

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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PROTECTING ALLEGERS AGAINST RETALIATION

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NUCLEAR REGULATORY COMMISSION

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**BRIEFING ON PROPOSED CHANGES TO NRC'S
PROGRAM FOR
PROTECTING ALLEGERS AGAINST RETALIATION**

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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Tuesday, April 26, 1994

The Commission met in open session,
pursuant to notice, at 9:30 a.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

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STAFF SEATED AT THE COMMISSION TABLE:

JOHN HOYLE, Assistant Secretary

KAREN CYR, Office of the General Counsel

JAMES TAYLOR, Executive Director for Operations

JAMES LIEBERMAN, Director, Office of Enforcement

LABAN COBLENTZ, Senior Inspector, Region IV

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

9:30 a.m.

CHAIRMAN SELIN: Good morning, ladies and gentlemen.

First I would like to -- I guess I'm apologizing for people who aren't here who would have been here had the meeting taken place tomorrow. But unfortunately we had to move this meeting on very short notice because of the federal day of mourning tomorrow.

We're here to receive a briefing from the staff on their response to the report of the review team on the reassessment of the NRC program for protecting allegeders against retaliation. As some of you may remember, the Commission was quite enthusiastic in its response to the review team's work. It's clearly a thorough job. If anything, it bent over backwards to review the process. The one question the review team was not able to answer, which I think is just extremely difficult if not impossible to answer, is just how serious a problem do we have. But failing that, the review team said, "Well, since we can't really give a definitive statistical answer from that point of view, we will review the processes and see places that are amenable to significant

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1 improvement from a kind of a management or
2 reengineering point of view," which means basically
3 the EDO has had a chance to review this work and to
4 set priorities on the recommendations.

5 This paper, which reviewed the work of the
6 review team, which is basically the EDO's
7 recommendations, SECY-94-089, has been publicly
8 released and copies are available at the entrances to
9 the room.

10 The Commission originally instituted this
11 evaluation because of residual questions about the
12 sufficiency of the NRC program to protect allegers
13 against retaliation. In fact, the Commission ordered
14 the staff in July 1993 to do a review. We authorized
15 the establishment of a senior staff review team to
16 take this fresh look. So, this is a longstanding
17 activity and contrary to population impressions it was
18 initiated by the Commission, not by outside reviews.
19 But clearly the outside intention has focused and in
20 some ways accelerated the work.

21 The staff is now ready to give us its
22 recommendations. We're eager to hear your suggestions
23 and we hope and expect that the recommendations, the
24 actions that you recommend, will carry forward further
25 progress and resolve major concerns about this whole

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1 allegation process.

2 Commissioners?

3 Mr. Taylor?

4 MR. TAYLOR: Good morning. With me at the
5 table are Jim Lieberman. Of course, Jim led the task
6 force, but he's here in his normal role as the
7 Director of the Office of Enforcement where many of
8 these actions all tie together. With him is Laban
9 Coblentz, who has worked with Jim from the inception
10 of this idea of studying this area and has been of
11 very valuable service to Jim and to me in helping to
12 complete this effort.

13 (Slide) May I have slide 2, please?

14 Mr. Chairman, you have outlined how we got
15 to where we are today and I will go through, with
16 Jim's help, what we in the staff have done with this
17 report which came out as NUREG-1499, and was released
18 for the public and, of course, to all interested
19 parties.

20 What I did was I took the report and sent
21 it to the regions and the program offices, asking for
22 their comments. I did receive comments from all the
23 regions and program offices that deal in this area and
24 we considered these comments as well as comments
25 submitted from groups and individuals outside NRC.

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1 For example, from what was NUMARC, now NEI, and the
2 National Whistleblower Center, which the latter group
3 actually came in and briefed the staff and provided
4 their comments. I was at at least part of that
5 meeting.

6 As the Chairman noted, I reported the
7 results of the views from the program offices and my
8 own evaluation in SECY-94-089. We evaluated these
9 recommendations based on the following criteria. I'll
10 just mention them briefly. First, we tried to do it
11 in a priority basis because there were so many
12 recommendations. We looked for those recommendations
13 which, if implemented, would produce the most
14 effective positive change to the Agency's processes
15 for protecting allegers against retaliation. In a few
16 minutes I'll discuss briefly five specific areas that
17 we and the staff believe by this standard to be of
18 high priority.

19 The second criteria we tried to apply in
20 assessing all the recommendations was the level and
21 the responses from the program offices and the region,
22 but it's the level of agreement indicated by the
23 regions and program offices. As it turned out, most
24 of the recommendations were relatively non-
25 controversial and were adopted as is. In these cases,

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1 we reviewed the recommendation and then determined the
2 first step or steps to be accomplished and I've
3 assigned an individual or office responsibility for
4 completing the task and will be following up with the
5 offices to work on these actions.

6 Those where there was complete agreement
7 are indicated on paper and we don't plan to talk about
8 every single recommendation, unless you have specific
9 questions. We will try to group them and try to hit
10 what I call the most important.

11 Some of the recommendations were more
12 controversial and the comments we received raised
13 aspects that hadn't been fully considered before by
14 the review team, led by Jim, and in these cases we
15 weighed the opinions of everybody who commented and
16 tried to come up with alternatives or modifications
17 that would be equally as effective as the original
18 recommendation. Jim Lieberman will be discussing this
19 group of recommendations.

20 Finally, I had to consider resources and
21 in a number of cases the cost in FTE impact are
22 somewhat unknown. But rather than delay certain
23 recommendations, we've asked the responsible offices
24 to go ahead with the initial steps of laying out what
25 would need to be done to implement the recommendation

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1 and at the same time evaluate the level of resources.
2 I will be coming back to the Commission with further
3 information on resources after I get some indication
4 of the Commission's agreement with my paper.

5 (Slide) I now ask for the next slide,
6 please.

7 This next slide lists what I would call
8 the high priority items. The first was a
9 recommendation for the Commission to issue a policy
10 statement. We believe that the greatest positive
11 impact from this whole endeavor would result from the
12 high degree of attention that the Commission has given
13 this subject and as would indicate continuing
14 attention to a policy statement. We believe a policy
15 statement that clearly states the Commission's
16 expectations in this area is a way of completing the
17 process, publicly reemphasizing the importance the
18 Agency places on the right and responsibility of
19 individuals to come forth with safety concerns without
20 being retaliated against by actions intended --
21 actions on the part of licensees.

22 One aspect of the policy statement which
23 we think is important, which is the so-called holding
24 period, is still being developed and will be discussed
25 in more detail by Jim.

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1 The second area --

2 CHAIRMAN SELIN: I personally wouldn't see
3 that as part of a policy statement. I mean that's a
4 more detailed discussion of a program that the
5 Commission would like to encourage and there has to be
6 some way of saying that. The policy statement should
7 be a broader statement that goes beyond individual
8 steps and will have a certain amount of permanency to
9 it. Just the fact that the holding period is so
10 controversial, our views on that are bound to evolve
11 in time, which to me suggests that that's something
12 that's more of a specific action than something that
13 would be in a policy statement that I would hope would
14 not have to be modified.

15 MR. TAYLOR: We can do it that way, either
16 way. It is a unique idea and it has positives and, in
17 fact, commenters have pointed out potentially negative
18 and how applied. But the staff would certainly need
19 the support of the Commission before we actually
20 executed something like that. So, one of the ideas
21 was to put it in the policy statement. That's not a
22 good idea. We can do it, but we would need, of
23 course, the Commission's support.

24 Moving on, another high priority area
25 which Jim will talk about also is the changes to the

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1 DOL process. We believe the proposed changes in this
2 area would have a significant positive impact on the
3 efficiency and effectiveness of the DOL process by
4 improving the quality of investigations and improving
5 overall timeliness of any actions that result from the
6 DOL. I refer here specifically to two
7 recommendations, II.C-1, which would move Section 211
8 investigations from Wage and Hour to OSHA, and Section
9 II.C-2, which would support legislation for more
10 realistic time frames, earlier reinstatement and DOL
11 litigation in support of the complainant. Jim again
12 will develop this a little further.

13 The third high priority recommendation
14 involved the Agency allegation manager. This
15 recommendation is significant because so many lesser
16 recommendations fall to this individual to carry out.
17 It was a point of great emphasis. We spent a fair
18 amount of time and discussion in trying to determine
19 how we want this person to function, including the
20 scope of his or her duties and in what office the
21 function should be placed. Again, Jim will provide
22 some details on that in the presentation. But we do
23 think that's a very important one.

24 The next one was the subject of more
25 harassment and intimidation investigation by our own

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1 Office of Investigations. This recommendation should
2 be particularly helpful in the enforcement area by
3 providing a sound basis for enforcement decisions as
4 well as for pursuit of criminal cases as appropriate
5 by the Department of Justice. Jim again will say more
6 on that.

7 The next major area --

8 COMMISSIONER REMICK: I'm sorry. Jim will
9 be saying more on that?

10 MR. TAYLOR: Yes.

11 MR. LIEBERMAN: If you have any questions.

12 COMMISSIONER REMICK: Yes, I do.

13 MR. LIEBERMAN: Yes, I do.

14 CHAIRMAN SELIN: Sorry.

15 COMMISSIONER REMICK: It was the
16 characterization of more. If I look at the
17 recommendation, it says the NRC should revise their
18 criteria for prioritizing NRC investigations. It
19 seems to me that if we reestablish the priorities,
20 that might be less. It might be less. Unless the
21 implication is here, we don't do any and we're going
22 to establish priorities for doing more. But, it's
23 the characterization on the slide of saying that more
24 will be conducted. When I read the recommendations,
25 it just says we need to establish priorities for doing

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1 it. Maybe the effect of that will be more, but I'm
2 not sure.

3 MR. TAYLOR: We thought it would be, but
4 maybe we're jumping the gun.

5 COMMISSIONER REMICK: In my mind it could
6 possibly lead to less, unless we're not doing any. I
7 don't know.

8 MR. LIEBERMAN: Well, Jim Taylor was
9 correct. When we made this recommendation to relook
10 at the priorities for investigations in the area of
11 discrimination, we made an estimate as to the number
12 of cases that would affect that guidance compared to
13 the number of cases we're doing in this area and there
14 were more investigations to be conducted. Right now
15 there are many cases involving discrimination that we
16 don't investigate and we wait for the DOL process to
17 take its course. What our approach for this
18 recommendation is is that we're going to look at
19 priority as a whole across the agency and see which
20 cases appear to be more important than others to
21 investigate, and then see how the H&I investigations
22 fit into that and then make decisions as to whether we
23 should be doing it available resources or seek more
24 resources or just where are we so we know which cases
25 we will be investigating and which cases we're not

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1 likely to investigate.

