

OFFICE OF INVESTIGATIONS



FY 2002
ANNUAL REPORT

FEBRUARY 2003

EXECUTIVE SUMMARY

This report provides the Commission with the results of investigations completed by the NRC Office of Investigations (OI) (reference SRM COMJC-89-8, dated June 30, 1989). This is the 14th OI annual report and addresses fiscal year 2002 (FY 2002).

OI conducts investigations of alleged wrongdoing by individuals or organizations who are NRC licensees or certificate holders, applicants for NRC licenses or certificates, or vendors or contractors to these entities. OI is composed of four regionally based Field Offices reporting to OI Headquarters. OI reports to the Deputy Executive Director for Reactor Programs and is responsible for two NRC programs: Reactor Investigations and Materials Investigations. In FY 2002, there were, on average, 31 special agents and 8 operational support staff assigned nationwide. The average experience of an OI special agent in FY 2002 was approximately 18 years in Federal law enforcement.

There were 670 allegations regarding potential violations of its rules, regulations, or requirements received by the NRC during FY 2002. The 670 allegations represent a 7.5% increase over the total of 623 received in FY 2001.

The total number of investigations in the OI inventory during FY 2002 was 281, a 5.7% decrease from FY 2001 (298 to 281). OI closed 201 of these investigations, or 71.5% of the total inventory. A statistical summary of investigations opened and closed during FY 2002 is contained in the Appendix to this report.

In FY 2002, OI continued to focus on increasing effectiveness, efficiency, and productivity in management, organizational, and process-related activities.

The following are significant achievements during FY 2002:

- OI, in conjunction with the Office of the Chief Financial Officer, established new performance goals focusing upon substantive investigations conducted by OI and eliminated performance goals based upon averages. The revised performance goals for OI as of the 3rd Quarter, FY 2002, are based upon the number of cases closed as substantiated/unsubstantiated and the percentage of those cases closed in 10 months or less.
- OI closed 161 cases out of 169 as substantiated/unsubstantiated, or 95% of the cases, exceeding its performance goal of 90%.
- Of the 161 cases closed as substantiated/unsubstantiated, 85% were closed in 10 months or less, exceeding its performance goal of 80%.
- There were 102 escalated enforcement actions¹ taken by the NRC in FY 2002, which included significant Notices of Violation, civil penalties, and orders. OI investigative findings were considered in 39 (or 38%) of these actions.
- OI processed 82 FOIA requests, a 21% decrease from FY 2001 (104 to 82), and the third largest number of requests processed by an office within the NRC.
- OI participated with various Department of Justice task forces related to counter-terrorism.
- OI concluded its participation in the Discrimination Task Group upon the issuance of SECY 02-0166, Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues.
- OI completed a nationwide NRC Enhanced Terrorism Response Project.

¹ An escalated action is a Notice of Violation or civil penalty for any Severity Level I, II, or III violation (or problem); a Notice of Violation associated with an inspection finding that the reactor oversight's Significance Determination Process evaluates as having low to moderate, or greater, safety significance (i.e., white, yellow, or red); or any order based upon a violation.

INVESTIGATIONS

Analysis of Case Inventory

Figure 1 shows the OI case inventory from FY 2000 through FY 2002. The total case inventory in FY 2002 was 281 cases, a combination of 88 cases carried over from FY 2001 and an additional 193 cases opened in FY 2002. OI closed 201, or 71.5%, of these cases in FY 2002.

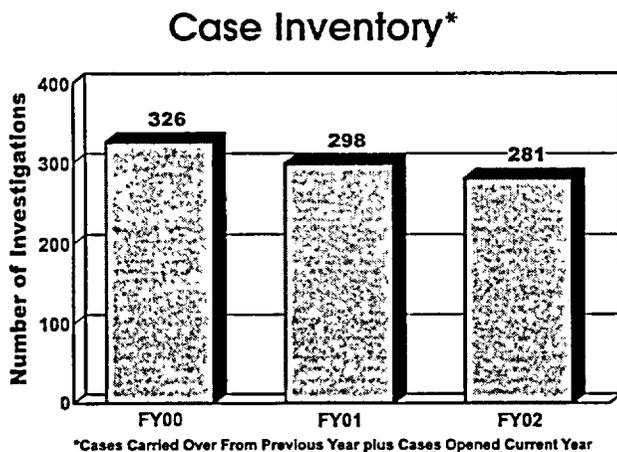


FIGURE 1

Analysis of Cases Opened

There were 670 allegations regarding potential violations of its rules, regulations, or requirements received by the NRC during FY 2002. The 670 allegations represent a 7.5% increase from the total number of 623 allegations received in FY 2001 and a 2.6% decrease from the total of 688 received in FY 2000.

