

**RESPONSE SHEET**

**TO:** Annette Vietti-Cook, Secretary  
**FROM:** Chairman Klein  
**SUBJECT:** COMSECY-08-0009 – REPORT OF THE SENIOR EXECUTIVE REVIEW PANEL – PEACH BOTTOM LESSONS LEARNED

Approved XX Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

**COMMENTS:** Below XX Attached \_\_\_\_\_ None \_\_\_\_\_

I believe that the "Report of the Senior Executive Review Panel (SERP) – Peach Bottom Lessons Learned" has laid out important and appropriate actions to implement the recommendations of the Peach Bottom Lessons Learned Team (PBLIRT) in the three main areas that were identified for improvement: A. Process for Forwarding Allegations to a Licensee, Evaluating Licensee Responses, and Documenting the NRC's Evaluation of the Licensee Response; B. Communications/Interactions with Concerned Individual(s); and C. Inspection Process for Detecting Inattentiveness and Inspector Awareness of Allegations. I endorse the EDO's direction to the staff to implement both the PBLIRT's recommendations for agency action, and the SERP's additional findings.

I also appreciate the thoughtful comments and suggestions from Commissioner Lyons in the areas of referral to licensees, considering additional surveillance methods for inattentive security officers, additional review for allegations relating to the processing or outcomes of an earlier allegation, and further reporting to the Commission by the SERP. I endorse these proposals.

  
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**SIGNATURE**

3/27/08  
\_\_\_\_\_  
**DATE**

Entered on "STARS" Yes  No \_\_\_\_\_

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER JACZKO  
SUBJECT: COMSECY-08-0009 – REPORT OF THE SENIOR  
EXECUTIVE REVIEW PANEL – PEACH BOTTOM  
LESSONS LEARNED

Approved  X  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  X  None \_\_\_\_\_

  
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SIGNATURE

4/22/08   
\_\_\_\_\_  
DATE

Entered on "STARS" Yes  X  No \_\_\_\_\_

**Commissioner Jaczko's Comments on COMSECY-08-0009**  
**Report of the Senior Executive Review Panel – Peach Bottom Lessons Learned**

I approve, in large part, of the recommendations of the Senior Executive Review Panel (SERP) regarding the lessons learned at Peach Bottom. I do not, however, believe that the review of the allegation program should end there. I believe there are some additional and necessary steps the agency should take outside of those currently being proposed.

The agency began what has developed into this SERP initiative following the events at Peach Bottom where we initially failed to substantiate allegations of inattentive guards and failed to take action until we received documentary proof of the allegations. Because our inspectors can not be in all places at all times, we need the dedicated employees who work at licensee facilities to be additional eyes and ears, and to feel comfortable that if they report issues, they will be handled professionally and appropriately. Thus, our inability to substantiate these allegations on our own understandably raised questions among a variety of our stakeholders, and internally in the agency, as well. Although there has been a concern that the strong reaction to this incident would unfairly condemn an otherwise effective program, I do not believe that to be the case. If anything, I believe the strong reaction to this incident is a recognition of just how important and critical the allegation program is to the NRC's mission.

There has also been a concern that the incident at Peach Bottom is too unique for a review of the issues surrounding it to have broad applicability. I am somewhat sympathetic to this concern. The most troubling thing about what allegedly occurred at Peach Bottom is that it appears that the guards were colluding in order to ensure that their sleeping went undetected. There are probably no changes to our allegation program that would remain foolproof in the face of such deliberate actions to evade detection. Section C of the SERP report does a good job capturing some actions outside of the allegation process that might prove helpful in preventing future incidents. Changes in our inspections, in our expectations for the behavioral observation program, and/or changes in our safety culture initiatives are, perhaps, more likely to be successful in stopping this type of behavior than changes in our allegation program. But I believe that it is often these challenging cases – unique and distinct though they may be – that provide us with the opportunity to take a hard look at a program that might not otherwise rise to this level of attention and further improve it.

