1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 BRIEFING ON THE NRC ENFORCEMENT

5 AND ALLEGATIONS PROGRAMS

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7 TUESDAY

8 JANUARY 19, 2010

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10 The Commission convened at 9:30 a.m., the

11 Honorable Gregory B. Jaczko, Chairman, presiding.

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13 NUCLEAR REGULATORY COMMISSION:

14 GREGORY B. JACZKO, CHAIRMAN

15 DALE E. KLEIN, COMMISSIONER

16 KRISTINE L. SVINICKI, COMMISSIONER

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1 PANEL 1: NRC STAFF

2 BILL BORCHARDT, EXECUTIVE DIRECTOR FOR

3 OPERATIONS

4 ROY ZIMMERMAN, DIRECTOR, OFFICE OF

5 ENFORCEMENT

6 LISAMARIE JARRIEL, AGENCY ALLEGATION

7 ADVISOR, OE

8 SHAHRAM GHASEMIAN, SENIOR ENFORCEMENT

9 ADVISOR, OE

10 DOUG STARKEY, SENIOR ENFORCEMENT SPECIALIST, OE

11

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13 PANEL 2: STAKEHOLDERS

14 ELLEN GINSBERG, NUCLEAR ENERGY INSTITUTE

15 INGRID DRAKE, PROJECT ON GOVERNMENT

16 OVERSIGHT

17 MICHAEL HEADRICK, NATIONAL ASSOCIATION OF

18 EMPLOYEE CONCERNS PROFESSIONALS

19

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1 P-R-O-C-E-E-D-I-N-G-S

2 CHAIRMAN JACZKO: Good morning.

3 We have a very busy meeting this morning

4 and certainly will -- before we get started ask

5 that people do their best to stick to the time.

6 I know the staff will as they always do a

7 good job, and for our stakeholders this afternoon

8 if they can be mindful of the time so we have an

9 opportunity for questions and answers.

10 I think that tends to be, sometimes, the

11 most interesting aspect of the meetings.

12 The meeting that we are having today is to

13 receive a briefing from the staff and input from

14 several stakeholders on the agency's Enforcement

15 and Allegation Programs.

16 I think this is one of the first times in

17 some time that we have had a meeting on these

18 topics.

19 Given some of the recent incidents, namely

20 Peach Bottom and Davis Bessie, it highlights really

21 that enforcement and the allegation programs are

22 really areas of high visibility, and they

1 really are crucial to our efforts to maintain
2 public confidence.
3 Ultimately, it's the performance of these
4 programs that's critical to our success as a
5 regulator, because what ultimately defines us as
6 regulators is our ability to ensure that our
7 policies and regulations are actually being
8 followed.
9 As I often try to remind people, the NRC
10 can't be everywhere and can't inspect everything.
11 That's why we need an effective enforcement
12 program that takes prompt corrective actions and
13 makes clear the high expectations we have of our
14 licensees for applying our guidance and
15 regulations.
16 It is also why we need an effective
17 allegation program, because that provides an avenue
18 for people out there, and the facilities, to give
19 us information that we may not have identified or
20 uncovered.
21 I think that has been a very strong program
22 for this agency historically.

1 It has performed well and I think it is
2 going to be further enhanced by the changes that
3 were made following the lessons learned from Peach
4 Bottom.
5 In today's briefing, we'll have the staff
6 review the Enforcement and Allegations Program, the
7 alternative dispute resolution process, and the
8 proposed changes to the enforcement policy, and to
9 the Allegations Guidance Memorandum.
10 I would also like to commend the staff in
11 their efforts to engage our stakeholders as part of
12 the process of developing the proposed revision to
13 the Enforcement Policy and the Allegations Guidance
14 Memorandum.
15 After the staff presentations, the
16 Commission will hear directly from several
17 stakeholders regarding their views on some of these
18 proposed changes.
19 I'm pleased that our panel of stakeholders
20 represents several diverse perspectives.
21 There is one perspective I think that we'll
22 have in writing from Billie Garde who had been

1 scheduled to participate in this panel today, but I
2 think she had -- she was called in to do some work
3 in court.
4 I think she won't be here, but we have her
5 thoughts in writing.
6 I look forward to discussing both the staff
7 and the stakeholders here today, discussing their
8 issues and how the Commission can best proceed in
9 reforming and strengthening these important
10 programs.
11 If there are any comments from Dr. Klein or
12 Commissioner Svinicki.
13 COMMISSIONER SVINICKI: Thank you Mr. Chairman.
14 I want to thank you for holding this
15 meeting today.
16 This is really timely in terms of the staff
17 having completed its major revision to the
18 enforcement policy and getting that in front of the
19 Commission.
20 It was timely in terms of my personal focus
21 on and review on that.
22 When I joined the Commission, if I'm

1 remembering the timing right, NRC was just
2 finishing up the senior management review of the
3 Peach Bottom Lessons Learned.
4 It is interesting to come at the end of
5 what was a very internally kind of soul-searching
6 time for the NRC.
7 It has been helpful to me to go back and
8 review those lessons learned and where we've come
9 from here.
10 I agree with you and I thank you for
11 commenting on the fact that the staff has done an
12 impressive amount of work here, which is apparent
13 in what they will present.
14 It is also a chance for me with our second
15 panel to hear directly from some of the commenters
16 and stakeholders.
17 Thank you for having this meeting today.
18 CHAIRMAN JACZKO: Absolutely.
19 I think Dr. Klein and I, we had our
20 opportunities to present information on Peach
21 Bottom, in particular, in front of Congress.
22 It was an activity that generated a lot of

1 interest, and I think this is the culmination of a
2 lot of the work that went into that.
3 I think it will be a good meeting.
4 With that I will turn it to Bill.
5 MR. BORCHARDT: Good morning, thank you.
6 The primary purpose of the NRC's
7 Enforcement Program is to support the NRC's overall
8 safety mission in protecting public health and
9 safety and the environment.
10 It does this by deterring noncompliance
11 with the NRC's regulations, and encourages prompt
12 identification and prompt comprehensive corrective
13 actions of violations when they do occur.
14 Today the enforcement program is very well
15 integrated with the inspection and investigation
16 programs in both the reactor and the materials
17 area.
18 In addition to the three topics that'll be
19 focused on today, I would like to point out that
20 the Office of Enforcement also has the agency
21 leadership role in safety culture initiatives, both
22 internal and external, and in the differing opinion

1 and nonconcurrence processes that are very
2 successful in helping us have an open and
3 collaborative work environment within the NRC.
4 With that, I will turn it over to the new
5 Director of the Office of Enforcement who is the
6 sixth person to hold this position, and I'll just
7 make note that the first Director of Office and
8 Enforcement is in the audience today, Mr. Jim
9 Lieberman who established the office many years ago
10 and was a long-standing Director of the Office.
11 Thank you.
12 MR. ZIMMERMAN: Thank you Bill.
13 Good morning Chairman and Commissioners.
14 We are very pleased to be here on behalf
15 the Office of Enforcement to be able to go over a
16 number of recent initiatives with you today.
17 Lisa Jarriel will assist us in reviewing
18 what occurred at Peach Bottom with the inattentive
19 security officers, and the lessons learned that we
20 have achieved as a result of that, and how we have
21 had enhanced our allegation program to incorporate
22 those additions.

1 Lisa is the agency's Allegation Advisor.

2 Following Lisa, Shahram Ghasemian, who is

3 our Senior Enforcement Advisor, will provide an

4 overview of our alternative dispute resolution

5 program.

6 It will be a little bit more of a program

7 review.

8 This program went into effect in the 2004

9 timeframe when we began the pilot.

10 He will bring us from where we were to

11 where we are now and has some slides and such to be

12 able to show some of the metrics associated with

13 that program.

14 It seems to be working quite well.

15 Following Shahram Doug Starkey, who is our

16 Senior Enforcement Specialist, will discuss the

17 proposed changes that we brought before the

18 Commission associated with the revision to the

19 Enforcement Policy.

20 What we are looking at here is not anything

21 that is revolutionary, but it is to try to keep the

22 enforcement policies such that it assists us as we

1 look to the future.

2 Something that will guide us well over the

3 next 10 or 15 years, and it does things such as

4 recognizes requirements that didn't exist the last

5 time it was revised and brings in guidance for

6 those Part 26 new reactors being a couple of those

7 areas.

8 There is also some areas where we didn't

9 have guidance where we needed guidance, we found

10 some holes where the guidance would assist us and

11 do things in a consistent way.

12 So, again not revolutionary, but things to

13 enhance our program and set us up for the coming

14 years and Doug will go over that.

15 Before passing the presentation to Lisa, I

16 wanted to mention that the Office of Enforcement

17 gets a lot of assistance from a lot of offices.

18 The program offices, OGC, OI, a lot of

19 people here that we work with very, very closely,

20 the Regions for sure.

21 We are fortunate that Dan Holody is

22 in the well behind me, because we felt that it was

1 appropriate with all the work that the Regions do
2 to have somebody available.
3 I wanted to thank Dan for making the trip
4 down here.
5 With that, let me pass to Lisa and thank
6 you very much.
7 MS. JARRIEL: Thank you.
8 We are going to start on slide three,
9 please.
10 Mr. Chairman, Commissioners.
11 Since the early 1980s when the NRC
12 formalized their process for addressing public
13 concerns of our licensed facilities, the allegation
14 program has addressed over 38,000 concerns,
15 some of which have resulted in significant
16 improvements to safe operation of those facilities.
17 It is a robust program partly because we
18 strive for continuous improvement through self
19 assessments, independent oversight, and event
20 reviews about particular events.
21 Today I want to describe one such event,
22 the lessons learned, and the resulting improvements

1 to the process that came from it.

2 In March 2007, the NRC received an

3 allegation concerning the Peach Bottom Atomic Power

4 Station.

5 It was alleged that security officers were

6 sleeping while on duty in the bullet resistant

7 enclosures and other unspecified locations due to

8 fatigue caused by excess work hours.

9 The alleger provided this allegation to us

10 in writing, and in that letter, requested no

11 further contact with the staff; did not want to

12 participate in the allegation process.

13 The NRC's policy is to engage licensees

14 with written request for information as

15 often as possible, and in this case we did engage

16 the licensee and requested some information.

17 The licensee provided information, for

18 instance, concerning their work hour data, how many

19 hours each security officers were actually working, and also

20 interviewed a number of the staff and provided

21 information to the NRC about that as well.

22 The NRC received the information as

1 requested and pulled some strings on that
2 information, did some additional data gathering
3 ourselves, and was unable to substantiate the
4 allegation as stated.
5 Next slide, please.
6 Notwithstanding that assessment, seven
7 months later the NRC was presented with video
8 evidence of security officers inattentive, not in
9 the bullet resistant enclosures but in ready
10 room -- a ready room.
11 The ready room is a place where security
12 officers can rest, can eat, study, read, but must
13 remain attentive and ready to respond if needed.
14 The NRC conducted a special inspection and
15 investigation into the event which resulted in us
16 issuing a white finding to the licensee and also a
17 civil penalty.
18 Next slide, please.
19 The staff also reviewed the allegation and
20 inspection programs and the processes to identify
21 what more could have been done to provide better
22 opportunities to the staff to discover such

1 inadequacies earlier.

2 The staff reviews, myself, in the capacity

3 as the Agency Allegation Advisor, reviewed the

4 staff's handling of the March allegation.

5 The region did a comprehensive

6 self-assessment of the events as well.

7 The EDO established a senior executive

8 review panel, which provided a report and several

9 recommendations for improving both processes, and

10 the Inspector General also did an independent

11 assessment of the events.

12 Today I will talk about changes to the

13 allegation program in particular, rather than the

14 allegation and inspection program, but just to

15 point out there were also changes made to our

16 inspection policy process as well.

17 The recommendations from the senior

18 executive review panel were provided to the

19 Commission, and the Commission approved those

20 recommendations and actually added further guidance

21 to the staff.

22 Internally, the NRC staff participated in a

1 number of workshops with the regional team that
2 addresses allegations, and we prepared interim
3 guidance which was issued in late 2008.
4 Over the last year, the staff has been
5 using that interim guidance to improve our
6 responses to allegations.
7 Shortly after we prepared the interim
8 guidance we also, at the Commission's request,
9 engaged the public in a workshop as well.
10 Many of the panelists that you will hear
11 from were part of that process.
12 We received, both from the staff and from
13 the public, very good comments on the interim
14 guidance and we have incorporated changes to a
15 revision to the guidance which is now before the
16 Executive Director for signature.
17 Next slide, please.
18 The enhancements I'll describe next address
19 the following key lessons learned.
20 First of all, alleger involvement
21 throughout the process is very beneficial.
22 It should be strongly encouraged even if

1 they request no further contact or wish to remain
2 anonymous.
3 Secondly, the NRC -- if the NRC engages
4 licensees in the process and requests written
5 information from the licensees, the staff has to
6 ensure that we provide sufficient detail to the
7 licensee so they can do a thorough review of the
8 concern themselves.
9 And if we're not able, because of alleger identity
10 protection issues to provide details, then the
11 staff needs to keep the concern and investigate it
12 solely itself.
13 Next slide, please.
14 It is important to inform our inspectors,
15 both resident inspectors and other inspectors, of
16 allegation information to ensure that they have
17 opportunities to detect relevant information.
18 Often our inspectors will inspect the
19 concerns raised, but even if we don't ask them to
20 do an inspection of a particular aspect of the
21 allegation, we need to inform them so that they can
22 detect relevant information, such as

1 inattentiveness as something any inspector can be
2 attentive to.
3 Lastly, we have to ensure in each case that
4 if we request information from the licensee that
5 the responses we received are adequate, and that
6 the NRC's independent assessment is thorough and
7 well documented.
8 Slide eight, please.
9 The Commission requested that the staff
10 revisit the appropriateness of engaging licensee in
11 the allegation process.
12 The staff has done so, and the practice
13 remains, to request from a licensee a written
14 evaluation of allegation concerns in all cases
15 involving an overriding safety concern and with
16 other concerns wherever possible and appropriate.
17 The staff's decision to engage a licensee
18 is thoughtful, deliberate, and takes into
19 consideration a number of factors.
20 Specifically, the NRC will normally not
21 engage a licensee if it could compromise the
22 identity of the alleger, and the alleger is

1 concerned about such a release.

2 We also will not do so if it compromises an

3 NRC investigation of wrongdoing.

4 We won't do so if it is unlikely that the

5 practice -- the licensee could not provide an

6 independent assessment of the concern.

