

PDR

**UNION OF  
CONCERNED  
SCIENTISTS**

June 28, 1999

Dr. Malcolm R. Knapp  
Deputy Executive Director for Regulatory Effectiveness  
United States Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT: INCOMPREHENSIBLE ENFORCEMENT INACTION**

Dear Dr. Knapp:

As you know, UCS has participated in a series of meetings with members of the NRC enforcement staff and with representatives of the nuclear industry about proposed changes to the enforcement policy. Despite this year-plus effort, we remain unable to reconcile the NRC's enforcement inactions with its stated policies. It may be that we still do not understand the enforcement policies, or it may be that the NRC is not consistently implementing the policies. The recent enforcement inaction involving workers at Perry is an example.

On May 20, 1999, the NRC proposed a \$110,000 civil penalty against FirstEnergy Nuclear Operating Company because its Radiation Protection Manager discriminated against a worker at Perry in violation of the employee protection requirements of 10 CFR 50.7.

On May 25, 1999, UCS submitted a petition pursuant to 10 CFR 2.206 requesting that the NRC take sanctions against the Radiation Protection Manager in addition to the corporate sanctions against FirstEnergy.

On June 23, 1999, the NRC denied our petition. The stated rationale included:

As part of our internal deliberations during the enforcement process, consideration was given to taking enforcement action against the Manager. The NRC determined, however, that the Manager was not familiar with the requirements of 10 CFR 50.7. In your submittal, you argued that even if this is accurate, that ignorance of the law is no excuse. The NRC agrees that knowledge and understanding of the law are not necessary elements in determining whether a violation of 10 CFR 50.7 occurred. These elements are relevant, however, in determining whether enforcement action can be taken against the individual based on a violation of 10 CFR 50.5, the rule on deliberate misconduct. ... Therefore, no formal action was taken against the Manager. ... The NRC issued the Manager a letter stating that the Manager's actions contributed to the enforcement action against FirstEnergy. Additionally, the letter informed the Manager that involvement in a future discrimination violation could result in enforcement action against the Manager.

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The NRC Office of Enforcement's extreme reluctance to impose sanctions against individuals violating federal safety regulations is deeply disturbing. Actions may speak louder than words, but inactions speak the loudest. By failing to hold individuals accountable for their acts of discrimination, the NRC Office of Enforcement is essentially an accomplice in future acts. The NRC Office of Enforcement is sending a message that managers and supervisors who break the law and discriminate against nuclear workers do so at virtually no risk to themselves.

In the June 23, 1999, letter denying our petition, the NRC Office of Enforcement indicated that it was assuming responsibility for informing individuals about their obligations under the law. Now that the NRC has formally notified the Radiation Protection Manager of the requirements of 10 CFR 50.5, that law is now applicable to that individual. Before, that law was apparently not applicable to that individual.

I call your attention to INPO Report No. 91-004, "1991 Survey of Nuclear-Related Employment in United States Electric Utilities," September 1991.<sup>1</sup> Table 1 lists the nuclear-related employment at US commercial power plants. According to this INPO information, the nuclear industry employs 12,770 managers and supervisors out of a total work force of 97,488. Instead of waiting until after each and every one of these managers and supervisors commits a discriminatory act without risk of retribution, the NRC should send a pre-emptive letter similar to the one recently sent to the Radiation Protection Manager at Perry. The NRC should take away the "Get Out of Jail Free" cards right away.

If the NRC staff bothered to look at the job description for the Radiation Protection Manager at Perry, it would undoubtedly have found that one of the prerequisites for that position was knowledge and understanding of NRC rules and regulations. It probably did not contain the disclaimer that 10 CFR 50.5 was excluded from this knowledge base. Thus, the NRC Office of Enforcement somehow reached the conclusion that this individual, who was appointed to that responsible position precisely because of a knowledge of NRC rules and regulations, was unaware of 10 CFR 50.7 even though it is towards the front of the Part 50 stuff.

The NRC Office of Enforcement imposed an individual sanction against Mr. Joseph Bynum of the Tennessee Valley Authority for discrimination against Mr. William Jocher. How did the NRC Office of Enforcement conclude that Mr. Bynum knew about 10 CFR 50.7 yet fail to reach that same conclusion about the Radiation Protection Manager at Perry? Does the NRC Office of Enforcement administer a written test and then not take enforcement action if the person misses the 10 CFR 50.7 question?

We consider rigorous and consistent enforcement of applicable regulations to be a vital component of safety-conscious work environments at nuclear power plants. We continue to believe that the NRC's existing regulations and policies, as we understand them, provide adequate controls. We also continue to believe that the NRC is not administering consistent enforcement policies when it comes to alleged discriminatory actions. Any efforts you could take to remedy this problem would be greatly appreciated.

Sincerely,



David A. Lochbaum  
Nuclear Safety Engineer

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<sup>1</sup> It is the most recent version of this INPO report that I possess. UCS does not have access to the INPO library.