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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

- - -

Public Meeting

on

REVISED ENFORCEMENT POLICY

- - -

Braves Room,
Stadium Hotel,
450 Capitol Avenue,
Atlanta, Georgia,

Monday, 1 December 1980.

The meeting was convened, pursuant to notice, at 1:00 p.m.,
BEFORE THE U.S. NRC PANEL:

JAMES P. O'REILLY, Director
Region II (Atlanta)
Office of Inspection & Enforcement

JAMES G. KEPPLER, Director
Region III (Chicago)
Office of Inspection and Enforcement

DUDLEY THOMPSON, Director
Enforcement and Investigation Staff
Office of Inspection & Enforcement

JAMES LIEBERMAN, Deputy Chief Counsel
for Rulemaking & Enforcement
Office of the Executive Legal Director

CHARLES E. NORELIUS, Assistant to the Director
and Enforcement Coordinator
Region III (Chicago)
Office of Inspection & Enforcement

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P R O C E E D I N G S

(1:00 p.m.)

1
2
3 MR. O'REILLY: Good afternoon. I am Jim O'Reilly.
4 I am Director of the NRC's Region II Office in Atlanta, and I
5 would like to welcome you to Atlanta -- if you are from out
6 of the City or out of the State -- and to this meeting.

7 We appreciate the opportunity to meet with you
8 here today. This is the first of five regional conferences
9 that are being held to explain and discuss the proposed
10 Revision of the NRC Enforcement Policy.

11 Before beginning the meeting, there are a few
12 administrative matters which I would like to call to your
13 attention. We do have secretaries in the entrance foyer from
14 my office who will be here throughout the afternoon's session.
15 If you get any messages, or if you desire any assistance, we
16 will be pleased to provide that type of service.

17 The meeting is scheduled to run from 1:00 to 10:00
18 p.m. this evening. We have scheduled a break from 5:00 to 7:00
19 p.m. for dinner, and we have prepared a presentation that we
20 expect will take somewhere between an hour and an hour and 15
21 minutes. Following that prepared presentation, we will get
22 into our question and answer period.

23 Now we would hope to give the prepared presentation
24 in totality, first, before we address the individual questions.

25 Now we have received advance requests for

1 comments from nine personnel or groups. These individuals will
2 receive first attention, and we expect that discussion to take
3 about an hour. Others wishing to speak should register on the
4 list outside this room, and they will be taken in turn after
5 those individuals who made an advance request to speak are
6 finished.

7 This meeting is being transcribed, and a copy of
8 the transcript will be filed in the NRC Public Document Room
9 in Washington; a copy will also be filed in our regional
10 office. To help make the record clear, it is requested that
11 those asking questions or making comments identify themselves
12 and the organization they represent.

13 I hope each person attending this meeting has
14 received a copy of an inquiry card. It is a 5 x 8 card from
15 the secretaries in the reception foyer. If you didn't get a
16 copy of the card as you entered, please pick one up as you
17 leave. The NRC has tried harder than we have ever tried before
18 to have a broad outreach-type program to inform citizens,
19 organizations, and licensees of this series of meetings on our
20 enforcement policy. We are interested in learning which of
21 the methods reached you. We would appreciate your filling out
22 the card to tell us whether your interest in this meeting was
23 identified by a letter mailed to you, by a newspaper ad, or
24 other means.

25 You do not need to sign the card if you don't want

1 to. And again as I said, leave the card with the receptionist
2 in the back of the room.

3 We scheduled a break this afternoon, in addition to
4 the dinner break, and that probably will occur at about 2:30.
5 We will have available either coffee or soda.

6 Now for the past year an effort has been underway
7 to revise the NRC's Enforcement Policy to reflect the Congress'
8 and the Commission's mandate to be firmer regulators of the
9 nuclear industry and to incorporate legislation passed by
10 Congress and signed by the President last summer providing the
11 NRC with increased civil penalty authority.

12 An important milestone was reached on September the
13 4th, 1980, when the Commission approved issuance of the policy
14 for public comment and for interim use of that policy by the
15 staff during the comment period.

16 The policy was published in the Federal Register on
17 October the 7th, and is presently being used by the NRC staff.
18 This series of regional conferences is being held with licensees
19 and the general public to explain how we are implementing the
20 policy so that you will be in a better position to comment on
21 that policy.

22 Comments can of course be provided both orally at
23 this meeting, and certainly in writing to the Secretary of the
24 Commission, Attention: Docketing and Service Branch, by no
25 later than December the 31st, 1980.

1 It is the intent that this policy, as finally adopted
2 by the Commission, will be codified in our Code of Federal
3 Regulations.

4 With me today to explain the revised Enforcement
5 Policy are the NRC officials selected by Mr. Victor Stello,
6 Director of the Office of Inspection and Enforcement, to
7 accomplish this effort:

8 Mr. James G. Keppler, the Director of the NRC's
9 Region III Office in Chicago. Mr. Keppler has been heavily
10 involved in coordinating all aspects of this policy for the
11 last year.

12 Mr. Dudley Thompson is the Director of the Enforce-
13 ment and Investigation Staff in the NRC's Office of Inspection
14 and Enforcement.

15 Mr. James Lieberman is the Deputy Chief Counsel for
16 Enforcement and Rulemaking of the NRC's Legal Staff.

17 And Mr. Charles Norelius is Assistant to the Director
18 and Enforcement Coordinator of Region III in Chicago.

19 In discussing the revised Enforcement Policy today,
20 we thought it would be helpful to briefly summarize the background
21 relative to the NRC's Enforcement Program. Prior to 1969,
22 Congress granted the NRC -- then the AEC -- authority to level
23 civil penalties for items of noncompliance.

24 Civil penalties of up to \$5000 per item of noncom-
25 pliance, with a maximum civil penalty of \$25,000 for all

1 violations occurring within a monthly period were permitted.
2 In August 1971 a rule was published to implement the statute
3 and in October 1972 the Commission first published its Enforce-
4 ment Policy in the Federal Register.

5 The next important milestone was December the 31st,
6 1974, when the staff provided all licensees an update and further
7 clarification of its enforcement criteria.

8 Another key milestone occurred in early 1978 when
9 the Commission, recognizing that \$5000 civil penalties did not
10 represent a serious financial incentive to larg licensees,
11 submitted a request to Congress to increase the maximum civil
12 penalty from \$5000 per item of noncompliance to \$100,000.
13 Congress enacted legislation, and it was signed into law on
14 June 30th, 1980.

15 While civil penalties and other escalated enforcement
16 actions were used cautiously during the early and middle 1970s,
17 there has been increasing emphasis on enforcement actions over
18 the past few years, with a significant increase in the number
19 and severity of enforcement actions since Three Mile Island.

20 As I stated earlier, this increase is a clear reflec-
21 tion of the mandate given to the NRC to be strong regulators.
22 In December 1979, NRC further visibly displayed this posture
23 when it published tough enforcement criteria for noncompliances
24 associated with the transportation of nuclear materials.

25 (Slide.)

1 During the past year the staff has been working to
2 revise its Enforcement Policy to implement the new civil
3 penalty authority. In this regard, the goals of the NRC's
4 revised Enforcement Program can be stated to be as follows:

5 To ensure compliance with NRC regulations and
6 license conditions;

7 To obtain prompt correction of licensee weaknesses;

8 To deter future noncompliances through strong
9 enforcement measures; and

10 To encourage improvements of licensee performance,
11 thus enhancing the degree of protection of public
12 health and safety, common defense and security, and
13 the environment. .

14 Mr. Keppler, who is next, will be providing a
15 description of the revised Enforcement Program. Before he
16 does, I would like to briefly repeat what the NRC hopes to get
17 from these meetings, and we would urge you to focus on these
18 matters in providing comments.

19 (Slide.)

20 Specifically, as we see in the next slide, we are
21 seeking comments on:

22 Is the policy fair and equitable?

23 Is the policy understandable?

24 Are the severity levels appropriate?

25 Are the different types of activities well-enough

1 defined? Should there be others?

2 Are the distinctions among various types of licensees
3 shown in Table 1 appropriate?

4 Are the factors for determining the level of
5 enforcement actions appropriate? Should there be others?

6 Is the degree of discretion allowed to Office Direc-
7 tors appropriate? Should there be more flexibility permitted?
8 Should there be less?

9 Are the levels of civil penalties that require
10 Commission involvement appropriate? Should they be higher?
11 Should they be lower?

12 Are the provisions for escalated action set forth
13 in Table 2, which you will see, appropriate?

14 We would of course also welcome questions and comments
15 on any other aspect of the NRC's Enforcement Program which is
16 of interest to you.

17 I will now turn the meeting over to Mr. Keppler,
18 who has been heavily involved in this program, and will
19 describe the basic elements of our revised and proposed
20 Enforcement Policy.

21 MR. KEPPLER: Thank you, Jim.

22 In revising the NRC Enforcement Policy we established
23 six specific goals.

24 (Slide.)

25 First, we wanted to establish criteria for utilizing

1 the increased civil penalty authority.

2 Second, we wanted to make the Enforcement Program
3 tough, yet fair.

4 Third, we wanted to achieve greater uniformity in
5 the treatment of licensees by taking equivalent actions against
6 similar licensees having similar problems.

7 Fourth, we wanted to better define our enforcement
8 capabilities with respect to NRC licensed activities other than
9 operating reactors. In particular, we wanted to give more
10 definitive guidance concerning enforcement in the areas of
11 construction and safeguards, and for taking enforcement actions
12 against licensed operators.

13 Fifth, we wanted to focus escalated enforcement
14 actions on the specific event or problems which led to the
15 decision to take escalated enforcement, rather than focus on the
16 total number of noncompliance items identified, as we had done
17 in the past.

18 And lastly, we wanted to articulate clearly our
19 Enforcement Policy and define more clearly the criteria for
20 taking various enforcement actions.

21 To further explain how these objectives were incor-
22 porated into the revised enforcement policy, I intend to discuss
23 the new severity categories -- including their application to
24 the different functional areas regulated by NRC; notices of
25 violation; enforcement actions against licensed operators;

1 civil penalties; orders; and the combination of enforcement
2 sanctions for recurring significant noncompliances.

3 Let me begin with the severity categories. For the
4 past several years we have had three categories of noncom-
5 pliances -- violations, infractions, and deficiencies.

6 While we have found that having different severity
7 categories is beneficial in judging the significance of
8 noncompliances, our experience has shown that more categories
9 were needed to capture the differing thresholds of
10 noncompliance.

11 In defining severity categories, we wanted to
12 relate them to the fundamental problem or event involved,
13 rather than solely to the items of noncompliance themselves.
14 We decided on six severity categories. I would like to explain
15 these categories in the context of reactor operations.

16 We considered the worst type of situation as one
17 where safety systems are called upon to work and are not
18 operable. An example would be Three Mile Island. We
19 classified this as a Severity Level I.

20 The next worse situation, Severity Level II, was
21 perceived to be one where a safety system is not capable of
22 performing its intended function, but fortuitously is not
23 called upon to work. An example might be the loss of contain-
24 ment integrity without a concurrent accident.

25 Severity Level III violations were established to

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1 cover situations where a safety system is not capable of
2 performing its intended safety function under certain condi-
3 tions. An example might be where the high pressure emergency
4 core cooling system is operable with normal site power, but
5 is inoperative under loss of on-site power conditions -- off-
6 site power conditions.

7 The next lower level, Severity Level IV, involves
8 a condition where a safety system is operational but degraded.
9 An example might be a situation where the sodium hydroxide
10 additive was valved out of the containment spray system in a
11 PWR, yet the containment spray system itself was otherwise
12 fully operational.

13 Severity Level V violations involve other proce-
14 dural items which have other than minor safety significance.
15 An example might be the failure to perform a required test on
16 a timely basis.

17 Lastly, Severity Level VI violations involve items
18 of minor safety significance -- such as documentation
19 inadequacies.

20 The same general principles were applied to the
21 other licensed activities.

22 Could I have the next slide, please?

23 (Slide.)

24 The next slide shows the relative ranking of the
25 new Severity Levels as compared with the ones that we have

1 been using -- namely, the violations, infractions, and
2 deficiencies. You will see that the old violations may now
3 fit the categories of Severity Levels I, II, or III.

4 The old "infractions" category may now be
5 categorized as Severity Level III, in some cases, but mostly
6 Severity Levels IV and V.

7 The old "deficiencies" will be equivalent to the
8 new Severity Level VI violations.

9 In general, we believe the Severity Levels I, II,
10 and III are serious violations that should occur infrequently
11 if appropriate attention is given to NRC requirements. We
12 believe the Severity Level IV violations also should not occur
13 often. And we view the Severity Level V violations to be
14 equivalent to most of the infractions that have occurred in
15 the past.

16 The different severity levels are defined separately
17 for each of seven different program areas which we regulate.
18 These program areas are shown in the next slide.

19 (Slide.)

20 Reactor operations; facility construction; safe-
21 guards at both reactors and fuel facilities; health physics
22 regulatory requirements; transportation requirements; fuel
23 cycle operations; and byproduct materials operations.

24 While the severity levels show the relative
25 importance of violations within the same program area, it is

1 important to recognize that the severity levels are not
2 equatable in terms of safety importance from one program area
3 to the other. Said another way, Severity Level I is the most
4 significant violation in each of the seven different program
5 areas shown; but a Severity Level I violation in the area of
6 facility construction obviously does not have the same safety
7 significance as a Severity Level I in reactor operations.

8 As I mentioned earlier, the determination of
9 severity categories is event-oriented. By that, I mean that
10 any particular violation may in one instance be a Severity
11 Level II violation, for example, while in another instance
12 the same violation may be a lower severity level.

13 Let me give you a couple of examples to explain
14 this:

15 At a reactor construction site, if numerous
16 violations of the Quality Assurance criteria in Appendix B to
17 10 CFR Part 50 are found and there are multiple examples of
18 these violations in several different construction areas, the
19 items collectively would demonstrate that there has been a
20 breakdown in quality assurance.

21 Based on such a determination, all the violations
22 related to that particular situation would be categorized as
23 Severity Level II violations. On the other hand, any one of
24 these violations identified separately in a more isolated
25 sense would probably be a lower severity level violation.

1 Another example would be in the area of radiation
2 safety. If an overexposure occurred which exceeded 5 rem and
3 there are other violations such as the failure to conduct
4 surveys, failure to follow procedures, and the failure to
5 properly control access to an area, all of which contributed to
6 the overexposure incident, all of these violations would be
7 categorized as Severity Level II violations. Yet, an isolated
8 occurrence of failure to follow procedures, or failure to
9 conduct a survey, or failure to adequately control access,
10 would likely be a lower severity level.

11 The revised policy also stresses the importance
12 that the Commission attaches to the accurate and timely
13 reporting of events. In this regard, material false statements
14 made to the Commission will be categorized as Severity Level
15 I, II, or III violations, depending on the relative signifi-
16 cance.

17 Also, the failure to make a required report, unless
18 otherwise specified in one of the supplements, will normally
19 be classified at the severity level of the event which has
20 not been reported. And the failure to make a required report
21 will be classified as a separate event, in addition to the
22 event not reported.

23 At this point, it is probably appropriate to address
24 a comment that has come up that this Enforcement Policy may
25 result in required information not being provided to the NRC.

1 We hope such a concern is not real. At any rate,
2 let me confront it by saying that NRC will consider the
3 conscious failure to provide required information to the NRC
4 a willful act that may result in not only civil penalties, but
5 also referral to the Department of Justice for consideration of
6 criminal prosecution.

7 One last point concerning the severity categories.
8 Due to the general nature of the policy guidance, we recognize
9 it may be difficult to apply the policy to certain specific
10 situations which arise and judgment will have to be exercised
11 in selecting the proper severity category. We would especially
12 welcome any comments you may have in clarifying the guidance
13 in this area.

14 Just a couple of comments concerning notices of
15 violation. It is expected that notices of violation will
16 continue to be sufficient enforcement action for greater than
17 90 percent of the violations which are identified during NRC
18 inspections. Two changes to the notice of violation should
19 be noted.

20 First, the notices now reflect the new severity
21 level categories.

22 Secondly, they will now normally require that
23 responses be submitted under oath or affirmation as provided
24 for in Section 182 of the Atomic Energy Act. This latter
25 step was instituted by the Commission as an additional

1 assurance of the accuracy of information provided in response
2 to written notices of violation.

3 With respect to licensed operators, as you may be
4 aware the previous Enforcement Policy was silent on enforcement
5 actions against licensed operators. The present policy provides
6 that notices of violation will normally be issued to operators
7 licensed under the provisions of 10 CFR Part 55 for Severity
8 Levels I, II, or III violations.

9 For serious violations which are recurrent, the
10 probably course of escalated action against licensed operators
11 will be license suspension or revocation. It is also possible
12 that civil penalties may be issued to licensed operators -- and
13 we wish to emphasize that the policy does not preclude such
14 action.

15 It should also be noted that enforcement action
16 against a licensed operator will likely also result in escalated
17 enforcement actions against the facility at which the particular
18 violation occurred.

19 Let me now turn to a discussion of civil penalties.

20 (Slide.)

21 As shown in the next slide, there are four general
22 areas that are likely to lead to assessment of a civil penalty.
23 The first is for Severity Level I, II, or III violations which
24 have occurred.

25 Secondly, it is possible to assess civil penalties

1 for recurring Severity Level IV and V violations.

2 Thirdly, the knowing and conscious failure to report
3 a defect by a responsible official of a licensee or vendor
4 organization may result in the assessment of a civil penalty
5 against that particular individual as provided for in Section
6 206 of the Energy Reorganization Act.

7 Fourthly, willful violations may result in civil
8 penalties.

9 I want to go back and make some additional comments
10 on the first two items shown on this slide. We recognize that
11 some technical judgment will enter into the categorization of
12 Severity Levels I, II, or III, and whether they warrant a
13 civil penalty. Normally, however, if it has been determined
14 that a Severity Level I, II, or III violation existed, it is
15 the Commission's intent to issue a civil penalty.

16 Civil penalties will generally be assessed for
17 recurring severity level IV and V violations which are similar
18 in nature to those which were the subject of an enforcement
19 conference and which occurred within two years following the
20 enforcement conference.

21 An "enforcement conference" is a meeting specifically
22 designated as such between NRC and licensee management for the
23 purpose of discussing specific violations, the planned cor-
24 rective action, and the enforcement options available to the NRC.

25 If similar violations occur after such an enforcement

1 conference and it is concluded that their occurrence resulted
2 from ineffective licensee action, a civil penalty will generally
3 be assessed.

4 (Slide.)

5 The next slide shows a table of base civil penal-
6 ties for different types of licensed programs and for different
7 severity levels of noncompliance. In determining the civil
8 penalty values, primary consideration was given to the severity
9 level of the violation and potential hazard involved with
10 the licensed operation, and to a lesser degree, general
11 ability to pay.

12 In general, those programs which present a greater
13 potential hazard and those where licensees have a greater
14 ability to pay are toward the top of the table. Let me stress
15 that this is generally the case, and we recognize that
16 isolated instances may not fit the general pattern. If a
17 large disparity occurs, adjustments may be made on a case-by-
18 case basis. Again, we would welcome your comments on the
19 equitable distribution of civil penalties.

20 You will note from the table that the base civil
21 penalty values for Severity Levels I and II are the same. This
22 is because the same basic noncompliance act occurred. However,
23 as you will see later in our discussion, if a Severity Level I
24 violation occurs, the licensee will normally be subject to an
25 Order in addition to the civil penalty such that the total

1 enforcement sanction will generally be more severe for a
2 Severity Level I than for a Severity Level II violation.

3 It is also noteworthy that, while the law provides
4 that a civil penalty of \$100,000 may be assessed for each
5 violation, the policy provides that for Severity Level I, II, and
6 III violations the civil penalty will be assessed for each
7 event, irrespective of the number of violations associated with
8 the event.

9 Whether more than one event arises out of a series
10 of violations will be determined on a case-by-case basis.
11 Let me elaborate. Referring back to the example I gave earlier,
12 if several violations were identified at a reactor construc-
13 tion site which led to the conclusion that a breakdown in
14 quality assurance occurred in multiple phases of construction,
15 each of the violations would be categorized as Severity Level II.

16 However, the civil penalty would be assessed for
17 the event. That is, a cumulative base civil penalty of
18 \$80,000 would be assessed for all the violations which
19 constituted that event regardless of the number of specific
20 violations.

21 We believe that such an approach will help to focus
22 licensee and public attention on the significance of events
23 as opposed to the individual violations which may be identi-
24 fied.

25 The mechanics for assessing civil penalties remain

1 the same. That is, the proposed notice of imposition of civil
2 penalties, and notice of violation, must clearly state which
3 violations occurred and which violations civil penalties are
4 being assessed for.

5 For example, if eight violations constitute a
6 Severity Level II event, the \$80,000 base civil penalty may be
7 equally assessed for all eight items which make up the event,
8 or the entire civil penalty may be assessed against only one
9 violation. The actual distribution will be determined on a
10 case-by-case basis.

11 There are several factors which enter into the
12 determination of the civil penalty, some of which I have already
13 touched on. These factors are shown on the next slide.

14 (Slide.)

15 The first factor is the gravity or severity of
16 the violation. This factor is taken into consideration in the
17 structure of the table itself, in that more serious violations
18 get higher civil penalties. Also, those licensees whose
19 programs prevent a greater potential health and safety risk
20 are toward the top of the table and will be assessed the higher
21 civil penalty.

22 The next factor is financial impact. This also is
23 taken into consideration in the structure of the table, in that
24 generally those licensees who have a greater ability to pay
25 are in the groups near the top of the table, and smaller

1 licensees with lesser ability to pay are generally near the
2 bottom of the table.

3 As mentioned earlier, however, there are recognized
4 inconsistencies in this area.

5 Next, the duration of the violation will also impact
6 upon the civil penalty which is assessed. Each day that a
7 violation continues may be considered as a separate violation
8 and therefore subject to a separate civil penalty. We expect
9 to utilize that provision as a general practice.

10 It is not possible to define beforehand how this
11 will be applied, because the requirements and situations differ
12 greatly. As an example, if a required safety system is valved
13 out so that it cannot perform its intended safety function,
14 the Commission will likely issue a civil penalty for each day
15 such a condition occurs.

16 On the other hand, if an overexposure has occurred,
17 that will be considered a single event where the duration of
18 the violation does not come directly into play.

19 The policy provides that civil penalties may be
20 reduced up to 50 percent of the base value if the noncompliance
21 which led to the civil penalty was identified by the licensee,
22 reported if required, and corrective action promptly initiated.
23 This self-identification does not apply to noncompliance
24 disclosed by incidents such as overexposures or accidents.

25 The policy also provides that if the licensee has

1 acted in good faith, an additional 25 percent reduction in
2 addition to that already provided for self-identification may
3 be applied. "Good faith" is not precisely defined in the policy,
4 but a reduction for good faith will be considered in those
5 cases where the licensee has taken extraordinarily prompt and
6 comprehensive corrective action.

7 On the other hand, the policy provides that if the
8 licensee could reasonably have been expected to have taken
9 preventive action, or if the violations are particularly
10 serious, including cases involving willfulness, the civil
11 penalty may be increased up to 25 percent over the base value
12 in the table.

13 We plan to review some specific cases in a little
14 while to better demonstrate how these factors would influence
15 the determination of actual civil penalty values.

16 Could I have the next slide, please?

17 (Slide.)

18 This slide shows the types of orders which may be
19 issued by the Commission. There are orders to modify, suspend,
20 or revoke a license; and orders to cease and desist any
21 particular operation. These orders may affect all or part of
22 the licensed activity.

23 Normally, orders for modification, suspension, or
24 revocation will be issued with a show cause provision. That
25 is, they will require a licensee to show cause why such action

1 as proposed should not be taken. Such orders always provide a
2 licensee opportunity for a hearing on the issues.

3 However, if a determination is made by the Director
4 of the Office of Inspection and Enforcement that the public
5 health and safety, common defense and security, or public
6 interest so demands, the order may be effective immediately.

7 It is possible for orders to be issued which combine
8 these provisions. That is, an order may require the immediate
9 suspension of a particular operation, and may at the same time
10 include a show-cause provision as to why the license should not
11 be revoked.

12 (Slide.)

13 The last slide in this segment of the presentation
14 shows a progression of escalated enforcement action which may
15 be taken for repetitive serious violations. This table is not
16 intended to prohibit the NRC from taking a different action if
17 the case warrants. However, the degree to which this progres-
18 sion should be followed in practice is a subject on which the
19 Commission has explicitly sought comment.

20 Let me run through an example of how this table
21 might be applied. If a Severity Level II violation occurred,
22 its first occurrence would result in a civil penalty. A
23 second similar violation within a two-year period would result
24 in a civil penalty and an order to either suspend affected
25 operations until the office director is satisfied that there is

1 reasonable assurance that the licensee can operate in
2 compliance, or an order to modify the license to impose
3 additional requirements to provide equivalent assurance.

4 If a third similar violation occurred within a
5 two-year period, then in addition to the actions taken the
6 previous time, additional action to show cause for further
7 license modification or for license revocation would be the
8 next step.

9 You will note that the table applies to violations
10 in the same activity area. This means that if a Severity I,
11 II, or III event occurs in the area of safeguards, for example,
12 a subsequent significant event in another area such as
13 radiation and safety would not be considered the same activity
14 area and this table would not be followed.

15 On the other hand, a personnel error leading to the
16 misvalving of a safety system at a reactor on one occasion
17 followed by personnel error which misvalved out a different
18 safety system, would be considered as the same activity area
19 and this table would normally be followed.

