

197

RECORD #197

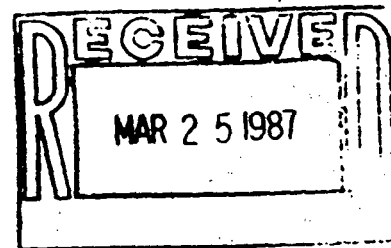
TITLE: Authority of Agreement States Concerning Their Licensees
Working at DOE Facilities

FICHE:



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

MAR 20 1987



MEMORANDUM FOR: Glen L. Sjoblom
Chief Safeguards and Materials Programs Branch, IE

From: Robert L. Fonner
Deputy Assistant General Counsel for
Rulemaking & Fuel Cycle
Office of the General Counsel

SUBJECT: OVEREXPOSURE INCIDENT AT IDAHO NATIONAL
ENGINEERING LABORATORY (INEL). (Ref. memo
from R. D. Martin, RIV to J. Taylor and R. Fonner,
et al, dated March 3, 1987)

I concur in your understanding that enforcement jurisdiction in the subject case is vested in the State of Idaho. This would also be the situation, under the reciprocity provisions of State law, if the radiography company had been licensed by NRC but was engaged in activities in an agreement State. (See the parallel reciprocity provisions in 10 CFR 150.20. I understand that NRC enforces as to agreement State licensees working in non-agreement States).

Although there is no legal objection to discussing the INEL case with DOE, we are not convinced of the necessity for it. We have not heard that DOE is obstructing State enforcement. As to jurisdiction the answer is simply that NRC does not exercise regulatory or enforcement authority over radiographers at INEL. In agreement States the NRC would license and regulate private parties like radiographers, who are normally subject to State jurisdiction, only in areas of exclusive Federal jurisdiction. Exclusive Federal jurisdiction is based upon Article I, Section 8, Clause 17 of the Constitution and applies only to land acquired according to its terms, primarily that the State legislature has ceded exclusive jurisdiction over the land to the Federal Government, and the Congress has accepted the land on that basis. There are relatively few such areas.

Robert L. Fonner
Robert L. Fonner
Deputy Assistant General Counsel for
Rulemaking & Fuel Cycle
Office of the General Counsel

cc: W.Brown, RIV

3-27-87
copy to E.A.N.

Enclosure 5



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

APR 1 1987

MEMORANDUM FOR: Stuart A. Treby
Assistant General Counsel for
Rulemaking and Fuel Cycle
Office of the General Counsel

FROM: Richard E. Cunningham, Director
Division of Fuel Cycle and Material Safety
Office of Nuclear Material Safety and Safeguards

SUBJECT: OVEREXPOSURE INCIDENT AT IDAHO NATIONAL ENGINEERING
LABORATORY (INEL)

This refers to the memorandum from R. D. Martin, Region IV to Hugh L. Thompson and others dated March 3, 1987, concerning a radiographer overexposure incident at the Department of Energy's (DOE) INEL facility. We have also reviewed Mr. Fonner's memorandum to the Office of Inspection and Enforcement (IE) dated March 20, 1987.

We note OGC's view that enforcement jurisdiction in this case is vested in the State of Idaho, and that discussion with DOE is not necessary. However, we believe that this matter should be pursued with DOE as suggested by Region IV. The INEL case illustrates two generic concerns:

1. There may not be a clear understanding throughout DOE and NRC regarding licensing exemptions for DOE subcontractors.
2. DOE's legal position regarding Agreement State jurisdiction may conflict with NRC's legal position.

In view of these concerns, we request that OGC give further consideration to discussing the legal issues with the DOE legal staff. Our staff is available to participate as appropriate.

A handwritten signature of Richard E. Cunningham in dark ink.

Richard E. Cunningham, Director
Division of Fuel Cycle and
Material Safety

cc: Mr. Thompson, NMSS
Mr. Taylor, IE
~~Mr. [redacted]~~

Enclosure 6

MAY -5 1987

MEMORANDUM FOR: Hugh L. Thompson
Director, Office of Nuclear Material Safety and Safeguards

FROM: Robert D. Martin
Regional Administrator

SUBJECT: OVEREXPOSURE INCIDENT AT INEL

On March 3, 1987, I sent you and several others a same subject memorandum suggesting a meeting with DOE to discuss licensing and enforcement responsibilities in re contractors and subcontractors at DOE's Idaho National Engineering Laboratory (INEL) site.

Since DOE's Chief Counsel at the Idaho Operations Office has informed us that DOE considers INEL a site of exclusive federal jurisdiction for licensing purposes, it is obvious that they do not recognize any State responsibility at INEL. However, the State of Idaho continues to have questions concerning the State's role. The State's questions were brought on by the recent incident at the site involving the overexposure of two individuals.