The 193 investigations opened by OI in FY 2002 are categorized by major types of alleged wrongdoing as follows:

Discrimination	65
Violations of Other NRC Regulatory Requirements	82
Material False Statements	46

Figure 2 depicts the number of cases opened from FY 2000 through FY 2002. There was a 14% decrease in cases opened between FY 2000 and FY 2002 (224 to 193). For FY 2000 and 2001, discrimination cases led other categories of violations. However, the number of discrimination cases decreased by 33% between FY 2001 and FY 2002 (97 to 65). The number of cases of suspected material false statements and the number of cases which involve other NRC regulatory requirements fluctuated during this period.

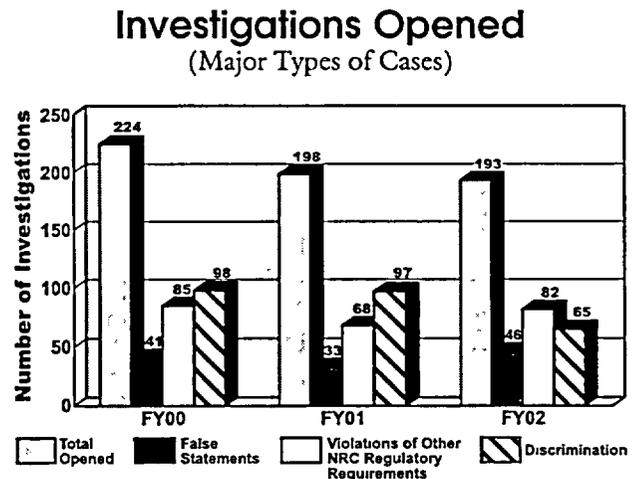


FIGURE 2

Figure 3 indicates the distribution of cases from FY 2000 through FY 2002 by percentage for the categories of cases opened. The FY 2002 distribution shows discrimination cases representing 34% of the cases opened, violations of other NRC regulatory requirements, 42% (includes cases in which assistance was provided to the staff), and material false statement cases, 24%.

Investigations Opened (Percent by Category)

