Jeff Kriner
102 E. Linger Lane
Phoenix, Arizona 85020
(602) 943-7783
jkriner@ieee.org (e-mail)

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Mr. Bill Borchardt
Director, Office of Enforcement
Mail Stop 14E1
Two White Flint North
11545 Rockville Pike
Rockville, Maryland 20852-2738
(301) 415-2741
rwb1@nrc.gov (e-mail)

Subject: Comments Regarding September 5 Meeting for the NRC's Discrimination Investigation Process

Mr. Borchardt,

I just finished reading the article "NRC's Discrimination Investigation Process Needs Reform, Industry Says," in the September 11, 2000 issue of *Inside NRC*. The article was written in response to the September 5 meeting in California. I would like to provide you my thoughts about the enforcement of these regulations and some of the comments provided in the *Inside NRC* article, from the perspective of someone accused and that has experienced the investigation process.

Before I discuss my experience with the employee protection regulations, I would like to express some of my general opinions of Utility safety cultures and related inspection activities.

- First and foremost, safety is always the priority. However, as you know, the culture of Utility personnel ultimately determines whether the rhetoric gets carried through with meaningful actions and implementation. I believe a Utility develops arrogant behaviors when it successfully slides through various inspections/audits on its rhetoric while quietly in the background is canceling or continually deferring final corrective actions to some degree. Consequently, in some cases the Utility achieves a passing grade primarily on nothing more than rhetoric. The recent shift in inspection and enforcement to focus on the safety significance of individual items seems logical on the surface. However, history's lessons associated with substantial engineering disasters have taught us that these events are born from a combination of individual deficiencies, usually not significant when judged on their individual merits, but collectively create substantial adverse consequences in a manner that is well outside any criteria used for postulating events. For better Utilities, this is the exception rather than the rule.

- In this respect, important to the proper development and maintenance of a safety culture is the effectiveness of Utility organizations, INPO and the NRC to perform those inspections that focus on how well the Utility follows through with final corrective actions, and in turn enforce those expectations that hold the Utility accountable for following through on promises. Too often I've seen very competent inspections provide findings and open items for follow-up, and after a few years, new inspection personnel get assigned the follow-up and close the open items based on a superficial and sometimes uninformed review. Utilities learn what is a hot item today can be deferred to another day with diminished emphasis and greater resolution flexibility.

- In conjunction with the above corrective action inspections, the employee protection regulations are important. At a Utility where the culture has been allowed to perform unchecked with the aforementioned behaviors, the group of individuals working towards effective corrective action implementation can become the minority and soon feel they are swimming upstream. I feel that when a Utility starts getting into trouble at the employee protection regulation level, it's symptomatic of a much larger problem shared by not only the Utility, but other oversight organizations for not performing detailed inspections that provide conclusions on how well the Utility

is implementing final corrective actions.

- SSFI type inspection activities provide the detailed information necessary to adequately assess Utility performance that other inspection activities have no chance of accomplishing. Other non-event driven inspection activities lack the resources and time to get much past the process descriptions and rhetoric, and the overall inspection quality depends heavily on the inspectors expertise and techniques to overcome these limitations. Unfortunately, the expense associated with SSFI type inspections has caused a reduction in these types of detailed inspections, and the ability of the NRC to assess the effectiveness of Utility programs and their final corrective actions is severely limited without the insight and knowledge gained from evaluating the details.

In regard to my personal experience with the employee protection regulations, I would like to echo and disagree with a few of the remarks in the *Inside NRC* article, and provide a few comments of my own.

