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RECORD #58

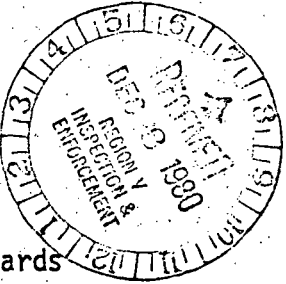
TITLE: ...Transportation Enforcement Cases Based on Third Party
Data Collected by Agreement State

FICHE: 38289-108



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

SSINS: 9196



DEC 5 1980

MEMORANDUM FOR: B. H. Grier, Director, Region I
J. P. O'Reilly, Director, Region II
J. G. Keppler, Director, Region III
K. V. Seyfrit, Director, Region IV
R. H. Engelken, Director, Region V

FROM: H. D. Thornburg, Director Division of Safeguards
and Radiological Safety Inspection, IE

SUBJECT: PROCESSING OF TRANSPORTATION ENFORCEMENT CASES BASED ON
THIRD PARTY DATA COLLECTED BY STATE AGENCIES

This subject has arisen on numerous occasions relative to our program for inspection/enforcement of transportation violations by NRC-licensed shippers of radwaste to the three state-licensed commercial waste burial sites. As the enclosed exchange of correspondence with ELD implies, there does not appear to be anything which would prohibit us from establishing precedent and proceeding to process on a routine basis enforcement actions against NRC licensees on the basis of State inspection data. As the enclosures also indicate, our discussions with South Carolina on this subject are somewhat further advanced than with the other two States. Accordingly, I am asking that Region II finalize any necessary details with South Carolina and proceed to process a "test case" when the appropriate opportunity presents itself. In the case of Beatty and Richland, I am asking that Region V explore the idea with the Nevada and Washington licensing authorities, with the view of obtaining their agreement to cooperate on such cases. If they appear agreeable, all that would remain would be to coordinate the protocols and proceed on some test cases.

As ELD points out, it is extremely important that we communicate and coordinate fully with the State authorities in specific cases, as well as in applying uniform inspection techniques, criteria and standards.

I would appreciate your keeping me apprised of your progress with the States on this matter.

Harold D. Thornburg
Director
Division of SRSI:IE

Enclosures: As stated

cc: G. W. Kerr, SP
J. Lieberman, ELD
D. Thompson, IE
J. Stohr, II
H. Book, VI ✓



Handwritten signature: M. J. ...
Handwritten initials: LEO

November 13, 1980

MEMORANDUM FOR: J. H. Sniezak, Director
Division of Fuel Facility and Materials
Safety Inspection, I&E

FROM: Stephen Sohinki
Office of Executive Legal Director

SUBJECT: USE OF THIRD-PARTY DATA IN
TRANSPORTATION ENFORCEMENT CASES

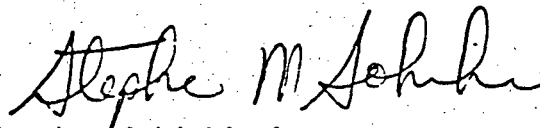
This is in response to your November 3, 1980 memorandum requesting our views regarding the use of data supplied by inspectors of the South Carolina Division of Health and Environmental Control as the basis for NRC enforcement actions. It is our opinion that should any transportation enforcement action result in a hearing, the results of inspections performed by state inspectors which form the bases for NRC action would be admissible provided that the state inspectors are available to testify. I have spoken to Richard Wilson, the Assistant Attorney General for the Division of Health and Environmental Control, and he has informed me that the state inspectors are anxious to cooperate with us in any way they can in the event of a hearing. In order to effectively foster that cooperation, however, we discussed two things that we believe would be helpful.

First, both we at headquarters and the staff in the Region must recognize that, to the extent we rely upon state inspectors in South Carolina, they should be kept informed with regard to every step of NRC proposed enforcement actions. This includes providing the Division of Health and Environmental Control with drafts of all proposed enforcement documents so that they are aware of the action and can assure that our enforcement document does not mischaracterize any actions taken by state inspectors.

Secondly, from time to time we issue Bulletins which interpret I&E enforcement criteria or standards. To the extent that any of these Bulletins or other interpretive documents we issue relate to activities conducted by

state inspectors, the Division of Health and Environmental Control should receive copies.

I understand from Mr. Wilson that several other items were discussed at the October 17th meeting, but for purposes of assuring effective participation of state inspectors in our enforcement process, the two items mentioned above are the most critical. If you have further questions regarding this matter, do not hesitate to contact me.



Stephen Sohinki, Attorney
Rulemaking and Enforcement Division
Office of Executive Legal Director

cc: H. Thornburg, I&E

Grella

NOV 1980

MEMORANDUM FOR: J. Lieberman, Office of the Executive Legal Director

FROM: J. H. Sniezek, Director, Division of Fuel Facility and Materials Safety Inspection, IE

SUBJECT: USE OF THIRD-PARTY DATA IN TRANSPORTATION ENFORCEMENT CASES

On October 17, Al Grella and Region II representatives met with officials of the South Carolina Bureau of Radiological Health to discuss matters of mutual interest regarding inspection of incoming waste shipments to Barnwell. Among the items discussed was the question of whether or not NRC is planning to use data and evidence collected by the State inspectors to process enforcement actions on violations by NRC licensee/shippers in those cases when an NRC inspector is not physically present at the site when the shipment is inspected. This question has arisen on a number of occasions in the past, and its answer has become all the more important since our coverage at the site amounts to about 3-5 days per month. We still plan for the foreseeable future to continue our inspections at the three (3) burial sites and plan to continue a vigorous enforcement program on violations detected.

A number of legal questions need to be answered; i.e.

- . would such third party data collected by state inspectors be admissible?
- . would the state inspectors involved be subject to being called in to testify in a case?
- . what are the precedents in previous Federal actions?

At the meeting in South Carolina, the Assistant Attorney General for the Division of Health and Environmental Control, Mr. Richard P. Wilson, indicated that he would be interested in discussing these questions directly with someone from the NRC legal staff. In that regard, may I suggest that you call Mr. Wilson directly (803-753-5658).

I would appreciate hearing your overall views and recommendations on the matter.

J. H. Sniezek
 Director
 Division of Fuel Facility and Materials
 Safety Inspection, IE

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FFMSI:IE	FFMSI:AD	FFMSI:D
AGrella:bmb	10/11/80:bjb	

J. Lieberman

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cc: G. W. Kerr, SP
J. P. Stohr, Region II
R. Trojanowski, Region II
H. Book, Region V

~~FFMSI:IE~~ ~~FFMSI:AD~~ ~~FFMSI:3~~
~~AGrella:hmb~~ ~~LBHigginbotham~~ ~~JWSniezek~~
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