



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

May 19, 1982

The Honorable Richard L. Ottinger, Chairman
Subcommittee on Energy Conservation and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are the answers to the questions in your letter of May 7, 1982 regarding the Hayward-Tyler Pump matter.

We share your concern about the release of the draft inspection and investigation reports to Company representatives. Moreover, we agree that our investigatory efforts should not be burdened by any practices which even give the appearance of impropriety. Nevertheless, I am concerned that your criticism of the Commission and its senior officials appears to be based on a misunderstanding of the facts. Your letter states (see page 5):

"Most importantly, these actions are reprehensible because of the total indifference shown by the Commission to the disclosure of these actions at the highest staff levels. The Commission's inaction in the face of internal documents and evidence that private, unrecorded meetings between a vendor under investigation and senior NRC staff not familiar with the investigation occurred and resulted in revisions in the text of official communications constitutes an endorsement of this promiscuous behavior between the regulated and the regulator."

There are two important points that merit consideration in this connection. First, rather than total indifference and inaction, the Commission acted promptly to establish the facts and to address two problems that arose in the Hayward-Tyler investigation. It directed that: (1) no draft investigation reports will be issued without the explicit approval of the Executive Director, and (2) any meetings held with representatives of organizations or individuals under investigation will have a written summary of the meeting prepared and placed in the files of the investigation. The Executive Director for Operations has implemented these actions.

Secondly, it was reported as a result of the investigation that the only direction given by the senior NRC official present at the February 25 meeting was to be sure that the language in the transmittal letter was consistent with the findings of the inspection and investigation reports. This hardly qualifies as reprehensible action, despite the fact that changes were later made in the transmittal letter -- changes about which the Inspector and Auditor said: "...I believe the regional officials made the changes in good faith believing they were on point and valid."

In a similar vein, the Office of the Inspector and Auditor reported to the Commission that the flaws in the handling of the Hayward-Tyler matter were not primarily caused by a people problem but by a more fundamental institutional deficiency regarding the agency's policy, procedures and overall management of investigations. Your letter appears to support this point of view when you state (see page 2): "...the Commission must establish clear policies which can be easily followed by the Regional Offices. This is not to impugn the ethics of those in the Regional Offices, but to stress the need for clear standards which can minimize actions such as those taken in Region IV in this case." The Commission's decision to establish a new Office of Investigations addresses the basic institutional problems with our investigative program. Further, during the discussion of the Inspector and Auditor's report to the Commission on the subject, no one expressed a view that the facts revealed egregious conduct by NRC officials which suggested that administrative disciplinary measures should be considered. On the contrary, it was noted that the officials in question withstood any undue influence.

From your oversight perspective, I believe you would agree with me that our regulatory operation is a complex one. Senior staff officials more often than not are attempting to deal in rapid fashion with multiple problems. When deficiencies in agency actions are discovered, we expect to be held accountable to a very high standard. If disciplinary action is warranted, the failure to take such action should not be condoned. However, the investigation has not disclosed the need for such action.

The agency's success in carrying out its mission depends on the dedicated efforts of its employees. Prejudgment of the integrity of employees not only harms the morale and effectiveness of the individuals attacked but also deeply affects all members of the agency and could reduce their continued availability as public officials.

My final point is that your May 7 letter implies that senior NRC officials should never talk to representatives of organizations which are the subject of an investigation. We agree that such meetings should rarely be held before the investigation has been completed, and only for a clearly stated regulatory purpose. However, in carrying out our regulatory responsibility we depend heavily on those who are subject to our regulations for information regarding, for example, the safety significance of alleged deficiencies and corrective actions that may be warranted. Placing a stigma, therefore, on any meeting with representatives of an organization under investigation would not be in the best overall interest of the conduct of our regulatory responsibilities.

In conclusion, Mr. Chairman, we share your concerns about avoiding improprieties in our investigations. Nevertheless, I sincerely believe that the conduct of our mutual responsibilities is not advanced by the circumstances I have discussed at some length. We will continue to do our best to assure that proper investigatory practices are routinely followed.

Commissioner Gilinsky adds: I do not agree with the Commission's letter. I am disappointed that the Commission did not even express its displeasure with the handling of the draft and final reports.

Sincerely,



Nunzio J. Palladino

Enclosure:
As stated

cc: Rep. Carlos J. Moorhead

QUESTION 1. What sanctions are available to the Commission for breach of 10 CFR Part 0 by a Commission employee?

ANSWER.

Part 0 generally recognizes that violation of any of the instructions or statutes referred to in the Part 0 may subject employees to disciplinary action by NRC in addition to any penalties prescribed by law for such violation (0.735-3(a)(7)).

