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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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BRIEFING ON NRC ACTIONS
VIS-A-VIS ALLEGERS

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Monday, January 31, 1994

The Commission met in open session, pursuant to notice, at 2:00 p.m., Ivan Selin, Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
FORREST J. REMICK, Commissioner
E. GAIL de PLANQUE, Commissioner

STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

JAMES TAYLOR, Executive Director for Operations

JAMES LIEBERMAN, Director, Office of Enforcement

BEN HAYES, Director, Office of Investigations

BRIAN GRIMES, Director, Division of Reactor Inspection and Safeguards, NRR

JACK GOLDBERG, Office of the General Counsel

JOHN GREEVES, Deputy Director, Division of Industrial and Medical Nuclear Safety, NMSS

JON JOHNSON, Deputy Director, Division of Reactor Projects, Region II

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

10:00 a.m.

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen.

We're here to receive a briefing from our review team on their report on the reassessment of the NRC's program for protecting allegers against retaliation. The team's report has been publicly released and copies are available today at the entrance to this room. It's also being published in NUREG-1499. Copies of the NUREG document should be available by the end of the week from the Government Printing Office or in our public document room.

The Commission hopes that this report and any Commission action resulting from future adoption of recommendations will go a long way towards resolving concerns about the allegations process and the protection of allegers. The Commission has become increasingly aware that although the NRC has done quite a bit over the years to establish avenues whereby allegers could raise safety concerns with confidence, there are residual concerns about the sufficiency of the NRC process.

Two reports from the Inspector General's Office have highlighted issues concerning protection

of allegers against retaliation. Therefore, we authorized the establishment of a senior staff review team to take a fresh look at the situation and to determine whether changes to regulations, policies or practices are warranted. This review is primarily the focus within the existing statutory scheme because the employee protection provisions in now Section 211 of the Energy Reorganization Act had so recently been amended. However, additional recommendations for statutory changes are also to be considered and there are several in the report.

I have to point out that this is a very difficult task. In fact, the first question that was given to this senior staff review team was to examine the extent of the problem and that's the one question they really weren't able to answer, that, in fact, if you think about it, may not even be an answerable question. Quite frankly, we don't know if this is a problem which is at the edges and inevitable or it's really a massive problem throughout the industry, what have you. We have some idea of the extent of the problem, but it's very hard to know with what it should be compared. So, it's very hard to say if this is a reasonable size or not.

Not being able to answer that question

and, in fact, realizing the essential unanswerability of that question, the review team took the point of view that the problem shall be considered as a very serious one. Quite major recommendations will be considered and they concentrated on weaknesses in the program that could be identified just from a program review. In other words, looking and saying, "It shouldn't be like this. There should be improvements. There are a number of cases that could have been averted if we had a better process. So, we have what I consider to be really quite an energetic analysis and some very far reaching recommendations in the report.

We are very pleased to see the comprehensive and thoughtful treatment that the senior staff review team has devoted to this very difficult subject and we'd be very interested to have the review team present its findings.

Commissioners?

Mr. Taylor?

MR. TAYLOR: Good afternoon.

I would like to note that the review team is made up of the offices principally with interests in this subject. The two major program offices, the Office of Investigation, we have a representative from

the region, of course the Office of Enforcement and legal advice from the Office of the General Counsel.

I'd like to recognize the members because I think this is a very extensive piece of work. To my far left, Jon Johnson from Region II, John Greeves from NMSS, Brian Grimes from NRR, the leader, Jim Lieberman from OE, Jack Goldberg, the legal advisor, and Ben Hayes, the Director of the Office of Investigations.

I would further note that this report has been provided to all the offices and regions and I would expect to have office comment by the 14th of February and thereafter to have the recommended collective staff position with regard to this report probably a few weeks after that.

With those opening remarks, I'll turn to Jim Lieberman who led the team and he'll present first a rather brief summary of the key points of the report and the recommendations.

Right, Jim? About an hour's worth, he says.

CHAIRMAN SELIN: Well, considering the amount of work that went, that's pretty brief.

MR. TAYLOR: I meant to say that because he isn't going to hit every single aspect of the

report itself.

MR. LIEBERMAN: Good afternoon, Mr. Chairman and Commissioners.

We appreciate the opportunity to brief you today on the report of the review team. In addition to the members of the review team that Jim spoke to you about, I'd also like to note that Laban Coblentz, who is on detail with me from Region V, provided great assistance to us.

I'd also like to express our appreciation to the Department of Labor, the Wage and Hour Division, OSHA, and Mine Safety. They provided helpful assistance to us during this effort.

I want to note at the outset that this briefing assumes some understanding of the report's recommendations and supporting analyses. For the benefit of the audience, I will provide some information concerning the context of the various recommendations. But in this relatively short briefing, it will be hard to do justice to the detailed analysis and basis for the various recommendations.

The review team was established last July following the findings of the NRC Inspection General that some individuals were dissatisfied with the

current effort for dealing with allegations of discrimination. Specifically the Inspector General found that the NRC process for handling allegations of retaliation does not provide an adequate level of protection to allegers reporting safety concerns.

(Slide) The purpose of the review team was to perform a reassessment on the NRC program for protecting allegers against retaliation in order to determine whether NRC has taken sufficient action to create an atmosphere within the regulated community where individuals with safety concerns feel free to engage in protected activities without fear of retaliation.

(Slide) The charter was relatively specific as to what the review team was to consider. The first issue to be discussed is whether NRC had done enough to assure that licensees encourage employees and contractor employees to raise concerns without fear of retaliation. Throughout this briefing and in the report, when we use the term "concern," we're using it broadly to include both actual concerns and potential concerns within NRC jurisdiction, including both technical concerns and H&I issues, harassment-intimidation issues.

The second issue on the charter was

whether the NRC allegation process was fostering a climate in which licensees' employees feel free to raise issues with the NRC.

The third issue addressing NRC's responsiveness to discrimination issues. This included whether NRC could assist in a speedier resolution of issues within the DOL process, whether NRC should be more proactive in conducting investigations during the pendency of the DOL proceedings, whether NRC adequately follows up on licensees' responses to chilling effect letters to determine if the licensees removed or addressed the chilling effect following issues of discrimination, and whether NRC should take stronger enforcement action against licensees and individuals responsible for discrimination.

The last issue under the charter was to look at the NRC's responsiveness to potential concerns. That is whether NRC has been sufficiently proactive when employees express fears that in the future they may be subject to retaliation for raising concerns.

The report presents detailed analyses of issues addressed in the charter. It reflects our understanding that the Commission recognizes the

contributions that employees have made by raising concerns, and that was important that employees not only be free to raise issues with the NRC, but also that employees be free to raise issues with the licensees and have those issues addressed by the licensees. The review team shares those views and we see this as an important issue. However, we were not tasked with, nor do we attempt to establish the relative significance of this area compared to other activities the NRC regulates.

(Slide) We made a concerted effort to get a broad range of views and ideas. We started by issuing a Federal Register notice, seeking comments from licensees and their employees on a variety of issues associated with the charter. We held six public meetings, two with attorneys who either represented individuals seeking remedies for discrimination or licensees. We held four public meetings in the vicinity of plants that had a relatively large number of discrimination allegations. We met with seven federal agencies to seek their views on the matter. We met with the regional administrators and office directors to get their input on the various issues.

We invited NRC employees who had

experience in dealing with allegations to give us their views. We also issued a temporary inspection instruction to have our inspectors look at employee concern programs at power reactors and fuel cycle facilities. This was a brief review to get the basic characteristics of these programs. Results of this review is in the PDR and summarized in the report.

(Slide) Before getting into the recommendations in the report, I'd like to discuss a number of background issues.

While the report concluded, as I will discuss later, that there's more that NRC should do, NRC has established the basic framework to achieve an environment in which employees feel free to raise concerns. From a statutory perspective, NRC has the authority to investigate allegations that licensees' employees have been discriminated against and taken enforcement action if discrimination is found. It's not always recognized, however, that NRC does not have the authority to provide a personal remedy when discrimination occurs. This is the responsibility of the Department of Labor under Section 211, formerly Section 210 of the Energy Reorganization Act.

The review team found that the NRC regulatory approach focusing on achieving environment

for promptly identifying and resolving concerns, addressing the chilling effect and taking enforcement action was more extensive than most other federal agencies as most agencies, if they address the issue at all, they address only the personal remedies.

The review team focused our attention on what can be done to establish a nuclear work environment where nuclear workers feel free to raise concerns without fear of retaliation. If that was achieved, we would not need to do investigations, take enforcement action and be concerned about the process for personal remedies. Thus, in our view, we believe the Commission should encourage all licensees to achieve and maintain a quality conscious work place. That is an environment where personnel at all levels are encouraged to raise concerns and those concerns are promptly reviewed, prioritized, investigated, corrected if warranted, and with appropriate feedback to the concerned employees.

The review team noted that there is a potential for employees to use a system to attempt to avoid disciplinary action and determination, not that the allegation of discrimination is valid. But it's important to emphasize that a person engaged in protected activities is not automatically immune from

disciplinary action because of non-prohibited activities such as poor job performance. There was a concern expressed that supervisors may be hesitant to take legitimate disciplinary action because of fears that they might be second guessed in civil or criminal proceedings. From the review team's perspective, licensees should take the action they need to take to properly run their facilities, provided they comply with Commission requirements. This may mean that they need to take the time to document the bases for personnel actions. But the concern the supervisors may be second guessed should not, in our view, be the basis for NRC not acting when discrimination issues have occurred.