A review of the allegation program, however, should be just that – a review of the allegation program. I do believe this self-assessment is productive and necessary; but I do not believe it should be the foundation upon which the entire structure of potential subsequent allegation changes is to be based. Broader changes the Commission decides are necessary should be informed by a broader view and one that recognizes that while procedure is important, how a procedure is implemented is critical to its success.

**Therefore, I believe the Office of Enforcement's (OE) ongoing efforts with the agency's allegation coordinators (in headquarters and the regions) should be the primary driver for the efforts to improve the allegations program. The allegation coordinators are those closest to the program and the best able to ensure that changes in one area do not result in unintended consequences in another. OE should continue the current efforts to assess the allegation program by having the allegation**

coordinators compare notes of best practices employed in implementing the program across the agency. After engaging in a dialogue with the agency's stakeholders, a report should be prepared on this effort outlining the changes determined to be necessary to the program and guidance to make improvements to the process and to ensure consistent implementation of those improvements. This report should also include any recommendations that come from the ongoing review by the Inspector General on this issue. The final staff paper on this initiative should be a "red band" paper, for discussion at a Commission meeting where the Commissioners can then engage in an informed dialogue on the many and vast policy issues embedded in this effort.

As part of this overall review effort, OE should consider some fundamental changes to the current allegation program. **First, the staff should consider changing the agency's presumption that we request information about the allegation from licensees unless certain circumstances are present.** Instead, the presumption should be that the agency will seek to obtain the information itself unless certain circumstances are present that would dictate the need to request it from the licensee. The policy as written sends the message that we generally send the allegations on to the licensee, when in fact in a majority of cases, the opposite is true. According to recent staff statistics, only 35% to 40% of allegations are currently forwarded to the licensee for information. Thus, it appears that changing the presumption would be a more accurate reflection of current practice. The staff recently changed the allegation terminology from "referral" to "request for information" not because it changed agency practice, but because it more transparently captured the actual practice. Similarly, changing the default to have the agency collect the information might not actually change any current practice, but could more accurately depict how the agency views and handles these allegations.

In addition to addressing this presumption, the staff should also consult with the Office of Investigations (OI) and consider to what degree additional guidance can be added to the policy and/or guidance on OI assistance outside of the normal investigative process. It appears that when the staff determines the NRC should independently look into an allegation, it generally chooses between sending the allegation to OI for an investigation or proceeding with an inspection. But the Office of Investigations also aids the staff in a process less formal than investigations, known as an "assist". This provides the agency the benefit of OI's skilled expertise in obtaining information in cases where the facts on hand at the time do not yet call for a formal investigation. **Therefore, as part of this comprehensive review of allegations, OI and OE should consult on how best to determine when OI's valuable expertise should be utilized by conducting "assists".**

**Additionally, OE's efforts in reviewing the allegation program should also include a detailed review of how the agency can best stay involved in those cases where it is determined that the more appropriate path forward is to request information from the licensee.** More active NRC oversight of a licensee as it develops its responses to the agency will both highlight the seriousness with which the agency reviews allegations and provide a more efficient process. I will discuss this more in response to recommendations A3, A4 and A5 below.

An additional area that I believe the OE staff should review and offer recommendations in is the area of early Alternative Dispute Resolution (ADR). According to current policy,

in a discrimination allegation case, if a licensee and the alleged enter early ADR before the Office of Investigations begins its investigation, and successfully reach a resolution, the agency will not then take enforcement action. Although, legally, the policy statement does not and can not eliminate the Commission's ability to proceed with an investigation or enforcement in any matter it chooses to, the policy neglects to capture that clearly for our stakeholders. Moreover, we have seen recent complications arise in implementing this early ADR arrangement when the early ADR is conducted through a program other than the NRC's. **Therefore, the OE staff should also review and offer recommendations on changes to the policy and/or guidance in this area as part of their comprehensive review efforts.**

**The recommendations of the Senior Executive Review Panel regarding Region I's findings should also be incorporated into this overall effort.** I believe most of these issues will be captured by the Office of Enforcement's review of the allegation program's best practices across the agency. In fact, several of the recommendations from the regional self-assessment are already routine practice in other regions.

