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RECORD #123

TITLE: Ellis Fischel State Cancer Hospital - Violation of 10 CFR  
19.16(c)

FICHE: 65295-013

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

O'Reilly  
R II  
0390/81

SEP 27 1981

MEMORANDUM FOR: James G. Keppler, Director  
Region III

FROM: Dudley Thompson, Director  
Enforcement and Investigations, IE

SUBJECT: ELLIS FISCHER STATE CANCER HOSPITAL - VIOLATION OF  
10 CFR 19.16(c)

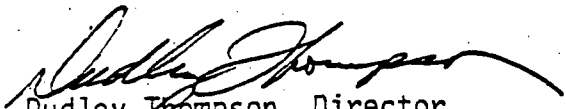
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Based on the facts presented in your November 3, 1980 memorandum to me regarding this subject, I concur that no further investigative effort is warranted. On the other hand, I do not agree that no NRC enforcement action is required in this matter.

It is a matter of NRC policy that the authority of the Department of Labor in employee protection matters does not in any way abridge the Commission's preexisting authority under Section 161 of the Atomic Energy Act to investigate an alleged act of discrimination and to take appropriate enforcement action. Indeed, the NRC's goal in such matters is to protect the flow of health and safety information which we need in furtherance of our regulatory responsibilities. The actions of the DOL focus primarily on the protection of the individual employee. It is our belief that the preservation of this flow of safety information to the NRC must entail the enforcement actions of both DOL and NRC, the former to insulate employees from adverse actions resulting from their cooperation with the NRC, and the latter to communicate clearly to the industry that we will not tolerate acts of discrimination against employees as a result of such cooperation.

In the subject case, DOL has made the employee whole and in the process has established that an actionable instance of licensee discrimination has taken place. Indeed, the court record suggests that the actions of the Hospital are a deliberate violation of an NRC regulation. Consequently I fail to see how we can avoid taking enforcement action against this licensee. The actions taken by DOL on behalf of the employee do not satisfy this requirement for NRC enforcement action.

Please review this case and inform me of what enforcement action you propose. I would suggest that due to the age of this case and the fact that this would represent the first such enforcement action taken in the wake of a DOL discrimination finding, that the enforcement action consist of a No Response Notice of Violation.

  
Dudley Thompson, Director  
Enforcement and Investigations  
Office of Inspection and Enforcement

See next page for cc's.

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James G. Keppler

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FEB 27 1981

cc: V. Stello  
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J. O'Reilly, RII  
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IB File  
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