Many commenters focused on the issue of protection of employees. The meaning of protection is not well understood. Section 211 and several of the Commission regulations such as 10 CFR 50.07 are entitled Employee Protection. In practical terms, what these requirements mean is that the protection is a prohibition on discrimination. NRC encourages employees to raise concerns internally to licensees and, if necessary, to the NRC. Not withstanding this encouragement, employees who believe that they've been retaliated against for raising concerns are to a large

degree on their own in trying to obtain a personal remedy. The Department of Labor provides a forum and a process to obtain a personal remedy, but unless the employer is willing to settle the case, the employee must be prepared for a lengthy litigation period which may be expensive from both a personal and financial point of view before a remedy is provided, if the remedy is provided at all.

The review team is concerned that an employee who's aware of this process may not be prepared to accept the personal risk if he or she is concerned about the potential for retaliation. Therefore, the review team concluded that despite the statutory and regulatory prohibitions, the existing DOL and NRC process does not provide, nor are they structured to provide, sufficient protection to employees.

In considering this conclusion, we noted that the ability to raise concerns was one level of the defense in depth approach that the NRC uses to provide protection or to assure the safety of nuclear facilities. I want to emphasize that we were not using that term in the technical sense, but rather we're using it in the general sense that there are multiple mechanisms to support the regulatory process,

one of which is receiving information from employees that might not be otherwise obtained by licensees through their various processes and the NRC through our inspection and reporting systems.

It's important to note that in our view the reluctance on the part of some employees to raise concerns does not necessarily call into question the safety of a given facility's operation. However, the persistence of such a condition could erode the quality consciousness of the work place by losing a questioning attitude, by further complacency which could ultimately result in a safety concern at a facility.

This then brings us to the magnitude of the question. As the Chairman noted, we really haven't answered that question. Hundreds of concerns are raised everyday in licensees' facilities, but a number of employees and former employees of licensees asserted to us that there is a chilling effect across the nuclear industry even for those licensees who have not had a number of discrimination allegations. Other employees and licensees asserted that the cases of actual discrimination is relatively rare.

While we received a variety of input during this review team effort, the numbers of

individuals who commented to us was a small percentage of the population of employees in the nuclear industry. Compared to the number of employees in the industry, there are few cases of actual discrimination being proven. But in our view, the data is ambiguous. It's difficult to measure a chilling effect. In our recommendations, we recommend that NRC develop a survey instrument that could be used to provide more meaningful information in this area. While we should seek a better assessment tool, we also note that it may be unrealistic to set a goal of measuring the qualitative consciousness of the work place. NRC will need to use a variety of indicators to assess the quality of the work place, including inspections, investigations, diagnostic evaluations and SALPs.

(Slide) Licensees have the primary responsibility and need to establish the quality consciousness of the work place so that employees who raise issues then have the issues appropriately resolved. Our focus was on what licensees can do to improve their responsiveness. As I said earlier and as emphasized throughout the report, the goal is to establish for each licensee a quality-conscious environment. If that can be achieved, there will be less need to focus on the issue of discrimination.

Many of the recommendations focus on this team to put more emphasis on the licensee to improve their work place environments.

While the primary emphasis of this report is on issues of allegations of discrimination, the focus on the NRC allegation management program for technical allegations is important from two perspectives. First, NRC needs to have an effective program in this area to serve as an escape valve so that if a licensee's program for encouraging concerns is not effective or if an employee desires to come to NRC for whatever reasons, we'll have an effective way to receive and process the allegation.

Second, as NRC becomes more receptive and responsive to allegations, licensees may also become more receptive and responsive to concerns, thus improving the quality consciousness of the environment. This may follow because licensees generally place effort where we focus our attention on and frequency licensees prefer to resolve issues themselves without NRC involvement.

As to the handling of allegations and complaints of discrimination, what we do in this area can encourage employees to feel more comfortable in raising concerns, can deter licensees and their

supervisors from retaliating against employees for engaging in protected activity, can encourage earlier settlements that may minimize the potential for chilling effects and can encourage licensees to place more effort into maintaining a quality-conscious environment.

(Slide) The review team's analysis was organized by the five topics in slide 7. We have 47 recommendations. Some of the recommendations are a refinement of the current process, others are new approaches. Recognizing that the recommendations are not of all equal importance, I'll only highlight the more significant ones oday. We will, of course, be prepared to answer any of your questions that you might have on any of the recommendations.

(Slide) The key recommendations in Section II.A of the report involving licensees' responsiveness to concerns is to have the Commission issue a policy statement. The policy statement should address three issues. The first item would be to emphasize the importance of licensees and their contractors to maintain a work environment conducive to effective problem identification and resolution in which employees can feel free to raise concerns both to their management and to the NRC. By problem

identification, we mean the identification of technical and regulatory issues. The review team is recommending a policy statement and not a regulation because in our view maintaining the right environment is a management issues. To be effective it must be cultivated from within the licensee's organization. It does not lend itself to prescriptive requirements. As noted in the report, there are a number of issues that may bear on achieving and maintaining a good licensee environment, which should be highlighted in the policy statement, things as cost cutting, root cause analysis, employee incentives, periodic training, contract considerations and licensee self-assessment.

Included in the policy statement should be an expectation that licensees have processes to raise issues through their normal line management systems and also have alternative methods to raise concerns, such as employee concern programs. The review team recognizes that employee concern programs are not a panacea, but clearly there are several benefits for having issues initially raised to the licensees so they can be promptly identified and resolved. Most employees would prefer to raise issues internally without having publicity. Even in the best

organizations, there may be, from time to time, employees that may not feel comfortable raising concerns through their own line management. We believe that the policy statement should provide an expectation that employees, including contractor employees, should be informed on how to raise issues through the line management process, through the internal processes and, if they choose to do so, the NRC.

The second area recommended to be included in the policy statement is a reminder that licensees are responsible to assure that contractors maintain an environment where contract employees are free to raise issues. This probably should be included in contract terms. This can improve the contractor's awareness of their responsibilities and improve the licensee's ability to oversee the contractors. This issue was addressed in the report because of the ease of removing a contractor employee and because of the large number of discrimination allegations received by contractor employees.

The third issue to be addressed in the policy statement is a use of a voluntary holding period following allegations of discrimination. This is an attempt to neutralize conflict in the work

place. It emphasized the need for licensees' senior management becoming involved in the matter. It would provide pay and benefits to the employees pending the investigation process. In the report, this is addressed in Section II.E. I'll be discussing this recommendation in greater detail when I get to that portion of the report.

(Slide) The key issues associated with NRC's responsiveness are described or listed in slide 9. The review team is of the view that the program and regional offices address allegations generally in an effective and responsible manner. We do believe that there are a number of things that can be done so that NRC can be more sensitive and receptive to allegations. We made 17 recommendations in this area to raise NRC's sensitivity to improve the treatment of allegers and to improve the consistency of allegation management. I'll be discussing five of these recommendations.

One recommendation is to have a more centralized oversight of NRC allegation management by establishing a full-time NRC allegation manager for centralized coordination and oversight of all phases of the allegation management program. This person should have direct access to the regional

administrators, the office directors and the EDO. While NRC has centralized the management of allegations, the current approach in the recent past has not provided an active oversight of the program. The functions of the allegation manager as we see it would include such things as overseeing training, reviewing regional guidance, developing agency-wide guidance, tracking and trending allegations and auditing the allegation program, covering such things as the allegation review boards, the process for referring allegations to licensees and allegation follow-up.

The review team is of the view that the NRC should improve its accessibility to allegers as well as our communications with them. We recommend that the NRC develop a readable, attractive brochure that can be provided to employees in the nuclear industry. This would describe such things as the allegation management system, the responsibilities between NRC and DOL, the process at DOL for investigating and conducting adjudications, the confidentiality with the Agency and its limitations, and the types of information that may be helpful for a worker to provide the NRC when they make an allegation to us.

We also recommend that the NRC develop 800 numbers for each of the regional offices. This may be a more receptive and visible approach than the current collect call system. We considered having a single 800 number, but we think regional 800 numbers would be more effective because the allegation resolution system is a regional based program.

We also believe that we should improve the feedback with allegers to have it on a more regular basis. We also think we should get feedback from allegers to see how we're doing. Getting information after we've closed out an allegation may provide us helpful information on how the program is running.

As I said earlier, we do think that we should develop a survey instrument to get a better understanding of the extent of this problem. We don't have a good idea or a good method to determine the number of employees who are concerned about raising issues or are chilled after enforcement action is taken or discrimination occurs. The current system for doing this is interviewing employees of licensees and the review team questions that this is an effective approach to get information. The report discusses other alternatives such as a survey instrument to get better information and we think we

should proceed along those lines.

COMMISSIONER de PLANQUE: Jim, before you go on, I have a question about the brochure, which was triggered by one of the statements in the report, that indicated that if people really knew how limited the protections are, that this might discourage coming forward. I would hope that the brochure would be very straightforward about what protection really can and cannot be expected. Is that your intention?

MR. LIEBERMAN: No question about it. I'm also hoping if some of the other recommendations are adopted that the process can be improved. But we do want to be honest with the workers so they know what they should expect if issues are raised and they are retaliated against.

COMMISSIONER de PLANQUE: Okay.

