

MEETING ON THE DISCRIMINATION TASK GROUP DRAFT REPORT

- Frank Congel
- Director, Office of Enforcement
USNRC



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Group Composition:

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

Formed in June, 2000 to:

- Promote active involvement of internal and external stakeholders.
 - Evaluate the NRC's current process.
 - Review/analyze stakeholder comments.
 - Develop recommendations that ensure the investigation and enforcement process supports an environment where workers are free to raise safety concerns.
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Task Group Schedule

- Evaluate current NRC processes.
(Complete) July-Sept., 2000
 - Conduct Initial Stakeholder meetings.
(Complete) Sept.-Nov., 2000
 - Review other federal agencies processes
(Complete) Oct., 2000-March 2001
 - Develop recommendations
(Complete) Jan.-April, 2001
 - Issue Recommendations for public comment.
(Complete) May, 2001
 - Stakeholder Meetings June-August, 2001
 - Comment Period Ends August 17, 2001
 - Issue Final Report October, 2001
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Scheduled Public Meetings

- Chattanooga, TN - June 25, 2001
 - Chicago, IL - July 11, 2001
 - Paducah, KY - July 12, 2001
 - San Luis Obispo, CA - August 9, 2001
 - Waterford, CT - August 14, 2001
 - Washington, DC - August 16, 2001
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GENERAL COMMENTS RECEIVED

- Improve Timeliness.
 - Release Information (e.g. OI Reports) prior to PEC.
 - Conduct of OI Investigations.
 - Establish more Criteria for Determination of Severity Level.
 - Need to better explain Legal Standard used.
 - Clarify DOL/NRC interface.
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RANGE OF COMMENTS

■ INDUSTRY

- Defer to DOL
- No Individual Actions
- Risk Inform process
- No Enf Action Needed
- SCWE oversight
but no regulations

PUBLIC

- Allegers need more protection
 - Allegers need financial
assistance
 - Take stronger enforcement
(especially against managers)
 - Current Regs sufficient
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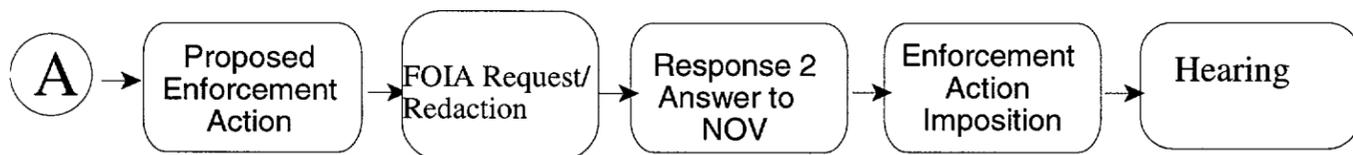
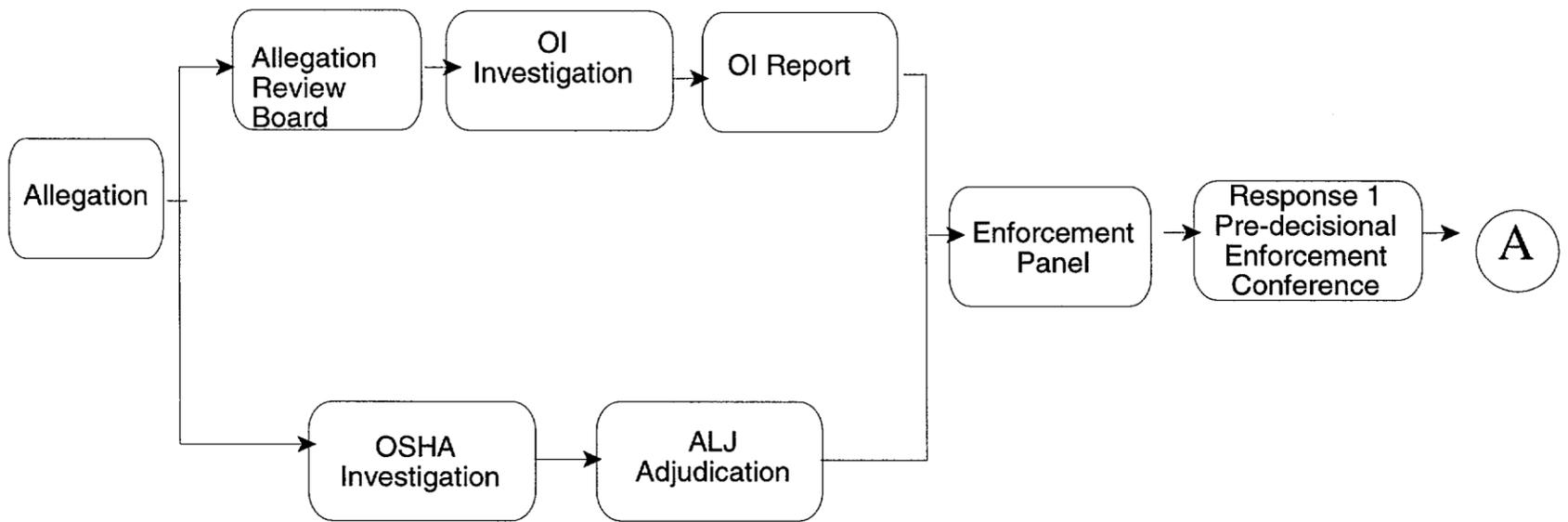
NOTABLE RECOMMENDATIONS

