PUBLIC MEETING ON THE NRC PROCESS FOR HANDLING DISCRIMINATION MATTERS

- Bill Borchardt
- Director, Office of Enforcement
  USNRC

San Luis Obispo Meeting
September 14, 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 1:00-1:30
- Stakeholder Comments 1:30-3:00
- Break 3:00-3:15
- Open Discussion of Issues 3:15-4:15
- Wrap up / Closing Remarks 4:15-4:30

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.

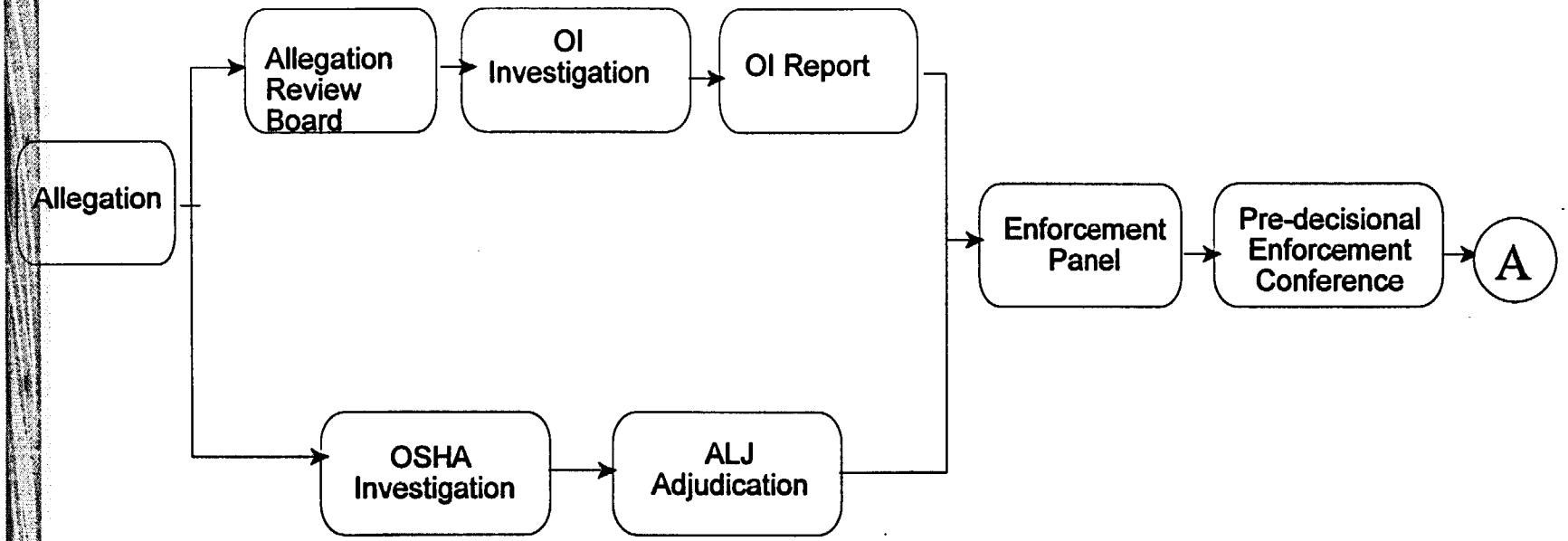
NRC Responsibilities regarding Discrimination

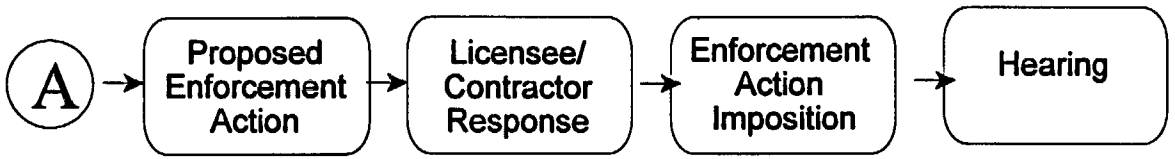
- To promote an environment where employees feel free to engage in protected activities.
- NRC enforcement action is directed at the licensee, contractor and individuals.
  - Notice of Violation
  - Civil Penalty
  - Order
  - Ban from licensed activities

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.

