPRI's activities range from supporting fundamental research to commercializing products and services developed for its member utilities and the electric industry.

14. In 1988, TVA created the Technology Brokering Program to promote economic development through interagency agreements with federal agencies, particularly the Department of Defense. The federal agency funded projects through this program and TVA administered the contracts for a certain fee. This program is referred to as off-loading of contracts. Upon receipt, TVA invested the program advance funds and earned about $4.3 million in interest revenue during 1992 and 1993. In 1994, the Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs published a report titled, Off-loading: The Abuse of Inter-Agency Contracting to Avoid Competition and Oversight Requirements. The report specifically discussed the accumulation of excess fees and interest earned by TVA and recommended that TVA return these funds to the U.S. Treasury. TVA has since returned approximately $6.8 million; however, the Department of Defense OIG has determined that an additional $4.8 million is outstanding.

15. On July 18, 1994, TVA named Lawrence Stein to be the President and Chief Executive Officer of CRS effective November 15, 1994.

16. The members of CRS's Management Committee were also members of the TVA Board of Directors.

17. The resolution stated that CRS was being terminated because it had not received contributions from other entities and had accomplished all the purposes for which it was established that it was capable of accomplishing without additional contributions.

18. The initial contract between CRS and the Kentucky foundation was effective in January 1995; its project manager was Dr. David Freshwater.

19. Justice refused our request to interview the Public Integrity trial attorney assigned to this investigation.

20. Good faith reliance on the advice of a designated agency ethics official is a factor taken into account by Justice in the selection of cases for prosecution. 5 CFR 2635.107(b).

21. This amount was the $505,250 EPRI paid CRS plus earned interest of $16,673.69.

22. Tennessee Valley Authority--Options for Oversight (GAO/PEMD-82-54, Mar. 19, 1982).

23. Triennial Assessment of Tennessee Valley Authority--Fiscal Years 1980-1982 (GAO/RCED-83-123, Apr. 15, 1983).

24. The Southern States Energy Board was comprised of government and industry experts with diverse experiences in energy operations, management, and regulation.

25. Tennessee Valley Authority: Financial Problems Raise Questions About Long-Term Viability (GAO/AIMD/RCED-95-134, Aug. 17, 1995) and Federal Power: Options For Selected Power Marketing Administrations' Role in a Changing

Electricity Industry
(GAO/RCED-98-43, Mar. 6, 1998).
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URL: http://www.knoxnews.com/shns/story.cfm?pk=UNIONTATTOOS-09-03-00&cat=AN

Ban on pro-union tattoos stirs concern at nuke plants

By VIRGINIA BALDWIN GILBERT
St. Louis Post-Dispatch
September 03, 2000

- The U.S. Nuclear Regulatory Commission is monitoring the safety of five Commonwealth Edison nuclear power plants in northern Illinois that have been threatened with a shortage of certified control room workers because of a labor dispute.

Nuclear plant workers have been escorted off their jobs more than 50 times in the last week for entering control rooms wearing temporary tattoos displaying a union logo.

A company spokesman says the plants will have no trouble meeting requirements for certified staff. State inspectors are checking certifications at every shift.

The union, Local 15 of the International Brotherhood of Electrical Workers, and Commonwealth Edison have been negotiating for more than a year over a company proposal to reduce pension benefits for younger workers.

Workers throughout the plant have been wearing shirts, buttons and bandannas with the union logo. When removable tattoos were added to the mix last month, management balked at allowing workers to wear them in control rooms.

"The control room is hallowed ground," said Bill Harris, a spokesman for Commonwealth Edison. "Operators are expected to have great respect for handling the nuclear core."

Control room workers have been allowed to wear buttons for years, Harris said. But the tattoos represented "the sudden appearance of something new and different," he said.

"Anything that would indicate to a unit supervisor that the nuclear operators had something on their minds other than monitoring and controlling a nuclear reactor could be considered a distraction."

The workers were asked to remove the tattoos. Some did and were allowed to work. Some did not and were sent home.

Harris said the plants - Braidwood and Dresden near the Indiana border, Byron near the Wisconsin border, Quad Cities near the Iowa border and LaSalle, in the north-central part of the state - had "lots of operators" with the proper certification. Two supervisors and four union-represented operators operate each control room during a shift. The plants have three shifts.