20 While we have been discussing the enforcement
21 actions normally taken by the NRC, it should also be noted that
22 the policy also provides for criminal sanctions. I don't plan
23 to spend any real time in this area, but let me just say that
24 Chapter 18 of the Atomic Energy Act provides that certain
25 violations of regulatory requirements may be criminal offenses.

1 All alleged or suspected criminal violations are required to
2 be referred to the Department of Justice for possible investi-
3 gation and prosecution.

4 Let me now turn the meeting over to Mr. Thompson
5 who will present a few simple cases demonstrating how the policy
6 will be applied.

7 MR. THOMPSON: To illustrate application of the
8 revised enforcement criteria, we have prepared a few hypothet-
9 ical enforcement cases based somewhat on actual experience.
10 The examples are intended to demonstrate how the criteria might
11 be applied, so some of the factual material has been altered
12 from actual cases.

13 (Slide.)

14 The first case involves a situation in which a power
15 reactor licensee legitimately removed an emergency core
16 cooling system from service to perform maintenance. When the
17 maintenance was completed, a procedural error, coupled with a
18 personnel error, led to the system remaining inoperable by
19 virtue of valves remaining in the closed position.

20 Four days later, routine surveillance on the system
21 disclosed the inoperable condition, which was immediately
22 corrected by the licensee and reported to NRC as required.

23 The enforcement action is calculated as shown on
24 the next slide.

25 (Slide.)

1 This is a Severity Level II violation -- using
2 Supplement I to the Federal Register Notice -- in that a
3 safety system was incapable of performing its intended safety
4 function. A base civil penalty of \$80,000 as shown in Table 1
5 is reduced by 50 percent because the licensee identified the
6 condition, promptly corrected it, and reported it in a timely
7 fashion. Since the violation continued for four days, the
8 resulting adjusted \$40,000 civil penalty is multiplied by 4,
9 resulting in a cumulative civil penalty of \$160,000.

10 (Slide.)

11 In the second case as shown in the next slide also
12 involves a power reactor licensee who shipped radioactive waste
13 to a burial ground. On arrival at the burial site, a state
14 inspector surveyed the truck and found radiation levels at
15 the surface of the truck substantially in excess of the
16 Department of Transportation limits.

17 The appropriate supplement for this case is Supplement
18 V. The Severity Level is II, because the radiation level
19 exceeded three times' DOT limits without a breach in contain-
20 ment. Since this involved a power reactor, the base civil
21 penalty is \$80,000. No adjustments upward or downward are
22 applied.

23 (Slide.)

24 Case number three, as shown in this slide, is an
25 example of a situation for which a civil penalty is of limited

1 value because of the nature of the problem. Instead, more
2 severe sanctions are called for.

3 Over a two-year period, technicians at a hospital
4 routinely administered double the prescribed doses of radio-
5 isotopes to patients undergoing diagnostic procedures. Their
6 motivation was apparently based on a desire to reduce the
7 amount of time required for scanning, thus reducing the dis-
8 comfort and convenience of the patients, most of whom were
9 elderly and very ill.

10 When it was proposed to follow the same improper
11 dosage procedure for a teenaged patient, one of the technicians
12 involved became sufficiently concerned that he "blew the
13 whistle" to NRC. Our investigation confirmed the facts of
14 the case and the actions shown on this slide ensued.

15 We immediately suspended the license and issued a
16 show cause revocation order. In addition, the willfulness
17 aspects of the case dictated that the matter be referred to
18 the Department of Justice for a determination of the desir-
19 ability of criminal prosecution.

20 (Slide.)

21 I might add that this case is an actual case that
22 occurred in the not-too-far-distant past. Had it come about
23 under the new enforcement policy, the actions would have
24 essentially been the same.

25 The final case is one that occurs not infrequently

1 among radiography licensees -- a "classic" radiography
2 overexposure. Following a routine field shot, the radiographer
3 failed to retract the source before entering the area to set up
4 film for the next shot. No surveys were made; personnel
5 dosimetry was not carried; and the area of the shot had not
6 been properly posted.

7 The radiographer and his helper both received
8 overexposures. The radiographer's whole-body exposure, based
9 on reenactments, was estimated to have been 12 rem. The helper's
10 was 7 rem. This was a Severity Level II event under Supplement
11 IV because of the amount of the exposure. This calls for a
12 base civil penalty under Table 1 of \$8000.

13 There have been numerous notifications to radiogra-
14 phers concerning similar previous events like this one. Thus,
15 there is a basis for concluding that the licensee could
16 reasonably have been expected to have had prior knowledge and
17 to have instituted preventive measures. This means that the
18 base civil penalty for this Severity Level II violation is
19 increased by 25 percent, leading to a cumulative civil penalty
20 of \$10,000.

21 Considerable flexibility is required and provided
22 in implementation of this revised Enforcement Policy. Responsi-
23 bility for this exercise of technical judgment is vested in
24 office directors who are senior managers in NRC.

25 For most cases, the principal enforcement officer of

1 the NRC is the Director of the Office of Inspection and
2 Enforcement, although other Office Directors may -- and in some
3 cases do -- issue enforcement actions in their own spheres of
4 responsibility. For example, the Directors of the Office of
5 Nuclear Reactor Regulation or Nuclear Materials Safety and
6 Safeguards issue license modification orders which restrict
7 operation relatively often. Similarly, the Director of the
8 Office of Administration is authorized to issue license revoca-
9 tion orders for nonpayment of required fees.

10 Fundamentally, however, we find that public interest
11 and licensee concern focuses most strongly on those retrospec-
12 tive enforcement actions associated with noncompliance with
13 regulatory requirements. Enforcement actions associated with
14 such noncompliance are taken almost exclusively by the Director
15 of Inspection and Enforcement and the discussion which follows
16 is based on those cases.

17 The Director's discretion is exercised both in his
18 decision regarding which type of enforcement action to take --
19 that is, the notice of violation, civil penalty, or an order --
20 and in the case of a civil penalty, the determination of an
21 appropriate amount to be assessed.

22 Furthermore, as noted in the previous presentation,
23 combinations of enforcement sanctions may be used for higher
24 severity level matters or for repetitive noncompliance.

25 The choice of enforcement sanctions in such cases is

1 a responsibility of the Director of I&E, based of course on
2 staff recommendations and consistent with the general principles
3 in the revised enforcement policy and the technical merits of
4 each case.

5 The factors considered in reaching these decisions
6 are those presented earlier, and repeated here, associated with
7 determining the amount of a civil penalty to be applied. That
8 is: the gravity of the violation; the duration of noncom-
9 pliance; the means of identification; financial impact; good
10 faith; prior enforcement history; and willfulness.

11 The Director notifies the Commission in writing of
12 each application of elevated enforcement sanctions such as
13 civil penalties or orders. In addition, for certain especially
14 significant actions, the Commission is consulted prior to
15 taking the action unless the urgency of the situation requires
16 immediate action to prevent or mitigate an imminent threat to
17 public health or safety.

18 Prior consultation with the Commission is required
19 for four types of situations:

20 First, when the action requires a balancing of the
21 implications of not taking the action against the hazards
22 be eliminated by taking the action.

23 Second, proposed imposition of civil penalties
24 exceeding either three times the value of a Severity Level 1
25 violation for that type of licensee; or, the maximum civil

1 penalty for the next higher severity level for the type of
2 licensee involved.

3 Third, we go to the Commission first on all actions
4 for which the Commission has requested prior consultation.

5 And finally, any action the Director believes
6 warrants the Commission's attention will be taken to the
7 Commission prior to its implementation.

8 An example of the first type of situation might
9 involve a contemplated license suspension order for a facility
10 providing products or services crucial to the national defense
11 or security. If the staff determines that shutdown of the
12 facility might deny the needed product or service and thus
13 adversely affect the Nation's interests, prior consultation with
14 the Commission is required.

15 A second example occurred recently in the case I
16 cited earlier when serious noncompliance involving patient care
17 at a hospital dictated issuance of a license suspension order.
18 Before taking the action, however, the staff made an explicit
19 determination that needed health services to the community would
20 not be denied by the order, since a neighboring hospital was
21 also licensed to perform the same procedures. Had such a loss
22 been a possibility, prior Commission approval would have been
23 required for the suspension.

24 The dollar limits on civil penalties requiring prior
25 consultation with the Commission can be reached by either a

1 a continuing violation or by a combination of events. For
2 example, the inability of a reactor safety system to perform
3 its intended safety function -- a Severity Level II event -- that
4 continues over a period of a week might lead to a civil penalty
5 of from \$210,000 to \$700,000, depending on the extent to which
6 adjustments were applied to the base values in Table 1. If the
7 adjusted figure exceeds \$300,000, prior Commission consultation
8 is required.

9 In the case of a continuing Severity Level III
10 violation -- for example, unavailability of a reactor safety
11 system if offsite power were lost -- the civil penalty for a
12 week-long violation might vary from \$105,000 to \$350,000. Any
13 such civil penalty proposal would require prior Commission
14 consultation, since the maximum civil penalty for the next higher
15 Severity Level violation at a power reactor is \$100,000.

16 The Commission has already identified one aspect of
17 implementation of the revised Enforcement Policy on which it
18 wishes to be consulted: Under the third criteria. That is,
19 the first few cases for which the staff proposes to apply "good
20 faith" as a basis for a reduction of a civil penalty must be
21 taken to the Commission for its prior approval before its
22 implementation.

23 Finally, the fourth criterion for prior Commission
24 consultation requires the mechanism by which the Director may
25 solicit Commission guidance on new or unique applications of

1 the policy, particularly for cases the Director believes to
2 be watershed decisions establishing precedent.

3 Let me comment at this stage that this concludes
4 our prepared presentation. Copies of the prepared remarks
5 and the slides will be available at the back of the room at
6 the break.

7 At this stage, I believe -- Jim, did you want to
8 proceed to the break now? Or can we take comments at this
9 stage?

10 MR. O'REILLY: I would like to make a note that we
11 are providing copies of the slides and the talks to you all at
12 the break. I believe the break -- correct me if I'm wrong --
13 is to be at 2:30. So I think perhaps really we should wet our
14 feet on some of the questions, and then we'll break at 2:30.

15 Let's proceed. We have a prepared listing of the
16 people who have requested to be heard. The first on our list
17 is a B&W Lynchburg representative, Mr. David Zeff. Is he
18 here?

19 MR. ZEFF: Yes.

20 MR. O'REILLY: You can use the microphone in the
21 corridor, please.

22 MR. ZEFF: My comments I would like to direct
23 mainly toward the philosophy of the new Enforcement criteria,
24 rather than to the technical aspects of it.

25 Our concern is that if we comment just on the

1 technical aspects, it might be considered that a "technical fix"
2 would satisfy the overall philosophical difference that we
3 have, and that is clearly not the case.

4 I would like to comment first on the fine structure
5 itself, the Table 1 in the Federal Register. The schedule of
6 base civil penalties in Table 1 for a power reactor range from
7 \$5000 to \$80,000 per day, with corresponding fines of half
8 that value for fuel facilities and test reactors, a fifth that
9 value for research reactors and critical facilities, and one-
10 tenth that value for all other licensees.

11 And of course it is the Commission's responsibility
12 and duty to protect the common defense and security and the
13 public health and safety where radioactive materials are
14 concerned. However, there is an apparent disconnect between
15 that philosophy, that concern for the public health and safety,
16 versus the overall structure of the table.

17 I believe that the table doesn't adequately reflect
18 the kinds of differences there are in the different licensees
19 and the various different risks they pose to the public. For
20 example, there is nothing that a low enriched uranium facility
21 can do -- including gross dispersal of its contents, of its
22 inventory -- to compare to the kind of accident that could
23 occur at a power reactor facility. The potential for harm
24 there is many orders of magnitude difference; whereas, the
25 levels of fines differs only by a factor of two for the two

1 types of facilities.

2 Based on a hazard potential, the difference should
3 be an order of magnitude difference as far as fines are
4 concerned.

5 Also, it has been clarified to some extent here
6 today the fact that there are differences in enforcement
7 actions for different -- excuse me, as far as categorizing the
8 types of violations is concerned, there are differences in the
9 supplements to the notice whereby, especially for fuel
10 facilities, it is very difficult to tell whether a given
11 violation fits into a Category III, a Category IV, or a
12 Category V citation. The criteria are quite well spelled out
13 for a power reactor, but for the other facilities it is reall-
14 not clear at all what types of citations -- what kinds of
15 level of severity a given noncompliance would fall under.

16 I would like to comment especially philosophy-wise
17 on the idea of a 50 percent reduction for licensee-identified
18 noncompliances which are promptly corrected and reported to
19 NRC where required.

20 We wholeheartedly, actually, disagree with this
21 philosophy since, from my perspective, the licensee perspective,
22 a fine is a fine regardless of the amount of it. For taking
23 prompt management action when a problem is identified, it just
24 appears to me to be totally inappropriate to have a fine.

25 I realize that it looks, on the one side, as though

1 there is an incentive to assure compliance, but on the other
2 hand if you look at it from a compliance-auditing standpoint
3 it would be in actuality cheaper not to have your compliance
4 organization, and thereby not identify the compliances in-house.
5 It would be simpler just to forget them all together, or just
6 not to even record the noncompliances.

7 I don't think that's the intent here at all -- to
8 drive that kind of a compliance and monitoring function
9 underground.

10 We also have been looking at the concept that a
11 violation is of the same magnitude, from a fining standpoint,
12 as the failure to report the violation. Clearly in my thinking
13 an overexposure of a given individual is very different from
14 the failure to report that overexposure on the timely basis
15 required.

16 I'm not saying that it shouldn't be reported, but
17 I do believe that there is a real difference between a real
18 exposure and a report that's generated as a result.

19 I would also like to make another comment on safe-
20 guards violations for low enriched uranium. The Institute of
21 Nuclear Materials Management published a special report in
22 August of 1976 called "Assessment of Domestic Safeguards for
23 Low Enriched Uranium," which concludes that the risk to the
24 public from low enriched uranium is not significantly different
25 of that for natural uranium.

1 And based on this report and a similar report
2 prepared for NRC by Brookhaven during approximately the same
3 time period in 1976, we believe that the safeguards violations
4 for low enriched uranium belong only in Categories V or VI and
5 should not be included in any of the Categories II or III.

6 Supplement IV to the proposed Enforcement Policy
7 addresses severity categories for violations of health physics'
8 requirements, Part 20 requirements. The assignment for
9 numerical limits for releases of radioactivity to the environ-
10 ment in Severity Levels I, II, and III is based on the degree
11 to which a requirement is exceeded -- a factor of 3, or what-
12 ever it is -- and does not necessarily reflect the consequences
13 of such releases.

14 The limits in Part 20, as I understand, were based
15 on the assumption that the effluents could be immediately
16 redirected into the human survival chain. In cases where this
17 is true -- such as when a facility is located in a very densely
18 populated area -- the controls are probably appropriate.
19 However, in the event a facility is located in a remote area
20 where the source-to-receptor distance and atmospheric condi-
21 tions, concentrations, the population at risk, et cetera,
22 differs greatly from those used to determine the limits, then
23 I believe also these mitigating factors should play a very
24 large role in determining whether or not a given severity
25 category -- the citation is placed in a given severity category;

1 rather than just an automatic, "it exceeds a given limit,
2 therefore it has to be changed."

3 Do you want to respond to these?

4 MR. O'REILLY: I would like to thank you, Mr. Zeff,
5 for your comments, and ask the panel here if they would like
6 to respond? Or would they basically accept your comments --
7 and they will be a part of the minutes of the meeting; and all
8 the comments will be assembled and appropriately addressed
9 when we are through with the entire cycle, the results of
10 these meetings and the results of the written comments that
11 the Commission has requested and is already receiving.

12 Is there anybody on the panel who would like to
13 respond?

14 MR. KEPPLER: I think not. We will take the
15 comments and get back to you eventually. Thank you.

16 MR. O'REILLY: This is our first case where some-
17 body has made comments. If there are any specific requests of
18 the panel for a reply, please identify that, too.

19 Now the next individual who has asked to make
20 comments is also from B&W, Lynchburg, Mr. Bill Heer.

21 Bill?

22 MR. HEER: I have no prepared comments.

23 MR. O'REILLY: The next individual who has requested
24 to be heard is a private citizen from Atlanta, Mr. Harry W.
25 Belfor. Is he here?

1 (No response.)

2 MR. O'REILLY: I note that he is not here.

3 The next individual identified is the Director of the
4 Nuclear Research Center, Georgia Institute of Technology,
5 Dr. John Russell.

6 Dr. Russell?

7 MR. RUSSELL: I would like to begin my comments by
8 reading a letter, for the benefit of those who were not on the
9 distribution list, to Mr. Dudley Thompson, Director. I wrote
10 this about a month ago:

11 "Dear Mr. Thompson:

12 "This letter is in response to the request for
13 comment on the proposed NRC Policy Statement which defines a
14 set of conditions for punitive fines for operators of nuclear
15 reactors. I have very definite opinions about the inadvisability
16 of creating such a system of fines, and my reasons follow.
17 But first I want to assure you that my comments are not directed
18 toward you personally, nor the NRC in general. I am quite
19 aware that the origin of the motive for creating these rules
20 lies outside the NRC and comes in part from the strong anti-
21 nuclear/anti-industry bias of the Carter Administration.

22 "My objection to the proposed policy statement
23 derives from a basic characteristic of a bureaucracy -- i.e.,
24 the people of the bureaucracy are just ordinary human beings,
25 not angelic supercreatures. As a result, no bureaucracy, to my

1 knowledge, has long been able to remain unaffected by the type
2 of temptation presented by the proposed system of fines and
3 levies.

4 "For example, the press has often accused the U.S.
5 Internal Revenue Service of such things as promoting its
6 auditors, or perhaps Inspectors, on the basis of how much money
7 they bring in on fines and having quotas so as to make the
8 operating budget.

9 "My 25 years of interactions with the AEC and now
10 the NRC has always been based on mutual respect and a solid
11 professionalism that is above reproach. I am afraid that in
12 time the proposed policy will destroy the professionalism of
13 the NRC and reduce its inspectors to the status of the country
14 cop who has to make his salary by trapping out-of-state
15 speeders. The safety of the nuclear industry depends in part
16 on the professionalism of the NRC. The American people deserve
17 to have a professional NRC.

18 "The proposed policy is a corruption of that
19 professionalism and therefore works to defeat the high purpose
20 of the NRC -- which is, a safe nuclear industry."

21 Since then, I have learned a few things in
22 addition which I think should be noted. At least one utility,
23 which must remain unnamed at the moment, has explored its own
24 record for the past year and estimated that implementation of
25 this policy would have cost \$1.3 million this year.

1 Now multiply that by 70 operating facilities in the
2 country and you come up to \$91 million per year which would be
3 the income from these proposed fines. I am sure other people
4 have done these calculations. It is certainly a beautiful plum,
5 and it severs the financial responsibility of the NRC to
6 Congress. And of course it also raises the possibility that if
7 you're running out of money towards the end of the year, it is
8 possible to schedule a few more inspections.

9 As Mr. Keppler commented, the rules very clearly
10 tend to force well-intentioned employees to lie. They are
11 encouraged to lie to their management -- especially so, since
12 probably half of the university-operated reactors in the
13 country could be shut down by a single fine.

14 These policies, if implemented, might guarantee my
15 job security by eliminating the next generation of nuclear
16 engineers.

17 In summary, in my opinion adoption of this policy
18 takes a large step toward absolute destruction of the nuclear
19 industry. This meeting today is like the gentleman trying to
20 discuss the price and circumstances with the lady: He is
21 missing the point; that the lady is not interested under any
22 circumstances at any price; it is her whole life, and it is not
23 a monetary matter.

24 My constructive suggestions for the NRC for an
25 alternative policy involve a tribunal to hear cases of willful --

1 The dollar amounts that come in as a result of imposed civil
2 penalties are payable to the Treasury of the United States, and
3 they go into the General Fund just like our income taxes.

4 Secondly, let me comment very briefly concerning the
5 character of the concern associated with self-identification
6 and the use of enforcement actions even in those cases for
7 which it was clearly a case of a self-identified flaw.

8 The analogy that I would draw in cases such as that
9 is that we do believe that it is appropriate that these factors
10 be considered in mitigation; but the mere fact that a hit-and-
11 run driver subsequently turns himself in to the police does not
12 completely mitigate the fact that the accident occurred.

13 We recognize the sensitivity of this subject,
14 however, and will be considering it carefully during the
15 revision to the policy arising from the public comment period.

16 Would anybody else like to comment?

17 (No response.)

18 MR. O'REILLY: Again, your comments in totality will
19 be reviewed by the Commission.

20 The next individual who identified himself for
21 discussion time is a representative from the Georgie Power
22 Company, a Mr. Leonard Gucwa.

23 MR. GUCWA: Thank you, Mr. O'Reilly.

24 My name is Len Ga-CEE-wah. I am the Chief Nuclear
25 Engineer with Georgia Power Company. I appreciate this

1 opportunity to express my company's views on the Commission's
2 proposed new Enforcement Policy. Although Georgia Power
3 Company plans to file formal written comments on the proposed
4 Enforcement Policy, it appreciates this opportunity to highlight
5 some of its concerns today.

6 While I want to address the specific topic mentioned
7 in the Notice of this proceeding, I want to focus first on
8 what Georgia Power Company considers to be the two most
9 troublesome aspects of this new policy.

10 First, the proposed policy fails to recognize the
11 role of positive incentives in ensuring compliance with license
12 requirements and a safe performance by utilities.

13 Second, the proposed policy is unduly rigid and
14 fails to recognize the proper role of informed discretion in
15 the enforcement process.

16 I believe that these two problems are interrelated
17 and that if they are not addressed and solved, they will act
18 in a cumulative manner to frustrate the best achievement of
19 the undisputed national goal of a safe utilization of nuclear
20 power.

21 I want to stress that this goal is a crucial
22 priority for Georgia Power Company and its affiliates. Strong
23 and fair enforcement by the Commission is critical to the
24 achievement of that goal.

25 Georgia Power Company recognizes this, as well, and

1 believes that the Commission has taken a very positive step in
2 this proceeding toward articulating its enforcement policy.

3 As I mentioned before, however, Georgia Power
4 Company believes that the proposed policy fails to provide
5 adequate and positive incentives, and fails to recognize the
6 need for reasoned discretion.

7 Let me first address the importance of positive
8 incentives. I think that everyone recognizes that safe
9 nuclear power cannot be ensured by government action alone.
10 Private initiatives in all phases of the nuclear industry is
11 essential to achieving the goal of safe nuclear power. Private
12 initiatives have escalated significantly in response to the
13 accident at Three Mile Island.

14 In addition to enhanced safety concerns generally
15 on the part of everyone in the industry, formal efforts to
16 establish programs to improve performance have been successful.

17 The Southern Electric System Task Force is an
18 example of such a program. The Institute of Nuclear Power
19 Operations, and the Nuclear Safety Analysis Center, which are
20 examples of ongoing programs. These programs may unearth new
21 problems in addition to providing the basis for ongoing
22 improvements, and may also disclose previously undetected
23 violations.

24 Events which were previous considered not reportable
25 may be deemed to have greater importance in the light of further

1 study and examination. I think it is fair to say that the
2 standards for what is reportable and what is not is not a
3 bright line, and hindsight has at times influenced almost
4 everyone's actions, including regulatory action.

5 Nonetheless, on the proposed policy, licensees who
6 find a problem which is classified as a "violation," report,
7 and correct it, are still subject to a fine regardless of the
8 fact that no immediate risk to health or safety of the public
9 is involved.

10 That fine may be reduced by slightly more than
11 half in cases of what the Commission considers "extreme good
12 faith." When a licensee has acted in good faith and finds,
13 reports, and corrects a condition classifiable as a violation,
14 either no notice of violation should be issued, or no civil
15 penalties should be assessed.

16 In any enforcement program, rewards and punishments
17 should be balanced with a view towards achieving the overall
18 goal. Whenever a serious imbalance between the rewards and
19 punishments exists, distortions in behavior occur. The net
20 effect can be counterproductive.

21 Discovery of a problem carries with it the burden
22 of correcting and reporting. Neither reporting nor correction
23 will occur if there is no discovery. The proposed regulations
24 seriously risk the unintended effects of chilling efforts at
25 discovery.

1 Some provisions should be made in the final rule
2 to more fully encourage good-faith reporting and active
3 investigation and study by providing that the licensee who acts
4 in true good faith will not be faced with punitive action. The
5 preservation of the reasoned use of discretion can help
6 implement such a program.

7 This brings me to the second point: The importance
8 of acknowledging and preserving the rational use of discretion
9 in the enforcement process.

10 A major step towards resolving the first problem
11 could be taken if the Commission adopted these rules as nonbinding
12 guidelines and expressly provided for discretionary waivers of
13 penalties, as well as outlining in great detail the discre-
14 tionary factors which will be considered in determining the
15 appropriate form of enforcement action -- whether a notice of
16 violation should be issued; whether a violation should be
17 found -- and the appropriate penalty, if any.

18 These discretionary factors could be added to
19 informally. The process of delineating the factors to be
20 considered in instituting a formal or informal enforcement
21 action should be constantly reviewed both formally and
22 informally.

23 This concern is specifically responsive to the
24 sixth and seventh specific inquiries of the Commission -- the
25 factors for determining appropriate enforcement action should be

1 made more clear and expanded to include all relevant concerns.
2 An office director should be granted explicit discretion in
3 fashioning enforcement remedies.

4 This concern is broader, however, than these two
5 specific inquiries of the Commission. Rigidity at one stage
6 of administrative action often leads to arbitrary action at
7 another. Just as conviction rates drop when mandatory minimum
8 sentences have been introduced, and just as the pretense of
9 full enforcement of the criminal laws when selective enforce-
10 ment is a fact leads to disrespect of law enforcement and the
11 law, the establishment of apparently automatic penalties is
12 bound to result in arbitrary and at times unfair actions in
13 the enforcement process.