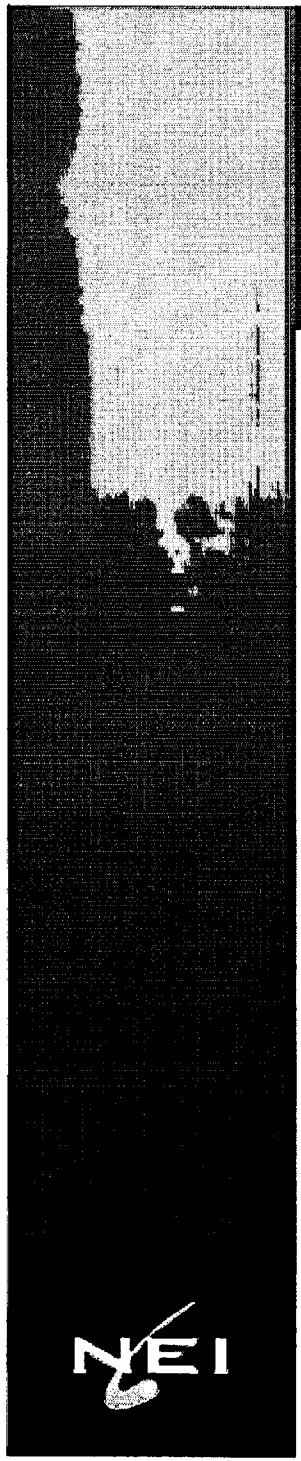
Simplified Discrimination Case Complaint





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)

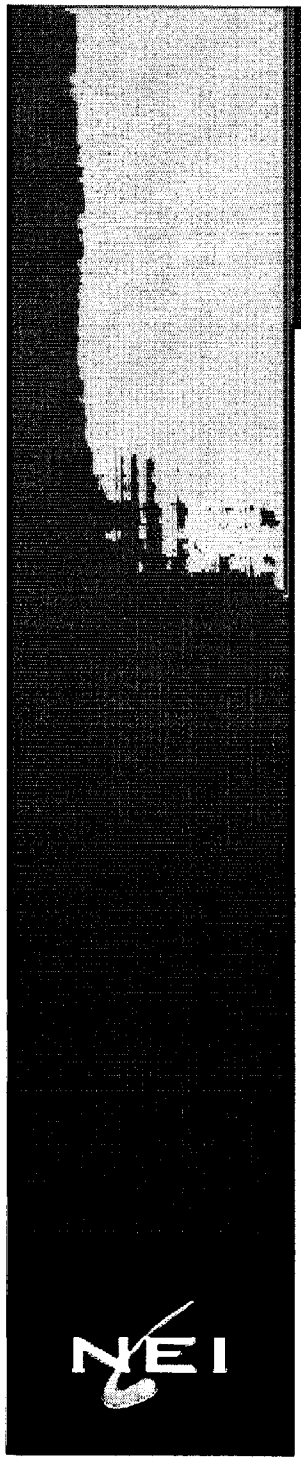


Presentation to
NRC Discrimination Task Group

Implementation of Employee Protection Regulations

September 14, 2000

NEI



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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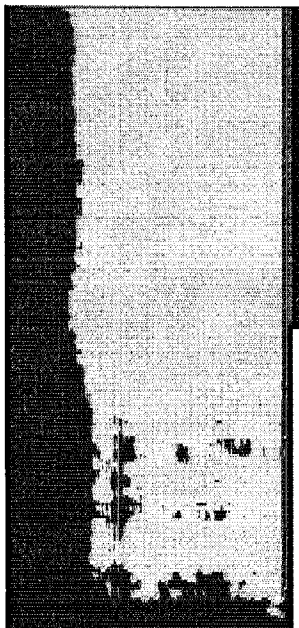

Industry Focus on Safety-Conscious Work Environment

- 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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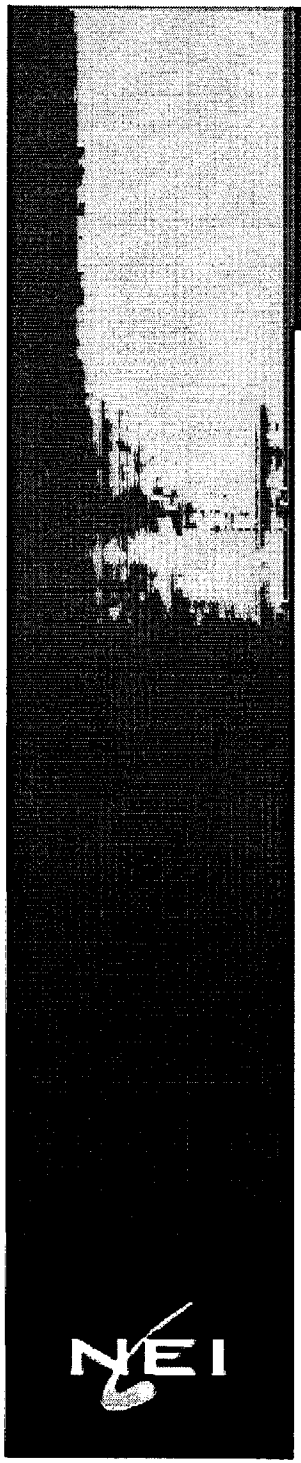

