

July 22, 2003

EA-03-105

NOTE TO: Frank J. Congel, OE
Dennis Dambly, OGC
Cindy Pederson, DRS

FROM: Chuck Weil, EICS *WJ*

SUBJECT: ENFORCEMENT CONFERENCE TRANSCRIPT

Attached for your review is the transcript from the closed predecisional enforcement conference on July 16, 2003, with Nuclear Management Company concerning a fitness for duty issue and incomplete/inaccurate information involving a contract employee at the Kewaunee Nuclear Power Plant.

Attachment: as stated

cc w/atch. B. Berson, RIII
P. Loudon, RIII
J. Creed, RIII
T. Madeda, RIII
J. Luehman, OE
J. Dixon-Herrity, OE
J. Longo, OGC
R. Paul, OI:RIII
M. K. Fahey, OI
G. West, NSIR
OE:EA

CONTACT: Charles H. Weil
(630 810-4372)

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DIRECTOR, OFFICE OF ENFORCEMENT**

Information in this record was deleted
in accordance with the Freedom of Information
Act, exemptions *7C*
FOIA- 2006-118

H-2

BEFORE THE UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN RE THE MATTER OF:)
Pre-Decisional Enforcement Conference) CONFIDENTIAL
Nuclear Management Company, LLC,)

NUCLEAR REGULATORY COMMISSION HEARING
July 16, 2003
9:00 o'clock A.M.

PROCEEDINGS HAD and testimony taken before the
UNITED STATES NUCLEAR REGULATORY COMMISSION, taken at the
United States Nuclear Regulatory Commission, Region III,
801 Warrenville Road, Lisle, Illinois, before Jeffrey D.
Stupak, C.S.R. No. 084-004188, a Notary Public qualified
and commissioned for the State of Illinois.

PRESENT FOR THE NUCLEAR REGULATORY COMMISSION:

MS. CYNTHIA PEDERSON, Director, Division of
Reactor Safety;

MR. JIM DYER, Regional Administrator;

MR. CHARLES WEIL, Enforcement/Investigation
Coordination Staff;

MR. BRUCE BERSON, Regional Counsel;

MR. JAMES CREED, Safeguards Program Manager;

MS. JENNIFER DIXON-HERRITY, Enforcement
Specialist, Office of Enforcement;

MS. MARY KAY FAHEY, Investigator;



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1 PRESENT FOR THE NRC: (Continued)

2 MS. GIOVANNA LONGO; Investigator;

3 MR. PATRICK LOUDEN, Branch Chief,
4 Reactor Projects Branch 5.

5 MR. TERRY MADEDA, Physical Security
6 Inspector;

7 MR. GARMON WEST, Security Specialist;

8 PRESENT FOR NUCLEAR MANAGEMENT COMPANY, LLC:
9

10 MR. THOMAS COUTU, Site Vice President,
11 Kewaunee Nuclear Power Plant;

12 MR. JONATHAN ROGOFF, Vice President and
13 Counsel, NMC;

14 MR. GORDON ARENT, Manager Regulatory
15 Affairs, Kewaunee Nuclear Power Plant;

16 MR. ALDO CAPRISTO, Manager, Employee
17 Concerns, NMC;

18 MR. RANDALL CLEVELAND, Manager,
19 Access Authorization and FFD, NMC;

20 MR. DAN CRAFT, Investigator, NMC;

21 MR. GARY VAN MIDDLESWORTH, vice president,
22 NMC;

MR. HAL WALKER, Consultant;

MR. EDWARD WEINKAM, director of regulatory
services.

1 MS. PEDERSON: Good morning, I'm Cindy Pedersen,
2 I'm the director of the Division of Reactor Safety
3 here in Region III. This meeting is a predecisional
4 enforcement conference with the Nuclear Regulatory
5 Commission and Nuclear Management Company. It does
6 pertain to apparent violations concerning
7 deliberately failing to execute the fitness for duty
8 program and provide complete and accurate information
9 at the Kewaunee facility. This meeting is closed to
10 public observation, but as our policy we are
11 transcribing this because it does deal with
12 potentially willful violations; therefore, I would
13 ask that you all use the microphone, that it will be
14 on if the little green light is on, and ask that you
15 speak loudly so the transcriptionist is able to fully
16 hear everything, as well as those participants on our
17 video conference. In a few minutes I'll talk about
18 today's agenda, but I'd like to start with
19 introductions, first for the NRC and then Nuclear
20 Management Company.

21 Jim?

22 MR. DYER: I'm Jim Dyer, Regional Administrator,

1 Region III.

2 MR. BERSON: Bruce Berson, Regional Counsel.

3 MR. LOUDEN: I'm Pat Louden, DRP Branch Chief,
4 Region III.

5 MR. WEIL: Charles Weil, Enforcement Specialist,
6 Region III.

7 MS. DIXON-HERRITY: Jennifer Dixon-Herrity, I'm
8 with the Office of Enforcement, Headquarters.

9 MR. MADEDA: Terry Madeda, Region III Kewaunee
10 Security Inspector.

11 MR. CREED: Jim creed, Region III, Safeguards
12 Program Manager.

13 MS. PEDERSON: NRC observers, please?

14 MR. NEURAUTER: I'm Jim Neurauter, Region III.

15 MR. PERGANDE: Shaun Pergande, engineering
16 group.

17 MS. BOND: Jamie Bond, nuclear safety inspector.

18 MS. MELENDEZ: Danada Melendez.

19 MR. PAUL: Rich Paul, OI.

20 MS. FUNK: Dawn Funk, physical security
21 inspector.

22 MS. PEDERSON: And headquarters, please?

1 MS. LONGO: Giovanna Longo, Office of General
2 Counsel.

3 MS. FAHEY: Mary Kay Fahey, Office of
4 Investigations.

5 MR. SUPUNSI: NSIR.

6 MR. WEST: Garmon West, NSIR.

7 MS. LONGO: This is Ginny Longo. We don't see
8 you on the camera through your end. Is that
9 purposeful, or are you not aware of that?

10 MS. PEDERSON: We are taking care of that.
11 Thank you, Ginny.

12 MS. LONGO: Thanks.

13 MR. LOUDEN: How's that?

14 MS. LONGO: Thank you very much.

15 MS. PEDERSON: For NMC, please?

16 MR. ROGOFF: I'm Jonathan Rogoff, NMC in-house
17 counsel.

18 MR. COUTU: Tom Coutu, Kewaunee Nuclear Plant,
19 site vice president.

20 MR. CLEVELAND: Randy Cleveland, NMC access
21 manager.

22 MR. CAPRISTO: Aldo Capristo, fleet employee

1 concern program manager.

2 MR. WALKER: Hal Walker, I'm an investigative
3 consultant.

4 MR. PICKENS: Terry Pickens, director of
5 government affairs, NMC, Hudson.

6 MR. ARENT: Gordon Arent, regulatory affairs
7 manager, Kewaunee.

8 MR. WEINKAM: Edward Weinkam, director of
9 regulatory services.

10 MR. VAN MIDDLESWORTH: Gary VanMiddlesworth,
11 vice president, assessments, for NMC.

12 MR. CRAFT: Dan Craft, with Nuclear Management
13 Company.

14 MS. PEDERSON: Thank you.

15 The purpose of today's meeting is to
16 gather additional information for us to make our
17 enforcement decision. As the title implies,
18 "predecisional enforcement conference" means we have
19 not yet made that decision. It's very important
20 today that we fully understand your perspective of
21 the facts of the case and any additional thoughts you
22 may have about enforcement.

1 Briefly I will go over the agenda.
2 After I have concluded my opening remarks, Chuck Weil
3 will briefly discuss the enforcement policy. We are
4 operating under a traditional enforcement policy in
5 this regard.

6 Terry Madeda will then summarize the
7 apparent violations.

8 Next, I'll turn it over to NMC to
9 makes its presentation as described in the facts and
10 circumstances as you understand them, causes and
11 safety significance included.

12 If you believe we have errors or
13 misunderstandings in our facts, please describe those
14 fully. All the information that we discuss today
15 will be included in our decision making process.
16 Also, if you could specifically acknowledge or state
17 your objection to the apparent violations, that would
18 be useful to us as well.

19 Corrective actions are always part of
20 understanding facts of the case and that too goes
21 into our enforcement decision making, so we would
22 appreciate hearing those.

1 Somewhat unique in this particular
2 case is in our June 9th letter we also specifically
3 asked that you address any potential chilling effect
4 at other NMC facilities since some of the individuals
5 in Kewaunee that were involved in the fitness for
6 duty issue were denied access at Point Beach.

7 Finally, I encourage you and your
8 staff to present anything else that you feel is
9 relevant to our decision.

10 I am sure you've probably had an
11 opportunity to review the enforcement policy again;
12 as such, anything that may factor into decisions on
13 civil penalties, if any, we would also like to hear
14 your perspective.

15 Following your presentation and any
16 questions that we may have, we will take a short
17 break. When we reconvene we may have a few
18 follow-along questions. Following that, Chuck Weil
19 will summarize where we go next as far as the formal
20 process is concerned. And lastly, Jim Dyer will
21 provide closing remarks.

22 I will note that we will be making no

1 final decisions during this meeting, so we will not
2 be presenting anything of that nature.

3 Before we continue, I'd like to just
4 comment on what the significance of what we're here
5 to discuss today. As you know, the NRC considers
6 potential deliberate violations very seriously. In
7 addition to the potential of this case of having an
8 unfit individual on site, the potential here is that
9 a supervisor deliberately failed to take action and
10 then later potentially lied about his knowledge.
11 And, obviously, that is not acceptable. Our
12 regulatory framework relies on individuals to comply
13 with our requirements in a trustworthy manner. If
14 somebody violates that trust it does shake the
15 foundation of our regulatory framework and cannot be
16 tolerated.

17 With that, John or Tom, any opening
18 remarks you would like to make?

19 MR. COUTU: I do have some opening remarks
20 before we begin the presentation, but let me begin
21 with the fact that we at Kewaunee and NMC take
22 fitness for duty, access authorization, employee

1 concerns and safety conscious work environment very
2 seriously.

3 This has been a long and difficult
4 investigation. We still, coming into this
5 conference, are not clear on the exact nature of the
6 violations, so we will present to you a purpose, what
7 we believe is the purpose for our meeting today and
8 then our objectives. As I have said this has been a
9 difficult issue for us to pin down. There are --
10 there's very little in the way of hard facts. Most
11 of the information that we have has been the result
12 of interviews with numerous people. Conflicting
13 statements have been made. We have had very much --
14 a lot of difficulty corroborating statements that
15 individuals have made. So, were we forced to draw
16 conclusions based on what we believed to be the most
17 reasonable sequence of events that occurred and we
18 intend to show that to you today, how we came to the
19 conclusions we did based on the information that we
20 had.

21 We hope that this can be a very open
22 exchange of information. Our goal here is really to

1 get to the right conclusion and not to defend one
2 position or another. So if the NRC is in possession
3 of information that we do not have, we hope to obtain
4 that information today. And if our course of actions
5 need to be changed, we will in fact change our course
6 of actions.

7 So with that, I'd like to just, if
8 nobody has any questions, move into the presentation.

9 MS. PEDERSON: Okay.

10 MR. COUTU: Oh, also, this can get complicated
11 from a names and positions perspective, so if you
12 would, we've prepared just a little chart of who's
13 who as far as folks that were involved initially in
14 the concerns and folks that we talked to and feel
15 that we will be speaking about today in our
16 presentation.

17 MS. PEDERSON: What I would suggest is that the
18 NRC participants return this document to you since it
19 would be personal privacy information and I would ask
20 that we return it to you at the end of the meeting.

21 MR. COUTU: All right. It's going to be tough
22 to keep track of everything for anybody who hasn't

1 been very familiar with this.

2 MS. PEDERSON: I appreciate that.

3 MR. COUTU: Okay.

4 Gordon?

5 MR. ROGOFF: Before Tom begins, it's going to be
6 very difficult to talk about this without speaking
7 the names of some of these individuals so, I mean, I
8 think we --

9 MS. PEDERSON: Right. My only point of that is
10 it being a document submitted to the agency, you
11 know, as part of this. But you're right, we will
12 that's why it's closed. We will be talking personal
13 privacy and potential willful.

14 MR. COUTU: Okay.

15 So, first off I will cover the purpose
16 of -- what we believe to be the purpose of this
17 enforcement conference, our objectives. And I will
18 also cover at a very high level the results of our
19 investigation. I would ask that, unless there's a
20 real burning question at that point, to kind of wait
21 on questions until Mr. Randy Cleveland makes his
22 presentation on the details of the investigation.

1 MS. LONGO: This is Ginny Longo. I have to
2 interrupt you, I'm sorry, just to ask. You all were
3 going to fax something, it hasn't come. Is there a
4 problem? I understand part of your presentation is
5 writing and we were going to be faxed a copy; is that
6 correct?

7 MR. MADEDA: The fax should be on its way.

8 MS. LONGO: Okay.

9 MR. MADEDA: Yeah, there should be a second fax
10 also coming.

11 MS. LONGO: Thank you. Sorry.

12 MR. COUTU: So, Mr. Cleveland will present the
13 investigation details and then Mr. Aldo Capristo will
14 present the potential effect or lack of potential
15 effect on safety conscious work environment. During
16 the course of the investigation, we did discover some
17 things that we did act upon. We will be covering
18 those actions, and Mr. Cleveland and Mr. Capristo
19 will in fact lay those out for you. And then I will
20 come back and wrap things up.

21 Our purpose today, we believe it is to
22 provide the NRC with facts that NMC investigations

1 revealed regarding allegation one, which was that
2 welders deliberately followed the -- failed to report
3 fitness for duty concerns; and a contract mechanical
4 and civil superintendent, that would be [REDACTED]
5 failed to report a fitness for duty concern involving
6 a foreman, and that would be a Day & Zimmerman
7 foreman, contract foreman, that would be [REDACTED].

8 [REDACTED] for your chart; to provide the NRC with
9 facts that NMC's investigations revealed regarding
10 allegation three, which is that a contract mechanical
11 and civil superintendent again [REDACTED] provided
12 false information to the NMC investigator relative to
13 being informed about the fitness for duty concern
14 involving the foreman, [REDACTED] also, to
15 provide, the NRC insight from the NMC's evaluation of
16 potential for chilling effects as a result of the
17 actions taken during our investigations and to
18 provide our conclusion concerning potential
19 violations.

20 Our objectives today are to show that
21 the NMC investigation was thorough and that our
22 conclusions were based on the facts, and probably

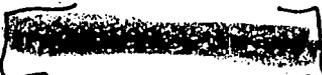
1 more correctly based on reasonable judgment
2 surrounding the information that we gained through
3 the interview process and several other fact-finding
4 initiatives that we identified; to demonstrate how we
5 carried out our fitness for duty obligations based on
6 the information that he has obtained during the two
7 related investigations; and to explain how NMC
8 maintained a safety conscious work environment
9 throughout the course of the investigation and
10 afterwards and how we managed that.

11 At a high level, the results of the
12 investigation, and then I'll go over what the
13 original allegation was that was brought to our
14 attention that launched into the investigation, and
15 that was that a Day & Zimmerman NPS supervisor turned
16 their heads when certain individuals come in half
17 blitzed. That was the original allegation.

18 Due to the potential seriousness of
19 the issue, we retained the counsel of an independent
20 investigator, actually the services of an independent
21 investigator, Walker Consultants, and that's Mr. Hal
22 Walker at the end of the table (indicating), he was

1 retained to complete a comprehensive investigation of
2 this incident.

3 Our investigative efforts and
4 conclusions were summarized and reported to the NRC
5 in a letter dated February 8 of 2002. There were
6 basically two investigations. We had an initial
7 investigation and then a supplemental investigation,
8 and we'll go through the results of those.

9 The initial investigation identified
10 four individuals who stated that on occasion they
11 perceived the odor of alcohol on the breath of a Day
12 & Zimmerman foreman, that would be 
13 while inside the Kewaunee protected area. None of
14 the individuals notified their immediate supervisor
15 or other member of management at the time that they
16 detected the odor of alcohol. That is the finding of
17 our investigation.

18 All four individuals who detected the
19 odor of alcohol on the breath of the Day & Zimmerman
20 foreman were aware of their responsibilities to
21 report or act.

22 And as a result, during of course of

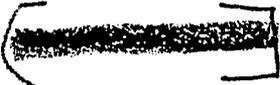
1 our investigation we uncovered some trustworthiness
2 and reliability issues that led us to deny access
3 because the individuals did not report the odor of
4 alcohol when they detected it. They basically failed
5 to support our fitness for duty policy and really
6 gave us no indication that they would support the
7 fitness for duty policy.