7 For instance, if senior management is

8 alleged to have been involved in the decisions.

9 Lastly, if a state or Federal agency

10 provides the information to the NRC and they wish

11 us not to engage the licensee, we're prohibited

12 from doing so.

13 We also consider a number of other issues,

14 such as the reason the alleger came to the NRC in

15 the first place.

16 If there is a concern of fear of

17 retaliation, if they have already engaged the

18 licensee in their internal processes and been

19 unsatisfied with those responses, those are factors

20 that we take into consideration before we engage

21 the licensee with a request.

22 We also look at our allegation and

1 inspection trends that inform us well.

2 Finally, we look at the licensee's

3 responses to prior requests for information on

4 prior allegations.

5 If they have been adequate and responsive,

6 we consider whether we should continue to request

7 information from them in writing.

8 The NRC requests are also finally made to

9 senior licensee management and the responses are

10 subject to our completeness and accuracy

11 regulations, a factor that most allegers find very

12 comforting.

13 Most allegers do agree that engaging the

14 licensee is fine with them.

15 Most importantly, and I can't emphasize

16 this enough, the staff verifies and validates any

17 information received from the licensee.

18 It is information that informs the staff's

19 process, it is information that is used in

20 conjunction with the NRC's independent assessment

21 of the concerns.

22 The staff believes that this is an

1 appropriate and effective process because the
2 licensee has primary responsibility for safe
3 operation of the facilities, and it seems
4 appropriate that the NRC engages them with nuclear
5 safety concerns, which is what we have received and
6 the only thing we accept in this process.
7 Secondly, the licensee is in a position to
8 promptly address the issues because they have ready
9 access to the equipment, the personnel, the data,
10 the history, and also engaging the licensee in this
11 practice gives the NRC good insights into how they
12 handle their employee concerns.
13 On the flipside, it provides the licensees
14 with excellent insights into their own safety
15 culture.
16 So, we have reaffirmed that the policy of
17 engaging licensees is appropriate, and we plan to
18 continue to do so.
19 Next slide, please.
20 The guidance by the way, has been enhanced
21 to articulate all of these points more clearly.
22 In the same vein, we've changed the

1 terminology we use to describe the process of
2 engaging licensee to more clearly articulate that
3 the NRC retains ownership of the allegation
4 concerns and the responsibility to address them and
5 authority to draw conclusions.
6 We used to call this process the referral
7 process, which to some implied we were lobbying the
8 issue over the fence to the licensee to do
9 whatever they thought appropriate.
10 In fact, the NRC does retain authority to
11 address every concern.
12 We independently do so and the term request
13 for information more clearly indicates the process that
14 we have in place.
15 Another significant enhancement was to
16 inform the resident inspectors and other inspectors
17 of allegation related information.
18 The process now requires that all resident
19 inspectors are informed of every open allegation at
20 their facility and other inspectors are informed as
21 appropriate.
22 Next slide, please.

1 As I said earlier, one of the key lessons
2 learned was the importance of involving allegers
3 throughout the assessment process.
4 As I said also, it is very rare that
5 allegers request not to be involved in the process,
6 but while we can't or won't mandate that they stay
7 involved, we have enhanced the guidance to ensure
8 that we strongly encourage their involvement.
9 In particular, based on public comments we
10 received, we want to ensure nearing the end of our
11 assessment of the concern that we engage the
12 alleger with how we address their concerns,
13 especially at the end.
14 So the guidance has been improved to
15 encourage that.
16 Further, as we discussed at the workshop,
17 we need to inform anonymous allegers that we have
18 caller ID at the NRC.
19 It seems like a no-brainer, but it was a
20 subject of some consideration as to how and when to
21 inform the allegers, but everyone agreed given that
22 we have caller ID and they want to remain anonymous

1 we should inform them that there is this number
2 that is showing up on our phone.
3 The staff will jot that number down, they
4 will inform the alleger of that, and they will
5 ensure with the alleger that it is an appropriate
6 number to use should we need to for emergency
7 situations, public health and safety; if we need to
8 contact them despite them wanting to stay
9 anonymous, if it's appropriate, should we use this
10 phone number and it gives the alleger the
11 opportunity to say, no, I'm calling from my boss's
12 desk or whatever their answer is to give us
13 maybe one more chance at providing contact
14 information with the alleger.
15 Lastly, also in response to public comments
16 we received, the guidance encourages more dialogue
17 with allegers.
18 We do provide written communication
19 throughout the process, we engage our allegers in
20 writing so that we have a documented document
21 upfront what we are going to look at so there is an
22 agreement there and also at the tail end, but there

1 are allegations that are either very complicated,
2 or involve emotional issues, very personal issues
3 to the allegers and the staff does communicate
4 verbally with the allegers as well.
5 We provide them with a contact name and an
6 800 number to contact us anytime they wish.
7 We recognize we can encourage our staff to
8 also reach out in those particular instances with
9 the dialogue prior to receiving the closure of
10 letter.
11 We clearly document now the NRC's effort to
12 verify and validate the licensee's response.
13 So when an alleger gets a response they
14 will say here is your concern, here is if we engage
15 the licensee, here is what the licensee responded,
16 and here is the NRC's independent assessment and
17 conclusions.
18 Lastly, should an alleger have any concern
19 with what they receive from us, and we receive
20 maybe 20-25 letters like that every year, the NRC
21 will conduct a senior management review of those
22 concerns that the alleger has to ensure that

1 follow-up is appropriate.

2 Next slide, please.

3 That is how we have improved our

4 communications with the allegers.

5 You will see a theme here.

6 It's about improving communications.

7 We also have improved communications with

8 the licensee.

9 Staff expectations with regard to the

10 licensee follow-up of our concerns, including the

11 independence of the evaluator they use, the

12 competence of the evaluator, and any plans they

13 have to address the concern.

14 We have mandated now in the letter to the

15 licensee, a phone call with the staff so that up

16 front as early in the process as possible, there is

17 a clear understanding between the licensee and the

18 NRC of what our expectations are for their

19 follow-up of this issue and our understanding of

20 where they're going.

21 Should we see them heading down a path that

22 we don't believe will address the issue

1 appropriately, we can steer them back in a
2 different direction.
3 We also require the licensees to document
4 clearly the basis for the scope and conclusions.
5 That was important in the Peach Bottom issue,
6 because as I said, they interviewed security
7 officers.
8 There were 4 teams of security officers on
9 site. They interviewed three of the four teams and
10 the video evidence received was for that 4th team
11 that wasn't interviewed.
12 Clearly indicating to the staff, if they
13 interview -- why that sample size is relevant and
14 reflective of the group as a whole is important for
15 us to know and we've articulated that in the
16 guidance.
17 Lastly, this also is a response to public
18 comments.
19 If the NRC finds any issue with the
20 adequacy of their response, the NRC will ensure
21 that the licensee understands what those
22 conclusions are from the Commission.

1 Sometimes -- often we will need to go back
2 to the licensee so they will understand that there
3 was some concern about their initial response.
4 Sometimes we don't need to go back to them
5 we have our independent assessment, and so although
6 we might differ with what they wrote, we haven't
7 always in the past gone back to them.
8 Clearly, that is a good idea that helps
9 them improve their process and their responses to
10 us in the future so we have committed to engaging
11 the licensee whenever we have any concerns about
12 the adequacy of their answers.
13 Next slide, please.
14 Finally, improving communications with the
15 public.
16 In the past the NRC has discussed
17 allegation information more publicly when it is
18 appropriate, when it can either help the public
19 understand the efforts the staff has gone to to
20 address an issue, particularly if that issue is
21 raised very publicly.
22 It is important for us to be able to

1 respond in a more public fashion than the process
2 usually allows.
3 But also, we have also found some
4 indications where when we start an inspection, it
5 has been beneficial for us to announce the
6 inspection.
7 We are here to look into concerns raised
8 about a particular issue.
9 That allows people who know we are on site
10 to bring forth information to us.
11 The problem is, there hasn't been guidance
12 for the staff about how to do that and how to
13 carefully do it.
14 We certainly don't want to send a message
15 to our stakeholders that if they come to the NRC, it
16 is publicly discussed.
17 There are times when it is, and when it is
18 the guidance -- it directs the staff to discuss
19 that with the alleger that brought the issue.
20 Explain to them that we will continue to
21 protect their identity and take into consideration
22 any concerns they have with publicly discussing the

1 issue.

2 Not their identity, but the issue.

3 Also, that when we publicly do so that we

4 clearly articulate why we are doing this that it is

5 not the norm, but that we are doing this publicly

6 for the following reason.

7 Next slide, please.

8 Lastly, we have put some process tools in

9 place to help the staff determine whether it's

10 appropriate to engage a licensee with a written

11 request for information, and finally when we do get

12 responses from the licensee to ensure that they're

13 adequate.

14 There is a checklist now in place.

15 Last slide.

16 The staff plans to issue the final guidance

17 by the 1st of February to the staff.

18 That guidance will be incorporated into the

19 staff's Management Directive. The policy related

20 information will go in the Management Directive,

21 and the practical day-to-day guidance, worksheets,

22 boilerplate language that we use with our allegers

1 will go into a manual -- a guidance manual for the
2 staff's use.
3 At that point, the NRC will be seeking
4 Commission approval of the Management Directive
5 with the policy related information in it.
6 Thank you.
7 MR. ZIMMERMAN: With that, we will pass the baton
8 to Shahram.
9 MR. GHASEMIAN: Good morning Chairman,
10 Commissioners.
11 Thank you for the opportunity to discuss
12 the Office of Enforcement's ADR, Alternative
13 Dispute Resolution Program, with you today.
14 My presentation is divided in three parts.
15 One is -- the first part is discussing some
16 general background as far as how we got to where we
17 are.
18 The second part is discussing some
19 statistical data, trends for the last five years or
20 so since its establishment in 2004.
21 The last part will be what our focus will
22 be for calendar year 2010 for our efforts, what we

1 will be focusing on.

2 In 2001, the NRC publicly announced its

3 intent to evaluate the use of ADR in its

4 enforcement program.

5 It solicited public comments to evaluate -- to

6 conduct its evaluation the NRC posed several

7 questions to the public as far as the disadvantage

8 or advantages of having an ADR program in the

9 enforcement program.

10 The scope, the type of ADR that may be

11 appropriate for use.

12 There were several workshops held, several

13 opportunities for public comments, and based on

14 internal and external comments, the

15 majority view was that ADR would have a

16 beneficial role in the enforcement program.

17 In 2003, after receiving the staff's

18 recommendation to have a pilot program, ADR

19 program, the Commission approved development of

20 such a program.

21 After that, there were several opportunities

22 for public comments and there was a public meeting

1 held as well.

2 The Commission approved the staff's

3 recommendation for the program with two notable

4 changes.

5 First was -- and they primarily dealt with

6 early ADR, which I will discuss later, which is the

7 program that starts prior to initiation of an

8 investigation.

9 Those changes were that we would offer

10 early ADR for all cases, without the

11 significance of the case.

12 Also, if there would be a settlement, it

13 would be in place of, there would be no

14 investigation conducted by the staff.

15 In 2004 the NRC implemented the program

16 which includes essentially two entirely different

17 subprograms.

18 The first part is early ADR and the second

19 part was the Post investigation ADR.

20 Early ADR is the program where it starts

21 before any investigation has been initiated, it

22 solely deals with allegations of discrimination.

1 The parties are the alleger and the
2 employer in most cases, the licensee.
3 Any settlement that may result cannot
4 encompass the underlying safety, or any safety
5 issues that may have been raised.
6 Bottom line, it solely deals with the
7 allegation of discrimination, not any other safety
8 issues.
9 Now, the early ADR is rather flexible.
10 To the extent the parties, the employer, or
11 the alleger don't want to use a mediator that is
12 offered through our neutral administrator,
13 Cornell University, they can select their
14 own mediator and use the licensee sponsored ADR
15 program.
16 For our discussion today, I will include
17 that program along with my discussion of early ADR.
18 The number of cases that have come to us
19 the last five years have been a handful.
20 It didn't require -- it wasn't appropriate
21 to have it’s own part, so I included that
22 discussion in the early ADR but essentially the

1 process is the same.

2 If there is a settlement and agreement and

3 we get the agreements, we review it to ensure that

4 there are no restrictive covenants in violations of

5 the applicable employee protection rule.

6 If there isn't any of such covenants, then

7 we close out the allegation and we don't conduct an

8 investigation.

9 The post investigation ADR, as the title

10 indicates, it is after our Office of Investigation

11 has issued -- it has conducted an investigation and

12 has issued its report.

13 The parties for post investigation ADR are

14 the NRC and the licensee, or contractor or

15 individuals.

16 The scope of that program is for

17 discrimination cases and other wrongdoing cases.

18 Whether it is early ADR or post

19 investigation ADR, these programs are entirely

20 voluntary. To enter the program it is totally

21 voluntary and any party can decide to exit the

22 program at any point.

1 Bottom line, no party is forced to engage
2 in ADR or even stay in ADR.
3 CHAIRMAN JACZKO: Can I get you to clarify?
4 It is voluntary, but can either party enter
5 the process?
6 In particular, post investigation ADR or
7 does it have to be offered by NRC?
8 MR. GHASEMIAN: No, it doesn't have to be offered
9 and there's been cases -- there has been cases that we haven't
10 offered, but generally speaking we do unless there is a
11 particular --.
12 Now, the benefits that these programs offer
13 in early ADR, reason tells us that if the parties
14 settle their dispute earlier the negative impact on
15 the work environment of the site where the
16 discrimination allegation arose is less.
17 Earlier resolution, chances are less damage
18 to the work environment.
19 Also, an early ADR, typically we get
20 quicker -- well, we do get quicker resolution to
21 disputes as compared to going through the entire
22 investigation process or a full-fledged litigation.

1 It's less resource intensive for all
2 parties involved, for the alleger, for the company,
3 and ultimately for the NRC as well.
4 Post investigation ADR, the primary benefit
5 is that we get broader and more comprehensive
6 corrective actions.
7 As an example, instead of getting
8 corrective actions addressing one particular site,
9 there have been many instances where we get
10 corrective actions that are fleet-wide.
11 Where in traditional enforcement, usually
12 it was site specific and now we are getting a lot
13 through confirmatory orders that we issue through the
14 settlement -- through the mediations, they are fleet-wide.
15 The next slide, basically now we are going
16 to get into the second part of the presentation as
17 far as talking about numbers and trends.
18 The blue chart deals with early ADR and the
19 green chart is post investigation ADR.
20 On average, rough average, the last five
21 years, we get about 40 cases a year.
22 More so for early ADR cases than post

1 investigation cases.

