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RECORD #54

TITLE: Applicability of State Regulations on NRC Inspectors

FICHE: 68590-234



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

OCT 06 1978

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*Yes*  
*see me on this*  
*her*

MEMORANDUM FOR: E. J. Brunner, Chief, RO&NS Branch, RI  
FROM: E. L. Jordan, AD for Technical Programs, ROI, IE  
SUBJECT: INTERPRETATION OF APPLICABILITY OF STATE REGULATIONS  
ON NRC INSPECTORS

The enclosed memorandum from Lieberman is transmitted as the NRC position on conflicts between state and federal regulations as they apply to NRC employees. This is in response to your note of 8/16/78. By copy of this memorandum I am requesting X00S to include this ELD interpretation in IE MC 9900.

*E. L. Jordan*  
E. L. Jordan, Assistant Director  
for Technical Programs  
Division of Reactor Operations  
Inspection, IE

cc: B. H. Grier, RI  
J. P. O'Reilly, RII  
J. G. Keppler, RIII  
K. V. Seyfrit, RIV  
R. H. Engelken, RV  
N. C. Moseley, IE  
H. D. Thornburg, IE  
E. M. Howard, IE  
L B. Higginbotham, IE  
L. I. Cobb, IE  
G. C. Gower, IE

Enclosure:  
Memo JLieberman to ELJordan  
dtd 10/3/78



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

October 3, 1978

MEMORANDUM FOR: Edward L. Jordan, IE  
FROM: James Lieberman, OELD  
SUBJECT: APPLICABILITY OF STATE REGULATIONS ON NRC INSPECTORS

This memorandum responds to your request for guidance on the binding effect on NRC inspectors of regulations found in Industrial Bulletin No. 5 of the Commonwealth of Massachusetts, Department of Labor and Industries, Division of Industrial Safety. Specifically, you requested that we evaluate

- 1) whether NRC inspectors are subject to state regulations which are more restrictive than NRC regulations;
- 2) how we would convey the NRC position on this matter to licensees and to states.

These questions arose as a result of a licensee's refusal to allow an NRC inspector to enter a containment area because the inspector did not have an annual physical examination as required under section 12.1 of the state regulations. A confrontation with the licensee did not occur as the inspector chose not to insist on entry.

It is a fundamental principle of our federal system that the states have no power to impede, burden, or control the manner in which the federal government implements the lawful enactments of Congress. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 315, 436 (1819). Under this concept of federal supremacy, the states have no authority to impose additional qualifications or restrictions on the performance of government business by federal officers or agents. Johnson v. Maryland, 254 U.S. 51 (1920). The federal government and its agents are not liable for criminal or civil penalties imposed by state statutes or regulations for lawful actions pursuant to federal law. Massachusetts v. Hills, 437 F. Supp. 351 (D. Mass. 1977). As the inspector here was clearly authorized to conduct a lawful inspection under the Atomic Energy Act of 1954, as amended, the licensee had no basis for refusing the inspector's entry to the containment, either on the theory that the inspector did not comply with state regulations or that the licensee

CONTACT:  
Steve Burns  
x27991

itself would suffer liability if it permitted the inspector to enter. Neither the NRC nor its inspector nor the licensee could be liable to the state in this situation because of the supremacy of federal law. Leslie Miller, Inc. v. Arkansas, 352 U.S. 187 (1956).

Moreover, section 1.2 states that the regulations are "intended to be in harmony with Federal regulations as they apply". Given this stated purpose, it does not appear that Massachusetts intended its regulations to interfere with NRC's inspection activities under the Atomic Energy Act of 1954, as amended, and other federal statutes. The Massachusetts regulations apply to "places of employment" where operations involve the use or emission of ionizing radiation. The requirement for medical examinations applies to employers who may assign employees, agents or contractors to operations at the site. As the NRC is not an employer subject to the jurisdiction of a state and since the licensee does not "assign" inspectors to its plant, the regulations are not applicable to the NRC.

Unless similar situations present increasing problems, we see no need to raise this supremacy issue with the licensees. We would prefer at the moment to handle similar problems, if any, on a case-by-case basis. The inspectors should be informed that supposedly conflicting state regulations do not provide the licensee an acceptable basis for refusing an NRC inspection. In the individual case, inspectors should follow normal procedures and notify headquarters if a licensee refuses inspection of its facilities. If discussion between IE headquarters and licensee management, including discussion between their respective counsels, cannot remedy the situation, consideration might be given to issuing an order to permit the inspection.

*Steve Burns for J. Lieberman*

James Lieberman  
Attorney  
Rulemaking and Enforcement Division

cc:  
M. Malsch