- I generally agree with the comments that the NRC's process "takes too long, lacks objective standards, and is carried out mostly in secrecy." I emphatically agree with Ellen Ginsberg's comment that the existing process "ignores evidence of legitimate reasons." Taking this comment further, I would state that Utilities and the NRC intentionally avoid placing too much effort toward challenging those individuals making allegations for fear of their validation activities being construed as discriminatory. In all of the past cases where investigations have concluded that no discrimination occurred, my impression is there have been very few investigations that have recommended follow-up investigations to determine whether deliberate misconduct occurred as a result of untruthful investigators or untruthful individuals raising allegations.
- I strongly disagree with the general comment that predecisional enforcement conferences are not useful. If it weren't for my predecisional enforcement conference, I believe the witch hunt investigations would have forced me to burn at the stake. Remarkably, it wasn't until the predecisional enforcement conference until I was specifically asked to 'elaborate' on the basis for my written recommendation for the release of two contractors, and the individuals asking the question were interested in my response. Up until that point, the investigations were obviously focused on building upon a presupposed notion of guilt that had been initially and willfully fabricated by an independent oversight contractor. I could write 100 pages worth of text on the matter of the lack of objectivity of the Utility and independent investigations, as well as the malicious intentions of those making the claims, which ultimately created a "perception" that was so far from the truth. The fabricated perception was swallowed by my colleagues and the public, and undoubtedly was perpetuated by a belief that "the NRC would never go after someone without cause."
- I also somewhat agree with John McGaha's comments characterizing the process as a "guilty-until-proven-innocent approach," and "missing from the process is accountability for individuals who misuse the system to file false investigations." These comments target the motivations of both investigators and the individuals making allegations. If I hadn't been through the ringer myself, I would probably write Mr. McGaha's statement off as being reflective of a minority of investigations that went astray based on my personal beliefs that everyone wants to do a good job and sometimes people make unintentional mistakes and oversights. At the beginning of the investigations in my particular case, I kept telling myself that the Utility investigators would do an objective job and the truth would prevail. I was wrong, and I voluntarily resigned my position at the Utility management's request while all along feeling it was the right thing to do. Then I told myself that OI would do an objective job and the truth would prevail. I was wrong again, and subsequently landed in a predecisional enforcement conference at the end of a rope with a lack of confidence in the whole system. I couldn't have been more ignorant of the influence that opinion, bias, self-serving motivation, political pressure, etc., plays in these investigations. Although I feel that all allegations must be initially assumed as legitimate, a detailed and fair investigation is necessary to assess the underlying truth behind the allegation.
- There's a critical difference between public perception and reality/truth. The difference must be acknowledged and respected by the Utility and regulators performing investigations. Each investigating body must be held accountable for not painting an untruthful perception picture, and make careful attempts at minimizing differences between perception and truth. The first steps taken by the initial investigations have a dramatic impact on how the public perception is molded, which in turn fuels Utility motivations on the investigation outcomes. Whether the initial investigations are based mostly on facts or opinion, bias, self-serving motivation, political pressure, etc., is largely in their control. I believe this area is one that requires priority improvement, far more than "the top complaints as timeliness and access to information" cited in the *Inside NRC* article.

Timeliness and access to information are attributes which speak nothing to the fundamentals of the investigation. I would rather have a truthful investigation that was untimely and secret, than an untruthful investigation that was timely and accessible.

I want to wrap this up by substantiating Bill Briggs comments that the existing investigation process is "devastating" based on my experience with the process. It's devastating in that it unfairly degraded and challenged my character, by essentially claiming that I didn't support safety and that I would do things intentionally incorrectly, and that I would retaliate against someone for raising safety concerns. It's devastating because the labeling comes from peers and the regulatory authority, which I respect and support. It's devastating because the back-drop to the initial grossly inaccurate perceptions is the general belief held by the public that "the NRC would never go after someone without cause." It's devastating because my reputation will always carry this scar, and there will always be those that silently view me in a guilty light due to the immense gap between perception and truth that had been fabricated.

Although I have come to an understanding of the motivations that drove the investigations' conclusions in my particular experience, the memories from this whole experience will continue to give me a sick feeling for many years to come. I've also lost some confidence in management and regulatory personnel to act objectively in these complex and difficult situations. Even if no fundamental changes are made to the current reactor inspection and employee protection inspection processes, perhaps sending you this letter is a way I can vent my frustrations.

Respectively,
Jeff Kriner