



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

APR 26 1983

Government Accountability Project  
Institute for Policy Studies  
ATTN: Ms. Billie P. Garde  
Director  
Citizens Clinic for Accountable Government  
1901 Que Street, N. W.  
Washington, D. C. 20009

Dear Ms. Garde:

This letter is in response to your letter of March 29, 1983 to Mr. Keppler. You requested a copy of the new NRC regulations requiring licensees to post notices informing employees of their protection against discrimination for providing information to the NRC. You also requested the results of the Region III review of Bechtel Form 3002 to determine if the Bechtel workers' perception is that it prohibits discussions with NRC personnel.

We are pleased to provide a copy of the final rule published in the Federal Register on July 14, 1982 on protection of employees who provide information (10 CFR Parts 19, 30, 40, 50, 60, 70, 72, and 150) and a revised NRC Form 3. It would be a violation of Section 210 of the Energy Reorganization Act (42 U.S.C. 5851) and these regulations for Bechtel to use Form 3002 to discriminate against its employees for the exercise of their right to provide the NRC with information about possible violations of requirements imposed under the Atomic Energy Act or the Energy Reorganization Act. As indicated in Mr. Keppler's letter of October 12, 1982 to you, Region III will undertake to determine whether Bechtel employees at the Midland site perceive Form 3002 as prohibiting or discouraging activities protected under Section 210. Region III has not yet reviewed this matter. The review will be completed and documented in an NRC inspection report by the end of June. A copy of the report will be sent to you.

If you have any further questions, please let us know.

Sincerely,

A handwritten signature in dark ink, appearing to read "T. A. Rehm", written over a horizontal line.

T. A. Rehm, Assistant for Operations  
Office of the Executive Director  
for Operations

Enclosures:

1. Final Rule on Protection of Employees  
Who Provide Information
2. NRC Form 3

8406040385 840517  
PDR FOIA  
RICE84-96 PDR

U.S. NUCLEAR REGULATORY COMMISSION

REGION III

Reports No. 50-329/83-10(OSC); 50-330/83-10(OSC)

Docket Nos. 50-329; 50-330

Licenses No. CPPR-81; CPPR-82

Licensee: Consumers Power Company  
1945 West Parnall Road  
Jackson, MI 49201

Facility Name: Midland Nuclear Power Plant, Units 1 and 2

Inspection At: Midland Site, Midland, MI

Inspection Conducted: March 21 through May 20, 1983

Inspectors: *J. J. Harrison for*  
B. L. Burgess

6/30/83  
Dated

*J. J. Harrison for*  
R. J. Cook

6/30/83  
Dated

*R. N. Gardner*  
R. N. Gardner

6/30/83  
Dated

*R. B. Landsman*  
R. B. Landsman

6-30-83  
Dated

Approved By: *J. J. Harrison*  
J. J. Harrison, Chief  
Section 2, Midland

6/30/83  
Dated

Inspection Summary

Inspection on March 21 through May 20, 1983 (Reports No. 50-329/83-10(OSC); 50-330/83-10(OSC))

Areas Inspected: Training and certification of MPQAD personnel, Bechtel secrecy agreement, Atomic Safety and Licensing Board (ASLB) hearing, meeting to discuss the Construction Completion Program (CCP), meeting of Caseload Forecast Panel, resident inspector investigation of allegations, heating, ventilation, and air conditioning (HVAC) welding, HVAC laydown area storage, core internal inspection, remedial soils work activities, and plant tour. This inspection involved a total of 405 inspector-hours onsite by five NRC inspectors including 57 inspector-hours during off-shifts.

~~8307140379~~ 9pp.

The inspectors reviewed the qualifications and certifications of 36 MPQAD personnel performing quality assurance, quality control, and auditing functions. The documents reviewed included resumes, training records, specific, general, and performance demonstration exams, exam answer sheets, physical and eye exam results, background checks, and qualification listings. These individuals were evaluated for assigned responsibilities versus actual education and experience. Selected QC inspectors, QA engineers, and QA/QC supervisory personnel were contacted and interviewed to facilitate this evaluation.

No items of noncompliance or deviations were identified.

3. Bechtel's Secrecy Agreement

The Government Accountability Project (GAP) questioned the use of Bechtel's secrecy agreement in letters to the NRC dated September 6, 1982 and March 29, 1983. The NRC previously responded to the GAP concern on October 12, 1982.

The inspectors reviewed the Bechtel Form 3002, "Bechtel Employee Inventions and Secrecy Agreements," as to the intent and use of the form and understanding by employees. This form is viewed by the NRC as a standard form used by companies to protect a company's proprietary information and inventions. The inspectors interviewed eleven Bechtel employees asking each two questions: (1) if they were aware of what the intent of form 3002 was; basic answer, a standard company form to afford protection on secrets and patents; (2) if they thought this form prevented them from talking to the NRC; the answer was no. The inspectors could find no evidence that this form had ever been used as a basis for firing anyone.

The inspectors also noted during this inspection that the licensee had properly posted NRC form 3 (revised 6-82), "Notice to Employees" as required by 10 CFR 50.7. This notice was the correct revision and was prominently posted in sufficient locations to afford workers an opportunity to observe the notice during their way to or from their place of employment.

No items of noncompliance or deviations were identified.

4. Atomic Safety and Licensing Board (ASLB) Hearings

On April 27-30 and May 4-6, 1983, Messrs. R. Cook, R. Gardner, R. Landsman and W. Shafer of the Midland Section presented testimony in regards to issues before the Board in the Midland ASLB Hearings. The hearings are scheduled to reconvene on June 1, 1983.

5. Meeting to Discuss the Construction Completion Program (CCP)

On May 17, 1983, members of the Midland Section met with Mr. D. Miller and others of the licensee's staff to discuss the licensee's April 6 and April 22, 1983, responses to NRC questions concerning the CCP.



AM

February 26, 1982

On the occasion of the termination of your employment we would like to remind you of the nondisclosure and secrecy agreements which you have signed while in the employment of Bechtel Group, Inc., and Bechtel Power Corporation and any affiliate or subsidiary of Bechtel Power Corporation, and Bechtel Petroleum, Inc. and any affiliate or subsidiary of Bechtel Petroleum, Inc., and Bechtel Civil & Minerals, Inc. and any affiliate or subsidiary of Bechtel Civil & Minerals, Inc.

You can obtain information concerning the contents of any such agreements to which you are a party by contacting either the undersigned or the Legal Department of Bechtel.