Industry Reform Objectives

- 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

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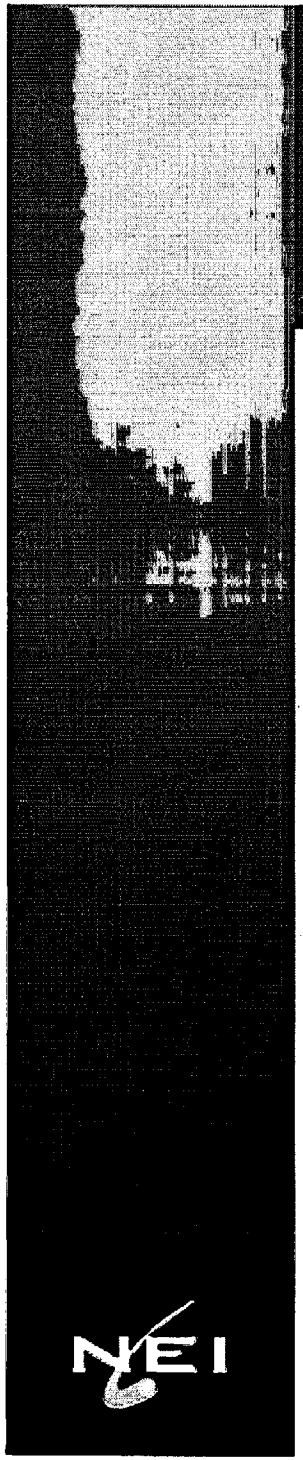

Principles of Good Regulation

- Independence
- Openness
- Efficiency
- Clarity
- Reliability

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

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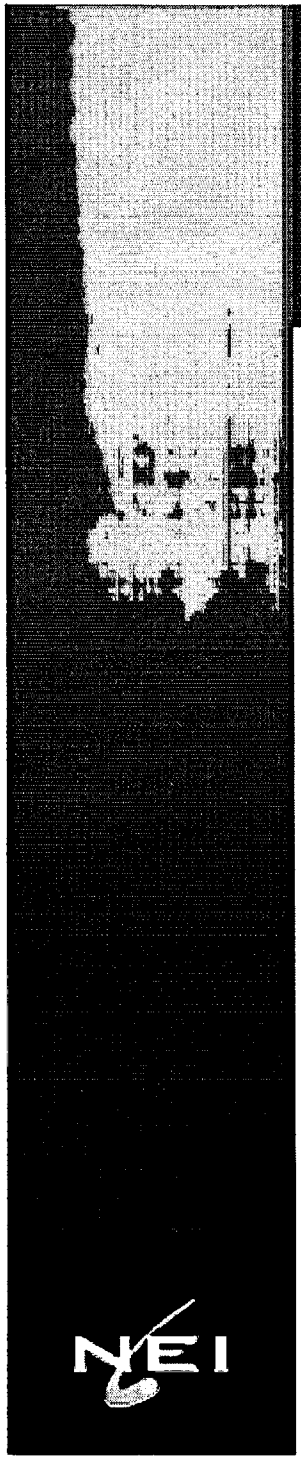

Conclusions

- 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

Presentation to NRC Discrimination Task Group

Jim Becker, Manager - Operations Services

NRC Public Meeting

Embassy Suites, San Luis Obispo

September 14, 2000

PG&E

Introduction

- PG&E supports the NEI comments overall
- PG&E is committed to maintaining a safety conscious work environment (SCWE)
- DCPP has stressed the importance of a SCWE to plant staff through various means
- Lessons learned from recent DCPP experience can minimize the impact of future NRC/DOL investigations on the SCWE
  - Clarify delineation of responsibilities
  - Make NRC investigation results available to licensees and public
  - Improve formality of DOL investigation process

PG&E

DCPP Experience

- NRC Office of Investigation conducted recent investigation into possible discrimination
- Subsequent claim filed with DOL
- Differences in investigation processes used by DOL and NRC
- Different conclusions reached by DOL and NRC
- Full DOL report released via e-mail

Recommendations

- Clarify the delineation of responsibilities between the NRC and DOL
  - NRC focus on investigation of underlying safety issue and potential chilling effect
  - DOL focus on actual discrimination claims
  - Ensure process exists to resolve conflicts between regulations/investigation outcomes
  - Share results of investigations between agencies

PG&E

Recommendations (cont.)