8 A supplementary investigation was
9 undertaken following communication by a concerned
10 individual to our, to NMC employee concerns program.
11 That individual wished to provide us additional
12 information or observations relative to the initial
13 investigation, so we opened a supplemental
14 investigation to follow up on those. This concerned
15 individual provided two new elements of concern. One
16 was related to the fitness for duty issue. The other
17 element was related to welding issues and that had
18 two parts. We investigated, we thoroughly
19 investigated the two elements and neither of the
20 elements are substantiated.

21 What we did find on the initial
22 allegation, as a result of both investigations, is

1 that the concern was partially substantiated. It
2 could not be concluded that the Day & Zimmerman
3 foreman was ever on the job unfit for duty. We were
4 unable to conclude that. It was concluded that the
5 odor of alcohol was detected. And, in fact, it was
6 concluded that the Day & Zimmerman superintendent
7 failed to comply with our fitness for duty program by
8 not ordering a for-cause test upon the detection of
9 an odor of alcohol. And although he performed
10 additional behavioral observations to ascertain
11 fitness for duty, he did not act in accordance with
12 our fitness for duty policy which does require
13 for-cause testing. It was also not substantiated
14 that any welder reported, initially reported the odor
15 of alcohol to the immediate supervisor or any member
16 of management.

17 So, again, we do not substantiate the
18 allegation that the odor of alcohol had been reported
19 to the contract mechanical and civil superintendent,

20  We did not conclude that the contract
21 mechanical and civil superintendent provided
22 incomplete or inaccurate information. We do not

1 believe that a chilling effect had been created at an
2 NMC facility as a result of this FFD issue or actions
3 that NMC has taken in response to what we discovered
4 in the course of our investigations. And we do not
5 believe at this time that any findings support
6 escalated enforcement.

7 And with that, I'd like to turn it
8 over to Mr. Randy Cleveland to provide additional
9 detail on what we discovered through the course of
10 our investigations.

11 MR. CLEVELAND: Okay, I'm going to highlight the
12 NMC investigative findings supporting our conclusion
13 that the superintendent, [REDACTED] was not
14 informed of an odor of alcohol on [REDACTED]

15 Our investigation focused on five
16 welders, each reporting that they detected the odor
17 of alcohol on [REDACTED] and whether they reported
18 the odor of alcohol to the superintendent, [REDACTED]
19 [REDACTED]. Our investigation concluded that four of
20 the welders deliberately failed to report the odor of
21 alcohol. This conclusion is based on two primary
22 findings: One, that the welders were adequately

1 trained on the expectation to report FFD concerns;
2 and the second, they provided specific reasons for
3 not reporting the odor of alcohol to supervision.
4 And, particularly, that these reasons were provided
5 prior to their notice by us of denial of access.

6 The welders, I'll begin with [REDACTED],
7 again provided specific reasons. He asked the
8 investigator, Hal Walker, to look at things from his
9 point of view, that as a

10
11
12 you didn't want to, as he stated, "Create
13 waves. You kept your eyes open and your mouth shut."
14 That was the reason that [REDACTED] gave for not going
15 forward with the odor of alcohol to supervision.

16 [REDACTED] simply stated it was not his
17 job to sniff others.

18 [REDACTED] stated that supervision was
19 aware of [REDACTED] drinking habits; therefore,
20 there was no reason to report. And he was a fellow
21 worker.

22 Finally, [REDACTED] simply stated he

1 feared union reprisal as the basis for not reporting
2 the odor of alcohol to [REDACTED]

3 The fifth welder having reported the
4 detection of alcohol [REDACTED] we ultimately
5 found to be not credible. This was based on our
6 finding of contradictory statements, uncorroborated
7 claims and a threat that the individual made to [REDACTED]
8 [REDACTED] which we will detail a little further in the
9 presentation.

10 Regarding the first area of concern,
11 with [REDACTED] this is the fifth welder's
12 credibility --

13 MR. COUTU: Let me make sure you understand.
14 We're going to focus on the fifth welder because he
15 was the only individual who told us that he reported.
16 The other individuals clearly told us they did not
17 report. So we are going to spend some time on this
18 individual because we wanted to be sure that we
19 understood whether or not he in fact did or did not
20 report. And that's really important.

21 MR. CLEVELAND: The first area of concern with
22 [REDACTED] credibility involved contradictory

1 statements he made to NMC investigators. The first
2 example includes a statement that he made on January
3 11, 2002, stating that the foreman, [REDACTED]
4 was loaded every morning, and in a subsequent
5 interview with NMC security on March 27 he made the
6 statement that he didn't know anything about the
7 foreman being drunk.

8 The second example involves a random
9 testing situation wherein, again on January 11, 2002, [REDACTED]

10 [REDACTED] claims that he was escorted to the
11 collections site at Kewaunee for a random test by [REDACTED].

12 [REDACTED]. On March 27 of 2002, in a subsequent
13 interview again with NMC security, he this time
14 denies being escorted to the collection site by the
15 foreman, [REDACTED].

16 Our third example of a contradictory
17 statement concerns, again, a random collection
18 wherein [REDACTED] alleges that the collector
19 performing the random drug and alcohol test
20 acknowledged the escort, [REDACTED], and again
21 these statements were made on January 11, 2002 as "a
22 little ripe." This was in response to [REDACTED].

1 challenging the collector as to why she was not
2 testing the messenger, the escort, [REDACTED]

3 In an interview with NMC security on
4 June 12 of 2002, [REDACTED] again reiterates that
5 [REDACTED] was not at the collection site and this
6 time that when he challenged the collector regarding
7 why she wasn't testing the messenger, she appeared
8 puzzled and did not in fact make such a statement,
9 appeared "a little ripe."

10 The second area of concern with
11 respect to [REDACTED] credibility involved
12 uncorroborated claims. We've got three examples here
13 which I would like to detail.

14 The first one involved [REDACTED]
15 claim that the foreman and a co-worker, [REDACTED]
16 went through access control together and that one
17 hour later the co-worker, [REDACTED] was for-cause
18 tested. Our review of test records from [REDACTED] we
19 were only able to identify a random test in July 2001
20 time frame. There was no record at all of a
21 for-cause test conducted on [REDACTED]

22 The second uncorroborated claim ties

1 back to the previous contradictory point we covered
2 wherein [REDACTED] claims the collector acknowledged
3 the foreman [REDACTED] was not fit for duty. This
4 is getting back to the "a little ripe" statement.
5 Again [REDACTED] claimed he was escorted by Mr.
6 [REDACTED] to the collection site, that he challenged
7 the collector as to why she wasn't testing the
8 messenger, and the messenger acknowledged, yeah, he's
9 "a little ripe."

10 We interviewed both of the collectors
11 that performed random tests on [REDACTED] in July of
12 2001 and neither of the collectors could recall
13 [REDACTED] escorting [REDACTED] to the collection
14 site, [REDACTED] making any such statements regarding
15 why they weren't testing the messenger, and neither
16 had any reason to ever question [REDACTED]
17 fitness for duty.

18 The third example involves a document
19 that [REDACTED] provided to us on June 12, of twice-
20 removed hearsay, essentially a he-said-that-he-said-
21 that-he-said. The document alleging that the
22 superintendent, [REDACTED] admitted to receiving

1 reports of the odor of alcohol and lying to
2 investigators.

3 Our follow up on this, we immediately
4 re-interviewed [REDACTED] and [REDACTED] Background on
5 what the document detailed, it detailed a
6 conversation between [REDACTED] and [REDACTED] in which
7 [REDACTED] admits to [REDACTED] that [REDACTED] and
8 [REDACTED] had reported to him the smell of alcohol on
9 [REDACTED] and that [REDACTED] lied to NMC
10 investigators regarding the same. Our interview of
11 [REDACTED] and [REDACTED] found both denied the
12 truthfulness of the document and neither acknowledged
13 that the statement regarding anyone reporting the
14 odor of alcohol to [REDACTED] was made.

15 The third area of concern regarding
16 [REDACTED] credibility involves a statement he
17 made to the superintendent [REDACTED] in June of
18 2001. This was developed by Mr. Dan Craft of my
19 staff. Dan Craft was recently hired by us, he's got
20 31 years of experience with the Federal Bureau of
21 Investigation, he was a special agent and supervisor
22 in character of investigations. We commissioned Dan

1 to take a look at, in preparation for the enforcement
2 conference here, the entire investigation that was
3 done, all that was conducted by Hal Walker and any
4 subsequent investigations that we conducted to
5 determine whether it was comprehensive and complete
6 and whether we needed to do additional investigation.
7 One of the things that Dan found, he identified the
8 need to go back and take a look at the employee file
9 of [REDACTED]. We did that and that's where we
10 developed the statements made to the superintendent.
11 Dan also did some re-interviewing and some additional
12 interviews and we are -- that information is
13 available.

14 What Dan found in the employee file of
15 [REDACTED] is evidence of a statement that he made
16 in June of 2001. [REDACTED] had gone to [REDACTED]
17 concerned that he should have been setup as the
18 foreman on the job. He opinioned that the foreman,
19 [REDACTED] is an idiot; asserted, this is [REDACTED]
20 [REDACTED] asserted that he is not going to burn rod
21 for the rest of his life; and finally, he threatened
22 to "get even and when I do, you people won't know

1 what hit you." This was documented to [REDACTED]
2 file on June 26th of 2001.

3 MR. BERSON: Could you explain how that
4 information got into [REDACTED] file? [REDACTED]
5 reported it?

6 MR. CLEVELAND: It was in [REDACTED] employee
7 file. It was a signed note of a memorandum of
8 meeting that took place by -- between [REDACTED] and
9 [REDACTED] signed by [REDACTED]

10 MR. BERSON: Okay.

11 MR. COUTU: I think it's important here to note
12 that, No. 1, we were not directed by anyone to go
13 look at this file. It wasn't like [REDACTED] said,
14 "go check his file." This was an independent piece.

15 I think the second piece, that's
16 important to understand is the time frame in which
17 this was entered, which was before, really, any of
18 these allegations were claimed to have been made,
19 which was in June 2001 time frame, as opposed to
20 starting in July. This whole issue started in the
21 July 2001 time frame. So I think those are important
22 things to understand about time frame and the fact

1 that no one directed us to go look for this. It just
2 turned up in our investigation. We would have
3 probably treated it differently if [REDACTED] had said,
4 "Well, go look in his file. There's something
5 there." It's a great question and, you know, we
6 considered that.

7 MR. BERSON: When did [REDACTED] sign this
8 statement?

9 MR. CLEVELAND: June 26, 2001.

10 MR. BERSON: He signed it prior to, okay.

11 MR. CLEVELAND: Correct.

12 So, in summary, with respect to the
13 fifth welder, [REDACTED] we ultimately concluded
14 him to be not credible based on the reasons which I
15 just articulated and were ultimately unable to
16 substantiate his claim that he had reported the odor
17 of alcohol to [REDACTED]

18 In conclusion, NMC was unable to
19 substantiate that the welders had reported the odor
20 of alcohol to [REDACTED] Again, this was based on
21 our finding that the four welders, again prior to
22 their denial of access, stated that they did not

1 provide that information to supervision, specifically
2 the odor of alcohol on [REDACTED] For the one
3 that did claim that he had reported the odor of
4 alcohol to [REDACTED] we spent a great deal of time
5 here detailing our investigative efforts to
6 corroborate his claim and were unable, ultimately
7 unable to do so based on our finding it was not
8 credible and our inability to substantiate his
9 claims.

10 MR. COUTU: I'd like to ask Mr. Aldo Capristo to
11 talk a little bit about the issue that you asked us
12 to address which was potential impacts on a chilled
13 work environment as a result of the actions taken
14 during this investigation.

15 MR. CAPRISTO: Good morning. As I mentioned in
16 my introduction, I am currently the fleet employee
17 concern program manager, and I think relevant to this
18 is at the time these events unfolded I was also
19 serving in the capacity as employee concern program
20 manager for the Kewaunee facility, so I was
21 integrally involved in these issues as they unfolded.

22 I have two central points. First,

1 that NMC self-identified the potential for a chilling
2 effect within the Day & Zimmerman organization and we
3 took action to address the safety conscious work
4 environment throughout this period.

5 Second, I will explain our basis for
6 our conclusion that the Kewaunee fitness for duty
7 issue did not create a chilling effect at Kewaunee or
8 other facilities.

9 MR. COUTU: That is a typo, should be "did not."

10 MR. CAPRISTO: "Did not create" on the handout.
11 I think that's substantial. Make sure to put that in
12 your notes.

13 We based these conclusions on three
14 specific evaluations that are relevant to the time
15 period. First, a fleet life safety cultural
16 assessment that was conducted in September 2001 which
17 is directly in the period of time of interest.
18 Second, a more specific concerns environmental
19 assessment that was conducted within the Day &
20 Zimmerman working group within the Point Beach and
21 Kewaunee organization.

22 And I think at this point it's

1 relevant to mention, again, it's important to
2 understand that this is a migrating working group,
3 that these are not regular employees that support one
4 and only one facility. That as the work at Kewaunee
5 rolled up with the generator replacement project in
6 the fall of 2001, some of these employees then moved
7 over to Point Beach. I believe that's the basis of
8 your concern that this may have had an impact beyond
9 just Kewaunee. So these employees do migrate between
10 facilities.

11 And third and final is an evaluation
12 that we provided in response to a previous NRC
13 request on this topic.

14 MR. WEIL: Could you explain to us how a
15 September 2001 assessment has to do with people that
16 are denied access in, seemingly, December some three
17 months later? I don't understand its relevance.
18 It's beforehand.

19 MR. CAPRISTO: I think there's a -- as we
20 understand the issue, the issue was brought to our
21 attention in November that there was a potential
22 fitness for duty issue, that there was an

1 unwillingness to report, whether it was an unfit
2 person at the facility. My understanding was that
3 this could have existed in this prior time and I
4 believe we go back to the July 2001 time frame where
5 there were concerns ultimately unearthed there could
6 have been unfit employees, that [REDACTED]
7 specifically may have been unfit as early as July
8 2001.

9 MR. WEIL: Let me be a little more explicit. I
10 think the potential chilling effect question we are
11 asking is, after these gentlemen raised the issue of
12 the fitness for duty issue and I believe circa
13 December, maybe, 2001, to potentially January 2002,
14 pulling this off the top of my head.

15 MR. COUTU: It was around the November time
16 frame.

17 MR. WEIL: So, well my point is it was after
18 this assessment so I don't understand the relevance
19 of the assessment period which was before they raised
20 the issue. We're asking the question, they raised
21 the issue and the chilling effect, if there was any,
22 would be afterwards, not beforehand.

1 MR. CAPRISTO: I think as I speak to the next
2 line --

3 MR. WEIL: Okay, well go ahead then. Maybe
4 we'll have to come back to the question.

5 MR. CAPRISTO: Certainly.

6 On that next line, again speaking to
7 the fleet-wide safety cultural assessment as an
8 effort to benchmark our entire fleet, we commissioned
9 an independent review by an expert in this area,
10 Synergy Consulting Services. Synergy's survey
11 instrument provides opportunities to demographically
12 identify the working group. It does not identify you
13 by name, but identifies you as a working group. In
14 the September 2001 survey, the demographically
15 important group is known as "CL" or contract labor.
16 And in that particular work group, again in the
17 September 2001 time frame, what we identified through
18 the Synergy report was that the working environment,
19 the safety culture and nuclear safety in general was
20 rated in the category of "good" to "very good." Now,
21 again, it's important to understand a few things. We
22 don't know that these -- that any of the principals

1 in this survey specifically responded to this survey,
2 but to the extent that we can demographically isolate
3 a working group to contract labor, which would be
4 representative of this work group, that is the result
5 that we were provided by the consultant. Now,
6 potentially speaking more directly to your point, we
7 conducted a follow-up survey earlier this year and
8 the same working grouping identified little to no
9 change in that surveyed area.

10 MS. LONGO: Excuse me, I have a question. You
11 identified that the result of your survey was a good
12 to very good response for contract labor. What other
13 categories exist? Excellent, superior, awful,
14 average?

15 MR. CAPRISTO: I don't have those committed to
16 memory, ma'am, but there are more positive and less
17 positive responses. I believe we get all the way
18 down to the range of unacceptable. I would confirm
19 that though.