The first recommendation (A1), and a later recommendation (B1) ask the staff to clarify when the agency will contact a concerned individual if the individual has requested not to be contacted. I agree that the agency policy on this issue must be transparently explained and consistently implemented throughout the agency. I also understand that there may be limited instances where contacting an individual despite their request otherwise may be necessary. But staff currently has in place a detailed process dictating how to handle such requests and recognizing the distinction between being anonymous and being treated confidentially. The aim of this process is to ensure that, absent specific circumstances such as an overriding public health and safety concern, the identity of the alleged is protected. Many times, once the alleged is informed of the discreet manner in which the NRC will dialogue with them and the importance of the assistance they can provide as the agency seeks to resolve their issue, they then agree to have continued communication with the agency. If, after this explanation the alleged continues to insist upon no contact, the staff respects those wishes and I believe they should continue to do so. Given my understanding of the current practice, I believe the agency as a whole has been effectively dealing with the delicate matter of attempting to maintain communication with an alleged where possible. **Thus, to the extent that this recommendation is aimed at simply transparently capturing and consistently implementing the agency's current practice regarding this issue, I support it. I do not, however, support any changes that would diminish our current practice of respecting an alleged's desire not to be contacted.**

Since the Peach Bottom incident, I am concerned that our message about our current practice has not been effectively portrayed. Instead, I believe we may, inadvertently, be sending the message that there is no such thing as the ability to remain anonymous after filing an allegation. Insisting that there will be contact with allegeders without more context does not adequately portray the expansive measures the agency takes to protect the allegeder's identity as the agency reviews their allegation. And such talk neglects to capture the actual roles and responsibilities of the involved parties. After all, allegeders are performing a public service above and beyond what is required of them simply by coming forward with the allegation. The NRC has the mandate to protect public health and safety - not the allegeder. Thus, once the allegeder has indicated that they are no longer comfortable with continued communication, absent specific circumstances that require otherwise, we should respect the allegeder's rights and proceed with our obligation to

resolve the concern. I believe our allegations' staff is generally very mindful of the fact that this is a program where people's expectations and perceptions are central to its success. **Therefore, I believe we must stop discussing our intent to contact people regardless of their request otherwise and start discussing the benefit of open communication, as well as the extreme sensitivity that is placed on protecting alleged as the agency proceeds to resolve a concern.**

Regarding the second recommendation (A2), there appears to be little harm in ensuring that everyone involved with the allegation understands the history and the trends associated with the subject licensee. The difficulty with this recommendation will be ensuring that having this information and making it part of the decision-making process does not dictate a particular path forward. For example, there may be occasional benefit to periodically inspecting allegations even at sites that have no negative history or trends. **This recommendation should be clarified to explain that the information is not to be used to foreclose an option, but only to make a more informed decision.**

The next three recommendations are all aimed at improving the information provided by the licensee at various stages of the process. First, the recommendations try to ensure that the licensee understands the scope of the allegation and the agency's expectations for its response before the licensee begins gathering the information (recommendation A4). The recommendations also seek to ensure the NRC is provided with enough detailed information about the licensee's actions in reviewing the allegation that the NRC can make an informed decision about what to do with that information (recommendations A3 & A5). And a later recommendation would better capture staff's assessment of the quality of the licensee's response in subsequent documentation. (B2).

These are all reasonable recommendations, but they appear to be limited to lessons learned in hindsight. I believe we should be seeking to improve the allegation process in a way that would help us better address not just the next Peach Bottom incident, but the many instances where we rely upon licensees to provide us information. These current recommendations apply to the time before we send the request for information and the time after the agency receives the information, but they neglect to cover the time during which the licensee is collecting the information. **I believe we must focus on a more effective strategy of strengthening the guidance and procedures in a way that ensures the agency is providing the appropriate oversight to the licensee during the time in which the licensee is developing its response.** We must never lose sight of the fact that the responsibility for resolving the allegation belongs to the NRC. In the 35% to 40% of cases where we need the licensee to collect some information in order to help us reach a decision, we should not lose control of the allegation and the appropriate resolution of it. It would be much more efficient to oversee a licensee as it develops its response, allowing us to know in advance the type of information it is collecting, and allowing us to adjust the course in real time, if need be, to ensure the efforts are helpful to us in resolving the allegation. **Therefore, while I support these recommendations, I believe they should be expanded to include an increased oversight role by the agency as the licensee collects the requested information.**