14 Fines should be recognized as only one tool in the
15 enforcement process. They should be utilized in appropriate
16 circumstances. Nonbinding guidelines should be used to provide
17 regulators and the regulated with benchmarks. The rules should
18 provide expressly for divergence from those benchmarks to
19 reward conscientious behavior, and to compel action by
20 recalcitrants.

21 This flexible approach is preferable to pretending
22 that a scale established by rulemaking has removed discretion
23 from the application of civil penalties.

24 Those are Georgia Power Company's general criticisms
25 of the proposed policy. The general criticisms have some

1 application to each of the particular issues the Commission
2 requested commentators to address, which I would like to address
3 now.

4 I intend to focus on the fairness of the program;
5 the propriety of the severity levels; and provisions for
6 escalated enforcement.

7 The Commission's first inquiry is: Whether the
8 proposal is fair and equitable? It has a risk of unfairness
9 because of the apparent rigidity of the civil penalties and
10 the slight attention given in the proposal to the discretionary
11 determination of whether a notice of violation will issue at
12 all.

13 For most utilities, the stigma of a notice of
14 violation is incentive enough to comply with license and
15 Commission requirements. The penalties make that decision to
16 issue a notice of violation all the more important. The
17 rigidity of the scale of penalties may lead to inconsistent
18 determinations of whether a notice of violation should issue
19 by the individuals responsible for administering the enforce-
20 ment program.

21 In short, the failure to address the elements of
22 discretion fully and to acknowledge the proper role of
23 discretion opens the door to unfair applications in practice.

24 The Commission's third inquiry is: Whether the
25 severity levels are appropriate? The severity levels are a

1 useful tool for gauging the relative significance of violations.
2 The policy should, however, clearly state that a determination
3 of the severity level is one of several steps in determining
4 the sanctions to be used. Consultation with the Commission in
5 certain cases would be a useful step in structuring the discre-
6 tion of enforcement officers.

7 The history of the licensee's compliance efforts
8 should also be considered, particularly in light of the need
9 to encourage and reward vigorous private initiatives. More
10 attention should also be paid to the definitions of the severity
11 levels, linking them appropriately to the degree of public
12 radiation hazards, the immediacy of the danger, and the type
13 of systems involved.

14 The Commission's ninth inquiry is: Whether the
15 provisions for escalated enforcement action set forth in Table 2
16 are appropriate? Table 2 of the Enforcement Policy should be
17 deleted. It gives a misimpression that the continuing and
18 escalating penalties are nondiscretionary.

19 This deletion would encourage the exercise of
20 discretion on a case-by-case basis with the twin goals of
21 ensuring compliance while being fair.

22 In conclusion, I would like to thank the Commission
23 for providing the opportunity to comment orally on its
24 proposals.

25 MR. KEPPLER: One of the things that we tried to

1 do was to avoid this rigidity by throwing in the words
2 "normally" or "usually" or "generally" throughout the policy.

3 If you can, in your written comments to us, give us
4 some thoughts perhaps as to how we can better avoid that
5 feeling of rigidity, we would appreciate it; but we intentionally
6 had tried to address that through the various drafts by
7 incorporating some of the weazle words into the thing.

8 MR. O'REILLY: Does any other panel member have a
9 comment?

10 (No response.)

11 MR. O'REILLY: Thank you for your comments. And
12 they will be addressed.

13 I think we have time for one more individual before
14 we take a break for a cup of coffee, or a Coke, or something.

15 So we will start with Mr. Jim Ritts from the
16 Tennessee Valley Authority.

17 MR. RITTS: I am Jim Ritts from the TVA Office of
18 Engineering, Design, and Construction, the Knoxville Licensing
19 Section.

20 The questions that I have today are mainly relating
21 to your Questions 6, 7, and 8. They are regarding facility
22 construction.

23 The examples that you gave in the proposed law, or
24 proposed policy, did not really make it very clear regarding
25 facility construction as to how some of these are to be applied,

1 and I think that would be helpful if we had some examples in
2 that regard -- I mean, some discussion here today possibly.

3 Secondly, you seem to indicate -- or at least
4 Mr. Keppler seemed to indicate in his presentation that the
5 point scale for evaluating each site to the violation and
6 severity level is being discarded. Is that true? Are you
7 using the point scale now? Or are you just completely --

8 MR. KEPPLER: Are you talking about the sanction
9 points?

10 MR. RITTS: The points that were previously used.

11 MR. KEPPLER: Yes; they're discarded.

12 MR. RITTS: Okay. Completely.

13 All right, concerning rights of appeal, there have
14 been numerous instances where -- and that will continue to
15 occur -- where the utility does not agree that the inspectors'
16 findings represent noncompliance with applicable codes or
17 standards, or licensing documents. We are interested in what
18 rights of appeal exist? And how will appeals be handled in
19 relationship to the new severity levels?

20 Another thing, the policy appears to be too strict
21 on the Severity Level III and IV items discovered and identi-
22 fied by the licensee. And I know this has been discussed by
23 some of the other commenters so far.

24 The Section IV-A implies that a Severity Level IV
25 item found by a licensee would result in an automatic notice of

1 violation, where it says that the NRC will not generally issue
2 notices of violation for Severity Levels V and VI. That is a
3 concern. It is also a concern as to whether or not that makes
4 it very clear about the civil penalty. You described in the
5 comments today that civil penalties will only apply after an
6 enforcement meeting has been held, which may be appropriate to
7 include.

8 Also, it appears that imposition of automatic
9 penalties for Severity Levels I, II and III items discovered --
10 and I'm talking about facility construction, primarily --
11 discovered and reported to the NRC by the licensee would
12 possibly be counterproductive to ensuring that all conditions
13 adverse to the safety are identified and reported.

14 Mr. Thompson's example of the hit-and-run I don't
15 think is completely appropriate in the case of facility
16 construction, again, because you have a number of people
17 involved. And if you should, I think, reward somebody for
18 finding a situation which hasn't gotten to the level of being
19 able to be detrimental to the health and safety.

20 The fifth item, the definition of one work activity,
21 or a single work activity, as discussed in Supplement II for
22 construction facilities could be more accurately defined. For
23 instance, "welding activities" could encompass "structural
24 welding, welding of piping connections," that sort of thing.
25 What is a "single work activity" in that regard? Are you

1 talking about activities of more than one individual in the
2 same kind of area? There is a morass of different interpre-
3 tations there.

4 And finally, how will violations at more than one
5 site be treated? For instance, for a utility such as we are
6 having two or more sites, if you have a violation that is
7 similar in nature, would they be considered a "recurrence," for
8 example?

9 I appreciate the opportunity to speak.

10 MR. KEPPLER: Could we go through these one-by-one
11 with you?

12 MR. O'REILLY: I think we have this list, and we
13 will sharpen it up during the break and start off after the
14 break with discussions on your questions. Let's have the
15 break now, and we will meet back here in 20 minutes.

16 (Brief recess.)

17 MR. O'REILLY: We will reconvene the meeting where
18 we left off. We had some six questions by Mr. Ritts from TVA.
19 I assume Mr. Ritts will guide us to see that we properly
20 address his questions.

21 The first one I noted on the list was that he
22 looked for additional examples of our Enforcement Policy in
23 the area of construction.

24 Mr. Dudley Thompson will discuss that, as appropriate.
25 Dudley?

1 MR. THOMPSON: Let me start off by commenting that
2 one of the goals we had in establishing the revised proposed
3 policy was to attempt to find a means by which we could apply
4 meaningful enforcement actions during the construction phase.

5 As most of the people in this audience are well
6 aware, our previous Enforcement Policy was predicated extremely
7 strongly on actual or imminent threat to public health and
8 safety. There is nothing wrong with that kind of emphasis, but
9 it is also clear that deficiencies -- and I use the word
10 advisedly -- in construction activities can be reflected at a
11 later time in a fashion that could then involve threat to public
12 health and safety.

13 But it has always been extremely difficult for the
14 staff to identify conditions during construction that provide
15 an actual or imminent threat to public health and safety --
16 aside from examples involving radiography and that type of
17 thing. So it was an explicit goal of the Task Force to
18 attempt to provide a means by which we could apply a tough
19 but fair Enforcement Policy in the area of construction.

20 To a limited extent, I think we have had some
21 success in the Supplement II. Having said that, I must hasten
22 to add that we are still very frustrated at our ability to
23 articulate clearly precise examples that would adequately
24 describe the concerns that are inherent in the philosophical
25 approach of an event-related enforcement policy not tied to

1 individual items of noncompliance.

2 One of the things I believe we are all going to have
3 to do over the next several months in that area -- and others,
4 as well -- is to gain an experience bank that will tell us
5 better what examples will fit Supplement II in the construction
6 program. We would very much welcome comments to the Secretariat
7 through the formal route that would help us to clarify and draw
8 more distinct lines separating the different severity levels in
9 the construction program, and others, as well. But since we
10 are dealing with the construction program right now, we would
11 very much welcome comments that would help us to clarify the
12 distinctions among the various severity levels.

13 Fundamentally, what we did in working on the
14 severity levels for Supplement II in the construction program
15 is to grade those severity levels on the extent to which there
16 was pervasiveness associated with the problem.

17 You commented in your oral statement that you thought
18 we might do better in the definition of the different activity
19 areas that appear in several places in Supplement II. I think
20 that would be helpful. The example you provided of welding
21 activities can apply in a number of different ways -- some of
22 them having rather serious safety-related connotations, and
23 others less serious.

24 I believe in the rewrite we probably can do a little
25 bit better job on some of those definitions. We were

1 fundamentally discussing activity areas associated with
2 traditional engineering disciplines -- electrical, construction,
3 soils, concrete, steel -- all of the different disciplines
4 associated with construction activities.

5 We would welcome comments in that area, and we will
6 definitely take them into account in our revision of this
7 proposed policy. I don't think I'm being really very respon-
8 sive to your direct question on giving you examples, but I am
9 not sure that I am capable of giving you concrete examples at
10 the moment.

11 MR. NORELIUS: Maybe we can just reference a
12 particular case, which might be helpful.

13 If you had several violations of the criteria in
14 10 CFR 50, Appendix B, let's say with a particular contractor
15 or a particular area -- one case that I am familiar with had
16 to do solely with the heating and ventilation contractor where,
17 in the inspection of that activity, we found multiple examples
18 of violations just related to that one activity.

19 It would seem to us that, under that, that would be
20 an example of a breakdown in the Quality Assurance Program
21 related to a single activity, which would be a Severity III
22 under the new policy.

23 Another example might be if we found multiple
24 violations and it affected some of the disciplines that
25 Dudley has expressed -- piping, concrete, possibly electrical --

1 those different disciplines were involved, then it would be
2 escalated to a Severity Level II situation for construction.

3 But I think a great deal of judgment will have to
4 be exercised in coming to the conclusion that this number of
5 violations represents a breakdown in the Quality Assurance
6 Program. That will sort of be the hinge point that the
7 decision will have to be based upon in determining the severity
8 categories.

9 MR. O'REILLY: I would like to add that, in
10 response to that comment, there will be answers provided to the
11 Commission.

12 Did you have a further question on that, Mr. Ritts?

13 That's on number one.

14 MR. RITTS: Of course there are a number of examples
15 that you might cite in terms of welding problems that, say you
16 have a -- one area would be cad welding, for instance. You
17 have situations where you have one cad weld that's bad, or you
18 have situations where you find a number of them are bad, and
19 then what happens if your QA people have looked at them and
20 said that these are okay, and then they are later found to be
21 outside of the requirements? I guess then you're talking about
22 one area, and you're talking about, it sounds to me like, a
23 Severity Level III, from what you had described before, or from
24 what is in the proposed rules. Is that right? Or am I
25 wrong?

1 MR. THOMPSON: Depending on the pervasiveness of the
2 problem. A single cad weld I cannot see -- a single cad weld
3 fitting the characteristics you described passed by QA and
4 subsequently found to be inadequate. It seems to me that does
5 not fit a Level III.

6 MR. RITTS: Right. But if you have a number of
7 them --

8 MR. THOMPSON: But if you had symptoms of a break-
9 down in the QC on cad welding, then I think you could extend it
10 to that if we agree that cad welding is a subject area that we
11 want to have covered.

12 MR. RITTS: What about in terms of the fine against
13 vendors, for instance? Are all the fines levied against the
14 utilities? Or will there be any fines levied against the
15 vendors, for instance, in terms of their QA programs where, you
16 know, you've made good-faith efforts as a utility to assure
17 that the QA programs are adequate to perform your needs?

18 MR. LIEBERMAN: At this time, we don't have the
19 authority to impose fines directly against vendors, except
20 through the 206 process of Part 21. We would take action
21 against the utility licensee for actions of its contractors and
22 vendors.

23 MR. THOMPSON: That is an area of concern to the
24 staff and to the Commission. Specifically, our ability to
25 reach vendors in the nuclear industry who are not licensees in

1 their own right.

2 MR. RITTS: Okay.

3 MR. KEPPLER: Let me add a comment on the construc-
4 tion. I see the type of case that leads to a civil penalty in
5 construction as fitting one of two molds.

6 The first would be a case where a problem led to --
7 where the Quality Assurance breakdowns led to something being
8 built or installed, and you found it after the fact. An
9 example would be the one that Chuck used -- much of the
10 heating, ventilating, and air conditioning work at one of our
11 facilities was found to really not have a Quality Assurance
12 program associated with the effort. You would take a look at
13 that and conclude afterward that clearly there was a major
14 breakdown in Quality Assurance in this area, and you would fit
15 it into one of the top three categories.

16 The other type of case that perhaps is more realistic
17 is the kind that is going to occur over a longer period of
18 time. It seems to me like, in building a plant, it is not a
19 matter of today you've got a Quality Assurance Program that's
20 working, and tomorrow you don't. What you have is some
21 examples of problems that occur, and generally they are the
22 subject of some discussion between the NRC and the licensee,
23 and I would see it more as over a period of time you would come
24 to some conclusion that this Quality Assurance Program just
25 isn't working in this area and it might lead you to take

1 escalated action.

2 I don't see it as something that is a sharp line of --
3 a sharp break in time. It is something that happens over a
4 period of time.

5 In any event, your point is well taken. We are
6 going to have to come up with some good examples in this area.
7 We will probably be documenting some of the cases where
8 judgments are taken during the interim.

9 MR. RITTS: Well, it seems, just from a personal
10 standpoint, that willful violations, et cetera, which occur
11 in the construction process are those which would be of a
12 Severity Level I, II, or III, those things that are done
13 willfully, basically. But it appears, just looking at the
14 chart -- again from a personal standpoint -- that it almost
15 seems like you tried to fit all the severity categories with
16 something that, you know, for each -- you try to fill them
17 up, basically. And I am not so sure that there is anything in
18 the construction phase, other than maybe a willful violation,
19 which should be a Category I.

20 MR. NORELIUS: I think there was clearly an intent
21 in writing the policy to require a higher level of compliance
22 in the construction area than what we have previously required.
23 So I think it is more than just "filling it up," and I think
24 it doesn't just relate to "willful."

25 I'm not sure we've defined it well, but I think there

1 was a basic intent to raise the required standard of compliance
2 in the construction area.

3 MR. RITTS: That's all I have on that one.

4 MR. O'REILLY: The second area was appeals, wasn't
5 it?

6 MR. RITTS: Yes.

7 MR. KEPPLER: Could you be more specific with the
8 question?

9 MR. RITTS: Well, we can always appeal by writing
10 our response to a violation and saying that basically we don't
11 feel like we were in violation. How is that handled internally?
12 Is that reviewed -- you know, are these at only very low
13 levels reviewed just at the Regional Office? Or are they
14 sent up to the Commission? Or what rights do we have under --
15 I'm sure you've got some appeal methods.

16 MR. KEPPLER: Well, the way the new policy will
17 work is basically the way it works right now. If you receive
18 a notice of violation and the utility or the licensee takes
19 issue with the citation, they present their written position to
20 the Regional Office, and that is either reviewed and concurred
21 in, or an explanation given to you why we don't agree with you.

22 If it is an escalated enforcement action, then in
23 addition to the regional input you have headquarters input.
24 So that is the same under the existing policy as it will be --
25 or as it was under the old policy.

1 MR. THOMPSON: I would assume in that regard you
2 are not referring to the formal appeal route associated with
3 the elevated enforcement actions of civil penalties or orders
4 for which the hearing process is obviously a formal appeal
5 route. You are dealing with what one might call an "informal
6 appeal" --

7 MR. RITTS: Right.

8 MR. THOMPSON: -- or taking issue with citations
9 and a notice of violation.

10 MR. RITTS: Right.

11 MR. THOMPSON: As I'm sure most of this audience is
12 aware, not infrequently we find occasions where either because
13 new facts are brought to light, or all the information was not
14 available at the time the notice of violation was prepared,
15 that the licensees present those additional facts or new light
16 on previously known facts and we do, when those occasions arise,
17 expunge the citations associated with those notices of
18 violation.

19 That, as Jim just stated, has been in existence
20 all along and we don't propose to have that changed.

21 MR. RITTS: Will all the violation levels, even
22 through Category VI, require a written response? I assume
23 that they will.

24 MR. THOMPSON: The Atomic Energy Act requires a
25 response to a notice of violation on the corrective action and

1 the steps to prevent recurrence. And Part II, also.

2 MR. KEPPLER: Again, licensee-identified items in
3 Severity V and VI will not be treated as noncompliance issues.

4 MR. RITTS: Items V and VI?

5 MR. KEPPLER: Severity Levels V and VI.

6 MR. RITTS: Okay, that gets to one of my other
7 questions. What about Category IV, licensee-identified?

8 MR. KEPPLER: Let me give you the rationale of why
9 we decided not Severity Level IV. We view that most of the
10 items of noncompliance will be in the Severity Levels V and VI
11 categories. We came up with the three top severity levels
12 that were representative, if you will, of a complete loss of
13 control or a loss of function.

14 What we tried to do in establishing a Severity Level
15 IV -- and there has been much discussion that maybe we should
16 eliminate Severity Level IV -- what we tried to do was to
17 define those "near misses" if you will, that fit the
18 categories of Severity I, II and III.

19 We don't envision a lot of Severity Level IVs, but
20 we felt that there needed to be some transition. And how could
21 you be in a position, if you will, of having a civil penalty
22 issued for a Severity Level III, and the next severity level
23 isn't important enough to even ask for a response to. So that
24 was the thinking that went into it.

25 MR. RITTS: I guess the only -- We did talk about

1 the definition of one "work activity" already -- violations at
2 more than one site?

3 MR. KEPPLER: It is our intent that -- Let's see.
4 I've got to be careful how I say this.

5 (Laughter.)

6 MR. KEPPLER: It is the intent of the policy and
7 the Commission to treat each facility, each reactor, on its
8 own as a separate facility. Where there are more than one
9 units at the site, we will look at that case to see whether
10 the management controls associated with that activity should
11 be strictly applicable to both units or not. But for the most
12 part, we will deal with a specific unit.

13 And as far as multi-site projects like TVA has, I
14 guess it's hard for me to perceive in the area of construc-
15 tion how that would tie in. But if there is a specific
16 management control function that might be applicable, then I
17 guess it could be looked at.

18 Let me just say that what we had in mind, quite
19 frankly, with this was to treat each reactor unit by itself.
20 If you have an operating site with two units, the security
21 plan would apply to the total site. Therefore, we would
22 probably treat that area as a recurring type of violation at
23 a two-unit site. But for the most part, I guess the answer
24 is that we will treat it on a unit basis.

25 MR. RITTS: Thank you.

jwb

1 MR. KEPPLER: The next person who has requested to
2 speak is Mr. Harry Belfor, private citizen from Atlanta.

3 Mr. Belfor, are you here?

4 MR. BELFOR: Yes. You can hear me, can you?

5 MR. KEPPLER: Yes.

6 MR. BELFOR: I am Harry W. Belfor. I came to
7 Atlanta, Georgia, on September the 13th, 1914, from New Jersey
8 to visit a relative. He left within a few days, and I remained,
9 and I'm still here. If I live till next April, I'll be 38 years
10 old.

11 I became a practicing lawyer in Atlanta, Georgia,
12 on June the 15th, 1915, and I am still in active practice.
13 However, on the 2nd day of December 1971, I went to Washington
14 for a few days, I thought, to meet Ramsey Clark with a view of
15 interesting him in a matter that I had been working on since
16 1954.

17 In 1954, I went to the Savannah River Plant when it
18 was built, and something possessed me -- I don't know what -- to
19 start worrying. And I continued to go to Washington frequently
20 at intervals on business trips, usually, and looked for the
21 facts that I anticipated would develop at the Savannah River
22 Plant.

23 I found everything was classified. When I went to
24 Washington on December the 2nd of '71, they were still
25 classified. But they didn't remain classified. I succeeded

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1 in influencing various members of Congress to bring about a
2 declassification of the Gaither Report of 1957, to which I am
3 looking at a copy. All the time that I was in Washington, I was
4 unable to obtain a copy of this. I couldn't even find a copy in
5 the Library of Congress.

6 But when I came back to Atlanta in May of '76,
7 after having injured this right eye (indicating), so that I no
8 longer see out of it, then, and I walked into the book store in
9 Atlanta, and found this Gaither Report on display.

10 I asked how many copies they had. She said, "25."
11 I said, "Well, I would like to order 100. Will you find out
12 how many you can get?"

13 She informed me that there were 640 available. I
14 said, "I'll take them all." I bought and paid for 320 of them
15 so that I could give them away, and I left her 320 so that
16 anyone who wanted to buy one could buy it. I don't know how
17 many she has left, but I have very few of these.

18 All I can say is, I would read you one sentence from
19 the Gaither Report in order to tie that in with what I am going
20 to say about Enforcement.

21 The letter of transmittal dated April the 9th,
22 1976, to the Members of the Joint Committee on Defense
23 Production: "Few documents have had as great an influence on
24 American strategic thinking in the modern era as the Gaither
25 Committee Report of 1957 entitled 'Deterrence and Survival of

1 the Nuclear Age.' Among the few similar caliber and George
2 Kennon's 'Mr. X' article on containment in 1947 issue of
3 Foreign Affairs, the 1950 report of the State Defense Policy
4 Committee which issued a blueprint for Korean War rearmament in
5 the form of NCS-68, and Albert Wolstede's similar 1959 article
6 'The Delicate Balance of Terror.' All these landmark articles
7 and reports have now been widely circulated, except the
8 Gaither Report, which was declassified only in 1973.

9 "The issues raised in this report to President
10 Eisenhower are especially timely today. Once there are
11 expressions of fear -- Once again there are expressions of
12 fear by government officials and independent analysts concerning
13 future Soviet nuclear superiority and consequent cause for
14 improved strategic forces and costly civil defense programs.

15 "Because the Joint Committee is reviewing the
16 current status of the national preparation effort, it is
17 appropriate that we refresh our memories on the antecedents of
18 today's concepts and programs. The Gaither Report will
19 therefore be of interest to you, other members of Congress,
20 and the public at large.

21 "Signed: William Proxmire."

22 I will skip over the rest of this report, only
23 saying that I hope that it will become -- it will come to the
24 attention of the present Congress and cause some congressman
25 to request that this be reissued, so that every person that

1 wants one can write to his congressman and get it, because
2 events that I will outline to you here have occurred that make
3 it appropriate that we start right there and find what we've
4 been doing since 1957 to cover up what we -- what you are now
5 concerned with, Enforcement.

6 I want to go back a minute to say that in 1954 when
7 I went to the Savannah River Plant, I had had some custody or
8 some contact with civil defense before. I happened to be in
9 Louisiana in association with a lawyer by the name of Sims
10 Womsley, employed by the State of Louisiana to make an investi-
11 gation of the affairs of a closed bank that had borrowed \$20
12 million from the RFC in February of '33. The money was sent
13 down there by rail, and it was put in a bank in the windows with
14 a sign, "Everybody who's been asking for their money and worried
15 about the government declaring a holiday and couldn't get it
16 and they're here for it now, come and get it. It's here for
17 you."

18 They all went in there. They all drew their money.
19 They all walked out happily. The officers of the bank patted
20 them on the back and said, "Now if you find another bank that
21 you can put the money into and get it when you're ready to get
22 it out, go put it there."

23 And they all came back and put it in that bank,
24 because there wasn't another place they could put it. So, I'll
25 confine myself to as few minutes as you want me to, or I'll

1 give you the details that brought me to Washington, D. C.
2 before Pearl Harbor and, as a result of it, I was the number
3 two man in the Office of Civil Defense with Sims Womsley being
4 the Acting Director of the Office of Civilian Defense, and with
5 me just a flunky making copies for him and keeping my mouth
6 shut. That's all I had to do with it.

7 But, I learned of it occurring. And a month before
8 that, Sims Womsley had come to New Orleans. He said, "Harry,
9 do I look like I'm wearing Khaki?"

10 I said, "No. Are you?"

11 He said, "Yes, we're in a war."

12 That was in 1941. No one knew officially that we
13 were in a war, but he did. And I didn't know anything more
14 about that until in 1971 when I went to meet Sims Womsley --
15 I went to meet Ramsey Clark. I walked into a book store, and
16 there was a book, Roosevelt and Churchill, and I opened it,
17 and there was the correspondence between Roosevelt and
18 Churchill planning that -- that something like Pearl Harbor
19 had to happen or Roosevelt couldn't lead us into a war.

20 Now that is a simple fact. You can now buy that
21 book at reduced rates. We have a sale at a nearby store, and
22 I noticed some of those books are being offered.