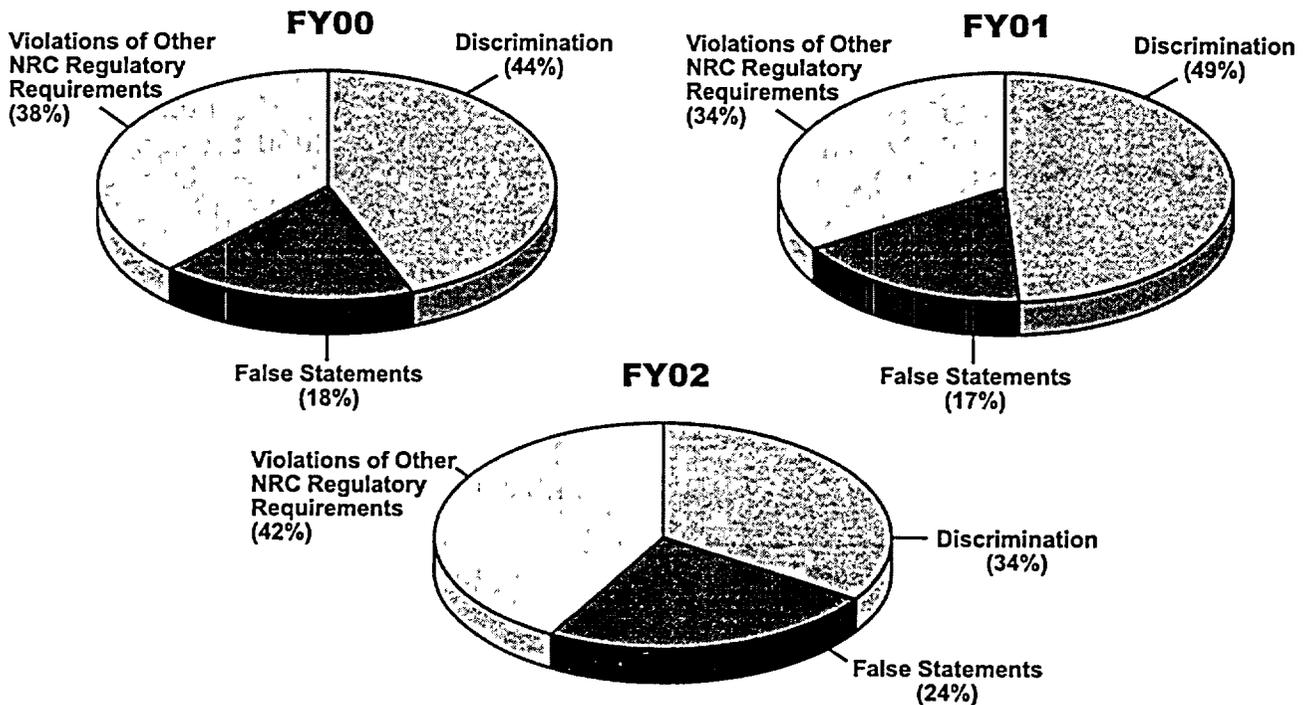


FIGURE 3

The graph at Figure 4 depicts the distribution of cases opened from FY 2000 through FY 2002 by the Reactor Investigation and the Materials Investigation Program arenas. Reactor-related cases demonstrated an overall 20% decrease (147 to 118) during the period. The number of materials-related cases decreased by 3% (77 to 75) for the same period.

Analysis of Cases Closed

Figure 5 depicts the number of completed investigations in FY 2002, categorizes them by major types of alleged wrongdoing, and compares them to FY 2000 and FY 2001. The number of cases completed for each of the major categories of wrongdoing is as follows:

Discrimination	80
Violations of Other NRC Regulatory Requirements	75
Material False Statements	46

Investigations Opened (Reactor/Materials)

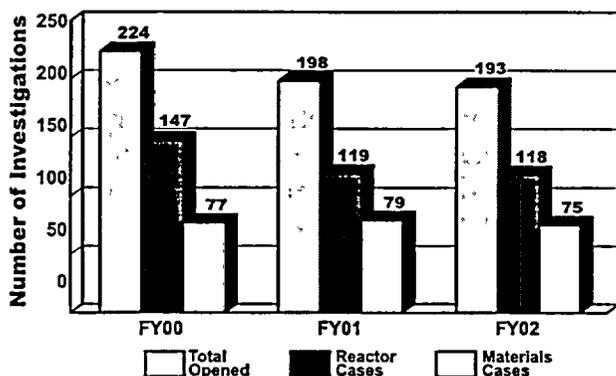


FIGURE 4

Investigations Closed (Major Types of Cases)

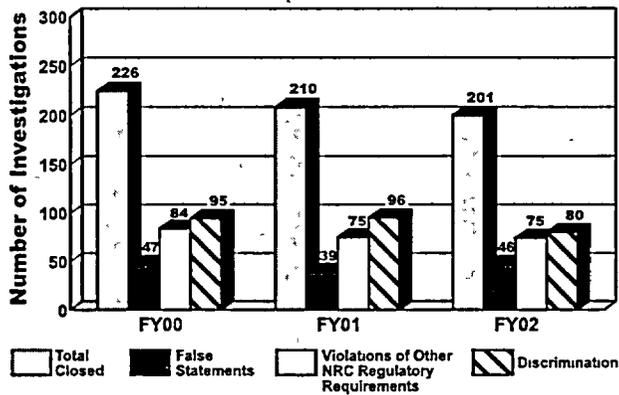


Figure 6 is a percentage comparison, by category, of investigations closed from FY 2000 through FY 2002. Discrimination cases accounted for 40% of the closed cases in FY 2002, cases involving other violations of NRC regulatory requirements, 37%, and material false statement cases, 23%.

FIGURE 5

Investigations Closed (Percent by Category)