2 COMMISSIONER REMICK: Yes. And I
3 personally have no problem with that. It was just the
4 characterization that this definitely will lead to
5 more. Maybe it will, I don't know. But I don't think
6 our goal is to do more, it's to establish priorities
7 for when we would do them. Am I correct?

8 MR. LIEBERMAN: Exactly.

9 COMMISSIONER REMICK: Yes. Okay.

10 CHAIRMAN SELIN: I'd like to follow up on
11 that a little bit since I noticed that Mr. Lieberman
12 was a little hesitant when Mr. Taylor said he would go
13 into these topics. I have something to say about both
14 this topic and the Department of Labor. If you're
15 going to make a presentation in those topics, fine.
16 If not, I'd like to say this now. Are you going to
17 follow-up on these?

18 MR. LIEBERMAN: I didn't have any prepared
19 remarks about the DOL process. So, I'd be happy to --

20 CHAIRMAN SELIN: Let me just say this.
21 One of the major findings of the task force, of the
22 review team, was that we were putting too much
23 reliance on the Department of Labor without taking a
24 look to see if, in fact, we were getting what we
25 wanted out of the process. In other words, we were

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1 taking sort of a bureaucratic copout, I think is the
2 right word, saying, "Well, it's not in our court, it's
3 over there," without saying, "From the point of view
4 of both safety and allegers protection, are they
5 getting adequate protection and is the investigatory
6 process producing the material that we need?" Your
7 answer was, to both questions, no. Therefore, I
8 strongly support this.

9 Your answer was we have to take more
10 responsibility for the overall process, whether we
11 execute it or the Department of Labor executes it, to
12 make sure that it's carried out correctly, that safety
13 is properly taken care of and that not only do
14 individual allegers get redress, but that overall
15 they're not deterred from coming forward when there's
16 a reasonable basis for coming forward and that the
17 current situation doesn't provide this assurance.

18 So, essentially what I read in the
19 evaluation report was a more integrated approach, to
20 say DOL could do a job which from our point of view
21 would be a better job if, A, OSHA takes over, B,
22 legislation is changed such that if there is an
23 initial finding in favor of the allegor that the
24 appeal is against the government, not against the
25 allegor, and C, the investigative process, whether

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1 it's done by NRC or DOL, really builds a record and is
2 carried out no so much to our standards but to an
3 objective, whereas the initial investigation, if it
4 found for the allegor but the licensee objected to it,
5 it sort of went into a cocked hat. Nothing was done
6 with that. As a net result, we were just sitting
7 around waiting for a report which wasn't expected to
8 be of great value.

9 Now, whether we do more investigations
10 where the Department of Labor ends up doing a process
11 that meets more of the needs that we have, that's
12 still unknown as far as I'm concerned. I certainly
13 don't sign onto the reports finding that we should
14 have 18 FTE doing these investigations. I'm with
15 Commissioner Remick on this. I do expect it will be
16 more work, but what we're trying to do is recast the
17 process such that the government acts in a more
18 integrated fashion, the allegers get redress, the
19 process doesn't start all over again just because
20 somebody has appealed the initial finding of the case
21 worker, et cetera.

22 The way it is now, you're going to have
23 three times the whole process starts all over again,
24 at great expense to the allegor and at great loss of
25 time and money to the government.

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1 Having said all that, where do we stand
2 with the Department of Labor? Have we had discussions
3 with them? Are they sympathetic to this approach or
4 are we just barking up a tree?

5 MR. LIEBERMAN: I spoke to the Department
6 of Labor just yesterday. They are seriously moving
7 forward in having a transfer between Wage and Hour and
8 OSHA. There's still some steps to be achieved. They
9 gave me some information that they'd rather that I not
10 state publicly as to what's happening there. But they
11 are at high levels seriously proceeding along that
12 course.

13 CHAIRMAN SELIN: Okay. You have a little
14 bit of a chicken in an egg thing. You can't really
15 negotiate freely with the Department of Labor without
16 having Commission support. The Commission is a little
17 reluctant to endorse a course of action without some
18 reason to believe that even if we think it's desirable
19 that it's likely to be productive. So, one of the
20 things the Commission should do is at the end of this
21 presentation is decide whether we firmly support the
22 Department of Labor approach which certainly makes
23 some sense on the face of it. Assuming that we do, is
24 then to ask you to come to us, really you, Mr. Taylor,
25 to come to us with a course of action where you've

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1 gotten some predisposition of what the Commission will
2 support that ties together Department of Labor
3 activities which include investigation as well as
4 adjudicatory activities and our activities with a
5 course of action that we can support. I think there's
6 no problem in supporting in principle the proposal.
7 But once we have a course of action which says, "In
8 such a such a date we'll know Labor's reaction, we'll
9 have some feeling to what Labor's investigations will
10 do and what ours will do and here are the rough
11 financial as well as policy implications," then I
12 think we can give you more concrete response.

13 I think you've done the right thing to
14 date. I'm not criticizing that. I realize it's
15 difficult when you are between two policy groups and
16 you need to ascertain the views of one before you can
17 tie down the other one. But the Commission will try
18 to give you some general support after this meeting
19 and then we would expect you, based on that policy
20 position, to come back with a course of action which
21 tells us when we have to get involved, what we can
22 expect, when we can expect some answers both on
23 support and on resources.

24 MR. TAYLOR: Well, since this is an
25 executive, Cabinet agency, what I would think we would

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1 need then, and we are getting the signals that they
2 are taking these ideas seriously and, in fact, at
3 certain levels advocating them, would be to ask at the
4 time when they think it's appropriate that they advise
5 us formally of where they stand on this action. Then
6 I'll be able to bring it to the Commission --

7 CHAIRMAN SELIN: That's fair enough.

8 MR. TAYLOR: -- with some degree of
9 confidence from the various parts of DOL. That would
10 be the course I'd suggest we follow because I do think
11 heretofore it's discussion and we would need to know
12 that they were at least proceeding in that direction
13 and then ask the Commission to provide whatever
14 thoughts it has to the Department.

15 CHAIRMAN SELIN: Well, what Mr. Lieberman
16 has said is basically it's too early to know for sure,
17 but there certainly is a predisposition to move at
18 least somewhat in the direction that --

19 MR. TAYLOR: That's right. That's what we
20 understand.

21 CHAIRMAN SELIN: Now the Commission has
22 got to give you some guidance. Given that it's not
23 purely theoretical, how do we feel about this, how far
24 would we like to see you go, and then with that you
25 could go further.

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1 MR. TAYLOR: We'll come back to the
2 Commission with this after we have a little more
3 formal indication of where the Department is going.

4 CHAIRMAN SELIN: Thank you.

5 MR. TAYLOR: The last area that is of some
6 priority were the various enforcement policy changes.
7 I wanted to emphasize two specific recommendations:
8 II.D-7, which recommends considering use of the
9 deliberate misconduct rule whenever it can be applied
10 to an H&I case, and actually we're already beginning
11 to do that. II.D-6 recommends non-citations when
12 cooperative efforts between the licensee and the
13 alleged result in early settlement, where the licensee
14 is unusually prompt in resolving the issue. We think
15 that's a good idea because we think that's a symptom
16 of a licensee taking the problem, handling it well.
17 Although that might have occurred where they take the
18 right kind of actions and settle the issue, we think
19 that we ought to note that by not issuing any
20 citation.

21 So, that discussion quickly tries to
22 summarize what we picked out as the high priority
23 recommendations to make effective and positive changes
24 to deal with this issue.

25 I'm now going to turn the presentation

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1 over to Jim to discuss other recommendations on which
2 we received a fair amount of comment, which in some
3 cases has resulted in modifications to the original
4 recommendation or a different direction.

5 As I mentioned, Jim is here today as the
6 Director of the Office of Enforcement, not as the
7 Chair of the review team that generated the original
8 recommendation. I realize this puts him in a somewhat
9 awkward position, but I wanted him here. In all
10 cases, we haven't coincided with the recommendations
11 of the review team, and of course I always have the
12 caveat of having to understand the amount of resources
13 that I have to put into this and it could well be that
14 balancing the resources against the action may cause
15 me to say I can't do a particular matter, but I'm
16 going to have to have an IOU on that with the
17 Commission.

18 But I did ask Jim to participate in this
19 presentation because of his in-depth knowledge of the
20 recommendations and, of course, as the leader of the
21 task force he spent many, many, many hours and days
22 working to bring these recommendations to me and to
23 the Commission.

24 Jim?

25 MR. LIEBERMAN: Thank you, Jim.

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1 Good morning, Mr. Chairman and
2 Commissioners.

3 (Slide) Turning to slide 4, as Mr. Taylor
4 noted, I will be discussing a number of
5 recommendations where the staff has received comments
6 on and which the staff internally has had substantial
7 discussions. A number of these issues were discussed
8 with the Commissioners in the January 31, 1994
9 Commission meeting on the review team's
10 recommendations. For each of the eight
11 recommendations, I will go over the original
12 recommendation, its purpose, considerations that led
13 up to the staff's position and then summarize the
14 EDO's position as reflected in his SECY-94-089.

15 (Slide) Recommendation B-15, as
16 highlighted on slide 5, addresses the distribution of
17 raw data on allegations. Specifically, this
18 recommendation provided that the NRC should
19 periodically publish raw data on the number of
20 technical and H&I allegations. This recommendation
21 was originally made because the NRC does not provide
22 allegation data to licensees. Licensees do not know
23 the number of allegations NRC receives for their
24 sites.

25 To my knowledge, Appendix F of the review

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1 team's report was the first publication of allegation
2 data on a site basis. The review team was of the view
3 that publicizing this data would be helpful to
4 licensees for comparison purposes and to discern
5 trends that might be helpful in evaluating the
6 effectiveness of their programs to encourage employees
7 to raise concerns. It was recognized by the review
8 team that care needed to be exercised in drawing
9 conclusions for raw data. For example, fewer
10 allegations may mean that the programs that raise
11 issues internally may be improving. But it might also
12 mean the employee felt less free to raise concerns.