- Maintain NRC involvement in discrimination issues.
 - Eliminate deferral of cases to DOL.
 - Streamline the process to improve timeliness and allow release of redacted OI reports.
 - Modify the factors for determining Severity Level.
 - Severity of the adverse action.
 - Notoriety of the adverse action.
 - Benefit to the individual.
 - Did the protected activity involve participating in government processes.
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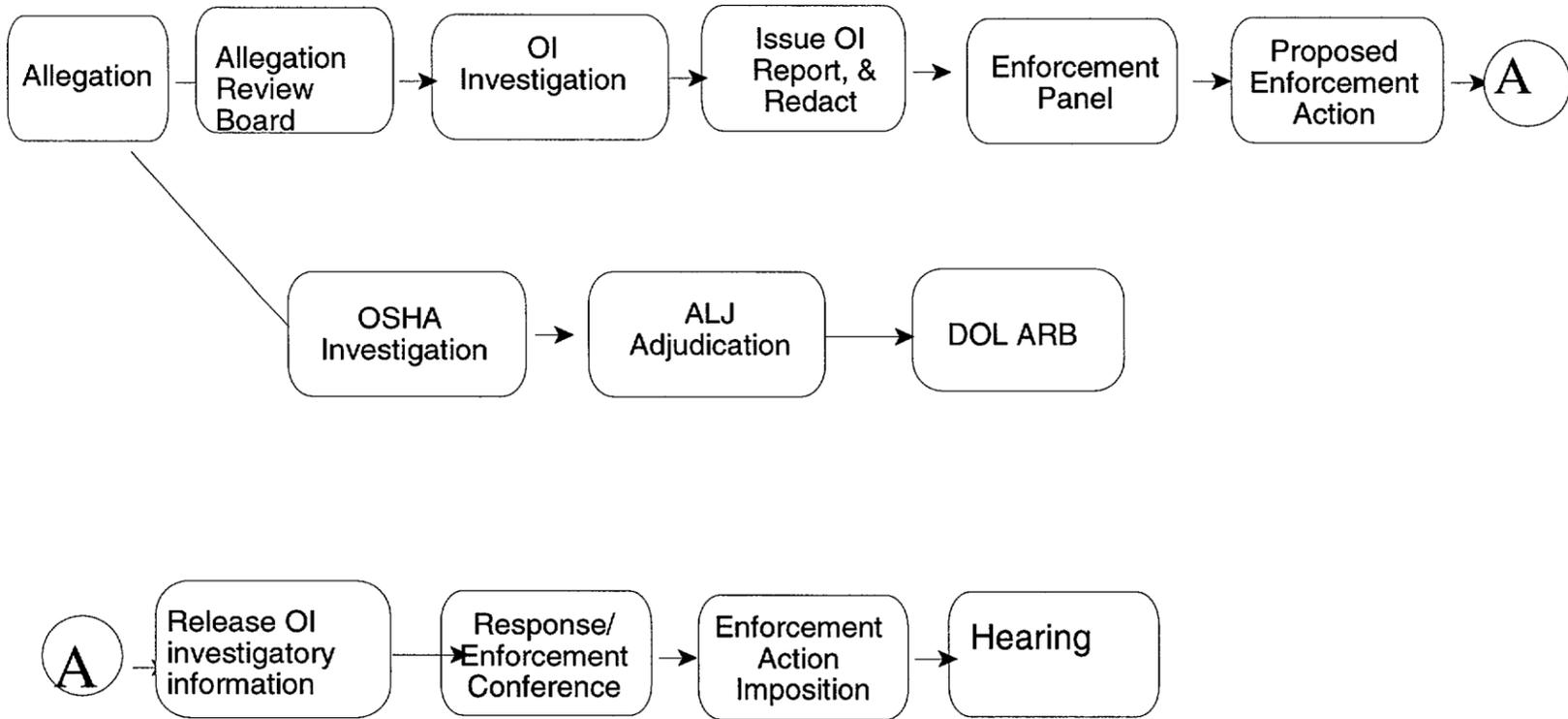
NOTABLE RECOMMENDATIONS- Cont