Subpart C of Part 0 includes a list of restrictions imposed by statute on the conduct of employees. (0.735-30). Part 0 is incorporated in its entirety in NRC Manual chapter 4124 "Conduct of Employees."

General authority for adverse actions against government employees is provided by 5 U.S.C. Chapter 75. While this chapter does not apply to NRC employees directly by virtue of the agency's excepted status under Section 161d. of the Atomic Energy Act of 1954, as amended, NRC has adopted its provisions in the agency's personnel regulations.

Depending upon the circumstances, if a particular statute is violated, the statute may itself provide for the appropriate sanction. (See, e.g. the statutes referred to in 0.735-21-0.735-27).

Unless a sanction is specifically provided for by a statute which has been violated, a general touchstone is in 5 U.S.C. section 7513 which states in part, that "... an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service."

A full range of sanctions are available beginning with counselling and proceeding through memoranda of admonition, letters of reprimand, suspensions, up to and including loss of job.

QUESTION 1 What sanctions are available to the Commission for breach of 10 CFR Part 0 by a Commission employee?

(i) Have any of these sanctions been invoked?

ANSWER

We understand the question to relate only to instances in which Part 0 has been invoked as the basis for the sanction. There have been two instances in which Part 0 has been relied on to impose an administrative sanction against a supervisory employee. The general authority in Part 0 is rarely used in and of itself as the basis for an administrative sanction against any employee. However, there are instances of administrative sanctions being imposed on non-supervisory employees under the authority of 5 U.S.C. chapter 75 or other specific statutes as the circumstances may warrant. Typically, the bulk of these sanctions concern absences without approved leave, falsifying government documents

(e.g. job application form and time and attendance cards) and insubordination.

(ii) If so, under what circumstances?

(1) A supervisor was suspended for seven calendar days for improperly advising a licensee to submit false records as part of a license renewal application (backdating a portion of the application to meet a deadline).

(2) A supervisor was suspended for thirty calendar days for unauthorized use of U.S. government vehicle resulting in its loss to the government.

QUESTION 2.

On April 6, 1982, Mr. Palladino testified before the Interior and Insular Affairs Subcommittee on Oversight and Investigations to the effect that the Commission had determined that no disciplinary action was warranted at this time as a result of the actions of Region IV officials.

(Note: Although the transcript of the April 6 hearing has not yet been released for our detailed review, we believe that the Chairman testified in part: "And I indicate that the Commission has not thought at this point in time that any disciplinary action is _____ needed.").

(i) Provide all legal analysis of Commission policies, procedures, rules and regulations prepared by the General Counsel, the Executive Legal Director, the Office of Inspection and Enforcement or the Office of Inspector and Auditor, along with any other considerations upon which this decision was based.

ANSWER

The deficiencies in the handling of the Hayward-Tyler matter were not the product of an employee problem. The underlying causation was the lack of comprehensive policy and procedures with regard to NRC field investigations. As stated in the letter of transmittal and in previous correspondence to you on this subject, the Commission directed its attention and actions to the underlying institutional deficiencies.

In reaching this conclusion, the Commission had for its consideration the Inspector and Auditor's report and the following statement of his conclusions and recommendations:

- "- Clearly, on February 12, 1982, Region IV officials should not have released drafts of the inspection and investigative reports, the draft transmittal letter to the inspection report and the draft Notice of Nonconformance. Notwithstanding whether or not we have specific regulations or guidance addressing this point, common sense should have dictated against this decision, given the totality of the circumstances.
- "- Both the EDO and regional official - given the frequency and informality of the various meetings and phone conversations with Mr. Rowden, et al - should have confirmed by memo or letter the substances and merits of these contacts.
- "- Throughout the investigation and inspection there was less than the proper arm's length distance between NRC and the vendor and his attorneys. This distance should have been maintained not only because of the competing interest that exists during an investigation but particularly because of the fact that NRC officials were dealing with former associates

who were also former senior officials of the NRC. Failure to maintain this distance subjects inspection and investigation reports to the charge that they lack independence and/or objectivity.

"- Following from the previous points we are left with the indisputable fact that the vendor was successful in effecting softening changes to a proposed NRC transmittal letter - and the perception by some that this was done to accommodate a former boss.

"- Finally, while the changes did in fact soften the letter I do not believe that regional officials knowingly made these changes simply to accommodate the vendor or Mr. Rowden. Moreover, although the changes to the proposed transmittal letter probably would not have been made absent the tactics employed by HTPC and their attorneys, I believe regional officials made the changes in good faith believing they were on point and valid.

"With regard to recommendations, it is my opinion that OIA's inquiry into the various aspects of the handling of the HTPC investigation/inspection substantiates to a large degree what has been brought to the Commission's attention in the past, to wit, the NRC investigative program is below par. The primary reasons for this situation is not a people problem, as we have many fully trained and competent investigators in the field, but rather we lack comprehensive policy and procedures with regard to NRC field investigations. For example, I do not believe there is region-wide agreement with regard to such practices as entrance conferences, exit conferences and similar practices as they pertain to investigations.