23 Now I came into the Public Document Room a few
24 days ago. I go there regularly in order to buy the Congressional
25 Records and certain books, and someone bought a book called

1 "Family Foods: Stockpile for Survival," 80 cents. Something
2 possessed me to take notice of it. I bought the book, and I
3 paid 80 cents for it, and I had her write me a receipt
4 describing what the 80 cents was paid for.

5 I'm going to read you the first sentence of that
6 book. Now this sale took place a few days ago. "Foreword.
7 This publication was prepared by the Agricultural Research
8 Service, U.S. Department of Agriculture in cooperation with the
9 Defense Civil Preparedness Agency, U.S. Department of Defense.

10 "Foreword. The very act of living involves risk.
11 In the morning, we are not completely certain that we will
12 return home safely at night; but by taking precautions, we've
13 reduced the degree of risk we are exposed to, and often our
14 level of anxiety is reduced or eliminated. We live in an age
15 when at least the threat of nuclear attack is a reality.
16 Other disasters are also within the realm of possibility.
17 Disasters that could isolate homes and rescue workers arise.
18 As a precaution, Defense Civil Preparedness authorities recom-
19 mend that you purchase and store at least two weeks' supply of
20 food. These stockpiled foods should be in cans, jars, or
21 sealed paper or plastic containers. Select foods that will
22 last for months without refrigeration and that can be eaten
23 with little or no cooking."

24 MR. O'REILLY: Mr. Belfor, we are quite limited in
25 time. Do you have comments that directly relate to our

1 Enforcement Program?

2 MR. BELFOR: I'm a little bit hard of hearing, so
3 I'll come closer, if you want me to hear you.

4 MR. O'REILLY: Could you -- Because of the limitations
5 in time for our program today, could you address the subject of
6 Enforcement for license activities? Because we are limiting
7 people to approximately 15 minutes per person.

8 MR. BELFOR: That is what is happening here in
9 Georgia. Every time I try to bring facts to those that need
10 to hear those facts, they all say: You've got 10 minutes. I
11 say, "All right, I'll take 10 minutes." At the end of 9 minutes,
12 they say, "Your time is up." And they say, "Come tomorrow, and
13 you'll have more time." I never get the time.

14 Now if I don't get the time to tell you what I have
15 to tell you, you won't know it. And if you don't know it,
16 Congress won't know it, the incoming President won't know it,
17 the outgoing President does.

18 MR. O'REILLY: But, Mr. Belfor, we're meeting until
19 5:00 o'clock. Then we're going to recess --

20 MR. BELFOR: And if you -- I'm telling you this:
21 Human life on earth is on the edge. Jimmy Carter is the one
22 man that spent 12 years learning something about it before he
23 became Governor. After he became Governor, I got acquainted
24 with him, and I went to Washington, and I stayed there 5-1/2
25 years in order to bring him up to date on what was happening

1 while he was busy being Governor here.

2 MR. O'REILLY: Okay, Mr. Belfor, but we have a
3 meeting scheduled for a very specific purpose. Our purpose --

4 MR. BELFOR: Well, the specific --

5 MR. O'REILLY: Our purpose today is "Enforcement"
6 as relating to the nuclear industry.

7 MR. BELFOR: And I'm going to tell you why a
8 proposal to enforce a \$100,000 is a drop in the bucket. When
9 you have plants such as exist in the New York area, and in
10 TVA, and other places, you will not get enforcement. You are
11 fining TVA, you're fining Georgia Power Company, you will fine
12 every other power the minute you learn a few more facts.

13 You know that something has just come up, and
14 you've shut down Indian Point. Now whether or not they'll
15 ever open it up again is a question.

16 Now all I'm saying is: \$100,000 -- you ask in your
17 document that you want comments -- Is that enough? I say,
18 it isn't enough because there are many plants that have been
19 built, and they have been built by amateurs, not by experts.
20 And everything they did is covered up.

21 And you don't deter them by fining them \$100,000.
22 There'll be another TMI very shortly. I'll digress by telling
23 you that in this town there is now a college professor by the
24 name of K. Z. Morgan. If he had known of this, I would have
25 urged him to come. I'll urge him to send a document to you

1 between now and so-and-so.

2 I am sure the name K. Z. Morgan is known to you.
3 For 34 years he was a physicist at Oak Ridge. He had a staff
4 of 250 people under him.

5 MR. O'REILLY: I'm aware of him, Mr. Belfor.

6 MR. BELFOR: How's that?

7 MR. O'REILLY: I am aware of him.

8 MR. BELFOR: All right, now I --

9 MR. O'REILLY: Now, sir, have you submitted any
10 written comments?

11 MR. BELFOR: How's that?

12 MR. O'REILLY: Have you submitted any written
13 comments?

14 MR. BELFOR: Have I?

15 MR. O'REILLY: No. I can't prepare written comments.
16 I'm not being paid. I have served my country and my
17 grandchildren and my President without any charge. I haven't
18 earned one cent December the 2nd, 1971. I have given all of
19 my time and all of my substance.

20 Now, K.Z. Morgan was being well paid. Now he is
21 now well paid only when he appears under subpoena as a witness.
22 The government subpoenas him, and he gives the facts to them.
23 Now he is now at Georgia Tech, and he is teaching health
24 physics.

25 MR. O'REILLY: I'm well aware of it, sir.

1 MR. BELFOR: Now let me say this, and then I'm going
2 to stop at your -- whenever you suggest. Because I'm going to
3 bring this to the attention of Jimmy Carter when he comes here
4 on the 20th day of January to bring his library here. I'm going
5 to make him realize that he owes a duty now to do what he can
6 by going to the United Nations, if he will accept an appointment
7 and the President will give it to him, to urge the United
8 Nations, to urge every country on the face of this globe, to
9 use the courts of justice to prevent what is about to happen.

10 You can't prevent it by fining it \$100,000. Now
11 I'll just say one more thing, and then I'm pretty well through.

12 In the next few hours, or the next few days, I will
13 file a short petition to the Supreme Court of the United States
14 calling their attention to the fact that in 1961 a suit was
15 filed against the Atomic Energy Commission. A record was
16 brought in that was very voluminous.

17 When the case was called, the judges said, "What
18 are we going to do? Appoint a Master?" And Archibald Cox, who
19 was the Department of Justice's representative, suggested that
20 the court deal with that case a trifle out of the usual. "Don't
21 look at the record. Trust us. The American Bar Association
22 President represents the Plaintiff. The Department of Justice
23 represents the Defendant. We know the facts. We will stipulate
24 what they are."

25 Every one of the judges spoke up. This is all on

1 the record. And I spent a year-and-a-half studying that record
2 and relayed the information to Jimmy Carter.

3 That's why he went to the White House. Now I'll
4 say to you that when they wrote their decision, they said,
5 "We're reserving the right to reopen this case and appoint a
6 Master if facts come to our attention contrary to the
7 stipulation." That suit will be filed very shortly.

8 It will be filed in other countries, too, in an
9 effort to get the courts of justice to deal with it appropriately
10 to save the Constitutional right of people.

11 MR. O'REILLY: Mr. Belfor, just due to time
12 limitations we will have to terminate this issue. But tonight
13 at 7:00 o'clock, we will reconvene again, and if you are
14 still here you can say some more words at that time.

15 MR. BELFOR: Well, I'll say this: If you ask me
16 to come tonight at 7:00 o'clock, you'll find that I'm acting
17 like a child who is too tired to stay up. I get up every
18 morning at 4:00 o'clock.

19 MR. O'REILLY: There are a number of people here,
20 sir, as you probably know, who have to catch planes, and
21 schedules.

22 MR. BELFOR: Well, I'll be glad to wait and give
23 them a chance.

24 MR. O'REILLY: Yes, sir.

25 MR. BELFOR: Now I'll say this, then. I urge you

1 to allow me to bring to your attention between now and the end
2 of the month, and K.Z. Morgan to bring to your attention,
3 matters and things that will indicate to you that every single
4 plant that exists with the passing of time will be a problem.

5 MR. O'REILLY: Okay. Thank you, Mr. Belfor.

6 All right, our next spokesman who has requested
7 time on the agenda for this afternoon is a representative from
8 the Carolina Power & Light Company, Mr. Ronnie Coats.

9 MR. COATS: I would like to say, for Carolina
10 Power & Light Company, that we appreciate the opportunity to
11 appear here today and make comments. We also will be filing
12 more detailed written comments in December, as requested by
13 your notice.

14 For today, I would like to make some general
15 observations with respect to the proposed policy, and I do have
16 some specific comments or questions that I would like to throw
17 out and, if possible, get some answers to and clarifications
18 of policy on.

19 One of our overriding concerns with the proposed
20 policy is the question in our mind as to how the proposed
21 policy is intended to be implemented. We have a concern as
22 to whether or not this is proposed to be issued as a formal
23 rule in total by the Commission, or whether or not it is to
24 be adopted as a policy statement only, which is not subject to
25 the normal legal provisions which deal with a rule. I think

1 an answer to that question, if possible, would help us in
2 clarifying some of the comments that we would make on the
3 docket later on in written comments.

4 MR. LIEBERMAN: If I could answer that --

5 MR. COATS: Yes.

6 MR. LIEBERMAN: -- the Commission intends to issue
7 this as a statement of policy. It would be issued only as a
8 statement of policy by the Commission, after receipt of public
9 comments and analysis of the comments.

10 The distinction between a "statement of policy" and
11 an "interpretative rule and regulation" is murky, at best, but
12 it is intended to be a statement of policy and not a binding
13 regulations.

14 MR. COATS: I'm not a lawyer, and I don't under-
15 stand the legal nature of it, but I believe that issuing it as
16 a statement of policy would provide more flexibility both for
17 the Commission and for the licensees in dealing and taking
18 advantage of the discretion under the policy. Is that
19 correct?

20 MR. LIEBERMAN: More or less. The Commission can
21 change a --

22 (Laughter.)

23 MR. COATS: Okay.

24 MR. LIEBERMAN: The Commission may change its
25 statement of policy for future application. A regulation

1 requires going through Administrative Procedures Act
2 procedures before changing a regulation.

3 MR. COATS: Okay. Thank you very much for that
4 clarification.

5 I would like to make another observation, which
6 has already been made previously, but very briefly: We at
7 Carolina Power & Light Company support a strong nuclear program.
8 We support a strong enforcement program, because we think
9 improved performance of the licensee is essential to the
10 survival of nuclear power.

11 From that context, we support the Enforcement Policy.
12 However, we are concerned, based on the tone of the policy and
13 the lack of clarity that we see in the policy, that what you
14 are now proposing is a policy that will not necessarily lead
15 us all jointly in that direction of improving licensee
16 performance.

17 What I am speaking to primarily is what we perceive
18 in the policy to be a situation of penalty only. We recognize
19 that the policy provides for anyone who defines a "deviation"
20 or a "violation" in their operations, and who corrects that
21 violation in a timely manner and who reports it to the
22 Commission, to be subject to a lesser "penalty," if you would,
23 than if they had not found it, or if they had found it and
24 had not reported it. We feel, as has already been expressed,
25 that this works contrary to creating an incentive for the

1 licensee to develop strong programs to identify problems in
2 his operation, and to correct those problems.

3 We submit that the Commission should really give
4 this thought very serious consideration as you finalize the
5 policy; that we do need a policy that will provide the
6 incentive, without it being a punitive action against the
7 licensee, to correct deficiencies when he finds them, and to
8 report those deficiencies, so that everyone can benefit from
9 the mistakes that someone might have made, but to do so in a
10 manner that will not result in him being severely penalized.

11 We would also like to comment on what we perceive
12 to be -- along those same lines -- a very rigid nature in the
13 policy; and along with that, an appeal for clarification.

14 We agree that the use of something like the
15 severity levels is appropriate. Our concern with the severity
16 levels, however, is what we feel to be a lack of clarity, or a
17 lack of definition. You have very broad statements, and use
18 terms such as "more serious," "most serious," and things of
19 this nature; and then we attempt to define the severity levels
20 by the use of examples.

21 I think some of our previous discussion today has
22 indicated that this is very difficult, and we appreciate this
23 difficulty. But we would appeal for the development of strong,
24 clear, and precise definitions of the severity levels.

25 I think this is an area where it is important enough

1 that both the licensees and the NRC have sufficient guidance
2 so that if and when a violation does occur, we can all quickly
3 and easily assess the importance and the significance of that
4 violation, and then deal with it.

5 With the policy as proposed, we are concerned that
6 we are creating a situation where the immediate action might
7 be to develop arguments, or develop a case, if you would, for
8 a violation being one severity level, as opposed to another;
9 and, through this, maybe a tendency to lose sight of the primary
10 purpose once it's been found -- which would be, to correct it.

11 So we would like to appeal for clearer definitions
12 of the severity levels. Personally, I feel that these should
13 be more rigid than maybe it is; but then along with that, more
14 flexibility and an indication of more flexibility and
15 discretion on the part of the regions and the other office
16 directors in dealing with a violation when it has been found,
17 to determine and assess a penalty that might be associated
18 with it.

19 MR. BELFOR: May I interrupt to ask just one
20 question? I asked for permission to send a document between
21 now and December the 31st, and for K.Z. Morgan. Do I have
22 such permission?

23 MR. O'REILLY: Yes, you do.

24 MR. BELFOR: Thank you.

25 MR. COATS: Along those lines, we would also like

1 to observe that all of us in the business have programs that
2 have been developed in response to regulatory requirements and
3 other concerns that have been raised by the Commission as we
4 have grown as a nuclear industry. We have these programs for
5 the specific purpose of trying to "clean up our act," if you
6 would, to find the mistakes that we're making and to correct
7 those mistakes.

8 We read the policy as being a policy that is
9 penalizing us for having these kinds of programs, and
10 especially for having one of those kinds of programs that is
11 successful -- i.e., a program that is indeed finding problems
12 and correcting them.

13 Those are general observations. I would like to
14 address more specifically the nine areas -- the nine questions
15 that you included in the Federal Register Notice.

16 First: Is the policy fair and equitable? We feel
17 that there is indication that the policy will consider the
18 facts of an individual case. However, we are concerned that
19 there is an overriding tone in the policy statement that gives
20 us some concern as to how the policy might be applied. We
21 think that application of the policy is going to be the real
22 answer to whether or not the policy is fair and equitable.
23 We feel that a lack of clarity and some vagueness in various
24 areas of the policy creates a situation that there can be
25 inequitable application throughout the country.

1 Is the policy understandable? We feel that in
2 general the policy is understandable. However, there are areas
3 for clarification, which I have talked on, and we will try to
4 be more specific on those when we file our formal comments.

5 We do feel, in response to question number three,
6 that the use of severity levels is appropriate. However, as I
7 have indicated, we feel that the definition of the severity
8 levels needs to be substantially clarified.

9 We feel, in response to question number four, that
10 the different types of activities are fairly well defined.
11 We don't see any need for other types of activities to be
12 covered. We would like to ask for clarification. That is,
13 can we clarify that "fuel cycle operations" and "reactor
14 operations" are totally separate? And that the "fuel cycle
15 operations" category does not cover the actual operation of a
16 power reactor? We raise this point because we note some
17 slight differences in the wording of the examples cited in the
18 supplements that cover these two areas, and we feel that there
19 is a possibility of double jeopardy if we don't clearly
20 indicate that those two areas do not overlap.

21 We feel, in response to question number five, that
22 the distinctions between the types of licensees shown in Table 1
23 are appropriate and clear.

24 In response to question number six, we feel that
25 the factors for determining the level of enforcement are not

1 all that clear. We feel that the policy should contain more
2 definitions or references to definitions for such terms as
3 "violation," "serious events," and other general terms that
4 are used throughout the policy statement. We feel that the
5 severity levels should be clearly defined. You have helped
6 some for me today with your clarification of how the severity
7 levels relate to the terms that I am more familiar with in
8 the past, "infraction," "deficiency," "deviation."

9 Finally, we believe that the policy should more
10 clearly indicate the flexibility that is provided for the
11 office directors and others in dealing with the policy and
12 in dealing with violations under this policy.

13 With respect to question number seven, that
14 primarily has been covered in response to number six. We do
15 feel that the office director should have discretion, but we
16 feel it should be expanded beyond what we currently feel that
17 direction to be within the existing policy or the proposed
18 policy.

19 In response to question number eight, the levels of
20 civil penalties that require Commission approval are appro-
21 priate and we would not recommend any changes thereto.

22 With respect to question number nine, we feel that
23 the provisions of Table 2 are contrary to other stated desires
24 of the policy -- which is, that of allowing discretion as
25 appropriate in dealing with the Enforcement Policy, and we

1 would recommend that serious consideration be given to
2 deleting the provisions of Table 2.

3 I would like to proceed now very shortly to some
4 more detailed and specific comments, particularly with respect
5 to the Supplements. And again, these will be submitted on the
6 formal document.

7 The list of Items (1) through (4) under paragraph
8 IV.A. of the proposed Policy Statement states that items
9 fitting Severity Levels I through IV will be mandatory
10 violations, even if the licensee identified the problem and
11 corrected it in a timely manner.

12 As I previously stated, we feel that the policy
13 should provide more flexibility in allowing the licensee to
14 find and correct problems, and to report those problems without
15 being concerned with a penalty.

16 In Section IV.B., Item number (2) -- and this is
17 in the supplement -- correction; this is not in a supplement --
18 we refer to similar violations covered in previous enforcement
19 conferences.

20 I believe there has been some clarification on this
21 made, but again I would like to state that the wording as it
22 stands right now leads one to question whether or not we are
23 talking about previous enforcement conferences at that
24 facility, or with that licensee, or with some other licensee.
25 And if I understood the clarification that was issued earlier,

1 we are talking primarily "at that facility that is being
2 questioned."

3 In Supplement I, paragraph C.4., we discuss
4 violations related to a failure to file a 50.59 report. We
5 feel that this example should be clarified to indicate that
6 this would not be the case if the licensee has made a specific
7 determination and determined that a 50.59(e) report was not
8 required, and then later on with hindsight the Commission
9 were to determine that a report, or would feel that a report
10 should have been provided.

11 With respect to Supplement I, several areas in
12 Supplement I. From an operating point of view, we are
13 concerned as to what the situation is if part of a safety
14 system, or a safety system, is out under conditions allowed by
15 its technical specifications. In other words, you're under
16 an LCO, but within your time frame; and then that system is
17 called upon to operate. Does that in effect constitute a
18 violation? Or is this excluded from consideration for a
19 violation under the policy? And I would appreciate some
20 clarification of that point.

21 In Supplement II, paragraph A.1., we discuss
22 violations involving all or part of a system or structure
23 completed in a manner that it would not have satisfied its
24 intended function. We would ask for some clarification on
25 this point as to how small a "part" or an "element" of a

1 structure we're talking about. That may not quite make sense,
2 but as an example: You may have a nut, if you would, on a
3 bolt in a safety-related system that fails. Okay? That nut,
4 by failing, will not be able to perform "its" intended function,
5 but it may not impair the total safety-related function of the
6 system. And the way we read that particular paragraph at the
7 present time, there seems to be a lot of room for argument as
8 to whether or not the failure of the nut, although the perfor-
9 mance of the entire system was not impacted, could be a
10 violation.

11 On Supplement II, paragraph B.1, and paragraph
12 C.1., it is not clear to us whether the violation that is
13 discussed there would have to be a violation if it was
14 identified after the final quality checkpoint. We feel that
15 the policy in this area would be much clearer if we could
16 specify that we are talking about the final checkpoint, because
17 there are many checkpoints in quality assurance inspections,
18 and the purpose of those checkpoints is to find problems if they
19 exist. And we feel you are talking about a situation where a
20 system or component has gone through all of the levels of
21 quality assurance review and a problem was not found, and then
22 sometime later down the road it was determined that a problem
23 did exist and was omitted.

24 In Supplement II, paragraph C.2., we would like to
25 request clarification of the violations related to preoperational

1 test program demonstrating a failure to confirm design safety
2 requirements of a structure or a system. We assume that what
3 you are looking at there is if you have a preoperational test
4 program that is functioning, and the result of that program is
5 that you classify some system as being fully in compliance
6 with the design criteria when it was not, due to some failure
7 of your program; that that would be the area of the violation,
8 not the fact that you tested a component or a system and it
9 failed to meet the design criteria and you identified it as
10 failing to meet the criteria.

11 In Supplement II, paragraph D.2., it discusses an
12 "Inadequate review or the failure to make a review in accor-
13 dance with 10 CFR Part 21" as a Severity Level IV violation.
14 We would request clarification of definition of what you mean
15 by "inadequate." Again, this is kind of like the 50.59(e)
16 situation. If the licensee has made a conscious effort to
17 review something and has determined that a Part 21 report is
18 not appropriate, and then later with 20/20 hindsight someone
19 comes in and rules that it should have been a Part 21 report,
20 would that constitute a violation for the licensee?

21 We feel that that particular paragraph should
22 indicate the failure to make a review when such a review is
23 required.

24 Lastly, there is a requirement in this Policy that
25 responses to enforcement action be submitted under oath. We

1 assume, or I assume, that that will proceed as we have
2 proceeded in a lot of things in the past; that the responses
3 are submitted with a statement of oath and are appropriately
4 notarized. But if you are intending something different from
5 that, I would like some clarification on that point.

6 MR. LIEBERMAN: Right. It is our intent that the
7 signer of the document, in response to a notice of violation,
8 states that the material submitted is true; not merely that
9 the signature of the person is notarized that the person in
10 fact has signed it is that person.

11 MR. O'REILLY: Any other comments from the panel?

12 MR. THOMPSON: Yes, Jim. I would like to comment.

13 I don't propose to give you a point-by-point
14 response, but to three areas in particular that I think are
15 general enough definition that they're worthy of responding
16 here.

17 Your comments, you indicated, would be coming in
18 formally anyway, and they will receive the review process. But
19 there are three that I wanted to mention.

20 Your comment about conditions that prevail during
21 conduct of activities under an LCO Action Statement, the
22 reason I think this is of general interest is because in each
23 of the supplements you will note that the beginning of the
24 examples for each Severity Level indicate "violations
25 involving." First, you must have a "violation" before you get

1 into the Severity Levels. If you are properly conducting
2 maintenance or surveillance or testing activities under an
3 LCO Action Statement, you are not in violation. That is not
4 to say that there may not be occasions where a safety-related
5 system cannot perform its function because of some other fault;
6 but simply because you are in an LCO Action Statement does not
7 make you in violation if then events ensue that require that
8 system to perform. That by itself doesn't make a "violation."
9 You have to have a violation to begin with.

10 The second point I wanted to make with regard to
11 your question about the higher severity levels on construction,
12 the completion of items past the final QC check, your
13 interpretation is correct; that what we are aiming at is when
14 you have determined that everything is okay, using all of your
15 QA programs, and it wasn't okay. Then you've got a problem.

16 The third one has to do with the requirement for
17 the completion of Part 21 reviews. This is different than the
18 Section 206/Part 21 requirement to report. There have been
19 instances in recent months where it has become increasingly
20 evident in some organizations that the depth and breadth of
21 the review process set up as part of the management scheme in
22 certain companies has left a great deal to be desired with
23 regard to that vague term of the "adequacy of review."

24 Obviously a responsible company official cannot
25 report something that has not been surfaced by the review

1 process set up in the company, and he's not the guy that's on
2 the hook. The problem is, in those cases, that the review
3 process was either not deep enough or not broad enough to
4 identify that a safety defect actually did exist when in fact
5 it did. That is what we are aiming at in that Part 21 review
6 example.

7 MR. COATS: In other words, what you are saying,
8 you are keying in on the total program and not some specific
9 review that was done and reported, or not reported?

10 MR. THOMPSON: Yes. I think we are looking at
11 instances in which a review is clearly not sufficient to
12 disclose the existence of a legitimate safety defect.

13 MR. O'REILLY: The next individual who requested
14 to make comments is the Duke Power Company, a Mr. William L.
15 Porter.

16 MR. RUTHERFORD: My name is Neil Rutherford. I am
17 here on behalf of Mr. Porter.

18 I would like to respond to some of the questions in
19 the Federal Register Notice.

20 First of all, number one: Is the policy fair and
21 equitable? In order for the Enforcement Policy to be fair
22 and equitable it must set up a system whereby the Staff, the
23 Boards, and the Commission will be able to apply uniform
24 criteria to the facts of each case. The Policy also must
25 reserve to the Staff, Boards, and the Commission sufficient

1 discretion to apply all enforcement sanctions only when and
2 where such sanctions will protect the public health and
3 safety.

4 As presently drafted, the Enforcement Policy
5 generally recognizes this critically important point and, to
6 the extent it can be viewed as fair and equitable. However,
7 the more important question is: Whether the policy will be
8 applied in a fair and equitable manner?

9 The answer to this question can only come from the
10 Commission itself.

11 Question number two: Is the Policy understandable?
12 The Enforcement Policy is, for the most part, understandable.
13 There are portions of the policy which require clarification,
14 and these portions are discussed in the responses to the
15 remaining questions.

16 Number three: Are the severity levels appropriate?
17 The use of severity levels is an appropriate means by which to
18 identify the relative severity of a particular violation.
19 First, the policy should state that identify the severity level
20 of the particular violation is only the first step in deter-
21 mining what enforcement sanction will ultimately be imposed on
22 licensees. Other steps include: reviewing a licensee's
23 enforcement history and, in certain instances, consulting with
24 the Commission.

25 Secondly, the policy does not clearly define each

1 of the severity levels for each type of activity. As a result,
2 it is difficult to determine what, if any, criteria are used
3 to place particular violations in their corresponding severity
4 level.

5 Question number six: Are the factors for deter-
6 mining the level of enforcement actions appropriate? Should
7 there be others?

8 The Enforcement Policy generally includes the
9 factors for determining the level of enforcement action.
10 However, they should be more clearly delineated.