MR. LIEBERMAN: (Slide) Turning to slide 10, in Section II.C of the report we focused on three areas, strengthening the DOL investigational adjudicatory process, NRC being more proactive in the DOL process, and focusing the need for NRC to conduct investigations during the DOL process. This slide, slide 10, addresses the DOL process. The effectiveness of the DOL process is important to NRC for two reasons. First because of resource

limitations and concerns about duplicating DOL investigations. In many cases, NRC relies on the DOL process to obtain evidence to form the basis for NRC actions.

This point is important because despite NRC encouraging employees to bring technical concerns to the licensee and the NRC, NRC does not normally conduct an investigation when discrimination is alleged. Instead, NRC normally relies on the employee to pursue his or her case through the DOL process to obtain a record to be able to take enforcement action.

For the various reasons noted in the report, reliance on the DOL process does not always provide an adjudicatory decision or record to form the basis for an enforcement action.

The second reason why the DOL process is relevant is that the process, in providing a personal remedy, has the potential for a chilling effect. The sooner the personal remedy is provided the lesser the chilling effect should be. The personal financial impact on the employee may also impact on the chilling effect.

The Department of Labor is considering transferring its Section 211 responsibilities from the Wage and Hour Division to OSHA. The report recommends

that the Commission support this transfer. The OSHA investigators have more experience in doing H&I investigations because they use a group of investigators who only investigate H&I issues. The report also recommends three changes to the Section 211 process. First, remove the -- modify the time changes for completing the DOL process. The review team proposes that the statute allow 120 days for performing investigation and 360 days to perform an adjudication, for a total of 480 days. We propose the statute be amended to allow reinstatement decisions to be made immediately effective following the administrative investigation. And third, we propose the statute be amended to provide the Department of Labor to defend its findings of discrimination should a licensee challenge the orders for relief issued by the administrative bodies of the Department of Labor.

Each of these recommendations are important from the perspective of improving the support for the employees that may be retaliated against for engaging in protected activities. At first glance, the recommendation for changing the statutory time periods may appear that we're slowing down the process. But in reality, in the last two years decisions on the merits have taken on the average more

than three years and in many cases substantially more than three years to complete the process. So, what we're recommending is actually shortening the time period to provide a more realistic and achievable approach for doing these investigations and providing a remedy for the individual.

CHAIRMAN SELIN: Before you get off this, I'd just like to comment. This is an extremely important set of findings from a management point of view. The way I would paraphrase this is that the NRC has taken a position in the past that was bureaucratically sound but not particularly effective. I mean we took a look and said, "Our responsibility is enforcement, DOL is redress, so we're just going to let DOL take care of the redress and when they're all done, we'll look at this," without really taking a look at the DOL process to see if it's effective, to see how the information comes up, et cetera. Although that's defensible in a narrow sense, it's not really defensible. So, your review of this process and coming in and saying we really shouldn't do this, that either the process on the DOL side should be improved or we should not expect more from the process than it can produce or some combination of the two is extremely important.

Furthermore, your detailed findings about how the record starts all over again rather than being continuous is important. Mostly your view, which is that once the government has found for the employee, then challenges should be to the government rather to the employee is very, very far reaching.

I would say, however, that I'd be very leery about recommending legislation for a sister agency. In addition to the sort of courtesy aspects of this, if the Department of Labor, either for its own reasons or because of your report, takes these recommendations to heart, they might be able to figure out some ways to accomplish much of what we wish to accomplish without legislation or with more limited legislation.

So, I guess what I'm really saying, there's a kind of an implication that these problems can't be fixed without legislation. That may be true or it may not, but if we can convince the Department of Labor, or if they're already convinced that yes these are problems, that things should be done about them, both in terms of better coordination or taking on these responsibilities themselves, I would not like to jump to the conclusion, even though it may turn out to be true, that legislation is needed to make those

three changes. Time to do a proper investigation, the ability to carry the -- well, it's actually four -- the ability to carry the information from stage to stage rather than starting all over again if the company doesn't agree with the finding. The third is the ability for instant redress rather than waiting for the Secretary of Labor to make the finding, and the fourth is that appeals be made against the government, since it was a government finding, rather than against the employee. All critical issues, all important ones, but it may be possible that the Department can accomplish some of that even before asking for legislation should they agree with your findings and choose to go along with them.

MR. LIEBERMAN: I think that's correct. Especially the issue which I personally consider the most significant is the issue of the government representing the employee. It may be that legislation is not required for that particular provision if the Department of Labor is willing to take that or adopt that recommendation.

One concern we do have about the time periods, that even if this effort is transferred to OSHA, that if there's an undue focus on the 30 day time period to do an investigation, even the best

investigators in the world may not be able to provide a quality product that would serve anybody's interest because discrimination issues are difficult issues to investigate and does take a certain amount of time.

COMMISSIONER REMICK: Our investigators certainly do a more timely job, do they?

MR. LIEBERMAN: I don't think there's much debate.

MR. HAYES: Let's go on, please, Jim.

COMMISSIONER REMICK: Do you have any kind of initial reaction from the Department of Labor to the recommendation?

MR. LIEBERMAN: The Department of Labor is giving serious consideration to transferring to OSHA. I've spoken to people within OSHA and they generally support the recommendations. But they're still looking at it and I don't think they have an official position at this time yet.

COMMISSIONER REMICK: But that does not require legislation, that particular aspect. Is that correct?

MR. LIEBERMAN: That's correct.

COMMISSIONER REMICK: How about the ones where it may or may not -- where you've recommended legislative changes?

MR. LIEBERMAN: When we developed these recommendations, we did get informal views from various departments in the Department of Labor. I didn't see strong views against these positions. But recognizing this has to do with legislation, I don't think the Department was prepared to give us their official views as to where they might be heading.

CHAIRMAN SELIN: But actually it's true that there's the standard operations of OSHA and the Mining Offic[illegible]re more like these already.

MR. LIEBERMAN: Exactly.

CHAIRMAN SELIN: Just transferring from one to the other is not just a question of replacing one kind of investigator with another one, but presumably taking on their modus operandi, which is more similar to this than the Wage and Hour Office's organization.

COMMISSIONER de PLANQUE: Just so I understand that, was that interest in Labor making the switch from Wage and Hour to OSHA, was that at our initiative or had they independently --

MR. LIEBERMAN: They had been considering this for several years.

COMMISSIONER de PLANQUE: Okay.

MR. LIEBERMAN: And then with the Vice

President's report of reinventing government, they decided to revisit that particular issue.

MR. HAYES: It may have also been stimulated by their own inspector general report that addressed some of the concerns in these areas.

MR. LIEBERMAN: Okay. Focusing on the issues associated with investigations at OI on slide 11, we were mindful, as I said earlier, to avoid the need of unnecessary duplication of DOL investigations. However, the review team was concerned that the DOL process may not be adequate to support enforcement actions under the rule and deliberate misconduct. There was also a concern that enforcement actions might not be able to be taken in cases where the adjudicatory record of the Department of Labor was not completed because of settlements or for whatever reason. The review team concluded that there was a need for the NRC to conduct its own investigations in this area, though not in every case. In accordance with the guidance in Manual Directive 8.8, which discusses allegations and investigations, each case for an investigation is assigned a priority level. Three priority levels are used, high, normal and low. Because of current resource levels in OI, unless a matter is assigned a high priority, the case would

probably not be investigated. However, there's no current guidance for characterizing a discrimination case at a high priority level. The review team believes the priority systems which were developed in 1985 needs to be reconsidered for discrimination cases so that deserving cases in discrimination can be investigated in a consistent way.

We believe there are four situations which should result in full-scale investigations. Therefore we recommend the high priorities should be considered for allegations of discrimination as a result of providing information directly to the NRC. Allegations of discrimination caused by a plant manager above a first line supervisor, and that would be consistent with high we characterize violations of discrimination as to level 1 and 2. Third, allegations of discrimination involving a licensee with a history of findings of discrimination or settlements suggesting a programmatic rather than an isolated issue. And fourth, allegations of discrimination that appear to be particularly blatant or egregious. While no case of discrimination is acceptable, these four situations may have a particular impact on the quality consciousness of the environment because of the likelihood for potential

chilling effect.

From a regulatory perspective, these cases are the type that probably should result in NRC enforcement action.

CHAIRMAN SELIN: Before you go off this, I'd just like to point out, although these are all reasonable on the face of them, what we're trying to do is encourage people to go directly to their licensees and encouraging licensees to accept these as free information that would cost them a lot of money to duplicate, not as annoyances. Treating differentially people coming to the NRC versus coming to the licensee may cut in the wrong direction on that.

MR. LIEBERMAN: We discussed that, Mr. Chairman. In the perfect world we could investigate every case. Recognizing we can't investigate every case, we're looking at the chilling effect and which ones should we focus our attention on. If someone comes to NRC, an NRC inspector for example, and then discrimination occurs thereafter, I would think that's a particular type case where we want to be able to take some strong enforcement action. If the person went to the Department of the Labor and the case is settled, then we won't have a record to take action

on. So, that's a reason why in that type of a case we want to do our own investigation.

CHAIRMAN SELIN: I understand that and we need to protect our own organization, but we don't want to give people additional incentive to come to the NRC. What we want to do is make sure that wherever they go they're protected and that the information is taken care of. The last thing we want is ten times as many allegations coming to us. Ideally we would want the licensees to deal with this information better themselves. So, it's a bit tricky coming both ways.

COMMISSIONER de PLANQUE: Before you go on, just so I make sure I've got the implications tied to the right place, using this kind of screen, this corresponds in the report to something like 34 cases a year.

MR. LIEBERMAN: Correct.