20 MS. LONGO: Okay. But there are more positive
21 responses than "good" to "very good."

22 MR. CAPRISTO: That is correct.

1 MS. LONGO: Thank you.

2 MR. COUTU: Before we leave this line, I would
3 like to address your question very directly.

4 MR. WEIL: Sure.

5 MR. COUTU: If you think about a chilled work
6 environment and you think about individuals who can
7 claim to have reported the issues to their
8 supervision over the course of a period all the way
9 back to the July time frame and those concerns not
10 being addressed, I believe that survey conducted in
11 September is very important to understanding what
12 type of work environment existed as a result of
13 individuals feeling free to report concerns to their
14 supervision and having those concerns acted upon. So
15 there is a period of time between July and September
16 where these involved individuals experienced a work
17 environment and then in September had an opportunity
18 to, through the cultural survey, to do that. That
19 provided us our baseline. So it's really important
20 to understand we're talking about the issue of what
21 was the work environment before, and during, and then
22 also what was it after we took our actions? And that

1 kind of ties everything together because it's
2 important because chilling goes way beyond just the
3 actions that we took, it goes to the fact that
4 supervisors allegedly failed to act on concerns.

5 MR. WEIL: Your point is well taken. I'm most
6 interested in, of course, in anything after the fact
7 to rule out, you know, that there was a chilling
8 effect because of maybe any potential retaliation,
9 perceived retaliation, whatever it may be. That's
10 what we are most interested in.

11 MR. COUTU: And we understand that.

12 MR. CAPRISTO: And I think that as I continue, I
13 think we get more focused and on point to this
14 working group as I continue.

15 MS. PEDERSON: If I could, before you go on, do
16 you have a recollection of what kind of response rate
17 you got on your labor force? Was it a small
18 percentage of people responded to this survey such
19 that it was not necessarily representative of the
20 group as a whole?

21 MR. CAPRISTO: The consultant provides us with
22 the response rate both overall and within the work

1 group. I think most directly to your point, the
2 consultant also provide us, with, if you will, an
3 asterisk that identifies when the response rate is
4 less than sufficient to assign any statistical
5 significance and this work group did not meet that
6 trigger. In reverse, yes, it was a statistically
7 significant sample based on the population.

8 MS. DIXON-HERRITY: Was the outage over at this
9 point? Were the people that you were talking to
10 during your cultural survey, were these the same ones
11 there during the outage and in July?

12 MR. CAPRISTO: The September 2001 survey would
13 have been at the time that the steam generator
14 replacement outage was staffing and beginning.

15 MS. DIXON-HERRITY: Okay.

16 MR. CAPRISTO: And I think I spoke to this third
17 point, is that the follow-up assessment that we took
18 in January 2003, again with the same demographics,
19 did not identify any significant -- statistically
20 significant change. Again though, I must note that
21 this may or may not have been the same employees.
22 This is, again, a migrating work group and it's some

1 period of time later.

2 More directly within the Day &
3 Zimmerman working group, in isolation of this fitness
4 for duty issue, there were many other indicators to
5 us that there were potential barriers, to problem
6 reporting within the Day & Zimmerman organization.
7 We took action as licensee with Day & Zimmerman
8 management to direct them to better understand their
9 overall working environment. And as a result of our
10 direction to Day & Zimmerman management, Day &
11 Zimmerman commissioned an independent consultant, Dr.
12 Michael Quinn of Management Systems, to interview and
13 understand the entire working environment and outline
14 for us any potential barriers to problem reporting
15 within this working group.

16 Dr. Quinn reported to us and to Day &
17 Zimmerman in a report dated January 31, 2002, and his
18 fieldwork was conducted primarily in November and
19 December of 2001, so, again, I think it speaks
20 directly to the environment at that time.

21 It's important to understand again
22 though, going back to the migrating work group idea,

1 that the Day & Zimmerman work force at this point was
2 primarily at Point Beach, so the majority of folks
3 that Dr. Quinn worked with were in the Point Beach
4 organization at that time.

5 What we identified was that there were
6 in fact barriers to problem reporting within this
7 working group but that they primarily manifested
8 themselves for what we would call "craft labor
9 culture." And I think any of us that have managed
10 not only a union work force but also a craft labor
11 work force can understand the complexities and the
12 issues that are sometimes unique to managing such a
13 work force. This is not a unique issue to Nuclear
14 Management Company. But most importantly, again
15 through the interview process and through the
16 entirety of Dr. Quinn's work, he did not identify any
17 barriers that related in any way to the Kewaunee
18 fitness for duty issue. And those issues that he did
19 identify, NMC did take action on which we will
20 outline later.

21 Finally, NRC had previously asked us
22 to look at this issue and in our response in a

1 February 8, 2002 letter to NRC, NMC has provided the
2 results of yet another review of the safety conscious
3 work environment within Day & Zimmerman. This time,
4 our methodology was slightly different. We utilized
5 the services of a member of my staff, Mike Langley,
6 employee concern program manager, came to Point Beach
7 and Kewaunee and interviewed members of the Day &
8 Zimmerman staff and asked them what potential
9 barriers there might be to problem reporting and
10 whether or not there was a willingness to problem
11 report.

12 In these interviews, the summary of
13 our conclusions was that there was no reluctance to
14 raise safety related issues. And, finally, that
15 there was no evidence of a chilling effect at NMC
16 facilities as a result of actions taken in response
17 to the fitness for duty issue.

18 I'd like to give it back to Mr. Coutu
19 for additional comments.

20 MR. COUTU: So, the important point to notice
21 here is that we do not see any impact of our actions
22 regarding the fitness for duty incident, but we did

1 see the fact that there were barriers to problem
2 reporting within the organization, which goes all the
3 way back to our -- some of our initial slides which
4 said that people chose or appeared to rationalize why
5 they did not have to comply with the fitness for duty
6 policy when they are required to report the odor of
7 alcohol on another individual. So, that appeared to
8 us, and from our studies, and from our
9 investigations, to be rooted in a different -- in a
10 different cultural aspect of the labor work force,
11 and as a result, not as a result necessarily of our
12 investigations, investigation-related, although some
13 of this is, but as a result of our investigations
14 into the culture of the work force we took some
15 actions to bolster that culture. And I'm going to
16 ask Mr. Cleveland and Mr. Capristo to address those
17 actions. Although they were not directly related,
18 all of them were not directly related to this, we
19 recognize that these were important to bring in here
20 because we knew that a certain culture existed in the
21 work force and we really can't tolerate that culture
22 continuing if we're going to operate the plant

1 safely.

2 MS. PEDERSON: Can I ask you a question before
3 you get into your actions?

4 You focused a lot on Day & Zimmerman.
5 Did you have similar kinds of responses or barriers
6 identified in other work groups?

7 MR. CAPRISTO: I would say to a lesser extent,
8 yes. But the -- our primary focus and the primary
9 activity of those drivers that brought us to the
10 conclusion that we needed to work with Day &
11 Zimmerman was primarily volume to the employee
12 concern program. So we had a, if you will, a
13 continuing stream of input that indicated to us that
14 work needed to be done and focused within the Day &
15 Zimmerman organization.

16 MS. PEDERSON: How about other NMC facilities?
17 Again, a lot of focus on Point Beach, Kewaunee, Day &
18 Zimmerman; any other input on other NMC facilities?

19 MR. CAPRISTO: We have not found -- we have not
20 found to this extent any type of issue at any other
21 NMC facility. Day & Zimmerman, please correct me if
22 I'm wrong, does support our other NMC sites.

1 MR. ROGOFF: That's correct.

2 MR. CAPRISTO: But we have not seen those type
3 of issues surface at other NMC facilities.

4 MS. PEDERSON: Now, the survey, you mentioned
5 the Synergy survey, that was for all NMC facilities?

6 MR. CAPRISTO: That's correct.

7 MS. PEDERSON: And if I understand your
8 discussion, your two other reviews that you did,
9 evaluations, were specific to Day & Zimmerman at
10 Kewaunee?

11 MR. CAPRISTO: Kewaunee and Point Beach,
12 correct.

13 MS. PEDERSON: Kewaunee and Point Beach, thank
14 you.

15 MR. COUTU: I think another important thing to
16 remember is that at the time Kewaunee and Point Beach
17 were being managed as a three-unit site organization,
18 and so that's kind of an important thing to remember.
19 Our employee concerns were all together at that
20 particular point in time.

21 THE COURT: Thank you.

22 MR. CAPRISTO: That's correct.

1 MR. BERSON: Just kind of a detail. The Synergy
2 study, did it also break down results by facilities
3 as well as across the fleet?

4 MR. CAPRISTO: Yes, it did. I am not certain if
5 we broke Kewaunee and Point Beach out in isolation to
6 each other. I believe at that point it was a
7 three-unit site. But, yes, there are different
8 results at Prairie Island and Duane Arnold and our
9 other NMC facilities.

10 MR. BERSON: But the "good" to "very good"
11 reference from the slide was to overall fleet
12 results?

13 MR. CAPRISTO: That was specific to the Kewaunee
14 and Point Beach environment within Day & Zimmerman,
15 within the contract labor pool.

16 MR. BERSON: Okay. Thanks.

17 MR. COUTU: So, Randy, if you would take us
18 through some of the corrective actions we made and
19 then Aldo will also address.

20 MR. CLEVELAND: Okay.

21 As Tom has already stated, we did take
22 some actions with respect to access authorization for

1 those people which we believe made a conscious,
2 deliberate decision to not follow the Kewaunee FFD
3 program and not report the FFD concerns, specifically
4 the odor of alcohol on supervision.

5 We, across the program, went and
6 underscored the importance of the immediate reporting
7 of the odor of alcohol to supervision and the need to
8 act on it. We did that through a number of actions
9 which I will detail here.

10 We have a form that is part of our
11 access authorization program, it's called a "Rights
12 and Responsibilities Statement" that each individual
13 has to sign and is acknowledging they read and
14 understand prior to being granted access on to our
15 sites. Where devised that to underscore the
16 importance of reporting the odor of alcohol
17 immediately to supervision and the consequence for
18 not reporting it which puts your access authorization
19 at risk. That applies fleet-wide to anyone coming
20 into an NMC site would have to complete that form.

21 Another fleet-wide initiative that we
22 undertook was to put out a program reminder. This

1 was done through various communication vehicles at
2 the sites, again underscoring the importance of the
3 immediate reporting of the odor of alcohol, and
4 consequence for not doing so, and also addressed
5 general FFD concerns.

6 MS. PEDERSON: If I could go back to your first
7 item as far as taking action?

8 MR. CLEVELAND: Sure.

9 MS. PEDERSON: Am I correct that three
10 individuals were denied access at Point Beach, versus
11 four?

12 MR. CLEVELAND: Four at Kewaunee.

13 MS. PEDERSON: Okay.

14 MR. CLEVELAND: For the failure to report their
15 reported detection of odor of alcohol to supervision.

16 MS. PEDERSON: Okay.

17 And then at Point Beach, several were
18 denied --

19 MR. CLEVELAND: The same four would be denied
20 throughout the NMC fleet.

21 MS. PEDERSON: Okay.

22 MR. CLEVELAND: If you're denied at one site,

1 you're denied at all.

2 MS. PEDERSON: Okay, it was four. Thank you.

3 MR. MADEDA: I have one question. The
4 individuals that you were talking about, are other
5 key players that you interviewed in this, has there
6 been any access authorization issues involving them?

7 MR. CLEVELAND: No.

8 MR. MADEDA: So, you are talking about the four
9 welders.

10 MR. CLEVELAND: We're talking about the ~~four~~
11 welders and ~~_____~~]

12 MR. MADEDA: Okay.

13 MR. CLEVELAND: A total of five that we took
14 access authorization on: The ~~four~~ that failed to
15 report and ~~_____~~]

16 MR. MADEDA: Okay.

17 MS. PEDERSON: Five.

18 MR. CLEVELAND: We denied his access.

19 MR. MADEDA: So, there's been no access
20 authorization action taken against either ~~_____~~]

21 ~~_____~~]

22 MR. CLEVELAND: Correct.

1 MR. MADEDA: Thank you.

2 MR. CLEVELAND: [REDACTED] the
3 superintendent -- well, let me just sort of qualify
4 there with respect to you mentioned [REDACTED]

5 MR. MADEDA: Yes, sir.

6 MR. CLEVELAND: Right. With respect to time
7 frame, we took no action.

8 MR. MADEDA: Has there been subsequent action?

9 MR. CLEVELAND: Correct. As he -- in a
10 pre-access test in March of this year, he was denied
11 as a result of a positive test.

12 MR. MADEDA: And the positive test was for?

13 MR. CLEVELAND: Alcohol.

14 MR. MADEDA: Thank you.

15 MR. CLEVELAND: [REDACTED] was coached and
16 counseled regarding the zero tolerance expectation
17 that NMC has with respect to the odor of alcohol,
18 that even a faint or imperceptible smell needs to be
19 acted on, that that as a stand-alone is a basis for
20 taking action. He had initially indicated to us that
21 he considered the odor faint and imperceptible and
22 did not notice any other signs such as unsteady gait,

1 slurred speech, et cetera.

2 We went back and again underscored the
3 importance of immediate reporting of the odor of
4 alcohol through a test questionnaire and general
5 employee training program, made the same
6 clarifications underscoring the importance of and
7 applying of FFD procedure.

8 MR. CAPRISTO: And then, finally, I would add
9 that, as I stated, what Dr. Quinn's report and what
10 we were well aware of was that we had what I would
11 most appropriately characterize as labor relations
12 issues between the local labor union hall and the
13 employer, the national employer, Day & Zimmerman. We
14 had had a, at this point, a fairly long history of
15 issues within this working group and this population
16 of workers that periodically supports our site, so we
17 identified the action to go speak with the local
18 labor union leaders, the head steward, and I'm not
19 exactly sure of the titles, at the Green Bay Locals,
20 and speak to them directly on what exactly our
21 expectations are as a nuclear employer and the
22 differences between working and earning your income

1 at the nuclear facilities in contrast to the
2 remaining period of time when they worked at other
3 non-nuclear facilities. We explained that problem
4 reporting is not only desired, but in fact required
5 as a condition of employment such that people do need
6 to bring forth their issues and will be held
7 accountable if they fail to bring issues forward. We
8 expressed to them, in the most fundamental terms, the
9 differences between nuclear employment an non-nuclear
10 employment. This meeting was held with Day &
11 Zimmerman representatives and Nuclear Management
12 Company employees to express those thoughts and
13 expectations.

14 MR. CREED: What was their response?

15 MR. CAPRISTO: I, generally, I would say
16 understanding, and I believe we left them with a
17 better appreciation for the differences between
18 nuclear and non-nuclear employment. I would -- I'm
19 not sure that I would say that there was any further
20 characterization than a good understanding.

21 MR. BERSON: Can you say again when 
22 tested positive?

1 MR. CLEVELAND: Pardon?

2 MR. BERSON: Can you state again when [REDACTED]
3 tested positive?

4 MR. CLEVELAND: On a pre-access test.

5 MR. BERSON: When was that?

6 MR. CLEVELAND: March of this year.

7 MR. BERSON: March of this year.

8 MR. CLEVELAND: 2003.

9 MR. MADEDA: Regarding that pre-access test,
10 would it be the licensee's policy to have an
11 out-briefing of that individual to present that
12 individual's side?

13 MR. CLEVELAND: No, we -- on a pre-access test
14 such as that, it's an automatic denial for a minimal
15 period of one year.

16 MR. MADEDA: Did [REDACTED] provide any
17 comments to any of your staff, either at the site or
18 corporate, regarding the positive test results?

19 MR. CLEVELAND: That I would have to research,
20 Terry. I do not have that readily available.

21 MR. MADEDA: Thank you.

22 MR. COUTU: So, in summary, our investigations

1 did not substantiate the allegation that the odor of
2 alcohol had in fact been reported to the contract
3 mechanical and civil superintendent, [REDACTED]

4 Also, that NMC did not conclude, based
5 on the information that we obtained in our
6 investigations that [REDACTED] provided incomplete
7 or inaccurate information.

8 We also concluded that a chilling
9 effect has not been created at NMC facilities as a
10 result of this fitness for duty issues and we do not
11 believe that, although there were violations of our
12 fitness for duty policy, clearly they were on the
13 part of [REDACTED] the general mechanical
14 superintendent, and certain individuals in the work
15 force; we do not believe that those support escalated
16 enforcement.

17 MS. PEDERSON: Thank you.

18 At this time, I'd like to ask if there
19 are any of the NRC representatives that have
20 questions of NMC. Should we start with headquarters?