We bring to your attention the fact that the provisions of any secrecy agreements which you have signed while an employee of Bechtel remains in force until they expire by their terms and apply whether or not you are employed by Bechtel. Thus you are bound by such agreements after termination of your employment with Bechtel to the same extent as heretofore.

Your secrecy commitments form the basis for similar agreements which Bechtel has given to certain of its valued clients; hence your full cooperation in complying strictly with the terms of your commitments is of extreme importance and necessity and will be assumed and appreciated by Bechtel.

Yours very truly,

*Nancy M. Miller*

By Nancy Miller

Title Office Assistant

(Signed) *E. Earl Kent*  
Employee

(Typed) Earl R. Kent

ORIGINAL - Master Personnel File  
YELLOW - Employee Copy

(If mailed, attach "Certificate of Mailing" here.)  
SEE PERSONNEL PROCEDURES MANUAL FOR INSTRUCTIONS.



TESTIMONY

OF

E. EARL KENT

*See P. 6*

before the

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION

of the

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

June 20, 1983

~~831102062~~ 26pp

MR. CHAIRMAN and MEMBERS OF THE COMMITTEE:

My name is E. Earl Kent. Until March 1, 1982 I was a Senior Quality Control Engineer in Nuclear Welding with Bechtel Power Corporation (Bechtel), the prime contractor for Southern California Edison (SCE), owner of the San Onofre Nuclear Generating Station (SONGS) near San Clemente, California for almost a year, at Palisades Nuclear Power Plant (Palisades) for three months, and at Midland Twin Nuclear Power Plant (Midland) in central Michigan. I was fired after bringing defects in construction and specifications to the attention of my supervisors, and fellow employees.

I wish to thank all the members of the organizations who assisted me, in particular the Government Accountability Project and the Alliance for Survival.

I am determined to fight for an honest resolution to the problems of nuclear safety of which I am aware. I refused to ignore the wrongdoing that I observed regarding substandard welds and the dangerous conditions they presented. I disclosed to my Bechtel supervisors, in the form of my allegations, potentially dangerous conditions existing at the nuclear sites where I was employed. The utility, and the government regulating agency were also aware of these serious allegations. Nonetheless neither Bechtel, SCE nor NRC -- the government agency charged with regulating nuclear industry -- took appropriate corrective action nor conducted a truly adequate independent investigation. I am forced to seek other means to obtaining an impartial resolution to my allegations.

Hence, I am requesting a Government Accounting Office (GAO) investigation into how the NRC conducted the original inspection of my charges, and a completely new inspection by an independent laboratory into the technical resolutions of my allegations.

I am knowledgeable and experienced as a Senior Quality Control Engineer in Nuclear Welding. I have had seventeen years of practical experience in Engineering (welding, quality control, and construction); eleven years in Welding as instructor, inspector, and weldor; and eleven years in Architect and Engineering Offices as job captain, designer, etc. I have been employed at six nuclear power units under construction and five major corporations. I was a member of the American Society for Quality Control. Since 1961, I have authored three publications on welding and structural steel. I hold more than a dozen copyrights for welding designs. Since 1970, several of my original welding ideas have been recorded in the Welding Encyclopedia by Monticello Books and also in Engineer Design Data Sheets of Welding Engineer Magazine published worldwide.

I began work as a Senior Quality Control Engineer at SONGS Units II, III in October, 1980. My regular duties were to inspect welds on piping, piping supports, and electrical tray hangers and preparation of vendor material verification forms. In connection with my employment at the various nuclear units, I was required to demonstrate proficiency by passing written examinations in welding. I was certified as a Senior Quality Control Engineer.

At SONGS I found the first example of a serious generic welding problem at Bechtel-built nuclear plants. Thousands of end returns were missing or incompletely welded, electrical tray hangers, pipe

supports and structural supports also had inadequate welding. The welding defects pose a significant impairment of a basic component of nuclear reactors and thereby posed a risk of harm to the public. I brought these problems to the attention of my supervisors in Quality Control for Bechtel. Little remedial action was taken. Possibly, this hazardous condition remains hazardous today.

In August of 1981 I was transferred to Palisades. There I was recertified and continued to work as Senior Quality Control Engineer. I worked on the completion of emergency cooling water piping. I found similar welding defects at Palisades as at SONGS. I saw corrosion, including deep pitting, on the interior of piping, which could affect its function.

Three months later I was transferred to Midland, which was under construction. I brought similar welding defects in construction and inaccurate specifications to the attention of my fellow employees and supervisors. In particular, I was critical of the fact that the standards for safety were systematically downgraded. I reported violations of design welding codes; undersized and improperly done welds; welds improperly ground down, thus reducing piping wall thickness; excessive porosity in welds that would appear outwardly strong but that would be weakened from within; and discrepancies between the designation of welds and their actual condition; all of which together constitute hazardous conditions. Once again I brought this to the attention of my superiors, with few remedial results.

I was terminated on March 1, 1982. I refused to remain silent despite the fact that the company wanted me to do so. Further



they advised me that my concerns did not and could not exist. I was advised that the company was terminating me because I had not been able to adjust to the "way things were done" and for not passing a certain welding inspection test to their satisfaction.

I was informed that I had failed the oral portion of the basic Level I Examination conducted in connection with my transfer to Midland. After retaking the examination I was again advised that I had failed the oral portion, however, the examiners refused to tell me why. I do not believe I failed the exams because my performance level had been evaluated in written reviews at both SONGS and Palisades as meeting or exceeding the performance requirements of Bechtel. Additionally, the GAP investigation has been unable to find any documentation to substantiate the Bechtel allegations.

The first hint of trouble with the NRC came in March, 1982. I decided to speak to the NRC because of the way I had been terminated by Bechtel, as well as because I felt that my observations had not received adequate attention from the Bechtel management. Region III inspectors investigated my allegations, but the investigations report failed to even address my concerns.

Shortly thereafter I was contacted by GAP with regard to my allegations of serious welding and quality assurance problems at Midland. Later in June, 1982 I submitted information to the NRC. For months there was little effort on the part of the NRC to begin to untangle the mystery of Bechtel's inadequate welding procedures.

I voluntarily made a trip, largely at my own expense, to the Region III office in Glen Ellyn, Illinois in August 1982 to check

the status of the NRC investigation into my allegations. Although I was interviewed by Region III inspectors and others, I was told they would contact me in several months.

