

MEETING ON THE DISCRIMINATION TASK GROUP DRAFT REPORT

- Frank Congel
- Director, Office of Enforcement
USNRC



Web Site www.nrc.gov/OE/
Group Coordinator - Barry Westreich
301-415-3456
Email: bcw@nrc.gov

Mailing Address:
Mail Stop O14E1
11555 Rockville Pike
Rockville MD 20852

Group Composition:

- Frank Congel, Director, Office of Enforcement,
Group Leader
 - Bill Borchardt, Associate Director for Inspection and
Programs, NRR
 - Barry Letts, Office of Investigations Field Office
Director, Region I
 - Dennis Dambly, Assistant General Counsel for
Materials Litigation and
Enforcement, Office of General
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
-

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.
-

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
-

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
-

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.
-

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
-

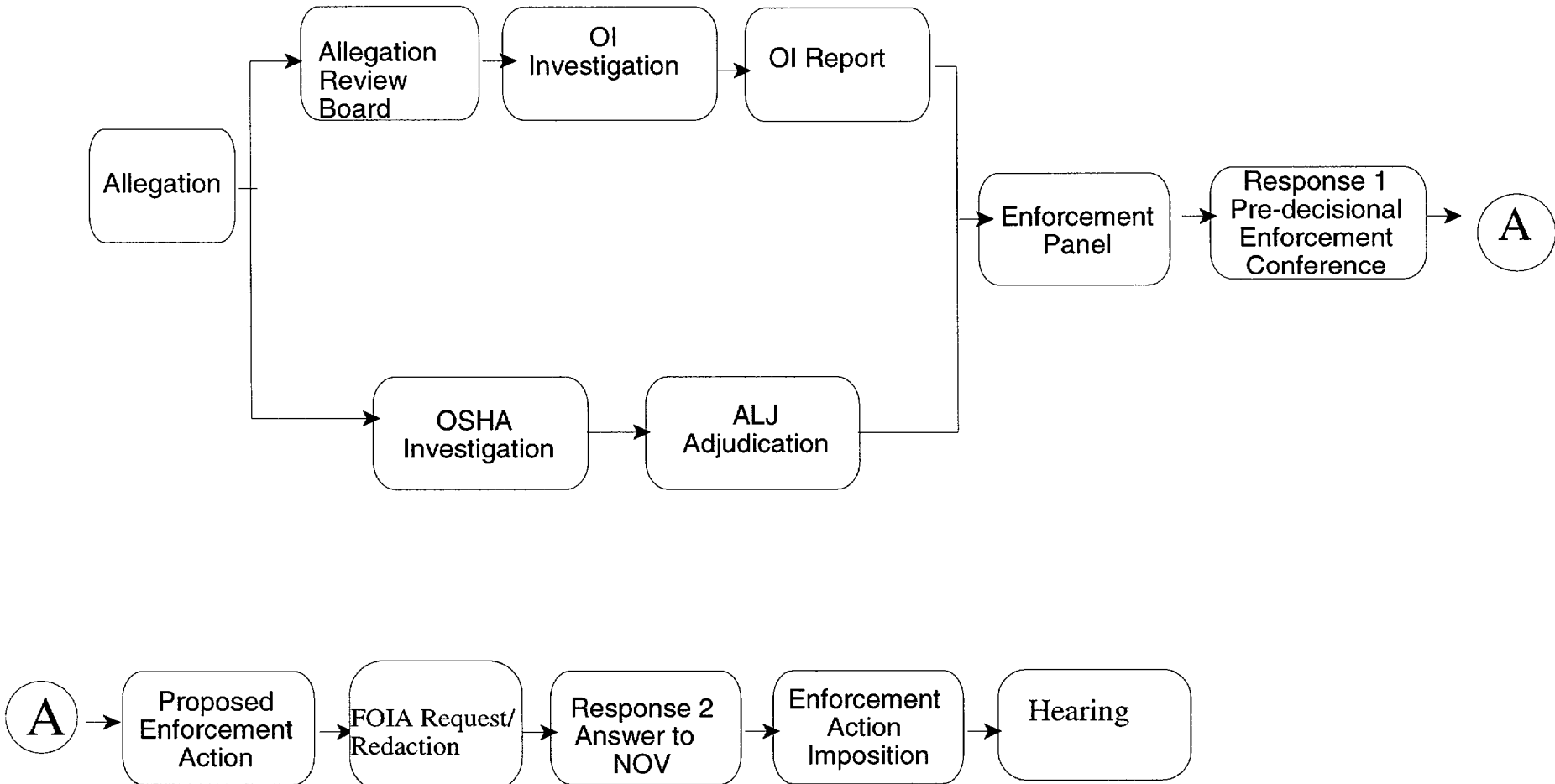
NOTABLE RECOMMENDATIONS

- 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.
-

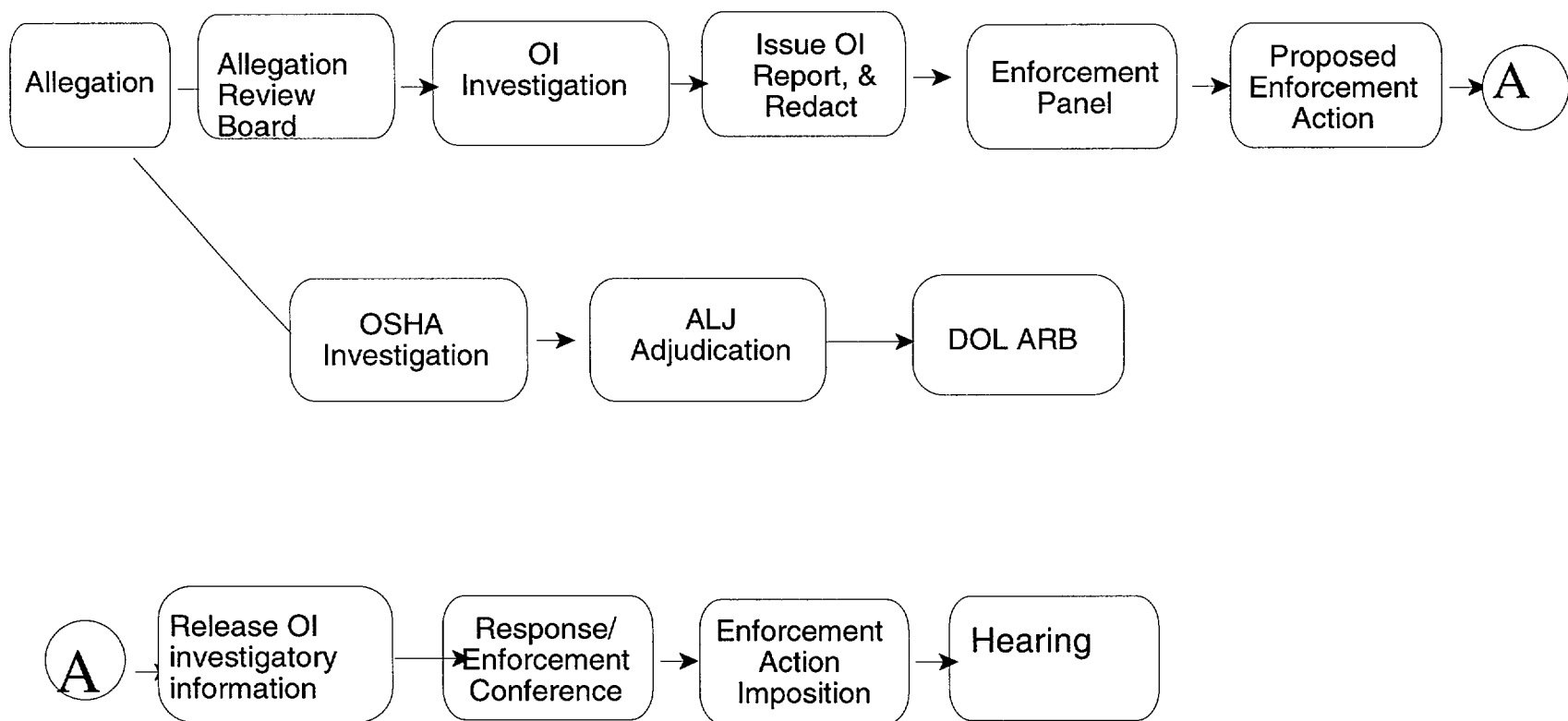
NOTABLE RECOMMENDATIONS- Cont

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

CURRENT PROCESS



RECOMMENDED PROCESS

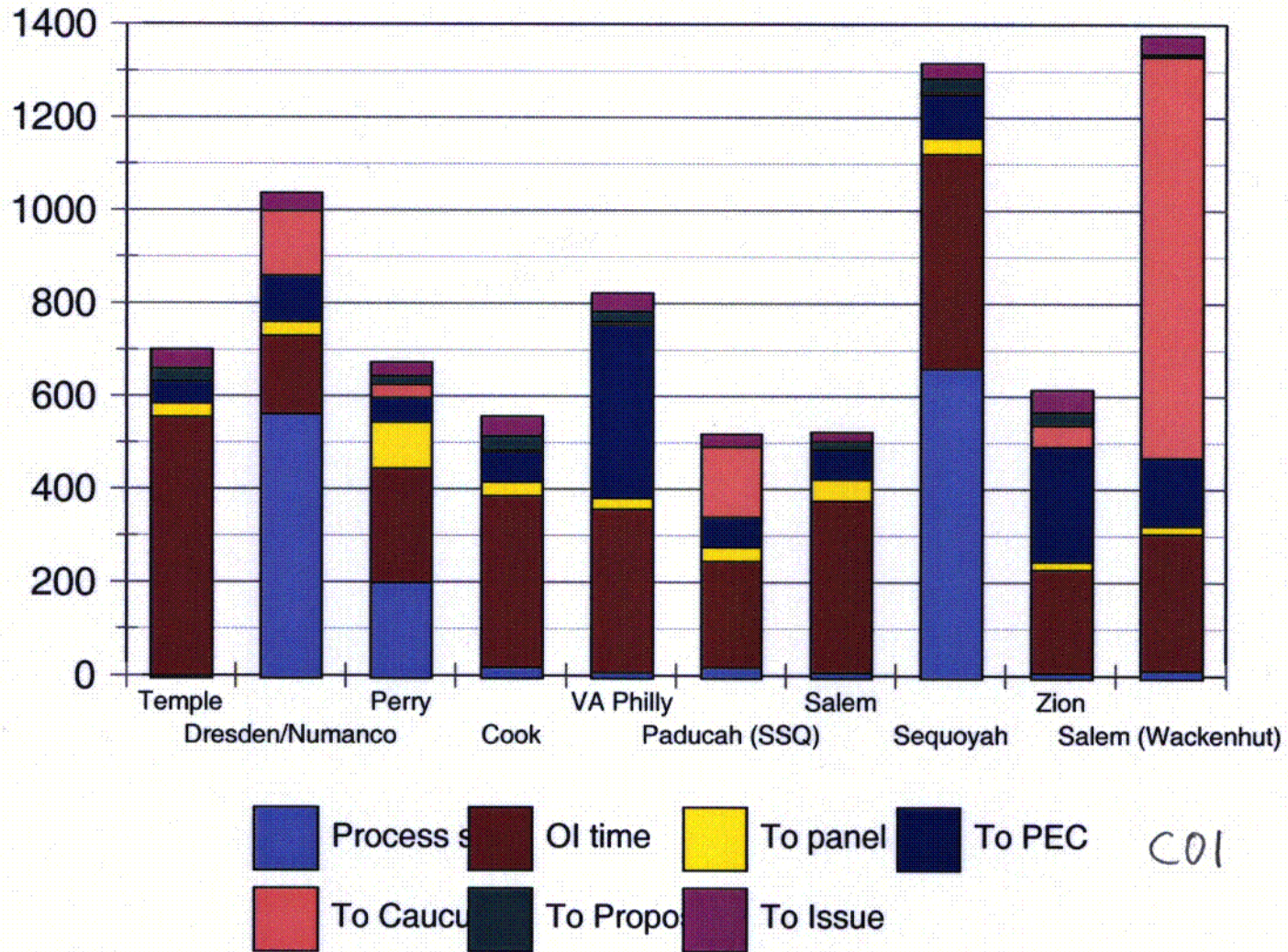


FUTURE ACTIVITIES

- 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
-

