

92R-216



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

August 5, 1982

William C. Marcoux, Esquire
LeBoeuf, Lamb, Leiby & MacRae
1333 New Hampshire Avenue, N.W.
Washington, DC 20036

IN RESPONSE REFER
TO FOIA-82-289

Dear Mr. Marcoux:

This is in response to your letter dated June 25, 1982 in which you requested, pursuant to the Freedom of Information Act, any information NRC might have on implementation of the Employee Protection provision in Section 210 of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5850).

In a telephone conversation between you and Linda Robinson on July 12, 1982 regarding the scope of your request, you reiterated your intent to write a law review article on the subject and stated you are not interested in the legislative history of this provision. Subsequently, NRC staff offered to meet with you to discuss this provision.

When James Lieberman and Linda Robinson met with Eugene Fidell and you on July 20, 1982, Mr. Lieberman informed you of the background and various aspects of the provisions and responded to your questions. At that time, you were given copies of the decision by the Department of Labor (DOL) regarding the Zach Company (82 ERA 2) and a recent NRC notice pertaining to this provision (47 FR 9987). In addition, Ms. Robinson informed you of various records, such as rulemaking matters, SECY papers, and records on Commission meetings, which have been made available for public inspection and copying at the NRC Public Document Room. You were also informed that, because of current NRC activities related to this provision, some relevant records consist of predecisional drafts as well as attorney work products and investigatory records. After discussion of the provision, the NRC staff agreed to provide to you a copy of the Memorandum of Understanding between NRC and DOL, the citation to a relevant case involving the Environmental Protection Agency, and a list of NRC notices of violations of the provision.

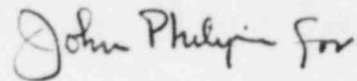
On August 3, 1982, Ms. Robinson telephoned you to inform you that upon search of pertinent files NRC staff determined that NRC has issued two notices of violation, which are identified on the enclosed appendix and are enclosed. Mr. Lieberman will respond by separate letter with regard to the Memorandum of Understanding and case citation.

William C. Marcoux, Esquire

-2-

As agreed, we are closing our file on your request. If you have any questions about this matter, please call Ms. Robinson (492-8133) or Mr. Lieberman (492-4909).

Sincerely,

A handwritten signature in cursive script that reads "John Philip Fox".

J. M. Felton, Director
Division of Rules and Records
Office of Administration

Enclosures: As stated

APPENDIX

1. 4/22/81 Letter to Ellis Fischel State Cancer Hospital with enclosed Notice of Violation and IE Inspection Report No. 30-02274/81-01.
2. 1/11/82 Letter to Tennessee Valley Authority with enclosed Notice of Violation.

APR 22 1981

License File

Ellis Fischel State
Cancer Hospital
ATTN: Mr. Joseph Greco
Hospital Administrator
115 Business Loop 70 West
Columbia, MO 65201

License No. 24-00481-04

Gentlemen:

This refers to an enforcement conference conducted by telephone between you and other members of your staff and Mr. A. B. Davis and other members of the Region III staff on March 9, 1981. The conference call was initiated to address a specific item of noncompliance related to the dismissal of a hospital employee in December 1978, and to discuss the hospital's recent enforcement history and the system for management controls to improve your regulatory performance of the licensed program. The enclosed copy of our report identifies the areas discussed with you.

Because of pending litigation involved in the first item which was to be discussed in the call, you declined to discuss the matter further. Subsequently, this matter was addressed in the telephone call between Mr. A. B. Davis, Mr. J. Lieberman of the NRC Office of Executive Legal Director and Mr. Marshall, Attorney for the Missouri Attorney General's Office. The particular item of noncompliance, which was the subject of that discussion, is described in the enclosed Appendix A.

A written response is required to this item. In addition to your response to the specific item set forth in Appendix A, your reply should include a description of the general management controls which you have instituted to ensure improved regulatory performance with regard to NRC requirements:

This notice is sent to you pursuant to the provisions of Section 2.201 of the NRC's "Rules of Practice," Part 2, Title 10, Code of Federal Regulations. Section 2.201 requires you to submit to this office within twenty days of your receipt of this notice a written statement or explanation in reply, including for each item of noncompliance: (1) corrective action taken and the results achieved; (2) corrective action to be taken to avoid further noncompliance; and (3) the date when full compliance will be achieved.