After my unproductive visit at Region III headquarters, I decided to independently pursue my concerns. Soon after my return to California, I went to Southern California Edison and the NRC directly with my concerns. Several days later I received a curt dismissal of my allegations. Convinced that my concerns were going to be continually disregarded by the utilities, corporations, and regulating agency, and despite my agreement with Bechtel of Non-Disclosure, I turned to public interest organizations. I spoke to the Alliance for Survival who later contacted the Los Angeles Times, and again to GAP. In mid-October various news media published my allegations.

In the wake of this public revelation, the NRC finally took some action. The Region III offices in a flurry of 'catch-up work' express mailed the June 29, 1982 affidavit to the Region V inspectors who had previously ignored my allegations. They contacted me, only after the news coverage. The direction of the NRC questioning was obvious. One of the first comments made by one of the investigators was to inform me "that my allegations were well known now, all over the United States, as well as Russia." The next day, the investigator appeared at my door with a six-page statement for me to sign. I refused to sign because they had grossly misstated my factual concerns. Without my authorization, the NRC used this document to set the scope of my allegations.

I am unconvinced that there was a truly professional technical review of my allegations which I had been making for many months. Although I was taken on an on-site walk through tour of SONGS, I was restricted to prescribed areas of the plant. Furthermore, I was denied access to any weld measuring equipment, paper, pencils, drawings, specifications, tools or other devices which would have made the walk through anything more than a sham.

In December 1982, the NRC issued a report regarding a special NRC investigation of SONGS. This report stated that none of my allegations were found to be substantiated, yet the report itself contradicts that conclusion. For example, the inspector identified four hydrogen line supports missing and a hydrogen gas line which was supported with bailing wire and duct tape, among other flagrant violations. Any reasonable examination of the NRC report would conclude that it was a "whitewash" and served as a public relations device instead of an aggressive, independent investigation into the serious concerns that I raised.

In conclusion, I would like to bring to the attention of this committee a serious problem of all Bechtel nuclear workers. On the one hand, Bechtel requires all of its employees to sign a non-disclosure statement. It states as follows: "I shall not disclose or use, directly or indirectly, at any time, any information as above defined, unless such disclosure or use is in the course of my employment by Bechtel or has been expressly authorized in writing by Bechtel." I have included a copy of the contract. (see attachment) On the other hand the Atomic Energy Act requires all employees to report and disclose such deficient conditions which may affect the health and safety of the public and in fact

may be subject to prosecution for failure to carry out such duty. The dangers of this paradox cannot be underestimated.

It was not until I went public with my allegations that the NRC took extensive action. And then it was to cooperate with others in proving me wrong, instead of looking into my allegations. My personal life has been irrevocably harmed as I waited patiently for my allegations to be investigated by the nuclear regulators that I placed my trust in. I have been unemployed for the majority of the last year. My financial condition has dropped daily. I sincerely believed that the NRC would pursue allegations I made in defense of the public health and safety. Instead I discovered an agency blindly promoting the industry positions, in effect leaving my family to bear the burden of prudent disclosure of construction flaws.

If this committee expects nuclear workers to bring forward information about problems at operating nuclear plants or power plants under construction, I must impress the NRC with the necessity of being independent of the industry it regulated.





AGREEMENT AND ACKNOWLEDGMENT OF OBLIGATION

Attachment 4

THIS AGREEMENT AND ACKNOWLEDGMENT OF OBLIGATION, is executed by the undersigned Employee and delivered to Bechtel on the date set forth below.

1. I hereby acknowledge that I understand and agree that the provisions hereof are part of my employment contract with Bechtel, and that my employment by Bechtel and the payment of the compensation I receive from Bechtel are induced by and in consideration of my agreement to such provisions, and my acknowledgment of my obligations hereunder.
2. As used herein, "Bechtel" shall mean Bechtel Group, Inc., or Bechtel Power Corporation and any affiliate or subsidiary of Bechtel Power Corporation, or Bechtel Petroleum, Inc. and any affiliate or subsidiary of Bechtel Petroleum, Inc., or Bechtel Civil & Minerals, Inc. and any affiliate or subsidiary of Bechtel Civil & Minerals, Inc. "Client" shall mean any person or entity for whom Bechtel performs services or from whom Bechtel or Employee obtains information; "information" shall mean any information, knowledge, or data relating to plans, specification, documents, inventions, methods, processes, products or operations of Bechtel or Clients; and "employment" shall include employment for hourly wages, for salary, or as a consultant.
3. I recognize that the business of Bechtel and the nature of my employment will permit me to have access to information of Bechtel and its Clients, that such information is the property of Bechtel and of its Clients, and that any unauthorized disclosure thereof may be highly prejudicial to their interests. I further recognize that I may during the term of my employment make inventions, discoveries or improvements.
4. I shall not disclose or use, directly or indirectly, at any time, any information as above defined, unless such disclosure or use is in the course of my employment by Bechtel or has been expressly authorized in writing by Bechtel. I shall not remove any writings containing information from the premises or possession of Bechtel or its Clients unless I have obtained express authorization in writing by Bechtel to do so.
5. Any and all ideas, inventions, discoveries and improvements which I conceive, discover, or make during the term of my employment, in any way relating to the business of Bechtel or arising out of or resulting from my employment, shall be the sole and exclusive property of Bechtel or its nominee. I shall promptly advise Bechtel of each such idea, invention, discovery and improvement and, whenever requested by Bechtel, I, my executors, administrators, legally appointed guardians, conservators or representatives shall without further compensation promptly execute any and all instruments which Bechtel may deem necessary to assign and convey to it, its successors or assigns, all the right, title and interest in and to each such idea, invention, discovery and improvement, and Letters Patent for the same, or such other interests therein as I may acquire, together with all instruments deemed necessary by Bechtel to apply for and obtain Letters Patent of the United States or foreign countries, it being understood and agreed that all expense incident to the securing of such applications and Letters Patent shall be borne by Bechtel, its successors or assigns. I understand and agree that such obligation to execute such instruments shall continue after termination of my employment by Bechtel with respect to each such idea, invention, discovery and improvement, which I conceived, discovered or made during the term of my employment, in any way relating to the business of Bechtel or arising out of or resulting from my employment.
6. This Agreement and Acknowledgment of Obligation shall be effective as of the date that I commenced or will commence my employment with Bechtel.

Dated: \_\_\_\_\_

This agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of Bechtel is used and which is developed entirely on my own time, and (a) which does not relate (1) to the business of Bechtel or (2) to Bechtel's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by me for Bechtel.

