UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING APPEAL PANEL
WASHINGTON, D.C. 20555

October 12, 1979

MEMORANDUM FOR: Norman Haller, Director, Office of Management and Program Analysis

FROM: Alan S. Rosenthal, Chairman, Atomic Safety and Licensing Appeal Panel

SUBJECT: PROPOSED POLICY AND PROCEDURES FOR DIFFERING PROFESSIONAL OPINIONS (NUREG-0567)

This will confirm my telephone conversation yesterday with Ms. Karen Singer with respect to the above document.

Section 10 (starting at the bottom of page 9) deals with the prevention of retaliation against individuals who express differing professional opinions. It states that any NRC employee who engages in such retaliation shall be subject to disciplinary action. Beyond that, it notes that employees who allege that retaliatory actions have been taken against them because of their submission of a differing professional opinion may invoke the NRC's grievance procedures.

Section 11 (appearing on page 10) is concerned with the other side of the coin; namely, the prevention of the intentional misuse of the procedures for differing professional opinions. It does not, however, indicate that any employee engaging in such misuse will be subject to disciplinary action. Nor does it either establish or make reference to procedures for dealing with seeming intentional misuse. Rather, it simply states that "NRC's policy on differing professional opinions assumes that the integrity, personal commitment, and professionalism of NRC employees will preclude the intentional misuse of these procedures developed to implement that policy."

The contrast between sections 10 and 11 is not merely marked but, additionally, unfortunate. Whether intended or not (and I trust it was not), the plain message conveyed is that, although our employees can be presumed to have sufficient "integrity, personal commitment, and professionalism" to refrain from intentionally misusing the procedures, it may not be likewise presumed that NRC supervisory personnel have sufficient "integrity, personal commitment, and

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professionalism" to refrain from taking improper retaliatory action against employees who express bona fide differing professional opinions.

As I indicated to Ms. Singer in our telephone conversation, I think it imperative that one or the other of those sections (or perhaps both) be rewritten to remove this wholly unjustified imbalance. In this connection, although I would certainly hope and expect that there would be few instances of either apparent retaliation or apparent intentional misuse, it seems to me that neither form of misconduct can be entirely ruled out as beyond the realm of possibility. With regard to intentional misuse, there is at least the possibility that, for example, an employee confronted with likely adverse personnel action because of some other misconduct or performance deficiencies might choose to invoke the procedures simply to lay the foundation for a spurious claim that that personnel action was, in fact, taken as a retaliatory measure. Similarly, an employee seeking a promotion or some choice assignment might resort to the procedures so that he would be able to advance a claim of retaliation should that promotion or assignment be denied him. Once again, I do not suggest that this is likely to be an often recurring problem. Nonetheless, inasmuch as the potential is there, consideration should be given to indicating in section 11 that, should intentional misuse occur, the offender will be subject to disciplinary action. In any event, as noted above, in my judgment it is imperative that the present imbalance between sections 10 and 11 be eliminated; i.e., that both the users of the procedures and their supervisors be placed on the same footing insofar as any assumption regarding their "integrity, personal commitment, and professionalism" is concerned.

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