Discrimination Cases

Total Time Breakdown



*Presentation to
NRC Discrimination Task Group*

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

*Ralph Beedle, Senior Vice President
Nuclear Energy Institute
July 11, 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**



3

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**



4

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**



5

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**



6

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**



7

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"**



8

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



9

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**



10

NRC Discrimination Task Group

July 11, 2001

Lisle, Illinois

Presentation By

Exelon Nuclear

Introduction

- Exelon appreciates NRC's effort to review the 10 C.F.R. 50.7 process
 - Draft DTG report is a comprehensive review
 - Good insights into Staff expectations
 - Some incremental improvements recommended
- Continue the good dialogue by offering constructive comments on the Draft Report
- Focus on remaining policy issues

Improvements Supported by Exelon

- Exercise of discretion to refer allegations to licensee for investigation (III.A)
 - Although Exelon believes that referral should be the norm unless there is a pattern of discrimination that shows a problem with the SCWE program
- Addition of factors for determining Severity Level, e.g., severity of adverse action, impact on SCWE program (IV.I)
- Release of OI report prior to Predecisional Enforcement Conference (IV.B)

Additional Exelon Comments

- Exelon agrees that clearer guidance is needed for what constitutes protected activity, adverse actions, and a prima facie case (III.B)
- Exelon supports the current practice of sequencing PEC prior to any enforcement action (IV.C)
- NRC should not limit opportunity to submit further information after PEC (IV.E)

Additional Exelon Comments

- Exelon supports DTG conclusion that SCWE rule is unwarranted
- Exelon reiterates suggested process changes to reduce resource burden and sharpen focus on any technical or legal issues
 - Before investigation, NRC should refer allegation to licensee and invite statement of position
 - Before PEC, NRC should provide reasoned basis for apparent violation of 10 C.F.R. 50.7 and identify any inferences to support discrimination finding

Policy Issues

- Exelon does not support discontinuing the current Commission policy of deferral to DOL investigations in certain circumstances
 - Avoids redundant investigations
 - Avoid inconsistent findings by two regulatory agencies charged with implementing Section 211
 - Defer to DOL for individual cases unless there is a pattern of discrimination