Employee: \_\_\_\_\_

(Signature) \_\_\_\_\_

(Typed) \_\_\_\_\_

Attest: \_\_\_\_\_

(Signature) \_\_\_\_\_

(Typed) \_\_\_\_\_



13 10/17/77

On the occasion of the termination of your employment we should like to remind you of the nondisclosure and secrecy agreements which you have signed while in the employment of Bechtel Power Corporation and any affiliate or subsidiary of Bechtel Power Corporation and Bechtel Incorporated and any affiliate or subsidiary of Bechtel Incorporated.

You can obtain information concerning the contents of any such agreements to which you are a party by contacting either the undersigned or the Legal Department of Bechtel.

We bring to your attention the fact that the provisions of any secrecy agreements which you have signed while an employee of Bechtel remains in force until they expire by their terms and apply whether or not you are employed by Bechtel. Thus you are bound by such agreements after termination of your employment with Bechtel to the same extent as heretofore.

Your secrecy commitments form the basis for similar agreements which Bechtel has given to certain of its valued clients; hence your full cooperation in complying strictly with the terms of your commitments is of extreme importance and necessity and will be assumed and appreciated by Bechtel.

Yours very truly,

By \_\_\_\_\_

Title \_\_\_\_\_

(Signed) \_\_\_\_\_  
Employee

(Typed) \_\_\_\_\_

TO ORDER THE GROUP INSURANCE  
CONVERSION LETTER USE  
FORM NO. 11624

ORIGINAL - Master Personnel File  
YELLOW - Employee Copy

(If mailed, attach "Certificate of Mailing" here.)  
SEE PERSONNEL PROCEDURES MANUAL  
FOR INSTRUCTIONS.

TESTIMONY OF

BILLIE GARDE and THOMAS DEVINE

GOVERNMENT ACCOUNTABILITY PROJECT  
INSTITUTE FOR POLICY STUDIES  
WASHINGTON, D.C.

before the

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION

of the

HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

JUNE 20, 1983

8405220578

CHAIRMAN MARKEY AND SUBCOMMITTEE MEMBERS:

I. INTRODUCTION

On behalf of the Government Accountability Project (GAP) of the Institute for Policy Studies it is an honor and a privilege to appear before you today.

Our testimony is presented to this committee specifically on behalf of Mr. E. Earl Kent, one of the many nuclear construction workers that GAP has or is representing as counsel. Mr. Kent is with us today in order to make a brief statement about the manner in which the Nuclear Regulatory Commission (NRC) handled -- or didn't handle -- serious allegations that he brought to its attention at two nuclear power plants. Mr. Kent's encounter with a Nuclear Regulatory Commission inspection mirrors the experience of other workers at nuclear power plants under construction across the nation.

The policies and laws for protection of nuclear workers who reveal information which may have an impact on public health and safety are clearly outlined in the code of federal regulations. The experience of Mr. Kent is a good example of the reality. Unfortunately for Mr. Kent -- as well as hundreds of other conscientious nuclear workers who put the health and safety of the public first -- the consequences of telling the truth or raising serious, valid questions in the nuclear industry are personal, professional and financial ruin.



Many potential whistleblowers are willing to speak out in spite of the risks -- but only if it is going to make a difference. As a Merit Systems Protection Board survey of government workers revealed, 73% who failed to challenge significant misconduct attributed their silence to a belief that nothing could or would be done. Only 19% "decided that reporting this matter was too great a risk for me."

The problem for nuclear industry whistleblowers is that there is no guarantee anything will be accomplished except professional martyrdom. The NRC is plagued by a breakdown in the quality assurance (QA) of its own investigations. The poor prospects are due to generic weaknesses that GAP has observed in NRC investigations and inspections.

A. In its approach to whistleblowers, the NRC has --

- (1) refused entirely to speak with employee whistleblowers, to cover specific issues such as retaliation, or to investigate at all when the allegation concerned a plant about to open;
- (2) violated the confidentiality of whistleblowers, either directly or indirectly;
- (3) narrowly defined issues raised by whistleblowers and failed to inspect beyond hardware examples the witness was able to identify specifically;
- (4) failed to record interviews or take affidavits, particularly on the most significant issues being raised by whistleblowers;
- (5) returned affidavits to witnesses to delete references to sensitive issues;
- (6) failed to include affidavits in the public reports when the statements contradicted the NRC's party line on the problems at nuclear plants;
- (7) failed to keep pace with new whistleblower allegations in a timely manner.

B. In its approach to utilities, the NRC has --

(8) conducted closed-door meetings with utility and contractor executives when investigating whistleblower allegations;

(9) provided advance warning to utilities about where and when the NRC was going to inspect hardware;

(10) relied on industry's technical conclusions without disclosure of supporting data and calculations for evaluation of whistleblower allegations;

(11) offered advance, informal review of decisions to the targets of NRC investigations and inspections, thereby permitting utilities to escape accountability through informal, often-unenforced commitments "not to do it again."

(12) reviewed and informally approved licensee practices before approved by corporate officials with quality assurance responsibilities, thereby undercutting the employees who tried to carry out their duties objectively despite the pressure of management urgings that "it's all right with the NRC, so why are you holding things up?"

C. In its approach to its own personnel, the NRC has --

(13) censored the text and conclusions of sensitive investigative findings by the staff;

(14) permitted fact-finders with first-hand knowledge of defective conditions to be overruled by national officials whose biases carried more weight than the evidence;

(15) obstructed efforts by its investigators to gather evidence necessary for potential criminal prosecution and forbade its fact-finders to draw conclusions based on what was learned.

(16) pursued an internal "buddy system" that undercuts the merit system and shatters the morale of conscientious employees.

D. In its approach to the public, the NRC has --

(17) attempted as a knee-jerk reaction to discredit critics -- whether whistleblowers, anti-nuclear organizations, or simply interested and concerned citizens -- by questioning their motivations, patriotism, integrity, and technical competence to raise questions about public health and safety;

(18) destroyed drafts of reports, created secret files and failed to admit the existence of documents requested under

the Freedom of Information (FOIA), in order to prevent the public from learning how investigative findings were covered up.

We base these conclusions on our experience monitoring the NRC over the last three years as counsel for citizens organizations and approximately a dozen whistleblowers at six nuclear plants, as well as interviews with over 75 witnesses from the nuclear industry. We emphasize that it would be unfair to generalize the misconduct above to all NRC investigators, inspectors, managers or even commissioners. On each level the NRC has numerous employees who help to define the term "public servant." But the misconduct listed above has taken place and continues to occur frequently enough that potential whistleblowers are playing career Russian Roulette when they consider disclosures to the NRC. Further, we believe that nuclear power is so dangerous that the analogy extends to the public. It is small comfort that NRC investigations periodically are effective -- generally when investigators are unshackled due to the political pressure created by a scandal and citizen backlash.