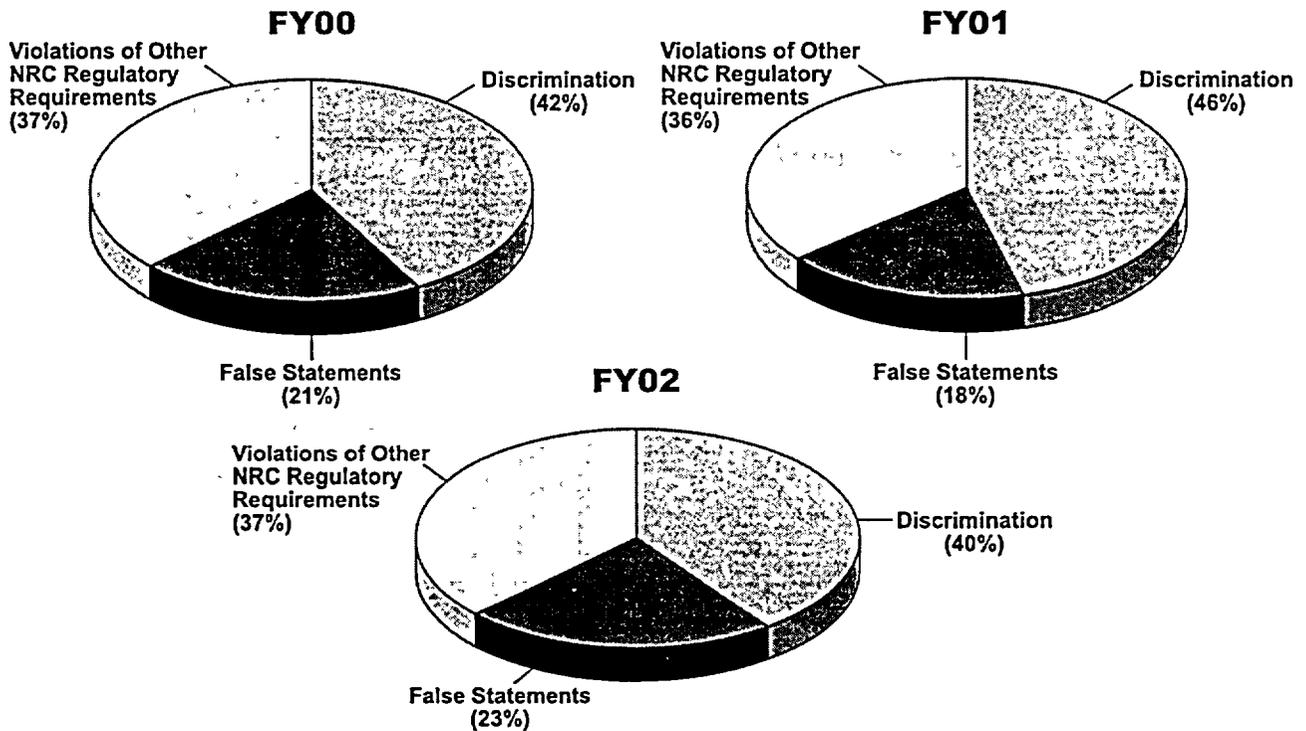


FIGURE 6

The graph at Figure 7 depicts the distribution of cases closed from FY 2000 through FY 2002 by the Reactor Investigation and the Materials Investigation Program arenas. Reactor-related cases have decreased 21% (153 to 121); materials-related cases have increased 10% (73 to 80).

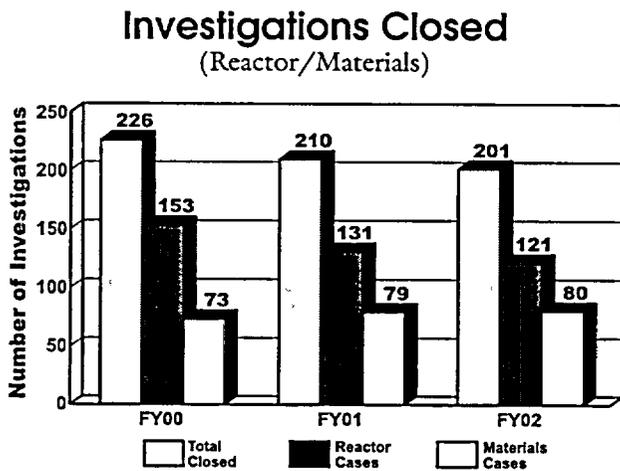


FIGURE 7

Of the 201 investigations completed in FY 2002,

- 56 cases were closed after investigation substantiated one or more of the allegations of wrongdoing.
- 105 cases were closed after investigation did not substantiate wrongdoing.
- 5 were closed after the evidence developed did not warrant further expenditure of OI resources.
- 3 were closed for administrative reasons.
- 32 cases were closed where OI provided assistance to the technical staff.

In FY 2002, OI, in conjunction with the Office of the Chief Financial Officer, made a decision to establish new performance goals focusing upon substantive investigations conducted by OI and to eliminate performance

goals based upon averages. OI's effectiveness, as well as its contribution to the NRC regulatory mission, is measured by those investigations that it conducts to a conclusion on the merits of the case, either substantiating an allegation of wrongdoing or not. These are the cases upon which the technical, legal, and enforcement staffs can base enforcement and other regulatory decisions and which, if substantiated, are referred to the Department of Justice for prosecutorial review. The new performance goals are 1) 90% of cases closed will be brought to a conclusion on the merits as either substantiated or unsubstantiated, and 2) 80% of those cases closed on the merits as either substantiated or unsubstantiated will be completed in 10 months or less. Thus, revised performance goals for OI as of the 3rd Quarter, FY 2002, measure both quality and timeliness.