11 First, the policy should set forth the criteria to
12 be used in assessing which enforcement actions should be
13 selected. These factors should include the severity of the
14 violation; the nature of the violation -- that is, whether it
15 is repetitive or continuing; and the licensee's history of
16 compliance.

17 After this step is completed and a tentative sanction
18 is selected, specific criteria governing the use of that
19 enforcement sanction should be then applied.

20 The criteria governing specific enforcement actions
21 also should be clarified. Specifically, the Enforcement Policy
22 should amplify and clarify the factors to be taken into account
23 when assessing a civil penalty.

24 These factors include the severity of the violation;
25 the nature of the activity in which the licensee is engaged;

1 and the need for its services; the financial impact; the
2 duration of the violation; and the effectiveness of licensee
3 safety programs.

4 In addition, the following mitigating factors should
5 be more fully considered: whether the licensee exercised good
6 faith in complying with the applicable requirement; whether the
7 licensee promptly identified the violation; whether the
8 violation was reported in a timely manner; whether the
9 violation was promptly and expeditiously corrected; and the
10 scope and cost of such corrections.

11 Question seven: Is the degree of discretion allowed
12 to office directors appropriate?

13 In order to ensure that the Enforcement Policy is
14 sufficiently flexible to permit sanctions to be tailored to
15 the precise facts of each situation, the policy must make clear
16 that office directors have discretion in determining whether
17 and in what form to bring an enforcement action, provided that
18 general criteria are followed.

19 Moreover, the discretion must not be limited by
20 the methodologies set forth in the policy. Rather, after
21 considering the general criteria governing the imposition,
22 those regulators imposing the sanction must be free to modify
23 the sanction otherwise applicable, if circumstances warrant.

24 As presently drafted, it appears that, to the extent
25 such discretion exists, it is limited in scope by various

1 requirements of the policy. That is, the formula for assessing
2 the civil penalties, for instance.

3 Therefore, more flexibility should be permitted in
4 the policy than is now the case.

5 Question nine: Are the provisions for escalated
6 enforcement actions set forth in Table 2 appropriate? Table 2
7 of the Enforcement Policy should be deleted. The policy
8 indicates that discretion is to be exercised in taking
9 enforcement action. Reconciliation of how such discretion is
10 to be exercised with the sequence of enforcement actions set
11 forth in Table 2 is not discussed.

12 Moreover, because the enforcement options available
13 to the staff are reasonably limited and guidance is provided
14 in the narrative portions of the policy, Table 2 is not
15 required for sanctions to be uniformly applied. Therefore,
16 to ensure the maximum exercise of discretion by the appropriate
17 NRC director, a specific sequence of escalations of enforcement
18 actions is not necessary or desirable.

19 In the event the Commission concludes that Table 2
20 should be included, it should be clearly identified as
21 "guidance" and should not be applied by the staff in every
22 case regardless of the facts.

23 In conclusion, I couldn't help but note that the
24 failure to report is accorded the same severity level as the
25 associated event. This seems to be part of a continuing NRC

1 policy of equating performance of proper paper work with items
2 directly related to safety. And I think this is another
3 unfortunate symptom of a recurring deficiency in the thrust
4 of the regulatory process. As such, I would urge the NRC to
5 reconsider this particular aspect of the Enforcement Policy.

6 Thank you.

7 MR. O'REILLY: Thank you.

8 MR. KEPPLER: I guess I would just add one comment
9 to what you said. The intent of the Commission's policy on
10 failure to report is not related to the paperwork aspect; it
11 is related to informing the Commission of the serious problem,
12 and whether or not the Commission has been aware of that
13 problem or not.

14 MR. RUTHERFORD: I agree with your statement that
15 reporting has its importance level in the overall scheme of
16 things, but I would not equate it with the same level as a
17 particular event in question. So I am not saying it should not
18 be noticed and appropriate action taken on failure to report,
19 but I am just questioning the level of importance that you seem
20 to apply to it in the policy statement.

21 MR. THOMPSON: Let me just respond very briefly to
22 that last comment. That is not a new provision under this
23 policy. That has been in existence since December of '74.
24 Granted we had different names, but the failure to report has
25 been regarded with the same seriousness as the fact not

1 reported, and that has been under existence under the old
2 policy.

3 MR. O'REILLY: Okay. The next individual who has
4 identified himself as wanting to say a few words is a
5 representative from the Alabama Power Company, Mr. Pat
6 McDonald.

7 MR. MC DONALD: I would like to ask a question.
8 The first question is specifically about the Severity Levels
9 V and VI. The question is: Why were these two Severity Levels
10 included?

11 The reason I ask this question is that there are
12 some thoughts that when you get down to the lower level areas
13 in -- "lower level" with respect to the importance to safety --
14 in fact these two are quoted as "other minor safety problems
15 or lesser safety." Why were these included, instead of
16 including an aspect of perhaps Severity Level IV, which would
17 be "recurring problems" in those areas?

18 The reason I ask this question, it seems to me
19 that such a policy would tend to focus both the licensee and
20 the NRC inspectors on the areas most important to safety, but
21 at the same time would encourage the licensee to take initiative
22 in all matters of safety regardless of the level.

23 So the basic question is: Why were these two
24 last levels added, recognizing that they are a departure --
25 somewhat of a departure from the previous policy?

1 MR. LIEBERMAN: I will answer that. The severity
2 levels were intended to focus on the significance of the item,
3 not the repetition or the duration of the items of noncom-
4 pliance. As you point out, enforcement action for Severity
5 Levels V and VI -- for escalated enforcement action -- requires
6 repetition.

7 We don't think it will take away from the licensee's
8 focus of safety by keeping the Vs and VIs in there. All
9 requirements should be complied with.

10 MR. MC DONALD: I think you said one thing I would
11 like to ask you if you meant it; that enforcement action on
12 Levels V and VI requires repetition. Did you really mean that?

13 MR. LIEBERMAN: Repetition or willfulness. If it
14 is a willful violation, a deliberate violation, any item can
15 get a civil penalty.

16 MR. MC DONALD: Now you don't define "civil
17 penalty" as the only type of enforcement action, do you?

18 MR. LIEBERMAN: No. A notice of violation -- you
19 can get a notice of violation for a V and VI.

20 MR. MC DONALD: So you do get enforcement action
21 for Severity Levels V and VI?

22 MR. LIEBERMAN: Correct.

23 MR. THOMPSON: Let me jump in on that one just a
24 little bit, too. The nature of your suggestion makes it very
25 difficult for the NRC Staff, in the following respect:

1 Were we to adopt a suggestion that you don't write
2 notices of violation for Vs or VIs, we would then be placed
3 in the position of telling our inspectors that some require-
4 ments you enforce, and some you don't enforce. And if in your
5 mind it is a V or a VI in your call, then we aren't going to
6 issue a notice of violation. That is an almost indefensible
7 position for NRC management to be put in, to tell its inspec-
8 tors: You go exercise your judgment as to when you're going
9 to cite, and when you're not going to cite.

10 The review process associated with determining
11 noncompliance items from inspection results is relatively
12 extensive. The more serious the items, the more extensive the
13 review.

14 We give instructions to our inspectors now: When
15 you find a licensee not in compliance with a regulatory
16 requirement, that is an item of noncompliance. And under this
17 new policy, that is a violation. The name doesn't make any
18 difference. "Noncompliance" is "noncompliance" and we can't
19 very well tell the inspectors to turn their head the other way
20 for some of them.

21 MR. MC DONALD: May I ask, back to the question,
22 the original question: Was it considered why that recurring
23 items could not be listed in a higher severity and to eliminate
24 them as enforcement items? The question does not mean that
25 they would not report them or note them, but the enforcement

1 action would be taken on recurring situations.

2 MR. THOMPSON: As a matter of fact, you will note
3 in the Federal Register Notice that "elevated enforcement
4 action" -- that is, associated with civil penalties, orders,
5 or a combination -- is taken for Level IV and Level V repeat
6 violations after an enforcement conference.

7 I think what is happening here is, tying severity
8 levels and actions. Severity levels are really established
9 simply to indicate the seriousness of the offense associated
10 with the violations.

11 MR. MC DONALD: I was really seeking an answer to
12 a question on why those two severity levels were included, in
13 lieu of the obvious problems with noting some of the lower,
14 minor things. Why did the Commission in this draft policy
15 include those two specifically? Was there deliberate thought
16 in including those two?

17 MR. THOMPSON: Yes, there was.

18 MR. KEPPLER: I think it is important to note that
19 it is just a carryover of the current policy that way. It is
20 no different than what we have done under the old policy.

21 MR. MC DONALD: So there is nothing else behind it
22 than what you have defined?

23 MR. KEPPLER: That's correct.

24 MR. MC DONALD: The second question I have concerns
25 Table 2 -- and I note that there have been several comments on

1 Table 2 already. Table 2 is titled under the words "Examples"
2 that's in a paren, and then after that in paren is "(will
3 normally)" meaning that it is an example, but it really isn't
4 an example, it is really the policy.

5 I guess the question is: What do all those words
6 mean? "example" "will normally be taken" and then other times
7 we use discretion? So that does Table 2 really mean? Will it
8 normally be taken? Does it in essence set a major policy
9 point? Is there any way in a fair and equitable widespread
10 applied policy that you could very frequently deviate from it
11 when it is put in such words?

12 MR. THOMPSON: You asked the question on the rather
13 strange parenthetical wording associated with that. You will
14 note that the accompanying Federal Register Notice announcing
15 these meetings called out the fact that the Commission is
16 particularly interested in receiving comments on the use of
17 Table 2. The reason the "could" and "will normally be" --
18 those words -- were placed in parentheses is that it is not
19 clear which of those two options the Commission desires to
20 adopt. It is seeking comments from the public on which is the
21 more desirable way to go.

22 Now for background on Table 2, this reminds me of
23 the earlier commenter noting that we don't like the rigidity
24 but we want more precision in definition. This is a dilemma
25 that we faced, as well. You can't very well have more

1 flexibility and tighter definitions. Those tend to be at odds
2 with one another.

3 In this case for Table 2, the people who worked on
4 the development of this proposed policy felt that it was
5 appropriate and fair to notify the public and licensees of
6 the probable course of action for repeated serious violations.
7 Table 2 very well could be eliminated from this policy. But
8 if it were eliminated, then licensees and the public alike are
9 left in a position of not knowing what happens the second time,
10 or the third time that you have a serious violation which on
11 the first occasion brought about a pretty hefty civil penalty.

12 This was an attempt to make clear that, for these
13 more serious violations, there was going to be escalated
14 action after a first offense. That is the whole reason that
15 Table 2 was put in there.

16 But your question on the wording of "could" or
17 "will normally be," that was a very conscious alternative set
18 of wording that was put in there; then, with the accompanying
19 notice that we wanted to have responses on: How do we handle
20 this very touchy situation?

21 MR. MC DONALD: So in fact, those two words are put
22 in there and not to be firmed up until you get the responses to
23 the questions?

24 MR. THOMPSON: Precisely.

25 MR. MC DONALD: Thank you.

1 MR. O'REILLY: Are there any other comments from
2 the panel?

3 (No response.)

4 MR. O'REILLY: Thank you.

5 With the exception of an individual who has requested
6 to have five minutes on this evening's session, all the people
7 who have requested to be heard have been heard.

8 Could I have a show of hands of anybody else who
9 has a -- I'm looking at the time -- anybody else who has a
10 comment?

11 (A show of hands.)

12 MR. O'REILLY: Yes, sir. Was there anybody else
13 here -- How many people would like to say anything else? Two?
14 Anybody else?

15 (A show of hands.)

16 MR. O'REILLY: Okay. Again, Mr. Keppler wanted to
17 terminate -- he has about five or ten minutes' worth of
18 comments. So with about three people left, let's start off
19 with a maximum time limit of about 10 minutes per person.

20 Yes, sir?

21 MR. CHIANGI: I am N. J. Chiangi, Carolina Power &
22 Light. I would like a few more clarifications on the
23 statements made under oath.

24 My question is: That if you report a 50.55(e) or
25 apotential 50.55(e) or a Part 21, it is my understanding that

1 the NRC will consider this to be a violation. With regard to
2 those two reportable items, will the required corrective
3 action or final report require a statement of some sort indi-
4 cating that this content in the report is in fact true? Are
5 you looking for a statement at the end, or somewhere in that
6 report, for all corrective action requests?

7 MR. LIEBERMAN: The reference in the policy for
8 statements under oath is applicable to all responses to notices
9 of violations. The oath does not go to what is intended to be
10 done, but rather the facts as to what has occurred. When a
11 licensee says he has taken corrective action, that is what we
12 want under oath.

13 MR. THOMPSON: Let me back up a little bit. I am
14 not sure I understood your question. I recognize what
15 Mr. Lieberman was talking about, and I fully agree with that.
16 But I didn't quite understand your question, I don't believe.

17 I thought you said that if the licensee submits a
18 50.55(e) report, or a Part 21 report, that in itself would
19 constitute a violation? Did I understand your characterization
20 correctly?

21 MR. CHIANGI: If I understood the intent of this
22 policy, once we identify a nonconformance, then that
23 nonconformance could be in the form of a potential 50.55(e)
24 or Part 21 that is then later on evaluated as a reportable
25 item; that the NRC will consider this deficiency at that point

1 as a violation and so notify us. Is that correct?

2 MR. THOMPSON: I would go back to my earlier comment
3 that each of these supplements, as a matter of fact, each of
4 the lettered subparts of the Supplements, begin "violations
5 involving." The conditions characterizing the seriousness of
6 those violations do not necessarily, in themselves, constitute
7 "violations." Violations associated with a 50.55(e) report
8 has to have a violation first. Reporting something under
9 50.55(e) or under Part 21 does not in itself constitute a
10 "violation."

11 MR. CHIANGI: On the assumption that you evaluated
12 it and it is in fact a violation and it is reported as that,
13 the corrective action report that is submitted at a later date
14 to, in my case, Mr. O'Reilly, is either signed say by myself
15 or one of the vice presidents. Are you looking for a statement
16 in that final report, in effect stating that the contents on
17 the corrective action are in fact true and so notarized?

18 As it is right now, I don't believe that type of a
19 corrective action report gets the notarization that you're
20 looking for, or a statement under oath.

21 (Panel conferring.)

22 MR. LIEBERMAN: This policy is only addressing the
23 notice of violation, as I said before. The responses under
24 50.55(e) or Part 21 or LERs, or whatever other reporting
25 requirements it might have, the format of those responses remain

1 the same.

2 If in responding to a 50.55(e) violations are found
3 such as a breakdown in QA, or whatever, that is not required
4 to be under oath. The responses to the notice of violation
5 which we send out are what this policy is addressing. This
6 policy is not changing the format of existing reports to us.
7 Does that answer the question?

8 MR. CHIANGI: No, I don't believe it does, sir.
9 Once we report a violation or a 50.55(e) which is in fact a
10 violation of a QA program, a specification, or something of
11 that nature, and it is determined as being a violation, are
12 you at that point going to inform us, as you have, that you
13 received it and this is considered to be a "violation"? And
14 from what I understand, this is the case.

15 We will report it. Your response would indicate --
16 or will it indicate? -- that it is at that time considered to
17 be a "violation"?

18 MR. THOMPSON: We have in the past followed the
19 practice on such cases, as I understand your characterizing it,
20 that, yes, this is considered to be a violation. However, no
21 response to this notice of violation is required, inasmuch as
22 you have previously given us your corrective actions and your
23 measures to prevent recurrence. That is not that unusual a
24 situation that we issue no-response notices of violation.

25 MR. CHIANGI: Then do I understand --

1 MR. THOMPSON: It isn't an everyday occurrence, but
2 it isn't that unusual.

3 MR. CHIANGI: Then if I understand you correctly,
4 in the corrective action report for a Part 21, a reportable
5 Part 21, a 50.55, does not require a statement under oath?

6 MR. THOMPSON: That is correct at this stage, but
7 let me add, gratuitously, that there are some members of our
8 Commission who are very concerned in this subject area, and
9 who advocate rather strongly that responses to NRC by licensees
10 should, for the most part, always be under oath or affirmation.
11 So even though I say the response to your question is "no,"
12 that could change between now and the time the final policy is
13 written, and I don't want to lend a false sense of serenity to
14 this matter.

15 MR. CHIANGI: And we will be informed of that at
16 the time it is changed, then?

17 MR. THOMPSON: That is correct.

18 MR. CHIANGI: Thank you.

19 MR. O'REILLY: We had another question in the back
20 of the room?

21 MR. BRIGHT: My name is Ron Bright. I'm from the
22 Florida Power Corporation. I would like to hit a couple of
23 specific items and make a couple of general statements, if I
24 may.

25 First of all, I believe it was Mr. Keppler who made

1 a statement that the 50 percent good-faith reduction on the
2 civil penalty fines would be if the licensee identifies,
3 begins corrective actions, and then reports the violation.
4 I notice the Federal Register has the words, "identify,
5 corrects, and reports."

6 Are you interpreting "corrects" as not completing
7 the corrective action, but only initiating it on the report?

8 MR. THOMPSON: That will be on a case-by-case basis.
9 The policy statement says, "corrects." We recognize that in
10 some cases the corrective action may extend over a period of
11 time, and in many cases the commitment for completion of the
12 corrective action in a reasonable time period that's consistent
13 with availability of equipment, for example, would be
14 appropriate and acceptable.

15 But let me correct one other comment you had made.
16 There is not a 50 percent reduction for good faith. There is
17 a 50 percent possible reduction for self-identification,
18 correction, and timely reporting. The "good faith" reduction,
19 which involves extraordinarily, timely, and extensive corrective
20 action is 25 percent after the self-identification reduction
21 has been applied.

22 I think it is pretty important to make this
23 distinction. They are certainly very closely related. Self-
24 identification can clearly be classified as a portion of a
25 good-faith effort on the part of a licensee; but in the context

1 of the proposed policy, good faith -- which is called out in
2 the legislative history of the authorization bill that gave the
3 new civil penalty authority -- is not further defined than
4 "good faith."

5 We have attempted to attach the "extraordinarily,
6 timely, and comprehensive corrective action" to imply good faith.
7 There are some steps that will meet the band-aid approach and
8 take care of a problem, and may meet the literal requirements
9 of a regulatory requirement, but may not be as comprehensive
10 as they might have been otherwise.

11 The "good faith" application is for those cases
12 where that corrective action goes considerably beyond the
13 minimum necessary to correct the problem.

14 MR. BRIGHT: I understand that. I misquoted the
15 statement.

16 The second comment that I would like to make, I
17 believe it was stated earlier that there were enough, if you
18 will, "hedge words" in the document so that civil penalties will
19 not always be levied. However, on page 8 of your prepared
20 text, it states that normally if it has been determined that
21 a Severity Level I, II, or III violation existed, it is the
22 Commission's intent to issue a civil penalty.

23 I am a little bit confused on that point.

24 MR. KEPPLER: What is intended there is that if we
25 determine that the intent of the three types of severity

1 categories has been met, and if it clearly fits the mold of
2 a loss of control, then it would be our full intent to issue
3 a civil penalty.

4 Let me give you an example of a case of how this
5 might be evaluated. Let's assume you had a loss of your ECCS
6 system for a very short period of time, seconds, because of
7 an operator error. You immediately recognize the problem and
8 realign the system properly.

9 In that case, we would probably judge that the
10 intent of the Severity Level II violation had not occurred.
11 If it was for a very short duration, the health and safety of
12 the public wasn't jeopardized, judgment would be entered into
13 the determination of the severity category. We would probably
14 call that a lower severity category.

15 So what I am saying is that once we make the
16 determination that a noncompliance act results in the top
17 three severity categories being exceeded, then we would go
18 ahead and issue a civil penalty.

19 MR. BRIGHT: Okay. I --

20 MR. KEPPLER: So the flexibility comes in the
21 determination of the severity categories is what I am saying.

22 MR. BRIGHT: Thank you.

23 One passing comment back in Supplement I, there are
24 various severity categories given to different multiples of
25 release of radioactivity greater than tech spec limits, and

1 there is a footnote that it doesn't include the instantaneous
2 tech spec limit. I would ask for a clarification in the final
3 rule of what is meant.

4 (Panel conferring.)

5 MR. BRIGHT: you are talking about a tech spec
6 limit, and I can think of three different limits we have in
7 our tech specs. Are you thinking of the worst of the ones that
8 you don't exclude?

9 MR. NORELIUS: As I understand the tech spec limit,
10 it is the same as in Part 20 requirements.

11 MR. BRIGHT: Correct.

12 MR. NORELIUS: And we thought it not fair to apply
13 that particular limit such that if you had a spike that occurred
14 it would not be applied. But I believe there are other limits
15 that are averaged over a longer period of time in the tech
16 specs, and those are the ones that it would apply to.

17 MR. BRIGHT: Okay. I would end with a general
18 comment, that I agree with what has been said previously, that
19 there should be something in this new rule that really makes
20 it in the licensee's interest to identify and promptly correct
21 violations or deviations or deficiencies such that a fine
22 would not be levied in that particular case.

23 I would offer Mr. Thompson a slightly different
24 analogy than the one he used on hit-and-run drivers. I would
25 say that a hit-and-run almost happened, due to mitigating

1 circumstances; and I went to a police station and reported it,
2 that I would not expect a ticket for it, nor would I expect a
3 brass band.

4 Thank you.

5 MR. O'REILLY: Thank you.

6 You had some questions, sir?

7 MR. WOODS: My name is Don Woods, in the Safety
8 Evaluation and Control Group of Virginia Electric and Power
9 Company. I would like to make some comments on your questions
10 in the Federal Register, to reinforce what other people have
11 said, and to identify some things that we are particularly
12 concerned with.

13 Concerning question one, three, eight, and nine,
14 the first question being: Is the policy fair and equitable?
15 VEPCO feels that the health and safety of the site personnel
16 and that of the public should remain the paramount, if not the
17 ultimate concern, of all parties.

18 Any enforcement action that is for any other reason
19 would erode and would distract NRC personnel and licensee
20 personnel alike from that emphasis.

21 VEPCO feels that uniform criteria be applied to the
22 facts in each case precise enough to apply to the majority of
23 the cases, and flexible enough to allow tailoring of the
24 enforcement action for each particular case.

25 We feel also that the policy must reserve sufficient

1 discretion to the staff, the boards, and the Commission to
2 apply all enforcement sanctions only when and where such
3 sanctions are necessary to and will protect the public health
4 and safety.

5 In addition, we feel that all enforcement action of
6 the staff, Boards, and Commission should specifically define
7 in what way the enforcement action will protect the health
8 and safety of the public. We are concerned with whether or not
9 the policy will be applied in a fair and equitable manner.

10 We feel that the policy should be applied uniformly
11 on both the intraregional and interregional basis. We feel
12 that the moment enforcement action is suspected to be used to
13 punish NRC licensees, it would disrupt if not destroy the
14 cooperative efforts between the NRC and the industry.

15 In response to question three: Are the severity
16 levels appropriate? VEPCO feels that the policy should address
17 the fact that identifying the severity level of a particular
18 violation is only the first step in the process of determining
19 enforcement sanction or what enforcement sanction will be
20 imposed.

21 We feel that if Severity Levels V and VI cannot be
22 specifically defined, they should be deleted. Severity Levels
23 I through IV should be more clearly defined. We feel also that
24 the policy should clarify that the supplements are for guidance
25 only, and that they would provide examples of how certain

1 violations may be handled. I would reinforce that a little bit.
2 Earlier Mr. Keppler said that the new severity levels were
3 created to identify specific problems, and Severity Levels V
4 and VI are basically general statements instead of specific
5 problems. I again reiterate that they should be defined more
6 precisely.

7 In response to question eight: Are the levels of
8 civil penalties that require Commission involvement appropriate?
9 We take exception to the policy and feel that the civil
10 penalties as described in Table 1 should never be exceeded
11 without the review and approval of the Commission.

12 This would contribute to the fair and equitable
13 implementation of the Enforcement Policy with interregional
14 uniformity when extended beyond approval levels.

15 Concerning number nine: Are the provisions for
16 escalating enforcement action set forth in Table 2 appropriate?
17 We feel that the Table 2 should be deleted. I appreciate
18 Mr. Thompson's remarks on that earlier, that it is for our
19 information, but we also say that the use of the Table 2 as a
20 guide would be counterproductive to the enforcement options
21 and discretionary guidance already provided in the policy.
22 If the Commission chooses to retain Table 2 as part of the
23 policy, it should be used only for providing guidance in
24 extreme cases.

25 In addition, we feel that the time period in Table 2

1 was arbitrarily set without consideration of the frequency or
2 depth of inspections. If a time period is required, this
3 time period should be set for a maximum of one year for
4 commercial and PWRs, or it should be based on the number of
5 inspector hours.

6 In addition, we have some comments that directly
7 reflect our personal feelings. VEPCO feels that the emphasis
8 for and the use of uniform and discretionary process, including
9 consideration for the scope of work and financial impact in
10 determining enforcement actions should be applied to the
11 issuance of show cause orders reflecting IE bulletins when,
12 involving the issuance of an amendment to a license.

13 Also, the time period determined for corrective
14 action should be influenced by the real threat to the health
15 and the safety of the employees and the public that actually
16 exists.

17 A case in point is a Surrey Unit 1 show cause order
18 involving IE Bulletin 79.02 and 79.14. The total cost of this
19 particular issue will be in excess of \$90 million just for
20 the reanalysis, redesign, and rework. This does not include
21 the cost of replacement power incurred as a direct result of
22 the 160-day show cause order which will be in excess of -- or
23 was in excess of \$40 million.