COMMISSIONER de PLANQUE: Which would require about 14 FTEs as opposed to the 4.8 you currently have.

MR. LIEBERMAN: Right.

COMMISSIONER de PLANQUE: So that matches this.

MR. LIEBERMAN: Correct.

COMMISSIONER de PLANQUE: Okay.

MR. LIEBERMAN: (Slide) Turning now to enforcement, it's important to note that maintaining and environment in which individuals are free to raise concerns without fear of retaliation is in essence a performance-based requirement. We do not provide prescriptive requirements on how to achieve that environment. Rather, we use enforcement where there's problems indicated in the work place as evidenced by issues of discrimination. Civil penalties are frequently used to address these types of violations. Civil penalties are intended to provide deterrents, that is to discourage violations by emphasizing the negative aspects of committing a violation.

In most cases, violations associated with discriminations are limited to $100,000.00 because they're not considered continuing violations. The review team believes that higher civil penalties would provide more deterrence in this area. Recognizing the inflation that has occurred since 1980 when the amounts of civil penalties were last adjusted and the need to increase deterrents and convey the importance that the review team believes the Commission should place in preventing these types of violations, we recommend that the Commission seek an amendment of the

Atomic Energy Act to provide for civil penalties up to $500,000.00 per violation. This amount is in the order of replacement power for one day of a power reactor operation. This will provide a more financially relevant civil penalty. I should also provide a clear and strong message that licensees may face a significant penalty if they don't take action to prevent discrimination or, if discrimination does occur, they don't take prompt action to correct it.

CHAIRMAN SELIN: Let me ask you -- Commissioner de Planque, please.

COMMISSIONER de PLANQUE: Well, I must admit I had a little trouble following the arguments here because the inflation factor would have brought it up to 180, and then clearly your report stated, as I've heard and I think many of us have heard, that the key factor is the publicity. So I had a little trouble going from the leap from 180 to 500. Why wouldn't the inflation factor itself be something that would be sufficient to increase the deterrent?

MR. LIEBERMAN: Well, clearly whatever you would increase it would probably increase the negative publicity to some degree. There's probably no magic number. We looked at 500,000 from the point of view that's the cost, the average cost or the order of

replacement power for one day of a power reactor operating.

If you go back to the legislative history of civil penalties, they intended that to be an intermediate sanction between what they described as a fly swatter, notice of violation, and a sledge hammer, shutting down operation. So we came up with the $500,000.00 idea as that is the equivalent of shutting down a facility for one day without shutting it down. We wanted to give a clear message that may have some degree of a financially relevant message that in the 1990s there should be no excuse for discrimination.

I would hope and expect that if we levied several civil penalties in the order of $500,000.00, that that would go a long way of ending this problem, because that size amounts I think we would clearly get licensees' attention that not only must they tell supervisors not to discriminate but they really have to mean it.

COMMISSIONER de PLANQUE: Well, do you still see the overriding factor as being the publicity or now do you see the amount as nore important?

MR. LIEBERMAN: It would be a combination. Certainly it would have more publicity, but I think at

500,000 becomes much more financially relevant and might persuade them to change their performance.

I want to note that we're not proposing this just for discrimination, but we'll be seeking a general increase in the amount of civil penalties and then the Commission can use that in willful cases that are clearly discrimination or in any other area where a significant penalty was appropriate.

It's also important to go back to the issue with the continuing violation. In other cases where you have violations occur over time, the amount of the penalty can be increased above $100,000.00, so it's not unusual that we'll have several violations so a penalty will be more than $100,000.00. But in the discrimination area, because it's not a continuing violation, it's considered a one act violation, we're limited to $100,000.00.

CHAIRMAN SELIN: I have a couple of questions. Let me just ask you a background question. Normally, is a civil penalty considered an ordinary cost of doing business and put into the rate base when people are figuring their expenses?

MR. LIEBERMAN: Each state has different rules in this area, but generally licensees charge the civil penalty to the stockholders.

CHAIRMAN SELIN: So it's not something the ratepayers pay?

MR. LIEBERMAN: That's right.

CHAIRMAN SELIN: So $500,000.00 of civil penalty is therefore a lot more expensive than $500,000.00 of replacement?

MR. LIEBERMAN: That's right, but in the large utilities with large amounts of -- well, I won't say large amounts -- in the large utilities it would require a civil penalty on the order of $2 million or $3 million to affect a dividend by one penney, so, you know, we're still not talking about huge amounts of money here.

CHAIRMAN SELIN: Don't try to do the financial management for the utilities. Their profits count. Their cash flow counts, their dividends. It's a complicated thing, but the fact remains that a dollar that goes to civil penalty, if it's not -- the dollar that goes into replacement power in the short-run actually increases revenues. In the long-run, you know, it's clearly going to cost something, but it's offset by the reimbursement, but a dollar that comes out of civil penalties is a dollar that goes directly to the profits. Whether they choose to reduce the dividend is something else.

The second question I wanted to ask you is, I'm confused by the $500,000.00 per day. I mean, is it-- the report said we should raise our limit from $100,000.00 per day to $500,000.00 per day, but what I assume that means is that the penalty is $500,000.00 and that certain kinds of penalties can be reassessed once per day, effectively. Is that what you're saying?

MR. LIEBERMAN: That's correct.

CHAIRMAN SELIN: But not these type penalties?

MR. LIEBERMAN: It's not the impact of -- the statute says $100,000.00 per violation and each day the violation continues --

CHAIRMAN SELIN: Is considered another violation?

MR. LIEBERMAN: Correct.

CHAIRMAN SELIN: What kind of violations are those?

MR. LIEBERMAN: That would be -- the simplest example would be if you have a requirement to keep a door locked, say in a security area. Each day you didn't keep the door locked would be a separate violation. Contrast that to a violation that says you have to check after you close a door to make sure it's

locked. That's a one-time circumstance that is not a continuing obligation to check the door each day.

CHAIRMAN SELIN: If there's a violation for a repeated pattern of intimidation and harassment, isn't that so much per day?

MR. LIEBERMAN: In that type situation where you have additional acts of discrimination, that may well be a continuing --

CHAIRMAN SELIN: Not just one per each act, but we're basically saying for a period that could have been years, you've carried this out. The potential civil penalty could be enormous.

MR. LIEBERMAN: Yes, apart from additional acts of discrimination, each of which would subject the violator to now $100,000.00 per violation. The hostile work environment theory, which has recently been adopted in this area, is of a continuing nature. So, that would subject the violator to a maximum $100,000.00 per day while that continuing hostile work environment existed.

CHAIRMAN SELIN: Okay. That's the end of my questions.

Commissioner Remick?

COMMISSIONER REMICK: Yes. It's one of two areas in the area of assessing civil penalties

that I had a considerable amount of problem with. You just stated that it's needed to increase deterrence but on several occasions you've indicated we don't know the magnitude of the problem. So, I'm not sure that one follows with the other. I thought you provided no basis, as has been pointed out, for $500,000.00. You do relate it to a day's loss of revenue, but it is going to apply in other areas. It's an interesting concept. Will we apply it to hospitals also, that that will be the basis of maximum penalty, loss of a day's revenue? It's not profits, it's revenue. How widespread is this? I would certainly want something like this to receive public input before ever considering anything like that.

I thought enforcement policy was used to increase safety, not necessarily to punish people. It seems that that's what we're doing. We've determined deterrence, that deterrence is needed and therefore we're going to punish and that's going to turn around. Maybe it should be a million or two million if that's the purpose. I don't know.

But I think we have to realize and particularly if this is going to come out of stockholders that there's no bottom of the spit there and I think it's going to be stockholders and

therefore the company managers are going to be less inclined to provide dollars for safety of that monies going to go for these purposes, going in fines. It would mean less money that might otherwise be provided to actually enhance safety. So, I'm not sure from my mind that you've made a good case. It seems quite arbitrary to me. You do mention that if it was based on inflation it would be more like $180,000.00. I don't even know if that's a basis.

In my mind, the number came out of the air sounded pretty good. But when you think that this is going to be applied across the board for willful violations, I think we have to think very carefully about the bases that we're talking about, how widespread is this going to be, is that a reasonable criterion, a day's lost revenue? What do other agencies do? Does the FAA do that with airlines, willful violation? Do they assess a fine based on the loss of day's revenue? How about the Department of Transportation and so forth? There are lots of questions I would have before I could endorse it.

CHAIRMAN SELIN: I just have a -- I'm sorry.

COMMISSIONER REMICK: Yes, go ahead.

CHAIRMAN SELIN: I have a suggestion. You

know, rather than our piling on and seeing whether you're Emmitt Smith or Thurman Thomas, what I suggest is let's go back to your basic point, which is this is across the board. It's not just for I&H. You've made the I&H finding that given inflation and other things you believe that the opportunity to assess heavier penalties is called for. I think from an I&H point of view that's all you ought to say. Then you ought to do separately as part of your job as the Director of the Office of Enforcement, not as the chairman of this task force, to take a look at the basis for the civil penalty structure, what's happened over time, the range of different pieces and then come to the Commission with a recommendation on a set of schedules, justification and how they might be applied in different situations.

As you said explicitly, and as we said, we're not about to change the civil penalty by a factor of five for I&H and leave everything else the same. So, clearly, this is just -- I won't say it's the tail wagging the dog, but it's only one of a number of applications, and following Commissioner Remick's questions and Commissioner de Planque's questions, should just be looked at. It's a major issue in itself and deserves to be looked at on its

own.