"An immediate solution to this problem would be the formation of an Office of Investigation, reporting directly to the EDO or to the Director, OIA. Current regional investigators would report directly to this office and the office would serve as a service organization to the five regions. The clear advantage of having this office report directly to the EDO would be that major line functions of the agency would continue to report to the EDO and OIA would retain its total overview function. The major advantage of having this office report to the Director, OIA, lies in the fact that many field investigations deal with whether or not the regions have done a proper job and this reporting arrangement would avoid the situation where the EDO is looking at and appraising one of his own.

"I do not believe we can avoid coming to grips with this issue any longer." (End of Quote)

Although the Office of the General Counsel did not provide any written legal analysis, a representative of that office was present at the Commission meetings on the subject. Part O was discussed. The Commission was advised as a general proposition that although it would not be legally irrational to apply Part O (because of its general

language), the Office of The General Counsel strongly recommended against that course. Historically, Part 0 has been understood to be concerned primarily with conduct which involves conflict of interest situations. If Part 0 is to be broadly interpreted and applied (so as to invoke administrative sanctions on the basis of the appearance of a violation of one or more of its general standards solely because of isolated errors of judgment), the Office of General Counsel recommended that prior notice of such intent be given to all NRC employees.

The Commission was also advised that on the basis of the facts reflected in the Inspector and Auditor's report on the Hayward-Tyler matter, the Office of The General Counsel was not aware of any provision of law which appears to have been violated by any NRC employee.

The Office of The Executive Legal Director did not provide any analyses, legal or otherwise, with regard to the decision that "no disciplinary action was warranted at this time as a result of the actions of Region IV official." The Executive Legal Director was present at the Commission meeting at which the advice summarized above of the Office of The General Counsel was given to the Commission.

On May 1, 1982, the Director of the Office of Inspector and Auditor furnished you a copy of an April 20 memorandum prepared by his investigators and a copy of his April 23 response.

QUESTION 3

What was the purpose of the meeting between Mr. Dircks and Mr. Rowden, in light of the fact that NRC officials present were not familiar with the facts of the case? Is it NRC policy for senior officials, presumably not involved in or familiar with the inspection or investigation to meet with parties under investigation to discuss the investigation and documents associated therewith prior to issuance of the final report? If so, please state the purposes served and the safeguards used to protect the agency from possible perceptions of impropriety.

ANSWER

The statement in the question that the NRC officials present were not familiar with the facts of the case is not correct. The Office of Inspector and Auditor's report indicates that senior NRC Headquarters officials had been previously briefed on the results of the Hayward-Tyler Pump Company investigation. This briefing was conducted by John Collins, Administrator of the Region IV office, on February 18, 1982. That briefing was sufficiently detailed to raise questions in the minds of the attendees (at the February 18 meeting) regarding the adequacy of the investigating and the draft report of the investigation. There was also concern about the safety implications of and deficiencies in the pumps and the type of remedial action which would be taken to inform those who needed to know.

The meeting was held because it was requested. The particular source of the request was not a determining factor in holding the meeting. Meetings with representatives of companies regulated by the NRC are not uncommon. Such meetings are an essential part of our ascertaining facts which may have a significant bearing on regulatory actions, such as the type and timing of enforcement actions. It is appropriate for the Executive Director for Operations to meet with senior company officials to discuss matters under his purview. The regional offices report to the Executive Director for Operations. As far as "safeguards" are concerned, both the Executive Legal Director and the Deputy Director of Inspection and Enforcement accompanied the Executive Director for Operations at the meeting. Additional administrative directions, referred to in the covering letter, have been issued to require written summaries of such meetings and to prohibit the release of draft investigation reports to licensees or their agents without the express permission of the Executive Director for Operations.

QUESTION 4

What activities are contemplated by the Commission to determine whether such actions are not uncommon by Headquarters officials discussed in this letter?

ANSWER

Although such meetings are not frequently conducted by Headquarters officials, it is not inappropriate to provide an opportunity for company representatives to meet with senior Headquarters officials to discuss issues under their purview when the circumstances so dictate. This is particularly true when safety considerations and the need, if any, for remedial actions is involved. In the final analysis, the institutional changes which the Commission has already directed with regard to management and conduct of investigations, coupled with the sound judgment of responsible officials, should minimize any concern of the type raised by the Hayward-Tyler matter. And, as indicated in the answer to Question 3, additional directives will be issued to the extent necessary regarding the circumstances under which senior officials are to meet with representatives of the subject of an on-going investigation.