



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555 - 0001

August 31, 2001

MEMORANDUM TO: File

FROM: Barry Westreich /RA/  
Office of Enforcement

SUBJECT: SUMMARY OF AUGUST 9, 2001, DISCRIMINATION TASK GROUP  
PUBLIC MEETING IN SAN LUIS OBISPO, CALIFORNIA

On August 9, 2001, a public meeting was held in San Luis Obispo, California to discuss the Draft Discrimination Task Group Report and recommendations related to employee protection cases. The meeting was part of a series of meetings being held to solicit stakeholder comment on the draft report. A summary of the meeting presentations, materials and statements submitted and an attendance list is attached.

Attachments: As stated

cc: WKane, DEDR

DISTRIBUTION:  
FCongel, OE  
BWestreich, OE  
Day File  
Public

**ADAMS ACCESSION NO.**

Doc Name: **G:\Barry\ discrimination task group\ draft report\San Luis 8-9-01 meeting and cover. wpd**

OE	D:OE
BWestreich	FJCongel
8/28/01	8/31/01

**AUGUST 9, 2001 DISCRIMINATION TASK GROUP PUBLIC MEETING SUMMARY,  
SAN LUIS OBISPO, CALIFORNIA**

The meeting began at 7:00 p.m.

**Mr. Frank Congel, Director Office of Enforcement**, presented an overview of the Task Group activities and draft recommendations. (Slides attached)

Mr. Fewell discussed the comments on the legal standards being used in discrimination cases. Three specific comments the Task Group have heard in this area were:

- Standards used to initiated an investigation are too low.
- Standards used to determine that there is discrimination are too low (based on a scintilla of evidence).
- Concern that we are using a different legal standard that DOL. With the DOL if the licensee can show that by clear and convincing evidence that they would have taken the action anyway, no remedy is awarded, even if the adverse action was a contributing factor. If the NRC however, considers that an adverse action was taken, even if it was only a contributing factor, enforcement action may be warranted due to the chilling effect of the adverse actions has on other employees.

Mr. Baker discussed the flow paths of the current process and the recommended process.

Ms. Becker - Are we really interested in having the public attend these meetings? If so, then you should not put it in the paper three days in advance of the meeting, and not on a Thursday night, which is farmers market night.

Mr. Westreich - Well, we have made an several attempts to get the word out on these meetings. We have published the meeting schedule for all the public meetings the Task Group is having in the Federal Notice a number of months ago, and included the meetings on the NRC and Office of Enforcement webs sites. We also issued a press release a few months ago listing the time and location of all the Task Group meetings, including this one, as well as a press release last week specifically for this meeting. We have found in the past that if we issue a press release too far in advance, people tend to forget that the meeting is taking place, and too close to the meeting does not give people enough time to prepare. So it is a fine line, and we try to it a about a week in advance.

Ms. Becker - But it only appeared in the paper this week, which is certainly not enough time, especially if you are out of town as I was. The report is very long and I haven't had enough time to review it and comment on it.

Mr. Congel - We are sorry you haven't had time to prepare comments, but you are encouraged to send us written comments on the draft report. We will accept comments for as long as we can and still meeting our schedule for getting the report out at the end of September.

**Ellen Ginsberg, Deputy General Counsel, NEI (slides attached)**

NRC's evaluation process was reasonable, seeking broad spectrum of issues from stakeholders.

NEI's view is that although we believe the NRC Task Group has expended a lot of effort, there

hasn't been a lot in the way of meaningful results. There is a lot of similarity between the industry and the public in our concerns with the current process.

The conduct of investigation exacerbates the problem.

The legal standards are inappropriate.

There is a lack of fundamental fairness, these problems are precisely the things that the Task Group recommends keeping.

The industry is very disappointed by the Task Group efforts. There was an inability to perform an honest assessment of the process, but a justification of the status quo.

The justification for the recommendation is clearly lacking. The limited recommendations made will not advance the ball but actually exacerbate the problem.

NRC recommendations do not address issues of fundamental fairness.

The current legal standards are not being applied correctly. Everybody is entitled to know the standards that they are being judged against.

Eliminating the PEC. We agree that the PEC is not fair and doesn't buy anything. Unfortunately, the recommendation to move the enforcement conference to after the action is issued promotes the NRC digging its heels in. This effectively reaches a conclusion without a fair hearing.

There is no opportunity for individual hearing rights. This would be an easy recommendation to implement. But the NRC's response is that it is too resource intensive.

The OI report in redacted form will only be an extensive summary.