COMMISSIONER de PLANQUE: Jim, do you know offhand what the basis for the original 100 was?

MR. LIEBERMAN: The original statute was $5,000.00 per violation with a cap of $25,000.00 for all violations occurring within a 30 day period. Following the TMI accident, Congress came up with $100,000.00 and to the best of my knowledge they just came up with a number.

COMMISSIONER de PLANQUE: But that came from Congress?

MR. LIEBERMAN: Yes.

MR. TAYLOR: Do you remember exactly what year it was?

MR. LIEBERMAN: 1979. It might have been 1980.

MR. PARLER: It was in the 1980 Authorization Act, along with a lot of other recommendations or legislation, statutory changes that grew out of the TMI accident.

MR. LIEBERMAN: Another recommendation in the enforcement area has to do with the use of non-sited violations to encourage settlements. A non-sited violation is used where we recognize that a violation occurred, but we do not take enforcement

action in order to reinforce the licensee's positive conduct in addressing the violation. Similarly, we're recommending in this area not to conduct investigations if we're using non-sited violation.

The licensee that takes actions to responsibly address a discrimination issue without the need for DOL/NRC involvement is helping to establish a quality-conscious environment by sending a strong message that retaliation is not acceptable within its work place. Even where the issue has gone to the Department of Labor, enforcement action may not be warranted if settlement can be achieved before the evidentiary hearing begins in order to encourage more timely settlements that may reduce the chilling effect.

The report discusses this concept in further detail, including limitations on its use for matters that might quality for high priority investigation.

The next issue to be discussed is the use of the deliberate misconduct rule. The review team favors that we should use the rule to emphasize to managers and supervisors that they may be held personally accountable when they cause discrimination and therefore in each case involving a finding of

discrimination, we should consider using it, whether by using an order or demand for information or for an enforcement conference to put the burden on the licensee on why their employees should not be held accountable for discrimination.

As I noted earlier, many discrimination issues involve contractor issues. Section 211 and the Commission's regulations place clear notice on contractors that they're subject to prohibition on discrimination. In the review team's view, contractors should be invited, along with licensees, to enforcement conferences and if enforcement action should be taken against the licensee because the contractor caused a violation, caused a discrimination violation, then we should also be considering enforcement action against the contractor.

CHAIRMAN SELIN: We're not permitted to do this today?

MR. LIEBERMAN: No, we are, and we have a number of proposals where we're considering this. We're suggesting we should be doing this on a more regular basis.

CHAIRMAN SELIN: That also goes beyond I&H. Generally you would hold contractors responsible for their actions in wide range of enforcement issues

or just in discrimination issues?

MR. LIEBERMAN: This just has to do with discrimination because Section 211 specifically addresses the contractor's responsibility.

CHAIRMAN SELIN: It's not clear we have this authority in other areas?

MR. LIEBERMAN: That's correct. Our general authority is against the licensee. It's up to the licensee to maintain compliance whether they work through contractors or themselves.

MR. GRIMES: We do have some authority under Part 21, but it's a fairly narrowly defined authority.

MR. GREEVES: Also the wrongdoer rule now extends beyond licensees and deals with the conduct of contractor, subcontractors and the employees of those organizations. Section 211, by its own terms, and our implementing regulations, explicitly apply not only to licensees and applicants, but contractors also.

MR. LIEBERMAN: (Slide) There are two recommendations in the area of treatment of allegations outside the enforcement investigation process that are listed in slide 13 that I'd like to discuss.

The first issue has to do with the

treatment of allegations of the potential for future discrimination and then dealing with allegations that where discrimination has occurred before finding that discrimination has been found by either NRC or the Department of Labor.

Allegations of potential discrimination is an important area but a difficult one to address. Clearly to the extent that actions can be taken to prevent discrimination from occurring, the public interest is furthered. However, NRC needs to be cautious that our involvement does not aggravate the matter. We need to consider the issue of resources, balancing the efforts to address potential issues of discrimination against efforts to address allegations that discrimination has occurred. We also need to consider the issues of credibility with concerns based on feelings and perceptions without specific facts.

The review team recommends that early NRC involvement to notify licensee's management when NRC receives credible information suggesting a reasonable fear of retaliation exists and the individual is willing to have his or her name disclosed to the licensee. In such cases, NRC would notify senior management in writing or in documented meetings of the concern and indicate the NRC will monitor those

actions taken against the individual, that we'll consider enforcement action should discrimination occur, including the use of the rule on deliberate misconduct.

We would also emphasize to the licensee that our notification does not mean to imply that legitimate disciplinary action should not be taken if warranted. By monitoring, we do not mean that we'll be overseeing the matter on a daily basis, but rather we'd be getting feedback from individuals involved and our inspectors. This approach is in keeping with the general philosophy of the review team that the first responsibility to address the quality-conscious environment is the licensee's.

(Slide) The last recommendation to discuss is the issue of the voluntary holding period which is slide 15. This recommendation is probably the most novel, but may be one of the most effective to reduce the potential for chilling effect. As noted in the report, when there's an issue of discrimination and the underlying action is not corrected, that is the employee is not made whole, there's a potential for a chilling effect to continue regardless of the actions the licensee may take attempting to address the chilling effect for others. When an employee

perceives another employee to have been retaliated against for raising concerns, it may be hard to expect that employee to raise a concern and risk putting himself and his family at financial risk. This may be especially true with the current DOL adjudicatory process for obtaining a personal remedy.

Disputes between employees and management have the potential to poison the work place, making management of license activities that much more difficult. The friction that can occur may create an environment of mistrust that is clearly not desirable from anyone's perspective. The issues are compounded because the perception of discrimination as viewed by those involved in other employees may be more important than whether discrimination actually occurred in setting the tone of the work environment. The review team is therefore recommending that we consider a holding period to attempt to neutralize the conflict in the work place by providing for the continuation of pay and benefits either in the same or different position or on administrative leave-type approach. During this holding period, senior licensee management should get involved to determine what really happened, to allow time for the licensee to investigate the matter, reconsider the facts,

negotiate the issues with the employee and inform the employee of the final decision.

We also propose that this holding period continue for a two week period to allow the employee to make a complaint with the Department of Labor is settlement is not achieved, and then to continue that holding period through the DOL initial investigation and thereafter if the DOL finds in favor of the employee.

Clearly there are costs associated with this approach. We recommend it only for power reactors and large fuel cycle facilities. But in the long run, it may be less expensive than the impact in the work place with the current approach.

This approach can be used to demonstrate management's commitment to a quality-conscious environment. With this approach, management will be giving a clear signal that it recognizes there is a dispute as to whether a person was retaliated against. On the interest of not discouraging other employees to raise concerns, the employee will not lose pay and benefits while the matter is resolved.

COMMISSIONER REMICK: Jim, just a comment on that. I thought that was a very innovative and worthwhile recommendation. One of the concerns I had

in the draft policy statement where you're basically encouraging people to volunteer to consider a program like this, the language it then uses is very prescriptive. It says it should do this, should do that and so forth. I notice when we're talking about things that we might do as an agency we use words like "might" and "may." It might do this, we may do that. But we're saying "should" and I think it raises a question in people's mind are we really suggesting that they do it voluntarily and that they adapt it to their own needs when we use words like should. It's not as bad as "shall" perhaps, but still it sounds prescriptive and I think people might be less inclined to adopt it if they think that they've got to incorporate these should ideas.

MR. LIEBERMAN: Well, we should look at those words because we --

COMMISSIONER de PLANQUE: We shall.

MR. LIEBERMAN: We shall look at those words.

MR. TAYLOR: We will.

MR. LIEBERMAN: Because as the report recognizes, we can't order this approach. It is strictly a voluntary approach. If a licensee is satisfied that its actions are clearly justified, then

a holding period would not be warranted. It may not be appropriate to use this type approach in a large downsizing activity. But if there's a case where the outcome of the discrimination issue is unclear, and in almost every case of discrimination there's good arguments on both sides of an issue, then a holding period approach might encourage licensees and the employees to resolve their differences without the need for government involvement.

Including the holding period approach in a policy statement may be viewed by some as intrusive. This was not our intent. Our intent was to emphasize the importance for senior licensee management to get involved and resolve the matter without the need for government involvement. We want to emphasize that discrimination is a licensee's problem and licensee's management needs to take the necessary action to solve these problems.

Turning to the next slide --

COMMISSIONER de PLANQUE: Before you go on, is it realistic to expect that something you start as a voluntary program is really going to retain that characteristic or do you think there will be pressure to apply this in every case?

MR. LIEBERMAN: Pressure by the NRC?

COMMISSIONER de PLANQUE: Well, or perceived pressure on the part of the licensee. This is a tough issue.

MR. LIEBERMAN: It's intended to be voluntary.

(Slide) As I was about to say in the next slide, in appropriate cases NRC senior management could send a letter to the licensee to remind them of the policy statement and to suggest the use of a holding period in a particular set of facts and to seek the senior management involvement in determining what really happened and to give a report back to us. I would not see such a letter in every case. That would be in the more significant cases, in cases where it appears to be more programmatic.

COMMISSIONER de PLANQUE: Then aren't we more or less making the decision rather than making it voluntary?