A preliminary report issued by the NRC on Thursday said the company had moved some supervisory personnel with the proper certification into the jobs or asked union personnel without the tattoos to extend their shifts. "There has been no evidence that the incidents have been detrimental to safety," said the report.

The union filed unfair labor charges against the company Friday in Chicago, asking for an immediate decision from the National Labor Relations Board.

"I think they're overreacting," said William Starr, president of Local 15. Starr described the tattoo as a two-inch square with blue and red letters and the slogan, "Strength in Unity."

"The buttons say exactly the same thing," Starr said. "That's acceptable, but you can't wear the tattoo on your hand?"

The local considers the issue one of free speech, Starr said. "Some guys aren't wearing them. A lot of them who are, they're pretty ticked off about it."

The NRC would have the power to order a shutdown if personnel with the proper certification were not present in a control room.

But Harris, of Commonwealth Edison, said there was absolutely no chance that any of the plants would lack sufficient certified personnel.

(For news and information about St. Louis, visit http://postnet.com. Distributed by Scripps Howard News Service.)

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September 7, 2000

Good Evening,

Panel Members

My name is Vera English.

I am a former worker at a General Electric nuclear fuel plant in Wilmington, North Carolina. I pursued legal actions against GE through the U.S. Department of labor and, later federal district court. Although the latter led to a favorable ruling by the U.S. Supreme Court, and other judges, the NRC and a DOL investigator found evidence of discrimination against me, I won nothing from GE after an 8 year legal battle. I did not prevail in my first complaint at the DOL because I filed too late. No one told me about time limits.

GE fought me in the courts, my home was repeatedly broken into and trashed. The ultimate terror came when my home was broken into and trashed. The revolver that I slept with was emptied of ammunition and spread around a large picture of me that was laid out on my bed. The revolver was stored back in the bedside table. The bath room was smeared with human feces. The toilet was used but not flushed. The police came and took me away. I never spent another night in that house.

I have kept quiet for over 10 years. This is the first public statement since the Supreme Court ruled in my favor and I admit I am nervous. But I am about to be 75 years old and I feel that it is time for me to speak out about the corruption and betrayal by the NRC, especially Region 2.

Winning in the courts does not mean very much to me since the original judge in North Carolina went back and made the same ruling again as did the appellate courts. I recovered nothing. But I did keep my self respect and my belief in God.

BUT one day before the NRC's five year limit on complaints was up, NRC proposed a twenty thousand dollar fine against GE. GE paid the fine for discriminating against me for raising safety concerns.

But I consider the ultimate betrayal by the NRC when I told the Region 2 Office of Investigations about copies of internal documents obtained in discovery and prepared by GE's internal investigator that GE had found that my "allegations have substance."

The NRC never went in and did an investigation. They trusted GE to tell the truth. But the NRC never trusted me to tell the truth. But I did not have the money, authority or political power to hold the NRC accountable. I was powerless.

And now here we are over 16 years later and I find that not only has nothing changed at the NRC but now you want us to tell you how you should change your ways. The NRC doesn't need anyone to tell them how to change. You know what your responsibilities are. I want you to know that I hold you responsible for what ultimately happened to me. GE was only doing what they knew that they could get away with.

GE is still performing the same illegal and unsafe activities as it was in 1984 when I came to you. So I wonder who does need to change? Until you determine that safety is your business, GE and all the others will run over the American people while you support their actions.

I want this statement to be made a part of the written record.

Thank you

September 7, 2000

NRC Panel Members:

My name is Joyce Proffitt.

I am a resident of Meigs County and a former Meigs County Commissioner. I am a business owner in Meigs County.

I have come here tonight to support the efforts of those that want you to recognize the lack of enforcement that brings us all here tonight.