## II. BACKGROUND

The Government Accountability Project is a project of the Institute for Policy Studies, Washington, D.C. The purpose of the program is to broaden the understanding of the vital role of public and corporate employees in preventing waste and corruption, to offer legal and strategic counsel to whistleblowers, to provide a unique legal education for law students, to bring meaningful and

significant reform to the government workplace, and to expose government actions that are repressive, wasteful or illegal and that pose a threat to the health and safety of the American public. Presently, the Project provides a program of multi-level assistance for government employees who report illegal, wasteful or improper actions by their agencies. GAP regularly monitors governmental reforms, offers expertise to Executive Branch offices and agencies, and responds to requests by Congress and state legislatures for analysis of legislation to make government more accountable to the public.

GAP's Citizens Clinic is a citizens training, consulting, and social activist program for local "grassroots", public interest, community, and church groups. This program is designed to assist and direct citizen involvement. Its role is to provide a range of services to individuals or groups who begin to speak out about problems spawned by corporate or government ineptitude or malfeasance. The Clinic's focus is on assisting citizens to effectively use their First Amendment rights to expose or address significant issues.

The Clinic addresses health and safety concerns, consumer fraud, corporate "rip-offs", pollution, government misconduct, abuse or inaction, and the abridgement of individual rights that often accompanies the struggle of citizens to redress their grievances.

In recent years GAP has been approached by a growing number of witnesses from nuclear power plants under construction across the nation. In keeping with its objectives, both the GAP Whistle-



blower Review Panel and the Citizens Clinic Review Board have directed staff to pursue aggressively the complaints and problems that nuclear workers bring forward.

GAP is not an "anti-nuclear" organization. Its objectives within the nuclear industry are the elimination of the government's misconduct and inaction, the uncovering of facts that warrant closer scrutiny or regulatory action by the Nuclear Regulatory Commission (NRC), and monitoring of how the NRC deals with significant information provided by nuclear "whistleblowers". This Clinic assumes that nuclear-related issues are critically important to the public safety, and acts upon evidence that the NRC is doing an inadequate job regulating the nuclear industry that government created. Nuclear whistleblowers, the central figures in our approach to nuclear-related work, are the vital components in the struggle for safe energy and making the public aware of dangerous or questionable conditions.

### III. CASE STUDIES OF THE QUALITY ASSURANCE BREAKDOWN IN NRC INVESTIGATIONS

#### A. Zimmer

Our work began over three years ago when Thomas Applegate, an undercover detective who was fired from the Zimmer nuclear power plant after uncovering severe safety problems and rampant criminal activities, brought his evidence to GAP. GAP launched its own extensive investigation. Eventually, GAP's investigation led to two NRC probes -- an internal investigation and a renewed probe of the detective-whistleblower's original allegations.

The results of both investigations, released in November 1981, substantiated GAP's accusations. The NRC internal investigation revealed that the NRC's original effort failed to meet minimum government investigative standards. The probe of the fired employee's actual allegations led to a record \$200,000 fine, based on a finding of systematic quality assurance violations -- records had been doctored, mandatory inspections had been skipped and inspectors harassed.

But the NRC even failed to see the forest through the trees the second time around. Since November 1981, new whistleblowers from inside and outside the Commission revealed devastating new evidence about the plant and the NRC. The latest information demonstrates that the NRC investigations, as meticulous and comprehensive as they appeared, were meant to contain the scandal at the plant and shift the focus away from exposure of the most fundamental defects, hardware problems, and root causes. In the process, NRC avoided possible criminal prosecutions. Finally, in November 1982, after a sustained citizen campaign, the Commission recognized the scope of the problem and suspended safety-related construction.

Unfortunately, the Commission was quicker to shut down scheduled licensing hearings into the Zimmer QA breakdown than it was to shut down the plant. The NRC still has not permitted the hearings. As a result, the public still has no institutional opportunity to check whether the Commission has succeeded the third time around in avoiding a coverup. On June 3, 1983 GAP filed a renewed motion to reopen the licensing hearings, on behalf of the Miami Valley Power Project.

B. The Kent Case

Following the GAP staff work at Zimmer we received a request to pursue worker allegations of major problems at the Midland nuclear power plant in Midland, Michigan. On June 29, 1982 our preliminary investigation resulted in filing six affidavits with the Nuclear Regulatory Commission. One of these affidavits was from Mr. E. Earl Kent, a former senior welding engineer employed by the Bechtel Corporation, the main contractor of the Midland facility. His affidavit detailed serious welding defects at the Midland facility, and referenced similar problems at two other nuclear facilities that he worked on -- Palisades and San Onofre.

After submitting his allegations to the Nuclear Regulatory Commission at the end of June, Mr. Kent prepared his evidence and documentation for the anticipated visit by NPC investigators. Unfortunately the investigators never arrived. In mid-August, at Mr. Kent's own expense, he went to the regional NRC office to talk to the government officials charged with investigating the detail and specificity of his claims about the problems at Midland. Further, he wanted to clarify that the NRC was aware of his knowledge about serious hardware problems at the two other sites. Mr. Kent was seriously disappointed in his reception. He sensed correctly that nothing would be done.

Following the mid-August visit, GAP wrote a letter to Mr. James Keppler, Regional Director, emphasizing our concerns about Mr. Kent's visit. In the three months following the submission of Mr. Kent's claims -- serious construction flaws -- there remained no efforts on the part of the NRC. During this time Mr. Kent

and GAP worked to untangle the mystery of Bechtel's inadequate welding procedures.

Finally, upon his return to California, Mr. Kent attempted to independently pursue his concern about the San Onofre facilities. He contacted the utility, Southern California Edison (SCE), and also made direct contact with the Bechtel site Quality Control office in early and mid-September, 1982.

Then, after almost two years of working within the industry and regulatory system, Mr. Kent gave up on "the system" and agreed to go public for the first time by talking to a reporter from the Los Angeles Times. The reporter had learned of Mr. Kent's allegations from another source. On October 13, 14, and 15, 1982 there were numerous news stories about Mr. Kent's allegations at the three facilities.

After the press coverage, Mr. Kent was finally contacted by the Region V inspectors who had previously ignored, or remained ignorant, of his allegations. These NRC contacts came after Mr. Kent had again offered his assistance and information on serious welding flaws. Mr. Kent agreed to meet with the Region V inspectors.