DOE informed us that the company responsible for the exposure was a lower tier subcontractor, Northwest X-Ray.

We understand that Robert Fonner, OGC, has expressed the opinion that the State has the responsibility with regards to this particular matter even though DOE apparently believes differently. We continue to believe that the matter merits discussion with DOE in order to resolve the problem once and for all at not only INEL, but also the many other DOE sites where similar problems could develop. 10 CFR 30.12 does provide a means of dealing with the matter as noted in my March 3 memorandum. Since the responsibilities of some of the addressees have changed since the last memorandum due to the reorganization, it would be appreciated if you would now coordinate the response to us. We would like to participate in a meeting with DOE if such is deemed beneficial and we will be happy to assist you in any way we can.

ORIGINAL SIGNED BY
ROBERT D. MARTIN
Robert D. Martin
Regional Administrator

cc: J. Taylor, EDO
J. Lieberman, OE
W. Parler, OGC
C. Kammerer, OGPA

bcc: R. Bangart
R. Doda

RIV:RC
WLBrown:cms
4/24/87

D/D
RLBangart
4/27/87

OGPA
RJDoda
5/4/87

RA
RDMartin
5/4/87

Enclosure 7

5-20-87

IDAHO/NRC MEETING
STATE AGREEMENT ACTIVITIES

AGENDA

- INTRODUCTIONS
- NRC ORGANIZATION
- IDAHO ORGANIZATION
- IDAHO AGREEMENT EFFECTIVE OCTOBER 1, 1968
- PERIODIC NRC REVIEWS TO DETERMINE ADEQUACY AND
COMPATIBILITY OF STATE PROGRAMS
- NRC GUIDELINES FOR PROGRAM REVIEWS
- NEXT IDAHO PROGRAM REVIEW - JULY/AUGUST 1987
- IDAHO PROGRAM REVIEW - AREAS OF PRIMARY INTEREST
- NRC ASSISTANCE - TECHNICAL ASSISTANCE
 - TRAINING COURSES
- SPECIAL CASE - DOE'S INEL JURISDICTION
- OTHER QUESTIONS

Enclosure 8

NRC

1. Carlton C. Kammerer, Director
State, Local, and Indian Tribe Programs
Office of Governmental and Public Affairs
2. Donald A. Nussbaumer, Assistant Director
State Agreements Program
3. Joel O. Lubenau, SA Project Manager
State Agreements Program
4. Robert J. Doda, State Agreements Officer
Region IV
5. Gary F. Sanborn, State Liaison Officer
Region IV
6. Ralph S. Heyer, State Agreements Officer
Region IV

111 23 1987

MEMORANDUM FOR: Donald A. Nussbaumer, Assistant
Director for State Agreements Program, SLITP

FROM: Robert J. Doda
State Agreements Officer

SUBJECT: JURISDICTION QUESTION REGARDING IDAHO NATIONAL
ENGINEERING LABORATORY (INEL)

WMS (Sjoblom)
Vandy Miller ACTION
When will Treby respond?
GSjoblom

We have not, as yet, been able to answer specifically a question of Federal/State jurisdiction at a DOE facility, INEL (or, in general, at other DOE facilities). As you know, we owe the Idaho Hazardous Materials Bureau an opinion on this matter.

We are still awaiting some action by Headquarters to coordinate with DOE on obtaining general guidance for such jurisdictional questions at DOE facilities.

For your information, the following is a chronological listing of actions relating to this subject:

1. December 8, 1986 Overexposure incident involving radiography personnel at INEL.
2. December 11, 1986 PNO-IV-86-35 (Enclosure 1).
3. January 16, 1987 Letter, R. Funderburg to R. Doda, requesting guidance regarding jurisdiction at INEL (Enclosure 2).
4. February 25, 1987 Letter, R. Doda to R. Funderburg, providing partial answer to above request (Enclosure 3).
5. March 3, 1987 Memo, R. Martin to H. Thompson, et al., requesting action to deal with the jurisdiction issue (Enclosure 4).
6. March 20, 1987 Memo, R. Fonner to G. Sjoblom, expressing a legal opinion on jurisdiction at INEL (Enclosure 5)

SAO *[Signature]*
RJDoda/cjg
7/21/87

DRSS *[Signature]*
RLBangart
8/23/87

RC *[Signature]*
WLBrown
7/21/87

JUL 23 1987

Memo for Donald A. Nussbaumer

-2-

7. April 1, 1987

Memo, R. Cunningham to S. Treby, requesting a generic resolution of the jurisdiction question (Enclosure 6).

8. May 5, 1987

Memo, R. Martin to H. Thompson, re-emphasizing the need for a generic resolution of the question (Enclosure 7).