2 In early ADR we open a case when the

3 alleger agrees to engage in ADR.

4 We only go -- basically, the process may be

5 a follow-up to your question Mr. Chairman, we don't

6 offer ADR to the licensee unless the alleger first

7 says yes.

8 If the alleger says no to ADR, then we

9 don't go to the licensee, we just basically go

10 down the normal investigation process.

11 We don't get into early ADR unless the

12 alleger first says yes.

13 Conversely for post investigation ADR we

14 open a case when the licensee or the contractor or

15 the individual agrees to engage in ADR.

16 Just looking at the chart a little bit on

17 the blue chart, in calendar year 2005, that is not

18 a spike as far as compared to 2006, it is basically

19 an industry trend as far as allegations of

20 discrimination being filed.

21 Going back several years prior to 2005, so

22 it is basically a downward industry trend and it is

1 not necessarily a negative reflection on the use of
2 the early ADR program to draw from 2005 to 2006.
3 Conversely for post investigation ADR,
4 generally we have been getting about -- opening
5 about 10 to 15 cases a year with a spike in 2009,
6 that is primarily due to the greater number of
7 individual actions that was taken in 2009.
8 As far as the early ADR trends used, I will
9 discuss the bars a little bit.
10 The yellow bar, as I kind of mentioned
11 earlier, it is roughly the number of allegations
12 that are filed with the agency on a calendar year
13 basis.
14 The blue bar is the number of allegers
15 agreeing to engage in mediation; orange is when the
16 licensee agrees to mediate, and the red is when
17 there is a settlement agreement.
18 Putting the best fit straight line, the
19 trends are positive as far as the number of
20 allegers agreeing to engage in ADR and number of
21 licensees engaging in ADR and number of settlement
22 agreements.

1 2009 there is still eight pending cases,
2 even in the best case scenario, which I don't think
3 we will get eight settlements, so there is a drop
4 in 2009.
5 Straight line from 2006, it is generally an
6 upward trend, and we view that as a positive
7 reflection of the program, the greater use.
8 Another positive data is that when we get
9 two parties -- that the numbers indicate that when
10 we get two parties in the room the chances of
11 settlement are 50%, roughly.
12 We think that is a positive thing.
13 As far as timeliness of the early ADR
14 program, our goal is to, from the date when the
15 parties agree to engage in mediation to settlement
16 agreement, for it to take no more than 90 days.
17 We have been trending upward around 120
18 days, and that is partly been due to the diversion
19 of resources in the office to other high-priority
20 projects in the last few years.
21 Our goal is to bring that down and put a
22 little bit more focus on it.

1 There are so many stages in the process
2 that if we can shave a week or two at each stage, I
3 think the trends will come down.
4 But even if at the 120 day average,
5 as compared to a normal investigation process or
6 litigation, it is far better -- more timely than
7 the litigation or normal investigation process.
8 For post investigation ADR, as I mentioned
9 earlier, we are getting -- we get about 10 to 15
10 settlement cases a year, which our settlement
11 agreement is issued publicly in a confirmatory order
12 which reflects the terms of the agreement and
13 basically for the most part, the history of the
14 case in a public matter.
15 The blue bar reflects the number of
16 escalated actions based on OI investigations per
17 year.
18 As far as comparative data we are settling
19 about 20 to 50% of the OI cases that are processed
20 from one year to another.
21 CY-2009, we are still in the process of
22 finalizing the data and those numbers are

1 estimates.

2 For post investigation ADR timeliness for

3 ADR cases, the total time that the blue or the upper

4 line is the total time.

5 The total time is from the date when the

6 Office of Investigation report is issued to when

7 the confirmatory order is issued, and that is

8 taking roughly about 300 days.

9 We have an annual reporting to Congress, we

10 have a metric that we meet, it is 0% or no cases

11 greater than 360 days.

12 In most instances, I think with maybe one

13 exception a year, we meet that on a regular basis.

14 We have an internal 180 day average as well

15 that we try to meet for OI cases.

16 The green line is roughly about 150 days,

17 which takes from the date when the parties

18 engage -- agree to engage in mediation to when the

19 confirmatory order is issued.

20 We are running above -- we are running

21 below our commitment to the Congress, but we are

22 running above our internal metric that we try to

1 hold to.

2 That's another area we will be trying to

3 focus on to bring down the timeliness issues.

4 For calendar year 2010, my efforts will be

5 focused on enhancing our public and internal

6 websites to make it a little bit more

7 user-friendly, provide more data about the program,

8 and highlight some of the major components of the

9 program.

10 Also, I will be focused on the

11 infrastructure for the program such as having more

12 written guidance, more training, and things of that

13 nature.

14 Lastly, as I have mentioned, our focus is

15 going to be on timeliness by providing a little bit

16 more oversight and support to the various internal

17 stakeholders that are involved in the ADR program.

18 That includes my presentation.

19 Thank you.

20 MR. ZIMMERMAN: Okay, and Doug Starkey will go

21 over the proposed Enforcement Manual.

22 MR. STARKEY: Good morning.

1 About three years ago now, the Office of
2 Enforcement undertook a project to revise the
3 Enforcement Policy.
4 It is fair to say that that project was
5 truly an agency-wide project.
6 We had involvement from all of the Regional
7 offices, the program offices, and OGC.
8 We put the policy out at various stages for
9 public comment and we received comments and
10 recommendations, and many of the recommendations
11 that came from the public are reflected in what's
12 before you as the proposed policy.
13 We started that effort in 2007, there were
14 several purposes to our objective of revising the
15 policy.
16 The first being adding new guidance to the
17 policy.
18 The policy was last revised in 1995, 15
19 years ago.
20 During that time, since then, several
21 regulations have come on the books that didn't
22 exist in 1995.

1 For instance, Part 26 and Part 52, so we
2 took into account those new regulations.
3 We added guidance that is not presently
4 addressed in the current policy.
5 For example, alternative dispute
6 resolution, and import and export of NRC regulated
7 radioactive material.
8 Next slide.
9 We took this as an opportunity, also, to
10 clarify the use of terms.
11 This revised policy includes a glossary
12 which doesn't exist in the current policy.
13 Even though the glossary is not intended to
14 be all-inclusive, in other words it is not
15 exhaustive, it does include those terms that are
16 most frequently used during an enforcement process.
17 We also took this opportunity to remove and
18 and update outdated guidance.
19 For example, the term “sealed source” is used
20 in the current Enforcement Policy.
21 We proposed to replace that term with the
22 term “regulated material”, because whether a source

1 is sealed or unsealed, the enforcement actions are
2 the same, we don't treat them any differently.
3 We are also proposing to remove what we
4 consider to be an outdated administrative action,
5 that being the letter of reprimand.
6 Historically, the letter of reprimand was
7 used, but we found through experience that it tends
8 to be overly threatening.
9 In its place we have been using, in recent
10 years, closeout letter to an individual for
11 individual actions that don't rise to the level of
12 notice of violation are in order.
13 We are proposing to delete the use of the letter
14 of reprimand.
15 Next I would like to talk about the public
16 involvement in this process.
17 Historically, the NRC has not involved the
18 public in any revisions of the enforcement policy.
19 In 1995, during the last major revision,
20 there was some public involvement, but historically
21 that is not the case.
22 Because we knew this was going to be a

1 major revision to the policy, in 1997 we published
2 a notice in the Federal Register advising the
3 public of our intent to revise the policy and
4 soliciting comments.
5 In 2008, we published another Federal
6 Register notice with a draft revision of the
7 policy.
8 In 2009, a third Federal Register notice
9 advised the public of violation examples in the
10 policy that were being significantly revised.
11 From these public announcements, we
12 received approximately 250 comments, in particular
13 on the revised policy, the draft, and on the
14 violation examples.
15 Many of those examples -- many of those
16 comments that we received are reflected in the
17 policy that was the final product.
18 We also made those comments and the NRC
19 responses to those public comments, publicly
20 available on the Office of Enforcement webpage and
21 they're publicly available in ADAMS.
22 At least two of the program offices during

1 this project had public meetings of their own and
2 those officers were NRO and NMSS.
3 They had those meetings because essentially
4 they wanted to get some input on their interest, on
5 their programs that were reflected in the revised
6 policy.
7 They had those meetings in 2007 and 2008,
8 and from those meetings, those offices provided the
9 Office of Enforcement many recommendations,
10 especially in the area of the violation examples of
11 the policy.
12 The staff intends to approximately 18
13 months after the implementation of this revised
14 policy, to go out again for public comments because
15 there were significant comments or changes made
16 especially in the area of the violation examples
17 and we would like to get feedback on that after
18 there has been a period of time for implementation.
19 Next I would like to talk about some of the
20 changes to the policy.
21 The most significant changes are in
22 the area of the violation examples.

1 The current policy has what is typically
2 referred to as eight supplements that contain
3 violation examples at severity levels I, II, III,
4 and IV in eight different activity areas.
5 We are proposing in this revised policy to
6 expand those areas from 8 to 14 areas and there are
7 several reasons for doing that.
8 Primarily for clarification and use, but as
9 I said, there've been changes in regulations in the
10 last 15 years, and so we are adding new supplements
11 and new violation examples based on those changes
12 in regulations.
13 And where you will see those changes are in
14 the supplements regarding reactor and fuel
15 facility security, information security, material
16 security, fitness for duty, and discrimination.
17 We are also proposing to make two additions
18 to the table of base civil penalties to include two
19 areas -- two categories that are not currently in
20 the table of base civil penalties, and those are
21 for high-level waste repository and uranium
22 enrichment facilities.

1 We are also proposing to increase
2 increase the base civil penalty for uranium
3 conversion facilities.
4 Next slide.
5 One thing you will notice as far as the
6 optics of the new policy, what does it look like.
7 There are several things that we did to
8 improve the usability of the policy.
9 We have laid the policy out so it flows
10 logically in the same order that we typically
11 handle an enforcement action.
12 That is, we first identify that a violation
13 occurred, we assess the violation, we then
14 disposition the violation. There is guidance then
15 on how to use enforcement discretion, there is
16 guidance on actions, individual actions, actions
17 against individuals, and the last part of the
18 policy will contain the violation examples.
19 We have enhanced the table of contents to
20 provide more information and to make it more
21 user-friendly.
22 As I mentioned earlier, we have added a

1 glossary of terms that are frequently used in the
2 enforcement process.
3 A glossary which doesn't exist in the
4 current policy.
5 Where we could, we used terms as they are
6 defined in other documents.
7 We did not attempt to use the enforcement
8 policy as the place to initially define terms, but
9 we recognize that there are some terms such as
10 traditional enforcement or pre-decision enforcement
11 conferences that are very unique to the enforcement
12 process.
13 In those cases, we provided the definition
14 as those terms are commonly used in our day-to-day
15 enforcement activities.
16 We look forward to hearing from the
17 Commission on the policy and this concludes my part
18 of the presentation.
19 MR. BORCHARDT: And that concludes the staff's
20 presentation.
21 CHAIRMAN JACZKO: Thank you, Bill, and I think it
22 was a very interesting presentation.

1 Highlighted a lot of different areas and
2 very important areas for our regulatory program.
3 We will begin the Commission portion with
4 Dr. Klein.
5 COMMISSIONER KLEIN: Thank you.
6 Very good presentation and welcome Roy in
7 your new capacity.
8 At the inter-briefing last time your
9 contributions were acknowledged.
10 Probably after 9/11, your time at INSIR could have
11 been measured in dog years because it was obviously
12 a very busy time, so your contributions there were
13 certainly acknowledged.
14 MR. ZIMMERMAN: I appreciated the opportunity
15 given to me to be able to start up and operate that office
16 and it meant a lot to me, so I was very appreciative.
17 COMMISSIONER KLEIN: As indicated, Billie had sent
18 in a letter that I thought was very thoughtful.
19 Have you a chance to look through that and
20 start addressing those issues?
21 MR. ZIMMERMAN: We have read through it, we had
22 talked about it amongst ourselves and came to a similar

1 conclusion that there are a lot of good issues that require
2 us to take a hard look at and see where we stand.
3 I think in a number of areas, we align with
4 the points that she made.
5 I thought her letter was outstanding.
6 In a few areas we would likely want to
7 engage with her, because there are a few areas we
8 wanted to make sure that she saw the progress that
9 we felt we made and see where that conversation
10 went.
11 In some cases it looked like she didn't see
12 some of what we were doing to talk more frequency
13 and greater opportunities with allegers, which is
14 something that we want to be able to do.
15 We wanted to have some of that dialogue.
16 Basically, we benefited from it.
17 The bottom line that I think we come from
18 is that I don't see anything in which she provided
19 that would slow us down in our desire to be able to
20 issue the AGM revision.
21 As we work toward the Management Directive
22 8.8 over the next four to six months or so, that

1 gives us an opportunity to go back to her letter,
2 as well as what may come from the from the second
3 panel, to be able to see if there is other items
4 that we want to continue to fold in as we work on
5 the Management Directive.
6 I believe that the work that we have done
7 through the AGM moves further in the direction of
8 what that letter was requesting.
9 I think we can accomplish both move
10 forward, get close to where Ms. Garde was
11 suggesting and then before we come forward with the
12 Management Directive 8.8 for your review and
13 approval, we are able to address whether we
14 included, what was our basis, and more importantly,
15 what didn't we include, and what was that basis.
16 COMMISSIONER KLEIN: Thanks.
17 In our recent pre-brief you made a comment
18 that I thought was really enlightening, and that
19 was the comment that the contractor made about
20 people that raised allegations and through the ADR.
21 That their intent is not just to get money.
22 Could you comment a little bit about that?

1 MR. ZIMMERMAN: I think that the individuals that
2 we have been interacting with that are looking at ADR, that
3 they really want their issue to be addressed.
4 It is not all about dollars and cents, and
5 we can tell when we interact with them that they
6 have a sincere desire of understanding what is
7 happening with that particular case, what was found
8 in that case.
9 I feel like I was inappropriately
10 discriminated against, for example.
11 It is not just the dollars that they are
12 focused on as much as getting the rest of the
13 picture to determine that I was or I wasn't,
14 and what was the ramifications of what came out of
15 that for the individual that I had my interaction
16 with.
17 So, they are interested in getting more of
18 the big picture on that.
19 We have recent examples similarly on that
20 point.
21 COMMISSIONER KLEIN: Thanks.
22 Lisa, your comments on Peach Bottom

1 certainly brought back a lot of memories as --

2 MS. JARRIEL: Good times, good times.

3 COMMISSIONER KLEIN: -- as we have commented on.

4 Commissioner Svinicki as indicated had

5 missed all that excitement but I know that she's

6 read all the documents.