- Make results of NRC OI investigations more available to licensees and the public
  - Explaining the basis for conclusions reached may be useful in mitigating the negative impact of investigations on the SCWE
- Improve formality of the DOL investigation process since the release of initial findings can adversely affect the SCWE

Southern California Edison
San Onofre Nuclear Generating Station

SAFETY CONSCIOUS WORK ENVIRONMENT TRAINING AT SAN ONOFRE

NRC Discrimination Task Group Meeting
San Luis Obispo, CA
September 14, 2000

Safety Conscious Work Environment

- SCE is committed to maintaining a Safety Conscious Work Environment
- The key role for Managers, Supervisors, and Contractor Supervisors is to establish and maintain an atmosphere which encourages workers with concerns to document the concerns, raise the concerns to them, to the NSC Program, or to the NRC without fear of discrimination, intimidation, harassment or retaliation.
- Workers must understand their responsibility for maintaining a safe work environment, without fear of discrimination, intimidation, harassment, or retaliation.
- Executive Level management understanding and commitment is essential

Safety Conscious Work Environment Training at San Onofre

- One of several important elements to establish and maintain a Safety Conscious Work Environment (SCWE) at San Onfore Nuclear Generating Station (SONGS).

- Provided to Southern California Edison (SCE) employees, to contract workers, and to contract and SCE supervision and management.

SCWE Training, SCE and Contract Workers:

- **General Employee Training:**
  - Required for unescorted access into the Protected Area
  - Computer based, handouts, and video
  - Contents
    - How safety concerns may be raised
    - SONGS' SCWE
    - SCE's and the Nuclear Regulatory Commission's (NRC) policies and expectations
    - The Nuclear Safety Concerns (NSC) Program
    - Management's commitment to a SCWE (Video from Chief Nuclear Officer)

SCWE Training, Supervisors:

- **SCE and Contract Supervision:**
  - Contents
    - How safety concerns may be raised
    - Encouraging workers to raise issues
    - Supervisor's role in establishing and maintaining a SCWE
    - SONGS' NSC Program
    - SCE/NRC's prohibition against harassment, intimidation, retaliation and discrimination

SCWE Training, Supervisors: (Cont.)

- **"Managing for Nuclear Safety®" (4 hours):**
  - 700 supervisors and managers in last 2 ½ years
  - Contents
    - Encouraging workers to raise concerns
    - How to effectively identify and resolve a worker's concerns
    - Supervisor's role in establishing and maintaining a SCWE
    - SONGS' NSC Program
    - SCE/NRC's prohibition on harassment, intimidation, retaliation and discrimination

SCWE Training, Supervisors: (Cont.)

- **"Taking Action®" (4 hours):**
  - Refresher and continuing training
  - Contents
    - Re-enforce message of "Managing for Nuclear Safety"
    - Help supervisors with appropriate and timely action to resolve a worker's safety issue
    - SCE's and the NRC's expectations
    - SCE/NRC's prohibition on harassment, intimidation, retaliation and discrimination
    - Expanded understanding of SCWE issues
    - Recent industry developments

SCWE Training, Managers:

- **Manager Training (4 hours):**
  - 2nd level supervisors and managers
  - Contents
    - SCE/NRC's policies and expectations
    - SCE/NRC's prohibition on harassment, intimidation, retaliation and discrimination
    - Recent industry developments
    - Detecting and preventing retaliation
    - Recognizing chilled or hostile work environments
    - Implementing actions to correct chilled or hostile environments

SCWE Training, Periodic Retraining:

- **Annual Retraining: (Everyone with Unescorted Access into Protected Area)**
  - Establishing and maintaining a SCWE
  - How safety concerns may be raised
  - The NSC Program
  - Supervisor's responsibilities

SCWE Training, Annual Reminders from Senior Management:

- For workers, contractors, supervisors, managers and contract organizations
- Contents
  - SONGS' expectations for employees to raise concerns
  - SONGS' SCWE
  - NSC Program
  - NRC's and SCE's programs, policies and expectations
  - SCE/NRC's prohibition against harassment, intimidation, retaliation and discrimination

Attachment 5

DISCRIMINATION TASK GROUP MEETING ATTENDANCE

DATE 9/14/2000

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