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MEMORANDUM FOR: Chairman Palladino
Commissioner Roberts
Commissioner Asselstine
Commissioner Bernthal
Commissioner Zech

FROM: B. Paul Cotter, Jr. *bpc*
Chief Administrative Judge

SUBJECT: AN ISO BOARD OF INQUIRY LIMITED TO
INVESTIGATING SIGNIFICANT SAFETY EVENTS

I. SYNOPSIS

The Licensing Panel can perform the core function of significant safety event investigation and reporting addressed by Congress in connection with the FY 1985 Appropriations Act at almost no cost to the Commission. This paper addresses that thesis. This proposal is limited to the 8 to 27 significant safety events each year and does not address any other ongoing investigative, screening, or evaluation responsibilities of AEOD or any other Staff office.

II. INTRODUCTION

The Brookhaven Report (the BNL Report),* commissioned in response to the FY 1985 Appropriations Act, recommends, inter alia, an Independent Safety Organization to investigate significant safety events. The BNL Report recommended that the organization be patterned after the National Transportation Safety Board (NTSB). Among other things, the ISO would require:

*"An Independent Safety Organization," W. Y. Kato et al., Brookhaven National Laboratory, NUREG/CR-4152 (February 15, 1985).

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1. Independence (to avoid even the appearance of conflict of interest);
2. A structured investigation process;
3. A "go-team" of trained investigators;
4. Plant "freeze" procedures;
5. Separation of fact finding from regulatory compliance;
6. Public hearings to determine cause and make recommendations;
7. Power to issue subpoenas and administer oaths; and
8. Written published reports.

The BNL Report estimated the need for additional staff of 25 to 30 (for a total of 80) and assumed investigation of 8-12 events per year. The NRC Staff disagreed with both estimates as low (noting 27 abnormal occurrences or alerts in 1984) and, in general, opposed the recommendation.

The Licensing Panel believes that the significant event investigation, fact finding and report function can be carved out of the BNL Report and accomplished by the Panel at no significant cost other than a maximum of 2-4 FTEs a year. Our reasons follow.

III. GENERAL

Most of the capabilities needed for a significant safety event investigation and reporting function are already in place in the Licensing Panel. It has: (1) independence under the Administrative Procedure Act; (2) experience in structured processes; (3) broad technical expertise; (4) administrative expertise in using and administering part-time special government employees; (5) extensive experience in fact finding and hearings; (6) extensive experience in written reports; (7) the power to issue subpoenas and administer oaths; (8) separation from NRC regulatory compliance work; and (9) direct reporting to the Commission.

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The Panel has been used for special investigations in the past to present the Commission a report which organizes and digests an extensive body of material to enable the Commission to make its decisions. That is the Panel's essential function. The Indian Point and Waste Confidence proceedings are the most recent examples of specialized use.

IV. THE PANEL'S PROPOSAL

A. Board of Inquiry

Atomic Safety and Licensing Boards could be used to conduct Boards of Inquiry into the 8 to 27 significant safety events that occur each year. The Board would be appointed by the Panel Chairman who would also appoint the Investigator in Charge from a preestablished register. The Panel Chairman or the Investigator in Charge would then pick members of the "go-team" from that same register. An Investigator in Charge and his team would then go to the site (which had been "frozen" pursuant to established procedures) and conduct the investigation. The Investigator in Charge would be given a fixed but flexible period of time in which to complete the investigation in line with the NTSB goal of 60 days. After his initial visit to the site, he would formally notify the Board of Inquiry Chairman of the precise date the investigation would be completed.

B. The Go-Team

The go-team would be structured as in the BNL Report. It would consist of Commission employees and special government employees whose names would be listed on a go-team register. The special government employees would be drawn from INPO, utilities, nuclear steam supply companies, construction contractors, architects and engineers, and the like. They would be administered in the same way as part-time members of the Licensing Panel are. The part-time government employees would necessitate an additional 2-4 FTEs per year. Those FTEs would be the only additional ongoing cost of this proposal.

C. A Non-Adjudicatory Hearing

As soon as the investigator in charge notified the board chairman of the completion date of the investigation, the chairman would publish a notice of hearing to commence 15-30 days thereafter. The Board of Inquiry hearing would be

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modeled after the NTSB process. That process is described in the BNL Report at page 87 as follows:

At the conclusion of this process a public hearing is held, to place all the facts on record through testimony, depositions, and exhibits consisting of the factual material gathered in the previous phase. The hearing, which is non-adjudicatory, is presided over by a Board of Inquiry Parties, possibly the same ones who participated in the field investigation, are designated to testify at the hearing. Witnesses are questioned first by members of the technical panel and the Board of Inquiry, and then by the parties to the hearing. Witnesses, who testify under oath, may be accompanied, represented, or advised by counsel. Cross-examination in the legal sense, is not permitted, however. The hearing officer has the power to issue subpoenas both to compel attendance and testimony of witnesses and the production of documents. . . . Although the stated purpose of the hearing is to develop a complete factual record as a basis for analysis, another purpose is to give each party "its day in court." At the end of the hearing each party is encouraged to submit to the NTSB its analysis of the accident, and its views as to the cause and what it thinks the findings and recommendations of the NTSB should be.

Substantial portions of this process duplicate that presently used by Atomic Safety and Licensing Boards except that pleadings, discovery, prehearing conferences, motions, and cross-examination would be eliminated. But the principal substance is similar: an examination by experts with subpoena and oath powers, consideration of written views from each party, and the issuance of a written report (decision) by the Board.

D. Board of Inquiry Report

The board would prepare from the record of the hearing a report of the causes of the incident together with recommendations for corrective action. The report would be forwarded directly to the Commission for action. Time limit goals for forwarding reports to the Commission, such as 60 days, could be established, but provision for extension should be made for the more complicated or significant incidents.

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V. WHAT NEEDS TO BE DONE

Only a few steps would have to be taken to implement such a system:

1. Establish a go-team roster;
2. Establish investigation procedures including "freezing" the site and defining a "significant safety event";
3. Train the go-team investigators;
4. Establish non-adjudicatory hearing procedures presumably as a separate subpart of Part 2.

The Panel has experience in and could perform items 1 and 4.

VI. CONCLUSION

Clearly, the existing Atomic Safety and Licensing Board Panel would require only modest changes to its marching orders to function as such a limited Independent Safety Organization. Equally clearly the Panel's present reporting position, composition, experience and its name itself, make it readily (and uniquely) adaptable to this purpose if the request of the Congress and the core recommendations of the BNL Report are to be heeded. The variations in procedures, Atomic Safety and Licensing Board composition, and logistics could be developed in cooperation with other NRC entities, and, thus, a group that functions essentially like the NTSB could be readily established. The NRC could have a more sharply focused ISO sufficiently independent to avoid the appearance of Staff influence without necessity for legislative change and without the introduction of yet another independent agency.

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