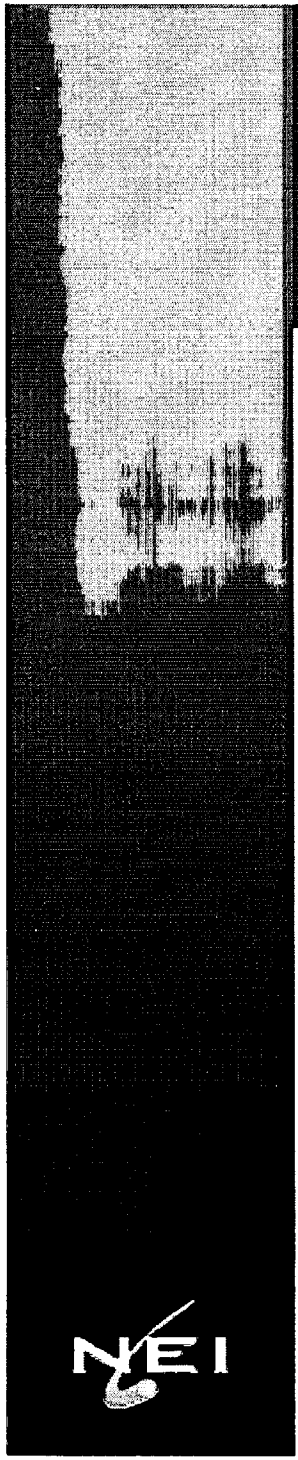
I have watched the building and licensing process at the Watts Bar Plant. I am amazed at the total lack of regulation and enforcement that takes place.

You ignore these workers that come forward that openly show how much they care about me, my neighborhood and my grandchildren and their future. Why can't the NRC at least make a show of attempting to do the same. You shame yourselves when you fail to respond to the kinds of deeds that brings you here tonight.

No one thinks more of you for permitting TVA, or others, to openly break the law. Instead we feel sorry that out tax dollars go to support such dishonesty and open contempt for the law as the NRC practices.

I ask that you give deep and open consideration to the requests for the actions that you hear tonight.

Thank you



Presentation to
NRC Discrimination Task Group

Implementation of Employee Protection Regulations

September 7, 2000

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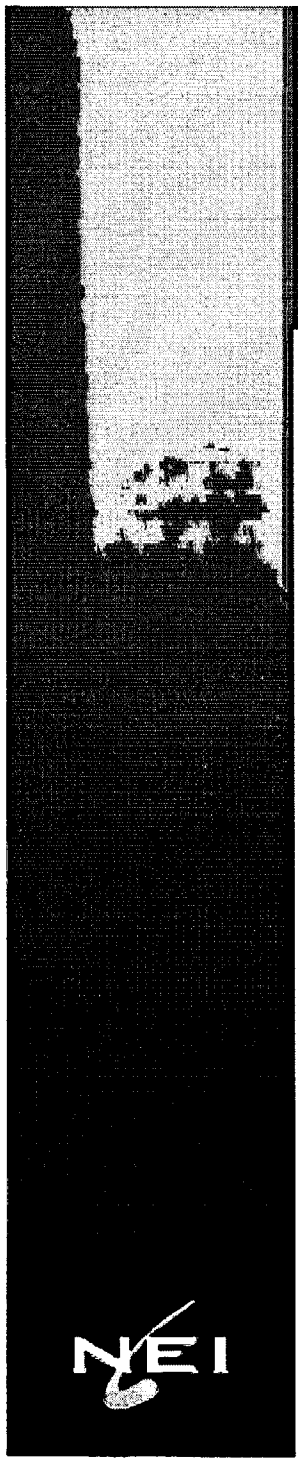

Background

- Industry performance continues to improve, including focus on maintaining a safety-conscious work environment
- Current implementation of 50.7 has potential to adversely impact licensee's ability to ensure safe and efficient plant operation
- Task Group review of NRC implementation of 50.7 provides excellent opportunity for stakeholder input

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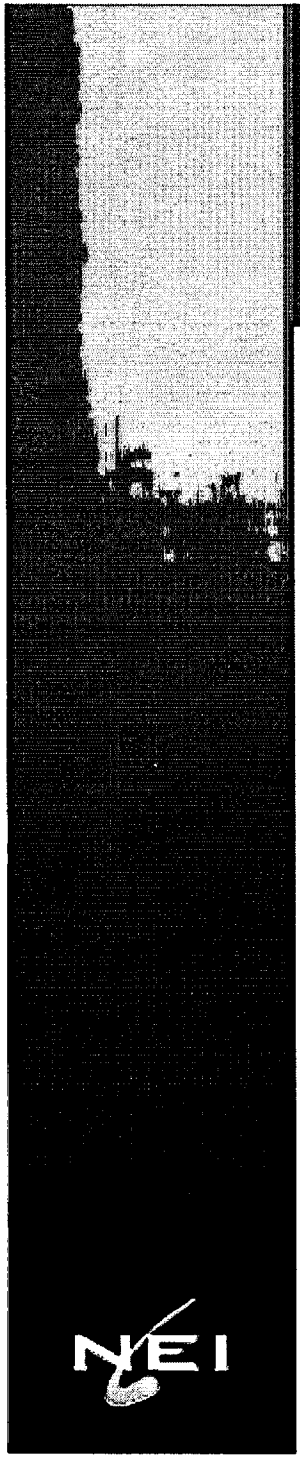