9. May 20, 1987

Meeting between Idaho State officials and NRC State Agreements Staff (see Enclosure 8, for agenda and participants). This meeting was held during the National Meeting of the Conference of Radiation Control Program Directors held in Boise, Idaho, the week of May 17, 1987. The special case of DOE's INEL jurisdiction was discussed briefly. The State is still seeking an answer to the jurisdiction question.

Original Signed By
R. J. DODA

Robert J. Doda
State Agreement Officer

Enclosures:
As stated

bcc: w/enclosures
R. D. Martin
R. L. Bangart
W. L. Brown
Idaho File
G. L. Sjoblom, NMSS ✓

December 11, 1986

PRELIMINARY NOTIFICATION OF EVENT OR UNUSUAL OCCURRENCE -- PNO-IV-86-35

This preliminary notification constitutes EARLY notice of events of POSSIBLE safety or public interest significance. The information is as initially received without verification or evaluation, and is basically all that is known by the Region IV staff on this date.

FACILITY: Northwest X-Ray
Idaho Falls, Idaho
(Idaho Agreement State Licensee)

Licensee Emergency Classification:
☐ Notification of Unusual Event
☐ Alert
☐ Site Area Emergency
☐ General Emergency
☒ Not Applicable

SUBJECT: RADIOGRAPHY OVEREXPOSURE OF TWO INDIVIDUALS

Region IV was advised by the Radiation Control Section of the Idaho Department of Health and Welfare on December 10, 1986, that a source disconnect occurred two days before while radiography operations were being conducted at the DOE's Idaho National Engineering Laboratory (INEL). Film badges worn by the two radiographers involved showed doses of 3.2 rems and 4.8 rems.

DOE authorities are investigating the incident and are reporting all information to the Idaho Radiation Control staff. Medical attention has been provided for the two radiographers.

Both DOE and Idaho staff are prepared to respond to any media inquiries.

Region IV State and Governmental Affairs staff expects to receive a final report on the incident within a short time.

This information is current as of 2:00 p.m. December 11, 1986.

CONTACT: R. J. Doda, 728-8139

DISTRIBUTION:

H. St. _____
Chairman Zech _____
Comm. Bernthal _____
Comm. Roberts _____
Comm. Asselstine _____
Comm. Carr _____
ACRS _____
SECY _____
CA _____
PDR _____

MNBB _____
EDO _____
PA _____
ELD _____
MPA _____

Phillips _____
NRR _____
DCS _____

Willste _____
NMSS _____
RES _____

MAIL:
ADM:DMB (Original)
DOT:(Trans only)

FAX:
INPO _____
NSAC _____
SP _____ (Air Rights)

RRI _____
NRC OC _____

LICENSEE:
(Reactor Licensee)

RIV:SGAS *AB*
RJDoda:jc
12/11/86

Regional Offices _____
PA *W*
RDMartin
12/11/86

1934
Enclosure 1



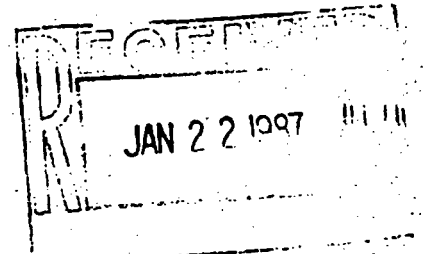
STATE OF IDAHO

DEPARTMENT OF HEALTH
AND WELFARE

DIVISION OF ENVIRONMENT

January 16, 1987

Robert Doda
U.S. Nuclear Regulatory Commission
611 Ryan Plaza
Arlington, Texas 76011



Dear Bob:

We would like to request an opinion from your office concerning a jurisdictional question about state licensing responsibilities on a federal controlled site. The Idaho National Engineering Lab (under U.S. DOE control) has a need for radioactive material licensees to perform radiography on the federal installation. These radioactive material licensees usually have an NRC license and come from out of state.

Normally these licensees request reciprocity from the state or send in an application for licensure. In previous years we have granted reciprocity or issued a license to them.

Recently an incident occurred at the INEL involving the over exposure of two individuals. The licensee was an Idaho based company. The U.S. DOE investigated and are in the process of writing a report. Our question has to do with our responsibilities for investigation of the incident and whether the operator is ~~liable~~ reliable under State or U.S. DOE law. Also, do we grant reciprocity or issue a license to a company operating on the INEL site?

If you need further information you can call myself or Larry Boschult at (208) 334-5879.

Sincerely,

A handwritten signature in cursive script that reads "Rob F".

Robert D. Funderburg
Radiation Safety Officer
Hazardous Materials Bureau

RDF/ds

EQUAL OPPORTUNITY EMPLOYER

Enclosure 2

FEB 25 1987

ID *Following*

Robert J. Funderburg
Radiation Safety Officer
Hazardous Materials Bureau
Department of Health and Welfare
Boise, Idaho 83720

Dear Mr. Funderburg:

This is in partial answer to your letter of January 16, 1987, regarding an Idaho licensee working at the Idaho National Engineering Laboratory (INEL).

