



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 20, 1995

Mr. Christopher A. Kouts, Acting Director
Regulatory Integration Division
Office of Program Management
Office of Civilian Radioactive Waste Management
U.S. Department of Energy
1000 Independence Avenue
Washington, D.C. 20585

SUBJECT: ALLEGED HARASSMENT AND INTIMIDATION

Dear Mr Kouts:

This FAX transmits to you a draft letter from Bernero to Dreyfus on the subject above. We are proposing to discuss proposed procedures set forth in the draft letter at the Management Meeting on February 8, 1995. The subject on the agenda for that meeting is the letter itself, and the enclosure is therefore not included with the draft.

If you have any questions, please contact me at (301) 415-6643.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph J. Holonich".

Joseph J. Holonich, Chief
High-Level Waste & Uranium
Recovery Projects Branch
Division of Waste Management
Office of Nuclear Material
Safety and Safeguards

cc: See next page.

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C. Kouts

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CC List for FAX to C. Kouts dated January 20, 1995

cc: R. Loux, State of Nevada
J. Meder, Nevada Legislative Counsel Bureau
R. Nelson, YMPO
C. Einberg, DOE/Washington, DC
M. Murphy, Nye County, NV
M. Baughman, Lincoln County, NV
D. Bechtel, Clark County, NV
D. Weigel, GAO
P. Niedzielski-Eichner, Nye County, NV
B. Mettam, Inyo County, CA
V. Poe, Mineral County, NV
W. Cameron, White Pine County, NV
R. Williams, Lander County, NV
L. Fiorenzi, Eureka County, NV
J. Hoffman, Esmeralda County, NV
C. Schank, Churchill County, NV
L. Bradshaw, Nye County, NV
W. Barnard, NWTRB
R. Holden, NCAI
E. Lowery, NIEC
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Dr. Daniel A. Dreyfus, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

SUBJECT: ALLEGED HARASSMENT AND INTIMIDATION

Dear Dr. Dreyfus:

As discussed with you in our management meeting on July 26, 1994, the U.S. Nuclear Regulatory Commission has received several allegations (see enclosure) regarding harassment and intimidation (H&I) of U.S. Department of Energy (DOE) contractor employees working on the High-Level Waste Program at Yucca Mountain. We have received additional allegations that this H&I is continuing. This letter briefly describes NRC's role with respect to H&I allegations involving DOE's repository program; explains how NRC will respond in the future to such allegations; and requests certain follow-up actions by DOE.

NRC's Role and Expectations Respecting Allegations of H&I at Yucca Mountain.

As you are aware, NRC has only a limited role with respect to allegations of H&I by DOE employees or contractor employees. Subject to certain exceptions that are not pertinent to this discussion, NRC regulatory authority is generally limited to the activities of NRC licensees and applicants for NRC licenses. Although DOE may ultimately file an application under 10 CFR Part 60, it is neither an applicant nor a licensee at this time. Therefore, allegations of H&I against DOE or its contractors would not be a violation of NRC regulations because no such regulations apply to DOE. Similarly, no regulatory enforcement purpose would generally be served by NRC's investigating H&I allegations against DOE or its contractors because NRC would have no basis to take enforcement action even if such allegations proved to be true.

However, although NRC does not have regulatory authority to address issues of H&I, they are nonetheless a concern to NRC. The identification and communication of potential concerns by employees are an important source of information for both DOE and the NRC. It is therefore important that DOE and its contractors establish an environment that is not only free from H&I, but is perceived by their employees to be such. Not to do so will only make the repository licensing process more complicated, if an application is submitted for Yucca Mountain, because of the need to resolve these issues.

NRC has the responsibility to review DOE's conduct of its site characterization program as part of the preclicensing consultation activities under 10 CFR 60.18. As part of its review, NRC can request DOE to provide information on site characterization. NRC is interested in information on H&I allegations because H&I actions taken against an employee may have a chilling effect on other DOE or contractor employees in that it might deter them from identifying any safety concerns they may have. Therefore, NRC intends to monitor DOE's handling of H&I allegations relating to site characterization. In addition, NRC intends to request additional information from DOE, as needed, to determine whether such allegations, should they arise in the future, present a basis for NRC to object to DOE's conduct of site characterization activities.

NRC expects that DOE will establish a quality conscious environment in which all employees, including contractor employees, are free (and feel encouraged) to raise concerns for timely resolution and without fear of retaliation, and that senior management will be actively and directly involved in addressing allegations of H&I, to ensure they are promptly and fairly resolved. As part of this effort, NRC expects that DOE will have each allegation of H&I appropriately investigated and a written report prepared, with a copy provided to my office. In addition, NRC expects, in each case, that you will provide us with the actions you plan to take to resolve any situations involving H&I and any chilling effect that may have been created which could discourage other employees from raising concerns.