Industry Focus on Safety-Conscious Work Environment

- Current industry practices include:
  - Prohibiting any action to discourage employees from identifying and communicating safety concerns
  - Training on the importance of
    - workers to raise safety concerns
    - managers to appropriately respond to concerns
  - Maintaining multiple avenues for workers to identify and communicate concerns
  - Addressing concerns in a timely and responsible manner in order to maintain employee confidence and trust

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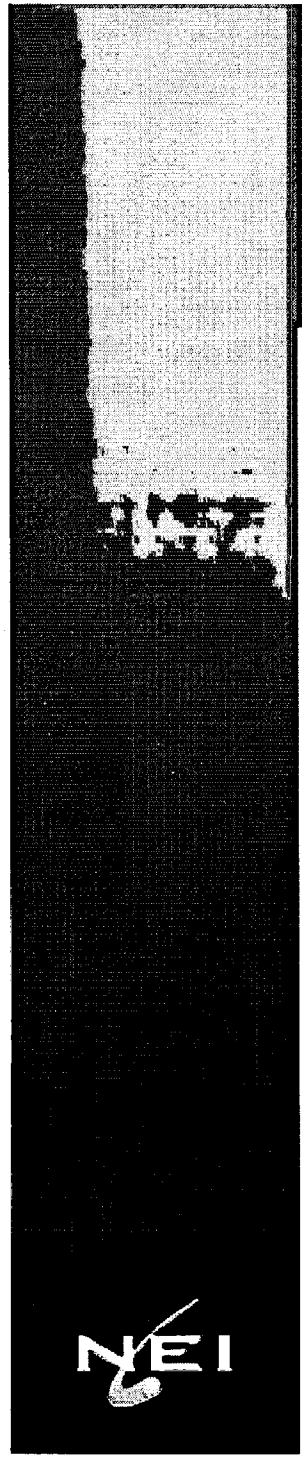
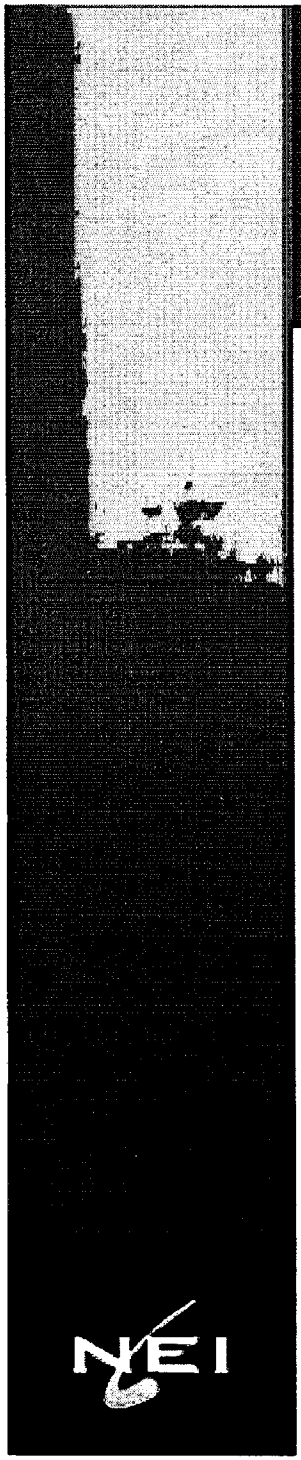