7 I would just like to publicly comment and

8 thank Senator Carper for his involvement in that

9 whole process.

10 I thought the fact that he took an entire

11 day out of his schedule and went to Peach Bottom

12 and really talked to the people to find out what

13 those issues were.

14 It really demonstrated his personal

15 commitment to making the industry and us better in

16 terms of those kinds of issues.

17 On a question, you commented you have

18 38,000, or you had 38,000, allegations, in general,

19 how many do we get a year?

20 MS. JARRIEL: The comment was 38,000 concerns.

21 Actually, each allegation comes with

22 multiple concerns.

1 Each alleger brings multiple issues,
2 typically.
3 On average, we receive between 500 and 600
4 allegations and 1,500 concerns a year.
5 For the last two years, that number has
6 increased by 10%.
7 I think we are close to 650 this last
8 calendar year, allegations that the staff has
9 received.
10 COMMISSIONER KLEIN: When you look at -- that is,
11 obviously, a large number and I think it is really important
12 as indicated that we have this process so people can bring
13 their allegations and concerns forward.
14 How would you bin those in terms of the
15 500? How many would you say are just general lack
16 of communication issues, how many are what I would
17 call problems, and then how many are really
18 significant problems?
19 MS. JARRIEL: It is hard to say as far as the
20 communications issues.
21 I would say that, typically, when the NRC
22 substantiates -- we substantiate about 30% of the

1 concerns that we receive, but on average it is 10%
2 that have -- that require any significant staff
3 regulatory response.
4 So, I would say about 10% or less have a
5 significance to them.
6 That's not to say that the ones that don't
7 have a significance are all caused by a lack of
8 communication.
9 Since 9/11 another way we bin those is by
10 discipline.
11 We have received -- the majority of
12 concerns we have received over the years since 9/11
13 have been security related concerns and chilling
14 effect concerns.
15 We look at those trends also to see if
16 there can be process improvements to deal with
17 those issues, and we have made substantial improvements
18 to the process because of the volume of security
19 related concerns we have received over the years.
20 COMMISSIONER KLEIN: Great, thanks.
21 Shahram, obviously ADR is an area that I
22 think you all have done a good job and I think part

1 of the challenge is just getting the word out that
2 it is an option.
3 How would you describe your progress on
4 getting the word out?
5 MR. GHASEMIAN: My efforts this year are going to
6 be multifaceted.
7 We are going to enhance our brochures that
8 we have for early ADR and post investigation ADR,
9 we will advance the websites to provide a little
10 bit more user friendly, easier to find information
11 on our website, and also, I will try to get out and
12 attend some conferences and give some presentations
13 at various stakeholder conferences and just being
14 available.
15 Those are the different ways of approaching
16 it.
17 COMMISSIONER KLEIN: One of the ways I think that
18 it could be sort of advertised are case studies, people who
19 have had a good experience. But in general people who go
20 through the ADR probably are not willing to be on camera
21 saying that I found a problem and it was well handled.
22 I guess the question would be, is there a

1 way that you could take some people with good
2 experiences and maybe either you or Roy could
3 appear on a video and say, this is the process we
4 have available, here are the comments people have
5 made, so that they would be more of an awareness?
6 MR. GHASEMIAN: Absolutely. I think that is a
7 great idea and we will look to see how we can implement
8 something like that.
9 MR. ZIMMERMAN: If I can add just for a moment, I
10 think Shahram's answer was a good one.
11 I think we are going to do the things that
12 Shahram went over.
13 When you read back in the materials when
14 the pilot was done, we received comments that were
15 similar.
16 That there were stakeholders that were
17 involved in the process that still had some
18 question in their mind about how the process was
19 going to work, and a little bit of unease in really
20 understanding that.
21 The fact that that went back to 2004
22 timeframe and we are in 2010 the steps that Shahram

1 has laid out will likely fix this problem,
2 hopefully, but I think because of the history I
3 feel like we are carrying some baggage that I want
4 to shed and that is to try to kill this one dead by
5 doing a little bit above and beyond because of the
6 fact that it has some legacy ties to it.
7 We will look at taking all of the steps
8 necessary so that we don't carry what we found in
9 2004 into 2010 and beyond.
10 We don't want to carry it beyond.
11 COMMISSIONER KLEIN: I'm not sure we would want to
12 go to the extent of having Bill's poster in all of the
13 elevators.
14 Thank you.
15 CHAIRMAN JACZKO: Commissioner Svinicki.
16 COMMISSIONER SVINICKI: Thank you all for the
17 presentations.
18 There has been, as Commissioner Klein said,
19 I wasn't here for the excitement of Peach Bottom,
20 but I'm in kind of a different place and it's an
21 interesting place because if you weren't present
22 for the Agency's immediate examination of how it

1 handled the Peach Bottom event, I might view it
2 slightly through the prism of saying an important
3 thing in reaction to a very shaping event
4 such as that, of course is that the pendulum
5 doesn't swing too far in any other
6 direction.
7 As I looked at both the AGM, the
8 Allegations Guidance Memorandum which I will call
9 the guidance because I don't like using a lot of
10 acronyms, and then revisions to the Enforcement
11 Policy, one thing and you can have different views
12 around the margins, but something you take away
13 from examining all of these materials is how
14 important healthy allegations and concerns
15 program is to our work as a regulator.
16 I know we all take with great seriousness
17 that we want to strike the right balance here and
18 maybe that term, that turn of phrase is a little
19 over used, but it is so important in this case that
20 we have that balance and that any program, because
21 there is not going to be a one-size-fits-all just
22 like each alleger concerned individual is bringing

1 their unique concerns that they have, but also they
2 bring their issues of being comfortable with our
3 allegations process.
4 We need to strike the right balance.
5 I would say that looking through everything
6 I think that we have done a good job with trying to
7 do that.
8 I think that is my overall impression.
9 I think that the guidance is very
10 impressive. Some might look at it and say there are
11 a lot of templates in here, and the pejorative term
12 might be scripts, and we don't want scripts because
13 then I would be violating my principle about the
14 fact that we can't have a one-size-fits-all.
15 And if we don't position the NRC staff that
16 is on the frontlines of working with allegers and
17 concerned individuals, if they are not equipped
18 with the flexibility to handle the situation, to
19 handle the communication, then I think that that
20 would be a vulnerability of the program, but that
21 is not what I see here in the templates.
22 I think that if I were an NRC staff person

1 working directly in this program I would find it
2 extremely helpful to have the suggestions and the
3 right words in front of me.
4 It is kind of, it is not exactly laid out
5 in a tree kind of statement but sometimes it will
6 say if the alleger has expressed this concern then we need
7 to move in this direction, but I think with the
8 right training and other things, that can be not
9 confining but very helpful to our staff as they
10 work through the process.
11 Lisa, I'm going to say though, the one
12 thing that struck me a little bit cold and maybe
13 it's because I don't understand the motivation for
14 it, it is this text that we want to add in
15 about a public -- going public with things in
16 public discussions.
17 We'll hear in the next panel from
18 individuals who spent their careers working around
19 allegers and concerned individuals, and I have not.
20 So, this is just maybe a human reaction to
21 it that says, if there is anything that is going to
22 chill me if I'm a concerned individual, you might

1 say to me, I need to give information to your
2 employer, to the licensee you've asked me to get to
3 the bottom of this.
4 I might be won over to say I'm reluctant,
5 but that is absolutely necessary because it is a
6 practical matter.
7 But when we get to this discussion and have
8 transmittals to allegers that say, we may need to
9 go public with this, not with your identity, but
10 again, I am sensitive because if I've asked for
11 some confidentiality of my concerns talking to my
12 employer is still something that I can be
13 comfortable with to a certain extent.
14 But I might be confused of why NRC would
15 say to me, I might need to go more broadly public
16 with this. You can be certain that I won't have
17 details traceable to you, I think that that might
18 concern me quite a bit.
19 If you could talk a little bit more about
20 the instances of when that would be necessary, I
21 would hope that no alleger would feel that we are
22 doing it, we need to do it to burnish our image

1 somehow as the NRC.

2 That is not the right -- I think that comes

3 at much too high a price of chilling the effect on

4 allegers and concerned individuals.

5 Can you talk about what this is an

6 outgrowth of and why we would do it?

7 MS. JARRIEL: Sure, thank you for the comments and

8 your question.

9 And to the comments, I will agree that it

10 may look like there's a lot of detail but we are

11 also using this effort as a knowledge management

12 tool, recognizing that there will be turnover in

13 the allegation process and those coming behind

14 these very seasoned individuals that

15 manage the process for us today, we

16 want to be able to have that guidance

17 documented somewhere for the future NRC staffers.

18 Now, to go to your question. I agree, it is

19 very rare that the NRC discusses allegation related

20 information publicly.

21 It is rarer still that the allegers names

22 are used, and that is only in the case when they're

1 recognized as a widely known alleger because they
2 have informed the public in a very public way that
3 they were the ones that brought this particular
4 issue to the NRC.
5 In recent history we have found it very
6 beneficial in certain specific cases to be a little
7 more engaging with a broader audience than just the
8 alleger, or the couple of individuals at the
9 licensee staff that will be evaluating a concern.
10 I can use specific examples. For instance,
11 there was a case where concerns were raised very
12 publicly by anonymous allegers about security
13 issues at a Southwestern plant.
14 The staff found early on in trying to
15 address these concerns that it would benefit us
16 greatly to get at the bottom of the issue, first of
17 all, to be able to engage the security staff at
18 that facility.
19 We did have a mediator that had brought the
20 issues to us who knew who the particular allegers
21 were and we engaged that mediator, and they went
22 back to the allegers and found that that wouldn't

1 be an issue with them, and we were able to gather a
2 lot more information being more forthright with the
3 staff at that facility.
4 Then, at the tail end, because they were
5 raised so publicly, to be able to respond publicly I
6 understand your concern about don't alienate the
7 public into bringing these concerns to us, but to
8 be able to respond publicly did serve to give the
9 public a clear understanding that the NRC did
10 something with the information that was brought to
11 them.
12 When you raise a concern and then you're
13 quiet about the answer, it doesn't go very well
14 with public confidence that the staff can and
15 will address those issues.
16 We do it rarely. We do in with complete
17 discussion with the alleger about any concerns they
18 would have in doing that, we protect their identity
19 throughout the process.
20 In the end, ensure when we are
21 communicating publicly that we also explain that we
22 don't do this normally and here is why we are doing

1 it in this particular case.

2 So people aren't left with the impression

3 that anybody who comes to us is going to have a

4 public discussion about the issue.

5 COMMISSIONER SVINICKI: That is very helpful,

6 thank you for that response.

7 Again, some of the templates, it became

8 obvious to me in certain cases that we had standard

9 text that said this would be an extreme example but

10 it said things like, we are aware that you

11 scheduled a press conference on your concern.

12 So in that case, the alleger has already

13 been very public about it.

14 As you are saying, to be able to take

15 forward the agency's response and discuss that more

16 publicly is appropriate.

17 I just lay this caution out there though. In terms

18 of moving from the guidance to the Management

19 Directive if there is anything you can do, you

20 talked about knowledge management and knowledge

21 capture is to capture the right ways that we can be

22 communicating that it's a rare instance and that it

1 would be handled with the appropriate discretion so
2 that allegers don't become sensitive to that point.
3 Doug, on my theme of flexibility and a
4 robust allegations program allows the NRC staff to
5 address unique situations with the right tools, you
6 mentioned the policy has gone from -- I think we
7 are calling them 8 examples to 14 examples.
8 When you look at it, it is actually much
9 more than that because each of the areas has
10 multiple -- for each severity level we have
11 multiple examples.
12 In those eight areas, each one of the eight
13 areas might have 10 to 12 items listed under there.
14 Do you think that going to now 14 different
15 areas with very specific types of, here is the
16 transgression or violation and here is it's mapped
17 over to a severity level, do you think that that is
18 too confining and what is the overall theme there
19 for really expanding that?
20 It is something commenters wanted more
21 examples? Licensees are looking to have no
22 violations whatsoever, so whose guidebook is this

1 so the public understands how we grade various
2 types of violations?
3 MR. STARKEY: Let me answer the question with two
4 responses.
5 We tell inspectors, we tell the program
6 offices, and the regions that the examples in the
7 Enforcement Policy, whether it's the current policy
8 or the revised policy, are not intended to be
9 all-inclusive, they're just examples.
10 Early on in this project to revise the
11 Enforcement Policy, the initial objective was, as
12 you may know the current policy is 80 pages in
13 length, which is long for a policy document.
14 Our original objective was to make a truly --
15 more of a policy document and take a lot of the
16 guidance out and put that guidance in either a
17 program office document or the enforcement manual,
18 which is the staff guidance manual, which is the
19 staff guidance document.
20 The feedback we got during the public
21 comment period and we got it from -- we received it
22 from more than one responder was, you've taken too

1 much out of the policy.

2 The concern was if you take material out of

3 the policy, you are deviating from what would be Commission

4 guidance and you are relying on staff guidance.

5 We would rather have more information in

6 the policy than less information.

7 That caused us midstream to essentially

8 change direction. At that point, prior to that,

9 we had paired the violation examples down to very,

10 what I would call, generic examples of each of the

11 severity levels.

12 But based on those comments, we stepped back

13 and say is that something we really want to do.

14 We agreed with the public comment.

15 So at that point we sat down, we got a lot

16 of input from the various program offices and the

17 regions, we came up with new examples, we actually

18 expanded the number of examples in the policy.

19 To answer your question, yes there are more

20 examples today in the revised policy than there are

21 in the current policy, primarily because of

22 comments we received from the public.

1 MR. BORCHARDT: Part of the motivation for that is
2 you have many different implementers of this policy and this
3 program.
4 At least the four regions, the program
5 offices and we are sensitive to the idea of having
6 a consistent treatment regardless of where the
7 licensee is located.
8 That argues for the more examples.
9 COMMISSIONER SVINICKI: Thank you; if we have
10 another round.
11 CHAIRMAN JACZKO: Well, I think I will touch on
12 that point.
13 I think Commissioner Svinicki raises a good
14 one and it is probably the most important issue
15 with our Allegations Program is to do enough that
16 the allegers feel like they get good response, but
17 not do something that causes the allegers not to
18 want to come forward.
19 I think it was interesting -- I was
20 surprised, my initial reaction had been that we
21 shouldn't when all of these issues were being
22 developed, that we shouldn't change our policy of

1 not going back to allegers.