Figure 8 illustrates that in FY 2002 a high number of cases were brought to a conclusion on the merits as either substantiated or unsubstantiated.

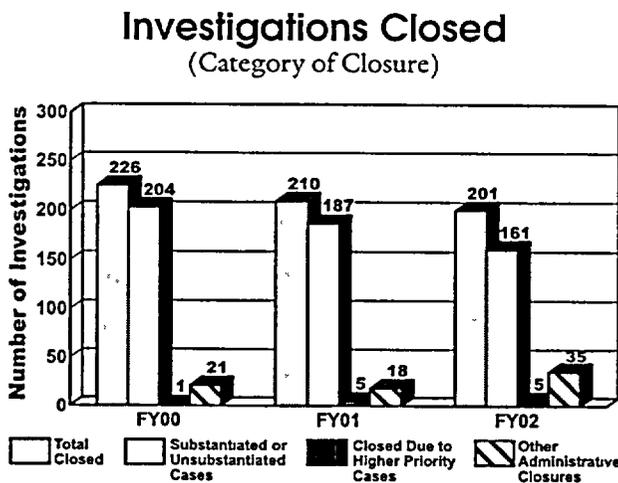
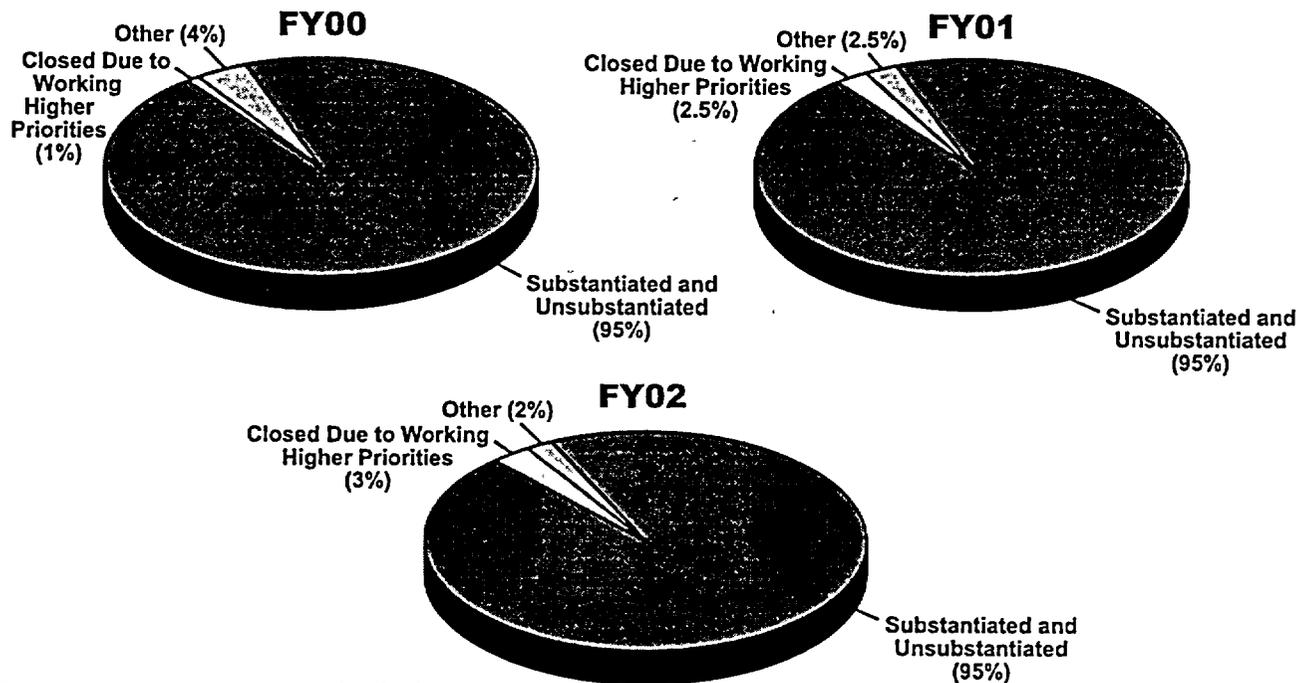


FIGURE 8

Figure 9 is another depiction of the disposition of closed cases. The percentage of cases brought to conclusion on the merits remained at 95% during this period, well above the new OI performance goal of 90%.