21 MS. LONGO: Yes, I have some questions.

22 My name is Giovanna Longo, I'm with

1 the Office of General Counsel. I have some questions
2 for Mr. Cleveland.

3 MR. COUTU: He's getting a drink of water.

4 MS. LONGO: Okay, well we'll wait for Mr.
5 Cleveland to come back..

6 MR. CLEVELAND: I'm here.

7 MS. LONGO: There you are, okay.

8 First of all, can you hear me?

9 MR. CLEVELAND: Yes, I can.

10 MS. LONGO: Can you hear me okay? Okay.

11 Mr. Cleveland, your presentation
12 consistently focused on whether or not anyone
13 reported, quote, "an odor of alcohol," unquote.

14 MR. CLEVELAND: Correct.

15 MS. LONGO: Okay.

16 Is that the only way in which someone
17 can report a fitness for duty concern? Is there any
18 other way they could report a concern?

19 MR. CLEVELAND: There are other ways they can
20 report a concern.

21 MS. LONGO: Okay.

22 Suppose one of these welders had said

1 to [REDACTED] quote, "I ain't going to work for a"
2 blankety-blank, expletive deleted, "drunk like him,"
3 unquote; is that a report of a fitness for duty
4 concern?

5 MR. CLEVELAND: Yes.

6 MS. LONGO: Okay.

7 MR. COUTU: Let me expand upon that. It could
8 be. Depending on whether the individual's
9 observations were based on his performance at work or
10 based on his knowledge of the individual's habits
11 outside of work.

12 MS. LONGO: Okay.

13 Mr. Cleveland, we too have information
14 that certain people said they did not report a,
15 quote, "odor of alcohol," unquote. But we also have
16 information that certain people reported that they
17 thought, to [REDACTED], that they thought [REDACTED]
18 [REDACTED] was drunk. And we have corroboration from
19 three individuals that [REDACTED] admitted that he
20 received reports from at least two of these people
21 that they thought [REDACTED] was drunk.

22 MR. CLEVELAND: Our investigation --

1 MS. LONGO: So if your -- so what I am saying
2 is, if your investigation focused on whether somebody
3 reported an "odor of alcohol," you missed the boat.

4 MR. COUTU: I think we're going to let Mr.
5 Walker, who conducted the investigations, help to
6 answer some of your questions at this time.

7 MS. LONGO: Before Mr. Walker responds, in
8 connection with this same point that I'm making I
9 have several other questions, but this disconnect
10 between what you found and what we found I think has
11 to do with this focus on, quote, "odor of alcohol,"
12 unquote and there's more to it.

13 MR. CLEVELAND: We understand the distinction
14 and we too developed the same information as part of
15 our investigation. The -- if you look at the sum
16 total of what we developed in our investigation, you
17 can definitely argue that the general opinion -- or
18 there was a general opinion out there that some folks
19 believed [REDACTED] to be a drunk. We did not develop
20 that anybody believed [REDACTED] to be drunk at work.
21 And he focused on the odor of alcohol because that
22 would certainly be, at work, something that would be

1 actionable under our program.

2 MS. LONGO: Okay, well this is an important
3 point, Mr. Cleveland, because the evidence that we
4 have developed that OI developed -- first of all I
5 want to ask, was [REDACTED] interviewed?

6 MR. WALKER: I interviewed him.

7 MS. LONGO: [REDACTED] Okay.

8 MR. CLEVELAND: Yes.

9 MS. LONGO: Okay.

10 [REDACTED] tells us that [REDACTED]
11 came into a trailer, the trailer where [REDACTED]
12 and [REDACTED] were seated and said, quote, "that two
13 individuals told him, quote, 'they ain't going to
14 work for an," expletive deleted, "drunk like [REDACTED]"
15 unquote.

16 We also have evidence from [REDACTED]
17 his testimony was that [REDACTED] admitted in
18 December of that year that [REDACTED] and [REDACTED] told him
19 that they thought [REDACTED] was drunk. Not that
20 they smelled alcohol but they thought he was drunk.

21 We have evidence from [REDACTED] --
22 I'm sorry, from mister -- excuse me, I'm getting

1 these names confused a little bit -- [REDACTED]
2 the foreman in question. [REDACTED] told us also
3 that in December, [REDACTED] said, yeah, two people
4 came to him and said that they thought [REDACTED] was
5 drunk, drunk or smelled of alcohol, [REDACTED]
6 couldn't remember which, what [REDACTED] said. But
7 they thought he was, at that time, impaired.

8 So that I am concerned that you
9 focused on "odor of alcohol" when there is more to
10 it, and [REDACTED] telling you, "Yeah, [REDACTED] never
11 said to me that these people said [REDACTED]
12 smelled of alcohol," well that's true, but he also
13 said that [REDACTED] said that these two people
14 thought that [REDACTED] was drunk at that time. Are
15 you aware of that?

16 MR. COUTU: We are. I'd like Mr. Walker to
17 address that if you would allow us some time to
18 discuss the issues? We were aware of some claims.
19 They later were contradicted, we believe.

20 And, Mr. Walker, if you would?

21 MR. WALKER: Yes. Good morning.

22 MS. LONGO: Good morning.

1 MR. WALKER: My name is Hal Walker. I was the
2 person asked to do the investigation at the Kewaunee
3 nuclear power station. As a part of the request for
4 the investigation included was there any FFD issues
5 associated with D&Z, Day & Zimmerman NPS? My
6 questions to these gentlemen, and I did speak to them
7 on December 17, Monday December 17 I spoke with [REDACTED]
8 [REDACTED] about several issues associated with the
9 welding program and any idea of any suggestion about
10 fitness for duty. I didn't -- I didn't couch it in
11 a, "Did you smell alcohol?" "Did you report a smell
12 of alcohol?" I couched it this manner to keep it
13 from anything. I asked him --

14 MS. LONGO: Mr. Walker, I'm sorry for
15 interrupting you but on your statement that you
16 interviewed [REDACTED] and you asked a question, was
17 he aware of a fitness for duty concern; did you ask
18 him whether he was aware of a fitness for duty
19 concern with [REDACTED] in August of 2001?

20 MR. WALKER: I'm going to answer your question.

21 MS. LONGO: Okay.

22 MR. WALKER: Fitness for duty issues. Mr.

1 [REDACTED] was asked if he was aware of any Day &
2 Zimmerman NPS employees who had been known to work at
3 Kewaunee while unfit for duty. That should encompass
4 odor, smell, impairment, et cetera. [REDACTED]
5 responded by saying, "Not that I know of." That's in
6 quotes.

7 [REDACTED] was asked if he had any
8 knowledge from any source of anyone working inside
9 the KNPP protected area while exhibiting the smell of
10 alcohol. So I went from fitness for duty issues to
11 smell of alcohol. He responded in the negative.

12 Then I asked was he aware further if
13 [REDACTED] himself exhibited the smell of
14 alcohol on his breath inside the protected area? He
15 responded that he had no knowledge of [REDACTED]
16 smelling of alcohol. He was open, appeared complete,
17 and I went from fitness for duty to the finer element
18 of smell, and then also to [REDACTED] And I got
19 negatives from him on each one.

20 MS. LONGO: Okay, Mr. Walker --

21 MR. WEIL: If I may --

22 MS. LONGO: Mr. Walker, then I think this is

1 where the disconnect is. Your questions focussed on
2 smell of alcohol. [REDACTED] testimony to OI was,
3 no, he was not aware of fitness for duty concerns
4 when the general question was asked. But when he was
5 asked about this specific incident, he says, "Yeah
6 [REDACTED] came in the trailer and [REDACTED] and I were
7 there and [REDACTED] said, 'These two people said they
8 ain't going to work for an,' expletive, "drunk like
9 [REDACTED]" there was no mention of odor of alcohol. So
10 any questions about odor of alcohol would not have
11 triggered his memory, and what I am saying is I think
12 that what we got was more complete information.

13 MR. WALKER: I was unaware of any suggested
14 circumstance of a trailer. What I was doing was
15 giving him a general, overall, broad question, and
16 then later into a more definitive question, and then
17 into [REDACTED] himself, which I believe should
18 have elicited any comments including what you're
19 suggesting regarding the trailer.

20 MS. LONGO: But as I understand as you just
21 explained the questions, all of them were focused on
22 smell of alcohol, and that's not what he knew about.

1 What he knew was that two people thought Mr.

2 [REDACTED] was drunk.

3 MR. WALKER: Well, on these --

4 MS. LONGO: And he did not -- let me finish.

5 Your questions were, What is your knowledge? What is
6 your knowledge? All he knew is that somebody,

7 [REDACTED] came in and said two people thought [REDACTED]

8 was drunk. So I think that it's understandable that
9 your questions would not have elicited this
10 particular incident.

11 MR. COUTU: I think we have a couple of issues
12 here. No. 1, I think you're making the leap that an
13 individual referred to as "a drunk" is in fact
14 impaired on the job. We did not -- we did not, we
15 were unable to establish through any of our
16 interviews with specific questions about whether Mr.

17 [REDACTED] was ever impaired on the job, we were
18 unable to establish that.

19 Further, we conducted a follow-up
20 investigation in preparation for this conference.

21 I've just asked Mr. Dan Craft to come to the table.

22 Dan, it's my understanding that you did interview --

1 MR. CRAFT: Both [REDACTED] and [REDACTED]

2 MR. COUTU: -- Mr. [REDACTED] and Mr. [REDACTED] and we
3 believe that we have additional information that
4 substantiates the fact that Mr. [REDACTED] was not
5 impaired while on the job. And I would like to give
6 Mr. Craft an opportunity to talk about that.

7 MS. LONGO: Okay, but this is -- this is an
8 important point because I think that what I'm getting
9 to is, you know, we do have independent corroboration
10 from three people that, in fact, [REDACTED] did
11 acknowledge that he knew that there was a fitness for
12 duty concern about [REDACTED] and in connection with
13 this I have to ask you, you, during the presentation,
14 I believe you listed, it was Mr. Cleveland who said
15 that [REDACTED] said he did detect a faint odor of
16 alcohol but he didn't think that [REDACTED] was
17 impaired so I he didn't do anything. Well, why was
18 he smelling [REDACTED] -- or [REDACTED]
19 breath if people didn't report that they thought he
20 was drunk? Is he generally going around doing that,
21 or how does that happen? How does that happen?

22 MR. COUTU: I think it was through incidental

1 contact with the individual. He worked with the
2 individual.

3 But let's let Mr. Craft relate his
4 findings.

5 MS. LONGO: Thank you.

6 MR. CRAFT: Hello, my name again is Dan Craft.
7 NMC had asked me to take a look at this investigation
8 from an objective outsider point of view and --

9 MR. ROGOFF: And he is our employee, but while
10 he was still an outsider, new at the company, so
11 there's no confusion there.

12 MR. CRAFT: I did take a -- I was unfettered in
13 my access and my ability to look at the entire
14 investigation and then take it wherever I thought we
15 needed to go with it. And I did interview Mr.
16 [REDACTED] and [REDACTED] related to me the same
17 incident that you are referring to where he was in an
18 office with [REDACTED] and [REDACTED] came in and
19 said that "Our hell child," meaning [REDACTED] "and
20 [REDACTED] said that they don't want to work for an,"
21 expletive, "drunk." And [REDACTED] told me that two
22 days later he went and talked to [REDACTED] about that

1 and asked him about that incident and [REDACTED] told
2 him that that's not what he said. That he said that
3 they needed to get [REDACTED] some breath mints. So I
4 asked him exactly, and he said, well, that -- that
5 [REDACTED] meant that [REDACTED] was a drunk. But I
6 asked -- I told him that reasonable people can infer
7 that, but I wanted to know accurately, specifically,
8 what he had said? And [REDACTED] had told [REDACTED] that
9 [REDACTED] needed breath mints. So it was [REDACTED]
10 that was editorializing to me what he thought [REDACTED]
11 meant, and I asked him not to do that but to be
12 accurate and that's how he came up with that
13 statement of [REDACTED] told him that [REDACTED] needed
14 breath mints.

15 MS. LONGO: Okay. I'm sorry, could you please
16 tell me your name again? I'm bad with names.

17 MR. CRAFT: Dan Craft.

18 MS. LONGO: Craft. Mr. Craft. In your
19 re-investigation, did you talk to [REDACTED]
20 again? What I think is very significant is that the
21 person of concern whose fitness for duty was in
22 question told us that [REDACTED] admitted in December,

1 "Yeah, these two guys came and told me they knew Mr.
2 [REDACTED] had a problem."

3 MR. CRAFT: No, I did not.

4 MS. LONGO: Are you aware of this? Did you
5 interview [REDACTED] again?

6 MR. CRAFT: No, I did not.

7 MS. LONGO: Are you aware -- okay. Well, we
8 did, and so you can see where we're coming from.

9 MR. CRAFT: Yes.

10 MS. LONGO: Especially when [REDACTED] makes
11 an admission like this, we have to take it very
12 seriously. This is against his interest; I think you
13 understand that.

14 MR. CRAFT: Yes.

15 MR. CAPRISTO: In our supplement, Mr. Walker is
16 just -- Mr. Walker is just reviewing his extensive
17 notes, but we did interview [REDACTED], I believe
18 it was in January 2002. If we could have a moment to
19 find the reference?

20 MR. DYER: While we're waiting, a question I
21 have, I'm trying to put together the time line on all
22 this. There was an initial investigation that you

1 performed, then there was the supplemental
2 investigation that you performed, and then there was
3 our OI investigation, and then there was an
4 independent review performed by Mr. Craft. I'm just
5 trying to put together a time line for these, you
6 know, when they overlap and where were we in the
7 process, if you would. So, Mr. Cleveland, can you
8 address that?

9 MR. CLEVELAND: Yeah, I think I can help clarify
10 that. We had the initial investigation conducted by
11 Mr. Hal Walker. And I think all those findings were
12 provided to you folks.

13 MR. DYER: That's the report of February '02.

14 MR. CLEVELAND: Correct.

15 We then, the next major data point, if
16 you will, would be in June of 2002 where we were
17 provided the document by [REDACTED] alleging the
18 conversation that took place between [REDACTED] and
19 [REDACTED] and the follow-up that we did on that
20 wherein we developed essentially the same thing that
21 your counsel is briefing regarding the reference to
22 "a drunk."

1 MR. WALKER: I think I can respond now.

2 MR. CLEVELAND: And then --

3 MR. DYER: That's June '02.

4 MR. CLEVELAND: June of '02.

5 MR. DYER: And [REDACTED] document concerning
6 what?

7 MR. CLEVELAND: He provided us a document that
8 alleged that a conversation had taken place between
9 [REDACTED] and [REDACTED] in which [REDACTED] admits
10 to [REDACTED] that people had come to him with the
11 odor of alcohol, particularly [REDACTED] and [REDACTED]
12 [REDACTED] and that we had interviewed them immediately
13 following receipt of that and both denied the
14 truthfulness, accuracy and, particularly, that the
15 statement regarding odor of alcohol was not in fact
16 made.

17 MR. DYER: Is that what you're referring to as
18 the supplemental investigation earlier?

19 MR. CLEVELAND: That was the investigation that
20 we referred to that we did in June of 2002.

21 MR. DYER: Okay.

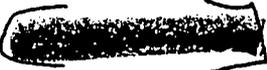
22 MS. LONGO: Could I interrupt at this point?

1 This is again --

2 MR. DYER: Ginny, before we get done I just want
3 to have them complete their time line.

4 MS. LONGO: Oh, okay. We'll come back to it,
5 but, again, this is another disconnect and I think
6 it's important for you to understand what we have and
7 what you don't have on this point.

8 MR. CLEVELAND: Okay.

9 MR. COUTU: I think it would be best to answer
10 Mr. Dyer's question, to start at the beginning when
11 the allegation occurred, when we started our initial
12 investigation, when we concluded it, when we denied
13 access, when we had the additional concerns raised,
14 when we began our supplemental investigation, when we
15 received the unsigned, quote-unquote, affidavit, et
16 cetera. And I think it would be really important for
17 us to go through that because this again goes back to
18 the fact that initially all of these people, except
19 for  told us they never reported. And
20 after we took action we had conflicting statements
21 beginning to develop and we went with the experience
22 of our investigators of when they typically get the

1 most truthful statements from individuals during
2 interviews, which is during the initial interviews,
3 they typically get the most truthful information, so
4 I think it's important to understand this time line,
5 understand when additional information surfaced
6 following actions that were taken.