The recommendations in section C are the ones that are most appropriately based upon this specific Peach Bottom incident. Although some of the specifics touch upon the allegation process, the recommendations are more directly aimed at improving the inspection procedures. **I believe they all have merit and look forward to feedback on their successive implementation. These specific directions do not need to**

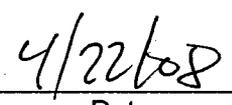
**await a broader agency review of the allegation program, but are the types of changes that make sense to implement immediately.**

Regarding recommendations C2 and C3, I am troubled by the finding that allegation information is not always and routinely shared with resident inspectors. Our inspectors are in many ways the most important part of the agency's oversight team, and we need to make it simpler – not harder – for them to do their jobs. **Improving the Allegation Management System and modifying the allegation process to ensure inspectors are kept informed of allegations should be a priority action item and staff should report to the Commission when this is finally addressed.**

I recognize that this review of the allegation program will take time, outreach and resources. I am fully committed to supporting the Office of Enforcement's efforts and helping the agency improve what is already a highly successful program coordinated by dedicated and energetic staff. The unfortunate outcome of the allegation process at Peach Bottom does not mean the entire allegation process is faulty, but it does give us this chance to make a good program even better, and I look forward to staff's efforts in this area.

**Finally, I believe this incident at Peach Bottom has also highlighted the need for the agency to conduct a review of the regulations and guidance surrounding the behavioral observation program required of our licensees.** The agency's first review of the Peach Bottom incident by an Augmented Inspection Team concluded with a white finding because of shortcomings identified in the facility's behavioral observation program. The Office of Inspector General's Report (OIG-08-A-07), also found some improvements needed in the guidance and the implementation of licensees' behavioral observation programs in their broad audit of licensee security programs released in March, 2008. While improving the allegations program is a positive result of this incident, improving the behavioral observation program is a necessary result of this incident. **Therefore, staff should conduct a thorough review of the regulations, guidance and implementation of the behavioral observation program, recommending areas in which the staff believes changes will effectively improve this other mission-critical program.** I look forward to reviewing the staff's findings and recommendations to this program, as well.

  
Gregory B. Jaczko

  
Date

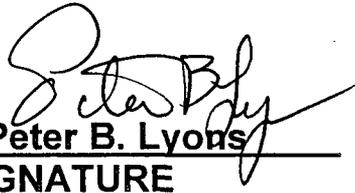
RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER LYONS  
SUBJECT: COMSECY-08-0009 – REPORT OF THE SENIOR EXECUTIVE REVIEW PANEL – PEACH BOTTOM LESSONS LEARNED

Approved  Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached  None \_\_\_\_\_

  
Peter B. Lyons  
SIGNATURE

3/25/08  
DATE

Entered on "STARS" Yes  No \_\_\_\_\_

## Commissioner Lyons' Comments on COMSECY-08-0009

I converted this "Report of the Senior Executive Review Panel (SERP) – Peach Bottom Lessons Learned" (NUREG-1904) to a Commission Action Memorandum to enable the Commission to take a formal position on the important issues covered in this report. The SERP was tasked to determine how best to implement the recommendations made by the Peach Bottom Lessons Learned Team (PBLLT) and to determine whether the PBLLT's recommendations should be expanded to cover additional areas.

The PBLLT focused its lessons learned on three main areas that require further follow up and improvement: forwarding allegations and evaluating licensee responses; communications/interactions with concerned individuals; and the NRC's inspection process for detecting inattentiveness. The SERP report focuses on the same areas and provides findings and actions to address the PBLLT's recommendations, and also recommends additional actions to improve the NRC practices for responding to allegations in general. I strongly endorse these initiatives.