MR. LIEBERMAN: Well --

COMMISSIONER de PLANQUE: Don't you see a little pressure there to --

MR. LIEBERMAN: One could suggest there might be some coercion. But our goal is to reserve it for the right cases. Maybe in those cases there may be a bit of pressure, but it is voluntary in the sense

that what we're asking is the licensee to get involved and do this. If they don't want to do that, we're not going to take any action against them. What we say in the report is that if someone adopts this holding period and discrimination is found to have occurred, then we would consider that in mitigation to sanction. We don't address how much that sanction would be mitigated, but in many cases it might be full mitigation because the employee is keeping his pay and benefits during this time period and thus not losing anything. It does give the clear message to other employees that the company recognizes that there's this issue, but by keeping the pay and benefits other employees shouldn't be chilled.

So, I see this as a great opportunity for licensees to get ahead of the curve here and in appropriate cases try to maintain that quality-conscious environment by -- not to be redundant, but by emphasizing to the employees that they do expect concerns to be raised and they don't have to be concerned about financial risk if there's a disagreement in this area until it's finally resolved.

MR. TAYLOR: I would think too that this is a relatively nominal cost to a licensee, large licensee, while the issues are looked at and attempted

to be settled as against the case when they do proceed through a DOL and the costs of the legal operations associated with that type of thing as well and there's a number of cases where large settlements ultimately get made, that if that can be avoided by this type of action, it's worth it to the licensee to settle the issue.

COMMISSIONER de PLANQUE: And in the case where it's ultimately decided in favor of the licensee.

MR. LIEBERMAN: Obviously the question is should the employee be required to return the funds? We haven't addressed --

COMMISSIONER de PLANQUE: I don't know. I'm not sure what I feel about all of this yet. What is the message in that case to both the licensee and the employees?

MR. TAYLOR: They would have paid that salary up until the time some decision was made. That's the loss to the company.

CHAIRMAN SELIN: It says the licensees will give the employee the benefit of the doubt until it's settled.

COMMISSIONER de PLANQUE: It's an insurance.

CHAIRMAN SELIN: That's a very good message to get across. I think this question of coercion is an important question.

MR. LIEBERMAN: And that will be tested by, if we approve the approach, how we handle that and it would have to be handled at a high level within the agency and closely scrutinized.

MR. TAYLOR: I think also this, of course, we're going to get public comment on, including industry comment. I think if this might have -- without mentioning any utilities or any particular cases, if this course of action had resulted in a solution compared to the outcome of a number of cases over the past several years, I'm sure a utility would have followed this line as to the great costs that they've had in handling these problems. That's my personal view.

MR. GREEVES: Commissioner de Planque, certainly the team did not intend to be coercive here. For the very concern you expressed, it was decided that this should not count negatively against a licensee who chooses not to use it, only a positive incentive for those licensees which do use it. I understand that there's still the potential for the pressure, but it was not intended to be coercive. It

was a suggestion that it was thought to be a good idea and would work to the licensee's benefit when they do utilize it.

COMMISSIONER de PLANQUE: Doesn't it ultimately seem like an insurance policy then?

MR. GRIMES: Well, to an extent, but if the licensee indeed is found for in the end, in my cases they will have got work out of the employee in the interim while they're paying the salary.

COMMISSIONER de PLANQUE: Oh, assuming they've reassigned them.

MR. GRIMES: Assuming they've reassigned them. In some cases they may choose to put him off on the side with pay, but I would guess in most cases the work environment will be such that they can continue to use the employee.

CHAIRMAN SELIN: I think there are two points that are very important and they ought to be kept separate. One is putting yourself in the licensee's shoes is pretty good policy, but that's their business. If it reduces the disincentives or the threat of retaliation for people to come forward, it's our business. So, as we argue whether this is a good idea or not, we've got to stick to whether it's good for the NRC, in other words for the general

public for this to happen. In fact, Mr. Taylor's arguments basically say any licensee who doesn't follow this process is really going for broke. The upside is very large and the downside is very low. But we don't run the licensees, we run the effect on these pieces. So, please make sure when you ask for comments on this you concentrate not on whether this would have been a wise thing for a couple of licensees to do, but is it in the general interest that they do so even if they don't have the wisdom to see it.

MR. PARLER: Mr. Chairman?

CHAIRMAN SELIN: Please.

MR. PARLER: Also, it should be clear or at least clearer to me, that if this thing is not considered -- the holding period is not considered voluntary, that it's questionable whether or not we have under our existing authority the authority to require such holding periods. I've heard in the discussion at least remarks that it depends on how we plan to go about implementing it if the policy were adopted. There are references made to letters perhaps having something that is really a policy statement where we don't have the authority to require something and impose requirements and then to treat it as if it were a requirement troubles me and should trouble my

successor.

COMMISSIONER de PLANQUE: I would also raise one more concern in this regard. It seems that you're advocating this for the large licensees like nuclear power plants. But what about the smaller licensee? I understand the rationale behind your thinking, but is there equity there? Does it get back to the old the jury finds for the complainant because the insurance companies have a lot of money? Do we impose this on the large licensees because we think they can handle it, but what happens in the middle size or the smaller ones? Where's the fairness to the alleger in that case? I'm not sure this is all balanced.

MR. LIEBERMAN: Well, I think that we consider this as a good approach for any licensee. Recognizing the novel nature, recognizing the financial costs involved, we thought we should consider it, at least at the beginning, for the larger licensees. You used the phrase "impose it." We're not going to impose it again, but to really suggest it. They have to decide for themselves whether they want to do this. We think that if they do it it will help their interest not just from their financial interest but to help the work place environment as a

work place environment which is what we're concerned about and raises concerns and getting issues addressed. That's a safety aspect that we have to keep them coming back to.

It is a different approach. I'm not sure what people in the industry will think of it, but we have a problem that just focuses on investigations and enforcement and the legalistic type ways and our goal is to have the licensees get involved and solve their own problems. This was an idea that we came up with and time will only tell whether it will be effective.

CHAIRMAN SELIN: I personally find it a very attractive idea.

Just let me go back to what I said before about what we require or what we encourage in the public interest versus licensing and then think what it means to say that it's a good policy for big ones or little ones. Number one, what does that mean? As the General Counsel has pointed out, we cannot punish people for doing things that we don't have the authority to require them to do. But we can encourage them for doing what we do. Does that mean that you're going to mitigate a penalty against a large licensee if he has a holding period but if it's a small licensing and he has a holding period you're not going

to mitigate the penalty? Of course not.

So, basically, if you think of the policy statement, it would apply to all licensees. You're basically saying that we think this is a good idea for all of you and if you do follow this we'll take this into account when we set the policy. That would be even truer of a small licensee than a large licensee. So, if it's not a requirement, but a policy statement, it's not clear to me why one would just say it only applies to large licensees. We should be even more generous with the small licensees since the downside is less and therefore they're doing something even more supportive of --

But it's a really good idea, I think. Commissioner Remick expressed his interest. I will read in Commissioner de Planque's question some significant interest to be followed up on carefully and just really think out, when you go out for comment, just what kind of comments you have, what our interest is as opposed to the licensee's interest, the risk of coercion. Rewarding some people is not the same as punishing others. It isn't just the other side of the coin. It's novel thinking for all the reasons that you said, not just to be stuck with sticks, but have some carrots also. I think that's

really very positive.

COMMISSIONER de PLANQUE: You may also in soliciting comments make sure that you've delineated those different time periods because different arguments can be brought about for the different time periods as well, whether it's pre-DOL or post-DOL involvement.

MR. TAYLOR: This represents an early action if companies decide to do it, which is one of the great complaints about many of the people, is nobody does anything early on to do anything for the person who comes forward.

COMMISSIONER de PLANQUE: And that's the very positive part of this approach, that it does solve a real problem out there.

MR. TAYLOR: It does.

COMMISSIONER de PLANQUE: But there are a lot of considerations here..

MR. GRIMES: And of course if the legislation were changed and allowed immediate reinstatement to be ordered by DOL after the first investigation findings, then this suggestion would really only apply to the first period.

COMMISSIONER de PLANQUE: Right.

MR. LIEBERMAN: (Slide) Okay. Turning to

the conclusions, the review team has concluded that the NRC is not taking sufficient steps within its authority to create and promote an environment within the regulated community which employees feel free to raise concerns without fear of retaliation. The NRC has established the basic framework to achieve this environment by having an allegation management system, by doing inspections and investigations, by taking enforcement actions. However, NRC in our view can and should do more within our existing authority. In addition, the statutory changes should reinforce the prohibitions on discrimination, thereby encouraging the quality-conscious environment and proving the protection of employees who are retaliated against for engaging in protected activities. he recommendations, if adopted, in our view should provide substantial support for employees who raise concerns.

At this point, I'd like to ask if any of the team members have anything that they'd like to add and then we'll be free to answer anymore questions you might have.

CHAIRMAN SELIN: May I -- first of all, I think you've done a wonderful job. The report is thorough. It's thorough in many sense, not just in the sense of looking at a lot of issues, but really

getting into documenting how things really work together rather than some facile recommendations. I think your fact finding part will be useful far beyond the policy recommendations of the report. You know, laying out just how the DOL process works, how our process works, how the two interact in many other places. It's clear that it's not a whitewash, that any time an agency reviews its own program there's always the question, particularly when it's in the office who is most responsible for the program.

I think you've bent over backwards, Mr. Lieberman, along with your team, to let all the cards on the table, warts and all, and see how we can mix up that metaphor a little more. But that's first rate.

Secondly, the way I read the report it says that our performance really hasn't been that bad, that things work pretty well most of the time. You point out the NRC is unique in having an enforcement option as well as the redress option that's available from the Department of Labor. I remember reading in the papers one of the representatives of some people who have suffered under the current process, when asked, "Well, how does this compare with --" I think it was the chemical industry and they said, "Oh, my God, NRC is ten years ahead of the chemical industry."