13 In looking at this recommendation, the
14 staff considered unlimited usefulness of unevaluated
15 data and the potential for placing more significance
16 on it than it deserves. The ambiguous nature of the
17 data and, most importantly, that AEOD would be
18 developing an approach for analyzing the trending data
19 under recommendation B-14. Therefore, the staff
20 concluded, in light of the more systematic approach
21 that will be taken by AEOD, that this recommendation
22 need not be implemented.

23 CHAIRMAN SELIN: I'd like to comment on
24 that before you get off of it. I think the AEOD model
25 is a good model, but once we get to the point, and

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1 assuming that we fund AEOD so they can do this work,
2 this all assumes that AEOD will have a project that we
3 should follow the function that we followed with the
4 LERs, which is you publish the raw data and the
5 analysis. You don't suppress the raw data. In other
6 words, a recommendation that I find acceptable is we
7 not start just publishing raw data period for the
8 reasons that you've put up and for a number of
9 reasons. But once AEOD gets into gear and they do the
10 analyses, that, A, they publish the analyses, and B,
11 the raw data on numbers of allegations also be made
12 available, but along with the analysis and the trends,
13 just as we publish raw data on LERs as well as the
14 analysis.

15 MR. LIEBERMAN: I presume that's what we
16 would do.

17 CHAIRMAN SELIN: Okay.

18 Commissioner de Planque?

19 COMMISSIONER de PLANQUE: Yes. From some
20 discussions with some of the utility people, it seems
21 to me there is a very positive outcome in their
22 knowing how many allegations come to us because that
23 does give them some figure of merit as to whether the
24 employees feel comfortable making allegations under
25 their own program versus ours. Is there some way to

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1 capture that benefit?

2 MR. TAYLOR: You mean to know the total
3 number of the utility -- ones handled by the utility?

4 COMMISSIONER de PLANQUE: For an
5 individual utility to know how many allegations are
6 coming to NRC because then they can compare that
7 number with how many come through their own program.
8 If a lot come to the NRC and very few through their
9 own program, that might tell the management that
10 there's something wrong with their own program or it's
11 not working very well, that employees feel they have
12 to come to NRC. That aspect of it I think could be
13 extremely useful to the utility. I don't know how you
14 can capture that given this conclusion.

15 MR. LIEBERMAN: Well, I should note NUMARC
16 opposed this recommendation.

17 CHAIRMAN SELIN: They opposed publishing
18 the data?

19 MR. LIEBERMAN: Correct. One of the
20 reasons we had made this recommendation is because a
21 number of the licensees at public meetings had made
22 the same comment that you made, Commission, that it
23 might be helpful to know. But they would like to have
24 the information privately rather than publicly because
25 of the danger of how it might be misused. But I think

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1 it is valid to raise the question as to what this data
2 means. When numbers go down, does it really mean
3 their programs are improving or does it mean that
4 people have more concerns?

5 Another important issue here is what is
6 five allegations? How we count allegations is
7 difficult. Do you count it as one allegation with
8 five parts or you count five parts as one allegation?
9 The numbers may be somewhat misleading. Also, is it
10 one individual with five allegations or is it five
11 separate allegeders? Because of the Privacy Act, we
12 have substantial difficulties in listing the number of
13 allegeders who give separate allegations. So, I think
14 on balance there are a number of problems with just
15 putting out a number and what that number really
16 means. By analyzing it first and dissecting it and
17 then putting the numbers out, I think the data will be
18 much more meaningful, though there will be a delay
19 factor.

20 CHAIRMAN SELIN: Mr. Lieberman, when do
21 you expect AEOD to be in position to start publishing
22 these data?

23 MR. LIEBERMAN: I think we first asked
24 AEOD to come back with a plan.

25 MR. TAYLOR: I think we asked them for a

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1 plan.

2 MR. LIEBERMAN: And that was for 90 days.
3 I don't know how long it's going to take to start
4 actually --

5 MR. TAYLOR: I'm not ready to answer that
6 today.

7 CHAIRMAN SELIN: Essentially you've made
8 a, to me, persuasive case that we shouldn't just start
9 publishing raw data. We have analytical problems.
10 More importantly, we have protection of allegers
11 problems. Whether we should wait for AEOD or review
12 what we can publish sort of depends on the schedule.
13 My view is I'd like to get the analysis out. I'd like
14 to get as much raw data out as we can without
15 interfering with the -- you know, without violating
16 the protection of those allegers that wish to maintain
17 anonymity. I'm a little less concerned about the data
18 being easy to misinterpret because all data are easy
19 to misinterpret. I'm very concerned about the
20 anonymity portion. So, whether we wait for AEOD or
21 not would depend very much on the plan that they give
22 you.

23 So, myself, I would just like to say you
24 decided to defer publishing these data. You think
25 you'll have something better to give us. We think it

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1 would be a large AEOD content. But rather than the
2 Commission saying, "Well, we'll wait for however long
3 it takes AEOD to get the data published and analyzed,"
4 you said, "Wait until we have a better plan of what
5 would be published and how anonymity could be
6 protected and some kind of a context it would be put
7 in." But we won't wait indefinitely. I mean this is
8 information that should be out once we've answered
9 these difficult --

10 MR. TAYLOR: But you need to monitor the
11 situation over this period of time.

12 CHAIRMAN SELIN: Absolutely.

13 MR. TAYLOR: And that's what we have to
14 get set up to do.

15 CHAIRMAN SELIN: But remember, AEOD --
16 when you come to LERs which don't have the anonymity
17 question, AEOD publishes the raw data.

18 MR. TAYLOR: Yes.

19 CHAIRMAN SELIN: And they do some
20 analysis, but they don't suppress the publication
21 until the analysis is done. The analysis is pretty
22 data -- you know, it's pretty policy independent. The
23 analysis compares plants with each other, but it
24 doesn't wait for trends.

25 MR. TAYLOR: Of course the LERs are public

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1 documents and they're all available, in fact are read
2 by a bunch of the industry as data information because
3 each one of them has a message. In Jim's outline, one
4 of the problems with trying to take just --

5 CHAIRMAN SELIN: Well, my view is that the
6 data should be made public as soon as possible subject
7 to anonymity corrections, that we should try to get
8 the analysis close so that the analysis will be timely
9 with respect to the data, not hold up the data
10 indefinitely so that we can do three years retroactive
11 analysis or something like that. I mean I agree with
12 you --

13 MR. TAYLOR: I can't answer the timeliness
14 questions because I really need the Commission's
15 approval to proceed on all or parts of these actions.
16 So, I'm not prepared today to tell you, Mr. Chairman,
17 when we'd have what you want.

18 You ready?

19 MR. LIEBERMAN: (Slide) Okay. Moving to
20 slide 6, the next recommendation, D-5, focuses on
21 mitigation for corrective action. The recommendation
22 was that the enforcement policy should be changed for
23 civil penalty cases involving discrimination to
24 normally only allow mitigation for corrective action.
25 It was also recommended that mitigation for corrective

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1 action should only be warranted where it included
2 poorly addressing issues of the environment for
3 raising concerns and providing a personal remedy to
4 address the potential chilling effect.

5 The timing of corrective action was also
6 recommended to be considered, determining whether to
7 mitigate or escalate a penalty based on the corrective
8 action factor. The purpose of this recommendation was
9 to emphasize prompt action to remove the potential for
10 a chilling effect. Under this recommendation, there
11 would be a minimum civil penalty for discrimination
12 cases, unless the licensee took prompt corrective
13 action before the hearing process began, consistent
14 with recommendation D-6 involving non-citations to
15 encourage settlements.

16 While in some areas of our regulatory
17 activities such as releases or exposures of
18 radioactive material, there are minimum civil
19 penalties. The staff is of the view that the factors
20 of identification of past performance are relevant to
21 a determination of civil penalties in the
22 discrimination area. As to identification, if the
23 licensee identified the discrimination justifying
24 mitigation, but where remedial action was not fully or
25 adequately taken, the issue could be addressed by

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1 escalating for corrective action.

2 As to past performance, the review team
3 intended to emphasis that the absence of retaliation
4 is expected and even one case of willful
5 discrimination is not acceptable. While the staff
6 agrees with that view, mitigation should be able to be
7 considered where there is an absence of past cases of
8 discrimination and there are strong programs for
9 problem identification and corrective action.

10 The staff did not see the need to consider
11 H&I cases different from other types of violation.
12 All the factors should be considered. If a case does
13 not warrant applying identification of past
14 performance and mitigation, we should state the
15 specific reasons for so doing. There is discretion in
16 the enforcement policy for achieving appropriate
17 penalty as warranted by the facts of the case.
18 Therefore, the staff did not adopt the recommendation
19 to normally limit mitigation to only corrective
20 action. The staff does adopt the recommendations
21 addressing the scope and timing of corrective action.

22 CHAIRMAN SELIN: I'd like to say something
23 on this. I agree with the staff's recommendation for
24 two reasons. One is an overall undertone of the
25 review group's report is we treat H&I differently from

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1 everything else, i.e. not as seriously. That should
2 be corrected. H&I intimidation and suppression of
3 allegations are safety issues just as much as
4 technical issues are. We shouldn't go the other way
5 and treat them differently beyond that, we should take
6 these as seriously as we take any information on
7 safety. So, there I think your logic is right.

8 The second point is we should avoid a
9 whole lot of special purpose, overly prescriptive
10 instructions to the staff that says, you know, if it's
11 an allegation history isn't important, but if it's
12 technical it is important. We should have as strong
13 a general regime on how we deal with safety problems
14 as possible in terms of enforcement and then apply it
15 more or less the same, whether it's an H&I allegation,
16 a technical problem, a performance problem, et cetera.

17 So, I think this is a sounder approach.
18 I do think that the review group's logic is right. In
19 the general, one willful discrimination is too many,
20 but not to get to prescriptive instructions to
21 enforcement. The same principles apply when you get
22 to penalties.

23 MR. LIEBERMAN: (Slide) Okay. Turning to
24 slide 7, this recommendation, B-3, provided that NRC
25 should develop a survey instrument to independently

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1 and credibly assess a licensee's environment for
2 raising concerns. This recommendation was made
3 because NRC does not have a quantitative method to
4 assess the environment for raising concerns or
5 determining there's a chilling effect following a
6 particular case or cases of discrimination. The
7 review team questioned the usefulness of the current
8 practice of conducting assessments based on numerous
9 one on one interviews of licensee employees. As noted
10 in the review team's report, there are survey
11 instruments that can be developed to assess the
12 licensee's environment for raising concerns. Appendix
13 E of the review team report provided a report from
14 Battelle on the methods to assess the environment for
15 raising safety concerns.