7 MR. CLEVELAND: Okay, so anyway, Hal, do you
8 have the exact date of the supplemental investigation
9 so we can get that?

10 MR. WALKER: The supplemental investigation.

11 MR. CLEVELAND: While Hal is researching that I
12 will continue on.

13 MR. WALKER: Two investigative reports were
14 prepared by me. One was closed January 7, 2002. The
15 supplemental report was closed January 30th, 2002.

16 MR. DYER: Okay, so both of those reports were
17 the basis for, I think, your letter to us of February
18 8?

19 MR. CAPRISTO: That's correct.

20 MR. DYER: Okay.

21 MR. CLEVELAND: Then we go to the June time
22 frame.

1 MR. COUTU: When did we deny access?

2 MR. CLEVELAND: We denied access to the four
3 welders at the end of February 2002.

4 MR. MADEDA: And that was [REDACTED] and
5 [REDACTED]

6 MR. CLEVELAND: [REDACTED]

7 MR. COUTU: When was their access placed on
8 hold?

9 MR. CLEVELAND: It was placed on hold, I would
10 have to specifically research that, Tom, but that was
11 approximately upon the discovery that the people did
12 not report the odor of alcohol we put it on hold.

13 MR. COUTU: Which would have been during the
14 initial investigation phase --

15 MR. CLEVELAND: Correct.

16 MR. COUTU: -- prior to the --

17 MR. CLEVELAND: December time frame of 2001.

18 MR. BERSON: And just for completeness, when
19 were the individuals first notified or become aware
20 that their access had been put on hold or denied?

21 MR. CLEVELAND: The denial would have been by
22 letter at the end of February.

1 MR. BERSON: Okay.

2 MR. COUTU: When did they know they were on
3 hold?

4 MR. CLEVELAND: They were not specifically
5 notified of being on hold. They didn't have access
6 at our site at the time, and this was not until we
7 actually denied access that we formally notified them
8 in writing.

9 MR. BERSON: Okay.

10 MR. CLEVELAND: So then you go to the June time
11 frame. We talked about the receipt of the
12 information from [REDACTED] the document alleging
13 the conversation that had taken place between Mr.
14 [REDACTED] the follow-up we did to that, and
15 then that takes us to the follow-up work that Dan
16 Craft --

17 MR. DYER: And when did Mr. Craft's
18 investigation --

19 MR. CLEVELAND: The middle to the end of June
20 2003.

21 MR. DYER: That was in preparation -- that was
22 as a result of our letter to you?

1 MR. ARENT: Yes.

2 MR. DYER: Thank you.

3 Ginny, go ahead.

4 MS. PEDERSON: Just a moment. Hal was going to
5 answer an earlier question.

6 MR. WALKER: Yes. This is Walker again.

7 Okay, on January 17th, January 17,
8 2001, I interviewed [REDACTED] along with Mr.
9 Capristo. During that interview, he stated -- we
10 were talking about why he would offer himself up for
11 a for-cause testing --

12 MR. ROGOFF: You said 2001. You meant to say
13 2002, January 2002.

14 MR. WALKER: I'm sorry, yeah, 2002.

15 Anyway, [REDACTED] was asked why he
16 felt he had to defend himself by voluntarily offering
17 to be for-cause tested. Well, he said he was willing
18 to be for-cause tested at any time.

19 And who told him he had a smell of
20 alcohol on his breath, if he was offering himself for
21 for-cause testing? He stated that when [REDACTED] in
22 August of 2001, or thereabouts told him that he --

1 that [REDACTED] smelled of alcohol. And then the
2 question was, well, when [REDACTED] told you that he
3 smelled alcohol on your breath, did he volunteer to
4 take a for-cause examination? [REDACTED] said he
5 was ready to be for-cause tested when [REDACTED] told him
6 that he smelled the alcohol and has no idea why [REDACTED]
7 [REDACTED] did not proceed to have him tested.

8 Then he went into are you friends with
9 [REDACTED] because there was a connection there
10 that might have been giving him lenience because of
11 [REDACTED]

12 We went on from that point to the next
13 phase of questioning was I asked him have other
14 individuals, other than [REDACTED] raised this
15 concern with you? Causing you to have breath mints
16 in the morning along with Scope, which was part of
17 his commentary. He said there was one other guy. I
18 asked who? He said, "I would rather not say." I
19 said, "Was it a Day & Zimmerman NPS welder?" He
20 said, "No." I said, "Was it a Kewaunee Nuclear Power
21 Plant personnel? Was it a supervisor?" He said
22 someone told a supervisor that he had alcohol on his

1 breath. I said, "Was the supervisor Day & Zimmerman
2 or Nuclear Management?" He said it was Nuclear
3 Management, but he refused to tell me and Mr. Aldo --
4 Mr. Capristo at that time who that individual was.
5 So that's the questioning that went on.

6 There was another thing in here, he
7 was talking about the subject of a breath mint and
8 things of that nature, that goes back to some other
9 issues we don't need to get into at this moment, but
10 that's in response to your question about asking him
11 directly of others, questioning him on it.

12 MS. LONGO: Okay.

13 But, again, what we have is that he
14 made a statement to us, [REDACTED] that in
15 December, not in August 2001, but December, [REDACTED]
16 came over and they visited and [REDACTED] told him,
17 "Yeah, those two guys came and told me you were
18 either drunk or smelled of alcohol."

19 MR. WALKER: [REDACTED] had --

20 MS. LONGO: In August 2001.

21 And this is [REDACTED] admission
22 against interest.

1 MR. COUTU: That may be information that we do
2 not have.

3 MR. WALKER: He had plenty of opportunity to
4 tell me the same thing and didn't. And at the end of
5 it, Mr. Capristo directly asked [REDACTED] if he
6 had ever reported to work in an unfit condition for
7 any reason. And his response was a clear "No."

8 MS. LONGO: Well, if he had a drinking problem,
9 that would not be surprising.

10 MR. WALKER: That wouldn't be surprising, but
11 the question was asked and answered. And also these
12 others.

13 MS. LONGO: Okay.

14 MR. WALKER: It was asked and answered.

15 MS. LONGO: And I want to come back to Mr. --
16 I'm sorry, it's just me, you know, I'm just bad at
17 names. Mr. Cleveland, yeah, okay.

18 What I wanted to bring up and
19 emphasize to you earlier was this point about your
20 re-interview of [REDACTED] after you found out about
21 this document, or supposedly [REDACTED] says I had this
22 conversation with [REDACTED] and [REDACTED] said that these

1 two people said, or some people said that [REDACTED]
2 smelled of alcohol. We also questioned [REDACTED]
3 about that document, and [REDACTED] told us the same
4 thing. No, [REDACTED] did not say that people came and
5 reported that [REDACTED] smelled of alcohol. What [REDACTED]
6 [REDACTED] told me in December of 2001 was that two
7 people came and said [REDACTED] was drunk.

8 MR. CLEVELAND: The statement --

9 MR. COUTU: "Was drunk" or "was a drunk"?

10 MS. LONGO: No, not "was a drunk," but was drunk
11 at the time.

12 MR. CLEVELAND: The information that we had
13 gotten from [REDACTED] is that [REDACTED] had
14 admitted to him that these two individuals did not
15 want to work for a drunk. We did not receive
16 information indicating that they considered him drunk
17 at work, no specific behaviors which were referenced,
18 including the odor of alcohol, indicating that
19 something had occurred or been observed at work which
20 was actionable.

21 This was clearly through the sum total
22 of the interviewing that we did, there was, if you

1 will, the urban legend throughout that [REDACTED]
2 was a drunk or a heavy drinker. But in terms of
3 specific behaviors at work, we did several
4 interviews, including one that was developed for us
5 as a source that we could interview which would truly
6 know whether [REDACTED] was unfit at work or had
7 the odor of alcohol, this was a [REDACTED] his
8 supervisor. [REDACTED] work worked [REDACTED] since 1985,
9 between August of 2001 and November of 2001 he had
10 daily contact with [REDACTED] approximately three
11 to four times a day, stopped by [REDACTED]
12 office every morning and never had occasion to
13 question his fitness for duty or ever detected the
14 odor of alcohol.

15 MR. ROGOFF: If I might, I have a document that
16 Mr. Craft developed. He asked in his interviews for
17 [REDACTED] to mark up this document (indicating), that
18 you probably have all seen, that would make it true.
19 And this is the original copy. It's written in [REDACTED]
20 [REDACTED] handwriting. And when he writes, he says
21 [REDACTED] - what he does is he marks up that document that
22 you've seen and he writes, [REDACTED] informed me

1 that he spoke to Harold Walker the allegations that
2 [REDACTED] that's in the print, and then in
3 this blue ink in the hand of [REDACTED] "would not
4 work for him because he's a drunk." That's what he
5 wrote. "He's a drunk." He didn't write --

6 MS. LONGO: Sir, that refers to the August
7 incident, but what I am talking about is December.
8 What [REDACTED] told [REDACTED] in December was that these
9 two had reported that [REDACTED] was at the time
10 drunk. At the time drunk. That's what he told us.
11 And we questioned -- he discussed it at some length,
12 so what I'm telling you is that I'm not interpreting
13 what we have. That is what we have.

14 MR. ROGOFF: Maybe Mr. Craft can come here, come
15 back to the table and speak to what the time frame is
16 that's being addressed here.

17 MS. LONGO: Okay. And it's possible we are
18 talking about two different times.

19 MR. CRAFT: It's my understanding -- excuse me,
20 Dan Craft again.

21 It's my understanding [REDACTED]
22 didn't work at either of these facilities in the late

1 fall of 2001, that he stopped working at some time in
2 October of 2001.

3 MS. LONGO: Right. But why is that important?

4 MR. CLEVELAND: I think you -- the point you're
5 trying to make is you're trying to nail down the
6 reference in time as to when the statement was made,
7 correct? It was in the December -- the late 2001-
8 early 2002 time frame?

9 MS. LONGO: Yes, because [REDACTED] made two
10 statements about what [REDACTED] said. He made a
11 statement about what [REDACTED] said in August when
12 everybody was employed at the plant, and he made a
13 statement about what [REDACTED] told him privately in
14 December of 2001. And what I am talking about, and
15 the disconnect between what you've got and what I've
16 got is about December 2001. You have got part of
17 what I've got. What you have is that [REDACTED] is
18 telling you, "Yeah, [REDACTED] did not say to me in
19 December 2001 that these two welders came and said
20 [REDACTED] smells of alcohol." You have that, we have
21 that. But we also have a statement by [REDACTED] at
22 the same time, he said, "Yeah, [REDACTED] didn't say,

1 anything about smell of alcohol. What he said, what
2 [REDACTED] told me was these two guys said that
3 [REDACTED] was drunk at the time." Not "a drunk."
4 "Was drunk." And I think you don't have that, from
5 what I understand. I'm not criticizing you. I'm
6 just trying to, you know, make sure you understand
7 where we're coming from and that I understand where
8 you're coming from.

9 MR. COUTU: It's a little difficult to do that
10 without having both sides of the -- of what's been
11 revealed in interviews. We only have what we have,
12 which is a tremendous number of conflicting
13 statements, like, "He was loaded every morning"
14 versus, "I don't know anything about him being
15 drunk." And we're having difficulty. You may in
16 fact have information that we don't have. That's
17 probably part of our frustration. What we'll try to
18 do is give you the information that we developed. It
19 does not surprise me that you may have information
20 that conflicts with ours since we have information
21 that conflicts with our own information from the same
22 sources.

1 So, again, I think Mr. Walker is the
2 best individual to talk about statements being made
3 by individuals about impairment on the job.

4 MR. ROGOFF: I think there's an important point.
5 If I might, I think the one thing we want to do here,
6 since we believe, Mr. Craft's best recollection is
7 that in the time frame in which you are stating the
8 statement was made, that [REDACTED] was not working --
9 not [REDACTED] So the conversation
10 would not have occurred. That's something that ought
11 to be verifiable one way or the other by going back
12 to records; right? Site records? Whether they were
13 on-site or not?

14 MR. CLEVELAND: That definitely would be
15 verifiable. I think the couple of points that we're
16 discussing here is, one, what statement did [REDACTED]
17 [REDACTED] make to [REDACTED] in December? We'll use
18 that time frame. And then, what was the reference
19 that was made in the office back in the July-August
20 time frame of 2001; correct?

21 MS. LONGO: Correct. And I just want to point
22 out that this conversation between [REDACTED] and [REDACTED]

1 in December was not on the site. [REDACTED] said it
2 was, you know, I can't remember, it was his apartment
3 or [REDACTED] apartment, but it was not on the site.
4 They were not on the site, so your site records are
5 not going to tell you anything about whether they had a
6 conversation.

7 MR. CLEVELAND: Correct. And we understand
8 that. We believe a --

9 MS. LONGO: Okay.

10 MR. CLEVELAND: The conversation took place in
11 [REDACTED] apartment.

12 MR. ROGOFF: Which conversation, Randy?

13 MR. CLEVELAND: The December conversation.

14 MR. COUTU: There's two. There's one that
15 allegedly took place in his apartment and one that
16 allegedly took place in that -- in the Day &
17 Zimmerman offices.

18 MR. CLEVELAND: Correct, back in the July-August
19 time frame.

20 MS. LONGO: Okay.

21 And the other thing I wanted to point
22 out, I'm not so sure that there is a conflict in what

1 we have. It's simply that we have additional
2 information, and that's why we, in the synopsis, we
3 tried to summarize it to you. Now that synopsis,
4 unfortunately, did not include the information
5 about -- which is really the most troubling, I think,
6 is [REDACTED] statement to us, he admits that
7 [REDACTED] said, "Yeah, these two guys reported that
8 you, [REDACTED] were drunk."

9 MS. PEDERSON: What I would --

10 MS. LONGO: At the time so --

11 MS. PEDERSON: Since we --

12 MR. CLEVELAND: Hal Walker has something to add.

13 MR. WALKER: Yeah, can I add something here?

14 You're talking about [REDACTED] okay, and you're
15 talking about December. Do you have a definitive
16 date in December? Or is it just a December date that
17 he had --

18 MS. LONGO: I think it was in December.

19 MR. WALKER: In December, okay.

20 December 11, Tuesday, December 11,
21 approximately 8:00 p.m., I had a conversation with
22 [REDACTED] via telephone. You are correct, he was not

1 working at the site. He was working at a
2 different -- he was not working for NMC at that time.
3 And a lot of this has to do with other issues, but
4 when I got to this I asked [REDACTED] again, and I
5 don't know how -- any way to ask these people, [REDACTED].
6 [REDACTED] are you aware of any D&Z NPS employees working
7 inside the protected area in violation of fitness for
8 duty policy?" I'm not trying to limit it to smell,
9 I'm not trying to limit it to dope or whatever. He
10 states to me that he said he was unaware of anyone
11 working at Kewaunee in violation of the policy.

12 So I went further. I said, [REDACTED]
13 [REDACTED] do you know," I asked him if he knew [REDACTED]
14 [REDACTED] And I'll get to it, everybody appears to
15 have known [REDACTED] so he knew [REDACTED]
16 And there was some insinuation at one point that [REDACTED]
17 [REDACTED] didn't do something because [REDACTED] was
18 friends with his [REDACTED] or something of that nature.
19 So I asked him, [REDACTED] said he knew [REDACTED] as
20 an individual who had worked with [REDACTED]
21 at both Kewaunee and Point Beach for many years. And
22 had worked in the same service, inspection service.

1 I asked him if he had smelled anything
2 on the breath of [REDACTED] [REDACTED] was asked
3 if he had ever had smelled alcohol to any extent on
4 the breath of [REDACTED] and [REDACTED] said he has not
5 smelled alcohol on the breath of [REDACTED] while
6 working at Kewaunee.

7 [REDACTED] further said that [REDACTED]
8 would have reported to work, walk by his office
9 informing him or [REDACTED] that he was present and
10 go on about his day. And that was his total of his
11 comments to me, and this took place December 11th.
12 So, if he had these kind of conversations, this was
13 very open to him to make his comments to me and he
14 didn't.

15 MS. LONGO: Mr. Walker, the conversation between
16 [REDACTED] and [REDACTED] was in December. Now I
17 don't know when in December. Your conversation with
18 [REDACTED] was December 11th..

19 MR. WALKER: That's correct.

20 MS. LONGO: And a reference at another place in
21 somebody else's -- somebody else had a conversation
22 with -- the two people had conversations with Mr.

1 [REDACTED] about this August incident apparently were
2 very close in time and the other person said he
3 thought it was around the holidays, which would be
4 after December 11th.