Investigations Closed (Percentage Substantiated and Unsubstantiated)*



*Based on number of cases closed, less number of assists

FIGURE 9

Figure 10 depicts the percentage of cases closed as either substantiated or unsubstantiated that were brought to a conclusion in 10 months or less. In FY 2002, 85% were brought to a conclusion in 10 months or less, well above the new OI performance goal of 80%.

Substantiated or Unsubstantiated Cases Closed Within 10 Months

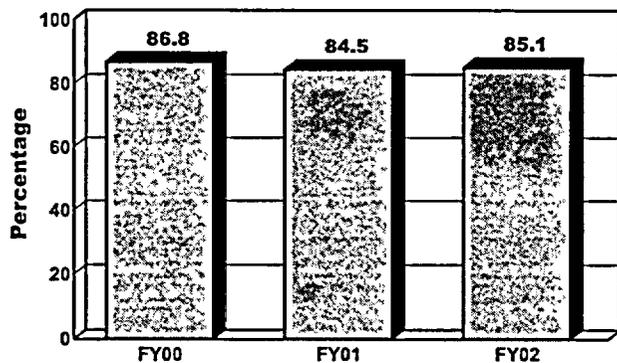


FIGURE 10

Figure 11 depicts the number of cases referred to the Department of Justice (DOJ) from FY 2000 through FY 2002.

DOJ Referrals

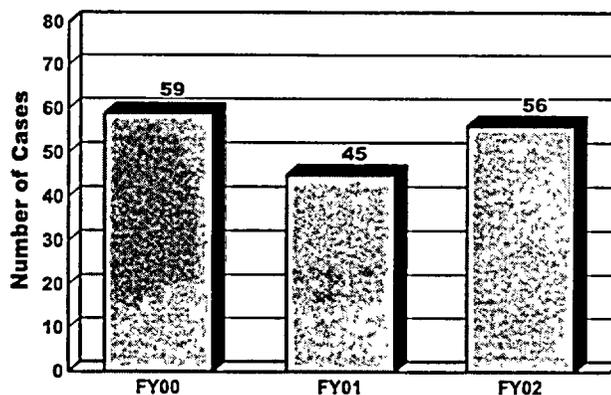


FIGURE 11

Management of Investigations

Case-specific staff hours are shown in Figure 12, indicating a 2% increase from FY 2000 through FY 2002 (44,000 up to 45,000 investigative hours). The FY 2002 ratio of investigative activities (field work and investigative travel) to administrative activities (allegation review process, writing the final report of investigation, management review of the case, etc.) is approximately 68:32, compared with OI's general standard of 60:40.

In addition to closing 201 cases, OI processed 82 FOIA requests, a 21% decrease from FY 2001 (104 to 82). This was the third largest number of requests processed by an office within the NRC in FY 2002.

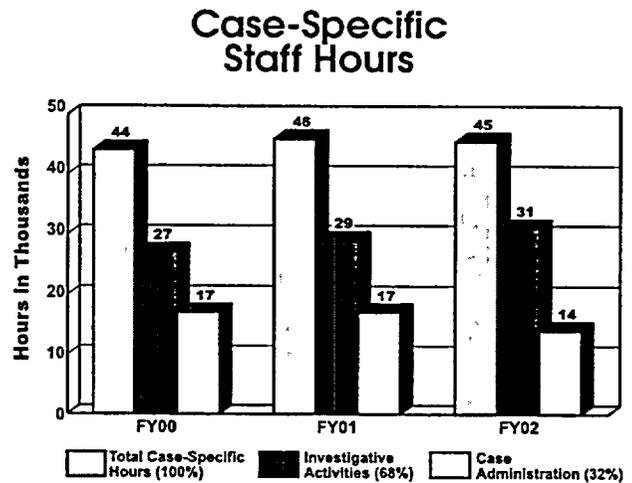


FIGURE 12

SIGNIFICANT INVESTIGATIONS

The following are examples of significant investigations conducted by OI during FY 2002:

Advanced Medical Imaging and Nuclear Services

An investigation determined that the Vice President (VP) and the Chief Operating Officer (COO) knowingly allowed the Advanced Medical Imaging and Nuclear Services (AMINS) facility to operate without a Radiation Safety Officer or an Authorized User, in violation of NRC regulations. Further, the investigation determined that the AMINS VP and the COO knowingly caused false and misleading information to be passed to Mallinckrodt Pharmaceuticals in the acquisition of radiopharmaceuticals for treatment of the AMINS patients. A Severity Level II Notice of Violation and civil penalty of \$43,200 has been proposed against the licensee, and on October 22, 2002, orders were issued to the VP and COO, barring them from taking part in NRC-licensed activities for 1 year.

