Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Nuclear Regulatory Commission's Authority to Mitigate Civil Penalties

File: B-238419

Date: October 9, 1990

DIGEST

The Nuclear Regulatory Commission (NRC) lacks authority to permit licensees who violate NRC requirements to fund nuclear safety research projects in lieu of paying monetary civil penalties. See 42 U.S.C. § 2282(a).

DECISION

This responds to a request from the General Counsel, Nuclear Regulatory Commission (NRC), regarding the Commission's authority to mitigate civil penalties levied against licensees who violate NRC requirements. The General Counsel asks whether NRC may permit a licensee, in lieu of paying a penalty, to fund nuclear safety research projects at universities or other nonprofit institutions. We conclude that NRC has no authority to mitigate penalties in such a manner.

BACKGROUND

Pursuant to the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2011, and the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5811, the NRC carries out an enforcement program to promote and protect the radiological health and safety of the public. Section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2282, authorizes the NRC to impose civil penalties, not to exceed $100,000 per violation per day, for the violation of certain specified licensing provisions of the act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. Section 234 also authorizes the NRC to "mitigate" such penalties.

In this regard, the NRC proposes to "mitigate" civil penalties by permitting violators to fund nuclear safety research projects. The NRC notes that it has authority under section 31 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2051(a), to award contracts to nonprofit educational institutions to conduct nuclear safety-related research. As part of an effort to expand its research

program, the NRC asks whether it has authority, without further legislation, to implement any of the following options:

-- The NRC would accept "contributions" from a violator, in lieu of a civil penalty, for use by the NRC Office of Research to fund research grants to universities and other nonprofit institutions. Currently, the NRC deposits in the Treasury penalties paid to it by licensees. See 31 U.S.C. § 3302(b) (1982).

-- In lieu of paying a civil penalty, the violator would agree to contribute the amount of the penalty, or a portion thereof, directly to a university or nonprofit institution to fund a research project competitively selected by the Office of Research.

-- In lieu of paying a civil penalty, the violator would agree to contribute the amount of the penalty, or a portion thereof, to a university to fund a research project selected by the violator.

As a general matter, NRC states that the contributions under each of these three options, would be treated as fines for Internal Revenue Code purposes and not as charitable contributions.

DISCUSSION

In a 1983 decision, we concluded that the Commodity Futures Trading Commission (CFTC) lacked authority to adopt an enforcement scheme similar to that proposed by NRC. B-210210, Sept. 14, 1983. CFTC had proposed that in lieu of imposing a monetary civil penalty, it might accept, as a remedy for violating the Commodity Exchange Act, a promise from the violator to make an educational donation. We noted that although the Congress empowered the CFTC with discretion in enforcing that act, the Congress specifically defined the remedies available to the CFTC. We determined that CFTC's discretion did not extend to remedies, such as that proposed by CFTC, that are not within the ambit of CFTC's statutorily authorized prosecutorial objectives, i.e., correction or termination of a condition or practice, punishment, and deterrence.

For similar reasons, we conclude that NRC is not authorized to impose its proposed alternative punishment. As we pointed out in the CFTC decision, an agency's authority is limited to the powers delegated to it by the Congress. The Congress, in

section 234, has specifically defined NRC's enforcement authority as follows:

> "[a]ny person who (1) violates any licensing provision, . . . or any rule, regulation, or order issued thereunder, or any term, condition or limitation of any license issued thereunder, or (2) commits any violation for which a license may be revoked . . ., shall be subject to a civil penalty, to be imposed by the Commission, of not to exceed $100,000 for each such violation."

42 U.S.C. § 2282(a). By its terms, section 234 authorizes the NRC to impose civil monetary penalties.

Section 234 also provides that "the Commission shall have the power to compromise, mitigate, or remit" such penalties. Id. Clearly, this authority confers discretion. "Mitigate," for example, means "to make less severe; to alleviate; to diminish." United States v. One Ford Coach Automobile (Motor No. 18-2396048), 20 F. Supp. 44, 46 (W.D. Va. 1937). Thus, with authority to compromise, mitigate or remit, NRC may adjust the penalty to reflect the special circumstances of the violation or concessions exacted from the violator.

Such discretion, however, like CFTC's prosecutorial discretion, does not empower the NRC to impose punishments unrelated to prosecutorial objectives. See B-210210, Sept. 14, 1983. Under NRC's proposal, a violator would contribute funds to an institution that, in all likelihood, has no relationship to the violation and has suffered no injury from the violation.

From an appropriations law perspective, such an interpretation would require us to infer that the Congress intended to allow the NRC to circumvent 31 U.S.C. § 3302 and the general rule against augmentation of appropriations. Section 3302(b) requires the NRC to deposit into the Treasury as miscellaneous receipts monies collected under section 234. Section 3302(b) provides that

> ". . . an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable . . . ."

31 U.S.C. § 3302(b). See, e.g., 39 Comp. Gen. 647, 649 (1960).

The purpose of section 3302(b) is to ensure that the Congress retains control of the public purse, and to effectuate

Congress' constitutional authority to appropriate monies. See, e.g., 67 Comp. Gen. 353, 355 (1988); 51 Comp. Gen. 506, 507 (1972). Each of the three proposals identified by the NRC would result in an augmentation of NRC's appropriations, allowing the NRC, in varying degrees, to control, in circumvention of the congressional appropriations process, the amount of funds available for nuclear safety research projects. See 59 Comp. Gen. 294, 296 (1980); B-210210, Sept. 14, 1983. We are unwilling to interpret "compromise, mitigate, or remit" in such a manner where neither the language of section 234 nor its legislative history provides any basis for such an interpretation.

Accordingly, we do not read section 234 as authorizing the NRC to implement any of the three options proposed. If NRC believes such authority is important to its operations or the amount of funding for such purposes is inadequate, it should submit a legislative proposal to the Congress either to amend section 234 or to increase its appropriation for its nuclear safety research program.

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