NRC Process for such H&I Allegations

When NRC receives an H&I allegation from a DOE employee or a DOE contractor, NRC will inform the employee that NRC lacks regulatory authority to take any enforcement action based on the allegation. NRC will inform the employee that, if the employee is willing to have his or her identity disclosed to assist investigation, then NRC will refer the allegation to DOE for an investigation. NRC will also inform the employee that, in most instances, NRC will be obtaining, for its review, DOE reports employees' allegations.

In addition, NRC will inform the DOE employee or DOE contractor employee that he/she may have a personal, individual remedy that he/she may pursue at his/her own election. In particular, NRC will indicate that Section 211 of the Energy Reorganization Act of 1974, as amended, provides a procedure for any employee of a DOE contractor or subcontractor indemnified by DOE under Section 170d of the Atomic Energy Act of 1954. If the employee believes he or she has been discharged or discriminated against, by any person, for engaging in protected activities, the employee may file a complaint with the Department of Labor, Employment Standards Administration, Wage and Hour Division, within 180 days after an alleged violation. NRC will refer the employee to Section 211, which sets out the employee activities that are protected. They may include: (1) the employee's providing his or her employer information about an alleged violation of the Energy Reorganization Act or the Atomic Energy Act; (2) refusing to engage in any practice made unlawful by those statutes if the employee has identified the alleged illegality to the employer; (3) testifying before Congress or in any Federal or State proceeding

regarding any provision of those statutes; (4) commencing, or causing to be commenced (or preparing to do so) a proceeding under those statutes or a proceeding to enforce any requirement under the statutes; (5) testifying or preparing to testify in any such proceeding; and (6) assisting or participating (or preparing to do so) in any such proceeding or in any manner or action to carry out the purposes of those statutes. (Please note that, as an employer under Section 211, DOE must post the provisions of Section 211 so that employees and contractors are aware of these provisions.)

Further, NRC will inform the DOE employee who makes an H&I allegation that he/she may have an individual right of action under 5 U.S.C. 1221, before the Merit Systems Protection Board. Section 1221 permits an employee, former employee, or an applicant for employment, to seek corrective action from the Board for any personnel action taken, or proposed to be taken, as a result of a prohibited personnel practice. NRC will refer the employee to 5 U.S.C. 2302(b)(8) for a description of prohibited personnel practices. They may include: (1) the taking of, the failing to take, or the threatening to take or not take a personnel action against an employee or applicant because of a disclosure that the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) abuse of authority; or (5) a substantial and specific danger to public health or safety. To pursue this right of action, a Federal employee must first file a complaint with the Special Counsel; however, if the alleged personnel action can be appealed directly to the Merit Systems Protection Board, then the employee may dispense with the complaint to the Special Counsel and go directly to the Board.

NRC Request for Action by DOE on Specific H&I Allegations.

As noted, NRC is concerned about the H&I allegations referenced at the outset of this letter. Specifically, NRC is concerned that actions allegedly taken against the employee may have had a chilling effect on other DOE or contractor personnel in that it might deter them from identifying any nuclear safety concerns they may have.

Accordingly, you are requested to provide this office, within 30 days of the date of this letter, a response in writing that:

1. Provides a copy of any information, including investigation reports, you have regarding the circumstances of the alleged H&I; and
2. Describes the actions taken or planned to ensure that this alleged H&I does not have a chilling effect in discouraging other DOE or contractor employees from raising perceived safety concerns.

To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information, so that it can be released to the public and placed in the NRC Public Document Room. If personal privacy information is necessary to provide an acceptable response, then please provide a bracketed copy of your response, which identifies the personal privacy-related information and a redacted copy of your response, which

Dr. D. Dreyfus

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deletes the personal privacy-related information. Identify the particular portions of the response in question which, if disclosed, would create an unwarranted invasion of personal privacy; identify the individual whose privacy would be invaded in each instance, describe the nature of the privacy invasion, and indicate why, considering the public interest in the matter, the invasion of privacy is unwarranted. If you request withholding on any other grounds, specifically identify the portions of your response that you seek to have withheld and provide the information required by 10 CFR 2.790(b), to support a request for withholding confidential commercial or financial information.

After reviewing your response, NRC will determine whether additional action is necessary.

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room.

The responses directed by this letter are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

Sincerely,

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure:
Allegations re Harassment &
Intimidation of DOE Contractor
Employees

cc:

R. Loux, State of Nevada
T. J. Hickey, Nevada Legislative Committee
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E. Lowery, NIEC
DOE IG