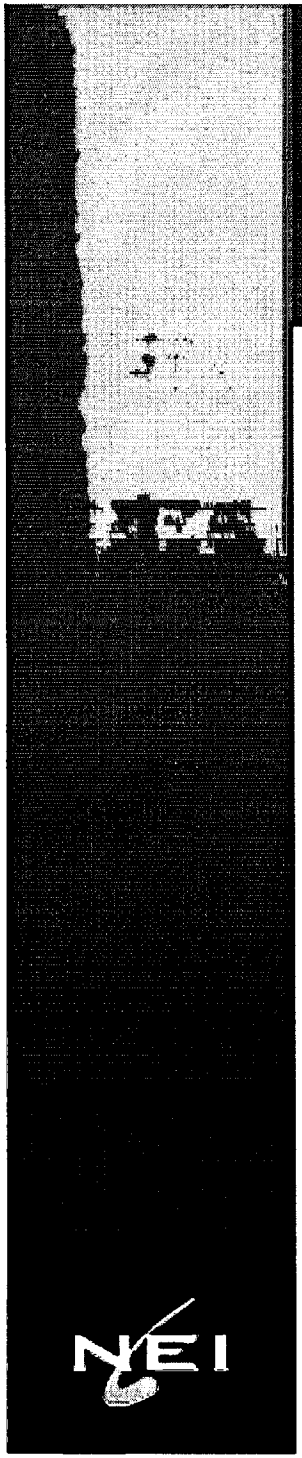
Industry Reform Objectives

- Improvements in NRC implementation of employee protection regulations should...
  - Ensure consistency with the Principles of Good Regulation
  - Ensure safety by recognizing the need for managers to take appropriate personnel action to maintain highly competent work force
  - Ensure procedural and substantive fairness for all participants
  - Promote appropriate allocation of NRC and licensee resources



Principles of Good Regulation

- Independence
- Openness
- Efficiency
- Clarity
- Reliability



Principles of Good Regulation

Independence--Nothing but the highest possible standards of ethical performance and professionalism should influence regulation. However, independence does not imply isolation. All available facts and opinions must be sought openly from licensees and other interested members of the public. The many and possibly conflicting public interests involved must be considered. Final decisions must be based on objective, unbiased assessments of all information, and must be documented with reasons explicitly stated.

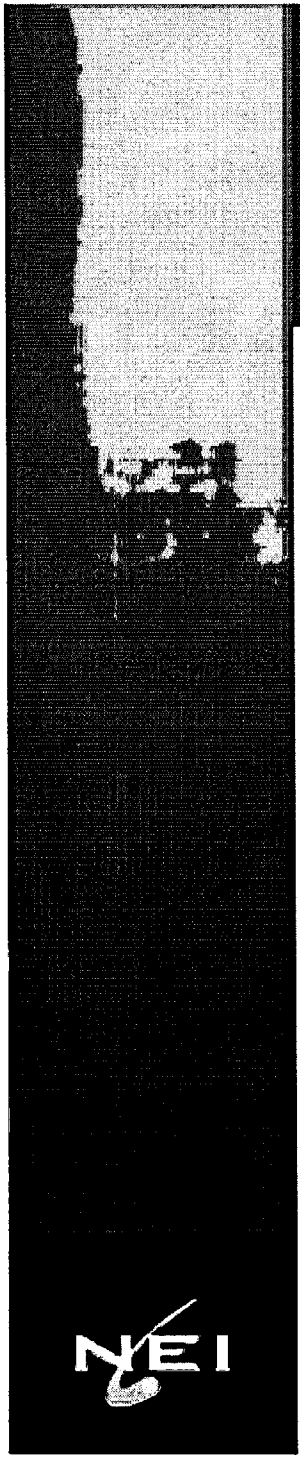
Principles of Good Regulation

Openness--Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law. Open channels of communication must be maintained with Congress, other government agencies, licensees, and the public, as well as with the international nuclear community.

NEI

Principles of Good Regulation

Efficiency--The American taxpayer, the rate-paying consumer, and licensees are all entitled to the best possible management and administration of regulatory activities. The highest technical and managerial competence is required, and must be a constant agency goal. NRC must establish means to evaluate and continually upgrade its regulatory capabilities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay.



Principles of Good Regulation

Clarity--Regulations should be coherent, logical, and practical. There should be a clear nexus between regulations and agency goals and objectives whether explicitly or implicitly stated. Agency positions should be readily understood and easily applied.