16 A survey instrument would not give an
17 automatic measure of the quality consciousness of the
18 work environment, but comparing relative results
19 across the licensee's organization or from licensee to
20 licensee might provide some helpful insight into areas
21 or licensees where greater efforts may be needed to
22 achieve a quality conscious environment.

23 The staff offices were divided on the
24 value of this recommendation. In considering the
25 recommendation, the staff considered the cost to

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1 develop a credible survey instrument, the difficulties
2 and resources needed to implement surveys, and the
3 reliability or usefulness of the results. It was
4 recognized that the existing interview process had the
5 same concerns of cost and usefulness. Rather than
6 embark on a new approach that may have the same
7 uncertainties in its usefulness, the staff concluded
8 that this recommendation should be deferred for six
9 months. This will allow time to implement other
10 recommendations and then this recommendation can be
11 reevaluated.

12 It might also be noted that under some
13 circumstances, such as where there's a history of
14 discrimination issues, it may be appropriate to have
15 licensees have surveys conducted by independent
16 contractors as provided for in recommendations E-6 and
17 7.

18 CHAIRMAN SELIN: I'd like to support your
19 recommendation and go a little further in this one.
20 As I said in my opening remarks, basically we're
21 acting as if there's a serious problem without being
22 able to prove or disprove there's one. We're not
23 going to hold up the -- there are two times to do the
24 survey, either before we take action or after we've
25 taken the action to see if they've held. To do it in

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1 the middle just strikes me as a waste of money. We're
2 clearly not holding up actions. We're acting as if we
3 have a serious problem without being able to prove
4 that it's serious or not. So, I don't see any sense
5 to do the survey now. I don't see a sense to do the
6 survey in the middle. Let's do the program for awhile
7 and then try to think about a survey as a kind of
8 evaluation of have we gone far enough or do we still
9 have to go further. After we've made the changes and
10 they've sunk in, I don't see a sense of doing a
11 comprehensive survey in the middle of a major
12 transition program and that's what the staff has
13 recommended, is a major transition.

14 MR. TAYLOR: Okay.

15 MR. LIEBERMAN: (Slide) Okay. Turning to
16 slide 8, developing an alleged feedback form, this
17 recommendation was to solicit feedback on the NRC's
18 handling of the given concern. There was general
19 agreement to adopt this recommendation as it may
20 provide helpful information in monitoring the
21 consistency of NRC's responses to allegations.
22 However, there are several implementation issues that
23 need to be considered such as the questions to be
24 asked, whether it would be a sampling process, whether
25 responses needed to be validated, who should consider

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1 the information and how should that information be
2 used in the process and what resources will be needed
3 to implement the approach.

4 In light of these issues, the EDO's
5 recommendation is that the Agency allegation manager
6 should develop a proposal that identifies options in
7 those resource impacts for soliciting feedback from
8 allegers.

9 (Slide) The next issue is the adoption of
10 an Agency allegation manager. This recommendation
11 provided that the NRC should designate a full-time
12 senior individual for centralized coordination and
13 oversight of all phases of allegation management,
14 designated as the Agency allegation manager with
15 direct access to the EDO, program office directors and
16 regional administrators. The purpose of this
17 recommendation was to provide a stronger, more
18 centralized oversight and management of the allegation
19 process. There was wide support for centralized
20 oversight. However, this recommendation resulted in
21 a fair amount of discussion as to the function of this
22 position and the scope of the individual's duties,
23 that it should involve policy only and both policy
24 implementation. It should also raise the question of
25 mission, should it cover both reactors and materials

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1 issues.

2 Finally, where should this individual be
3 placed? Should the position remain at NRR or would it
4 function better in a smaller office like OE, or should
5 it even be placed in the Office of the EDO?

6 The staff's approach was to first
7 construct an overall description of duties and
8 activities that this individual would be expected to
9 perform and this description was included in a SECY
10 paper, 94-089.

11 Second, various options were considered
12 for where the position should be placed. Clearly, the
13 largest percentage of allegations occur in the NRR
14 arena of oversight and there needs to be a close
15 relationship between inspection and allegation follow-
16 up. While the position may have suffered somewhat in
17 the past in NRR because of other safety priorities,
18 more attention in this area would provide the position
19 visibility and support. Placing this position in OE
20 was considered because the individual could work
21 directly for an office director, myself, which would
22 give the position visibility. Many allegation issues
23 are already enforcement issues and involve enforcement
24 decisions and OE already has oversight functions for
25 both reactors and materials programs in certain areas.

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1 So, it will be a convenient structure for developing
2 centralized positions on allegation issues, while
3 leaving functions-related technical issues and
4 implementation to NRR and NMSS.

5 On the other hand, there was significant
6 resource implications for OE, being a small office,
7 that would likely impact other OE efforts. Placing
8 the position in the EDO's office was considered from
9 the standpoint of visibility and access. It would be
10 a clear statement of the Agency's views and emphasis
11 by placing it in the EDO's office. However, as with
12 OE, there was a problem with resources. In addition,
13 it would be contrary to the desire to reduce the
14 number of functions for which the EDO and the Deputy
15 EDOs are directly responsible for.

16 The staff's conclusion for this
17 recommendation was strongly influence by the view that
18 allegation management should be integrated to the
19 extent possible with the lined safety mission in the
20 Agency. Therefore, the staff concluded that the
21 position should remain in NRR but replaced in the
22 Program Management Policy Development and Analysis
23 staff to provide more visibility with an annual report
24 to the EDO. The function should be given central
25 responsibility for allegation management policy and

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1 coordination, but the technical aspects should be
2 split between NRR and NMSS. NRR would be tasked to
3 provide a final position description to the EDO.

4 MR. TAYLOR: I think this is important
5 because frequently the allegation of I&H is mixed in
6 with some potential safety issue. I think it's very
7 important that the line system --

8 CHAIRMAN SELIN: The Commission cares that
9 this gets a lot of attention and that it be
10 centralized. How it's organized is basically the
11 EDO's function so long as we're satisfied that it's
12 not just stashed away.

13 MR. TAYLOR: I'll see how this works --
14 more attention.

15 COMMISSIONER ROGERS: It's very early, of
16 course, in your thinking on this, but I wonder if you
17 have any concept of how permanent such a person would
18 be. Not the position, but the person in such a
19 position. It would seem to me that this might be
20 something where it would require some uncommon
21 abilities and discretion in doing a good job here that
22 might take quite a little while to acquire. I was
23 wondering if you have any thoughts on that. It's very
24 early on.

25 MR. TAYLOR: Well, we've had -- our

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1 allegation system has been working basically in both
2 regions and Headquarters for quite some time. So,
3 people have been trained in this area. There's an
4 allegation coordinator in each of the regions. So,
5 people have been -- and what they do, of course, is
6 the allegation comes in as they take the technical
7 aspects and consult with the appropriate groups,
8 either in the region or in Headquarters or both, and
9 try to sort out. So, this person would have to
10 combine a bit more broader managerial aspects with our
11 traditional process of trying to handle allegations,
12 which will include, of course, the I&H. Most of them
13 are sensitive to confidentiality and all the other
14 aspects of handling allegations.

15 COMMISSIONER ROGERS: Well, it's just that
16 I would hope that somebody wouldn't be rotated in and
17 out of this at too great a frequency.

18 MR. TAYLOR: Understand.

19 COMMISSIONER ROGERS: There should be some
20 real continuity there.

21 MR. TAYLOR: And we should recognize them
22 if they do a good job.

23 COMMISSIONER ROGERS: Oh, absolutely.

24 MR. LIEBERMAN: And it will turn -- the
25 success of the position will turn to a large degree on

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1 the experience and stature of the individual, in the
2 sensitivity. It's hard to rate sensitivity, but the
3 wrong person will have a big impact, a negative impact
4 on this program.

5 (Slide) Turning to the next
6 recommendation, the holding period, this
7 recommendation, as we earlier discussed, was to be
8 considered as part of the policy statement and how we
9 express the Commission's views on this, we can
10 certainly do it different ways. It's just not wedded
11 to a policy statement. The idea was to provide the
12 Commission's expectation to encourage the use of a
13 holding period that would maintain pay and benefits
14 when H&Is allege so that senior licensee management
15 could become involved, that the allegation could be
16 investigated and the facts reconsidered and
17 discussions or negotiations held with the employee in
18 an effort to reach a mutually satisfactory resolution.

19 The purpose of this recommendation was to
20 neutralize conflict in the work place and to encourage
21 employees to continue to raise concerns
22 notwithstanding other employees may have alleged
23 discriminatory conduct. The holding period would not
24 be considered an additional act of discrimination,
25 even if the person was not restored to his or her

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1 former position, provided that the employee agreed to
2 the conditions of the holding period and pay and
3 benefits were maintained. In addition, the licensee's
4 use of the holding period would be considered as a
5 mitigating factor in any related sanction against the
6 licensee.

7 In certain cases, the EDO or other senior
8 NRC management might send a letter to the licensee's
9 senior management bringing the matter to their
10 attention, requesting their personal involvement,
11 recommending the use of a holding period, requiring a
12 response, and noting that the licensee's decision to
13 use a holding period would be considered as a
14 mitigating factor in any enforcement decision is
15 discrimination were determined to have occurred.

16 This recommendation was one of the most
17 controversial ones. It received a great deal of
18 comment and discussion both from within the Agency and
19 from outside groups such as NUMARC and the National
20 Whistleblower Center.

21 (Slide) In general, the holding period
22 concept centered around the three considerations
23 highlighted in slide 10A, which I'll briefly discuss.

24 First was the possibility that such an
25 approach could be open to abuse by the NRC. That is

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1 the NRC's management will use this policy statement to
2 justify micromanagement of licensee's personnel
3 issues. In fact, the focus of this approach is
4 exactly the opposite. It's an attempt to place to
5 burden back on the licensee, to emphasize that the
6 Commission does not believe that an NRC investigation
7 or DOL hearing should be the first choice for settling
8 personnel issues. That in fact based on the negative
9 ripple effect that these issues can have in
10 destructing the work place with a potential for
11 adverse impact on safety, licensees and management
12 ought to devote immediate, concerted attention towards
13 achieving a fair, well considered resolution in the
14 matter as a clear expression of their commitment to
15 maintaining a work place environment where employees
16 should feel free to raise concerns without fear of
17 retaliation. In addition, while the NRC would
18 encourage licensees to consider the holding period
19 approach, it must remain strictly voluntary.