24 Had a fair and equitable approach been taken, and
25 had discretion been used in the reanalysis and redesign could

1 have gone forth at a more relaxed but deliberate pace and the
2 rework could have been completed during the scheduled steam
3 generator replacement outages, it would have had considerably
4 less of a financial impact on the company.

5 VEPCO is concerned that sufficient credit is not
6 given to licensees concerning violations that the licensee
7 identifies, reports, and corrects. In an arena in which the
8 licensee or director or officer or employee identifies a
9 violation which hence results in a civil penalty for the
10 licensee or himself, an atmosphere of paranoia may begin to
11 cloud the truth of the actual events, leading to or causing a
12 violation. This atmosphere may result in the attempted
13 concealment or actual concealment of the facts -- facts which
14 are important to the Commission and the industry for building
15 files of operating experience.

16 Ultimately, we feel that only in the extreme
17 cases in which the licensee identifies, reports, and corrects
18 the violation that posed a real threat to the health and
19 safety of the employees or the public should a civil penalty
20 be awarded. Policy contrary to this would be counterproductive
21 to further development of cooperative working relationships
22 and improved communications between the Commission and the
23 industry.

24 VEPCO also feels that when a notice of enforcement
25 action is issued, a detailed description of the factors

1 influencing that determination of which sanction is used and
2 applicable severity level be provided to the licensee as part of
3 the notice.

4 That's all I have. Thank you.

5 MR. O'REILLY: Thank you very much, sir.

6 Is there anybody else who would like to make a
7 comment?

8 Yes, sir.

9 MR. MC GAUGHY: My name is Jim McGaughy from
10 Mississippi Power & Light Company. I would like to speak for
11 a minute just addressing the construction of Supplement II,
12 part of the proposed policy.

13 Under the example which I believe Mr. Norelius gave
14 earlier concerning a ventilation duct work that was not being
15 built under a specific QA program, as we read this table, or
16 rather Supplement II, surely that would also fall under
17 Severity II, which says "all or part of a structure or system
18 that is completed in such a manner that it could have an
19 adverse effect on the safety of operations." Surely the absence
20 of a QA program could have an adverse effect on the safety
21 of the operations.

22 You can look at what other assumptions you might
23 make. You might make it a Severity I, which would say it is
24 not completed in the manner that it would not have satisfied
25 its intended safety purpose, and it certainly would not if it

1 did not have a QA program, depending on how you want to define
2 that.

3 We feel that any of the items that we have been
4 reporting under the 50.55(e) system could be -- clearly could
5 be Category IIs under B.2. And depending upon the interpre-
6 tation of how you read the words that day, it could also be
7 a Severity I.

8 We are not talking about a law, and we're not talking
9 about a regulation. We are talking about a policy. And yet
10 we want to enforce a policy, you know, as if it were a part
11 of the Federal Criminal Code.

12 The policy as it is written, and the conversations
13 that we hear from the front table, are full of such words as
14 "significant." You've had lots of discussions of what that
15 means, over the years, and it certainly changes. "Deficiencies,"
16 "completed," what constitutes "completed." We talked about
17 "normally," "usually," "good faith."

18 So as we look at the Supplement II, it seems to us
19 that you can find just about any amount for just about any
20 violation, and increase it or reduce it just pretty much at the
21 discretion of the inspector, or perhaps the region.

22 In order to enforce a policy like that, it seems to
23 us that you gentlemen are going to have to have the wisdom of
24 Solomon and the patience of Job.

25 Also in the discussion it appears that we are kind of,

1 a priori, assumed to be liars and compared to criminals, hit-
2 and-run drivers. We feel in our company -- and I would guess
3 I would speak for the rest of us here -- that we feel we are
4 in an honorable industry; that we are trying to provide our
5 customer with low-cost, dependable service, and we are of
6 course subject to the pressures of our family security and
7 opportunities for promotion, which we think that you gentlemen
8 are under the same pressures. And we know that people from our
9 industry go to work in your industry, and people from your
10 industry go to work in ours, and we don't feel that -- certainly
11 that you don't have any corner on the market of honesty and
12 wisdom and good intentions.

13 We feel that we have that, too. So I feel that the
14 regulation is not really a "regulation." The "policy" makes
15 us not a nation of laws, but of men, at the whim of inspectors
16 or regions.

17 A policy of selective enforcement which is based on
18 your discretion, or perhaps on whether you like our attitude,
19 or how sincere you think we might be, seems to us to be a very
20 difficult thing to administer. I would like to say that if you
21 can't give us examples -- meaningful examples -- of what
22 different severity levels would be under this construction
23 program, then we have a hard time seeing how we can operate
24 under it, and how Jim O'Reilly can inspect under it, and how
25 he can provide any kind of a level of consistent enforcement

1 when it is so very difficult to define.

2 MR. O'REILLY: Thank you very much.

3 Do you have any particular comments? Or just
4 recognition of the observations?

5 (No response.)

6 MR. O'REILLY: Were there any other individual
7 comments? Yes, please. Noting that we have to allocate
8 Mr. Keppler 10 minutes, and me one or two minutes, and we want
9 to terminate at 5:00 for this phase of the Enforcement meeting.

10 Go ahead.

11 MS. BEARDSLEY: My name is Pamela Beardsley. I am
12 just a citizen who has taken off time from work to come here.

13 With regard to fines on construction, I certainly
14 think that you should increase the fine structure that you are
15 able to have probably, I would think so, more than you are
16 contemplating.

17 For instance, I don't understand why Westinghouse
18 is allowed to continue building billion-dollar reactors when
19 their steam generator problems have still yet not been solved.
20 These are steam generator problems that have resulted in
21 serious overexposure of individuals working to correct those
22 problems; that result in tons and tons of highly radioactive
23 material; and also when the NRC has said that when you repair
24 the steam generator -- for instance at Surrey -- that you have
25 no faith at all that you have really solved the corrosion problem.

1 So to me, it is just an incredible theft of money
2 from consumers, and it is posing a severe safety hazard to
3 continue building that type of plant, until you can reassure
4 everyone that the problem has been solved.

5 I would also like to say something that is just
6 totally probably irrelevant -- which is, that I'm sure you
7 don't notice it, but the sexual composition of this group is
8 overwhelmingly in one direction, and the majority of the
9 population is not represented here.

10 I am going to save -- I'm sure that's funny, but
11 probably if the majority of the population -- that is, females --
12 who are personally responsible for reproduction in the world
13 were represented, I doubt if we would have the type of nuclear
14 power system in this country that we do today.

15 I would like to save further remarks for this
16 evening.

17 MR. O'REILLY: Thank you very much.

18 Were there any other comments?

19 (No response.)

20 MR. O'REILLY: Mr. Keppler wants to make some
21 summary comments as the Chairperson of the Enforcement Panel.

22 MR. KEPPLER: I wanted to briefly address some areas
23 that came up today from many of you here.

24 There was a heavy plea for more specificity in the
25 severity categories, and yet at the same time, greater flexibility.

1 We put a great deal of effort in trying to
2 optimize both of these areas, because they are competing. I
3 guess I would make a plea to you people that, having worked on
4 this thing for the better part of the last year -- all of us
5 here -- if you can come up with some specifics to help us to
6 make the policy more meaningful, more useable, we would
7 appreciate your being as specific as you can.

8 The gentleman from Mississippi raised a comment
9 about the vagueness of the construction enforcement policy.
10 What we tried to do there -- and I'll just repeat very briefly
11 what is in the policy: We tried to distinguish between a
12 structure being completed; major breakdowns in quality
13 assurance in multiple disciplines, or multiple functions; and
14 a major breakdown in quality assurance in one work area -- as
15 the distinctions between Categories I, II, and III.

16 If you want to start using specifics into the
17 specific definitions of what that means, then I guess we would
18 appreciate whatever help you can give us in terms of making that
19 more meaningful to you.

20 Another area that I'd like to address that has come
21 out a lot today is the question of incentives, and the question
22 of good-faith reporting, and the tone being one of you want to
23 be encouraged to identify problems, and at the same time not
24 receive a penalty for them.

25 The other side of the coin that we have to deal with,

1 and one that you must recognize, is what happened to the system
2 to prevent these things from happening. That is where the
3 punitive action takes place.

4 So we have to balance the two in coming up with a
5 policy on this matter. You have all focused on the importance
6 of good-faith reporting, and trying to assure that the
7 reporting system doesn't fall down. I think you have to
8 address the other side of the coin here, and thoughts that you
9 may have on that would be welcomed, too.

10 I mentioned earlier that, on the subject of
11 flexibility, that we thought we had accomplished what many of
12 you are saying we haven't accomplished today. We tried to use
13 words like "normally," "generally," to give you some feel of
14 the way things would be looked at, but providing the flexibility
15 to deviate from that where, for technical reasons, it is so
16 warranted.

17 If you could point in your comments to specific
18 areas where you feel the policy is too rigid, that would be
19 helpful to us, also.

20 Jim, that's it. Thank you very much.

21 MR. O'REILLY: I, in terminating the meeting -- this
22 phase of the meeting, because we are going to repeat this
23 exercise to some degree starting at 7:00 p.m. this evening.
24 I would like to thank you all, and also be a little sympathetic
25 to Mr. Keppler, Mr. Lieberman, Mr. Thompson, and Mr. Norelius,

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who is going to do this exercise four more times during this week. You have my sympathy.

It is a tough job, and I guess really -- not to go through Mr. Keppler's comments, but I was present -- not for this purpose; for a different reason -- at a Commission briefing when the subject of enforcement came up. And although it does not come through, it is one of the issues that Mr. Keppler identified, that the whole purpose of the request by the Commission to have higher statutory authority in enforcement was preventive and anticipatory, rather than punitive.

Thank you.

(Whereupon, at 4:49 p.m., the meeting was recessed, to reconvene at 7:00 p.m., this same day.)

- - -

EVENING SESSION

(7:00 p.m.)

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3 MR. O'REILLY: Could we all take our seats, please.
4 It is 7:00 o'clock, and that is the scheduled time for our
5 second phase of our Enforcement meeting to start. Could we
6 try to move up a little closer? I think it might be a little
7 more profitable.

8 Good evening. I would like to introduce myself. I
9 am Jim O'Reilly. I am the Director of the NRC's Region II
10 Office. For the people who weren't here earlier today, I would
11 like to welcome you to Atlanta and to the meeting.

12 We do appreciate the opportunity to meet with you
13 to receive your comments on the NRC's proposed revision to the
14 NRC Enforcement Policy.

15 We have provided you with a handout. If you don't
16 have that, please raise your hand and I will have my secretary
17 provide you with the detailed talks that I gave this afternoon,
18 and which the Enforcement Panel also gave this afternoon.

19 I did want to identify the panel. I would like to
20 identify on my left, Mr. Keppler, who is the Regional Director
21 for Region III in Chicago, and who has been assigned for the
22 last year to work with various offices of the Commission and
23 our legal staff in the development of our proposed Enforcement
24 Policy.

25 On his left, Mr. Keppler's left, we have

1 Mr. Lieberman, who is the Deputy Chief Counsel for Enforcement
2 and Rulemaking of the NRC's Legal Staff.

3 On his left, we have Mr. Dudley Thompson, who is
4 the Director of the Enforcement and Investigative Staff of the
5 NRC's Office of Inspection and Enforcement in Washington.

6 On his left, we have Mr. Charles Norelius, who is
7 Assistant to the Director, Region III, responsible for
8 investigative and enforcement activities in that region, and
9 who has been also assigned to Mr. Keppler as his right-hand
10 man in developing this proposed Policy, and with coordination
11 with the other headquarters offices.

12 Now there are several ways we could proceed. We
13 have had the first part of the meeting this morning, and we
14 are prepared to obviously duplicate that meeting; or to go
15 right into questions and answers on our Enforcement Policy.

16 We did have a request from ten individuals to make
17 comments, or make a presentation, and one person was supposed
18 to be here tonight and requested that she be allowed time to
19 talk this evening. That was Ms. Lavinia George.

20 Is she here?

21 MR. JOHNSON: She had to leave.

22 MR. O'REILLY: She left? Okay.

23 Now who was not here this morning -- this
24 afternoon?

25 (A show of hands.)

1 MR. O'REILLY: Would you like us to proceed and
2 reread those speeches that take an hour? We are certainly
3 willing to, but I can assure you that the talks were, to
4 ensure uniformity between the afternoon phase of the meeting
5 and the evening, and also to ensure uniformity between the five
6 regional offices in which these presentations will be made,
7 we strived to stay exactly in accordance with the handouts that
8 you have received.

9 Further, there will be transcripts available of this
10 meeting that will be available in Washington, and will be
11 available in our Regional Office for review, if you so desire.

12 So, now, does anybody care to make a statement?

13 (No response.)

14 MR. O'REILLY: Did you not -- Were you present during
15 the afternoon meeting?

16 MS. BEARDSLEY: I was present.

17 MR. O'REILLY: And did you feel there would be any
18 value to repeating our canned talks?

19 MS. BEARDSLEY: I had missed the canned talks, but
20 I assume they are similar to what's in this book?

21 MR. O'REILLY: Identical. Would that be satisfactory?

22 MS. BEARDSLEY: Yes.

23 MR. O'REILLY: Thank you.

24 Okay, did you have something to say?

25 MS. BEARDSLEY: If anybody else would have some

1 comments, I would be willing to wait.

2 MR. O'REILLY: Well, as I look around the room, I
3 see a number of people who are present -- a "number," a small
4 number who were present during this afternoon's program and
5 made comments. I see some NRC employees. And I believe that
6 your table is the only table that wasn't present.

7 MS. BEARDSLEY: Right. One thing we would like to --
8 Mr. George, who is an attorney, has suggested that we make the
9 following suggestions with regard to this Federal Register
10 Volume 45, No. 196, Tuesday, October 7, 1980, Proposed Rules,
11 under Section C. "Orders," and then subsection 2.B, that a
12 change be made: To stop facility construction when (i) further
13 work would preclude or significantly hinder the identification,
14 and put, instead of just "and," "and/or" correction of an
15 improperly constructed safety-related system or component."

16 MR. O'REILLY: Did you get that?

17 THE REPORTER: Yes, sir.

18 MS. BEARDSLEY: As a lay person who is interested
19 in nuclear issues, I would like to be able to ask some questions
20 of the panel -- specifically, what these regulations or fine
21 structure would mean in reality.

22 For instance, I have a particular concern about the
23 steam generator tube failure problems that are occurring at
24 Westinghouse, and I guess CE plants to some degree, because
25 Vogel here in Georgia is going to be a Westinghouse plant. It

1 seems to me that when P&L has a problem that's going to cost
2 more than the original cost of construction of the plant -- and
3 from what I've read, there's no reassurance that they know how
4 to correct the problem -- and I was wondering, if it is
5 determined, or how would these regulations affect the further
6 construction of this type of steam generator?

7 I mean, if you know that there is a problem, and
8 you have not been able to determine a solution to the problem,
9 will you just allow, and continue to allow these plants to be
10 built? Or do these regulations at all allow you to say: No,
11 you've got to do it a different way?

12 MR. O'REILLY: The Enforcement Policy really wouldn't
13 direct itself to whether or not the Westinghouse steam
14 generators would be -- whether they would operate properly, or
15 whether we would modify them.

16 MS. BEARDSLEY: Well, you do say that you are
17 considering these fines in the construction area, or in all
18 areas, because of the safety problems that you wish to avoid
19 to the public. Obviously these steam generator problems pose
20 a hazard in San Onofre, in Florida Power & Light's Turkey Point,
21 and Surrey, and other places -- I think Point Beach. Workers
22 have been seriously contaminated when trying to plug the tubes.
23 So that is one health hazard.

24 Then there is the health hazard of these 200-some-odd
25 ton radioactive units having to be replaced in less than 10 years.

1 That is an obvious health hazard to the general public -- what
2 do you do with this stuff. So this is just to continue? There
3 is no way of ever calling a halt to this type of event?

4 MR. KEPPLER: I think you have to differentiate
5 between what you are describing as a design-related problem
6 versus an enforcement problem.

7 The Enforcement Policy is built around where
8 licensees have requirements to meet and they fail to do so,
9 and then an enforcement action is taken.

10 The case of the steam generators isn't an enforcement
11 issue; it's clearly a safety-related concern, and an issue
12 that is reviewed back in Washington by the licensing people
13 from a generic standpoint. I don't know whether this is the
14 right way to say it, but one avenue a member of the public has
15 in this regard would be to request a hearing on this issue -- a
16 public hearing, where the Commission staff gets involved, and
17 the safety-related issues are digested out in the public
18 domain.

19 MS. BEARDSLEY: you mean with regard to a plant
20 currently under construction --

21 MR. KEPPLER: Sure.

22 MS. BEARDSLEY: -- after it's been given a
23 construction permit?

24 MR. KEPPLER: Generally that would happen, I believe,
25 at the operating license type hearing, but correct me if I'm

1 wrong, Jim.

2 MR. LIEBERMAN: We have a provision in 10 CFR
3 2.206 of the Commission's Regulations where any member of the
4 public can submit a petition for the Commission to take action.
5 That would be applicable to a plant under construction, or an
6 operating plant, outside the normal licensing process.

7 The Director of the particular office who would be
8 issuing a decision would have to consider the petition and make
9 a reasoned decision, and that decision is then reviewed by the
10 Commission, and then eventually the courts. So there is a
11 mechanism to provide us facts that you have concerning a
12 particular plant, and we can look at it and not have to wait
13 until the licensing process is completed to make a decision.

14 MR. KEPPLER: Do you know whether the steam
15 generator issue has been addressed, specifically?

16 MR. O'REILLY: There was a hearing on it at VEPCO.

17 MS. BEARDSLEY: There wasn't an EPA hearing on
18 VEPCO.

19 MR. O'REILLY: I beg your pardon?

20 MS. BEARDSLEY: There was not an EPA hearing on
21 whether or not the VEPCO steam generator repair could be
22 taking place, although I understand one is scheduled.

23 MR. O'REILLY: EPA?

24 MS. BEARDSLEY: Or an environmental impact hearing,
25 which I gather is going to be held by NRC for Florida Power &

1 Light's Turkey Point change, because the customer did request
2 it. My understanding on VEPCO's steam generator repair is that
3 the NRC issued a report saying that even though they had
4 conducted this repair, the NRC had no confidence that this
5 repair job was going to work, really, and that in probably a
6 few years down the line a similar situation would develop
7 again.

8 MR. O'REILLY: Well, I can address the issue that
9 there was a hearing; and at the hearing they did look at the
10 exposures and some of the items you had mentioned. I think all
11 of them. They had concluded that the work could proceed, and
12 the work did proceed, and the work was accomplished, as far as
13 I recall, with less exposure than was discussed.

14 Now I am not exactly certain where we stand on the
15 Turkey Point issue. If there was a request for a hearing, that
16 would be considered by the Office Director of Nuclear Reactor
17 Regulation. If they deemed it was something new or different,
18 or would create a new hazard that was not resolved, they would
19 conduct a hearing. They have in every case that I'm aware of,
20 and they did for VEPCO on the Surrey case.

21 MR. THOMPSON: Jim, I would like to expand on it a
22 little bit on a philosophical vein.

23 In my prepared comments, a copy of which I believe
24 you have, I noted that there are really two types of enforcement
25 actions in the NRC's arsenal.

1 One of them is "prospective," in terms of anticipating
2 difficulties that may arise, and imposing altered license
3 conditions on either construction permit holders, or operating
4 license holders. Those prospective actions that are really
5 enforcement actions are not covered by this Enforcement Policy,
6 which is aimed at retrospective enforcement action.

7 On items of noncompliance by licensees or permit
8 holders, based on past performance, Mr. Lieberman's earlier
9 comments about the avenues available to a concerned individual
10 about the prospective aspects of enforcement under Part 2.206
11 is the avenue that is most readily available to you to raise
12 the kind of question you are concerned about.

13 What we are involved in here is: If indeed the
14 repair activities associated with steam generator tube changeout,
15 or steam generator replacement, do not prove effective and are
16 the cause of either worker exposure or, presumably, based on
17 your concerns, some public hazard, then the enforcement action
18 which by its very nature looks back on what happened up till
19 now, and then takes action to try to prevent those from
20 occurring again, would be called into bearing if there was a
21 resultant impact that exceeded regulatory requirements after
22 the repairs were made.

23 But the kind of thing you appear to be concerned
24 about now is something that looks to the future --

25 MS. BEARDSLEY: Based on incidents that have occurred

1 in the past.

2 MR. THOMPSON: Well, based on doubt about the
3 adequacy of the repair process that was engaged in. That
4 avenue is available through our regulations for a petition for
5 a hearing to resolve the issues you identified.

6 MS. BEARDSLEY: Well, then, I have a couple of
7 other questions that maybe you would clarify which category
8 they would fall into.

9 For instance, I read an article -- I haven't gotten
10 a copy of the report -- with regard to Sequoyah, which is also
11 a Westinghouse plant, that the NRC in its licensing report had
12 predicted that the plant had a nine-year life. And I'm perhaps
13 using this for discovery sort of for myself, but if it turned
14 out that the NRC sincerely has an understanding that the
15 massive metal reactor vessel might become brittle long before
16 its intended 40-year life span has come to an end, will you be
17 requiring that plants under construction use a different metal
18 components, or whatever, that would cause them not to be --
19 cause them to have a 40-year life expectancy instead of a
20 9-year life expectancy? When we're spending \$3.2 billion on a
21 plant, one would like to think they would last longer than
22 10 years -- although, I don't really care. I mean, I think they
23 shouldn't last any length of time.

24 But it does seem sensible that if you're spending
25 this amount of money on power production, that there ought to

1 be some guarantee that it will have a normal plant expectancy.

2 Is this covered anywhere under NRC Guidelines? Will
3 you be issuing regulations that would require them to conform
4 to standards which would do away with these problems?

5 (Panel conferring.)

6 MR. THOMPSON: Let me just address a couple of
7 aspects of what your concern appears to be.

8 The anticipated lifetime of a plant is really of
9 only secondary concern to NRC. The concern that we have as
10 regulators is the protection of the public health and safety.
11 Now with that motherhood statement, let me try to go on to try
12 to expand on it a little bit.

13 One of the requirements that we have for the entire
14 primary system boundary is a very comprehensive program for
15 in-service inspection, which is very demanding on the licensed
16 industry, and rather expensive as a matter of fact.

17 If in the course of that in-service inspection
18 program there is any indication of a question raised about the
19 integrity of the primary system boundary, I believe it is fair
20 for me to say that there wouldn't be any hesitation on the part
21 of NRC to stop the operation of the plant involved.

22 I recognize that there may be some doubt about the
23 validity of that observation on the part of people who are
24 concerned about this matter.

25 Secondly, whenever we identify a type of problem

1 that may be generic to a class of plants -- Westinghouse plants
2 or Combustion, or B&W, or GE, or all operating reactors -- we
3 do our best to disseminate very promptly information concerning
4 that particular kind of a problem, and to impose on the licensed
5 industry some additional requirements on what they must do to
6 verify the integrity of the particular component in question.
7 We do this through a series of bulletins.

8 I think you were here this afternoon when somebody
9 commented about the cost that was associated with responding to
10 two particular bulletins in the '79 calendar year series.

11 This is not a trivial requirement that we lay on
12 licensees, and requires vast expenditures on their part to
13 respond to these.

14 The point I am trying to make is that we don't
15 assume that when an operating license is issued we don't look
16 at them again for 40 years, and the plant then is valid for 40
17 years. There is an ongoing inspection program, and a licensing
18 review program, that keeps cognizance of what is going on in
19 these plants. And if we identify the kinds of concerns that
20 would shorten the lifetime expectancy on a vessel, or piping,
21 or major safety-related components of the plant, then we will
22 take action to stop it.

23 Now I am not familiar with the particular article
24 you cited. I don't question its validity or the accuracy of
25 the reporter's assertions. I am sure that it was accurate to

1 the extent that they were aware of what was going on.

2 I am simply pointing out that we don't stop our
3 monitoring when the operating license is issued, and that
4 continues throughout the lifetime of the plant, whether it is
5 three years, thirty years, or forty years.

6 I think that is a fairly general response to the
7 specific question you are asking, but I can't give you a
8 specific response because I'm not really familiar with the
9 article you cite.

10 MS. BEARDSLEY: Well, I guess my general question is:
11 If there are premature aging problems, as they are called, as
12 a whole that are of serious consequence, such as steam generator
13 problems, or the friability that results from radiation, and
14 we have these examples of workers that are being overexposed
15 in attempting to correct the tube failures, have you issued
16 bulletins on that, you know, requiring that the companies meet
17 certain safety standards when they send in these temporary
18 workers to go plug up the tubes?

19 Or are you going to consider whether or not you
20 are going to have to make changes in allowing these plants to
21 continue under construction, if you are able to develop that
22 type of evidence? Because really in a cost/benefit way, it is
23 one thing to say: Well, it's okay if we have to deal with
24 tons and tons of radioactive material because it has generated
25 electricity for 40 years, or if we have constant little

1 low-level emissions, et cetera, because this is a long-term
2 solution to our energy needs. But it is an entirely different
3 thing if it's going to be just a short-term solution to energy
4 needs, and an extremely costly one, at that. It does seem
5 like the NRC ought to be considering these issues and --

6 MR. THOMPSON: I think it's fair to respond to your
7 comment with the observation that when we identify problems
8 with operating plants that are generic in character and apply
9 back into plants still under construction.

10 The lessons that are learned out of the operating
11 plants are applied to those under construction. Now I think
12 there is an implication in your comment that the cost of
13 implementing changes, or the cost of providing alternative
14 energy sources are somehow an influence on how the NRC makes
15 its determination on whether to allow plants to continue to
16 operate, or to continue under construction.