So, in that sense.

On the other hand, given the importance of allegations for a safety process and whether we think we have a good process or not, what really counts in whether the potential allegers think we have a good process. Although it may be pretty good compared to others or compared to what it might be, that's just not nearly good enough. So, I think your -- well, I wouldn't say alarmist, but quite tough attitude about what has to be done is well justified.

Furthermore, in addition to the top down, and by that I mean the statistical arguments and the anecdotal material, you have done an absolutely first rate, bottom up or worm's eye analysis of the process. I mean, looking at the components and saying how do they work and how in an ideal world would they work and see how far some of these processes are from the ideal, and so there's plenty of reason to believe that, given the holes and the inconsistencies and, you know, some of the silliness you found in the current process, that it could be considerably better or at least considerably more defensible. So, I think your conclusions and the reason to take some strong steps are very well argued.

Now, there are at least three points that

are a lot more luck and maybe some others.

The implication of which complaints to take on, how to set priorities, you know, why an investigator can only do three reports in a year, et cetera, now that we're talking about ten more FTE, that's got to be looked at very carefully both on its own merits and compared to other priorities.

This whole question that we just discussed about the holding period clearly has to be thought out.

And the third thing is that, you know, you once did a sort of a -- I won't say casual, but an informal review of the enforcement process and the logic behind it, but, listening to Commissioner Remick's comments and my own about the civil penalties, I would very much suggest that you consider reviewing the civil penalties, not so much in the context of the I&H issue but the role in the enforcement process and the civil penalties within the enforcement process.

Your recommendations certainly go to the heart of the problem. By that I mean, if they are carried out, I would think there'd be very high confidence that most of the major problems identified would in fact be ameliorated if not solved, and I just

think that's a terrific job. You and your colleagues are to be congratulated not just for your competence but for your willingness to be tough on yourselves.

MR. LIEBERMAN: Thank you.

CHAIRMAN SELIN: Commissioner Rogers?

COMMISSIONER ROGERS: Yes. Well, I certainly share those views.

Just a question on the SALP process. You recommended perhaps adding problems of identification and resolution to the SALP process. What has been the feeling in NRR, for example, about that? We have been trying to reduce the number of categories in the SALP process. Well, we have reduced the number of categories. How would you see this working? Would it be a separate category or separate consideration or folded into everything else?

MR. LIEBERMAN: It would definitely not be a separate category, more of an evaluation factor, a consideration.

The existing SALP process has taken the old factor of the safety assessment and quality verification and that gets worked into the various other categories and we would see this as a subset of that, if there's an abrupt change in the allegation rate, if there are indications concerning the quality

conscious environment, as appropriate to work it in, not as a routine thing that would be in every SALP report. But if there's a message, positive or negative, that might be given in this area, it should be considered and used.

COMMISSIONER ROGERS: Mr. Grimes, you have any thoughts on that?

MR. GRIMES: No. I would agree. I think the quality verification area is a good place to consider it. Another evaluation factor in that same context would be useful in all these areas.

COMMISSIONER ROGERS: And I wonder if you could say a little bit more about your estimates of the cost of carrying out these recommendations, time and cost.

MR. LIEBERMAN: Okay. We haven't really focused on the time aspect. The report notes FTE cost for doing investigations, and we're careful not to suggest that the Office of Investigations should necessarily have additional FTEs. But rather, if we're going to do this effort, this is what the cost might be. Whether it's reprogramming or additional FTEs, we didn't consider that to be the issue before us.

On the enforcement side, we do recommend

one and a half FTEs to strengthen the enforcement program, some of which is to deal with additional investigations and some of which is to better follow the DOL process. We also recommend four FTEs, one for each of the remaining regions to help the regions in preparing enforcement actions and tracking the DOL decisions.

We don't have an estimate concerning the inspection program and the allegation management system. We don't see that as a major change in how we do business, but more of a fine-tuning, and we think that could generally be done through available existing resources.

Anything, Brian?

MR. GRIMES: Well, only if the recommendations are taken to heart by the industry and their internal processes are uniformly better there will be fewer allegations that come to the NRC for independent technical investigation or H&I investigation, so I hope in the -- perhaps we'll have a short hump of increased resources, but I hope in the long-term it will result in less NRC resources on these areas.

COMMISSIONER ROGERS: Well, I just wanted to say that it certainly gives me some comfort and

relief of the discomfort I've had for some time about our encouraging allegers to come forward but then when they get into trouble simply referring them to DOL and standing by and watching the wheels grind very, very slowly, and I think that this will help a great deal in that regard.

Thank you very much for an excellent job.

MR. LIEBERMAN: Thank you.

COMMISSIONER REMICK: I also join in Chairman Selin's comments about the job you've done. I think it's very thorough and you have some very good thoughts, good recommendations. It's obvious a couple of them I differ with at the moment, but we don't have he recommendations from the EDO yet on implementation of these.

I would like to make just a couple comments. One, a little bit of confusion I think may exist in at least my reading of the draft policy statement, which by the way in general I think is a good document. But, Jim, when you started out you talked about concerns within NRC jurisdiction and it's an area that I was a little confused in reading the draft policy statement. The first page, it talks about safety concerns. Throughout most of the rest of the document it just mentions concerns and as I read

on I thought, do we mean safety concerns or not?

Then you do have a statement, if I recall, on page 9 that is something that a licensee should attempt to capture all concerns, not only safety concerns. I'm not taking a position one way or the other but I think there appears to be some confusion in my mind as I read things and I heard, I think, twice you said something to the effect that concerns within the NRC's jurisdiction, which I assume would be safety concerns. So, I'm just pointing out the possible area of confusion when one reads the document. I had that question when I read the document.

MR. LIEBERMAN: When we prepared the report we discussed in the definition section "safety concerns," "safety related," "important to safety," all the various terms that we use. To employees, the review team was concerned that, if a licensee's program, say an employee concern program, only addressed safety-related concerns, issues associated with health physics or safeguards or other issues might not be picked up, so we wanted to use a broad term.

Clearly we're not talking about financial aspects, things which may be under the OSHA worker

safety, but rather those matters that we look at in NRC, and that could be better defined.

COMMISSIONER REMICK: I would say that's not clear, because I certainly did not get that interpretation. In fact, when I read that licensees should attempt to capture all concerns, I thought you were literally meaning all concerns. And, as I say, I don't take a position on that. It might not be a half bad idea, but it seemed to be in my mind inconsistent.

Second item, just my own view on the holding period, which I say I think is innovative. My bottom line characterization is I think it's a good idea worthy of consideration. That's how kind of I would characterize it at the moment.

I had mentioned earlier that there were two areas in the assessment of civil penalties that I had problems with, and the one I mentioned. The other is, and I don't think this is the intent of the staff, however, in a recent proposed enforcement action I saw similar words which cause me to wonder. It appears to be an attempt to threaten or punish licensees if they pursue their legal rights, particularly if in pursuing legal rights it delays a decision and causes a chilling effect, and that we're saying, well, we might

not mitigate and so forth.

Basically, I don't think it's intended, but it certainly can be read as putting pressure on licensees. "Don't pursue your legal rights because we might not mitigate any enforcement action if this takes a long period of time," and that long period of time might be out of their control. I think you're doing the right thing as trying to address the process and is there any way we can shorten it so this period of time is short, but I think any implication that people should not pursue their legal rights, whether we agree with them or not, I don't think an agency, any government agency, should even infer that. And I'm afraid I can read words under assessing civil penalties and, as I say, in a recent proposed enforcement action along those lines.

MR. LIEBERMAN: I understand that concern, Commissioner, and as a lawyer I appreciate the right for companies to be able to exercise those legal rights.

Our concern was the impact on the work place of exercising those rights without doing something to give this clear message that we still want concerns to be raised.

There was one case in the past several

years that comes to mind where the employee had gone to the company to raise the concern and the company says, "We'll look into it."

The employee said to the company, "Sure I don't have to go to the Department of Labor within 30 days?"

They said, "Don't worry about it."

Finally, the employee chose to go to the Department of labor itself and then the company argued that, "You are outside the 30 day period."

The company lost before the administrative law judge, lost before the Secretary of Labor, even lost before the Court of Appeals with some strong statements made against the company.

Now, if you were an employee in that company and you saw how this person had been treated, you might think twice before raising a concern because you see that the company is prepared to put its full resources to challenge you. That's the balance. Clearly employers have to have the right to raise issues. That's why the holding period might be a particularly good idea to try to ameliorate some of the problems in the work place pending that litigation.

COMMISSIONER REMICK: I agree. I think

that's why it's worthy of consideration. But the words in the report can be read as, in my mind, threatening to punish through lack of mitigating enforcement actions if you pursue these rights and it results in a delay because this might result in a chilling effect, which it conceivably could, but I don't think we should be threatening people not to pursue their rights, as it can be read. I don't think that's really your intent. It might be just wording.

One other thing, I think we should not be reluctant to admit that it's possible for people to misuse the system also. And by misuse of the system it can cause supervisors and managers not to do the job that perhaps otherwise they should do. Sometimes people do need to be moved into another position. Sometimes they have to be let go and so forth.

We have to be careful, because it doesn't take a Rhodes scholar to realize that a below average performer, if he thinks his job is at risk, the easiest thing to do is on a periodic basis put a safety concern before the NRC and then, if any action is taken, say, "Well, that's the basis of it," and let the licensee defend before an administrative law judge in Washington that that's not the case. You do have some words in here, but I think in the policy

statement and so forth we should point out that we do not condone that type of action either.