"Referrals" to licensees is an area that came under intense scrutiny during the agency's review of its allegation and inspection processes, and I believe with good cause. I understand that the staff is changing the term "referral" to "request for information" to more appropriately reflect this action. This revision is notable because the language we use provides a context which, I am convinced, impacts how we use our processes as well as how they are perceived by the public. As the SERP report points out, the bases for such requests to licensees must be sound and well-documented. When in doubt, it is far more reasonable to err on the side of not making such requests. Of greater concern to me is the SERP's finding that the NRC did not challenge the scope of the licensee's evaluation in its review. We should not lose sight of the fact that the NRC is responsible for independently verifying the adequacy of a licensee's actions and responses, and this verification is critical to making such requests effective. In that vein, the adequacy of a licensee's previous responses to allegations should always be factored into any determination whether the Agency should make additional requests to that licensee. This guidance is included in MD 8.8 and I believe it should be specifically addressed in the Allegation Management System database as well. In conjunction with the other criteria in MD 8.8 that should be considered, this information should carry a great deal of weight when deciding the appropriate course of action for the Agency to take.

Another recommendation suggests additional surveillance methods for inattentiveness in response to Bulletin 2007-001, "Security Officer Inattentiveness." The actions to implement this recommendation include "follow-up with the Industry on the actions being taken to address security officer inattentiveness to ensure that the issue is being properly addressed." I believe that industry, working with its guard forces, must reexamine any notion that security at NRC-licensed sites is performed by groups that are not fully integrated into site operations. In its engagements with the licensee community on this matter, the staff should stress the expectation that the guard forces should be full members of the team of professionals required at each site. Furthermore, properly addressing the issues of inattentiveness, or worse, collusion, will require consideration of why such incidents occur. Part of the solution to these issues, I believe, will require moving away from zero tolerance for any inattentiveness and toward treating the root causes of inattention with the Behavior Observation and Corrective Action Programs. I cannot stress strongly enough how important it is to include security officers in this process, and the staff should emphasize this approach to our licensees.

The staff should consider revising agency guidance and procedures to add a senior review team that would review the conclusions and recommendations made as a result of an initial allegation when subsequent allegations are submitted or questions come up (either internally or externally) regarding the processes or outcomes of the initial allegation. Such a team would provide additional independence to the allegation review process and make it more transparent to the public.

I respectfully recommend that my fellow Commissioners endorse the EDO's direction to the staff to develop appropriate guidance and actions in response to the SERP report's recommendations, as augmented by my additional comments. Finally, I note that activities are underway in the NRC Offices of Inspector General and Investigations that may provide information for future consideration. The SERP should reassemble after these activities have been completed to determine if there are additional lessons learned and whether additional action is needed, and provide this information to the Commission for its consideration.

  
Peter B. Lyons      Date 3/25/08

RESPONSE SHEET

TO: Annette Vietti-Cook, Secretary  
FROM: COMMISSIONER SVINICKI  
SUBJECT: COMSECY-08-0009 – REPORT OF THE SENIOR  
EXECUTIVE REVIEW PANEL – PEACH BOTTOM  
LESSONS LEARNED

Approved X Disapproved \_\_\_\_\_ Abstain \_\_\_\_\_

Not Participating \_\_\_\_\_

COMMENTS: Below \_\_\_\_\_ Attached X None \_\_\_\_\_

  
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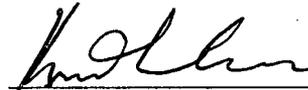
Entered on "STARS" Yes  No \_\_\_\_\_

**Commissioner Svinicki's Comments on COMSECY-08-0009**

I approve the recommendations of the Senior Executive Review Panel (SERP) regarding the lessons learned at Peach Bottom.

I endorse the comments of Commissioner Lyons regarding the "referrals" process, including the recommended changes in approach and in how this process is communicated; internally, with licensees, to the public, and when dealing with concerned individuals. I also support his suggestions for further reporting to the Commission by the SERP.

I echo the cautions expressed by Commissioner Jaczko regarding venturing into any territory which would diminish public confidence that an alleged's identity will be protected (including an alleged's anonymity), and that requests not to be contacted will be honored. These principles are the cornerstone of any effective allegations process.



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Kristine L. Svinicki

4/24/08