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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, D.C. 20510

STEPHEN BREYER, CHIEF COUNSEL
RICHARD H. GROGAN, JR., STAFF DIRECTOR

May 8, 1980

Mr. John F. Ahearne
Chairman
U.S. Nuclear Regulatory Commission
Washington, D. C. 20555

THIS DOCUMENT CONTAINS
POOR QUALITY PAGES

Dear Chairman Ahearne: *John* -

I am enclosing a copy of a letter I received from a constituent, Dr. Ronald R. Lund, regarding the Commission's proposed rule on protection of employees that was published in the Federal Register on March 10, 1980. Dr. Lund raises several questions concerning the advisability and the scope of the proposed rule, particularly as it applies to licensees for medical applications of byproduct material.

The Commission's proposed rule is designed to implement section 210 of Public Law 95-601. That section, enacted on November 6, 1978, was intended to provide a broad statutory base for protecting employees of NRC licensees and applicants and their subcontractors against discriminatory actions by their employers in retaliation for assistance the employee may have given NRC in the discharge of its licensing and related regulatory responsibilities. I understand that prior to the enactment of this section there were several documented instances in which employees of nuclear power reactor licensees or their suppliers alleged that they had been discriminated against, or at least had been threatened with discriminatory actions, by their employers for assisting NRC inspectors. Section 210 was enacted within this factual context.

Given this experience with respect to nuclear power reactor licensees and their suppliers, provisions such as Section 210 and the Commission's proposed rule may well be warranted for those activities. But I question whether sufficient consideration has been given, in either the legislation or the administrative process, to the need for such a provision with respect to licensees for medical applications of byproduct material. I would urge the Commission, as part of its review of the March 10 proposed rule, to consider whether the rule should apply to this category of NRC licensees.

5/14..To EDO to Prepare Reply for Chairman's Signature..Date due Comm:
May 21.....Cpys to: Chm, RF, OCA to Ack...80-1003

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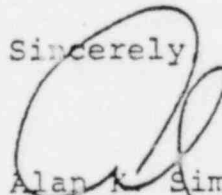
Mr. John F. Ahearn
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To assist me in my own review of the matter, please provide me with any information the Commission has on actual allegations by employees of NRC licensees, applicants or their subcontractors of discriminatory action or threats of discriminatory action in retaliation for the employee's assistance to NRC. In particular, please identify any such allegations that have been made against licensees for medical applications by byproduct material.

Finally, even if the Commission determines that medical licensees should be covered by the proposed rule, I believe Dr. Lund is correct in his comment that the summary description of the proposed rule is overbroad with respect to this category of licensees to include antitrust and common defense and security matters. Since I understand that neither of these matters is of concern for this category of byproduct material licensees, I would urge the Commission at a minimum, to clarify this aspect of the scope of the proposed rule.

I would appreciate your comments on these concerns. Also please keep me informed of any action taken by the Commission on this proposed rule.

Sincerely



Alan K. Simpson
United States Senator

AKS/jat

MK

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ROGER P. MATTSO, M.D.
RONALD R. LUND, M.D.

JACK A. LARIMER, M.D.
JOSEPH G. BICEK, M.D.

March 24, 1980

Senator Alan K. Simpson
6203 Dirksen Building
Washington, D.C. 20510

Dear Senator Simpson:

I have taken the liberty of sending to you a copy of a page from the Federal Register and a copy of my letter of response to it. I am also communicating with Senator Wallop and Congressman Cheney on this same subject.

As Chairman of the Department of Radiology at Memorial Hospital in Casper, I am responsible for most of the dealings with the Nuclear Regulatory Commission regarding our license for radioactive isotopes. The burden of nonproductive regulations has been expanding in this area as well as in other areas of health care. It is becoming oppressive.


And now this thing, where the NRC wants to set up a system of informers! As you can see in the first paragraph of their summary, under item (1), they want to include under this informer scheme, not only subjects that relate to radiologic functions, but also antitrust, safety, and security matters, whatever that really means.

This publication has, for the first time in my life, evoked within me a fear of my own government.

Someone responsive to the notion that "freedom" and "liberty" are not the new dirty words is needed to slow or reverse this trend. Perhaps there is still some way for you, our elected representatives, to regain this power again from the regulators.

I am asking that you try.

Sincerely yours.



Ronald R. Lund, M.D.
Chairman, Department of Radiology

RRL/dls

cc

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 30, 40, 50, 70, 71, 150

Protection of Employees who Provide Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations in regard to protection for employees who provide information to the Commission. These amendments would (1) change the types of information to include not only information on radiological working conditions but also information on anti-trust, safety, and security matters, (2) make the employee protection provisions applicable not only to licensees but also to permittees, applicants, and their contractors and subcontractors, (3) make employers aware that discrimination against employees who provide such information to the Commission is prohibited, (4) make employees aware that, if such discrimination is believed to have occurred, a recourse for remedy is available through the Department of Labor, and (5) require posting on premises of licensees, permittees, and applicants of explanatory material relating to the prohibition and remedy. DATE: Comments should be submitted May 9, 1980.

ADDRESSES: Written comments or suggestions concerning the proposed amendment should be mailed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. W. E. Campbell, Jr., Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. [301-443-5913].