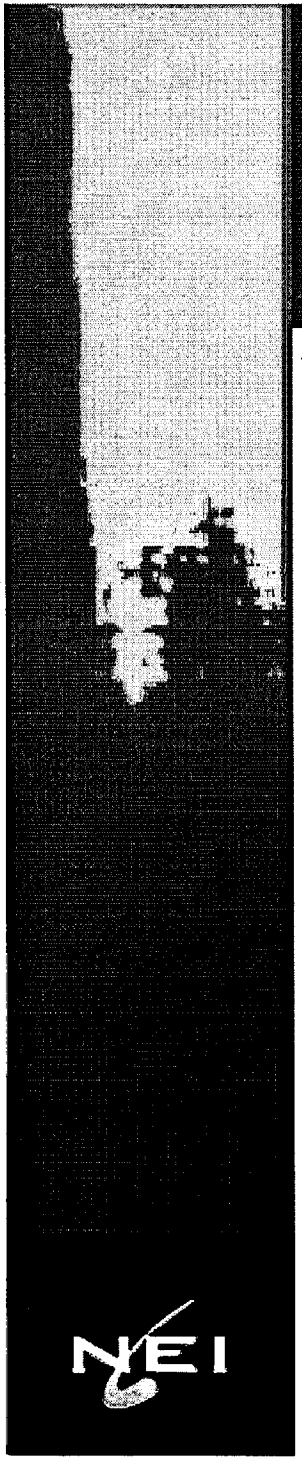
NEI

Principles of Good Regulation

Reliability-- Regulations should be based on the best available knowledge from research and operational experience. Systems interactions, technological uncertainties, and the diversity of licensees and regulatory activities must all be taken into account so that risks are maintained at an acceptably low level. Once established, regulation should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes.

Implementation of Employee Protection Regulations Changes

- Reorient NRC inquiry to focus on:
  - underlying safety issue
  - potential chilling effect
- Discontinue practice of automatically referring allegation to Office of Investigation
- Defer to Department of Labor on individual discrimination claim



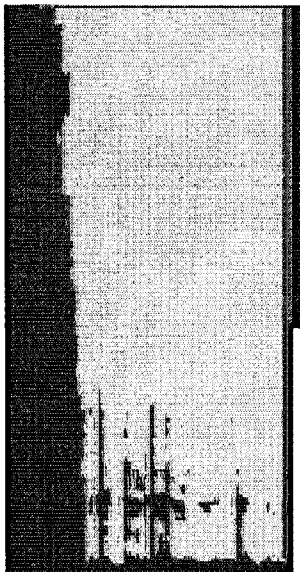
50.7 Enforcement Process

Where NRC pursues enforcement action process must be:

- **open,**
- **transparent,**
- **fair, and**
- **timely**

50.7 Enforcement Process, con't

- In evaluating whether a deliberate violation occurred, NRC should adhere to regulatory requirements of 50.7
  - Staff should articulate more appropriate standard of causation
  - Evidentiary standard should be modified from "preponderance of evidence for a reasonable inference" to "preponderance of evidence" regarding retaliatory motive
- Enforcement Policy should be revised to allow consideration of additional factors in severity level determination



Conclusions

- NRC implementation of 50.7 should be realigned to focus on agency's safety mission
  - Focus on ensuring licensees take appropriate corrective action in response to any potential "chilling effect"
- DOL evaluation of discrimination claim provides opportunity for individual to obtain personal remedy, avoids duplicative regulatory proceedings and inconsistent decisions
- Realignment will avoid unintended adverse consequences

NEI

Significant Themes From Previous Meetings

✓ Access to information

- OI reports should be "released" prior to the Predecisional Enf. Conf.
- Fundamental lack of fairness for accused
- Wrong to take away individuals livelihood without evidence
- More detailed basis for decision documented

✓ Process Issues

- High stress for accused
- Safety significance lost (if ever existed)
- Timeliness
- Refer issues immediately to licensee for response and position
- Refer cases meeting certain criteria to Licensee for investigation
- Line Management not involved
- Risk Inform the Process

✓ Legal Issues

- Threshold for establishing a case is too low
- Need a clearer motivation nexus
- Legal standards to be applied

✓ Appropriateness of Sanction

- Only for programmatic problems
- Limit Individual Actions to the most egregious cases
- Measured responses - severity levels should be reduced and include other factors
- If settled during DOL process, discontinue enforcement process
- Middle management most affected.
- "Guilty until proven innocent" approach, company bears all costs

✓ Interface with DOL

- only address chilling effect. NRC should only review licensee's programmatic implications
- if individual chooses not to go to DOL, close case if licensee has addressed chilling effect

- ✓ **Training**
  - ➳ Communication and knowledge issues

DISCRIMINATION TASK GROUP MEETING ATTENDANCE

DATE 9/7/2000

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	Ron McCauley	V.C. Summer Plant	732-2716	
X	Kevin Doody	SELF	4402594878	
	April Doody		"	

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