2 I think it is really an advantage of the

3 process that we went through here and engaging

4 stakeholders, that that was something that was quite

5 obvious from people who practice this all the time

6 that was an obvious thing and we probably weren't

7 doing enough to stay in touch with the allegers.

8 I think one of the points in Billie Garde's

9 letter is that the memorandum doesn't quite

10 capture enough of how we can stay in

11 communication, stay in contact.

12 I think it is useful in that context on the

13 public comment to make sure.

14 I guess I would ask in that context, I've

15 probably come around a little bit in my view, maybe

16 you can reinforce a little bit how our new guidance

17 on engaging allegers, even if they indicate that

18 they don't wish to be contacted.

19 How that won't somehow violate that trust

20 for other allegers that might want to come forward

21 and then may get some hesitance if they think they

22 are not going to be, or be able to stay as

1 anonymous as they would like.

2 MS. JARRIEL: Yes, thank you.

3 Initially, the recommendation was that we

4 engage an alleger that requests no further contact

5 no matter what and we mandate it.

6 The internal stakeholders and the staff

7 felt very strongly that because these are very

8 unique issues brought to it, everyone is different,

9 everyone is unique, all the circumstances are

10 unique, that it would be wrong to insist to mail a

11 letter to this individual in every single case.

12 That there are going to be cases where the

13 alleger literally wants to provide the information,

14 but is not willing to engage any further, for very

15 personal reasons that we can't even comprehend

16 right now at this table.

17 Although the guidance encourages the staff

18 to press with the individual how much better

19 our evaluation is with their involvement, it

20 does not mandate that we are going to send them a

21 letter no matter what about how their issue was

22 addressed.

1 Regarding the caller ID issues, you're
2 hard-pressed to find in this country a phone that
3 does not have caller ID, or the ability to find out
4 what number the phone call was made to.
5 It is a matter of courtesy, we believe, to
6 inform very publicly all allegers calling in that
7 we have that capability.
8 But to do so very gingerly and respect the
9 fact that they wish not to provide contact
10 information if after we've explain how much better
11 we are when we have it throughout the process if
12 they continue not to want to be involved for
13 whatever personal reasons, we will indicate that
14 this number has popped up on our phone and if, in
15 the case of significant issue to protect public
16 health and safety, we need to contact you, is this
17 an appropriate number to call.
18 That gives them another opportunity to say
19 yes or no.
20 That information is documented on our
21 intake forms so the staff understands they are
22 anonymous, they don't want to be contacted, here is

1 that number, and here's how they responded to that
2 question about whether it was an appropriate
3 number, so that we don't inappropriately use that
4 information.
5 We feel that because the basis for the
6 allegation program is protecting public health and
7 safety, that's our mission.
8 If we need to get more information from
9 them and talk to them, it behooves us to jot that
10 number down.
11 CHAIRMAN JACZKO: And you are comfortable that
12 that is not going to jeopardize long-term the ability of
13 other allegers to come forward.
14 MS. JARRIEL: No, because the majority of allegers
15 want to stay involved in the process, and the majority of
16 allegers are nonanonymous.
17 Even those that don't want to give us a
18 name, we find creative ways to continue dialogue
19 with the individuals by providing them -- agreeing
20 on a particular phrase that they can use when they
21 call the number and ask for the allegation
22 coordinator.

1 If they use this phrase, it means that's
2 the alleger of this allegation.
3 We maintain contact with the majority of
4 our allegers, but this process now encourages the
5 staff -- in the past, we honored their request
6 almost without thinking.
7 You don't want to be involved, okay sure.
8 We want to still honor the request if after
9 we've talked to them more about how important it is
10 for them to be involved.
11 I believe very, very strongly in that.
12 We have examples in our hip pocket where
13 we've gotten near the end of a process and talked
14 to the alleger and they say, wait a minute, did you
15 talk to Bob?
16 And we're like, Bob, you didn't tell us about Bob.
17 Bob who?
18 And we go back and it's sent us off in a
19 different direction.
20 Engaging the allegers constantly up until
21 the end -- when we think we are concluding
22 something is very important to us.

1 The guidance just presses that point now.

2 CHAIRMAN JACZKO: One of the enhancements

3 certainly I think in the new allegations program is how we

4 go about dealing with issues.

5 We have changed terminology I think, we not

6 only changed terminology but I think we changed

7 practice a little bit.

8 Instead of talking about referrals, we now

9 talk about gathering information.

10 Which is, in many ways how we do all of our

11 activities.

12 Inspectors go out and do a lot of

13 information gathering, working with licensees.

14 I think we will hear later, the other

15 panels, about -- still some discussion on that

16 issue of whether we have the right approach when it

17 comes to the level of involvement of licensees in

18 responding, or whether or not we should have more

19 direct NRC investigation on that.

20 One of the issues that had come up in the

21 past, I think in this idea of what they call the

22 Office of Investigation Assist, when they go out in

1 a direct capacity as conducting a formal
2 investigation, but rather use their skills as
3 investigators to help gather information and get
4 information.
5 As I was going through the Allegations
6 Guidance Memorandum, there is some reference to
7 those kinds of approaches, but I'm wondering if you
8 think there's enough specificity in there, again,
9 so in the future that the people who are using this
10 program know that that's a tool that's available to
11 them and what kinds of circumstances they will be
12 able to use that and what times it's appropriate.
13 MS. JARRIEL: That's a fair comment.
14 I can tell you from practice now we have
15 conducted some independent assessments of the
16 region's implementation of the changes and I can
17 tell you that assists are on the rise anecdotally,
18 but we can double-check and look at the Management
19 Directive to ensure that it appropriately reminds
20 the staff that that tool is available.
21 I do know that the Office of Investigations
22 is engaged in all allegations.

1 We conduct something called an allegation
2 review board. A senior executive chairs the board
3 and the Office of Investigation participates in
4 each of those concerns at the beginning of the
5 process to determine how they can help to assist
6 the staff in getting to the bottom of the concern.
7 I can look at the guidance to see if
8 there's anything in the Management Directive that
9 can be added in that regard, and I will work with
10 the Office of Investigations on that.
11 CHAIRMAN JACZKO: That is something that does come
12 up for Commission review, it is probably an area I will want
13 to have some focus on and look at.
14 Again, bottom line it is important to say,
15 I think this is a strong program.
16 It is one we handle a large number of
17 allegations, we pursue a lot of information and a
18 lot of leads and do work that effectively.
19 I certainly wouldn't want anyone who is out
20 there listening to this meeting thinking that it's
21 not a viable program. It certainly is a viable
22 program and I think people should continue to use

1 it.

2 I think these enhancements are exactly

3 that, they're enhancements to make it even better.

4 Shahram, I thought I would ask you a

5 question.

6 ADR in principle is a good program.

7 I think it greatest strength perhaps is the

8 mediation ability or the mediation among the

9 parties affected, it is probably also in many ways

10 its biggest weakness, which is that that is a

11 process that happens behind closed doors, literally

12 and figuratively.

13 Maybe you could talk a little bit about how --

14 we are an agency that talks a lot about openness and

15 transparency and it's part of our -- one of our

16 organizational values is for that openness.

17 How do we maintain that with a program like

18 ADR, where it is invariably not something that is

19 conducted in an open way?

20 MR. GHASEMIAN: Thank you, Chairman.

21 I will focus my answer in talking about

22 early ADR and post investigation ADR given the fact

1 that they are entirely different programs.

2 In early ADR, the allegation of

3 discrimination comes through the allegation

4 program, and as we've discussed, confidentiality is

5 a major consideration dealing with allegations and

6 so on.

7 In early ADR we try to respect that.

8 The allegations are not only of a very

9 personal matter, they come through a very

10 confidential process, and they are dealt with in a

11 confidential way with the person's employers.

12 As far as how open that end of the program

13 is, it is really up to the parties and their

14 settlement agreement, how public they desire the

15 terms and conditions of their settlement agreement

16 to be.

17 In that respect, openness is balanced by

18 providing an environment where parties are free to

19 candidly discuss their issues and resolve them.

20 We do get involved at the tail end of

21 things, but from a public -- publicizing whether

22 there has been settlement agreements between two individuals,

1 an employer and their employee, generally
2 we don't and we leave that up to
3 the parties to decide how public they want to have
4 their agreements.
5 As far as post investigation ADR, openness
6 is definitely a consideration.
7 It was just balanced by mediation. One of
8 the benefits is that it's confidential, that
9 parties can speak candidly and share information
10 candidly.
11 At that point it is nonpublic, but we do
12 issue a confirmatory order at the end of the
13 process, so to speak, and in that confirmatory
14 order we do publicize the terms of the agreements
15 and history -- to a certain degree, the history of
16 the case.
17 So, that's the way we deal with the
18 openness part on post investigation ADR.
19 CHAIRMAN JACZKO: I think it is an important issue
20 and if nothing else this meeting and continue to talk about
21 ADR I think is an important way to reinforce the program.
22 I think it is also fair to say that at some

1 point we will probably have enough statistics to be
2 able to look and see whether it's really an effective
3 program.
4 I think I've said in the past, one of the
5 most high-profile ADR cases we have is dealing with
6 Nuclear Fuel Services in Tennessee.
7 We had a fairly unique order that came out
8 of the ADR issue we had or the enforcement actions
9 that we had with NFS, and I think time will tell
10 whether the order was effective.
11 Perhaps may have been more effective than
12 another approach.
13 I tend to think it was, but if in the end
14 the licensee doesn't ultimately change behavior,
15 then it may not have proven to be as effective as
16 it could have been.
17 I think it is an important piece and it is
18 one that we have to continue to be vigilant about
19 as we go forward.
20 Use a little too much time, Dr. Klein do
21 you have any more questions.
22 MR. ZIMMERMAN: Chairman, can I make a comment on

1 that last point?

2 Shahram, keep me honest on this.

3 As I understand it, a similarity in

4 pre-decisional enforcement conferences of a

5 personal nature dealing with individuals is also a

6 closed process.

7 When we compare the ADR process being

8 closed, if we look at the merits of opening that,

9 we probably need to also be looking at about what

10 does this mean in terms of the PEC when you're

11 dealing with that.

12 You are really dealing with a lot of the

13 same sensitivities.

14 So, we would need to look, really, at both

15 processes; is that right?

16 CHAIRMAN JACZKO: I wasn't suggesting that we open

17 the project, you can't have an ADR process that is open.

18 I think we just have to be mindful of it

19 that I think we have to really be able to

20 demonstrate that it's an effective process, because

21 there is a sacrifice there and I think it's the

22 sacrifice of that openness and transparency.

1 I think we have an extra burden to make
2 sure that it is achieving ultimately the right
3 kinds of outcomes and the right kinds of
4 effectiveness.
5 So no, I think unfortunately you can't do
6 it any other way.
7 I think Shahram indicated with the post
8 investigation ADR we do issue a confirmatory order,
9 so the public is aware of what settlement agreement
10 was negotiated and that does provide a measure of
11 transparency there.
12 I think that's why it's particularly
13 incumbent upon us to make sure we can show that
14 it's an effective program because there has been a
15 loss there.
16 Commissioner Svinicki?
17 COMMISSIONER SVINICKI: I'll turn to ADR for a
18 moment since we're on that.
19 On early ADR, I think that this question is
20 most relevant to early ADR which is the
21 discrimination cases, our templates for
22 communicating remind allegers that there is a

1 Department of Labor process as well and we haven't
2 talked about that at all today.
3 People use this term of forum shopping
4 which I didn't really want to use it, but I don't
5 know a way to get to the question I'm asking
6 without using that term.
7 We do talk about the time frames of the
8 Department of Labor processes.
9 I would say that we alert allegers in our
10 our communication with them that whether or not
11 they are going into our ADR process, that does not
12 alter in any way these time frames for filing
13 something with the Department of Labor.
14 Could you talk a little bit about the fact
15 that allegers would have even another agency to go
16 to in the discrimination cases, and what the
17 experiences are in terms of our early ADR program,
18 and allegers having an opportunity to go elsewhere
19 with their concern?
20 MR. GHASEMIAN: Lisa can maybe supplement my
21 answer, but we do acknowledgement letters back to allegers.
22 There is a whole paragraph or two

1 about the alleger's rights under the Department of
2 Labor and what the timelines are to file a similar
3 complaint with the Department of Labor.
4 The fact that they filed a complaint with us or engaging in ADR
5 through our program doesn't toll that process.
6 We do try to inform the alleger of the
7 legal requirements in other -- at least the
8 Department of Labor.
9 COMMISSIONER SVINICKI: Well, maybe I was hoping
10 if possible, could you give some sense -- because I think to
11 myself that maybe allegers who would engage through our ADR
12 process that what they can -- an opportunity they have in
13 that is really to get to safety concerns, or if they feel
14 they've been discriminated against for raising concerns they
15 would have a forum where they would be engaged with their
16 employer maybe to also discuss those issues as well.
17 The concerns kind of at the heart of why
18 they feel they were discriminated against.
19 I am not certain if the DOL process would
20 give them any of that opportunity.
21 I'm asking you, this is unfair, to peer a
22 little bit into the motivations of why allegers

1 would be interested in it.

2 MR. BURNS: Could I speak to that for a minute?

3 I think the essential answer is, there is a

4 significant distinction between the roles of the

5 NRC and the DOL.

6 That goes back to the original legislation

7 that established DOL as a forum for aggrieved

8 employees to raise concerns before DOL.

9 When I say raise concerns, essentially what

10 they are doing there, is DOL is a place where they

11 can get the personal remedy in terms of contract,

12 or orders for reinstatement, damage remedies which

13 is something the NRC does not provide the employee.

14 From the standpoint of the employee being

15 made whole in terms of the personal,

16 financial or employment situation, they need to go

17 to DOL in that sense and then the timelines are

18 jurisdictional.