5 MR. WALKER: Or around Thanksgiving.

6 MS. LONGO: Well, no, the testimony was
7 December, January, around the holidays.

8 MR. WALKER: Okay.

9 MS. LONGO: But the person is talking about
10 Christmas, New Year, so I think what it sounded to me
11 like, after putting everything together, it looks to
12 me like this conversation, these two admissions that
13 [REDACTED] made to [REDACTED] and to [REDACTED] were around
14 the Christmas holiday, which would have been after
15 your discussion of December 11th, which was why [REDACTED]
16 wouldn't have mentioned it.

17 MR. WALKER: Okay.

18 MS. LONGO: Okay. And --

19 MR. WEIL: Ginny, excuse me a minute?

20 MS. LONGO: Yeah.

21 MR. WEIL: I may have a point of clarification
22 that might help as far as a date. Mr. Walker, it

1 appears the conversation between [REDACTED] and [REDACTED]
2 [REDACTED] occurred some time in December after your
3 interviews with [REDACTED] if that helps you at
4 all.

5 MR. WALKER: What about my interview with [REDACTED].

6 [REDACTED]
7 [REDACTED] was interviewed on two
8 occasions.

9 MR. WEIL: I understand. I can't place that,
10 but I can place it after your interview with -- at
11 least one of your interviews with [REDACTED]

12 MR. WALKER: Okay.

13 MR. WEIL: That's all I can do right now..

14 MS. LONGO: Okay.

15 MR. ROGOFF: Could we just have Mr. Craft -- you
16 know, Mr. Craft did go back then and re-interview [REDACTED]
17 [REDACTED] and maybe, Dan, you could just review a little
18 bit of, you know, did you give [REDACTED] an
19 opportunity to talk about the smell of alcohol and
20 the state of -- physical state of [REDACTED]

21 MR. CRAFT: Yes. [REDACTED] told me that nobody ever
22 came to him and reported that [REDACTED] smelled

1 of alcohol or had been drinking.

2 MS. LONGO: Are you speaking of [REDACTED] I
3 couldn't hear.

4 MR. CRAFT: Yeah, [REDACTED]

5 MS. LONGO: Okay.

6 MR. ROGOFF: So, this conversation would have
7 been well after the December time frame when, given
8 the opportunity, he didn't come forward with that
9 information. Which is not to say he didn't say it
10 before, but it's just not what he told us.

11 MR. DYER: Let me ask a question first. I guess
12 the question I have is: Mr. Craft just said that [REDACTED]
13 [REDACTED] said nobody had come to him about concern about
14 [REDACTED] fitness for duty?

15 MR. CRAFT: Correct.

16 MR. DYER: I think the question, and what Ginny
17 was asking was, had [REDACTED] had conversations with
18 [REDACTED] about somebody coming to [REDACTED]

19 MR. CRAFT: Correct.

20 MR. DYER: Now, did you verify or --

21 MR. CRAFT: Yes.

22 MR. DYER: And he said that discussion did not

1 occur?

2 MR. CRAFT: No, that -- if I understand your
3 question right, did someone go to [REDACTED] about

4 [REDACTED]
5 MR. DYER: Basically, what I understood Miss
6 Longo to say, and correct me if I'm wrong, Ginny, was
7 that we have evidence that says that [REDACTED] was
8 told by [REDACTED] that somebody had come to him
9 about [REDACTED] fitness for duty.

10 MR. CRAFT: Correct.

11 MS. LONGO: Right. That he was drunk at the
12 time. There was no mention of smell of alcohol. And
13 this gets me back to my point is you keep on focusing
14 on "smell of alcohol," but that's not what people
15 were talking about.

16 MR. CRAFT: No, that's correct, it was --

17 MR. DYER: The question, in fact, is not whether
18 [REDACTED] had direct knowledge, or somebody had come
19 directly to [REDACTED] It was more was he aware that [REDACTED]
20 [REDACTED] knew?

21 MR. CRAFT: Right. But I asked him that anyway,
22 to be thorough, to see did anybody come to him.

1 But to answer your question, yes, this
2 conversation between [REDACTED] and [REDACTED] had taken
3 place, but there's a slightly different
4 interpretation or version. What [REDACTED] had told me
5 that [REDACTED] told him is that --

6 MS. LONGO: Well, did [REDACTED] tell you that
7 [REDACTED] said, "Nobody ever told me that there was
8 any kind of problem with [REDACTED] did [REDACTED]
9 say that?

10 MS. PEDERSON: Ginny, can we let Mr. Craft
11 finish his summary, please?

12 MS. LONGO: Okay.

13 MS. PEDERSON: Thank you.

14 MR. CRAFT: I had asked a specific question, did
15 [REDACTED] ever confront [REDACTED] with this? The fact
16 that did anybody ever come to him with the smell of
17 alcohol or [REDACTED] being unfit for duty and so
18 forth. And [REDACTED] told me that he did have a
19 conversation in [REDACTED] apartment where he
20 specifically asked him about this and it was the
21 version, the accurate -- I had him write it down in
22 his own handwriting (indicating), is that [REDACTED] and

1 [REDACTED] didn't want to work for [REDACTED] because he was
2 a drunk. Not "drunk," but "a drunk." And I asked
3 him about the affidavit and why he didn't sign it?
4 He said because it wasn't accurate. So I asked him,
5 well, what would make it accurate? And he told me
6 the series of corrections. I had him correct it,
7 initial it on each of the corrections and then sign
8 it, and then I actually signed it as a witness to him
9 signing it on June 27th of this year.

10 MS. LONGO: Mr. Craft, in addition --

11 MS. PEDERSON: Did he elaborate at all on the
12 context of him being "a drunk"? Was there any
13 further exploration of what that meant? Whether on
14 site, off site, anything further in that regard?

15 MR. CRAFT: No. And [REDACTED] had talked to
16 [REDACTED] about it, about these -- this conversation,
17 had -- did not witness, himself, any fitness for
18 duty, didn't see the slurring of the speech or the
19 bloodshot eyes or the gait or anything; that he could
20 smell an almost faint, imperceptible smell of old
21 alcohol, like if he had a lot to drink the night
22 before, went to bed early and then just got up in the

1 morning and didn't clean up. That seemed to be his
2 explanation of that.

3 I asked [REDACTED] about that too and
4 that he had socialized with [REDACTED] and that
5 [REDACTED] was a heavy drinker, that he would drink at
6 night, then go to bed, 8:30, 9:00 o'clock, the latest
7 would be 9:30, and he would drink all the way up
8 until he went to bed, get up in the morning and come
9 to work and he would have this residual smell of
10 alcohol.

11 MS. PEDERSON: But no one caused -- that didn't
12 cause him to take a for-cause test, no when asked
13 that he take a for-cause test?

14 MR. CRAFT: Correct. It was [REDACTED] opinion,
15 based upon being a supervisor -- and he would also
16 say that, you know, he knew the history of [REDACTED]
17 for twenty-some years and that he had this
18 reputation, he had this smell about him. [REDACTED]
19 [REDACTED] had supervised [REDACTED] for years and
20 had had him tested 15 times, always negative. That
21 he had taken this medication that made him smell.
22 That he had a problem with his throat, that it didn't

1 close properly, that any residual odor would still
2 linger. So [REDACTED] was aware of it, but he also told
3 me that he would watch him and check and he did his
4 job and that's what he was -- he, [REDACTED] was
5 concerned with: Was he fit for duty? And did he do
6 his job? He didn't want to get hung up in the
7 scuttlebutt or the mudslinging because of this
8 reputation and people, you know, bad-mouthing
9 [REDACTED]. He was more concerned with did he do his
10 job and was he fit for duty? And his professional
11 opinion at the time, and we can argue whether it was
12 right or wrong, it was his judgment that he was fit
13 for duty.

14 MS. PEDERSON: And [REDACTED] relied on the
15 behavioral observation to make that statement?

16 MR. CRAFT: Yes.

17 MS. PEDERSON: Or that observation he was fit
18 for duty, even though he was aware he was a heavy
19 drinker, he chose not to have a for-cause test of [REDACTED]

20 [REDACTED]
21 MR. CRAFT: Correct.

22 Plus, [REDACTED] would challenge him,

1 say, "If you think I'm drunk, let's go right now,
2 take me for a test," and [REDACTED] didn't. Now, that
3 may be an error in judgment, and I think NMC had
4 counseled him on that and taken corrective action,
5 that that's not permissible in our sites, but that
6 was his opinion at the time given the circumstances,
7 and he did what he did why he did it.

8 MS. PEDERSON: Thank you.

9 MR. COUTU: I think also to put in perspective
10 maybe the two individuals that claimed to have this
11 conversation, one of those individuals was also the
12 individual who said, quote, "loaded every morning,"
13 "The foreman was loaded every morning," and later was
14 reported to say, "I don't know anything about him
15 being drunk." That he was escorted to the collection
16 point by the foreman and it turned out he was not
17 escorted to the collect collection point by the
18 foreman. That the collector recognized the foreman
19 as being "a little ripe"; and neither of the
20 collectors interviewed corroborated even the fact
21 that the individual escorted, that the foreman
22 escorted the individual to the collectors' site, nor

1 making a remark that the foreman was "a little ripe."

2 We also have the claims, the erroneous
3 claims that individuals went through an access portal
4 together, one was pulled out of line for for-cause
5 testing, which our records do not substantiate; they
6 only substantiate a random test at some point after
7 that in the day.

8 You know, we could focus on one
9 statement made by this individual, but my sense is,
10 to get a real picture of what we are dealing with
11 here, you've got focus on the numerous conflicting
12 statements that this individual gave us. And we
13 went -- we went to NMC employees who work with this
14 individual to try to determine whether or not there
15 were any cases of unfitness for duty.

16 Mr. Walker?

17 MR. WALKER: Yes?

18 MR. COUTU: How many people would you say you
19 overall interviewed? And did any of them give you an
20 indication that there was ever a time that ~~_____~~
21 ~~_____~~ was on site unfit for duty?

22 MR. WALKER: In both these investigations, with

1 all these issues included about 34 individuals I
2 interviewed. Out of those 34 individuals, 13 I
3 interviewed directly regarding a fitness for duty
4 issue with [REDACTED] or whatever they could find
5 out. Not one individual indicated to me that they
6 observed any impairment in this individual. I went
7 over very clearly, that was part of the testing that
8 was done in their training department and those
9 exhibits.

10 Now also another individual, a [REDACTED].
11 [REDACTED] I will bring up now, who is really the person
12 who was -- the person who was in the alleged incident
13 wherein [REDACTED] was tested and [REDACTED] was the
14 alleged reason for this drift of the smell back on
15 him causing him to be tested. I had this interview
16 with [REDACTED] on December 9th, Sunday, December 9th
17 at approximately 7:00 p.m., and what he -- he told me
18 that it was not uncommon for [REDACTED] to smell
19 of alcohol in the mornings but not appear to be
20 impaired.

21 And I went after him again and I said
22 to the extent, I asked him why he did not bring

1 [REDACTED] behavior to the attention of management,
2 or any appropriate party? He said that if he had
3 seen [REDACTED] while on the job stumbling around
4 he would have turned him in to the appropriate
5 parties; however, according to [REDACTED]
6 [REDACTED] was running a crew, and if he was that bad
7 why didn't his crew turn him in?

8 Now, I have to say that of everybody
9 here, no one expressed to me that the man exhibited
10 any impairment other than this smell of alcohol,
11 which seems to be pervasive. I talked to Mr.
12 Capristo, I said if we interviewed everybody on the
13 site, probably how many would say they smelled a
14 faint smell of alcohol on [REDACTED] Because it
15 came almost like this rumor, I interviewed other
16 individuals, a [REDACTED] and he was talking,
17 discussing about, well, the alleged incident wherein
18 [REDACTED] had went through and another individual
19 had been tested. This seemed to be a pervasive
20 thought of him smelling of alcohol based on that
21 event which, to me, looks like a -- people just knew
22 him as, I hate to, quote-unquote, "a drunk." So this

1 one individual stated to me, [REDACTED] he said
2 non-nuclear jobs he smelled alcohol on him, but never
3 on nuclear. Now where is the impairment? I didn't
4 see it. No one brought it to my attention.

5 MR. CLEVELAND: You also have to balance the
6 results of those interviews with interviews of other
7 individuals, credible individuals, such as [REDACTED]
8 [REDACTED] which I detailed, who, again, had very regular
9 contact with [REDACTED] daily, multiple times per
10 day, very close proximity, early in the morning and
11 never detected neither the odor of alcohol, or had
12 reason to question his fitness. He is not unique.
13 [REDACTED] we did a follow-up with him based on
14 Mr. Walker's initial results, and he too indicated
15 that he had --

16 MR. ROGOFF: You know, I think this is the first
17 time you're referring to [REDACTED] Can you
18 identify him?

19 MR. CLEVELAND: [REDACTED] is another craft
20 worker out there who [REDACTED] would go to
21 occasionally to get some advice or help with the ISI
22 project. So he had some somewhat regular contact

1 with [REDACTED] and, again, never detected the
2 odor of alcohol or had any reason to question fitness
3 for duty.

4 Another individual which we
5 interviewed, this was part, again, of Dan Craft's
6 follow-up, a [REDACTED] he is the NPS general
7 foreman [REDACTED] that was hired on [7/30 of 2001] and we
8 interviewed him and he again indicated that he had
9 multiple contacts with [REDACTED] never had any
10 reason to question his fitness, did not detect the
11 odor of alcohol and believed him to be a very
12 reliable worker.

13 [REDACTED] also elaborated that it's
14 his belief, based on what he characterized as
15 attitude, the attitude problem of [REDACTED] and [REDACTED]
16 [REDACTED] that if they had had a concern which they
17 believed was not being addressed adequately, they
18 would have gone to other folks in the chain at the
19 time.

20 And [REDACTED] also partially
21 corroborated our concern with the June 26 statements
22 that we identify in the employee file of [REDACTED]

1 MR. ROGOFF: And if I could just make one more
2 point about what we call -- we can call this document
3 an "Affidavit" now, after it's been executed. That
4 it was done on June 27th of this year, so it was done
5 three weeks ago. Yes, it speaks to the March
6 conversation, but there would have been ample
7 opportunity when he marked this up to have said, "I
8 had a separate conversation in December," so --

9 MR. DYER: What document are you talking about?
10 I'm confused.

11 MR. ROGOFF: I'm talking about the document that
12 was titled "Affidavit" that was never executed, which
13 I believe Ms. Longo referred to in her conversation,
14 and that Mr. Craft, when he interviewed [REDACTED]
15 who now seems to be kind of providing the smoking gun
16 facts, you know, that seems -- we were not aware of,
17 that I think it is -- he asked [REDACTED] to take the
18 document and in his hand to mark it up. This is the
19 original copy, you can see the blue, perhaps you
20 can't read it, but the blue ink here and initialed
21 some changes to this. And each time that he refers,
22 he talks about "a drunk," not "drunk." Admittedly,

1 as Miss Longo correctly pointed out, this refers to
2 the March conversation, not to December --

3 MS. LONGO: To the August, August. August.
4 There was no March conversation.

5 MR. CLEVELAND: I believe the affidavit refers
6 to a conversation in March of 2002.

7 MR. WEIL: If I may at this point, counsel?

8 MR. ROGOFF: Yes, sir.

9 MR. WEIL: Our interview, of course, was
10 transcribed under oath and our information from
11 [REDACTED] about his conversation in December with [REDACTED]
12 [REDACTED] and he was referring back to [REDACTED] and
13 [REDACTED] and we believe going back to --
14 remember, we're focusing on one issue in July of
15 2001. So going back to that, the conversation is,
16 "He had been drinking and was a drunk." That's the
17 quote.

18 MR. ROGOFF: But could you read the question and
19 the answer so we have some context there?

20 MR. WEIL: No, I don't want to go into that
21 because we're still predecisional, sir.

22 MR. ROGOFF: Okay.

1 MR. WEIL: Just, please, take my word for it.

2 MR. COUTU: Are you saying he had been drinking
3 on the job? Or he had been drinking the night
4 before?

5 MR. WEIL: Sir, all we know, sir, is that it was
6 in the fabrication shop, this conversation came to
7 [REDACTED] by the three welders. I'll set the
8 ground there. It was the fab shop, the limited
9 control area, [REDACTED] had access to the protected
10 area.