20 The second consideration is that this
21 approach would be open to abuse by licensees. That is
22 the licensees will use this policy statement as a
23 carte blanche authorization to reassign and suppress
24 allegers and that, in fact, the policy statement would
25 guarantee that such activities would not be considered

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1 discriminatory. Here again the focus of the proposed
2 policy statement must remain clear. Not only must the
3 holding period be voluntary for a given licensee, it
4 must also be clearly voluntary for the individual. A
5 holding period consisting of administrative leave with
6 pay may be acceptable when the alleged discrimination
7 involved discharging the employee. However, when the
8 alleged discrimination did not involve discharge and
9 the individual is still employed, the terms of the
10 holding period might more appropriately be focused on
11 maintaining the status quo.

12 The third consideration was that this
13 approach could be open to abuse by alлегers. That is
14 it could encourage frivolous complaints submitted by
15 individuals who had received legitimate discipline or
16 been legitimately terminated as part of a reduction in
17 force and whose goal was simply to extend pay and
18 benefits as long as possible.

19 In considering this issue, we noted that
20 to some extent any provision of this sort, including
21 existing provisions for providing relief to employees
22 through DOL, pose some possibility of abuse. However,
23 the proposed policy statement needs to state that a
24 licensee's use of this approach is clearly voluntary
25 and that it may not be appropriate for all situations

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1 such as during reductions in force.

2 (Slide) Turning to slide 10B, the staff
3 concluded in considering these issues that the overall
4 concept as presented by the review team remains
5 silent. The potential for abuse should be carefully
6 considered in the composition and wording of the
7 policy statement. Participation by all parties should
8 remain clearly voluntary. The focus should be on the
9 licensee's responsibility to maintain a work place
10 environment free from either real or perceived
11 retaliation and free from resulting chilling effects.
12 These considerations should be incorporated into the
13 draft of the policy statement which then would be
14 submitted to the Commission for its consideration and
15 then be issued for public comment. The policy
16 statement will make it clear that any licensee could
17 use this approach. As to the EDO's or senior NRC
18 management's letter, the letter should request
19 consideration of a holding period rather than
20 requesting use of a holding period to maintain the
21 voluntary nature of that holding period.

22 Any questions on the holding period?

23 COMMISSIONER REMICK: One. The bit of not
24 wanting to micromanage licensees, the wording that you
25 just stated, which was some revised wording, I think,

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1 that the EDO has accepted, when we request something
2 I'm not sure that people really consider it voluntary.
3 So, I think we have to be very careful with the
4 wording. If the NRC requests the licensee to do
5 something, in general they're going to do it unless
6 they have a stronger basis. I think that's not
7 consistent with our not wanting to micromanage how
8 they do it, nor that it's truly voluntary. So, I just
9 point out that inconsistency in the wording, even
10 though the wording in E-4, Item 3 has been changed
11 from the original recommendation.

12 When you originally proposed the
13 recommendation, the group did, of a holding period, I
14 thought that was very novel and it had some benefits.
15 But I must admit when I read the strong comments not
16 only from the industry but from the National
17 Whistleblower Center, I don't see anybody really
18 speaking out, maybe there were, that this is a good
19 concept.

20 So, I share what I understood Chairman
21 Selin's earlier comments. We're not sure about this.
22 I guess I'm hesitant about putting it in as a policy
23 statement at this point, unless we have some
24 compelling basis to really think that there is a
25 benefit. It seems like everything that I read that

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1 you provided was negative, potentially negative. So,
2 I must admit I'm not as optimistic about this
3 suggestion as I was when you first proposed it and
4 thought, "Gee, this maybe is a way to protect the
5 allegeders."

6 MR. TAYLOR: I'd like to note that this
7 whole idea, you know, I recognize is novel and we
8 would make it voluntary, but this idea came about by
9 studying what's happened at one or two major utilities
10 in handling these issues over the most recent four or
11 five years. It does represent an idea of sort of
12 going to neutral at the early stages of dealing with
13 both an allegation of intimidation and harassment and
14 before things get exacerbated. This does not preclude
15 a utility from documenting, for example, behavioral.
16 Maybe an allegeder has been discriminated against. Then
17 he or she gets very antagonistic and, of course,
18 emotions run high. That antagonism that may exist
19 between management and the employee gets exacerbated.
20 If the employee begins a pattern of misbehavior, they
21 would document that very carefully, in my view,
22 separately.

23 But this was an idea that I think has some
24 merit to try. If you can reverse some of the
25 situations of the past several years at some of the

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1 utilities, I think they'd be glad to go back to day
2 zero and try to settle these issues rather than see
3 them --

4 COMMISSIONER REMICK: Maybe the interim
5 position could be that we at least mention that some
6 licensees have found this to be an effective way
7 without our talking about that we're going to request
8 people to consider and that type of thing, which has
9 more meaning than I think we mean to put in those
10 words. But maybe just pointing out that some people
11 have found this effective and get away from talking
12 about whether we're going to enforce or mitigate and
13 all those things. That's just off the top of my head
14 at the moment.

15 MR. LIEBERMAN: Well, I know I for one was
16 somewhat surprised with some of the comments we
17 received on this holding period because I thought it
18 had some merit. I still think it has merit. I think
19 the key word is voluntary, that the employee go into
20 this with open eyes. Seeing what the options are may
21 well conclude that for him or her this is a good
22 approach. In other cases the employee might not see
23 this as a good approach. The same with a licensee.
24 They can see it both ways. It is an option that if
25 mutually acceptable is a different approach than

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1 traditionally licensees have taken to this area and
2 may go a long way, especially if the employee is
3 discharged.

4 Providing pay and benefits pending
5 resolution or pending the initial reviews clearly
6 gives a message to the other employees that if I raise
7 an issue, I won't adversely impact my family. That
8 was one of the biggest concerns that we had in this
9 whole area, that one person alleges discrimination and
10 the other employees see what's happens regardless of
11 the merits of that case. They're perceiving this and
12 they say, "Well, do I want to impact adversely my
13 family financially?" We heard all sorts of stories of
14 the commenters about negative impacts and this might
15 encourage other employees to continue raising concerns
16 because they won't be so concerned about the financial
17 impact. I recognize that success will be in the
18 implementation and that may be very difficult, but I
19 think it's a good idea.

20 CHAIRMAN SELIN: First of all, I agree
21 it's a good idea, but what we think isn't so
22 essential. I'd like to make a couple points.

23 The first point is the form of this
24 presentation, concentrating on controversial issues,
25 hides the general idea that it's a terrific report,

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1 the staff has supported most of the recommendations,
2 the Commission is with the staff and the review group
3 and we really are talking at the edges.

4 The second is that I think we have to
5 concentrate on not whether the licensees ought to do
6 this but what the NRC ought to do. As Commissioner
7 Remick was, I was really quite impressed with the
8 originality and the perception of the review group and
9 the staff in coming up with this idea. But most of
10 your arguments are saying it's a good idea for the
11 licensee to do this.

12 Now, why would we say this is our policy?
13 Okay. There are only three possible reasons. One is
14 we intend to coerce, even though we call it voluntary,
15 which we don't intend to do. I would take that last
16 line out about the EDO. I wouldn't prohibit the EDO
17 from writing a letter, but I wouldn't put that in the
18 policy statement.

19 The second is that utilities really
20 haven't thought about it, so we're calling it to their
21 attention, but we've done that by having it in the
22 report.

23 The third is by having it as an NRC policy
24 voluntarily or not, it allows people to do things they
25 would like to do but they need coverage to do. That's

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1 where I think you should concentrate, that clearly we
2 believe this is a good idea. If the market doesn't
3 think it's a good idea, either side, then we have to
4 think twice about it. But what benefit do we have by
5 making it NRC's voluntary policy? It allows a utility
6 to go to its board, it allows them to go to a public
7 utility commission, it allows them to go to outside
8 groups and say, "This is a policy which is national
9 policy. It's voluntary, but it has some backing."

10 So, I think the question about whether we
11 include this in the policy statement or not should be
12 focused on what does this enable people to do that
13 would like -- where they would like to do it but
14 somehow they need some cover or some encouragement to
15 do. Don't make the argument that it's a good idea for
16 utilities to do this. That's not at bay. I think we
17 all agree on that. The question is what further
18 benefit is involved in the NRC.

19 I think you're telling two things. One is
20 to call it to people's attention and second is we
21 enable people to do things that they want to do, and
22 that should be the test, does a policy statement
23 support those points or not. If, in fact, we end up
24 with a uniform antagonism from both the whistleblowers
25 and the utilities, then we have to reconsider even

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1 though it's a good idea. If put in this context you
2 think it's a good idea, I think the Commission will
3 support you either way, but we should really separate
4 out what the Commission does as opposed to what the
5 utilities do and have some pretty concrete reasons for
6 having a policy statement.

7 MR. LIEBERMAN: If I could just add one
8 more point. That is giving a view as to whether use
9 of a holding period would constitute additional act of
10 discrimination, from the Agency perspective is an
11 important piece of information to give to licensees as
12 they make their decision of whether or not to --

13 CHAIRMAN SELIN: I certainly agree with
14 Commissioner Remick. I thought it was a neat idea.
15 I'm a little taken aback by the fact that all the
16 people that think it's a good idea seem to be at this
17 table and therefore -- you know. But it is a good
18 idea. Now, the question comes, given all that, what
19 benefit is there in having the Commission come to this
20 and how will it be received? Then I think we would
21 act sympathetically on that point. I certainly would
22 and I think from Commissioner Remick's remarks, he
23 would. But, you know, we're sort of bothered if we're
24 the only people who think it's a good idea. What are
25 we pushing there? There has to be some benefit to

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1 doing this work.

2 COMMISSIONER ROGERS: And if I could just
3 say, I really align myself with the Chairman's earlier
4 remarks in which he thought that this didn't belong in
5 a policy statement. I'm not so sure he's still saying
6 that when he keeps saying policy statement.