- Provide financial support to the allegeders and one personal representative to attend PEC.
 - Modify regulations to allow assessing Civil Penalties to Contractors.
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CURRENT PROCESS



RECOMMENDED PROCESS



FUTURE ACTIVITIES

- Stakeholder Meetings and Feedback
 - Comments accepted until August 17, 2001
 - Issue Final Report to Commission
 - Disposition recommendations
 - Tasking to staff for evaluation and follow up
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*Presentation to
NRC Discrimination Task Group*

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**Discrimination Task Group
Draft Review and Preliminary
Recommendations**

*Ellen Ginsberg, Deputy General Counsel
Nuclear Energy Institute
August 9, 2001*



NRC's Evaluation Process

- ☞ **Perform internal evaluation of current NRC investigative and enforcement processes**
- ☞ **Obtain views of stakeholders through public meetings and written comments**
- ☞ **Review processes used by other federal agencies**



Stakeholders Agree on Need for Reform

- ☞ **Strong consensus that NRC should revise approach to employee protection**
- ☞ **Stakeholders agree reform needed to address:**
 - ☞ **Conduct of OI investigations**
 - ☞ **Legal standards and evaluation process**
 - ☞ **Lack of fundamental fairness in enforcement process**
 - ☞ **Lack of transparency**
 - ☞ **Lack of timeliness**



Discrimination Task Group Draft Review and Preliminary Recommendations

- ☞ **Suggests lack of objectivity**
 - ☞ Largely justifies the *status quo*
 - ☞ Fails to consider processes of other agencies
- ☞ **Suggests lack of appreciation of stakeholder concerns**
- ☞ **Recommended changes will not produce a fairer, more understandable process**
 - ☞ Result will be greater duplication and inefficiency
- ☞ **Fails to justify significant expenditure of resources given industry performance**



NRC Should Reconsider Preliminary Findings and Recommendations

- ⌘ **NRC recommendations do not address issues of fundamental fairness**
 - ⌘ **Retain current approach to conduct of investigations**
 - ⌘ **Retain current legal standards/evidentiary bases for enforcement**
 - ⌘ **Eliminate predecisional enforcement conference**
 - ⌘ **No opportunity for hearing by individual subject to NOV**
 - ⌘ **Continued failure to provide full explanation of bases for enforcement action**



NRC Should Reconsider Policy Issues

- ☞ **Conduct of independent investigation and enforcement action**
- ☞ **Threshold for initiation of OI investigation**
- ☞ **Adverse impact on nuclear employee accountability**
- ☞ **Promotion of settlement through credit in Enforcement Policy**



Bases for Reform of 50.7 Implementation

- ⌘ **Nuclear industry performance demonstrates freedom of employees to report safety concerns**
- ⌘ **Preserving nuclear employee accountability is an important public interest**
- ⌘ **Current legal and evidentiary standards are inappropriate**
- ⌘ **Lack of openness and transparency undermines credibility of results**
- ⌘ **Current process promotes inefficient use of NRC resources**



Achieving Reform

- ⌘ **Fundamentally revise NRC’s approach to individual discrimination claims by allowing Department of Labor to handle in first instance**
 - ⌘ **Other federal agencies with similar public health and safety responsibility do not independently investigate or take enforcement action on grounds of discrimination**
- ⌘ **NRC could retain enforcement authority--reserved for “exceptional circumstances”**



Achieving Reform, con't

⌘ Revise the current process to achieve greater fairness, appropriate allocation of resources and transparency

- ⌘ Adopt appropriate threshold for initiation of OI investigation
- ⌘ Adopt and apply appropriate legal standard and “preponderance of evidence” standard
- ⌘ Provide *meaningful* predecisional enforcement conference
- ⌘ Provide full and reasoned explanation of bases for enforcement
- ⌘ Provide right to hearing for individual subject to enforcement



Conclusions

- 🏠 **NRC should withdraw preliminary report and reconsider input from stakeholders and other agencies**
- 🏠 **Substantive reform is imperative to address the flaws in the current process**
- 🏠 **All stakeholders will benefit from a fairer, more open, and more timely approach**



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