11 MR. ROGOFF: Could you just read the quote again
12 for me?

13 MR. WEIL: "I remember him saying 'drinking' and
14 'was a drunk.'"

15 MR. COUTU: But its hard to understand the
16 context --

17 MR. WEIL: I understand.

18 MS. LONGO: If you will hold on a second. I
19 have --

20 MR. WEIL: Ginny, let me finish one other thing.

21 MS. LONGO: Right. And when you're through I'm
22 going to add something. There's additional stuff in

1 the testimony. I don't mean to --

2 MR. WEIL: Well, I'll let you decide how much
3 you want to go to.

4 But one thing I want to furnish to Mr.
5 Walker is [REDACTED] continues that [REDACTED] had
6 stated that he denied to Mr. Walker that he had had a
7 conversation with [REDACTED] and [REDACTED]

8 MR. WALKER: Right.

9 MR. WEIL: So, going to your conversation, Mr.
10 Walker.

11 So, Ginny, it's yours.

12 MS. LONGO: If you will just hang on a second
13 here?

14 MR. BERSON: This might be --

15 MS. LONGO: [REDACTED] stated, when he was asked
16 about the affidavit and the affidavit says that
17 [REDACTED] said that [REDACTED] and [REDACTED] had reported that
18 they smelled alcohol on [REDACTED] and [REDACTED]
19 says, like I said, [REDACTED] said they came to him and
20 said they wouldn't work for him. That they thought
21 he'd been drinking and was a drunk problem." Not
22 that "he was a drunk." "He had been drinking."

1 MR. ROGOFF: Did I hear you to read, quote, "he
2 then drinking"? I may have misheard.

3 MS. LONGO: He -- I'm sorry, "He'd been
4 drinking."

5 MR. BERSON: "He'd been drinking."

6 MS. LONGO: "He had been drinking."

7 MR. COUTU: And did you establish what they
8 meant by that? He had been drinking on the job? He
9 had been drinking the night before?

10 MS. LONGO: Well, I think since these people
11 were on the job, since [REDACTED] on was on the job, and
12 [REDACTED] and [REDACTED] were on the job and they reported on
13 the job that they thought [REDACTED] had been drinking,
14 what does it matter whether he was drinking on-site,
15 or just before, or the night before? If they thought
16 he was clearly, you know, showed signs of being
17 drunk?

18 MR. COUTU: I didn't hear that in your
19 statement.

20 MS. LONGO: Well, why did they think he'd been
21 drinking unless he was -- clearly showed some signs
22 of having been drinking? Something was wrong.

1 MR. ROGOFF: I think it was because there was --

2 MS. LONGO: Is that not to you an indication
3 that somebody might be impaired? Is that not a
4 report of a fitness for duty problem?

5 MR. ROGOFF: I think it was [REDACTED]
6 regular behavior to drink. I mean nobody doubts
7 that. You know, our belief and our conclusion was
8 that it was confined to after hours, so that when
9 somebody says "he had been drinking," there wasn't
10 any -- there's no news in that statement just in and
11 of itself. Unless one can establish, I think, is
12 what Mr. Coutu is asking, that they're --

13 MS. LONGO: Well, if mister --

14 MR. COUTU: I guess in reality, its irrelevant.
15 Its irrelevant in that we did not have that same
16 statement in our investigation. So, we if we agree
17 today that you probably have some information or may
18 have had some information or different statements
19 than what we received, I think it's wrong for either
20 of us to infer what it meant. But it is a statement
21 that we obviously don't have in our investigation.

22 MR. DYER: Let me back up. Let me ask a

1 question here, I think, and redirect this a little
2 bit. You know, the violation we're looking about
3 doesn't go to [REDACTED] drinking problem. It
4 goes to what did [REDACTED] know, or what was he
5 told? And I think that what we're telling you is
6 that we have independent information that says that
7 [REDACTED] acknowledges being told by the two
8 individuals, regardless of their motives, that, the
9 way we understood it, that [REDACTED] was -- had a
10 fitness for duty problem. You know, whether he is a
11 drunk, drinking, whatever it was, if an employee
12 comes to their supervisor and makes this, "I don't
13 want to work for a drunk," and, you know, is that the
14 type that you want to make an distinction as to
15 whether he's drinking after work and he's hung over
16 in the morning? Or, you know, does that raise enough
17 of a concern to cause a for-cause fitness for duty
18 test? That's sort of where we are, and what did [REDACTED]
19 [REDACTED] know? So, I don't want to get into whether
20 or not mister -- the history of [REDACTED]
21 drinking. It's a question of what did [REDACTED]
22 know? And if you -- you know, what was your basis

1 for making your investigation?

2 It's obvious our investigation has
3 different conclusions than yours did, and I think
4 Ginny. And we've shared with you that going to
5 independent third parties who were relating
6 conversations, other conversations of [REDACTED]
7 would indicate that these individuals had come to
8 him, regardless of the motives, and provided some
9 sort of an accusation that he wasn't fit for duty,
10 that [REDACTED] wasn't fit for duty. So if
11 there's a questions -- if you have something on that,
12 we don't need to get into the debate, did he have a
13 drinking problem or anything else like that. It's
14 more directed as to what did [REDACTED] know?

15 MR. ROGOFF: Randy, could I ask you if you had
16 what you believed to be credible evidence that the
17 individuals had gone to [REDACTED] and [REDACTED]
18 had stated something that you believed that to be
19 credible, had come to him and said that he had been
20 drinking, with the inference or the direct statement
21 of on the job, or was impaired on the job, would your
22 decision have been different with respect to [REDACTED]

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[REDACTED]

MR. CLEVELAND: Absolutely. Yes.

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And the focus was exactly -- that's an excellent point that you made. The focus of our investigation, we were trying to determine whether anyone had come to [REDACTED] with specific articulable, actionable observations regarding [REDACTED]

[REDACTED] fitness. You really, in a case like this, you can't entirely pull it away from the context of what was known about [REDACTED]

Clearly, [REDACTED] acknowledged that [REDACTED] was known as a, quote-unquote, "drinker," but based on his personal behavior observation, he did not have a basis for initiating a test or taking further action.

Now, he was counseled by NMC on making a more conservative decision with respect to what he considered the imperceptible faint odor, but in terms of people coming to him with a specific concern regarding fitness --

MR. ROGOFF: Randy, if you would speak more directly to Mr. Dyer's question with respect to the credibility, the conclusion you drew with respect to

1 the credibility of the individuals who stated that
2 they went to [REDACTED] Because I think the
3 gravamen of the concern has been perfectly expressed
4 here, and we've been through this hour upon hour upon
5 hour, by Mr. Dyer and that is how we came to the
6 conclusion that it was not credible that the
7 individuals had gone to [REDACTED]

8 MR. CLEVELAND: Ultimately, what we concluded
9 about [REDACTED] was he didn't go to supervision. He
10 was on record with this, he did not go anywhere with
11 the odor of alcohol. He didn't indicate in the
12 initial interviews that there was any other concerns
13 that he had gone.

14 MR. WALKER: If I may? January 15th I had two
15 conversations with [REDACTED] based upon conversations
16 from [REDACTED]. This was a telephone call with him
17 down south. He's in the [REDACTED]
18 Local. What he told me was that regarding the smell
19 of alcohol, it wasn't just limited to a smell of
20 alcohol, as Miss Longo suggests, was an FFD issue.
21 This was directly related to what they were telling
22 me about the smell of alcohol. He said at this time.

1 while working inside the protected area, two people
2 occasionally smelled of alcohol. He identified the
3 two individuals who smelled of alcohol as both [REDACTED].
4 [REDACTED] and [REDACTED]. This is the first time
5 anybody suggested that [REDACTED] smelled of alcohol
6 at any point in time. It was never corroborated in
7 any of my other interviews.

8 [REDACTED] was asked if he reported the
9 smelled of alcohol to his immediate supervision? I
10 don't think we can ignore this on two occasions. He
11 said he did not report his concerns. So, I asked him
12 specifically, "What did do you? I want to know what
13 you did with it?" He said he didn't report his
14 concerns because then, he said, "Look at it from my
15 point of view," and then he talked about being [REDACTED].

16 [REDACTED] I think we're all aware in this room what
17 being [REDACTED] in a union. He says, "Look at it
18 from my point of view. I'm working out of a union
19 hall," which

20
21
22 [REDACTED] He said he didn't want

1 to create waves, so he kept his eyes open and his
2 mouth shut.

3 Now, when he talked -- he talked to me
4 a little bit more; he talked about he wanted to --
5 he, [REDACTED] talked about going to the employee
6 concerns, or wanting to go to employee concerns. So
7 looking at my notes, I hadn't really went into that
8 in-depth so I called him back at 7:55 p.m. Now, I
9 had to call one place, they had to go get him and
10 bring him back so he could talk to me on the phone,
11 so this was a -- there was a -- it wasn't an
12 immediate, there was a lot of deliberate thought
13 there. I asked him what he meant about what he said
14 earlier and he again reiterated to me that he did not
15 tell anyone of the smell of alcohol. So he had an
16 opportunity to tell me about that. He didn't on two
17 occasions in that same day.

18 MR. COUTU: And later claimed that he did. Or
19 was one of the two parties that did. In much the
20 same way that we got conflicting statements from Mr.
21 [REDACTED] So, we have an issue here which is, if you
22 take anyone's statement made by an individual, you

1 can support a conclusion. If you look at all of the
2 statements made by the individuals and you look at
3 our initial assertion that four of the five people
4 said they did not report it, they did not report,
5 okay? The ~~fifth~~ one gave a series of conflicting
6 statements and uncorroborated evidence who happened
7 to be the other individual that allegedly went to ~~██████████~~
8 ~~██████████~~ We had to form an opinion on whether or not
9 these people really did report, and our conclusion
10 was they did not.

11 We could take any one statement. We
12 could take the statement, you know, the initial
13 statements of individuals and then discount the other
14 ones. We had to take all of the information, come to
15 a reasonable conclusion about whether or not we had
16 impairment on the job and in fact the individuals did
17 report that. Our conclusion was, from the
18 information that we had, that that didn't happen.

19 We clearly admit, we believe that ~~██████████~~
20 ~~██████████~~ had a drinking problem. Did it manifest
21 itself as impairment on the job or fitness for duty
22 on the job? We were unable to find any information,

1 exclusive of these statements, which were in conflict
2 with other statements that there were cases of
3 impairment on the job by multiple sources, so we made
4 a reasonable judgment regarding whether or not those
5 reports were in fact made.

6 As it turns out there's a whole lot
7 more information on this affidavit. ^{AA} One of
8 individuals has since [REDACTED] We're
9 not going into motives for that, but there -- there
10 is -- there's a great deal going on here.

11 MS. PEDERSON: Are there any further questions
12 from the NRC on this?

13 MS. LONGO: Okay, no further questions. And I
14 thank you for, you know, going through the details of
15 what you did and what you have.

16 MR. WEIL: I do.

17 MS. LONGO: Okay, thank you.

18 MS. PEDERSON: Chuck?

19 MR. WEIL: Mr. Walker, just a few short
20 questions.

21 In your interviews as a professional
22 investigator do you normally share your interview

1 notes with the person you interview?

2 MR. WALKER: Do you mean the results of their
3 interview?

4 MR. WEIL: No, your actual interview notes? The
5 notes you take during the interview.

6 MR. WALKER: No.

7 MR. WEIL: I notice in the interview of [REDACTED]
8 [REDACTED] that you had him read your actual interview
9 notes and initial them and date them. Could you
10 please explain why you did that, sir?

11 MR. WALKER: Yes, I will. Because initially
12 when I spoke to [REDACTED] on the 5th, I believe, of
13 December, I had I asked him the question, which I
14 have already told you folks, I asked him about
15 fitness for duty, and was there any -- I can read it
16 again, but it's about fitness for duty. He said
17 there was none.

18 Then I went and I interpret -- I then
19 interviewed [REDACTED] who told me that --
20 of the issue and said that, when I asked him why he
21 didn't tell anybody or report it, he said, "Well, the
22 supervisors all know it." Which caused me to go back

1 to [REDACTED] and go in-depth into the interview
2 with him again. I wanted to determine if in fact he
3 did have any smell of alcohol. And throughout that,
4 I had him look at the previous notes, Chuck, Mr.
5 Weil, and look at it and then at the conclusion of it
6 I had him write down in his own hand why he didn't --
7 or why he arrived at the conclusion that he did, that
8 it didn't need to be reported, which was the
9 five-hours. And I thought it was important, because
10 of my own intent to get to the bottom of it, to have
11 his, as the note implicated, in the notes for him to
12 say whatever is accurate, what wasn't accurate, and
13 write down why he didn't report it. That was the
14 one -- I hardly ever do that, but it was significant
15 enough for me to make sure that you, the reader, got
16 an opportunity to see what he was saying to me.
17 That's why I did it in this case.

18 MR. WEIL: Thank you. It just stood out and I
19 wanted to --

20 MR. WALKER: And I wanted it to stand out
21 because what's differentiating at that time was that
22 he was making the determination, not that he didn't

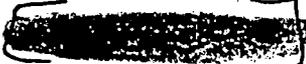
1 smell, but that the smell -- he was making a
2 determination himself as to where that fit in this
3 five-hour rule himself. I thought that it was
4 significant.

5 MR. WEIL: Thank you very much.

6 MS. PEDERSON: Other questions?

7 MR. CRAFT: Can I make one --

8 MS. PEDERSON: Mr. Craft? Sure.

9 MR. CRAFT: One comment for the what-it's-worth
10 department. I don't know if it matters or if it
11 doesn't matter, but I sat down with 
12 and based on my former career and my former life, 31
13 years, I went at him very, very hard, as hard as I've
14 gone after any homicide suspect, and I pressed him
15 very, very hard, and I called him a liar. And I'll
16 never get invited to his family picnic, but that
17 wasn't my purpose. I wanted to know, as an
18 investigator, is he lying? Now, I'm a former
19 polygraph examiner, not that that matters, but if you
20 talk to a thousand liars, you know what a liar sounds
21 like. You know what a truthful person is. And I
22 squeezed, I went after him very, very hard and he

1 swore to me that he was telling the truth, that they
2 never came to him, other than that comment that they
3 didn't want to work for a drunk.

4 MR. COUTU: How long did that interview take?

5 MR. CRAFT: About three hours. And I didn't let
6 up. Three hours in a room, I mean, that -- that's
7 where I used to make my money with the FBI. They
8 sent me all over the world to do interrogations, and
9 I went at him very, very hard.

10 MR. WEIL: At least this part of the table
11 appreciates an examiner.

12 MR. CRAFT: Well, you know what I'm talking
13 about.

14 MR. WEIL: Yes, sir.

15 MS. LONGO: This is Ginny Longo. I just wanted
16 to, for what it's worth, I've done investigative work
17 too, and I can appreciate the difficulties. And I
18 have dealt with psychopaths and, you know, people
19 accused of murder and embezzlement and all kinds of
20 bad things, and so I understand, you know, what
21 you're dealing with. You know, it's not easy.
22 Thanks.

1 MR. COUTU: One last question, and I think this
2 is a really important question. Does anybody have
3 any reason to believe, because [REDACTED] still has
4 an unescorted access to our facility, does anybody
5 have any reason to believe at this point in time that
6 he should not have unescorted access to our facility
7 or to any other nuclear facilities? Because that's
8 very important. We've been asking this, essentially
9 from the time we were notified of this predecisional
10 enforcement conference. We take this very seriously.
11 If there is a belief that this individual does not
12 belong working at a nuclear facility then we need to
13 know that. And we've been told no, there is not a
14 safety concern at this point. Has that changed?

15 MR. DYER: Tom, let me just answer that right
16 away. I understand.

17 If you will look at our enforcement
18 manual, I think it's Section 7.5, it talks about what
19 we do when we get a preliminary call on a willful
20 violation, and as part of our process we review that
21 and make a decision. We have in the past, we will in
22 the future make calls and say, until this is

1 resolved, we have to pull somebody. And we made that
2 decision and said at this time, based on what we
3 know, we don't see that. We'll review the
4 information we've gotten today and reconfirm our
5 previous conclusion, but no. It's spelled out, our
6 process, and in the enforcement manual, and we are
7 following it.

8 MR. COUTU: But no changes at this time.

9 MR. DYER: No changes, yes, sir.

10 MS. PEDERSON: No changes.

11 MR. COUTU: Thank you.

12 MR. ROGOFF: Would you like us to provide
13 copies -- yes, we shall provide copies of Mr. Craft's
14 notes and a copy of the document as marked up in the
15 affidavit of

16 MS. PEDERSON: Yes. Thank you.

17 Any other statements or questions at
18 this time before we take a short recess?

19 MS. LONGO: Nothing here. Thank you.

20 MS. PEDERSON: Ginny, we're going to take a
21 short recess. We would like to include you folks.
22 Do you have a conference room that we can call you

1 at? And what number would that be?