Mr. Westreich - In our recommended approach we are proposing that we give you everything. The OI report and the transcripts of the interviews and all other exhibits. The only thing that would be redacted is personal privacy information, such as phone number, addresses and things like that. I don't think it's accurate to characterize that as an extensive summary.

NEI is suggesting that the NRC reconsider its approach:

- Change the conduct of independent investigations.
- The Reason for why the NRC should be different is not discussed in the report.
- Thresholds for OI investigation are too low. Thresholds should only be in egregious cases.
- With the industries efforts in the discrimination area, these actions are not needed.

Ed Baker - Are you suggesting we use a higher standard than OSHA uses to initiate an investigation?

Ms. Ginsberg - Yes, we believe you should only be doing enforcement in the most serious cases. Settlements should also be given credit for.

The bottom line is that the NRC should take a fundamentally different approach. The NRC should allow the DOL to handle cases in the first case. The NRC should refrain from enforcement and use it only in the most serious cases.

The NRC should withdraw the preliminary report and reconsider in a more objective fashion. The recommendations made do not have an measurable impact in the process.

Ms. Becker - Do you make this presentation the NRC goes?

Ms. Ginsberg - Myself or one of my colleagues does.

Mr. Congel - NEI has made a presentation at three of the four meeting held thus far.

Mr. Baker; Would NEI support giving DOL the authority to issue fines for a deterrent effect

Ms. Ginsberg - What the NRC does is pile on after the fact.

Mr. Fewell - We have struggled with the cases where individuals settle, which is a private settlement with the individual but does not address the overall work environment. That is one of the reasons why we concluded that we should continue to look at these cases.

Mr. Baker - Also if OSHA issues a finding and settles, but the settlement does nothing to impact the fact that the manager is still there and the bad environment continues.

Ms. Becker: That is precisely what is happening here at Diablo. The manager that discriminated is still there. We resent the industry coming here and giving this presentation every where the NRC goes and that the NRC does not give people the time to prepare a presentation. It really stinks.

Mr. Fewell - You have said that people are afraid to come to the NRC, why is that?

Ms. Becker - Because the perception is that the NRC is not doing a good job, and you have to go to DOL to get any kind of remedy. Everybody is so worried about the energy problem in California that now nobody is raising concerns. I don't think the NRC can do enough to protect workers.

Mr. Proulx - The comments on risk informing the process, how would we even do this?

Mr Congel - One way would be to look at the issue and see what impact that had on the overall safety of the plant.

Mr. Baker - There are other comments, such as that unless the issue is safety significant, then we should not bother with it.

Mr. Fewell - With regard to some of your comments about our justification, we agree that we need to do a better job at explaining why we made the conclusions we made. We will have a lot more analysis done for these comments in the final report.

Ms. Becker - Will we have an opportunity comment of the final report?

Mr. Westreich - You always have the opportunity to comment on products that the NRC puts out.

Mr. Baker - Also, each of the recommendations will go to the staff for review and implementation, and the public will have the opportunity to comment on them.

Mr. Vasquez - To the NEI rep. You are recommending that the NRC only look at the most serious cases, isn't that going to lead to a more chilled environment?

Ms. Ginsberg - Our view is that a single case of discrimination, investigated by OI gets blown out of proportion, and that you cannot connect it to an overall work environment issue.

Mr. Vasquez - If you also have a lot of lower level issues, doesn't that also contribute to an chilled environment?

Ms. Ginsberg - If they go to the DOL it is no longer a lower level.

Mr. Wambold - Individual claims of discrimination, how do we view the responsibilities with regard to the work environment? There are things the NRC does that looks at the environment.

Mr. Baker - We will look at technical allegations, usually by an inspectors, not in an OI investigation. It is difficult to examine non-specific feelings that they are chilled from bringing issues forward. There is no good way that we can look at that. As far as discrimination issues, we feel that these cases can have an immediate effect on others raising safety issues. We do have an inspection procedure that looks at the environment.

Mr. Fewell - One additional thing that we have used is to have a management meeting when there is a general feeling that there is a problem at the facility with people bringing issues forward.

Mr. Wambold - In the industries model, deferring to DOL, could you still satisfy your requirements to look at the SCWE.

Mr. Baker: As a team, we felt very uncomfortable recommending not responding to allegations of retaliation. That would have a large negative impact on the environment.

Ms. Becker - At a recent meeting we raised the issue that the workforce is demoralized and fatigued. We have received anonymous letters saying that people are going too fast and not raising concerns. The NRC did not even ask for a questions or a copy of the letter. And the response is that some plants do refueling even faster.

Mr. Baker - I agree that we should have reviewed that letter, could you please give me a copy of the letter.

The meeting concluded at 8:30 p.m.