7 CHAIRMAN SELIN: Well, no. If the
8 Commission arrives at a policy, it should be as a
9 policy. It shouldn't be part of the board -- I mean
10 we should have a broad policy statement that says
11 nothing about holding periods regardless of how you
12 and therefore we come out on this issue. How this is
13 reflected will sort of depend on the issue, but it
14 shouldn't be part of the Commission's policy
15 statement.

16 COMMISSIONER ROGERS: Yes, I agree with
17 that. I think the policy statement should be a policy
18 statement. This is a tool. This is a mechanism that
19 might or might not work and could be consistent with
20 the policy statement, but it's not by itself, it seems
21 to me, a proper piece of the policy statement. So,
22 maybe the policy statement should address somehow
23 issues such as you've just touched on if you can,
24 namely that various mechanisms that -- new mechanisms
25 that the Commission would favor would not result in

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1 some negative impact back on the licensee.

2 I'm struggling here for the proper words
3 because I don't really quite know how it would fit in.
4 But I think the point is that the policy statement
5 ought to indicate our receptivity to introducing new
6 tools and taking new approaches and not discourage
7 them. But I wouldn't want to see it go beyond
8 something like that with respect to mechanisms. I
9 think the mechanisms ought to come in a different way.

10 I think we have a problem here in the
11 sense that I don't think this belongs in a policy
12 statement. But where does it belong? If not
13 carefully described to licensees, it could be
14 regarded, as Commissioner Remick has pointed out, as
15 really something that we really are almost requiring
16 in a sense without requiring it. So, what we would
17 want to do is encourage the use of this as a possible
18 tool and not discourage it, but without implying that
19 it's something we expect everybody to follow. If they
20 have another way of dealing with situations where they
21 don't seem to have a problem, perhaps this would not
22 be something they'd want to automatically adopt.

23 MR. TAYLOR: I understand and you point
24 out it's like a tool and it really is. The idea is
25 that licensee senior management gets into the squabble

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1 fairly fast and doesn't do anything that affects the
2 employee's livelihood, but tries to sort out the
3 issues to get into it. Maybe a supervisor did go off
4 and needs to be cautioned. You know, to try to settle
5 the problems before they get into this long, long --

6 COMMISSIONER ROGERS: Well, it seems to me
7 that maybe those are the elements that ought to be in
8 the policy statement, the objectives that led us to
9 identify this as a tool, without taking that final
10 step and saying, "This is the final conclusion as to
11 how to deal with those."

12 CHAIRMAN SELIN: I hadn't thought about
13 that until Commissioner Rogers brought it up, but upon
14 30 seconds of reflection, which is a long time by some
15 other things, I think that something in the policy
16 statement that would encourage a cooling off period,
17 that just basically -- you know, we talk about our
18 enforcement policy, we talk about mitigating
19 circumstances, something to the effect that says,
20 these are highly tense situations and a cooling off
21 period as opposed to immediate actions is something
22 that we strongly recommend without getting into
23 specific tools, 30 days, 60 days, 90 days, pieces like
24 that because that's really -- your observation, I
25 think, is a very powerful one. The fear of immediate

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1 retaliation put aside, there should be time to work
2 these --

3 MR. TAYLOR: And it takes senior people
4 deliberating on who's right, who's wrong, who did the
5 wrong thing.

6 CHAIRMAN SELIN: Well, when you look at
7 your enforcement policy, you can have elements like
8 involvement of senior management in resolving these
9 issues as opposed to just letting them go or
10 reflection or whatever it is that you felt. I mean
11 there are many ways to express your interest and
12 therefore the Commission's interest in a cooling off
13 period short of a formal policy.

14 MR. TAYLOR: I had one utility executive,
15 without mentioning the utility, describe some recent
16 years of experience and problems in this area as one
17 of the worst experiences that he's had in his entire
18 career. I think many of the situations that got out
19 of control in the utility could have been handled at
20 the very beginning in a way and a process that cooled
21 down everybody at the very beginning before people
22 took such divisive and hateful positions, I guess is
23 a good word.

24 Excuse me.

25 COMMISSIONER de PLANQUE: I just say I

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1 support Commissioner Remick's word of caution here
2 because if you couple that with what's on slide 6, the
3 mitigating or corrective actions only, there is a
4 bullet that says "and personal remedy." So, if this
5 is looked upon as a personal remedy, it's also
6 reinforced as an item to look toward for mitigation.
7 So, it's not standing just in and of itself.

8 MR. TAYLOR: I agree with that.

9 CHAIRMAN SELIN: We all think you've got
10 a good thing there. We're just leery about how it's--

11 MR. TAYLOR: Packaged and handled.

12 CHAIRMAN SELIN: How it's done basically.

13 MR. LIEBERMAN: (Slide) The next issue,
14 turning to slide 11 on increase civil penalty amounts.

15 Under this recommendation, which is D-3
16 and D-4, the Commission would seek an amendment to the
17 Atomic Energy Act to allow a maximum civil penalty of
18 \$500,000 per violation per day. That the enforcement
19 policy would specify use of this increased authority
20 for willful violations, including discrimination
21 issues. In addition, the Commission would proceed to
22 modify the enforcement policy pending the recommended
23 amendment to the Atomic Energy Act to adopt a fix-
24 based penalty for H&I violations regardless of
25 severity level and the current amount for Severity

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1 Level 1 violations put the particular type of licensee
2 involved.

3 The purpose of these recommendations was
4 to increase deterrence by adopting a more financially
5 relevant penalty and to convey the importance the
6 Commission places on preventing willful violations of
7 any type.

8 (Slide) Slide 11A provides some obvious
9 considerations for this recommendation. The EDO is
10 not taking a position on the merits of this
11 recommendation. Rather, he has not adopted them
12 pending a review by OE of the enforcement program,
13 including use of civil penalties. This effort is now
14 in the formative stages, but I expect it to include a
15 public comment process.

16 CHAIRMAN SELIN: Mr. Lieberman, are you
17 reviewing the overall question of civil penalties or
18 just within I&H?

19 MR. LIEBERMAN: No, this is overall, how
20 we use civil penalties, the purpose, the effectiveness
21 in past cases, a broad look.

22 CHAIRMAN SELIN: I have three very strong
23 views on this which are consistent with your
24 recommendation. Number one, the objective of this
25 whole program is to treat H&I like others, take it

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1 seriously, treat it like other safety issues, not set
2 it aside, not set up a whole set of rules that are
3 different from others. So, the idea of looking at all
4 the civil penalties is a very strong idea.

5 The second is that this is a serious issue
6 across the board and therefore the importance of this
7 overall review is very important, and the third is
8 that we have real dates and stuff so that this really
9 is not referred to study and come back some other
10 thing, but a concrete plan that says, yes, we will
11 address these issues. Clearly the penalties in the
12 current structure are too low, not just for H&I but
13 across the board and they have to be reviewed given
14 not only inflation but a lot of current review of what
15 kind of enforcement history we've had in the 20 years
16 since these were set. But I think you should come
17 back to the Commission at some point and be quite
18 explicit, not just with the results, but what the
19 study is, what it's looking at, what we can expect and
20 when so we make sure that -- although we're clearly
21 going to go along with this recommendation, in fact
22 we're going to encourage it, we want to know that it's
23 a course of action and when we get around to it we'll
24 do that.

25 MR. LIEBERMAN: Well, we're planning to

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1 provide a planning schedule, what type issues we're
2 going to be looking at to provide that to the
3 Commission.

4 CHAIRMAN SELIN: When will you provide
5 this information, roughly speaking? Morning or
6 afternoon?

7 MR. TAYLOR: June.

8 MR. LIEBERMAN: Within the month. Within
9 the month for sure.

10 CHAIRMAN SELIN: Okay.

11 MR. LIEBERMAN: I don't have a specific --

12 CHAIRMAN SELIN: The month ends in five
13 days.

14 MR. LIEBERMAN: I meant with a month, a 30
15 day period.

16 CHAIRMAN SELIN: Okay.

17 MR. LIEBERMAN: Or sooner.

18 CHAIRMAN SELIN: Fine. Thank you.

19 MR. LIEBERMAN: (Slide) Okay. Going to
20 the last recommendation on slide 12, this addressed
21 the use of an 800 number for allegeders to call the
22 region rather than the current process of calling the
23 region collect. The purpose of the recommendation was
24 to make it easier for allegeders to contact the agency.
25 There's no disagreement on this recommendation, but

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1 IRM is reviewing the Agency use of 800 numbers and
2 we've basically put this recommendation on hold
3 pending the completion of that review, which I
4 understand is expected to be done very shortly and
5 thereafter we'll develop guidance to implement this
6 recommendation.

7 CHAIRMAN SELIN: The policy is to make it
8 easy for people to call up. The execution obviously
9 is something that the staff has to work out and come
10 to the Commission and say, here's how you're going
11 to -- this is really a low level implementation
12 question, whether it's collect or 800 or regions or
13 what have you.

14 MR. TAYLOR: Mr. Chairman, we've covered,
15 I believe, most of the priority and somewhat
16 controversial issues where we've modified the position
17 of the team as staff and I'd appreciate it if the
18 Commission, having had this meeting, would provide --
19 would take comments, of course, from the transcript,
20 but importantly to indicate to the staff the
21 Commission position with regard to this review. We
22 believe this is a very important action and a big step
23 in treating an area that is important ultimately to
24 our safety responsibility.

25 So, that concludes our formal

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1 presentation. If there are further questions, Jim and
2 I will try and answer them.

3 CHAIRMAN SELIN: Commissioner Rogers?

4 COMMISSIONER ROGERS: Oh, just -- I
5 thought this was very helpful and very good and, of
6 course, I think the report was an excellent report.
7 I certainly join the Chairman in his praise of it.

8 Just a question in your attachment 2 to
9 the SECY-94-089. You did mention there alternative
10 means of raising concerns that could be devised by
11 licensees. Do you have any specifics with respect to
12 what you had in mind there with respect to alternative
13 means?

14 MR. LIEBERMAN: Commissioner, could you
15 just direct me where you're referring to?

16 COMMISSIONER ROGERS: Well, attachment 2
17 to the SECY, page one of it. I'm trying to find it
18 myself in here. But there was a reference to
19 alternative means of raising concerns to what's
20 presently in place.