MR. TAYLOR: I agree with you.

COMMISSIONER REMICK: You do have some words. I just want to say that I think we have to be fair and balanced in this. We sometimes are reluctant to address that point, but it is a fact of life, an unfortunate fact of life, and we should not hesitate to say we don't condone that type of activity either. Once again, I agree. I think in general you have a very good and thorough report. You've done a good job.

COMMISSIONER de PLANQUE: Well, I would agree. I'm the third one or fourth one to agree that it's an excellent report. It really is. It's very readable. It's got good hard information in it, which was a little difficult to come by before this report, and I think you were very fair in analyzing the pros and cons of various actions, which is somewhat difficult to do. This is not hard science. It's soft science in many cases and I think in each case that I saw you did come up with "on the one hand" and "on the other hand," which is extremely valuable in trying to evaluate the recommendations.

I was particularly intrigued by the

discussion about what is adequate protection and I'm kind of interested that the question really wasn't answered, which, you know, boils down to when is enough enough and how do we know when we've got there? How do you judge it?

I sense that you're going to use some of these survey instruments to get there, but, again, there's no perfect way to get to when is enough enough, when have you really gone as far as you can go, and the problem is at some threshold beyond which, no matter what you do, you're not going to make it any better, which kind of leads me to question one of the conclusions that says sufficient steps were not taken. Sufficient steps were not taken to what?

I agree that there's a lot more that we can do and I think some of your recommendations go a long way into improving the situation where we can. I'm not sure I would judge it as having been insufficient up until now, but I think there is indeed a lot more we can do.

I just want to make sure I understand the resource implications. I was trying to add up all the numbers and I saw a 14 on the investigations, one and a half on the enforcement, four for the regions, so we're talking in the ball park of 15 to 20 or so if

you carry out all the recommendations. Is that about right or haven't they been totaled up?

MR. LIEBERMAN: I think that's correct, assuming no reprogramming within the Office of Investigations.

MR. HAYES: Right now, I think approximately 18 percent of OI's resources is in this area.

COMMISSIONER de PLANQUE: Right.

MR. HAYES: Obviously the balance is in other areas. If we're going to pick up what statistically we're suggesting at least should be considered, we can produce probably two H&I cases per agent per year, approximately. It's 1,500, 1,600 hours less annual and all that sort of thing.

So, it comes down to the critical issue is what's best for the public safety, here or there, and we're not suggesting one way or another. We're just laying out these are the pros and cons and we either reprogram or we adopt just a portion instead of the eight or nine FTE, because we're already using approximately five, 4.8 right now. You know, I can shift resources if we don't get any. Right now, we've lost one this fiscal year. We're due to lose another one next fiscal year, so it's just a reprioritization

of what we have available.

COMMISSIONER de PLANQUE: Right. Again, I think in terms of allocating resources this way it will be important to know what cannot be done if this --

MR. HAYES: That's correct.

COMMISSIONER de PLANQUE: -- is done, and what is for the overall good as a safety issue.

MR. TAYLOR: We'll have to pull that together after the offices get their comments in.

MR. HAYES: What's in the best interests of the Commission is what it's going to come down to, and public health and safety.

COMMISSIONER de PLANQUE: Sure.

CHAIRMAN SELIN: We would expect the EDO to make a recommendation on the overall budget bearing this in mind and then we would look at this as one of the elements within the budget.

COMMISSIONER de PLANQUE: Well, again, I think it was an excellent report and I commend you for the hard work and the good job.

MR. LIEBERMAN: Thank you.

CHAIRMAN SELIN: Thank you very much.

(Whereupon, at 3:13 p.m., the above-entitled matter was adjourned.)

CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting of the United States Nuclear Regulatory Commission entitled:

TITLE OF MEETING: BRIEFING ON NRC ACTIONS VIS-A-VIS ALLEGERS

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: JANUARY 31, 1994

were transcribed by me. I further certify that said transcription is accurate and complete, to the best of my ability, and that the transcript is a true and accurate record of the foregoing events.

Reporter's name: Peter Lynch

REPORT OF THE REVIEW TEAM

FOR

REASSESSMENT OF THE NRC'S PROGRAM

FOR

PROTECTING ALLEGERS AGAINST RETALIATION

BRIEF OF COMMISSION

JANUARY 31,1994

PURPOSE

Has Sufficient Action Been Taken To Create An Atmosphere Within The Regulated Community Where Individuals With Safety Concerns Feel Free To Engage In Protected Activities Without Fear Of Retaliation?

CHARTER

- Licensee Actions To Encourage Raising Concerns
- NRC Allegation Process
- NRC Responsiveness To Discrimination Issues

  DOL Process
  NRC Investigations
  Chilling Effect Letters
  Use Of Civil Penalties, Orders, And Demands

- NRC Responsiveness To Potential Concerns

METHODOLOGY

- Federal Register Notice
- Six Public Meetings
- Meetings With Federal Agencies
- Regional and Program Office Input
- Solicitation Of NRC Employees
- Temporary Inspection Instruction On ECP

BACKGROUND

- Current Regulatory Framework
  - NRC Responsibility
  - DOL Responsibility
- Nuclear Work Environment
  - Quality-Conscious Workplace
  - Legitimate Disciplinary Action
- "Protection" Of Employees
- Magnitude Of The Issue

AREAS OF FOCUS

- QUALITY-CONSCIOUS WORKPLACE
- NRC ALLEGATION MANAGEMENT
- H & I ALLEGATIONS AND COMPLAINTS

KEY REPORT TOPICS

SECTION II.A	Licensee Responsiveness To Employee Concerns
SECTION II.B	NRC Responsiveness To Employee Concerns
SECTION II.C	NRC Investigations During DOL Process
SECTION II.D	Related NRC Enforcement Actions
SECTION II.E	Allegations Of Actual Or Potential Discrimination Outside The NRC Investigation And Enforcement process

LICENSEE RESPONSIVENESS TO EMPLOYEE CONCERNS

KEY RECOMMENDATIONS IN SECTION II.A

Commission Policy Statement:

- **Effective Problem Identification And Resolution**

  Include Alternative Methods

- **Improve Contractor Awareness Of Responsibilities**

- **Use Of A Voluntary "Holding Period"**

NRC RESPONSIVENESS TO EMPLOYEE CONCERNS

KEY RECOMMENDATIONS IN SECTION II.B

- More Centralized Oversight Of NRC Allegation Management
- Improve NRC Accessibility / Communication
  - Brochure For Workers
  - Toll-Free 800 Numbers
  - Feedback To And From Allegers
- NRC Assessment Capability

NRC INVESTIGATIONS DURING THE DOL PROCESS

KEY RECOMMENDATIONS IN SECTION II.C

- **Section 211 Investigations**

  Transfer From Wage & Hour To OSHA

- **Propose Legislation To Amend Section 211**

  Reasonable And Achievable Time Periods

  Reinstatement Decisions Immediately Effective

  DOL Defend Findings In Adjudication

NRC INVESTIGATIONS DURING THE DOL PROCESS (CONT.)

KEY RECOMMENDATIONS IN SECTION II.C (CONT)

Revise Priorities For OI Investigation When The Alleged Discrimination Involves:

- **Retaliation For Providing Information Directly To The NRC**
- **Manager Above First-Line Supervisor**
- **A Licensee With A History Of Discrimination Or Settlements**
- **Particularly Blatant Or Egregious Circumstances**

NRC ENFORCEMENT ACTIONS

KEY RECOMMENDATIONS IN SECTION II.D

- Increase Maximum Civil Penalty
- Encouragement of Settlements
- Deliberate Misconduct Rule
- Contractor Actions

TREATMENT OF ALLEGATIONS OF ACTUAL OR POTENTIAL DISCRIMINATION OUTSIDE THE NRC INVESTIGATION AND ENFORCEMENT PROCESS

KEY RECOMMENDATIONS IN SECTION II.E

- Allegations Of The Potential For Future Discrimination
- Allegations That Discrimination Had Occurred

ALLEGATIONS OF POTENTIAL DISCRIMINATION

- Respond To Credible Reports Of Reasonable Fears Of Retaliation
- Individual Must Be Willing To Have Identity Revealed
- Hold Documented Meetings With Licensee Management
- Issue Letters To Licensee Management

ALLEGATIONS OF ACTUAL DISCRIMINATION

- Involvement Of Senior Licensee Management
- Encourage Voluntary "Holding Period"
  - Maintain Or Restore Pay And Benefits
  - Allow Time For Investigation, Reconsideration Of Action, and Negotiation
  - Allow Reasonable Time For Filing Complaint With DOL
  - Continue Until Initial DOL Finding

ALLEGATIONS OF ACTUAL DISCRIMINATION (CONT.)

- Would Not Be Considered Additional Discrimination
- Considered As Mitigating Factor
- Use Of Follow-Up Letter
  - Sent By EDO Or Other Senior NRC Management
  - Request Personal Involvement Of Senior Licensee Management
  - Request Use Of Holding Period
  - Requiring Report On Licensee Actions
  - Employee Notified Prior To Issuing Letter

CONCLUSIONS

- Sufficient Steps Not Taken
- Basic framework Has Been Established
- Additional Action Should Be Taken
- Recommendations, If Adopted, Should Provide Substantial Support To Employees Who Raise Concerns