United Evaluation Services

An investigation determined that United Evaluation Services personnel knowingly allowed an uncertified individual to conduct radiography at a location not authorized by the license. Further, it was determined that the Vice President (VP)/Radiation Safety Officer (RSO) and other employees were involved in making false written and/or oral statements to the NRC regarding the status of radiographic exposure devices, the use of such devices, an annual refresher training examination and other training records, the performance of radiography by an uncertified employee, and conducting radiography at an unauthorized location. Based on the investigation, the NRC issued an immediately effective order to suspend the license, citing deliberate violations of NRC safety requirements involving radiography, as well as providing

inaccurate information to the NRC. In a settlement agreement approved by an Atomic Safety and Licensing Board, the VP/RSO agreed to terminate the company's license and agreed not to act as a radiographer for 1 year from the date of the suspension order, and not to act as an RSO or manage or oversee NRC-licensed activities for 5 years from the date of the settlement agreement. Enforcement actions against four additional employees are pending.

Cataract, Inc.

An investigation determined that a former Human Resources Coordinator (HRC), employed by Cataract/RCM Technologies, Inc., a contractor to the Tennessee Valley Authority (TVA), deliberately submitted background information that the HRC knew to be incomplete or inaccurate in support of the granting of unescorted access authorizations at TVA facilities, at Consolidated Edison's Indian Point Unit 2, and at Northeast Utilities' Millstone Nuclear Station. An immediately effective order prohibiting involvement in NRC-licensed activities was issued to the HRC based upon the HRC's deliberate activities while employed at Cataract/RCM Technologies, Inc. On October 31, 2002, a Notice of Violation was issued for a Severity Level IV violation to RCM Technologies, Inc., formerly known as Cataract, Inc.

Byron

An investigation determined that an Employee Concerns Administrator (ECA) at the Byron Nuclear Power Plant was deliberately discriminated against by a former Corporate Nuclear Oversight Vice President in retaliation for the ECA's engaging in protected activity. As a result, the NRC issued a Confirmatory Order on October 3, 2002, modifying licenses at 19 Exelon nuclear plant units. The Confirmatory Order ensured Exelon's commitments to train all vice presidents and plant managers throughout its organization at every nuclear station and

corporate headquarters on the provisions of the employee protection regulations. These individuals are to then train their subordinate managers. Exelon also modified its management training program regarding the provisions of 10 CFR 50.7, Employee Protection, as a result of the findings from this investigation. In addition, Exelon admitted to a violation of 10 CFR 50.7.

Central Pharmacy

An investigation determined that a Pharmacy Technician deliberately caused the licensee, Premier (Central Pharmacy), to be in violation of license conditions related to the use of radioactive material, i.e., the wearing of finger dosimetry badges and the use of syringe and vial shields. The Pharmacy Technician admitted to removing the multi-dose vial from its protective shield in order to determine how much nuclear material remained in the vial. The Pharmacy Technician stated that he did this out of curiosity at least once a day until Central Pharmacy's Radiation Safety Officer (RSO) instructed him to stop. The RSO stated that, on one occasion, he observed the Pharmacy Technician in the restricted area without his ring badge on his finger. The Pharmacy Technician admitted to OI that he had stopped wearing his ring badge for a period of time. A Notice of Violation, Severity Level III, was issued to Central Pharmacy.

University of Missouri - Columbia Research Reactor

An investigation determined that a Senior Research Scientist employed at the University of Missouri - Columbia Research Reactor (MURR) was discriminated against by management for engaging in protected activity. The Senior Research Scientist had contacted the Department of Energy regarding MURR policy. A Notice of Violation and Proposed Imposition of Civil Penalty, Severity Level III, in the amount of \$3,000 was issued to the licensee.