21 MR. LIEBERMAN: What that's referring to
22 is the primary means should be through line management
23 raising the concern. Alternative means would be
24 through open door policy, use of an ombudsman, an
25 employee concern program, outside contractors. Most

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1 licensees have a variety of ways outside the line
2 management process to raise a concern. We thought
3 that it's appropriate to have this alternative means
4 because in some cases, whether it's a personality
5 conflict or actually fear of intimidation, harassment,
6 there should be a way to go around the normal process
7 to raise an issue.

8 COMMISSIONER ROGERS: Don't most licensees
9 have some kind of alternative right now?

10 MR. LIEBERMAN: Almost all licensees do.
11 In the report we had a listing of a brief review of
12 these various programs. Some are more structured than
13 others. Some are more formal than others. What we
14 were seeking here is that licensees make sure
15 employees are aware of these alternative programs and
16 that it's a respected way of raising an issue. We
17 found that there's some licensees, some large
18 licensees, have done surveys and many employees don't
19 appreciate that there are these other programs
20 available to use.

21 COMMISSIONER ROGERS: Okay. Fine. That's
22 all I have.

23 CHAIRMAN SELIN: Commissioner Remick?

24 COMMISSIONER REMICK: Just a couple
25 comments on items that were not discussed. The first

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1 one is on page 16 of the attachment 1, having to do
2 with Item II.C-4, which is basically recommendations
3 to encourage the NRC to take a more active role in the
4 DOL process. And the last sentence in that
5 recommendation is, "The NRC should consider filing
6 amicus curiae briefs where warranted and DOL
7 adjudicatory proceedings." I assume we would do that
8 based on the facts and therefore if the facts were
9 that we would do that on behalf of the alleged, we
10 would also do it on behalf of the licensee if we
11 thought the facts were appropriate that way.

12 MR. LIEBERMAN: That's right. We're
13 referring here to an issue more likely than not a
14 legal issue or policy issue that may impact NRC and
15 how we consider harassment and intimidation issues.
16 It would not be a routine type thing that there's a
17 dispute of the facts and we enter the dispute.

18 COMMISSIONER REMICK: For which party,
19 whichever we thought it was appropriate to enter? It
20 wouldn't be --

21 MR. TAYLOR: It could be.

22 MR. LIEBERMAN: Yes, whatever the issue
23 is. The purpose is for NRC's benefit in establishing
24 the law on policy.

25 COMMISSIONER REMICK: Okay. Fine.

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1 Next question. On page 20, Item C-11, has
2 to do with the memorandum of understanding between the
3 NRC and the Tennessee Valley Authority IG. The
4 recommendation is that that MOU should be
5 reconsidered. Under implementation however it says,
6 "Upon completion of the IG investigation, OI should
7 submit a plan for required modifications." So, one
8 gets the impression that we've already determined that
9 there's a need for modifications before we've
10 reconsidered. Maybe that is the intent. I just go by
11 the words. If that is not the intent, then I would
12 say for any required modifications. It sounds
13 otherwise like you've already concluded.

14 MR. TAYLOR: I think you're right.

15 COMMISSIONER REMICK: So, language is all,
16 yes.

17 And my last comment, page 31 on item II.E-
18 8. The recommendation is the NRC should consider
19 action when there is a trend in settlements without
20 findings of discrimination. I wondered what was the
21 reason for that and then I thought, well, yes, it's
22 possible that people would be making settlements and
23 not addressing the root cause. That certainly might
24 be bad. But the wording again, "should consider
25 action," to me gives a negative tone. It seems to me

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1 that we would want to explore why and find out. It
2 could be that they just decided that it's a less
3 expensive way to proceed, let's settle and not pursue
4 it. Maybe they are addressing the root cause if that
5 was a consideration.

6 So, once again, it's just the question of
7 the NRC should consider action, to me that has a
8 negative connotation. I assume what we want to do is
9 we want to -- and I hesitate to use the word
10 "investigate," but at least explore their reasons or
11 why they're doing this. Is that your intent, why
12 saying "consider action," or do we consider that
13 people who settle, that's a bad thing?

14 MR. LIEBERMAN: No, it's the former.
15 Obviously we're focusing on discrimination, but if you
16 get an unusual situation where a licensee seems to
17 have a history of settlements, is there something
18 there that there is a problem of discrimination which
19 isn't being fixed or -- obviously we won't take action
20 unless we're focusing on a particular problem. So,
21 first we'd have to look into the matter.

22 COMMISSIONER REMICK: Right. Yes. And
23 it's a legitimate question. If there's lots of
24 settlements and no discrimination, what's the basis
25 for it? But it's just the wording again.

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1 I agree also that -- I think particularly
2 your way of presenting it today was very good because
3 there are many, many recommendations in a big report
4 and the way that you've chosen to present it to the
5 Commission I thought was extremely helpful. It does
6 have the disadvantage that Chairman Selin pointed out
7 that we're only addressing part of your
8 recommendations. In some cases we're differing or
9 raising questions and it should not give the
10 impression that we are in general agreement with many
11 of the things that have been recommended and many of
12 the things that the EDO is recommending. But in some
13 cases, and particularly the holding period is the most
14 obvious one, that we just have some questions about
15 it.

16 But all in all, I think the original
17 report was a good one in general and what the EDO has
18 done in going through those and making his
19 recommendations and so forth have been very good.

20 CHAIRMAN SELIN: Commissioner de Planque?

21 COMMISSIONER de PLANQUE: I have just two
22 questions on what you didn't cover today. The first
23 one is on page 4 and the recommendation II.B-1, the
24 NRC should incorporate consideration of the licensee
25 environment for problem identification and resolution,

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1 including raising concerns into the systematic
2 assessment of the license performance process. The
3 response was agreement. I was wondering if maybe the
4 cart is a little bit before the horse here because the
5 implementation seems to suggest you will identify
6 criteria for doing this. I was having a difficult
7 time trying to imagine how this would play out. If
8 there are no problems or it looks like a good
9 environment, do you give credit in the SALP? I was
10 just having a hard time --

11 MR. TAYLOR: Yes. Yes. The idea would be
12 that if the system, whatever criteria we can come up
13 with, if the system is working well, that would be
14 noted in SALP. If there are clear indications that
15 it's not, then we'll have to develop this criteria.
16 That was the idea.

17 MR. LIEBERMAN: Even today, we know
18 there's -- I don't know by name, but there are
19 licensees who do an extra good job in encouraging
20 employees to raise issues and take corrective action.

21 MR. TAYLOR: Particularly in the line.
22 That works well. It becomes evident.

23 MR. LIEBERMAN: And we want to note that.
24 Similarly, there's licensees who don't have attention
25 to detail, who don't have employees who are routinely

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1 raising issues and taking corrective action. That
2 should also be reflected. The idea here is to do this
3 in a more systematic basis.

4 COMMISSIONER de PLANQUE: I guess I would
5 feel a lot more comfortable seeing what these proposed
6 criteria are before agreeing that it's a good idea.
7 It seems to me there's a lot of judgment call in these
8 and it's going to be difficult to come up with a set
9 of criteria. Also, I wonder about the timeliness
10 factor of all of this because a lot of these things
11 take awhile to play out and whether it would be
12 applicable to the time period considered in SALP.

13 MR. TAYLOR: No, it would have to be
14 developed. We'll show it to the Commission and put it
15 into the SALP and everybody will have to understand
16 that's part of the SALP. So, this is a little bit,
17 until we actually do it, somewhere down the road.

18 COMMISSIONER de PLANQUE: I think it will
19 be an interesting exercise to do, to see whether there
20 are criteria that are acceptable in this regard.
21 Okay.

22 My second question had to do with -- on
23 page 21, item II.D-2, which talks about addressing
24 hostile work environments and discrimination in cases
25 where the protected activity involved providing

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1 information of high safety significance. I'm
2 wondering if this leads to a situation where someone
3 alleging H&I sees further reason to prove that this
4 particular issue involved high safety significance.
5 Maybe I'm not reading this right, but doesn't that
6 muddy the waters a little? H&I is H&I, regardless of
7 the level of the safety significance of the issue.

8 MR. LIEBERMAN: Well, that's certainly
9 true. In fact, it's H&I even if there's no safety
10 significance, as long as the person is in good faith
11 raising the issue. There's two separate points here.
12 First the hostile work environment as one issue,
13 because by definition a hostile work environment is
14 over time and management's involvement and that seems
15 legitimate for level 2.

16 The second issue is if there is H&I and
17 it, in fact, turns out to be a significant safety
18 issue, that seems to be a particularly good case to
19 take strong enforcement action on to provide a strong
20 message that we can't afford to have any case of
21 discrimination, never mind those where the person has
22 raised a solid safety issue. It was to give more
23 emphasis to the area.

24 COMMISSIONER de PLANQUE: I guess it's a
25 somewhat delicate matter and I'd like to see how it

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1 plays out. But I would worry about --

2 MR. TAYLOR: Well, in all cases were we to
3 do this, the Commission would see it even before. So,
4 it's the traditional call of what is a high safety --

5 COMMISSIONER de PLANQUE: Yes.

6 MR. TAYLOR: -- of high safety
7 significance. That would be a judgment by the staff
8 and a recommendation and any enforcement should be
9 applied.

10 COMMISSIONER de PLANQUE: I would see the
11 safety problem as a separate issue --

12 MR. TAYLOR: Yes. I agree --

13 COMMISSIONER de PLANQUE: -- and the H&I
14 should stand alone, whether it involves a
15 significant --

16 MR. TAYLOR: We agree with that.

17 COMMISSIONER de PLANQUE: Okay. All
18 right. I --

19 MR. TAYLOR: I wouldn't think this would
20 be very frequent.

21 COMMISSIONER de PLANQUE: Okay. Well, I
22 too would like to thank you for an excellent job that
23 you've done throughout this. I think the
24 presentations have been excellent and the reports are
25 extremely good. Thank you.

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1 CHAIRMAN SELIN: I have a couple of
2 general things to say. Some of them are repetitive,
3 about the excellence. But, you know, you've taken --
4 the review group made recommendations, some of which
5 are policy, some of which are implementation, and your
6 reaction covers all of these. It does not mean that
7 many of these require or really should get Commission
8 review. We're pleased to know what you're going to do
9 about them, but a lot of them are implementation
10 pieces.