19 The timelines, although they are much more

20 generous than they were under the original

21 legislation in 1978, I think it was only 30 -- you

22 had to go within 30 days and I forget -- Lisa you

1 may be able to tell me what the timing is now, but
2 those time frames are jurisdictional with respect
3 to the Department of Labor.
4 Department of Labor won't -- other than
5 validating whether -- or determining whether or not
6 the employee adverse action was taken against the
7 employee for discriminatory reasons, it will not
8 engage in any kind of look at the underlying safety
9 issues or not. That's why it has to come from us.
10 COMMISSIONER SVINICKI: That was really the
11 contrast that I was trying to extract, so thank you for
12 pointing that out.
13 I wanted to just get to a sense is that
14 allegers may derive a different purpose from the
15 two different programs so I appreciate that.
16 I just wanted to close quickly with Lisa, I
17 wanted to ask a little bit about what we call the
18 response after closure or the very final looping
19 back with allegers who decide to stay involved in
20 this process.
21 As I understand it, the NRC would
22 communicate back to them kind of where we ended up

1 and we would -- it appears that NRC would document
2 then something about the reaction we got from the
3 alleger of missing the mark or it being overall
4 this process addressed or got to the heart of what
5 it was that they were raising.
6 Other than our documenting that, is there
7 anything we intend to do as an agency with that, if
8 we universally got back dissatisfaction or that
9 allegers felt we pursued something but it wasn't
10 exactly what it was that they had raised.
11 Do we intend to feed that back into the
12 process, other than documenting it for the file
13 what do we intend to do with that?
14 MS. JARRIEL: Thank you.
15 The purpose of the senior management review
16 of all responses after closure is just for that
17 purpose is to determine what actions the NRC staff
18 needs to take to be more responsive to the alleger.
19 Clearly, if there's additional information
20 provided or new concerns provided, the staff has to
21 treat those as allegations on their own and respond
22 to those completely.

1 If there is a difference of opinion about
2 the concern raised, we still try to be responsive
3 to be the alleger and explain -- try to explain
4 further what the staff did to be responsive to
5 their concern.
6 So you understand, all of that is
7 documented but the communications are continuing
8 with the alleger.
9 As I said we get a couple dozen of those a
10 year, we get a lot more responses from allegers.
11 The couple dozen are those that are unhappy
12 with their response, we also get positive feedback
13 that even if we were unable to substantiate concern
14 that the process was respectful and timely, and
15 thank you for looking into our issue.
16 COMMISSIONER SVINICKI: Thank you.
17 CHAIRMAN JACZKO: I think we have -- the
18 Commission's time goes to 11:30, so if you have more
19 questions.
20 COMMISSIONER SVINICKI: I just had one more, and
21 it's Lisa, I'm sorry it's you again, but in terms of the
22 template that we now have for evaluating the quality and

1 completeness of licensees' responses to our request
2 for information, we have a template or
3 an evaluation scheme for how we intend and
4 then we want to provide feedback, as I
5 understand it, to licensees.
6 I think you said over time they could
7 improve the completeness and quality of their
8 responses.
9 If we were to look historically, do we have
10 any sense, versus the template that we have laid
11 out now, and again it is not that complicated as I
12 understand it we are assessing these responses
13 against say the independence of the people that the
14 licensee assigned to look at it, their overall what
15 we believe their competency was to look into this
16 issue, and so at a high level these are very
17 commonsense kinds of items, but historically I
18 guess we were using the term referral, but when we
19 referred issues in the past and got a licensee
20 response on it; did we put this evaluation
21 framework in place because overall our assessment
22 of those responses was that they were of poor

1 quality, or is this just another, as the Chairman
2 had said, an enhancement in strengthening so that
3 we will be evaluating all the responses against the
4 same kind of metrics.
5 MS. JARRIEL: It's an enhancement.
6 Historically the licensees have been quite
7 responsive and provided complete responses.
8 There have been cases where over time
9 licensees are providing inadequate responses and
10 the staff addresses those concerns.
11 We contact senior management, the licensee
12 and in very rare cases we have stopped engaging
13 them for reviews -- requesting them for information
14 on allegations and inspected a 100% of the concerns for
15 some time until we again gain confidence in their
16 ability to address them properly.
17 But those are very rare occasions, and for
18 the most part the licensees have been quite
19 responsive to our requests.
20 The process that we put in place is a
21 discipline for the staff, again, recognizing staff
22 turnover it's been said many times in many venues

1 we have a lot of new staffers and we want to make
2 sure that we document the way the old grey breads
3 have been doing it for some time.
4 This tool is just one such tool for the
5 staff to discipline themselves to say, were they
6 independent, were they competent, did they address
7 the concerns, did they answer the additional
8 questions the staff put forth to them.
9 Before we say okay, that's a good response,
10 now independently what have we found and does it
11 gel?
12 We also recognize that sometimes the
13 responses may be inadequate because we didn't
14 provide them enough information.
15 It gives us an opportunity to say, they
16 answered the mail, we didn't give them enough up
17 front.
18 It gives us an opportunity to recognize
19 that more clearly and therefore, improve the
20 process overall.
21 COMMISSIONER SVINICKI: I think you've gotten to
22 the heart of the two areas that I've raised, which is the

1 response after closure and this evaluation of licensees'
2 responses to the request for information.
3 I think these are potentially fruitful areas for
4 us, as the Chairman said, looking forward learning
5 how to be more effective.
6 I think this could be good OE for us,
7 operating experiences, as a regulator as someone
8 who has an enforcement program and allegations
9 program.
10 I think that it is good data collection for
11 us as an agency.
12 Thank you.
13 CHAIRMAN JACZKO: Doug, I have a series of
14 questions on the enforcement program.
15 I can't help but commenting that, Bill, you
16 think you mentioned Jim Lieberman is in the
17 audience and I noticed he had some fairly strong
18 comments about accountability, or how we conduct
19 our enforcement and the fact that we don't really
20 have a single – the head of the Office of Enforcement is
21 not responsible necessarily for the enforcement
22 action itself, we have collective decision-making

1 that we engage in there.

2 I think it's an interesting issue and

3 probably good knowledge management issue as

4 somebody who started the enforcement office, it is

5 always valuable to have those comments and I think

6 it demonstrates the good public process the staff

7 went through in doing that.

8 There are a couple of specific areas,

9 perhaps these are areas more where I'm curious if

10 the staff considered additional clarification or

11 additional information.

12 One of them gets to an issue that I don't

13 think we use enough which is our daily civil

14 penalty authority, and as I look through there is

15 an extensive discussion on civil penalties and how

16 we conduct civil penalties and there's two

17 sentences on using the daily civil penalty

18 authority.

19 It says, "The NRC may exercise discretion

20 and assess a separate violation and intended civil

21 penalty up to the statutory limit for each day the

22 violation continues.

1 The NRC may exercise this discretion when
2 the licensee was aware of a violation or if the
3 licensee had a clear opportunity to identify and
4 correct the violation, but failed to do so."
5 As I look at that I'm not sure that that's
6 necessarily going to change much practice, in terms
7 of our use of the daily civil penalties because it
8 doesn't really provide much in the way of guidance
9 about when this is an appropriate mechanism versus
10 the approach that we use now which tends to be
11 essentially we group everything as a single
12 violation on a single day effectively.
13 If I could say it that way.
14 I don't know if you have any comments on
15 that if we got comments about that issue or if it's
16 one that, at this point, is not really part of the
17 practice so it didn't really get a lot of attention
18 in the --.
19 MR. STARKEY: I don't recall that we received any
20 public comments on that aspect of the policy.
21 I can tell you that every time a civil
22 penalty is proposed the staff reviews the merits of

1 that civil penalty, the circumstances surrounding
2 it, and we will adjust the proposed civil penalty
3 accordingly and sometimes it's not an easy decision
4 and you are correct that we have used daily civil
5 penalties in the past, we've used them rarely, but
6 we've used them and those times that we have used
7 them it is usually because we want to make, we
8 really want to make a point that this is a
9 significant continuing violation and there are
10 examples in enforcement history where we have
11 specifically used daily civil penalties.
12 But probably what happens more often, and I
13 will give an example of the challenge that faces
14 the staff sometimes, is that we will use the daily
15 civil penalty, I will call it process, to inform
16 the decision on what the final civil penalty should
17 be that the staff recommends.
18 The example that comes to mind and it was
19 very high-profile case, very public there is a lot
20 documented in ADAMS on it, it was in 2005 when we
21 issued the $5 million civil penalty to Davis
22 Bessie.

1 The cover letter to that notice of
2 violation and civil penalty, I think gives some
3 insight on what the staff was thinking.
4 The civil penalty was $5 million but we
5 stated in that cover letter that if we had
6 considered, or if we had used at the maximum daily
7 civil penalty that, civil penalty would've been
8 $75 million.
9 The cover letter goes on to say that the
10 purpose of the staff's direction in issuing civil
11 penalties is not intended to be punitive, it's
12 intended to act as a deterrent.
13 So that a license -- to emphasize to
14 licensees to not only not do this thing again, but
15 to identify violations and to initiate appropriate
16 corrective actions.
17 So I use that as an example to say it's not
18 always easy.
19 If we had a strict rule or an application of
20 the civil penalty process, daily civil penalty, the
21 civil penalty issue to Davis Bessie would've been
22 much more significant than the $5 million, but the

1 staff considered that to be an appropriate amount
2 based in part on the economic hardship or challenge
3 that the licensee was put under just for the fact
4 that they had their unit shut down for an extended
5 period of time, they had to replace the reactor
6 vessel heads.
7 Yes, it's true, we very infrequently use
8 daily civil penalties, but that's not to say we
9 don't inform our decision on the final amount of
10 the civil penalty by taking into consideration what that
11 daily civil penalty how it might affect the total civil penalty.
12 CHAIRMAN JACZKO: I know this is in front of the
13 Commission now for consideration and something I will
14 probably be exploring a little bit , but it may be something that
15 we can better clarify and explain what the guidance is to
16 the staff about when to consider this, because it doesn't necessarily have
17 to be the maximum either.
18 One can envision a situation which a $10
19 daily civil penalty may in fact be providing the
20 right kind of enforcement action, and when I say
21 one can imagine I'm trying to imagine one right now and
22 I haven't come up with one, but I'm sure one can.

1 Certainly there may be situations in having
2 better guidance about when that is the appropriate
3 route to go I think would only help facilitate
4 the staff's understanding of when to use that.
5 Another issue perhaps more practice, I
6 didn't necessarily see fully reflected in the
7 Enforcement Policy, has to do with the confirmatory
8 action letter.
9 In the Enforcement Policy itself or at least
10 in the initial chapters, I didn't go through all
11 the examples and perhaps maybe it's covered later
12 in the examples, we refer to them, confirmatory
13 action letters, in a fairly minute way and we talk
14 about it in a section on administrative actions.
15 I think it's a practice now that is
16 becoming more and more a de facto enforcement tool which is
17 the use of confirmatory action letters rather
18 than issuing an order.
19 It's an area that perhaps could benefit
20 more from discussion and description about when
21 that is appropriate versus when we would issue an
22 order, or the other types of administrative

1 actions.

2 The other ones are listed weren't things

3 that resonated with me as much as the confirmatory

4 action letter.

5 I didn't know if you had any comments on

6 that, or if it's just not something we consider

7 enforcement so it's not really in the enforcement

8 policy in more detail.

9 MR. STARKEY: I think the reason there's not more

10 said in the policy and there's not much said in the current

11 policy either, is because a CAL is considered an administrative

12 action much like the letter of reprimand that I mentioned

13 earlier.

14 In fact, perhaps we do need some guidance,

15 but many times the Office of Enforcement will not

16 be involved at all in confirmatory action letters,

17 they will be issued by the program office.

18 MR. BORCHARDT: The motivation clearly is to get

19 corrective actions in place as effectively as possible.

20 The confirmatory action letter gets used

21 because the way the process is, is the licensee is

22 proposing some corrective action.

1 If it meets all the criteria that we think
2 are necessary to be addressed it's the most
3 effective way of reaching a common agreement as
4 what needs to be done, and then we also add in to
5 that a description of what criteria will be the
6 basis upon which we would close out the
7 confirmatory action letter.
8 If that agreement can't be reached, then we
9 go to the more formal processes of issuing an
10 order.
11 CHAIRMAN JACZKO: I think it is one of these
12 areas, in many ways it is similar to what we do with the
13 reactor oversight process where we've effectively taken
14 enforcement for reactors out of the traditional enforcement
15 process, but we still have a fairly lengthy description of the
16 ROP process and when you would still use traditional
17 enforcement versus the ROP.
18 I think it can be an effective tool and I
19 think again, if we look at these documents also
20 from a knowledge management perspective, to help
21 have that clarity of when it's an effective
22 approach versus when you go down looking at the --

1 what those criteria are for using it or not using
2 it.
3 I think it is something I will be looking
4 at as I go forward.
5 The last thing and there is a lot of
6 discussion in the enforcement policy about enforcement
7 discretion as well.
8 I'm wondering if we have ever taken a look at
9 enforcement discretion.
10 I think the idea being that there may be
11 circumstances in which we can get licensees to
12 comply, which is ultimately the goal; the goal
13 isn't to give people penalties or give them
14 orders, the goal is to get them behave safely or
15 whatever.
16 If we have ever looked at enforcement discretion
17 and compared situations where we've use enforcement
18 discretion in situations in which we haven't, where we have actually
19 gone through enforcement or used ROP process or whatever it may be.
20 Whether we can clearly document that, in
21 fact, it is a more effective approach, I don't know
22 if the staff has ever looked at that or considered

1 that in the past.

2 I hear it anecdotally, it works better, but

3 have we ever really documented that or demonstrated

4 it anywhere?

5 MR. BORCHARDT: I don't think we have done it

6 quite the way that you are describing, it tends to be done

7 on an individual specific basis because it is really a way

8 of using -- of implementing a risk informed approach to

9 regulations.

10 In many cases, it's not putting the plant

11 through a transient of a fixed duration to allow

12 time for something to be repaired.

13 That is the most common type of scenario

14 that is used.

15 Whether or not we have absolute strict

16 criteria beyond the Reg Guides that talk about risk

17 informed regulations and those kinds of things, I

18 don't think we have done a complete categorization

19 of all the times we've used it.

20 CHAIRMAN JACZKO: Thank you, those were the

21 questions I had.

