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RECORD #138

TITLE: Interpretation of 10 CFR 20.201(b)

FICHE: 68632-189



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

October 23, 1986

MEMORANDUM FOR: Phillip F. McKee, Chief  
Operating Reactor Programs Branch  
Division of Inspection Programs  
Office of Inspection and Enforcement

FROM: James Lieberman, Assistant General Counsel  
for Enforcement  
Office of the General Counsel

SUBJECT: INTERPRETATION OF 10 C.F.R. §20.201(b)

This is in response to your memorandum of October 2, 1986, in which you request our views on the meaning of subparagraph (2) of 10 C.F.R. § 20.201(b).

Section 20.201(b) provides:

Each licensee shall make or cause to be made such surveys as (1) may be necessary for the licensee to comply with the regulations in this part, and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present.

The issue raised in your memorandum is whether, under subparagraph (2), surveys which are reasonable under the circumstances are required in order to evaluate the extent of radiation hazards that may be present even if such a survey is not necessary to show compliance with a specific Part 20 regulation. If so, then the failure to perform such a survey would constitute a violation of §20.201(b)(2) even if no specific Part 20 limit or regulation is violated. 1/

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1/ You indicate that three possible meanings may be attributed to subparagraph (2). These are as follows: (1) Subparagraph (2) can be read as a stand-alone addition to subparagraph (1). Thus, a licensee would be required to make the surveys specified in subparagraph (1) (those needed to comply with Part 20), and would also be required to make those surveys which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. This would permit citations against §20.201(b) when no Part 20 limit or requirement was involved. (2) Subparagraph (2) could be read as modifying subparagraph (1). This would mean that the required

(FOOTNOTE CONTINUED ON NEXT PAGE)

For the reasons explained below, we believe that §20.201(b)(2) does require reasonable surveys to evaluate radiation hazards even if no other specific Part 20 regulation requires a survey or is violated.

In addressing this issue, we have consulted both the Statements of Consideration which accompanied the proposed rule amending section 201(b), 45 Fed. Reg. 45302 (July 3, 1980), and the Statements of Consideration which accompanied the publication of the final rule, which added subparagraph (2), 46 Fed. Reg. 53647 (October 30, 1981). We have also discussed this matter with the Rulemaking division of the Office of the General Counsel.

Section 20.201(b) originally provided: "Each licensee shall make or cause to be made such surveys as may be necessary for him to comply with the regulations in this part." The proposed rule would have amended this section to read: "Each licensee shall make or cause to be made such surveys as are reasonably called for by circumstances surrounding the use of source, byproduct, or special nuclear material." The Statements of Consideration which accompanied the publication of the proposed rule stated that the regulation was redrafted "to clarify the intent of the survey requirement to assure that licensees are on notice that the requirement is to make appropriate surveys and that the requirement may be violated even if noncompliance with some other requirement of Part 20 does not result from the failure to survey..." In the final rule, the text of revised section 20.201(b) differed from that set out in the proposed rule. The existing text of the section was retained, with the addition of subparagraph (2). As indicated in the Statements of Consideration which accompanied the publication of the final rule, this was done in response to a public comment received on the proposed amendment to the section which questioned whether the proposed language eliminated the goal of preventing overexposures. The commentary explained:

While there is a significant relationship between the survey requirement and other Part 20 requirements

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surveys are only those which may be necessary to comply with the regulations in Part 20 and which at the same time are reasonable under the circumstances. (3) Subparagraph (2) could be read to mean that the surveys required by section 20.201(b) are those which relate to specific sections of Part 20 and are required regardless of whether the limit or requirement in Part 20 has been violated. You express the view that the appropriate meaning of 10 C.F.R. § 20.201(b) is that described in the third of these interpretations. We conclude in this memorandum that interpretation (1) is correct. In our view, there is little difference between (1) and (3).

in that information obtained through responsible compliance with 20.201(b) may well prove essential in determining whether a licensee has or has not satisfied other Part 20 requirements, this is not the primary function of the survey requirement. The principal role of the survey requirement is preventive. Adequate survey procedures provide measurable protection for the health and safety of the worker and the public because they provide the information necessary for the establishment of adequate protective measures. The usefulness of this early warning system may be seriously reduced if licensees are not held responsible for failure to conduct any survey or for failure to conduct an adequate survey when violations of other Part 20 requirements have not occurred.... The clarifying phrase provides that when a violation of other Part 20 requirements has not occurred, the Commission will consider in determining whether §20.201 survey requirement has met the reasonableness of the actions taken in the light of all the circumstances to evaluate the extent of radiation hazards. (Emphasis added.)

Nowhere in the Statements of Consideration is the view expressed that the surveys required are only those which relate to or are necessary to comply with the regulations in Part 20. Indeed, the commentary emphasizes that the determination of whether a licensee has or has not satisfied other Part 20 requirements is not the primary function of the survey requirement. Based on the above, we conclude that the correct interpretation of section 201(b) is that surveys are required in accordance with specific Part 20 regulations and also are required by subparagraph (2) as is reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. Consequently, citations are permitted against section 20.201(b) when no other specific Part 20 limit or requirement is violated.

Please feel free to contact me if I can be of further assistance.

  
James Lieberman, Assistant General Counsel  
for Enforcement  
Office of the General Counsel

cc: W. Olmstead, OGC  
G. L. Sjoblom, IE  
R. L. Baer, IE

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5.5	Ventilation
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5.7	Calibration Facility
	INSTRUMENTATION
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