17 I don't know how to provide you the assurance that
18 I know to be the fact, that these factors are not bearing on
19 NRC decisions as to whether to allow these activities to continue.

20 We are extremely conscious, those of us in the
21 Regulatory Agency, that the cost of these items is, at best,
22 a tertiary or a quaternary concern on how the corrective
23 action should be implemented.

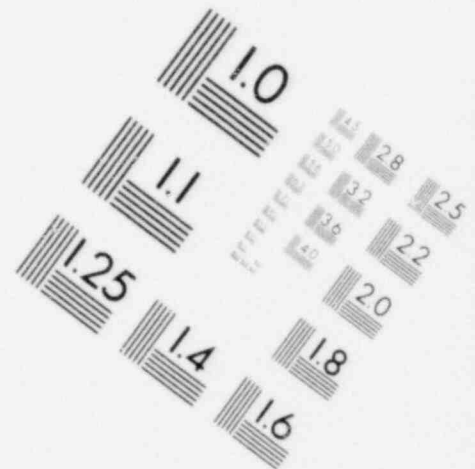
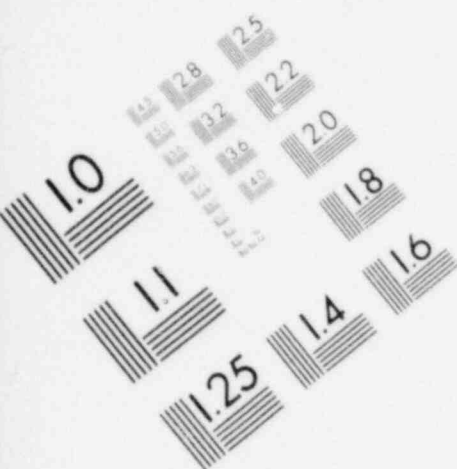
24 The cost is a risk that is assumed by the utility
25 that decides to go nuclear. I think there is ample evidence

1 in the record to show that these concerns are not influencing
2 NRC decisions in this area.

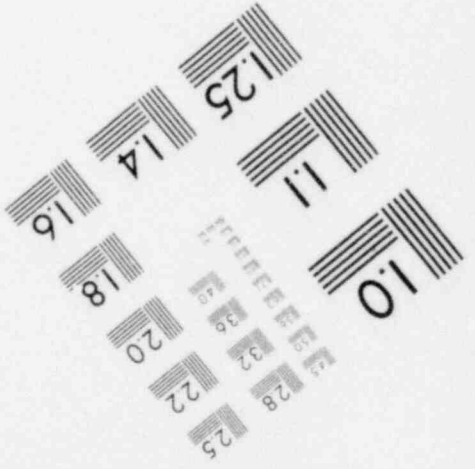
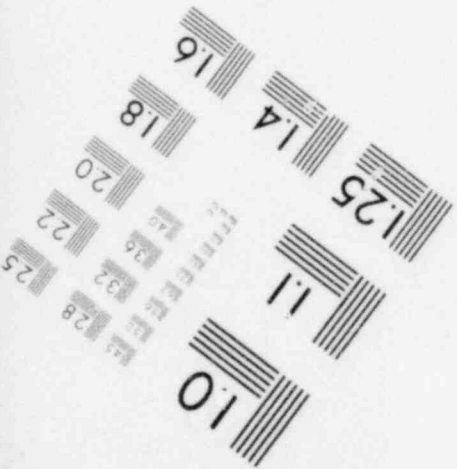
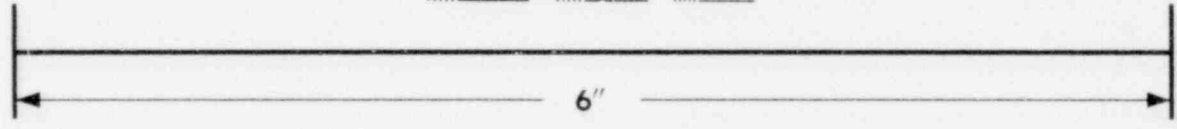
3 MS. BEARDSLEY: Well, on that point, there was a
4 lot of concern expressed earlier today that perhaps the
5 companies were being treated as though they were criminals, or
6 lawbreakers, or that there wasn't enough trust between the
7 NRC. And then of course there is this concomitant thing where
8 the public doesn't feel so secure with the NRC's regulatory
9 ability.

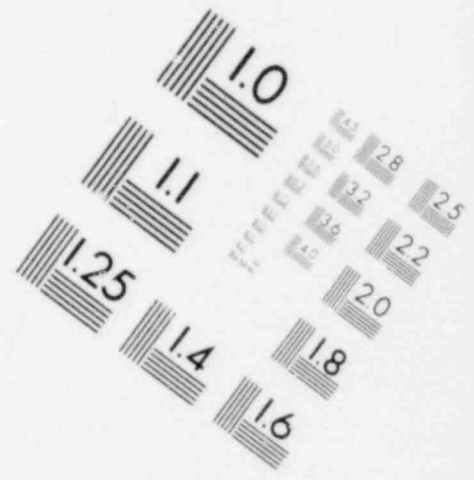
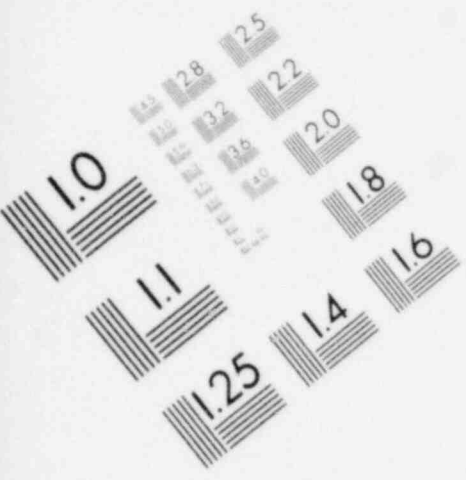
10 I would like to cite an article that would indicate
11 why consumers or public people, in addition to what one person
12 said today about how people from the NRC have worked in the
13 industry and the people in the industry have worked in the
14 NRC, that kind of linkage. Here, with regard to Sequoyah, as
15 I am sure you are well aware there was some debate to some
16 degree over whether to give them an operating permit because
17 the dome might not withstand the pressures of a hydrogen
18 buildup such as occurred at TMI.

19 There is a tentative solution that hasn't been
20 proven. However, according to Mr. Freeman with the TVA, he
21 is describing to the reporter how they did get the license,
22 how they got Mr. Gilinsky's support: "Fortunately for TVA, its
23 research and commitment to safety at Sequoyah paid off with
24 a unique communication between Freeman and NRC member Victor
25 Gilinsky, who objected the loudest to the licensing of

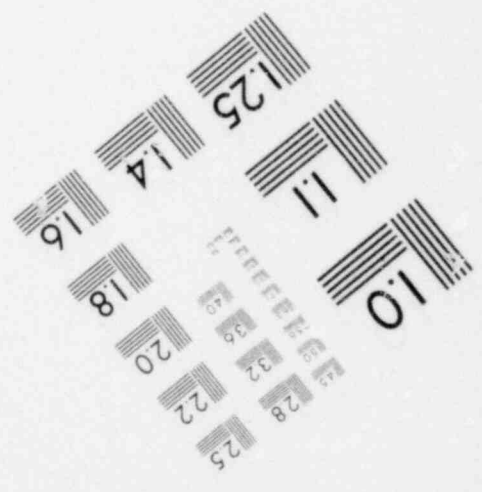
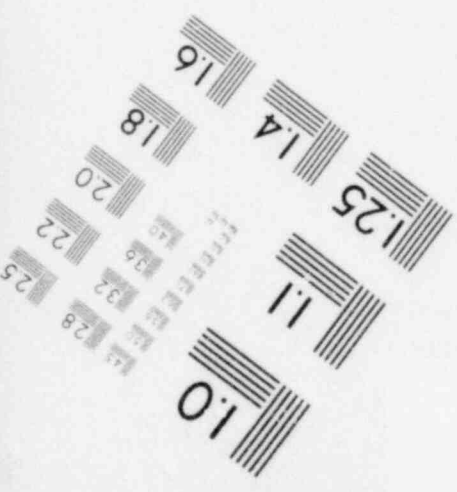
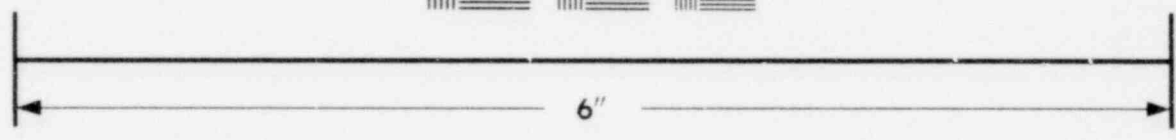
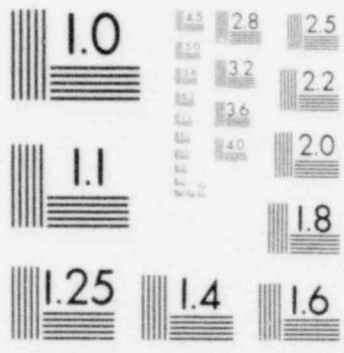


**IMAGE EVALUATION
TEST TARGET (MT-3)**





**IMAGE EVALUATION
TEST TARGET (MT-3)**



1 Sequoyah. Through conversations that at times occurred daily,
2 Freeman said, 'I felt like Commissioner Gilinsky and I
3 developed a close relationship. I felt like we were partners
4 trying to solve a problem.'

5 You know, in short, what the article says is that
6 the NRC decided that TVA had just as much concern about the
7 problem as NRC did, so go ahead.

8 It is true that these do cause skepticism among
9 the public. So I would just urge you again that tougher
10 regulation is what is required; tougher fines are required when
11 a VEPCO spills radioactive material from 55 gallon drums at
12 higher than normal levels, and they should be fined more than
13 \$5- or \$8000, whatever it is. It is a danger to the public,
14 and this whole industry is a danger to the public.

15 MR. KEPPLER: I would hope that if you listened to
16 all the discussions this afternoon, you would come away with a
17 feeling that the revised policy is a lot tougher, because it
18 certainly was the intention to make it that way.

19 MS. BEARDSLEY: Well, it certainly needs to be
20 tougher. I hope that it would be tougher. You know, time will
21 tell.

22 MR. THOMPSON: I have another comment in connection
23 with your observation. The impression I gained from the tenor
24 of your comments is that somehow there is something nefarious
25 associated with the Chairman of the Board of Directors of TVA

1 gaining a close relationship to a Commissioner of the NRC. Let
2 me submit for your consideration the possibility that they may
3 have been working in common to the solution of a safety problem
4 identified by both, and not necessarily that the influence was
5 undue on an NRC Commissioner to change his mind about the
6 nature of the problem.

7 I say that with some hesitation, because it sounds
8 very defensive; but it is entirely possible that the common
9 ground that they learned to share in the course of this exchange
10 was the solution of a problem that bothered them both in terms
11 of pressure buildup in the containment as a result of hydrogen.

12 MS. BEARDSLEY: I don't dispute that at all --
13 although of course it is also possible that the fact that there is
14 a common interest, communication, and friendship often do
15 override more technical or reasoned disputes. Also, the
16 fact that -- I mean, the NRC was created because the old AEC
17 promoted nuclear energy, and it was thought to be obviously
18 contradictory to have a -- but there still is, to me, you know,
19 this aspect of promotion of nuclear energy from the NRC.

20 I have one more question with regard to this --

21 MR. KEPPLER: Could I just add one comment? I think
22 if you had attended the Commission meetings on the Enforcement
23 Policy, you would have found that Commissioner Gilinsky was one
24 of the more severe critics of our policy, and encouraged it to
25 be much firmer than it was initially.

1 MR. O'REILLY: Also, I could add a comment. I know
2 that Commissioner Gilinsky has been very active in trying to
3 resolve this hydrogen problem in containment. Also, that
4 really one Commissioner -- it takes, you know, a majority of
5 the Commission to approve a licensing issue. So, there are
6 five Commissioners -- or there should be five Commissioners.

7 MR. THOMPSON: Let me just close with one other
8 comment. There were some remarks this afternoon by a member
9 of the audience associated with their concerns that, as we sit
10 up here at this table we think we have an option on integrity,
11 and a concern that the perception of large segments of the
12 public was that we were the "good guys" and they were the "bad
13 guys."

14 I don't believe that extent of adversary relation-
15 ship is appropriate. For well over 90 percent of the activities
16 in this industry, we find that licensees perform within the
17 regulatory requirements. Of the somewhat less than 10 percent
18 of the cases where we find noncompliance with our requirements,
19 about 90 percent of those are relatively -- and I emphasize
20 "relatively" -- insignificant with regard to direct impact on
21 safety.

22 Our experience over the years indicates that about
23 2 percent of the cases involve noncompliance with regulatory
24 requirements severe enough to warrant the type of escalated
25 enforcement action we've been talking about today -- that is,

1 civil penalties and orders. About 98 percent are quite
2 adequately covered by notices of violation, formal requirements
3 requiring licensees to respond describing the corrective actions
4 they've taken, and the actions they've taken to prevent
5 recurrence.

6 Now I don't like to sit up here and be very defen-
7 sive about the nuclear industry, but I do believe that when we
8 engage in discussions of the negative aspects of NRC's program --
9 that is, enforcement -- that it tends to create a false picture
10 in the minds of observers from the side who are not protagonists
11 in that argument.

12 So I don't want to come across overly defensive.
13 When industry is wrong, we're there to crack the whip and beat
14 them over the head. And I think we're doing a relatively
15 effective job of that.

16 MS. BEARDSLEY: Well, obviously if it had been
17 effective we wouldn't be having these meetings saying we need
18 to increase the fine structure and we need to increase
19 vigilance.

20 I feel that the comments about the NRC being the
21 "good guys" and the industry being the "bad guys" was a self-
22 serving comment on its face.

23 I have a question. There is an article with regard
24 to -- It was in the Des Moines Register. It is with regard to
25 Charles Edward Cutchell -- you're probably familiar with him --

1 who testified that at a Westinghouse building the containment --
2 the construction site, the containment dome was repatched and
3 repaired and not reported to the NRC

4 Now would this be an incident that would require a
5 fine? And what type of fine -- at all, can you give me a
6 ballpark figure -- would be the result of this kind of a
7 deliberate violation?

8 MR. KEPPLER: Let me just say that that happened at
9 one of the reactors in Region III, the Marble Hill Reactor.
10 In that case, you may or may not be aware that the Commission
11 stopped construction at that facility, and construction still
12 has not been allowed to resume some 15 months later.

13 The particular problem that was found that was
14 identified by Mr. Cutchell was known by the NRC -- perhaps not
15 to the degree that Mr. Cutchell made us aware of it -- but we
16 had -- the record would show that we had identified problems
17 with respect to concrete placement and repair work, and that
18 we had had an enforcement conference with the utility regarding
19 those problems.

20 The bottom line is that the types of problems that
21 were identified at Marble Hill, both in the area of concrete
22 placement and in the area of structural steel placement, would
23 have also resulted in a fine being a Severity II type
24 violation in the new Enforcement Policy. So we probably --

25 MS. BEARDSLEY: Why Severity II? That seems like a

1 fairly deliberate thing, and there was apparently a coverup?
2 Am I wrong? There wasn't a coverup --

3 MR. KEPPLER: No, there was not a coverup in the
4 matter.

5 MS. BEARDSLEY: -- they did notify the NRC?

6 MR. KEPPLER: And in fact --

7 (Panel conferring.)

8 -- that matter was referred to the Justice
9 Department, by the way, to look at the coverup aspects, and
10 the Department of Justice concluded that there wasn't a problem
11 in this regard.

12 MS. BEARDSLEY: Well, I will say that -- totally
13 hearsay; we don't know what to do -- but GAIN has had a report
14 from someone that a construction worker friend of his is
15 unwilling to come public and has said that -- I didn't know
16 about this happening -- but that concrete in the containment
17 dome at Vogel was cracked, the original layer, and that that
18 was never reported. Now of course that is totally hearsay,
19 but it causes concern when one realizes that it actually has
20 happened somewhere.

21 That's the end of my comments. Thank you very much
22 for your time.

23 MR. LIEBERMAN: You might encourage that person to
24 come forward to us. To the extent we can, we will protect his
25 identity. Under the Statute, an employer is prohibited from

1 discriminating against the person for talking to NRC. We do
2 an audit-type inspection. We need input from workers to help
3 us do our job. We're not there every minute of the day. So
4 if you believe this person has some safety information, I think
5 we would all appreciate receiving that information.

6 MS. BEARDSLEY: Thank you again.

7 MR. O'REILLY: Yes?

8 MR. JOHNSON: I would like to make a comment.

9 MR. O'REILLY: Identify yourself for the record.

10 MR. JOHNSON: My name is Tim Johnson. I really
11 hadn't intended to speak tonight, but after I got here I just
12 had to.

13 I have a question. The \$100,000 maximum, is that a
14 maximum set by law?

15 MR. THOMPSON: Yes, it is.

16 MR. JOHNSON: In other words, could NRC make it
17 higher? Or is that the highest you can make it?

18 MR. LIEBERMAN: The statute limits us to \$100,000
19 per violation per day.

20 MR. JOHNSON: Right. The reason I asked is because
21 \$5000 is kind of silly, but even \$100,000, when you look at a
22 company the size of Georgia Power or the Southern Company,
23 is not a very significant amount of money. \$100,000 is a
24 fraction of a cent per share of common stock. It's a fraction
25 of a cent per consumer. And I'm not sure that, you know, a

1 \$100,000 fine is going to have the kind of impact on a utility
2 that it would have on you or me.

3 And, you know, I'm certainly glad to see the
4 Regulations being strengthened, and your statements that you
5 want to make the Regulations stronger and tougher. But I can't
6 help but question the way you're doing it -- you know, the
7 \$100,000 fine.

8 You have a tremendous list of unresolved safety
9 problems at nuclear plants around the country. Plant Hatch and
10 a number of other General Electric reactors were known for many,
11 many years to have containment systems that could not contain
12 a Class 9 accident, and yet you allowed those plants to continue
13 operation. I assume that that was an economic decision, or a
14 political decision, but it was certainly not a safety decision.
15 If you look at it strictly from a safety viewpoint, there's no
16 question but that you would have to shut down a plant whose
17 containment system, by NRC's own calculations, could not
18 withstand a worst credible accident.

19 And I hope that in the future you will take into
20 consideration, when you list these unresolved safety questions,
21 instead of just saying: Well, let's keep the reactors operating
22 until we resolve them, that seems like putting the cart before
23 the horse. You should shut a reactor down if there's a problem
24 that could be as serious as inability to contain a meltdown
25 accident.

1 The -- you know, just some indications that safety
2 decisions by the Commission are political: Three Mile Island
3 Unit 1 is still shut down. The other Babcock & Wilcox reactors
4 around the country are open, with the exception of TMI Unit 2.
5 They are of the same design. The reason, obviously, is
6 political, because people there are upset about it and they
7 don't want to start a reactor up when there's that much
8 political opposition and that much public opposition to it.

9 So to say that your considerations are strictly
10 based on safety, and that you don't look at political consid-
11 erations or economic considerations, is obviously a fallacy.
12 The oconee reactors in South Carolina are Babcock & Wilcox
13 reactors. You're allowing those to operate.

14 MR. THOMPSON: May I interrupt for just a moment?

15 MR. JOHNSON: Please.

16 MR. THOMPSON: I believe that your assumption that
17 these decisions are based on political considerations is not
18 founded in fact. There are a number of factors that are
19 associated with the operation of any given plant.

20 A very important factor associated with the operation
21 of a plant is the design of the plant, but it's not the only
22 one. There are many other factors that are associated,
23 including the management of the utility, the management of that
24 particular plant, and the qualifications of the operating crews
25 that are associated with it, and we don't have the same crews

1 associated with the other B&W plants that we do at TMI.

2 I don't mean to belittle your concerns about B&W
3 design, but there are other factors to be considered besides
4 design. One does not make a decision on one element alone.

5 MR. JOHNSON: Well, I appreciate that response, but
6 I might point out that TMI Unit 1 was cited as having one of
7 the leading safety records of any reactor by any manufacturer
8 in the United States up until the accident at Unit 2. That
9 would seem to indicate that its operators were at least as
10 competent as the operators at the other reactors.

11 I think really, you know, these \$100,000 fines, or
12 a million dollar fine, or whatever, you're not going to be
13 able to regulate safety adequately at reactors. I think this
14 is really addressed more to the utility people here. I see
15 a lot of people from the utilities, including some people I
16 know from Georgia Power. I am really addressing this to them:

17 That is, if the utilities are really convinced that
18 their reactors are operated safely, and if the Congress is
19 convinced that reactors are safe, then a way to show the public
20 that you really believe it is to voluntarily, or to request
21 Congress, and I think NRC should request Congress on this also
22 because of your safety consideration, to revoke the limitation
23 on liability provided by the Price-Anderson Act. The market-
24 place supposedly provides some protection for citizens. If in
25 any other industry there is an accident that destroys your home

1 or injures your health, then you have a right to sue. And if
2 the problem is due to negligence on the part of the perpetrator,
3 then obviously you will recover. Under the Price-Anderson Act,
4 they limit it to a small fraction of the potential damages.
5 The utilities have specifically stated in testimony before
6 Congress that they would not operate nuclear reactors without
7 this limit on their liability.

8 That seems to indicate to me, and I think to anybody
9 with just common sense, that they do not believe that the
10 reactors are as safe as they tell the public they believe they
11 are.

12 So I would hope that the NRC would request Congress
13 to change that, to remove the limitation on liability, and I
14 would hope that the utilities would support such a change, if
15 indeed they believe their protestations that the plants are
16 safe.

17 Thank you.

18 MR. O'REILLY: Do we have any other individuals or
19 groups who would like to make any comments?

20 Please.

21 MR. STRINGFELLOW: My name is William Stringfellow.
22 I just wanted to ask a couple of questions that I was concerned
23 about.

24 I am concerned about how you detect and correct
25 repeated construction violations and negligence on the part of

1 people who are building the power plants, and how it is possible
2 to step in when a contractor is already starting to build the
3 plant and that has been having repeated trouble with the power
4 company that they're building the plant for? This has happened
5 in Georgia, and I'm just not sure exactly what you all do it
6 make sure that these construction violations are corrected, even
7 if the company doesn't report it, or there aren't people on the
8 construction crew that are concerned. And that perhaps even
9 the construction crew is doing deliberate, either changing --
10 taking shortcuts, as they say, or deliberately sabotaging
11 because of problems with the person who is contracting with them.

12 I was just curious if you could enlighten me on that.

13 MR. O'REILLY: To correct the problem of course you
14 have to know what the problem is. In that regard, we have an
15 inspection force. We inquire into all allegations that we
16 receive, and it is part of our program to go out and talk to
17 workers to find out whether or not there are any problems.

18 Also, we have reporting requirements which we impose
19 on the licensees in which they are supposed to identify to us
20 problems of the type that would be of substance. That was some
21 of the issues we discussed today on our enforcement criteria,
22 where we identify in our policies that the failure to report
23 an event we look at as seriously as the occurrence of the event
24 itself.

25 So we use those various devices to make ourselves

1 aware of problems.

2 Now, how do we fix them? Obviously, once we have
3 identified a problem, without exception if it is a problem, we
4 take some type of action against the company. We do this
5 publicly. We, as a minimum, write them a letter documenting
6 the problem, and we expect and will assure ourselves that we
7 will get a response that would be adequate to resolve that
8 type of issue.

9 When we get that written response, our program
10 requires us to follow up on that item to ensure that the
11 action that they took was adequate, and that it was implemented
12 properly to assure that it does not recur.

13 Now we do that for whatever source, however we got that
14 information. Now if we did all those things and we found
15 everything to be fine, and then the problem recurred again,
16 our program and this enforcement policy -- the past one and the
17 current one -- puts a great deal of attention and amplifies the
18 problem on a recurring event. So that if it occurs a second
19 time, a similar type of problem -- not necessarily identical --
20 this escalates our action and includes a number of additional
21 things.

22 It could mean, if the problem was originally not of
23 major significance, it could be a straightforward letter to the
24 licensee requiring such-and-such. If they come back to us, or
25 it occurs again, it would usually be in the position of at

1 least doubling our interest, and perhaps getting into some
2 escalated enforcement action, order, civil penalty, and usually
3 meetings with the corporate representatives to assure that they
4 recognize the seriousness of our activities, you know, and our
5 concern.

6 MR. STRINGFELLOW: Are construction people allowed
7 to make any kind of changes on these reactors after the
8 licensing procedure where you've approved a plan for the
9 reactor?

10 MR. O'REILLY: Yes, they are, in accordance with,
11 you know, with our system. They can make changes, as long as
12 the changes don't violate any, you know, basic premise of the
13 AEC, and also they must correct the -- you know, before they
14 get a license, they correct their -- what they call their
15 "Safety Analysis Report" into their final, which then we would
16 review. So they are keeping us informed, but they can make a
17 number of changes, which we have found historically is necessary
18 in a construction program that takes pretty near five to ten
19 years.

20 MR. STRINGFELLOW: Okay, so after it is all done you
21 all review it all again? And what if you find that these
22 changes that, although individually didn't seem to appear
23 significant, when they're added together might have a significant
24 problem?

25 MR. O'REILLY: Well, if we determine that there was

1 problem of significance due to these number of changes, we
2 would require correction. But what we rely very heavily on --
3 and a lot of people don't seem to recognize it -- that we have
4 requirements for extensive construction-type of testing of
5 equipment, systems, and components.

