RECORD #205

TITLE: Record Retention At Ex-Licensee After a Licnese Has Been Terminated

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

February 27, 1989

From
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MEMORANDUM FOR: Charles L. Miller, Director
Standardization and Non-Power
Reactor Project Directorate
Division of Reactor Projects - III, IV,
V and Special Projects
Office of Nuclear Reactor Regulation

FROM: Patricia Jehle
Counsel for NRC Staff

SUBJECT: RECORD RETENTION AN EX-LICENSEE AFTER A LICENSE HAS BEEN TERMINATED

This is in response to your memo of January 26, 1989 to Stuart Treby on the above subject. The Nuclear Regulatory Commision regulations do not clearly indicate whether an ex-licensee is subject to records retention requirements. A review of the rulemaking history and regulatory guides concerning records retention do not provide a clear answer either. I conclude that an ex-licensee is not bound by the records retention regulations.

On May 27, 1988 the Commission issued a final rule on the Retention Periods for Records which affects 10 C.F.R. Parts 4, 11, 25, 30, 31, 32, 34, 35, 40, 50, 60, 61, 70, 71, 73, 74, 75, 95 and 110. 53 Fed. Reg. 19240. These parts contain all the regulatory provisions which refer to NRC requirements to retain records, except for Part 20. Part 20 is discussed below. The Commissions regulations refer only to a "Licensee" or an "Applicant". There are no references to the applicability of the regulations to an ex-licensee or former licensee. Two types of retention periods are referred to in the regulations: 1) terms of years-two years, three years and ten years; and 2) the life of the component, activity area, or facility, or until the license is terminated.

I have drawn the inference, that the records retention regulations do not apply to ex-licensees, from the absence of references to ex-licensees. Therefore, once a license is terminated by the NRC, the former licensee is no longer required to retain records. This result does not suggest that the Commission is without authority to require the retention of necessary records. The Commission may place conditions on an order of termination to be fulfilled before decommissioning is complete. If the Commission believes records retention should continue for a term of years its termination order could be conditioned on the expiration of the term.

Once termination of the license is complete the Commission has no authority to require the retention of records. Furthermore, the Enforcement Division of OGC recently indicated that an individual without a license cannot commit a violation of NRC regulations, nor can an order to be served on or an civil penalty be assessed against the unlicensed individual. Weisman, R.M., Statutory Authority for Nuclear Regulatory Commission Orders Imposed on Individuals. (Sept. 30, 1988).

A weaker and less clear-cut rule would involve identifying the purposes behind each provision which requires the retention of records. If the purpose behind retaining a record continues even though a license has been terminated by the Commission, then one may argue the record should be retained until the end of retention period is reached.

In 10 C.F.R. § 20.401 the retention of records of surveys, radiation monitoring, and disposal are addressed. This provision requires that a "Licensee" maintain the records, no requirements are placed on ex-licensees. Generally the licensee must maintain these records until the Commission authorizes their disposition. 10 C.F.R. § 20.401(c).

The recordkeeping requirements of Part 20 are the subject of proposed rulemaking. 51 Fed. Reg. 1092. The proposed rules for records are contained in Subpart L and in this section there are references only to a "Licensee". The proposed rules, in all but two sections, state that the licensee shall retain records until the Commission terminates the license requiring the record. See §§ 20.1102(b) and 20.1103(a) for examples of a two year retention period. The Notice of the proposed rule does not state that the regulations have been changed to require that records be maintained until the license is terminated. 51 Fed. Reg. 1092. Therefore, I conclude that an ex-licensee is not required to retain records under Part 20 of current NRC regulations, nor would an ex-licensee be required to do so under the proposed Part 20 regulations.

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cc:
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