PUBLIC MEETING ON THE NRC PROCESS FOR HANDLING DISCRIMINATION MATTERS

- Bill Borchardt
- Director, Office of Enforcement
  USNRC
  Waterford, CT Meeting
  November 1, 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 7:30-8:30
- Open Discussion of Issues 8:30-9:00
- 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. 1, 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.

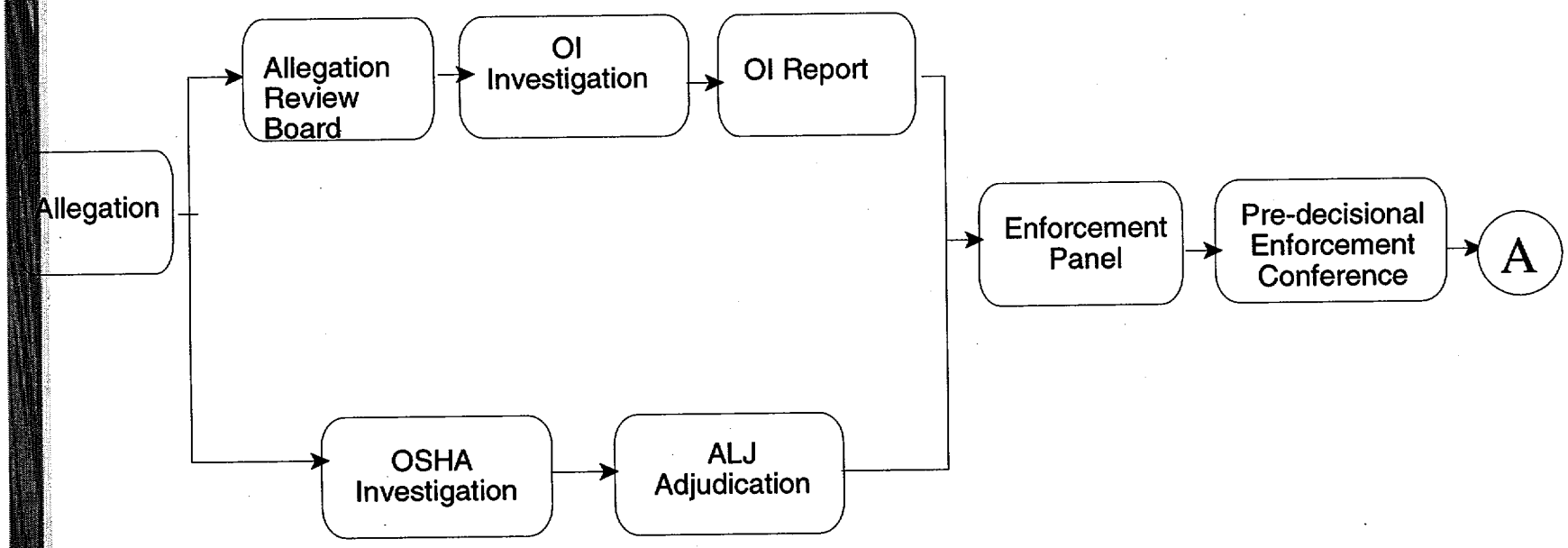
NRC Responsibilities regarding Discrimination

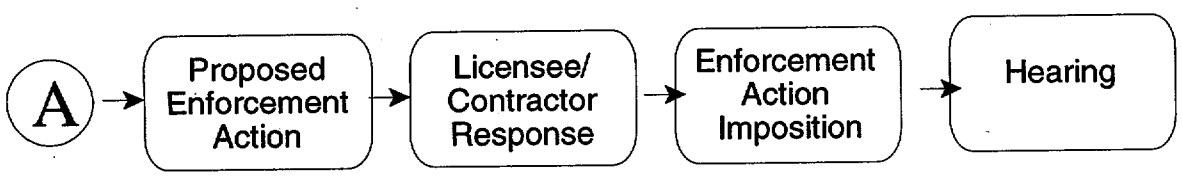
- To promote an environment where employees feel free to engage in protected activities.
- NRC enforcement action is directed at the licensee, contractor and individuals.
  - Notice of Violation
  - Civil Penalty
  - Order
  - Ban from licensed activities

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.

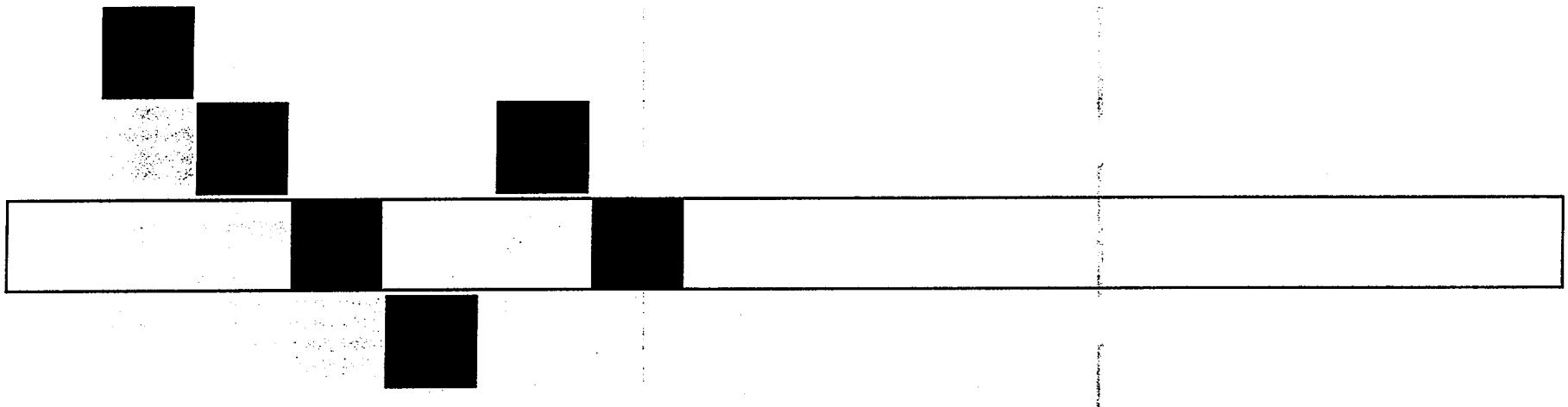
Simplified Discrimination Case Complaint