Two days after the meeting NRC inspectors appeared at Mr. Kent's home and insisted that he sign a three page statement that they had prepared from their notes of the October 15 meeting. Mr. Kent reviewed the statement and made some changes. However, he wisely delayed signing the statement prior to review by his counsel.

On October 25, 1982 Mr. Kent was taken on a site tour of the San Onofre facility by Bechtel, SCE, and NRC personnel. During this tour he pointed out numerous construction problems, including



worker safety violations, and attempted to explain his technical welding allegations. He was not allowed the use of tools, accompaniment by a witness, or even the courtesy of a step ladder to point to specific flaws.

After our review of the statements, as well as receiving much more detailed information from Mr. Kent, we informed the NRC -- both Region III and Region V -- that Mr. Kent would be supplying an expanded and much more detailed affidavit of his allegations after he received and reviewed the NRC tapes of his interview. The NRC's commitment to provide the tapes immediately to Mr. Kent was a prerequisite to Mr. Kent's meeting with the NRC without his counsel present.

Then, on December 10, 1982 the Region V office, the Bechtel Corporation, and Southern California Edison held press conferences or issued press releases about the NRC report which debunked Mr. Kent's allegations, discredited him publicly, and denounced his concerns as unsubstantiated, untrue, or technically inaccurate.

It was a cheap shot.

Region V didn't bother to notify Mr. Kent prior to the public press conference, although both Bechtel and Southern California Edison had plenty of time to prepare for their own press releases issued the same day.

Region V didn't bother to provide a copy of the report to Mr. Kent or his counsel until 5 days after its public release. In fact, neither Mr. Kent nor GAP had received the interview tapes at the time of the press conference. The NRC did not even wait for Mr. Kent to sign an accurate version of his allegations and evidence, which the report supposedly had rebutted.



We were outraged at how Region V handled Mr. Kent's allegations. We announced that we would do an independent investigation of (1) the substantive allegations; and (2) Region V's inspection/investigation effort. We completed that effort last month.

#### Kent Analysis

Tomorrow we intend to file our independent investigative analysis of Region V's Kent inspection with the Commissioners.

In summary our independent investigation of the NRC's effort has determined that--

- (1) The inspection was seriously prejudiced by unverified and unsubstantiated attacks on Mr. Kent's integrity by another NRC inspector. As evidence to discredit Mr. Kent's allegations, the NRC used uncorroborated rumor; deliberate misrepresentations of another NRC inspection effort that, in fact, had never been conducted; and crude, irrelevant and unsubstantiated personal attacks on Kent's professional and educational background.
- (2) The inspection was curtailed at its inception to meet the utility licensing timetable for San Onofre Unit 3.
- (3) The inspection did not address the basic generic welding flaw alleged by Mr. Kent.
- (4) The inspectors either did not conduct, did not document or destroyed records of all of the interviews with Bechtel and utility executives, yet the alleged interviews were used to discredit or dismiss Mr. Kent's allegations.
- (5) The NRC either did not perform, did not document or destroyed records of any independent technical analysis of Mr. Kent's allegations -- instead, the NRC adopted without question Bechtel's technical evaluation of the safety consequences from its own misconduct.
- (6) The NRC either did not perform, did not document, or destroyed records of all inspection interviews with workers beyond Mr. Kent and two employees specifically referenced by him.
- (7) The NRC either did not conduct or did not document interviews, or destroyed records of information provided by individuals who substantiated Mr. Kent's specific or generic allegations.

- (8) A NRC regional investigator attempted to predetermine the results of another Region's inspection/investigation efforts prior to any inspection/investigative effort on the part of the other Region.
- (9) Regional inspection policies were directly contradictory to federal NRC inspection guidelines for a period of at least 18 months -- this practice compromised at a minimum one San Onofre inspection effort as documented in an internal Office of Inspector and Auditor investigation, the Narbut Report.
- (10) Top-level NRC administrators, including officials in the offices of Nuclear Reactor Regulation (NRR), Investigations (OI), and Inspection and Enforcement (IE) were all aware of the inadequate investigation/inspection effort undertaken by Region V.
- (11) Finally, the NRC failed to provide either the Washington, D.C. administrators or the public with the facts surrounding Mr. Kent's refusal to sign an NRC-prepared statement. Instead, Region V officials used the unsigned statement as fact, and failed to explain that Kent's refusal to sign was based on the fact his counsel advised him not to because the statement was inaccurate, incomplete and seriously understated Mr. Kent's concerns.

On balance, we believe that just as at Zimmer three years ago with the Applegate allegations, the NRC response to Mr. Kent failed to meet minimum government investigative standards.

We will ask the Commissioners to -- (1) initiate a legitimate inspection and technical analysis of Mr. Kent's welding defect concerns, and (2) seek an investigation by another government agency such as the Naval Intelligence Service into the outrageous handling of Mr. Kent's allegations, or (3) request a GAO investigation into Region V's handling of this inspection and the deliberate or inadvertant violation of NRC inspection procedures and policies throughout the Region.

We have also forwarded this information to the Department of Justice.

C. Palo Verde

In May 1982, Region V and the Office of Investigations began an investigation into allegations of faulty electrical work on the shutdown systems and falsification of quality assurance records at the Palo Verde plants. At the time, the NRC staff promised Robert Gunderson, the electrician who raised these allegations, that his identity would be protected and that there would be a through investigation. Mr. Gunderson, who last February revealed his identity in order to criticize the conduct of the NRC's investigation, believes he was subsequently blackballed from the nuclear industry. Further, over a year later the investigation report is not complete.

The investigators did not go to the site to examine Mr. Gunderson's allegations until two months after interviewing him and another QA manager who made similar charges. In September 1982, before the issuance of any report, the Arizona Public Service Company which owns Palo Verde announced in its newsletter that it had received a "clean bill of health" from the NRC on these allegations.

Mr. Gunderson was flown back to the site in October 1982 for an exit interview. The investigators told him at the time that all problems he described had been fixed prior to the NRC inspection or that the specifications for the job had changed so the discrepancies were no longer violations of the specifications. Mr. Gunderson, expecting this response from the NRC, then detailed other problems which he had deliberately omitted from his first affidavit. None of these deficiencies, of course, had been repaired.

When we inquired about the status of the investigation and how the utility knew the outcome of the investigation, the OI investigator hung up the telephone on us. We complained to his superior in the Office of Investigations in February 1983 about the manner in which the investigation was being conducted. We heard no response until May 1983, when we were told that OI had misplaced our letter for three months and believed the matter was more appropriately handled in OIA.