SUPPLEMENTARY INFORMATION: Section 10 of Public Law 95-601 amended the Energy Reorganization Act of 1974, as amended, by adding a new § 210, "Employee Protection." This new section identifies specific acts of employees as protected activities and prohibits employers from discriminating against employees who engage in those activities, provides the Department of Labor with new authority to investigate an alleged act of such discrimination, and provides a remedy to the

discrimination by means of an administrative proceeding in the Department of Labor. This new authority of the Department does not in any way abridge the Commission's preexisting authority under Section 161 of the Atomic Energy Act to investigate an alleged discrimination and take appropriate action, for example withholding of a license, suspension of a license, or imposing a civil penalty.

The Nuclear Regulatory Commission and its predecessor the Atomic Energy Commission have promulgated some regulations that address the subject of workers who provide information to NRC, e.g., 10 CFR 19.16(c), and posting requirements, e.g., 10 CFR 19.11(c). Paragraph 19.16(c) is of limited scope and since it pertains to radiological working conditions it is applicable only to licensees. Paragraph 19.11(c) is also of limited scope in that it relates the posting requirements to radiation areas. NRC is considering whether a more comprehensive regulatory program for protection should be developed by it to complement the DOL program. DOE noticed effective rules for its program on January 8, 1980 (45 FR 1836).

Accordingly, the Commission proposes to amend the regulations not only to announce the prohibition of discrimination of the type described above and to announce the availability thru the Department of Labor of a remedy for employees who believe they have been discriminated against but also to require posting by specific types of licensees, permittees and applicants of explanatory material concerning the prohibition and remedy.¹ In addition, the Commission proposes to delete 10 CFR 19.16(c) but at the same time to amend Part 19 by the addition of 10 CFR 19.20. This new paragraph, when combined with proposed changes to Parts 30, 40, 50, 70, and 71 will extend the current prohibition of discrimination against workers who provide information concerning radiological working conditions to NRC to include employees who provide information relating to radiological health protection matters, safeguard matters that could affect the public health and safety or common defense and security or anti-trust matters.

Title 10, Chapter I contains provisions in various Parts, for example paragraph 40.25(e), to exempt specific categories of "general licensees" from the requirements of 10 CFR Part 19. This exemption is based on the nature of the

licensed activity. On the basis of this exemption these general licensees are not required to post a copy of the current NRC Form 3. The proposed amendments continue this exemption for all general licensees except the general licensee carrier of special nuclear material (10 CFR 70.20a).

Title 10, Chapter I contains provisions, in Parts 30, 40, 50, 70, 71, and 150, for example §§ 30.61 and 50.63, that allow orders to be issued to suspend or revoke a license or to impose a civil penalty for violation of, or failure to observe, the terms and provisions of rules, regulations or orders of the Commission. The amending of the regulations based on the Atomic Energy Act, as amended, to prohibit specific discriminatory acts by licensees, permittees, and applicants will clarify the imposition of various enforcement orders in the event that licensees, permittees, or applicants engage in the specified types of discriminatory acts.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 19, 30, 40, 50, 70, 71, and 150, is contemplated. All interested persons who wish to submit comments or suggestions in connection with the proposed amendments should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by May 9, 1980. Copies of the comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

1. The table of contents for Part 19 is amended to add "19.20 Employee protection," immediately prior to "19.30 Violations."

§ 19.11 [Amended]

2. 10 CFR 19.11(c) is amended to read as follows: "Form NRC-3, 'Notice to Employees,' shall be posted by each licensee as required by Parts 30, 40, 50, 70, and 71."

§ 19.16 [Amended]

3. In 10 CFR 19.16, paragraph (c) is deleted.

4. A new § 19.20 is added to read as follows:

§ 19.20 Employee protection.

Discrimination by a licensee, or a contractor or subcontractor of a licensee

¹ Copies of the material to be posted, NRC Form 3 (Proposed Revision 5/77), may be obtained by writing the Office of Administration, Document Management Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.



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LEWIS W. SPENCER, F.A.C.H.A.
ADMINISTRATOR

20 March 1980

Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Sir:

Comment was invited regarding NRC proposed rules for "Protection of Employees Who Provide Information", published in the Federal Register/Vol.45, NO.48/ March 10 1980.

This is simply too much. For twenty years I have worked in Nuclear Medicine, aided by a feeling of partnership with and admiration for the Atomic Energy Commission and its successor, the Nuclear Regulatory Commission. Slowly and steadily this relationship is being eroded and converted to an adversary relationship. The steady scientific reputation of the Commission has faded, to be replaced by a politically oriented force buffeted by the winds of public opinion fads. The Commission appears to distrust its licensees, and a policy of help and progress is being replaced by a policy of suspiciousness and punishment.

Now you offer a system fitting of this paranoia, an informer system. You now offer to protect employees who provide "information to include not only information on radiological working conditions but also information on anti-trust, safety, and security matters." You further offer to punish employers or licensees who discriminate against such informers.

Is it really necessary to take more freedom and liberty from your people? What will you gain by turning employee against employer? Sometime, someday, this trend must stop!

Please record my negative vote regarding your proposed new rule change.

Sincerely yours,

Ronald R. Lind, M.D.

Ronald R. Lind, M.D.
Chairman, Department of Radiology

RPL:hs

(PURPOSE OF 8005060041)

LEWIS W. SPENCER, F.A.C.H.A.