Avera McKennan Hospital

An investigation determined that a Nuclear Medicine Technician (NMT) at Avera McKennan Hospital, an NRC licensee, deliberately provided an unauthorized administration of technetium-99 to an NMT student for non-medical reasons. The student was performing on-site training at Avera McKennan Hospital. The NMT injected the student with technetium-99, a radio-pharmaceutical controlled substance, for the purpose of administering a bone scan on the student without a doctor's order. The NMT failed to document the dispensation and administration of a regulated radioactive material because the NMT could not support an authorized medical justification. The investigation also determined that an NMT Supervisor made efforts to conceal the unauthorized administration by attempting to convince several physicians to fabricate an order for the procedure after the unauthorized administration. A Notice of Violation and Proposed Imposition of Civil Penalty, Severity Level III, in the amount of \$3,000 was issued to the licensee. A Notice of Violation, Severity Level III, was issued to the NMT.

J.L. Shepherd & Associates

An investigation determined that the President and the Vice President/Quality Assurance (VP/QA) of J.L. Shepherd & Associates, an NRC licensee, deliberately failed to comply with a Certificate of Compliance (COC) regarding the fabrication, packaging, and shipment of radioactive materials to an overseas location and misrepresented an unapproved package during the COC Authority application process. Additionally, it was determined that the President and the VP/QA failed to promptly inform the NRC upon notification of their failure to meet packaging requirements. A Notice of Violation and Imposition of Civil Penalty, Severity Level II, in the amount of \$19,200 was issued to the licensee.

Interaction with the Department of Justice

In FY 2002, 56 cases were referred to the Department of Justice for prosecutorial review, including the following investigation:

Perry Williams Power Corp.

An investigation substantiated discrimination against a union craft painter, employed by Williams Power Corporation (WP), who raised safety concerns at the Perry Nuclear Plant. The painter was instructed by his supervisor at WP to skip the cleaning and decontamination surface preparation procedures prior to painting the fuel pool building. The painter raised these concerns to management and then to the plant Ombudsman, which led to his and a co-worker's layoff by the contractor. The painter alleged that the severance checks were written in advance of the layoff and that he was laid off as a result of going to the Ombudsman.

At an enforcement conference, the WP supervisor denied that he had written the severance checks in advance and that the layoff was discriminatory. He subsequently admitted that he lied to OI and also lied to the Region III staff during the enforcement conference concerning the checks. The WP supervisor also admitted that he had written the union craft painter's severance check in advance of the layoffs and then lied about it to the NRC on two occasions to cover up his actions.

NRC enforcement action is being held in abeyance until criminal prosecution is completed by the U.S. Attorney's Office in the Northern District of Illinois.

Anti-Terrorism Task Force Participation

OI continued to participate, by invitation, in a number of Anti-Terrorism Task Force meetings/training seminars sponsored by local U.S. Attorneys' Offices.

INITIATIVES

Counter-Terrorism Activities

In conjunction with the NRC's response to the terrorist attacks on September 11, 2001, OI conducted the Enhanced Terrorism Project. OI Special Agents visited 80 nuclear facilities, nationwide, conducting both interviews and records reviews. Of a total of 738 interviews, 324 involved licensee senior management, security management, and security contractor personnel, and 414 involved law enforcement and emergency responder personnel whose offices were located in proximity to the facilities. Included in the law enforcement and emergency responder contacts were local police departments, sheriffs' offices, State police posts, various fish and game agencies, National Guard units, local FBI counter-terrorism and weapons of mass destruction units, Department of Justice offices, the Coast Guard, the Border Patrol, the Federal Aviation Administration, the Environmental Protection Agency, and other Federal agencies.

Immigration and Naturalization Service (INS) Review of Critical Infrastructure Employees

Following September 11, 2001, OI supported an INS initiative involving the comprehensive review of critical infrastructure employers to ensure their compliance with INS employment eligibility verification requirements. All employers are required to conduct an employment eligibility verification process for all employees at the point of hiring, including U.S. citizens. The INS objective was to ensure public confidence in the safety and security of our national infrastructure industries.

APPENDIX

STATISTICAL SUMMARY REPORT

**Office of Investigations
Management Information System
Status of Cases
for the Period 10/01/2001 to 09/30/2002**

Cases Open at Start of this Period	88
Cases Opened this Period	193
Cases Closed this Period*	201
Substantiated	56
Unsubstantiated	105
Higher Priority	5
Other	3
Assistance to Staff	32
Total Cases Open at End of this Period	80
Criminal Referrals	56

***Source:**

Alleger/Whistleblower/Intervenor – 126
NRC (Inspector/Technical Staff) – 33
Licensee/Licensee Employee Concern Program – 28
OI (Self-Initiated and Developed by OI) – 7
Other Government Agencies – 7