11 Also, this format, which is very useful
12 for this kind of discussion, obscures the fact that
13 not only is there a lot of agreement, but you have
14 some general principles throughout and I think I've
15 referred to several of them. But we are responsible
16 that these people are protected and if the DOL has
17 certain authorities under the Act to carry them out,
18 we have an interest in how those come out, whether
19 it's entering as amicus curiae or whether worrying
20 about a process. Those overall principles are
21 essential. We don't think H&I has been taken
22 seriously enough. It should be treated like other
23 safety issues. Not more, but certainly not less.
24 There are a lot of lessons to be learned about how to
25 diffuse these as issues and you've tried to spread

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1 those within the industry. I think those three main
2 points, we shouldn't lose track of those. Those
3 suffuse your report and they're terrific.

4 As far as specific things to come out,
5 I've made a list of six things that we need to give
6 you some guidance on. In the Department of Labor, we
7 need to tell you we're comfortable. I think
8 particularly the Commission has to decide whether it
9 supports the idea of shifting to the point where it's
10 the government who defends against appeals rather than
11 the individual. That's a major policy issue.
12 Strictly speaking, it's a DOL policy issue, but if
13 we're going to advise the Department on that, you need
14 to know that you've got the Commission's support. So,
15 we'll try to get an opinion to you on that.

16 On the holding period, I think it's very
17 clear that we would like you to figure out a way and
18 maybe it's just three sentences in the policy
19 statement that says, "It has been found that cooling
20 off and talking and involving of top management in
21 these issues sooner rather than later is useful," and
22 maybe that will achieve what you need to achieve
23 without going through a whole structure of a program.
24 i don't know. But clearly you make points that this
25 ought to be done, but there are problems with being

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1 too prescriptive on that.

2 On OI, the Commission definitely is taking
3 a bye on whether we want to -- and as the EDO has,
4 about whether we want to just do more investigations
5 or we want to see the investigative priorities
6 considered in light of what we hope will be a more
7 fruitful interaction between the Agency and the
8 Department of Labor. We definitely haven't been
9 asked to, nor have we approved 18 new FTE for OI or to
10 ignore the fact that DOL is doing investigations, do
11 them ourselves. Commissioner Remick is exactly right.
12 The priorities we would like to see set and we'd like
13 to see them set in the context of the overall what DOL
14 will do different from what it's been doing.

15 The survey instrument, you know, I'd have
16 to ask my colleagues, but I don't think there's any
17 real interest to do anything about that until the
18 program settles down.

19 Civil penalties, I'm sure we are
20 comfortable with the idea that they have to be
21 reviewed, but in the overall context of the civil
22 penalty program, in the context of making H&I more
23 like other safety issues, not fewer, and then we need
24 a clear idea about what AEOD is going to do or what
25 you're going to do with the data before we're in a

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1 position to say that's a good idea or bad idea.

2 A lot of the other things we consider as
3 courtesies, that you've told us what you intend to do,
4 but they're clearly within the staff's authority to
5 do. So, we need to get you some answers to these.

6 Did I miss any? And we will endeavor to
7 do that as quickly as possible.

8 Do you believe that there are other
9 questions in which you need -- would you like the
10 barbarians to come in and help to protect you from
11 your neighbors? Do you believe there are other issues
12 in which you would like Commission guidance that I
13 haven't put down in this list?

14 MR. LIEBERMAN: The only ones that I can
15 think of is a few changes to the enforcement policy
16 that we'll need Commission approval to do. I assume
17 in the SRM you will indicate whether you want us to
18 proceed on developing those or not.

19 CHAIRMAN SELIN: Okay. Mr. Taylor?

20 MR. TAYLOR: That's all, sir.

21 CHAIRMAN SELIN: Okay. Thank you very
22 much. Terrific job.

23 (Whereupon, at 11:06 a.m., the above-
24 entitled matter was concluded.)

25

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CERTIFICATE OF TRANSCRIBER

This is to certify that the attached events of a meeting
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TITLE OF MEETING: BRIEFING ON PROPOSED CHANGES TO NRC'S PROGRAM FOR
PROTECTING ALLEGERS AGAINST RETALIATION

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: APRIL 26, 1994

were transcribed by me. I further certify that said transcription
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PRESENTATION OF SECY 94-089:

EDO RESPONSE TO REVIEW TEAM REPORT

ON

REASSESSMENT OF THE NRC'S PROGRAM
FOR PROTECTING ALLEGERS AGAINST RETALIATION

Slide 1

ACTION SINCE JANUARY 31, 1994 PRESENTATION

- Reviewed Comments from Regions, Program Offices
- Evaluated Recommendations Based On:
 - ◆ Priority
 - ◆ Level of Agreement
 - ◆ Resources Required
- Outlined Responsibilities, Initial Tasks, Schedule

Slide 2

HIGH PRIORITY RECOMMENDATIONS

- Policy Statement (A-1, -2, -4; E-3, -4)
- Changes to Department of Labor Process (C-1, -2)
- Agency Allegation Manager (B-9)
- More H&I Investigations by NRC OI (C-7)
- Enforcement Policy Changes (D-6, -7)

Slide 3

MODIFIED / CONTROVERSIAL RECOMMENDATIONS

- Distributing Raw Data on Allegations (B-15)
- Mitigation for Corrective Action **Only** (D-5)
- Developing a Survey Instrument (B-3)
- Developing an Allegor Feedback Form (B-8)
- Agency Allegation Manager (B-9)
- Holding Period (E-3, -4)
- Increased Civil Penalty Amounts (D-3, -4)
- Toll-Free Telephone Numbers (B-17)

DISTRIBUTING RAW DATA ON ALLEGATIONS (B-15)

Original Recommendation:

- Periodically publish raw data on numbers of allegations

Considerations:

- Limited Usefulness
- AEOD will analyze data for changes, trends, applications

Conclusion:

- Should not implement recommendation

MITIGATION FOR CORRECTIVE ACTION ONLY (D-5)

Original Recommendation:

- For H&I cases involving civil penalties:
 - ◆ Corrective action should be the only mitigating factor
 - ◆ Must include broad-scope action **and** personal remedy
 - ◆ Must consider timing of corrective action

Considerations:

- Identification, Past Performance are also important
- Basis for treating H&I differently from other enforcement

Conclusion:

- Modify recommendation to allow consideration of all factors

Slide 6

DEVELOPING A SURVEY INSTRUMENT (B-3)

Original Recommendation:

- Develop a survey instrument

Considerations:

- Cost
- Resources to implement
- Usefulness of results

Conclusion:

- Defer action for 6 months

DEVELOPING AN ALLEGER FEEDBACK FORM (B-8)

Original Recommendation: Develop a standard feedback form to include in allegor close-out correspondence

Considerations:

- Format (form, separate letter)
- Method of Collection (random sample, periodic request)
- Method of Validation (trial program, sample)
- Recipient (regional coordinator, allegation program manager)
- How to use the information
- Resources

Conclusion: Agency Allegation Manager should develop a proposal that identifies options and notes resource impacts

Slide 8

AGENCY ALLEGATION MANAGER (B-9)

Original Recommendation: Designate senior Agency Allegation Manager for centralized program coordination, with direct access to EDO, RAs, program office directors

Considerations:

- Functions--centralization, duties, policy vs. implementation
- Placement--NRR, OE, OEDO
- Mission--reactor vs. non-reactor

Conclusion:

- Function: Central responsibility for policy and coordination, with technical aspects split between NRR and NMSS
- Placement: Remain in NRR, but placed in PMAS staff, with annual report to EDO.

HOLDING PERIOD (E-3, -4)

Original Recommendations:

- Policy Statement should include "holding period" discussion
 - ◆ Maintain Pay and Benefits When H&I is Alleged
 - ◆ Encourage Senior Management Involvement
 - ◆ Investigate, Reconsider Facts, Negotiate With Employee
 - ◆ Should continue during DOL process, if applicable
- Holding period would not be considered a discriminatory act
- Use of holding period would be considered as a mitigating factor in any related sanction against licensee
- EDO might recommend use of holding period to licensee in specific cases

SLIDE 10

HOLDING PERIOD (E-3, -4)

Considerations:

- "Open to Abuse by the NRC"
(i.e., over-involvement in licensee personnel issues)
- "Open to Abuse by Licensees"
(i.e., used to reassign and suppress allegeders)
- "Open to Abuse by Allegers"
(i.e., could encourage frivolous complaints)

HOLDING PERIOD (E-3, -4)

Conclusion:

- Agree with overall concept
- Potential for abuse should be carefully considered in composition and wording of policy statement
- Participation by all parties should be clearly voluntary
- Focus should be on licensee responsibility to maintain an environment free of retaliation and/or resulting chilling effects
- EDO's letter, if used, would request licensee to "consider" the use of a holding period.

Slide 10B

INCREASED CIVIL PENALTY AMOUNTS (D-3, -4)

Original Recommendations:

- Commission should seek an amendment to the AEA
 - ◆ Allow \$500,000 per violation per day maximum civil penalty
 - ◆ Enforcement Policy should specify use for willful violations, including discrimination
- Modify Enforcement Policy, pending the recommended amendment to the AEA
 - ◆ Fixed base penalty for all H&I violations, regardless of severity
 - ◆ Use the current amount for Severity Level I violations

INCREASED CIVIL PENALTY AMOUNTS (D-3, -4)

Considerations:

- Is there a need for stronger deterrence?
- Do larger penalties provide stronger deterrence?
- Scope of Increases
 - ◆ Limited to H&I matters?
 - ◆ Limited to Willfulness?
 - ◆ Applied to All Types of Violations?

Slide 11A

INCREASED CIVIL PENALTY AMOUNTS (D-3, -4)

Conclusion:

Recommendations to be Considered in Broad-Scale Review
of Enforcement Policy

Slide 11B

TOLL-FREE TELEPHONE NUMBERS (B-17)

Original Recommendation: Regions should provide toll-free 800 numbers for individuals to use in making allegations.

Considerations:

- Method of Implementation
- Current IRM Study on Agency Use of Toll-Free Numbers

Conclusion: Agree in concept. Additional guidance for implementing this recommendation will be given after the IRM policy review.

SUMMARY

Recommend Commission adoption of the recommendations as presented in SECY 94-089. As modified, they are:

- Consistent with the overall thrust of the Review Team recommendations;
- Consistent with the emphasis the Commission has given to maintaining an industry work environment in which individuals feel free to raise safety concerns without fear of retaliation.