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RECORD #176

TITLE: Authority to Penalize Willful False Exposure of Personnel
Monitoring Device

FICHE: 03720 - 080



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

0436/30
SSINS: 6025

AUG 28 1980

MEMORANDUM FOR: J. Philip Stohr, Chief, FFMS Branch, Region II

FROM: J. R. Metzger, Division of FFMSI, IE

THRU: *LM* L. B. Higginbotham, Assistant Director, Division of
Fuel Facility and Materials safety Inspection, IE

SUBJECT: AUTHORITY TO PENALIZE WILLFUL FALSE EXPOSURE OF PERSONNEL
MONITORING DEVICES AND OTHER HOAXES (AITS F02600009H08)

In response to your memo dated May 7, 1980, we have asked for and received from ELD an opinion dated August 26, 1980 about your concerns (enclosed).

The second paragraph in ELD's memo states that a person conducting activities without a license is in violation of the Atomic Energy Act. A person as used here could mean a licensee, employee, etc. It must not be construed that licensees should always be cited for something an employee does in the way of hoaxes, where the licensee has no control and no regulatory requirements exist. Of course, this would have to be determined on a case-by-case basis.

As you are aware, the Surry case mentioned in the ELD memo involved two employees damaging some fuel bundles with corrosive material. Some 68 allegations were made and an investigation showed none of them to be valid. An extensive search of the Act by ELD indicated that the licensee could not be found in violation of the Act because of what the employees had done. In this case, the licensee pressed charges and the employees were found guilty and sentenced to jail terms.

Therefore, each case of hoaxes, willful false overexposures or other similar events should be brought to the attention of HQ. It may be that the licensee was at fault, such as failure to follow approved security measures. If an employee commits an offense against the licensee, there may be something we can do depending on the circumstances, although within the context of your memo it is doubtful. The most likely course of action would be for the licensee to dismiss the employee or ask for local police assistance and press charges if the licensee desires.

J. R. Metzger
J. R. Metzger
Division of Fuel Facility and Materials
Safety Inspection, IE

Enclosure:
As stated

cc: Directors, Region I, III, IV and V
with encl. dated 5/7/80 and 8/26/80



Banks - Enforcement Policy

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

August 26, 1980

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MEMORANDUM FOR: Jack R. Metzger
Division of FFMSI:IE

FROM: James Lieberman
OELD

SUBJECT: AUTHORITY TO PENALIZE WILLFUL FALSE EXPOSURE OF PERSONNEL
MONITORING DEVICES AND OTHER HOAXES

This is in reference to your memorandum on the above subject in which you requested our views as to actions NRC may take concerning willful false exposure of personnel monitoring devices and other hoaxes.

Providing false information to the NRC may, depending on the circumstances and the materiality of the information, be subject to prosecution under 18 USC 1001. Utilizing source, by-product, and special nuclear material for malicious purposes such as obtaining false film badge readings is not authorized by licenses and arguably a person who so uses material is conducting activities without a license in violation of the Atomic Energy Act. Therefore, depending on the circumstances, a person may be subject to the enforcement sanctions available under the Atomic Energy Act for such activities.

In respect to your question concerning state and local law that might be violated by providing false information, etc. to a licensee, I would suggest that the particular licensee involved contact his attorney. Finally, in respect to the Surry incident, I would suggest you contact Bill Ward for further details.

On the basis of the information you have provided, a licensee would probably have adequate basis to dismiss the employee involved or take other disciplinary action which may be more timely and effective than the threat of criminal prosecution in reducing the occurrences of concern.

James Lieberman
James Lieberman
Deputy Director
Rulemaking and Enforcement Division



UNITED STATES
NUCLEAR REGULATORY COMMISSION
REGION II
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MAY 07 1980

SSINS 0800

MEMORANDUM FOR: J. H. Sniezek, Director, FFMS, OIE

FROM: J. Philip Stohr, Chief, FFMS Branch, RII

SUBJECT: AUTHORITY TO PENALIZE WILLFUL FALSE EXPOSURE OF PERSONNEL
MONITORING DEVICES AND OTHER HOAXES (AITS F02600009H08)

Reference: PNO-II-69, 4/24/80

The recent apparent deliberate exposure of five personnel monitoring devices (film badges) at Whittaker Memorial Hospital to between 38 and 71 rem (Ref 1) is representative of false alarms and hoaxes that have exercised licensees, NRC Regional Offices and State Agencies with increasing frequency in recent years. This results in dilution of safety programs and waste and mis-direction of limited resources.

As you're aware, state and local governments have criminal penalties for false alarms (fire and police) that waste public resources. We believe that it is time to consider similar sanctions at the federal level.

The question we have at this time, then, is, does NRC possess any authority now to penalize this type of behavior? If none exists, we recommend that an evaluation be made as to how authority to penalize behavior of this sort could be obtained.

J. Philip Stohr
J. Philip Stohr, Chief
FFMS Branch, RII

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