As was explained during telephone conversations with both yourself and Mr. L. Boschult, the DOE health physics staff took responsibility for investigating the incident and for keeping the State informed of their actions. The jurisdiction question was presented to our legal staff for review. Since initial NRC/DOE discussions indicate a need to examine the question in a more general sense, our answer to you may take some time. We will write to you as soon as the question is resolved.

In the meantime, we understand the recent overexposure incident at INEL has been investigated by DOE and they have supplied you with a report of the incident. If any conclusions or recommendations in the report apply generally to the Idaho licensee's radiation safety program, you may wish to follow these up with your licensee to assure that any unsafe practices have been corrected.

Sincerely,

Original Signed by

R. J. DODA

Robert J. Doda
State and Governmental
Affairs Staff

bcc:

R. D. Martin
P. S. Check
R. L. Bangart
W. L. Fisher
C. E. Wisner
W. L. Brown
G. F. Sanborn
✓ R. S. Heyer
Idaho Files
D. A. Nussbaumer, SP

READING FILE COPY

RIV Official File Copy

RIV:SGAS
RJDoda:vg
2/24/87

RC
WLBrown
2/25/87

Enclosure 3

Hugh L. Thompson
James M. Taylor
James Lieberman
William C. Parler

MAK -3-1987

MEMORANDUM FOR: Hugh L. Thompson
Director, NMSS

James M. Taylor, Director
Office of Inspection and Enforcement

James Lieberman
Assistant General Counsel for Enforcement, OGC

William C. Parler
General Counsel, OGC

FROM: Robert D. Martin
Regional Administrator

SUBJECT: OVEREXPOSURE INCIDENT AT INEL

Recently, an incident occurred at the DOE's Idaho National Engineering Laboratory (INEL) site involving the overexposure of two individuals. We have been informed by DOE personnel that the Idaho based company responsible for the overexposure, Northwest X-Ray, was a lower tier DOE subcontractor. According to the DOE's follow-up investigation, the company apparently did not follow procedures and ignored instrument readings.

The State of Idaho raised several questions with Region IV pertaining to the incident with regards to the State's role in any licensing and investigative responsibility. Northwest X-Ray has a State license. It does not have an NRC license. It was the subject of a severity level-3 enforcement action about a year ago (EA85-138) involving licensed activities in a non-agreement state (Montana) pursuant to Part 150.20.

In looking into the incident at INEL, we were informed by DOE's Chief Counsel for the Idaho Operations office that the INEL site is not an area of exclusive federal jurisdiction, but rather one of proprietary jurisdiction. However, the Chief Counsel stated that DOE considered the site as one of exclusive federal jurisdiction for licensing purposes.

Pursuant to 10 CFR 30.12, DOE prime contractors are exempt from NRC licensing requirements under certain specific circumstances. In addition to that exemption, Part 30.12 provides that, subject to certain Energy Reorganization Act requirements not applicable here, any DOE prime contractor or subcontractor is exempt from the requirements for a license set forth in sections 81 and 82 of the Atomic Energy Act of 1954, as amended, and from the

Enclosure 4

Hugh L. Thompson
James M. Taylor
James Lieberman
William C. Parler

-4-

MAR 3 1987

regulations of Part 30 to the extent that such prime contractor or subcontractor manufacturers, produces, transfers, receives, acquires, owns, possesses, or uses by-product material under his prime contract or subcontract when the Commission determines that the exemption is authorized by law; and that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety. We are not aware of any such determination having been made by the Commission for Northwest X-Ray.

Furthermore, our review of the matter indicates that the Part 30.12 determination requirement has probably never been enforced as a prerequisite for certain prime contractors and subcontractors to perform activities on DOE sites otherwise subject to NRC licensing requirements. We suggest that a meeting with DOE may be in order to deal with this apparent gap in regulatory compliance. The combined legal, licensing, and enforcement implications of this issue suggests that a multi-office meeting may be in order.

ORIGINAL SIGNED BY
ROBERT D. MARTIN

Robert D. Martin
Regional Administrator

cc:

T. E. Murley, Regional Administrator, RI
J. N. Grace, Regional Administrator, RII
A. B. Davis, Acting Regional Administrator, RIII
J. B. Martin, Regional Administrator, RV
J. G. Partlow, IE
R. E. Cunningham, NMSS
R. L. Fonner, OGC

bcc:

RLBangart
DAPowers
RJDoda

RIV:RC WTD
WLBrown:cms
2/24/87

O/SGA AS
RJDoda
2/24/87

D/DRS
RLBangart
2/27/87

RA
RDMartin
2/ /98