2 MS. LONGO: Other than the one you're at?

3 (Whereupon, a brief recess
4 was taken.)

5 MS. PEDERSON: Okay, let's go back on the
6 record.

7 Thank you for rejoining us. We have a
8 couple of things, it's going to deviate a little bit
9 from standard practice. We want to circle back on
10 the specific apparent violation and get your reaction
11 to that. Secondly, for your benefit, we will have
12 Ms. Longo summarize what we see to be the additional
13 information. And then we will go into our
14 enforcement policy and process, and then Jim Dyer
15 will give his closing remarks.

16 Terry, do you want to review the
17 apparent violation, please?

18 MR. MADEDA: I thought we wanted to go over the
19 question first.

20 MS. PEDERSON: Yeah, the question as it relates
21 to --

22 MR. MADEDA: Okay, I guess this is a question to

1 Randy Cleveland. Does your FFD program require
2 reporting the odor of alcohol?

3 MR. CLEVELAND: Yes.

4 MR. MADEDA: Is there any exceptions on the
5 contrary when that would not be required?

6 MR. CLEVELAND: No.

7 MR. MADEDA: So, it would be all-inclusive?

8 MR. CLEVELAND: Yes.

9 MR. MADEDA: Thank you.

10 MR. DYER: Let me ask that another, and we will
11 review it, but is it just the odor? Is it if
12 somebody -- fitness for duty? What triggers it?

13 MR. CLEVELAND: Our fitness for duty program
14 requires the reporting of any FFD concern, and we
15 provide a number of behavioral examples that you can
16 break into physical indicators, social, performance
17 related. Certainly anything along the lines of smell
18 of alcohol, unsteady gait, slurred speech, that is
19 all referenced as a basis for developing a concern on
20 fitness, and the expectation would be that that would
21 be reported.

22 MR. DYER: Okay. If it's somebody just asked,

1 you know, if somebody just goes to your employee
2 concerns program and says, "So and so's drunk," would
3 that trigger a fitness for-cause test?

4 MR. CLEVELAND: Yes.

5 MR. CAPRISTO: What we would do is we would
6 share that information with the fitness for duty
7 representative on site for their analysis. And my
8 understanding, and Randy can correct me if I'm wrong,
9 is there is some test of credibility or some
10 corroboration or some validation of that that needs
11 to be made such that people don't make up just false
12 statements.

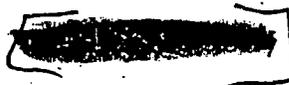
13 MR. CLEVELAND: The program, what Al is getting
14 at there, the program's got some checks and balances
15 built into it. We want to make sure that this is
16 credible, articulable observation of a specific FFD
17 concern. If somebody were to report -- the
18 expectation would be that if somebody were to report
19 to my supervision that, "I've got a problem working
20 with Randy Cleveland, I think he's a drunk," that the
21 supervision would do the appropriate follow up
22 through the behavior observation program and see if

1 they could corroborate any FFD concern, as we define
2 it in our program again, looking for some of these
3 indicators that we give, odor of alcohol, unsteady
4 gait, slurred speech, bloodshot eyes, et cetera, and
5 then act on that. If they're not able to corroborate
6 that, it's a data point and we move on. It's not an
7 automatic trigger for conducting a for-cause test.

8 MR. BERSON: If we go back and they said, "Randy
9 Cleveland smells of alcohol," clearly smells of
10 alcohol.

11 MR. CLEVELAND: Then yes, that is actionable,
12 and that's a very good point. That's why we're
13 focusing our investigative efforts on trying to
14 determine whether we had that. An actionable
15 observation.

16 MR. BERSON: Okay.

17 MS. PEDERSON: And one further clarification on
18 that. If a supervisor, such as 
19 personally detected even a faint odor of alcohol,
20 would that trigger a for-cause test by your program?

21 MR. CLEVELAND: Yes.

22 MS. PEDERSON: Thank you.

1 MR. CLEVELAND: And that's where we did do
2 the -- counseled [REDACTED] on conservative decision
3 making with respect to this program, and we expect in
4 the future that that be initiated.

5 MS. PEDERSON: At this point, I would ask Ginny
6 to summarize the additional information. That does
7 seem to be a rather crucial part of this case.

8 Ginny?

9 MS. LONGO: Okay, the -- there are three pieces
10 of additional information we wanted to make sure you
11 understand that we have and that are important. The
12 first is [REDACTED] testimony that in, I guess it
13 was July or August of 2001, whatever the time period
14 was, [REDACTED] came into the trailer where [REDACTED].
15 [REDACTED] was seated and [REDACTED] was seated, and [REDACTED]
16 [REDACTED] said, [REDACTED] meaning [REDACTED] and
17 [REDACTED] "they ain't going to work for an,"
18 expletive deleted, "drunk like [REDACTED] unquote.

19 The second piece of information is
20 that [REDACTED] testified under oath also that in
21 December of 2001, the date is not specified, but it
22 was December 2001, [REDACTED] told [REDACTED] -- or, I'm

1 sorry, in December of 2001, [REDACTED] told [REDACTED]
2 that a couple of guys had come up to him and said
3 that [REDACTED] either had alcohol on his breath or
4 was drunk. And this is in reference to, again, the
5 event in July, August, 2001.

6 And then the third piece of
7 information is [REDACTED] sworn testimony when he
8 was questioned about this affidavit that was never
9 signed and the statement in the affidavit which says
10 that [REDACTED] informed [REDACTED] that -- I'm
11 sorry, I lost my thought. I'm going to have to start
12 that sentence over again. When, in response to -- or
13 in reference to the unsigned affidavit which claims
14 that [REDACTED] told [REDACTED] that he was informed that, by
15 [REDACTED] and [REDACTED] that they smelled alcohol on
16 [REDACTED] said, "Well, that's not what [REDACTED]
17 [REDACTED] said to me. What he said to me was that [REDACTED]
18 and [REDACTED] said that they didn't want to work for
19 [REDACTED] because he had been drinking and he was a
20 drunk."

21 MS. PEDERSON: Thank you,

22 Any clarifying questions on that, Tom?

1 MR. COUTU: Only that we now have a signed -- a
2 signed, corrected version of that which may be
3 additional information that we have as a result of
4 our effect of this review on our investigation, which
5 we will submit along with all of the other
6 information that was not submitted as part of the
7 first two investigations, we will submit that
8 information to you through the appropriate channels.

9 MS. PEDERSON: How long would that take for you
10 to submit that to us?

11 MR. COUTU: We talked about that. When can we
12 have a report complete, Dan?

13 MR. CRAFT: My report's complete now.

14 MR. COUTU: Okay.

15 MR. ROGOFF: It could be FedExed out tomorrow.

16 MS. PEDERSON: Great thank you.

17 MR. COUTU: Give us to the end of the week to
18 pull everything together, and we'll make sure we get
19 everything to you.

20 MS. PEDERSON: That would be fine. Thank you.

21 Chuck, do you want to talk a little
22 bit about the enforcement process, please?

1 MR. WEIL: Okay. What I just want to cover is
2 where we go from here.

3 First of all I want to emphasize the
4 apparent violations that were described earlier today
5 are subject to change based on our deliberations from
6 today's meeting. Usually, we like to get our
7 enforcement actions out in four to six weeks, but in
8 complicated cases like this one is beginning to show,
9 it's obviously going to take longer. A data point that
10 I will also give you is that we are having an
11 individual conference with [REDACTED] -- excuse
12 me, at [REDACTED] request, I believe it's August
13 5th, so we will also be taking his information into
14 consideration so we have more homework to do later on
15 next month, so we have to give all that consideration
16 too. So, basically, after all the information is in,
17 the Region, along with the Office of Enforcement and
18 Office of General Counsel and the Program offices, we
19 will all get together, review the information, review
20 it, caucus, come up with the Agency's position.

21 Once the agency's position is arrived
22 at, one of the senior managers in the Region will

1 call you and give you the Agency's position and, of
2 course, tell you what it is.

3 Possibilities are, obviously, one is
4 no action; another would simply be a notice of
5 violation; another would be a notice of violation
6 with a proposed imposition of a civil penalty; or a
7 fourth would be, possibly, some sort of an order.

8 If an order or a civil penalty is
9 proposed, we would also be making a press release.

10 The action, if it's any sort of
11 significant action, would also be faxed to you ahead
12 of time so that you had an opportunity to review it
13 so that you would be able to comment on the action
14 should you need to.

15 Instructions for responding to the
16 notice of violation if there is one issued will be
17 contained in the notice of violation. The options,
18 of course, would be to accept the violation. If a
19 civil penalty would be proposed, also accept the
20 violation and civil penalty.

21 The other option of course would be to
22 deny the violation and pay the civil penalty.

1 The fourth option would be to deny the
2 violation and deny the civil penalty should be
3 proposed.

4 With the notice of violation or impose
5 a civil penalty, if you disagree with it of course
6 you have to come back in writing and tell us why you
7 disagree with it. We will take another look at it
8 and give you our analysis, and we would get back to
9 you, either in writing telling you why we agree or
10 disagree, at this time we would either be mitigating
11 or withdrawing the violations, or possibly
12 ordering -- issuing an order imposing civil penalty.
13 Should an order be written imposing a civil penalty,
14 at that time your appeal rights to the Atomic Safety
15 Licensing Board would hatch. That's basically the
16 enforcement process through Atomic Safety Licensing
17 Board.

18 I really want to emphasize that this
19 is predecisional at this point. No decisions have
20 been made going into this meeting, and we have one
21 more conference to go before we collect everything we
22 probably need to collect.

1 I do have a question, and that is:
2 The information given today, is there anything that
3 we should know about that's either proprietary or of
4 a personal privacy nature that we need to restrict?

5 MR. ROGOFF: Other than the document that was
6 referred to and read from, that comes from the
7 personnel file of [REDACTED]

8 MR. CLEVELAND: You mean [REDACTED]

9 MR. ROGOFF: [REDACTED] I'm sorry.

10 Everybody's made slips, and I've probably made more
11 than my fair share. But I think that's the only one.

12 MS. PEDERSON: Could I ask a little more
13 specifically so I understand that remark? We talked
14 about returning the chart to you because you could
15 crosswalk that to your larger handout. Is there
16 anything in your handout, the bound handout, that you
17 would consider withholdable under 2.790 of the
18 Privacy Act?

19 MR. ROGOFF: We specifically left names out of
20 here.

21 MS. PEDERSON: Right.

22 MR. ROGOFF: And we did that so that no one

1 could tie any individual back to this in the public.
2 Would this be okay with you folks? We'll say that
3 unless we get back to you within a couple of days,
4 that we will -- that we don't see anything in the
5 presentation?

6 MR. WEIL: Let me suggest this: In the report
7 that you are going to submit to us, why don't you
8 print it in the same document, maybe as a second
9 attachment.

10 MR. ROGOFF: Okay.

11 MR. COUTU: Because I would like that to be
12 final. Not, "If we don't get back with you."

13 MR. WEIL: It's on the record.

14 MR. COUTU: We'll just have a concrete --

15 MR. WEIL: Finally, let me read this one last
16 statement so it's accurate.

17 In conclusion, any statements or
18 opinions that may have been made by a member of the
19 NRC staff during the conference is not to be viewed
20 as a final opinion of NRC. Any lack of a statement
21 by an NRC representative should not be viewed as
22 acceptance of a position or statement.

1 Is there any questions I can answer
2 for you on the NRC enforcement policy?

3 MR. COUTU: No, sir.

4 MR. WEIL: Mr. Dyer?

5 MR. DYER: Thank you.

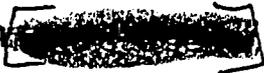
6 My closing remarks are somewhat built
7 on Chuck's summary of where we go from here. I think
8 you've heard from Ms. Longo that, you know, right now
9 we have additional information, we just provided it
10 to you, that says that -- that sort of explains why
11 we're at different conclusions. So anything you can
12 do to reconcile that or clarify or adjust your, you
13 know, position, the goal of this meeting, and again
14 the predecisional enforcement conference, what Chuck
15 said, this is still part of our proposed enforcement
16 development process and that, and so between now and
17 the time when we finally come to our conclusion,
18 which will be some time after we hold the individual
19 conference, you know, any information that you can
20 submit to us that will clarify or reconcile why and
21 where we're different is welcome. And right now, you
22 know, we're taking a look at, you know, trying to

1 come to a conclusion and review it as a part of, you
2 know, what's the quality of the evidence and the
3 basis for the weighting the credibility that we give
4 to the information that we have. Obviously, you
5 know, more credibility to things like sworn
6 statements and independent or uninvolved parties
7 carry more weight with us than the individuals who
8 may have a motive in providing their side of the
9 story.

10 And so that's where we're headed and I
11 just want to reiterate some of the questions -- the
12 point I made before is, you know, we're not really
13 dealing with whether [REDACTED] was in fact
14 drinking that day. The question comes down to was it
15 reported that he was? And did [REDACTED] take the
16 appropriate actions? [REDACTED] is not the
17 violation, if you would, today. The question has to
18 do with did [REDACTED] properly implement your
19 fitness for duty process? And so the question is was
20 he knowledgeable? Did somebody present him the
21 information? And we have to come to a final
22 conclusion on that.

1 I think you heard pretty much where we
2 are today and where we're going and, you know, we'll
3 take the information that you provided and reconcile
4 it with what we already know.

5 I thank you for coming and any
6 information you can give, again, any information you
7 can give us between now and the time we reach our
8 final conclusion is -- would be helpful. Thank you.

9 MR. WEIL: If I could tack on for a moment?
10 There's also the other violation, potential
11 violation, I should say, that's the potential for
12 false information provided by  not only
13 us, but also Mr. Walker during his investigation. So
14 that's out there also.

15 MR. COUTU: I don't know that we're clear on
16 exactly what the apparent violations are. Can we
17 actually read the apparent violations?

18 MR. WEIL: Okay. There's two. One is in July
19 of 2001, and potentially the last two weeks is
20 probably the best we can cover it, in your owner-
21 controlled area, in the Day & Zimmerman fabrication
22 shop, three individuals, these three welders we've

1 been talking about, provided [REDACTED] with the
2 fitness for duty information, and then [REDACTED]
3 took no action upon that in violation of your FFD
4 policy.

5 Then, secondly, is the incomplete and
6 inaccurate information issue that, and I've -- I
7 don't have the dates off the top of my head, but the
8 dates Mr. Walker interviewed [REDACTED] and the
9 dates that Special Agent Fahey interviewed [REDACTED]
10 [REDACTED] that [REDACTED] provided incomplete and
11 inaccurate information to the investigators and
12 that's about -- and his knowledge of what occurred
13 after July 2001, the fitness review.

14 MS. PEDERSON: Those are summarized in the third
15 paragraph of our June 9th letter.

16 MR. DYER: Any other questions?

17 MR. COUTU: Well, we appreciate the opportunity
18 to come here and present what we uncovered in our
19 investigation. I guess the one thing I would ask is
20 that we look at all of the information provided by
21 all of the individuals to understand the credibility,
22 potential truthfulness or lack of truthfulness, and

1 the time line at which those statements occurred to
2 really understand whether or not you think [REDACTED].
3 [REDACTED] in fact received the information at the time
4 that you believe the violation occurred. And that we
5 will see if there's anything we can do to clarify
6 that when we leave here to see if there's more
7 information we can give you, or if we can pull it
8 together in a different manner, whatever we need to
9 do.

10 Thank you. It was a good, open
11 exchange of information, almost like an accrediting
12 board, the questions weren't intended to be hostile,
13 but they may appear to be so. I thought it was a
14 good exchange of information. Thanks for the
15 opportunity.

16 MS. PEDERSON: Thank you. That concludes the
17 meeting.

18
19 (Which were all the proceedings
20 had at the hearing of the
21 above-entitled cause.)
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STATE OF ILLINOIS)

) SS

COUNTY OF DU PAGE)

I, JEFFREY D. STUPAK, C.S.R. No. 084-4188, a
Notary Public duly qualified and commissioned for the
State of Illinois, County of DuPage, do hereby
certify that I reported in shorthand the testimony
taken at the hearing of the above-entitled cause, and
that the foregoing transcript is a true, correct and
complete report of the testimony so taken at the time
and place hereinabove set forth.



JEFFREY D. STUPAK

My Commission Expires:
April 23, 2005



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