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)



HANDLING OF DISCRIMINATION COMPLAINTS

Paul Blanch
Energy Consultant

NRC's Allegations Task Force

November 1, 2000

Paul M Blanch
Energy Consultant

History Involving High Profile Whistleblowers has been Contentious

- 1993 US Senate Hearings
- Usually a NO-WIN Situation
- Concernees Banished from Nuclear Industry
- Extensive Licensee and NRC Expenditures
- Erosion of Public Confidence

Root Cause of Major Allegations

- Technical/Programmatic Issue(s)
- Licensee/NRC response not perceived timely or accurate
- Communications breakdown
- Perceived retaliation
- Seeks resolution/vindication elsewhere
-

Present Regulations are Adequate

- Program/Regulation changes will not be effective until the NRC has the will to enforce existing regulations
- OIG reported NRC also has retaliation problems
- Appearance that NRC/OI ignored vital evidence in major investigation (DCNNP)

A Better Approach

- An Approach Looking for WIN-WIN Offers Promise

An Approach
Looking for WIN-WIN Offers
Promise

- Industry could seek to take an active and constructive role
- Consider role of Credible Response Team
- Demonstrated Success at Millstone and Promising Outlook for Byron
- Reestablish Communication and Trust
- Resolve Issues Internally

A WIN-WIN Strategy Offers Substantial Benefits

- Demonstrate Care and Respect for the Individual
- Reduce "Chilling Effect"
- Fewer DOL and OI Investigations
- Increase Public Confidence
- Increase Employee Trust
- Improve SCWE

NRC's Performance Goals

- Maintaining safety
- Reducing unnecessary regulatory burden
- Increasing public confidence
- Carrying out responsibilities more effectively, efficiently, and realistically

Summary

- The NRC has made little progress WRT Allegations
- The Nuclear Industry must learn lessons from "Millstone"
- There is a better way

Presentation to
NRC Discrimination Task Group

Implementation of Employee Protection Regulations

Ellen C. Ginsberg
Deputy General Counsel
Nuclear Energy Institute
November 1, 2000

NEI

Common Themes Identified at Previous Task Force Meetings

- Ensuring employees feel free to identify and communicate safety concerns clearly is important to the nuclear energy industry
- NRC should improve agency implementation of employee protection regulations
- Current punitive approach impedes resolution of employee-employer dispute
- Current approach may lead to unintended consequences affecting safety

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NRC Should Improve Implementation of Employee Protection Regulations Because...

- Current investigation and enforcement focus:
  - Does not promote resolution between employee and employer
  - Does not incorporate adequate procedural safeguards
  - Is not timely
  - Is not transparent
  - Does not promote safety

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Current Commission Policy

- Focus on wrongdoing
  - Referral to Office of Investigations
  - Referral to DOJ for criminal prosecution
- Duplicative investigations and inconsistent decisions by NRC and DOL
- Inadequate procedural safeguards afforded by enforcement process
- Allocation of NRC resources to allegations of discrimination

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Policy Changes Necessary to Refocus NRC Approach to Employee Protection Regulations

- Focus on underlying safety issue and licensee response to chilling effect letter
  - Enforcement would be reserved for 50.7 violations which meet threshold specific threshold criteria
- Defer to DOL on individual discrimination claims
- Discontinue automatic referral to Office of Investigations

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Policy Changes Necessary to Refocus NRC Approach to Employee Protection Regulations, con't

- Establish schedule for NRC to ensure timely response on safety issues and response to chilling effect letter
- Allocate NRC resources to allegations of discrimination based on *demonstrated* need
- Provide appropriate procedural safeguards during enforcement process

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Proposed Revisions to NRC Enforcement Process for 50.7 Violations

- NRC should consider enforcement for 50.7 violations under *limited* circumstances
  - NRC to initiate enforcement action if specific threshold criteria a met
    - (e.g., significance of adverse action; level of accused individual; safety significance of allegation; egregious circumstances)
- NRC should apply appropriate legal and evidentiary standards

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Proposed Revisions to NRC Enforcement Process for 50.7 Violations, con't

- Procedural safeguards should be incorporated into the enforcement process
  - Limit use of 50.5 in conjunction with 50.7
  - If 50.5 is applied, provide accused with hearing opportunity prior to taking enforcement action
  - Release investigation report to licensee, accused and alleger prior to pre-decisional enforcement conference
  - Provide written notice of agency's bases for proposed enforcement action
- Develop graded criteria for severity levels

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DISCRIMINATION TASK GROUP MEETING ATTENDANCE

DATE 11/1/2000

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