The OI Report has yet to be issued, although a special inspection report issued on April 22, 1983 indicates Mr. Gunderson's charge of falsified records was corroborated. Neither OI nor OIA has provided any explanation for the long delay in the investigation or the apparent disclosure to the utility of Mr. Gunderson's allegations prior to NRC inspection.

D. Catawba

On April 21, 1983 GAP requested an Office of Investigation (OI) probe into the Catawba facility under construction in South Carolina by Duke Power Corporation. We had received significant evidence of a massive utility coverup of welding procedure violations, records falsification and retaliation. This information was brought to the NRC's attention by over two dozen welding quality control inspectors.

Retaliation and records falsification are potential criminal violations; but the NRC region permitted the utility to dispose of the issue through a report by a consulting firm on whose board the utility president sat. The ensuing report devoted only three pages out of 450 to the allegations of deliberate violations such



as illegal reprisals. The regional office was satisfied that there aren't any problems. The whistleblowers feel they were left to twist slowly in the wind, and are still twisting.

Clearly this would have been an opportunity for the new Office of Investigations to demonstrate its own independence and to compensate for the NRC's previous abdication. Unfortunately, OI passed the buck again. It delegated the case to the Office of Inspector and Auditor. At best, OIA will investigate the NRC's own oversight, leaving the charges of reprisal still effectively unanswered.

As a result, after two years there have been three utility task forces, one Regional I & E review and an OI referral to OIA. But the NRC's investigative program still has failed to seriously address all the issues initially raised at Catawba.

#### IV. ORGANIZATIONAL CAUSES FOR THE BREAKDOWN

The case studies demonstrate repetitive violations in the quality of NRC investigations. At nuclear plants, NRC inspectors have concluded that repetitive violations indicate an organizational breakdown in the quality assurance program. In our opinion, that same conclusion applies to the NRC. We have identified four causes for the breakdown -- 1) programmatic defects; 2) failure to honor the merit system for personnel decisions; 3) absence of legitimate structure for checks and balances on agency performance, evidenced by the absence of an independent Inspector General; and 4) failure of leadership by the Commissioners. The net effect has been to cripple the NRC's investigative program generally and to effectively abdicate the criminal enforcement of provisions in the Atomic Energy Act.



A. Programmatic Defects

In some instances bureaucratic roadblocks have obstructed investigators' efforts. For instance, in practice the various NRC factfinding bureaus -- OI, OIA and the Office of Inspection and Enforcement (IE) -- sometimes each wait for the other to complete its individual segments before taking a turn. Successive instead of integrated cases lead to delays, as witnesses leave, forget key evidentiary details or simply become tired of the parade of NRC representatives. The nuclear industry investigators and attorneys do not wait for IE to finish its inspections before speaking with witnesses. We don't understand why OI investigations are put on hold, sometimes until potential criminal cases become stale and defenses are perfected.

Another significant problem is the prohibition on conclusions or recommendations in OI reports. As a result, the factfinder who directly observes the witnesses and gathers the evidence must defer judgment about such key issues as criminal intent to those without firsthand knowledge -- Mr. James Cummings, OIA Director, or the Commissioners. While the ultimate policy decisions of course must be made by agency leadership, GAP believes that the NRC's investigators should be permitted to draw conclusions about what they have learned. Currently there is a void in the NRC's capacity to detect intentional violations of the Atomic Energy Act.

One of the most obvious handicaps for OI is its meager staff of approximately 25 investigators. Given the state of utility contempt for legal QA requirements, this is a hopelessly inadequate force to uncover the causes of illegalities throughout the industry.

B. Buddy System Intrusions Into the Civil Service

One letter that GAP received recently alleged serious personnel policy abuses -- including predetermined personnel selections for those who don't make waves with the industry by a particular regional administrator. The letter contained documents that evidence violations of the Civil Service Reform Act. The results of these merit systems violations can be ominous for the public forced to put its trust in the NRC. To quote the NRC source who communicated with GAP --

...incapable stooges are being promoted to lead competent engineers into doing an inadequate job. One incapable person after being installed at the helm, stands in a position to help select other incompetents and then the chain continues which ultimately spells disaster.

These concerns echo the frustration of excellent investigators who have left the agency in protest. They have informed GAP that many conscientious NRC investigators must make a career decision after around two years -- whether to stop fighting for principles and results, or whether to leave. That is not to deny that dedicated personnel persist, or that outstanding new investigators are recruited by the NRC's public service mission. But we believe talent is wasted unnecessarily due to merit system violations.

C. Lack of an Independent Inspector General

The repetitive breakdowns in the quality of NRC investigations suggest a breakdown in the agency's system of checks and balances. We have found that to be the case at the Commission. The Office of Inspector and Auditor does not have legitimacy as the watchdog on the quality of NRC's performance. To illustrate the sorry state of OIA's credibility, the whistleblower who disclosed

allegations of merit system violations closed with a specific request: "Please, we do not want you to send Mr. Cummings or his staff to do this [Investigation]. They do a good paint cover up job when it comes to covering up for management deficiencies."

Our assessment is that OIA under Mr. Cummings leadership has sacrificed its role as an agent of accountability. On occasion it has been reduced to smoothing over potentially embarrassing scandals through "counseling", to make sure that the problem is "resolved". Even worse, OIA has become a de facto graveyard for charges of criminal Atomic Energy Act violations.

As with the breakdown in the NRC investigative program generally, the OIA's record can be illustrated through case studies and repeat violations, and explained through poor leadership and structural defects.

1. Case Studies of OIA Investigations

a. The Narbut Report

Our concerns about Region V's handling of the Kent investigation led us to inquire into the regional inspection policies. We discovered that a July 1982 OIA investigation had determined that, in fact, Region V had a policy of sharing inspection information such as draft reports with licensees that was in direct violation of NRC investigation/inspection policies. We learned that the OIA investigators had effectively gathered all the facts, but the OIA leadership failed to endorse or even include the investigative conclusions in the final report.

b. Zimmer

The Zimmer case illustrates the myriad of OIA deficiencies. In the end, the investigative staff was able to produce a significant report. But they

produced it in spite of OIA management, which severely compromised the effort through -- 1) even more significant censorship; 2) stopping the investigators at the key point in their probe into the causes of the QA breakdown; and 3) denying the existence of agency records requested under the Freedom of Information Act (FOIA) which reveal the extent of the coverup.

Our June 3, 1983 motion to reopen Zimmer licensing proceedings summarizes OIA's -- and Mr. Cumming's -- efforts to avoid public disclosure of the NRC's role in the failure to see the obvious at Zimmer.