22 I want to thank the staff, I think this has

1 been a very good presentation I think it will set
2 up nicely for the discussion from our stakeholders
3 after a quick five minute break.
4 CHAIRMAN JACZKO: We will now turn to our
5 stakeholder panel, we have three distinguished presenters
6 here.
7 Ellen Ginsberg who's Vice President and
8 General Counsel and Secretary of the Nuclear Energy
9 Institute, Ingrid Drake who's an investigator with
10 the Project on Government Oversight, and Michael
11 Headrick, Chairman of Board of Directors of the
12 National Association of Employee Concerns
13 Professionals.
14 We will start with Ms. Ginsberg.
15 MS. GINSBERG: Thank you.
16 Thank you Chairman Jaczko, Commissioner
17 Svinicki, and Commissioner Klein for the
18 opportunity to present the views of the commercial
19 nuclear energy industry on this very important
20 topic at this morning's briefing.
21 We have been very involved in enforcement,
22 at least since I've been on staff with NEI and its

1 predecessors and that goes back two decades, almost
2 two decades.
3 We are very interested and very concerned,
4 but optimistic about the future.
5 Next slide.
6 Going to enforcement.
7 As you can see from this slide, in comments
8 going back almost 3 years now to 2007, NEI has been
9 encouraging the agency to ensure that the
10 Enforcement Policy -- implements, and
11 institutionalizes a program that emphasizes
12 objective, realistic, and risk informed assessments
13 in decision-making.
14 We have encouraged the agency to consider
15 ways to avoid overly subjective and unduly
16 conservative risk assumptions.
17 As is reflected in the second bullet on
18 this slide, we believe that the agency has
19 generally achieved these goals and properly focused
20 on improved performance through the ROP while
21 maintaining a strict focus on traditional
22 enforcement for those areas where that is

1 appropriate.

2 Next slide.

3 There has been a lot of discussion this

4 morning about the revisions to the enforcement

5 policy, and I am proud to say that we have

6 participated extensively by submitting comments in

7 2007, 2008, and 2009 at every opportunity.

8 I would note that in 2007 I was somewhat

9 entertained to see that you asked for comments but

10 didn't provide us with your views, and we came back

11 and suggested that you ought to provide us with a

12 little more detail upon which we could comment.

13 In fact, the Agency did that.

14 I would also commend the Agency for the

15 approach that it is a taking as a follow-up.

16 I heard this morning that in 18 months

17 there will be an opportunity to again do a look back and

18 see whether our comments and the agency's actions

19 have been appropriate or require some modification.

20 I would note that we recognized, as did the

21 Agency in its 2008 Federal Register Notice, that

22 part of the Enforcement Policy objective is to send

1 regulatory messages.

2 We feel very strongly that the regulatory

3 messages sent must first and foremost rely on a

4 comprehensible and fair process.

5 In addition, we think it is extremely

6 important that this process be consistent and

7 transparent to the industry, as well as all other

8 stakeholders.

9 That having been said, we note that there

10 is an important compliance of enforcement that

11 relies on judgment based on the detailed facts of

12 any given situation.

13 Next slide.

14 With respect to traditional enforcement, I

15 think the industry wishes to impress on the

16 Commission, as is reflected in this slide, the

17 importance of your continued and vigilant

18 oversight.

19 Because these are very important management

20 issues which need to ensure consistency of process,

21 extensiveness, and validity of the Agency's

22 evaluation to the extent that communication can be

1 full, we expect it to be and I think all
2 stakeholders feel similarly and the ultimate
3 objective of this process, specifically with
4 respect to traditional enforcement, should be to
5 ensure nuclear safety.
6 Next slide.
7 Here, this slide might be perceived as
8 somewhat provocative and was intended to be so,
9 because we think that there is value in using Judge
10 Farrar's cautions as guidance.
11 We are very interested and keenly aware of
12 the need to keep traditional enforcement as a very
13 focused and very well reviewed and detailed
14 judicious process.
15 Next slide.
16 MR. BURNS: Commissioner, can I remind, Judge
17 Farrar's opinion in the Geisen cases are before the Commission on review
18 with respect to that particular enforcement action.
19 MS. GINSBERG: Yes, and I would add that we take
20 no position on the underlying facts, but rather simply
21 picked up on the thematic note that he was articulating in that
22 product.

1 That is the only purpose of that comment.

2 Moving on to ADR.

3 I must say I was party to ADR's birth as it

4 were in the agency many, many years ago and I think

5 this is a great example of a success of public

6 policy.

7 If you look at the objectives, I think it

8 is fair to say what you heard this morning and what

9 we hear from both management and our employees is

10 that the ADR program, by and large, has achieved

11 these objectives.

12 In fact, it does increase licensee

13 credibility, it does provide incentives to go

14 beyond regulatory requirements, and ultimately, it

15 does result in both more timely resolutions and an

16 enhancement of nuclear safety.

17 I would add that, next slide.

18 I would add that no Commission briefing

19 would be complete without the industry and perhaps

20 other stakeholders making some suggestions for

21 improvement, but I don't want to dilute the message

22 that this process is in fact a very strong, robust,

1 and worthwhile process.

2 That having been said, there's been some

3 discussion about the mediators this morning.

4 We think there is an opportunity to enlarge

5 the pool of mediators so that there are more

6 available, and that the mediators who do

7 participate are aware of industry issues and so

8 they don't come to these issues cold and

9 explanations don't have to be provided each time.

10 Further, there is some question about

11 whether or not the nature of the review and its

12 timeliness could be improved.

13 I commend that to your attention.

14 Finally, we think where there is a

15 settlement and a statement regarding closure it

16 should so state that this is a closed matter and

17 that no further regulatory action will be taken.

18 Next slide, please.

19 On the allegations program, we'd like to

20 commend the staff for, what I would describe as

21 dog it attention to detail.

22 I think this morning it was described as

1 perhaps potentially a script or a cookbook
2 response.
3 I think that the information contained in
4 the allegations guidance memo will well serve all
5 stakeholders. We have a better appreciation of what
6 is necessary and what should be provided, both to
7 the NRC, and as a matter of response, to the alleger.
8 I would suggest that there was a 40% rate
9 in one of the documents for the allegations being
10 referred to the licensees. I think we think that
11 ratio could be switched, and instead of 40/60 it
12 could well be 60/40 and even better enhance nuclear
13 safety, so that's something for consideration.
14 In addition, there was some concern about
15 these statistics on the website and whether or not
16 further explanation of what they do and don't refer
17 to would be valuable.
18 Those are my formal remarks and I would be
19 happy to take questions.
20 CHAIRMAN JACZKO: Thank you.
21 Ms. Drake.
22 MS. DRAKE: Thank you Commissioners for hearing me

1 out today.

2 I first off want to thank the staff of the

3 NRC for the process.

4 We really appreciated seeing our comments

5 in the revised guidance and seeing an explanation

6 to why some of them were not presented.

7 This is very rare in our experience working

8 with Federal agencies to see such responsiveness.

9 That was extraordinary.

10 The revised guidance reflects several of

11 the recommendations we made to the NRC staff last

12 year on improvements to the allegation guidance.

13 However, the recommendation that we felt

14 most strongly about did not get implemented, and

15 that was for the NRC to shift referring as many

16 allegations as possible to the licensee for action

17 response to as few allegations as possible.

18 While there is a shift in language, we do

19 hope that that carries over to a shift in attitude

20 and in culture as well of ensuring that there is

21 greater oversight that the request for information

22 are thorough and independent and take the

1 allegations quite seriously.

2 Our belief and the reason for the NRC to

3 have made that change is that in our experience,

4 allegers come to the NRC because they want the NRC

5 to act for whatever reason, that may be that they

6 have already pursued reforms on the ground at their

7 workplace, or fear of retaliation, but we do think

8 that the NRC should respect that role that it takes

9 as an oversight body.

10 That said, the changes we saw in the

11 guidance, there was a lot of really good

12 improvements.

13 Specifically, we think that sharing the

14 closure letter with the alleger to ensure that they

15 review the investigation for its completeness at

16 least one contact with the alleger is a great step.

17 We know that many allegers care most about

18 getting their issue resolved and if they feel like

19 there are gaps and holes in the investigation, that

20 they will speak out whether they had intended to at

21 the beginning of the process or not.

22 We feel very strongly about that and that's

1 based on our on experience, we deal with a lot of
2 allegers and some of them don't want to be a part of
3 the process, but we always do try to share our
4 final product and learn quite a bit through that
5 phase.
6 We do think there is sufficient
7 improvements in encouraging allegers to participate
8 in the process.
9 The improvements of the allegation review
10 board worksheet were good, it also seems to me as a
11 way to create greater accountability of staff and
12 staff actions as well.
13 Publicizing allegation evaluation outcomes
14 is something that we feel could have untold
15 benefits, again, of showing a more robust proactive
16 role for the NRC as well as addressing issues that
17 might be systemic through the U.S.
18 The ADR process, there were some
19 improvements to communicating it to allegers.
20 We have encountered several power plant
21 employees who have been really duped by the
22 process, so I appreciate the efforts to educate

1 externally the changes to ADR but I think it is
2 also important to educate internally as well.
3 We have actually seen a lot of
4 correspondence from inside the NRC that seem to
5 miscommunicate the purposes of the ADR program, so
6 that would be an additional comment that I would
7 make to that.
8 That is it.
9 CHAIRMAN JACZKO: Mr. Headrick.
10 MR. HEADRICK: Yes, I want to thank the NRC
11 Commissioners and the NRC staff for allowing me the
12 opportunity to share feedback from the nuclear industry on
13 the Alternate Dispute Resolution process and revision to the
14 Allegations Guidance Memorandum.
15 I am here representing the National
16 Association of Employee Concerns Professionals and
17 the comments that I am providing today are a
18 culmination of those feedbacks that I got from my
19 peers in the industry.
20 Regarding the Alternate Dispute Resolution
21 process, feedback from my industry peers was
22 generally positive on the Alternate Dispute

1 Resolution process.

2 The only feedback I got whether there was an

3 opportunity was to improve the process, was a need

4 for consistency in the NRC's acceptability of

5 settlement agreements.

6 Just a minor issue, but overall generally

7 positive on the ADR.

8 Regarding the Allegations Guidance

9 Memorandum, sometimes there are issues with

10 availability of NRC contacts referenced in the

11 request for information letter which can create

12 some delays in getting important information

13 related to an investigation.

14 So, some feedback that I got was providing

15 two names in the request for information letter

16 might speed that up and ensure that that

17 information is provided in a timely manner.

18 Next slide.

19 Additional feedback on the Allegations

20 Guidance Memorandum, there was also feedback from

21 my industry peers on items that impacted timeliness

22 of completing investigations.

1 With the changes in the process there is
2 increased depth and scope of investigations and in
3 some cases, faxed copies of the request for
4 information letter were sometimes received after
5 the date on the RFI letter which has resulted in
6 requests for extensions, and also there have been
7 requests for information that have been issued near the
8 end of the year which also has resulted in requests
9 for extensions.
10 For the NRC's consideration, looking at
11 potentially making the default of 45 days versus 30
12 to allow for those additional increases and rigor
13 in the process.
14 Next slide.
15 More feedback on the Allegations Guidance
16 Memorandum, industry peers also shared that limited
17 information on allegations that are not processed as
18 request for information and limited information on
19 allegation trends, has limited management's ability
20 to understand and address the issues that are
21 related to allegations.
22 The NRC should consider sharing more

1 information on allegations and allegation trends to
2 utilities.
3 Industry management does understand the
4 importance of maintaining confidentiality of
5 allegers and the challenge is understood in terms
6 of sharing that information, so it is really
7 finding a balance there that satisfies the utility
8 management.
9 That pretty much concludes my comments, and
10 again I want to thank the NRC for allowing me the
11 opportunity to share the feedback from the
12 industry.
13 CHAIRMAN JACZKO: Well, thank you for those
14 comments from all three of you.
15 I think it is probably a testament to the
16 work of the staff that there were more positives
17 than there were areas for improvement.
18 That doesn't mean that we don't appreciate
19 your comments, but I think it shows a lot of work
20 went into, particularly the Allegations Guidance
21 Memorandum before we got to the table.
22 We will start questions with Dr. Klein.

1 COMMISSIONER KLEIN: Thank you for your
2 participation because I think clearly we need your input as
3 we make the process better, so I appreciate your continued
4 involvement and what you've done to date as well.
5 It was interesting, Ellen and Michael both
6 had a similar comment and that was your comments on
7 consistency.
8 We heard from the staff this morning that
9 each case is different, each one is unique both in
10 personalities and in the issues that are addressed,
11 so I guess I will ask Ellen first then Michael to
12 comment, could you tell me how we can be more
13 consistent?
14 In other words, can you give us examples of
15 inconsistency and examples of where we could do
16 better?
17 MS. GINSBERG: Thank you.
18 I think the answer begins with the notion
19 that we're not proposing a cookie cutter or
20 one-size-fits-all, as was described this morning,
21 process.
22 That having been said, some of the

1 supplements do provide some idea of, under certain
2 circumstances, you can anticipate this kind of
3 outcome.
4 There is a lot of information to be derived
5 from, even if it's not a perfect connection between
6 what is provided in the supplement, versus what
7 happens in the field.
8 I think there is a lot of information to be
9 derived from that, that will be very useful in the
10 licensee understanding what the likely outcome is
11 and also in the Agency applying that repeatedly.
12 Again, it is not a perfect one for one
13 analogy, but I do think it will be valuable for all
14 stakeholders and the agency as it applies the
15 program.
16 In the past there were, and this was in
17 part David Lochbaum's concern as well as the
18 industries, that you couldn't tell what the outcome
19 would be because similar situations didn't yield
20 similar outcomes, and I think what we see more of
21 now is consistency and I think the supplements will
22 help ensure that further.

1 MR. HEADRICK: Yes, I wasn't providing any
2 specific examples, but one of the feedbacks that I got was
3 from a mediator's standpoint in terms of what they provide to
4 the NRC in their write-up there might be an opportunity for
5 them to look at what they provide to the NRC to help
6 consistency from that perspective, and that was really the only
7 feedback that I got that was specific.
8 COMMISSIONER KLEIN: Have you seen any
9 inconsistency among Regions, or is it just in the settlement process in
10 general?
11 MR. HEADRICK: I would say in general.
12 COMMISSIONER KLEIN: Thanks.
13 Well, Ingrid, you had a comment about too
14 many allegations that were referred to the
15 licensee, and we heard from the staff in order to
16 make easy changes the licensee has to be involved;
17 could you comment a little bit about why you think
18 too many go to the licensee?
19 MS. DRAKE: We took that from the original
20 guidance, the policy of the NRC, that was the goal so we
21 just took issue with that premise.
22 I do think, of course, there are -- that

1 the licensee is a key part of the process and there
2 is no way to get around that, but we wanted an
3 actual shift of the NRC seeing itself more as the
4 one to investigate the allegations and then when
5 more appropriate, to refer to the licensee.
6 COMMISSIONER KLEIN: I do think the staff in
7 their comments had indicated that we need to do a better job
8 of making sure we talk to the allegers and so we really
9 understand what the issues are.
10 I was also impressed that most of those
11 bringing up allegations, as Roy and others had told
12 me in the pre-brief, people aren't after money they
13 want problems fixed, which I thought was a very
14 positive sign.
15 Can you comment on whether you think that
16 we are -- with the new processes do you think we
17 will be better engaging with the allegers?
18 MS. DRAKE: I do, I do think so.
19 It certainly looks like there's a better
20 framework.
21 One thing I didn't mention today, but I
22 mentioned before was when we had spoken with

1 employees at the plants, there is this still
2 pervading notion that the NRC is in the pocket of
3 the industry, and we thought that this shift of
4 saying we're handling allegations in most cases is
5 a great way to kind of challenge that culture.
6 So, that is really where we were coming
7 from.
8 COMMISSIONER KLEIN: We've also heard comments
9 from the industry that we are also in the pockets of the
10 allegers, so I guess it cuts both ways.
11 Could you comment a little bit, you talked
12 about the people are confused about the ADR
13 process; could you elaborate a little more on that?
14 MS. DRAKE: We have seen examples of peoples'
15 underlying safety concerns not fully explored and addressed,
16 and when they have pursued that they've been told this was
17 resolved as part of your settlement, as part of the ADR
18 process.
19 And that, as I understand, the process is
20 wrong.
21 So, that was a confusing message for people
22 and for us as well.