6 We also have a very elaborate system of checkout,
7 hot functional tests by the crews. We call this our "Preop-
8 erational Testing Programs," which takes usually about six
9 months. And then of course, with the plants heavily staffed
10 and under a great deal of scrutiny from the NRC, from the nuclear
11 steam suppliers, from the architect engineers and the licensee's
12 operating staff and the corporate offices, their technical
13 staffs, they have a rather extensive power ascension testing
14 program in which we try to identify every significant type of
15 problem that could occur before the plant basically is released
16 for commercial operation.

17 So you have all those types of things. So you can't
18 dismiss the fact that the construction tests verify a number of
19 things. Like you're talking about containment, the issue that
20 was brought up before. All the containment structures are
21 tested at very high pressures, just part of our construction
22 program -- before they're even involved in the power ascension --
23 I'm sorry, not "power ascension," in the preoperational program.
24 They must verify that the leak rates are within the requirements
25 that are specified.

1 And then, even when they're licensed every couple of
2 years they have to go through and demonstrate that they meet
3 all these requirements.

4 I picked on containment because it was identified
5 earlier, but we have the same type of requirements -- and
6 usually at a much higher frequency level for testing -- on all
7 the safety systems. So we are satisfied with the types of QA
8 programs, the types of reviews that go on, the construction
9 testing, the preoperational testing, the power ascension testing,
10 and plus the continuous type of monitoring on all the systems
11 that go on through the life of the plant, that we feel that we
12 have that degree of reliance that it will perform properly in
13 the case of an event of an accident.

14 That has nothing to do with the training. I wasn't
15 talking about the people, which of course is a major part of
16 our concern, and that has been highlighted to a much higher
17 degree since TMI. We thought we had neglected that before.
18 That was one of the findings in the TMI reviews. So we have
19 been keving very heavily on the human factor problem of
20 operating nuclear power plants.

21 MR. THOMPSON: Let me expand on that response just
22 a little bit, to broaden the example. In another portion of
23 the country within the last several months, an occasion arose
24 late in construction when it was disclosed that a critical
25 component in the plant had had modifications made on it by a

1 contractor for the licensee in a fashion which cast doubt on
2 the ability of that component to perform its intended function.

3 We have stopped all activities in that area for that
4 licensee, and have required that he go back and do a very
5 intensive review to find where those problems came from, to get
6 them corrected on that particular component, and to see what
7 spillover there was for the deficiencies that led to that kind
8 of a change being made without adequate review, to be sure that
9 it doesn't happen in other portions of the construction.

10 That happened several months ago, and the plant has
11 still not resumed construction in that area, in that work
12 activity.

13 MR. STRINGFELLOW: Have they determined what these
14 problems are correctable?

15 MR. THOMPSON: Yes. The problems are correctable.
16 But we are not telling them how to correct the problems; we're
17 making them go find their own solutions.

18 MR. STRINGFELLOW: Okay. The second area of concern
19 I had was indirectly related to the construction of the
20 facilities.

21 You mentioned your quality testing programs. In the
22 Plant Hatch reactor there was a problem where part of the
23 quality assurance, if I'm not mistaken, is that they test the
24 primary coolant loops for the tightness of their seal. And if
25 I have been informed correctly, part of that is that they pump

1 gas into the system and check it that it holds it pressure.
2 And after they did this, either deliberately -- I say
3 "deliberately," because I have heard there were problems with
4 the construction crews and Georgia Power -- or purely by
5 accident, a valve was left open on this test system, and it
6 resulted in emissions into the biosphere that weren't, as far
7 as my information leads me to believe, were never recorded as
8 additional emissions, because if they were it seems to me they
9 would have closed the pipe like they eventually did; and that
10 these were in addition to all the other emissions which they
11 did report, which are supposedly within the limits set by the
12 NRC, or whatever the standard-setting body is.

13 So it seems to me that there were several violations
14 involved in that. There was a construction violation, in that
15 they didn't close this valve. There was also a violation that
16 it seems highly improbable to me that Georgia Power did not
17 realize it was losing coolant water somewhere besides where it
18 was allowed to.

19 I was concerned about whether there is an incentive
20 for power plants to keep their emissions as low as possible,
21 rather than just within the limits set by the NRC? Also,
22 whether when you do penalize somebody, as I assume you do, for
23 when they exceed your emissions, whether it is just not an
24 extra tax that many times they can stand to afford, rather than
25 having to deal with the waste disposal issue. Meaning, that

1 suppose that a plant has to vent some gas, and then they report
2 it to the NRC, and they're fined, and they go, "Oh, well, too
3 bad; the gas has already been vented." Do you think that the
4 penalties are doing the function they're supposed to be doing?
5 Are they preventing this from happening? Or are they merely
6 just a license to do it?

7 MR. LIEBERMAN: Let me answer the latter part of your
8 question. If we have a situation where we feel that a licensee
9 is deliberately violating a requirement -- I think that's the
10 premise of your thought -- that may well be a matter of
11 criminal concern to the Department of Justice. All alleged or
12 suspected criminal violations are referred to the Department of
13 Justice for criminal prosecution, or consideration of criminal
14 prosecution.

15 So if we received information of deliberate
16 noncompliance, that is what we would do with it.

17 MR. STRINGFELLOW: Okay, in a case where like Georgia
18 Power, which the Plant Hatch I assume is basically within the
19 emission limits, but if you started counting the emissions from
20 their leaky coolant system that are, as far as I know, not
21 recorded, is there a way to retroactively fine them for these
22 emissions? Or is it a matter of: What's done is done?

23 MR. O'REILLY: They are required to report their
24 emissions. I don't -- The case that you refer to, is that a
25 recent case? Was it an operator error problem?

1 MR. STRINGFELLOW: Well, the story I heard on it
2 was -- I didn't read anything in the newspaper; I knew some
3 people that were involved with it. What it was is, technicians
4 had discovered that -- there was a pipe that was just left
5 open. There was a valve on it that should have been closed and
6 was left open.

7 MR. O'REILLY: During some test.

8 MR. STRINGFELLOW: And it was a direct emission
9 pipe from the --

10 MR. O'REILLY: I believe this was a Licensee Event
11 Report --

12 MR. STRINGFELLOW: Yes.

13 MR. O'REILLY: And I think the cause was an
14 operator error. Our resident inspector would be reviewing it.
15 And they're probably an item of noncompliance and failure to
16 follow procedures.

17 MR. STRINGFELLOW: Okay, when you say --

18 MR. O'REILLY: The releases, as I recall, were low.
19 If they were high, there are other systems that would have
20 actuated to isolate it. That's the situation.

21 MR. STRINGFELLOW: Well, from what I understood, the
22 situation was -- when you say "operator error," that tends to
23 make it sound like it was somebody turning the valve off and
24 left it for a few days. What I understood is, I think the
25 plant was in operation for five years or more at this time, and

1 that the valve had probably been open the full time. And when
2 it was discovered, the water was bubbling up out of the ground,
3 whereas I could assume that the water went down before it
4 saturated the ground and came up.

5 MR. O'REILLY: I think you switched cases on me, or
6 else maybe we're not talking about the same thing.

7 MR. STRINGFELLOW: Okay, maybe --

8 MR. O'REILLY: You're talking about just the
9 construction line that was off an air injector? I mean, that
10 case --

11 MR. STRINGFELLOW: Yes, that's the --

12 MR. O'REILLY: -- has been analyzed, you know, I
13 think you know, and there's an extensive report and still
14 reports from it. The problem was some tritium being discharged
15 at low levels into the ground. Correct? Is that the issue
16 you're talking about?

17 MR. STRINGFELLOW: Yes.

18 MR. O'REILLY: Is that the whole issue? Or are you
19 talking about another problem?

20 MR. STRINGFELLOW: Well, that's the way the report
21 read --

22 MR. O'REILLY: Well, to tell you how the releases
23 have to be reported to the NRC --

24 MR. STRINGFELLOW: Yes.

25 MR. O'REILLY: I think you know that they have been

1 reported to the NRC and made public; and that there is a --
2 they're getting -- I am aware of Georgia Power's activities,
3 but independent of Georgia Power, the NRC has conducted their
4 own independent measurements. Our vans have been down there
5 looking at it, and we are of the view that this has not been a--
6 is not a major problem. It's a problem that requires
7 monitoring. The releases are low, and I think that's a complete
8 consensus of the technical opinion.

9 MR. STRINGFELLOW: Yes. I don't mean to pick on
10 Georgia Power or their specific interests --

11 MR. O'REILLY: But they are required to report it,
12 and all their releases are reported. And if we found out,
13 you know, say a couple of years ago some major release took
14 place and we're not aware of it and it was not reported, we
15 would take action against the company.

16 MR. STRINGFELLOW: Okay, but you can fine retro-
17 actively?

18 MR. O'REILLY: Absolutely. We did recently in a
19 case in this region where we found out about a problem, and we
20 took civil penalty action six or eight months after the fact.

21 MR. STRINGFELLOW: Okay, I just would in final like
22 to voice my support of increased penalties, and have criminal
23 penalties, too, to specific individuals that are proven to be
24 in violation or negligent in their behavior.

25 Thank you very much.

1 (Panel conferring.)

2 MR. O'REILLY: Mr. Keppler made a point to me.
3 Maybe you didn't bring this up, but I think you alluded to it.
4 You talked about regulatory requirements, even if they say
5 there was a release and it didn't exceed the requirement, are
6 we concerned about it?

7 Yes, we are. The NRC has this rule, they call it
8 "ALARA," "as low as reasonably achievable," on all these types
9 of releases, even though they are below, and sometimes even
10 well below requirements. We look to see whether or not that
11 was a reasonable type of event that occurred.

12 If not, then we would, and we have, written letters
13 to licensees or met with them to take action to reduce these
14 types of exposures.

15 One example which would be a good example would be
16 probably something like a steam generator repair or something.
17 If they were within limits but they weren't handling it
18 efficiently, where the people who went in were not properly
19 trained, or they weren't monitoring these people correctly, we
20 would take action. That is the ALAPA concept.

21 Does anybody else have a question? Please.

22 MS. LOWE: My name is Janet Lowe. I'm from Decatur,
23 Georgia.

24 One thing that occurred to me when this last
25 conversation was going on concerns the resident inspectors. I

1 have been getting notices from Region IV on their public
2 announcements, and for the last year a lot of information
3 that's coming through the mail is that so-and-so has been
4 appointed regional -- not "regional inspector" -- resident
5 inspector for one plant or another.

6 After looking at them, there have been maybe 8, or
7 10, or 12, and I keep reading about some individual, some man
8 and his wife and his three children, and they're going to
9 Baxley, Georgia, and this person is fairly well educated, and
10 they're going down to the boondocks, and this person is going
11 to be the inspector and, to some extent, the enforcer of NRC
12 regulations.

13 And I just can't help being a little skeptical about
14 how this person is going to play the watchdog to these people
15 in this small town, given the fact that maybe the people that
16 the plant managers and operators that the person is watching
17 are perhaps his social group that he is going to interact with.

18 So I don't really have any question or answer about
19 that; it just makes me a little uneasy and skeptical about the
20 ability of this individual to perform.

21 MR. O'REILLY: Could I respond to that?

22 MS. LOWE: Sure.

23 MR. O'REILLY: Let me just tell you how it is. We
24 have problems with, obviously, staffing the residents with the
25 caliber of people that you would expect and demand. A

1 resident inspector, to a large degree, is an additional person
2 that the NRC uses. We have quite an extensive program of
3 specialists in all different disciplines that are important
4 to the operation of a nuclear power plant that, on a scheduled
5 basis -- on an unannounced basis -- visit all our plants, even
6 in addition to our resident inspector.

7 So I will talk about the resident inspector
8 separately, but don't underplay the fact that we have a very
9 active program of inspection that is directed and independent of
10 a particular locality run by the regional office.

11 In addition to that type of inspection program, we
12 also have an audit oversight group that looks over those
13 activities from the region and from the resident.

14 With regard to the resident, I think your concern
15 of being out there and getting in social contact with the
16 people in a small town, I think it is a real concern. It was
17 a real concern, and is a concern of the NRC at this time, and
18 we have very strict -- and unless I hear differently -- rules
19 for a resident that prohibit that conduct or association with
20 licensees in all sites and certainly these small sites which
21 is very difficult for our residents.

22 Our residents do not associate with licensee
23 personnel, period. This has caused problems with us in these
24 small communities, problems that if you start assuming that
25 none of these people are crooked, that it makes it very difficult

1 for a man and his wife and his children going to school, and it
2 is difficult. But we do enforce them, and this is part of
3 the requirements that we impose on a resident, to be that
4 independent.

5 MS. LOWE: Okay.

6 MR. O'REILLY: Did you have any specific questions
7 on those types of programs? Because we are putting these
8 individuals out -- and I didn't address his qualifications,
9 because you said -- I assume that you thought they were
10 qualified, that they're well trained, they're well experienced.
11 These are all prerequisites to assigning an individual as a
12 senior resident.

13 We have "residents" -- you know, we have different
14 types of categories of people at some of our sites, our larger
15 sites. A "senior resident" is the one in charge. The
16 "residents" are the people who are experienced and trained but
17 haven't got that -- I guess that experience that would satisfy
18 to have him be our senior NRC representative on site.

19 MS. LOWE: No, I don't question the qualifications.
20 The only thing that runs through my mind are the dollar signs
21 all these watchdog programs sort of add up and add on to the
22 cost that I'm paying for the power, whether through my
23 electric bill or through federal taxes.

24 MR. O'REILLY: That's a good question. I just wanted
25 you to know that we have had always from the beginning of the

1 program those types of concerns, and we will try to address
2 them in the selection, the monitoring, the independent
3 inspections by the region; and on top of all that, we have
4 what we call our "PAT Program" that is run from headquarters,
5 independent of the region, that is supposed to analyze his
6 impartiality and his lack of interest and his ability to
7 perform out there.

8 So we have put a lot of our resources into that.
9 It is costly, and I don't argue with your point that that ends
10 up being imposed on the consumer in the long run.

11 MS. LOWE: Well, how much would you say that it
12 costs the NRC to watch over and regulate plants in Georgia,
13 for instance?

14 MR. O'REILLY: I would have to get back with you --

15 MS. LOWE: Could you do that? Would that be --

16 MR. O'REILLY: The NRC overall --

17 MS. LOWE: If you take --

18 MR. O'REILLY: -- the licensee --

19 MS. LOWE: -- the budget and divide it up by, you
20 know, the number of plants?

21 MR. O'REILLY: We do have fees, you know, that we
22 impose on licensees which are supposed to represent a certain
23 proportion of the total NRC costs, and I don't recall the fee
24 for an operating reactor. Do you happen to know it?

25 MR. THOMPSON: I don't recall it offhand.

1 MR. O'REILLY: Well, the NRC charges for a
2 construction permit, it charges for an operating license, and
3 there's an annual fee, and there's a fee for various changes
4 and everything else that are required for us to process. And
5 that is supposed to recover the cost of NRC's activities,
6 except the activities that can be allocated to just pure
7 safety.

8 MS. LOWE: But the NRC does cost the taxpayer money?

9 MR. THOMPSON: Oh, there's no question about that.

10 MR. O'REILLY: Yes, it does.

11 MS. LOWE: What is the annual budget?

12 MR. THOMPSON: What is the annual budget?

13 MR. THOMPSON: You can find the fee schedule in
14 Title X of the Code of Federal Regulations, Part 1.70. There is
15 a very extensive table and it lists all of the fees that are
16 charged to licensees for various activities of the NRC. But
17 that does not recover the cost of NRC activities.

18 There is a certain amount of activity on the part
19 of NRC that's of benefit to the public. The only thing we are
20 by statute allowed to recover from licensees are those items
21 of NRC activities that are of some benefit directly to the
22 licensee. But those that are for the general public welfare
23 are not recoverable from the fees; that comes out of the
24 General Revenues of the United States.

25 MS. LOWE: Well, I would certainly want the NRC to

1 stay in existence, even if Georgia Power didn't have power
2 plants, because of all the research reactors, and the defense
3 type stuff, and just materials being transported around the
4 country.

5 But is there any way that I could get some figure
6 from some person on the Commission staff on how much is spent,
7 you know, to cover Georgia?

8 MR. THOMPSON: You could do the same thing we would
9 have to do for you. The NRC's budget figures nationwide are
10 a matter of public information, and they're available in the
11 Public Document Rooms. I think you could probably figure,
12 either take 1/25th, or 1/24th, or 1/16th, what fraction you
13 would choose based on the number of plants, depending on the
14 rigor with which you wanted to do the math, and you could
15 parcel it out as to how much of it was spent in Georgia.

16 MS. LOWE: Okay.

17 I do want to say that I think that the monetary
18 penalties imposed are very low. Having spent a little bit of
19 time watching the power company, and being involved in their
20 rate hike cases, and looking at their annual budget and their
21 operating expenses, and the things that they spend their money
22 on, I think \$5000 they spend just getting ready for their --
23 well, probably more than that -- just getting ready for an
24 annual stockholder's meeting. Or their program to talk to the
25 school children in the state is going to cost quite a bit more.

1 So I don't really see that they're much of a
2 deterrent.

3 MR. O'REILLY: Could I answer that? When you talk
4 about an escalated enforcement, the chart that we indicated
5 today that we gave provided some examples, where it does include,
6 if there is seriousness, willfulness, repetitiveness, that
7 there are other actions that are taken that are a great deal
8 more expensive than the \$100,000 per day which is the limit per
9 event.

10 There are things that would require a suspension, a
11 revocation of licenses, modification of licenses, that can have
12 a tremendous impact on their ability to produce power, and
13 certainly on the cost to a utility.

14 MS. LOWE: Well --

15 MR. O'REILLY: Because there are other things, other
16 than just the penalty that's involved in escalated enforcement.

17 MS. LOWE: -- there's this tritium problem that was
18 talked about a few moments ago. Suppose that happened two
19 months from now, or after these regulations are in effect.
20 What do you think would be the penalty imposed on the power
21 company?

22 MR. O'REILLY: Well, I would have to really get
23 involved in the case. It depends on how, and how much was
24 involved, how serious it was.

25 MR. THOMPSON: It is highly conjectural, but if you

1 want to take the worst case, or the best case -- depending on
2 one's point of view -- it could be \$100,000 a day for each day
3 that the emission occurred. But that's highly conjectural,
4 because there are a number of modifiers that can be applied
5 with regard to how it was identified, and the promptness and
6 adequacy of the corrective action. A number of those things
7 could be applied.

8 But to cite the example that I think you are looking
9 for, it could be \$100,000 a day.

10 MR. O'REILLY: The severity level has to be
11 considered, also.

12 MR. KEPPLER: It could be zero.

13 MR. O'REILLY: It could be zero. It depends on the
14 severity, among many things. That would be the primary issue:
15 severity and willfulness.

16 MR. KEPPLER: If the releases were within the
17 regulatory limits, then probably the initial reaction would be
18 for no fine. And then if there were recurring problems in this
19 area, generally what would happen is you would meet with the
20 utility management, and if they failed to correct the problem,
21 then you would issue a fine.

22 But to initiate a fine from the first releases,
23 they're going to have to be above regulatory limits with the
24 new policy.

25

1 MR. THOMPSON: In order for it to occur, there must
2 be a violation of regulatory requirements, first.

3 MS. LOWE: Well, nevertheless, it doesn't really --
4 These fines don't really make me feel any better about it. I
5 used to work under NASA grants funding, and each year the
6 inspectors would come around the laboratory, and of course we
7 were all spruced up for the occasion. Things were always quite
8 a bit different on that day than normally.

9 So with that kind of background, I'm still a bit
10 uneasy about these plants operating in my home state.

11 The other thing that makes me concerned is just the
12 kind of information I get from people that I know around the
13 plants. I'm on the Consumers Utility Council Advisory
14 Committee, and there is a man from down around Almer, Georgia,
15 and he talks about workers that he knows, and things that they
16 say about the operations of the plant, and none of that sounds
17 too good, either.

18 The last thing I wanted to say is that, just by
19 chance, I have an old college friend that actually works in
20 Washington for the NRC. He did say to me that he thinks that
21 the only thing that will really keep nuclear plant operators
22 in line is real economic incentives and just about sure disaster
23 for the utility that lets some kind of accident occur, a
24 release, or whatever.

25 He didn't just sort of come out with this, but we

1 talked a long time about it. He had a lot of ambivalent
2 feelings about his role in the whole business, and the way he
3 felt about the business. But we both finally did agree that
4 it is mostly an economic thing, and that is why I don't think
5 that these figures are high enough, and I do think that there
6 is too much released into the environment without anything
7 being done about it.

8 Thank you.

9 MR. O'REILLY: Any comments?

10 (No response.)

11 MR. O'REILLY: Any further comments or questions?

12 (No response.)

13 MR. O'REILLY: Panel?

14 (No response.)

15 MR. O'REILLY: Well, I won't close the meeting. I
16 guess we will terminate the meeting. It's open until 10:00,
17 and I guess we will have a strong group representative here to
18 stay until we're at least sure there are no other questions
19 either personally or publicly. I guess we will then terminate
20 the meeting, unless there are some other questions or comments?

21 (No response.)

22 MR. O'REILLY: Thank you very much.

23 (Whereupon, at 3:14 p.m., the meeting was
24 adjourned.)

25 * * *

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

in the matter of: Public Meeting on Revised Enforcement Policy

Date of Proceeding: 12-1-80

Docket Number: _____

Place of Proceeding: Atlanta, Ga

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Jane W Beach

Official Reporter (Typed)

Jane W Beach

(SIGNATURE OF REPORTER)

Enforcement

**GOALS OF REVISED
ENFORCEMENT PROGRAM**

- Ensure compliance
- Prompt correction
- Deter future noncompliance
- Encourage improved performance

1. Is the policy fair and equitable?
2. Is the policy understandable?
3. Are the severity levels appropriate?
4. Are the different types of activities well-enough defined? Should there be others?
5. Are the distinctions among various types of licensees shown in Table 1 appropriate?
6. Are the factors for determining the level of enforcement action appropriate? Should there be others?
7. Is the degree of discretion allowed to office directors appropriate? Should there be more flexibility permitted? Less?
8. Are the levels of civil penalties that require commission involvement appropriate? Should they be higher? Lower?
9. Are the provisions for escalated action, set forth in Table 2, appropriate?

OBJECTIVES IN REVISING
ENFORCEMENT POLICY

- Implement \$100,000 CP authority
- Tougher enforcement

SEVERITY CATEGORIES

<u>Description</u>	<u>New</u>	<u>Old</u>
Major significance	I	Violation
	II	
	III -----	
Lesser significance	IV	Infraction
	V -----	
Minor significance	VI	Deficiency

DIFFERENT NRC LICENSED
ACTIVITIES

- Reactor operations
- Reactor construction
- Safeguards
- Health physics - 10 CFR 20
- Transportation
- Fuel cycle operations
- Materials operations

CIVIL PENALTY ISSUANCE

- Severity categories I, II, or III
- Severity categories IV and V after enforcement conference
- Failure to report
- Willful violations

TABLE 1
Base Civil Penalties

<u>Types of Licensees</u>	<u>Severity Levels of Violations</u>				
	<u>I</u>	<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>
Power reactors Other SNM licensees associated with Category I material for safeguard purposes only	\$80,000	\$80,000	\$40,000	\$15,000	\$5,000
Test reactors Fuel facilities. Other SNM licensees for safeguard purposes only	40,000	40,000	20,000	7,500	2,500
Research reactors Critical facilities	16,000	16,000	8,000	3,000	1,000
All other licensees and persons subject to civil penalties	8,000	8,000	4,000	1,500	500

CIVIL PENALTY FACTORS

- Gravity of violation
- Financial impact
- Duration of violation
- Problem identification
- Good faith
- Prior enforcement history

ORDERS

- Modification
- Suspension
- Revocation
- Cease and Desist

TABLE 2

Examples of Progression of Escalated Enforcement
Actions For Violations In the Same Activity Area
Under the Same License

Severity of Violation	Number of similar violations from the date of the last inspection or within the previous two years <u>(whichever is greater)</u>		
	<u>1st</u>	<u>2nd</u>	<u>3rd</u>
I	a+b	a+b+c	d
II	a	a+b	a+b+c
III	a	a	a+b

a - Civil penalty.

b - Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.

c - Show cause for modification or revocation of the license, as appropriate.

d - Further action, as appropriate.

Licensee: Power Reactor

Circumstances:

- Following routine maintenance on the high pressure coolant inspection system, valves were inadvertently left closed, rendering the system inoperable.
- Condition was discovered by the Licensee four days later during a routine surveillance test and promptly corrected and reported to NRC.

Action:

Supplement I

Severity Level II

Base Civil Penalty	\$80,000
Self-Identified Reduction	\$40,000
Four-day Continued Violation	\$160,000

Licensee: Power Reactor

Circumstances:

- Shipment of radioactive waste to burial ground was found to have a radiation level of 700 mR/hr at the surface of the truck (limit is 200 mR/hr).
- Discovery was by a state inspector on arrival of the truck at the burial ground.

Action:

Supplement V

Severity Level II

Base Civil Penalty \$80,000

Licensee: Hospital

Circumstances:

- Over a two-year period, patients were routinely administered diagnostic doses of radioisotopes at twice the levels prescribed by physicians.
- Disclosure was made by a concerned employee of the hospital to NRC investigators.

Action:

1. Immediately effective order suspending the license.
2. Show cause order why license should not be revoked.
3. Referral to Department of Justice for consideration of prosecution as a criminal violation, based on willfulness.

Licensee: Radiographer

Circumstances:

- Employee failed to retract source prior to setting up for another shot; failed to survey; improper personnel dosimetry; failed to post restricted area.
- Result was overexposure of worker and helper. Exposures were 12 Rem and 7 Rem whole body, respectively.

Action:

Supplement IV

Severity Level II

Base Civil Penalty \$8,000

Prior Knowledge Increase \$10,000