The rationalizations for the coverup are in the best tradition of Catch 22. To illustrate, throughout most of the Zimmer OIA investigations Mr. Cummings effectively defined the mission as determining the root cause of the NRC's failure, rather than a witchhunt against individuals. This effort produced evidence that both Region III and top utility executives may have been aware that the QA program was out of control as far back as 1977, and deliberately let the violations continue. At the last minute, Mr. Cummings deleted this major section of the report, over the investigators' objections, with the excuse that QA's mission was merely to look for individual personnel violations. Mr. Cummings cut the heart out of the OIA report around the same time that he participated in a decision to stop his investigators as they were closing in on identification of the decision makers in the QA violations, for possible presentation to a grand jury.

Last month Judge Thomas Hogan issued an order in Applegate v. NRC No. 82-1829 (D.D.C., May 24, 1983) with significant conclusions about OIA's lack of accountability to the public under the FOIA. The Court found that--



evidence was uncovered in the record suggesting that despite the existence of a carefully drafted official NRC FOIA policies and procedures, the personnel assigned to implement FOIA in OIA executed those rules in a manner designed to thwart the release of responsive materials....It is disturbing to this Court that unbeknownst to agency management, an office in the NRC was able to design a filing and oral search system which could frustrate the clear and express purposes of FOIA. The assertion of an exemption is one thing, avoidance borders on dishonesty....A lawsuit ought not to be required to ensure the adequacy of a search.

Mr. Cummings has publicly stated that the FOIA policies in the Zimmer case reflected his decisions, that he did nothing wrong and would make the same decisions again. In light of the Court's finding, this type of leadership is not reassuring. It has been a barrier to exposing the truth.

c. LaSalle

At LaSalle, Mr. Cummings could perhaps explain better than we why he found nothing when he investigated internal allegations of "NRC white wash" by members of Region III management. His own memorandum of July 15, 1982 to William Dircks (enclosed as Exhibit 3) illustrates how OIA has substituted counseling, and Mr. Cummings' subjective reassurance, for accountability:

On June 30, 1982, Jim Keppler called me relative to internal comments being made in Region III to the effect that there was so much emphasis/pressure to complete the licensing process of the LaSalle plant that certain allegations relative to LaSalle, and currently under investigation by Region III, were not being properly investigated, i.e., the investigation would result in a "white wash."

Principle examples given by Maura and Reimann in this regard was the fact that Reimann had been pulled off the investigation just at the point where he was discovering more evidence/records to support the falsification charge and further that proper safeguards were not



taken to impound or protect the questionable records but rather the records were left in the custody of the licensee;

The Regional Administrator was in general agreement that the criticism levied by Maura and Reimann was valid, however, overall office circumstances have dictated both the delay of investigative matters and in some instances the assignment of inspectors to investigatory matters;

The Regional Administrator has directed that the falsification allegations regarding torque wrenches and gauges be fully and completely investigated irrespective of real and/or imagined pressure regarding the licensing of LaSalle.

In view of the above no further action is being taken by this office.

This approach may smooth over potential scandals but it is no substitute for effective enforcement as the sorry history of La Salle demonstrates.

## 2. Causes of the OIA Failure

Like the QA breakdown at OI, the violations at OIA are repetitive. The same type of misconduct is being discussed today that was reported two years ago in a General Accounting Office report, "Improvements Needed in the Nuclear Regulatory Commission's Office of Inspector and Auditor" (July 9, 1981) EMD 81-72. While Mr. Cummings' leadership is an obvious target, we believe that GAO's findings help to explain the continuing breakdown:

The independence of the Office of Inspector and Auditor needs to be strengthened. In GAO's view, this only may be possible if NRC accepts and implements the recommendations contained in this report. GAO also suggests that Congress consider establishing a statutory Inspector General office at the NRC. Such an office could help ensure that the Congress and the Commissioners receive objective information on problems within the Commission and enhance public trust in the regulation of commercial nuclear power.

This lack of organizational independence would violate Criterion I of 10 CFR 50, Appendix B if it existed at a nuclear power plant. At the NRC it helps explain why OIA was stopped in its tracks and hit with bureaucratic retaliation when it took tentative steps in late 1981 to pursue agency accountability. When OIA proposed an audit of the NRC's QA oversight, Chairman Palladino quashed the initiative and allowed the staff that would have been the subject of the audit to exonerate itself. This action undercut the Chairman's warning to the Atomic Industrial Forum that the NRC will hold the industry to higher quality assurance standards.

Similarly, after OIA's strong findings on Zimmer, the NRC's "watchdog" was put on a leash and not permitted to conduct further oversight of NRC investigations for months.

The net result is that an independent Inspector General is necessary to establish a structure that even permits accountability. Fresh leadership is necessary to implement a system of legitimate checks and balances, if one becomes available.

#### D. Failure of Leadership by the Commissioners

As seen above, the Commissioners must share the responsibility for the investigative breakdown at NRC. Amazingly, this spring the Commissioners took the industry bait and established an advisory committee that may further weaken the investigative program. The "Advisory Committee for Review of the Office of Investigation Policy and Rights of Licensee Employees Under Investigation" was established to consider such issues as whether NRC

investigators should be required to inform witnesses of their Miranda right to counsel. Another topic was whether the company should provide the lawyer. We believe that this project is illegal under the Federal Advisory Committee Act (Pub.L. 92-963), as well as utterly frivolous.

Initially the committee is illegal, because the NRC justified its existence by subtracting a key phrase from the Act. In a January 10, 1983 letter, Chairman Palladino explained that a committee is appropriate in part because "we are not aware of any other agency advisory committee which could fulfill this purpose." That is not the relevant test under the statute. Section 5(a) of the Advisory Committee Act specifies that proposed committees should be screened to determine "whether the functions...are being performed by one or more agencies or by an advisory committee already in existence." (emphasis added). As the NRC's Advisory Committee hearings revealed, nearly every other agency in the Executive Branch already has a policy on Miranda-style warnings in non-custodial interrogations. Various representatives shared their experience with the NRC. As one bewildered witness at the May 26 hearings from the Pentagon IG noted about the whole proposition, "...I just don't understand the purpose of it."

The NRC advisory committee also is illegal because it does not reflect the requirement in Section 15(b)(2) of the Act for balanced membership "in terms of the points of view represented...." There is not even token membership on this committee for public interest and/or citizens groups, or even those who have fought for the rights of nuclear industry employees. Just as industry proposed