8105280440
PDR

Ellis Fischel State
Cancer Hospital

- 2 -

APR 22 1981

We will gladly discuss any questions you have concerning this matter.

Sincerely,

James G. Keppler
Director

Enclosures: :

- 1. Appendix A, Notice of Violation
- 2. IE Inspection Report No. 30-02274/81-01

cc w/encls:

Central Files
 Reproduction Unit NRC 20b
 PDR
 NSIC
 Mr. Marshall, Attorney
 General's Office, State
 of Missouri

RIII
[Signature]
 Adam/so
 3/18/81

RIII
[Signature]
 Weideman
 3/19/81

RIII
[Signature]
 Fisher
 3/24

RIII
[Signature]
 Nodellus

RIII
[Signature]
 Davis
 4/17

RIII
[Signature]
 Keppler
 4/17

Appendix A

NOTICE OF VIOLATION

Ellis Fischel State
Cancer Hospital

License No. 24-00481-04

It appears that certain of your activities of December 20, 1978, were in noncompliance with NRC requirements as noted below. This item is an infraction.

10 CFR 19.16(c) states that no licensee shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under the regulations in this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of himself or others of any portion afforded by this part.

Contrary to the above, on December 20, 1978, you discharged a hospital employee because he had notified the NRC concerning certain matters relevant to public health and safety which prompted an investigation by this agency.

8105280442
POR

U.S. NUCLEAR REGULATORY COMMISSION
OFFICE OF INSPECTION AND ENFORCEMENT

REGION III

Report No. 30-02274/81-01

License No. 24-00481-04

Licensee: Ellis Fischel State
Cancer Hospital
115 Business Loop 70 West
Columbia, MO 65201

Conference Telephone Call Conducted: March 9, 1981

Report Prepared By: *D. G. Wiedeman*
D. G. Wiedeman, Acting Chief
Materials Radiation Protection
Section 1

April 13, 1981

Approved By: *W. L. Fisher*
W. L. Fisher, Chief
Technical Inspection Branch

April 13, 1981

Summary

Telephone conference call on March 9, 1981 (Report No. 30-02274/81-01)

Areas Discussed: The purpose of the communication was to discuss the licensee's enforcement history, management control system, and an apparent item of noncompliance which occurred on December 22, 1978.

Results: One apparent item of noncompliance was noted, 10 CFR 19.16(c). Licensee discharged a hospital employee because he notified the NRC concerning certain matters relevant to public health and safety.

30-02274/81-01
PAR

DETAILS

1. PARTICIPANTS

Joseph Greco, Administrator, Ellis Fischel State Cancer Hospital
Walter Kenney, Assistant Administrator, Ellis Fischel State Cancer Hospital
Tom Sullivan, Radiation Safety Officer, Ellis Fischel State Cancer Hospital

A. B. Davis, Deputy Director, Region III
C. E. Norelius, Acting Director, Division of Engineering and Technical Inspection, Region III
W. L. Fisher, Chief, Technical Inspection Branch, Region III
W. H. Schultz, Enforcement Coordinator
D. G. Wiedeman, Acting Chief, Material Radiation Protection Section
No. 1

2. DISCUSSION

The Regional Deputy Director stated that the purpose of the conference was to review the licensee's enforcement history and management control system and to discuss an apparent item of noncompliance with 10 CFR 19.16(c) which occurred on December 20, 1978. The licensee declined any discussion of the noncompliance, because this case was in the appeal stage in the Federal Courts. NRC representatives were advised to contact the Missouri State's Attorney regarding any additional discussion of this matter. A subsequent discussion of the circumstances which pertain to the item of noncompliance was made with the Missouri State's Attorney.

During the March 9, 1982, conference telephone call, the licensee described the management control system that was instituted to ensure compliance with NRC requirements. The licensee was asked to document this management control system in the written reply to the Notice of Violation.