1 COMMISSIONER KLEIN: I think it's confusing for us
2 and the staff, because typically we're after solving the
3 safety issues, so I guess I would encourage you if you have
4 any examples of that, if you would make sure you let our
5 staff know because our intent as a regulator is to make sure
6 we solve safety issues.
7 And if there are things we can do to make
8 that better so it's not confusing, and also if
9 there are things we can do to make the ADR process
10 more robust we would like to have that information.
11 MS. GINSBERG: May I offer a perspective?
12 I think this may be an area of common
13 ground, I think the industry would support the
14 agency expressing more fully that the ADR process
15 exists and describing what it is and what it isn't,
16 so that people do have a reasonable expectation of
17 outcome and that there's not a guarantee that you
18 will be satisfied, necessarily, with the outcome,
19 but rather that you will be given a fair process to
20 be heard.
21 It will be candid going to the nature of
22 the mediation so you will have a real opportunity

1 to discuss the issues with the licensee.

2 Setting forth, really how the process works

3 and articulating that as an agency probably would

4 be helpful to all parties.

5 COMMISSIONER KLEIN: One thing that I would like

6 to make sure is that we get rid of the myth, because if the

7 ADR is not addressing safety issues we need to make sure we

8 kill that one because that is our goal as a regulator is

9 public health and protection of safety is our job.

10 Thank you very much.

11 COMMISSIONER SVINICKI: Thank you all and your

12 organizations for participating in this process.

13 Mr. Headrick, I would start with you by

14 virtue of being part of the discipline, the

15 professional community you are a part of Employee

16 Concerns Professionals; as you look across programs

17 or across Government programs of this type, is

18 there any real strong components or essential

19 elements that you would feel that the NRC

20 allegations program would lack?

21 MR. HEADRICK: Looking at the changes that were

22 made to the Allegations Guidance Memorandum and the feedback

1 that I got from the industry, I think my industry peers feel
2 like the changes that were made were good and that process
3 is much stronger now then it was before.
4 Looking at the way an employee concerns
5 program works in comparison to the allegation
6 process, there is nothing that sticks out in our
7 process that would be any more beneficial to the
8 NRC.
9 One thing that the ADR process, I know
10 utilities have the option of having their own
11 internal ADR process, I'm not sure the utilities
12 have taken full advantage of that opportunity,
13 probably because they haven't been involved in the
14 ADR process in general.
15 So that might be one area that the
16 utilities could benefit from, but that is nothing
17 that could change the current processes now with
18 the NRC.
19 COMMISSIONER SVINICKI: Okay.
20 Well, I certainly again thank you and your
21 colleagues for participating since, as the staff
22 mentioned, in 18 months or so there will be a

1 further solicitation for feedback.

2 I hope you will stay involved and we can

3 continue to benefit from you professional expertise

4 on these programs.

5 Ms. Drake, you mentioned the shift in

6 terminology from referrals to requests for

7 information, and I certainly agree with you that

8 that has to be more than a rebranding, it has to be

9 a real kind of a shift in approach and the Chairman

10 mentioned that too.

11 In my review of the policy and the Guidance

12 Memorandum, I do see a shift in approach there, but

13 certainly something that over the course of the

14 next 18 months and longer.

15 Again, I encourage you to continue to stay

16 involved and we will see how the operational

17 experience goes with the changes and enhancements

18 that we're making.

19 You mentioned something as you and your

20 colleagues at POGO have worked directly with

21 allegers, a key thing that NRC is trying to enhance

22 is communicating in the best way we can and as

1 persuasively as we can to allegers the benefits
2 that can be derived if they are willing and
3 comfortable in staying involved in the process as
4 it moves forward.
5 Have you or your colleagues discovered any
6 particular ways to communicate that or persuasive
7 elements that can be put forward where you've been
8 more or less successful in working with allegers
9 and getting them to continue, or does it really
10 come down to a matter of trust and confidence that
11 the alleger has in their confidentiality or
12 whatever other protections they think they need?
13 MS. DRAKE: It is certainly the latter much more
14 than the former.
15 When we worked with some of the guards who
16 came towards us from the Kabul embassy alleging
17 pretty serious misbehavior, the fact that we went
18 to bat for them and we're still kind of going to
19 bat for them based on retaliation that they faced
20 six months later I think is really key in
21 establishing some sort of credibility that to
22 allegers we will go to bat for you.

1 I said that my original comments to the
2 staff demonstrate by its results and by how it
3 follows through on this process, more people will
4 come forward and I think you will see less people
5 wanting to remain anonymous and more actively involved.
6 COMMISSIONER SVINICKI: Thank you for that.
7 Ms. Ginsburg, you had mentioned in
8 opportunities for improvement and I appreciate that
9 you included that, that's important, one of the
10 purposes of holding a meeting like today's.
11 I think I have the parts of our public
12 website that you felt could be improved upon, I
13 think it is just this table of reactors and then
14 raw numbers on the allegations.
15 Is your suggestion is that this is without
16 context or could you give me a better sense of the
17 improvements there?
18 Again, I am just surmising that's it's just
19 a chart with reactors and numbers, and is it that
20 you feel the context is not said?
21 MS. GINSBERG: I would like to give you a very
22 complicated, in-depth answer, but the answer is yes.

1 It is the fact that it's a table. It doesn't
2 have explanation, and it was actually brought to me
3 in an interesting context, in that one of my
4 members said industry management doesn't understand
5 the numbers. And when they squared their numbers or
6 the tally that they had to intentionally try and
7 keep track of this to make sure that they each year
8 drove to a better result, they couldn’t figure.
9 out where the numbers came from,
10 so further explanation I think would be
11 useful for everybody, other stakeholders as well as
12 the industry.
13 COMMISSIONER SVINICKI: Okay, thank you very much.
14 Sometimes the simple answer is okay, that
15 is fine.
16 Thank you and thank you, Mr. Chairman.
17 CHAIRMAN JACZKO: Ellen, Maybe I will start with a
18 question for you and maybe, Michael, you could comment as
19 well and that really gets to the point about the allegations
20 program.
21 I mean, why do we have an allegations
22 program, what's not working with licensees that,

1 with the employee concerns programs that exist,
2 with the other mechanisms that exist that people
3 are coming to the NRC and not being able to resolve
4 issues within the -- at the facility itself?
5 MS. GINSBERG: I think it's a fairly
6 straightforward answer, it's not a perfect world and not
7 everyone feels comfortable necessarily going to one specific
8 entity.
9 And I think having what I would describe as
10 multiple relief valves, as the Department of Labor
11 does as EEOC does, I think it is very valuable and
12 it does give people multiple opportunities to
13 consider options and get their issues identified
14 and then addressed.
15 So, I wouldn't view it as a negative that
16 necessarily licensees are failing, I think Michael
17 and his colleagues do an enormous job and the
18 evolution has been very promising over time, over
19 the last two decades.
20 So, my view is maintaining multiple paths
21 is a very positive thing and it does allow the
22 agency to have a look see that it wouldn't otherwise

1 have.

2 MR. HEADRICK: The two key things that I think are

3 there, are communications and confidence and one of the

4 things that I've been doing as ECP Manager of my utility is

5 over the last three years we do what we call ECP lunches

6 with all the groups on site, and I've probably been through

7 every group on site and not everybody attends those because

8 they might be on vacation, so I can't say I've hit 100% of

9 the population, but in those communications I explain to

10 them about how the program works and what they would expect

11 if they raise a concern.

12 And also let them know what other options

13 they have, they always have the right to go to the

14 NRC and things of that nature.

15 Why I think that's important is that I've

16 found during those sessions, especially working

17 with folks who work shift work, you find out that

18 there were issues that clearly were related to some

19 allegations we received that if the person knew

20 about the process and how it worked with our ECP

21 program the fact that I have a pager and if you

22 call me in the middle of the night, within three or

1 four minutes I can get that concern.

2 I believe there was an opportunity there

3 where some of those allegations may not have gone

4 to the NRC, and we would've had an opportunity to

5 address them.

6 In addition to the communications,

7 obviously people will want to have confidence that their

8 concerns are going to get addressed fully, they may

9 not get the answer they want but if they're

10 convinced you did a thorough investigation then I

11 think they will walk away and they will be

12 proponent of the program.

13 Those are the two key things, make sure

14 people know about the programs and make sure they

15 have confidence in the programs.

16 CHAIRMAN JACZKO: I think that's good feedback,

17 and I think Ellen your points were valid.

18 We certainly don't want to cut off any

19 avenues for people to come forward, but I think

20 shows we spent a lot of time talking about the

21 allegations program, but I think it's important to

22 consider why we are seeing them.

1 If there are things that we can do to help
2 resolve those issues even earlier as we have with
3 the ADR program, other kinds of avenues that
4 it's worth considering those lessons as well.
5 I have to admit, we had the discussion on
6 the ADR program and the safety focus of the ADR
7 program, I think that's an interesting comment I
8 can very well see why some people may be confused
9 by the program, I get a little bit confused by it
10 myself.
11 I think part of it if we look, particularly
12 to the early ADR program which has a focus really
13 exclusively on discrimination issues, clearly
14 from our perspective, those have presumably
15 some nexus to nuclear safety, that is our role and
16 our responsibility.
17 But when those issues are fundamentally
18 discrimination, I think it can create some
19 confusion about nuclear safety issues, and for
20 instance if somebody goes into an early ADR and
21 they have a variety of allegations, some of which
22 may be discrimination some of which may be broader

1 nuclear safety issues and they enter that early
2 ADR, that early ADR will resolve the discrimination
3 issues not necessarily the broader ones.
4 That I can see where there may be some
5 confusion and people may not fully understand then
6 how those issues are addressed, obvious ones,
7 sometimes is if there's an underlying problem with
8 their safety conscious work environment program.
9 That is not an issue that can be dealt with
10 in the early ADR, but it may be coupled with an
11 allegation that can be addressed in the early ADR.
12 There probably is some communication we can
13 do to improve that and get people to understand
14 what the nexus is and how one thing can work versus
15 another.
16 I talked earlier about some of the
17 strengths of ADR are its biggest weaknesses, in the
18 same way the opportunity for an employee to be able
19 to sit down and mediate with an employer can be a
20 tremendous strength, but it can also be a
21 tremendous weakness because that employee is
22 invariably in a position of weakness relative to

1 the management or whoever may be negotiating with
2 them.
3 So, having a mediator there helps but it
4 has pitfalls, and I think it's important that we
5 can keep an eye on what those pitfalls are as we
6 utilize these programs.
7 Ellen, you suggested 60% of allegations
8 with more direct licensing involvement, I think, Ingrid
9 you talked about having a shift in focus; is there
10 a number that's too much?
11 If 100% of allegations are being dealt with
12 by licensees more directly, is that too much would
13 you say, or are there ones that invariably are
14 going to need to be dealt with by the NRC no matter
15 what?
16 MS. GINSBERG: I think I will decline to be pinned
17 to a number, but I think the issue is, are you using the
18 right criteria by which to assume that the licensee, or to
19 make the determination that the licensee can both adequately
20 and credibly conduct a thorough investigation, evaluation,
21 assessment review and address the issue.
22 If the criteria are right, I actually took

1 notes from what Lisa said, and she listed no fewer
2 than 9 criteria that argue against sending the
3 issue to the licensee.
4 Then she came up with two, which would be
5 in favor of, which are that the licensee can
6 promptly address the issue because they generally
7 have control over whatever the issue is, and
8 further it does give the licensee some insight to
9 their own programs and might allow them to take
10 action in advance of future issues arising.
11 So, I think the balance may need to be
12 struck a little differently.
13 I don't know what the right number is, but
14 I could see the balance being in favor of heavier
15 weight on the two items that were listed as opposed
16 to the nine others that were listed.
17 I think the industry would welcome the
18 opportunity to do more and do better.
19 CHAIRMAN JACZKO: I think we've made a lot of
20 changes to the program and I think those have been good
21 changes by and large.
22 I think we are now in the process of

1 getting guidance out, getting guidance out to our
2 staff, finalizing the Management Directive.
3 I think the next couple of years will give
4 us a good insight as to whether or not these
5 changes are accomplishing what we want, because in
6 the end, I think as all of you have indicated, the
7 goal here is safety and we want to ensure safety.
8 The best way we can do that is to have
9 these good, robust programs so I think as we go
10 forward it will be interesting to see whether the
11 numbers change about the amount that are directly
12 dealt with by the licensee, the amount that NRC
13 are dealing more, whether anecdotally, OI assists
14 are going up.
15 Those kinds of things I think will give us
16 some insight about how these changes are being
17 implemented, and it is probably worth in a couple
18 of years revisiting to see if we hit the mark or if there
19 are still improvements to be made.
20 With that, I appreciate all of your
21 comments and your participation, I think in all of
22 the meetings and the work that went into developing

1 these documents.

2 I think the relative lack of contentious

3 issues here I think is really a testament to a lot

4 of good work was done by the staff early on to get

5 us to this point, and I think as Dr. Klein said, we

6 encourage you to keep involved -- or Commissioner

7 Svinicki said, to keep involved and to keep active

8 and engaged in these issues because they are

9 important issues for us and we welcome and

10 appreciate your input.

11 With that, we are adjourned.

12 Thank you.

(Whereupon, the proceedings were concluded)

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