



BPI

Business and Professional People for the Public Interest

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November 18, 1982

Stephen H. Lewis, Esq.
Nuclear Regulatory Commission
Region III
799 Roosevelt Road
Glen Ellyn, IL 60137

Dear Steve:

This letter is to express our concern that your special inspection has yet to begin in earnest, and to memorialize our recent telephone conversations concerning NRC interviews of the three persons who submitted affidavits in support of DAARE/SAFE's motion to reconsider summary disposition on its QA/QC contentions.

On October 28, in response to a request from Steve Goldberg of the NRC staff for the addresses of our affiants, Doug Cassel advised Mr. Goldberg by phone and by letter that the three affiants could be reached through our office and indicated our willingness to provide replies to NRC inquiries "as promptly as possible."

We heard nothing further until your telephone call of November 9 proposing interviews with the three affiants.

It is difficult to believe that a sufficient inspection could have been completed in the three weeks between November 9 and your announced target date of December 1. This is particularly so in light of your indication in our telephone conversations that interviewing the affiants is only the first step in an NRC inspection. Indeed, on November 16 you told me that your plan is to interview the affiants and then decide what kind of special inspection to do. Clearly no sufficient inspection can be completed in the ten days remaining now. Further, as detailed below, your continuing change of position regarding the conditions of the

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interviews and your inability to provide me with requested information pertaining to the interviews leaves doubt as to whether you actually will interview two of the three affiants.

I have offered repeatedly in our telephone conversations of November 9, 10, 12 and 16, to attempt to arrange telephone conference calls with each of my clients and your investigation team in order to expedite this process. Until November 16, your position was that such telephone interviews would not be sufficient to enable you to develop needed information to begin the investigation. Indeed, you stated that you would have a court reporter present and that each affiant would be under oath. I agreed to this on the condition that each affiant be provided, without charge, a copy of his transcript, and you consented to such a provision.

However, on November 16, you told me that you had changed your position and that the interview would not be recorded.

You also remain uncertain whether the affiants would be provided with drafts or copies of the interviewer's report which they could correct or comment upon. Indeed, your only commitment in this regard appears to be that you would provide a copy of the final report, which I understand would be a public document in any event.

With respect to Peter Stomfey-Stitz, I informed you that he is not presently living in the Chicago or Byron areas and that an interview with him would entail travel. We therefore requested that if you desire an interview, you provide travel expenses for him to come to Chicago. You subsequently indicated that this would be possible, but because of restrictions on NRC travel funds you will not be able to bring him to Chicago until after December 17. On November 16 you informed me that funds are presently available and expressed your desire to interview him as soon as possible. On November 17 I confirmed Mr. Stomfey-Stitz's ability to come to Chicago on Tuesday, November 23 for an interview. As I told you, his schedule is very tight and this is the first available date for him to come to Chicago; indeed, it may be the only such date until after the end of December.

On each occasion during which we discussed Mr. Stomfey-Stitz, I told you that we will require an agreement under which no action will be taken against him by or on behalf of the NRC or any federal body for any matters raised in his affidavit or his interview. Your continuing refusal to enter into negotiations with me, to refer me to the person or party with authority to make such agreement, or even to provide firm information in this regard, has made it very difficult for us to make the necessary arrangements for his interview. You have told me that you did not think his interview would occur on the 23rd because of the required prefatory work, of which you have been aware for some time but have done nothing about.

Daniel Gallagher, as I informed you early last week, is available to come to Chicago any time for his interview. On November 12 you were able to confirm that his interview would be scheduled for 1:00 P.M. Wednesday, November 24 at the NRC offices in Glen Ellyn. During our telephone conversation of November 16 you told me that you questioned the productivity of interviewing him at all because there had already been inspections of concrete work, the topic of Mr. Gallagher's affidavit, at some prior time. Your apparent intention to dismiss Mr. Gallagher's assertions without any investigation of them whatsoever, based on the fact that some concrete work at Byron had been the subject of a previous inspection, is distressing, to say the least. Such an attitude is likely to impede a thorough investigation of the facts stated in his affidavit.

As I informed you last week, Mr. Smith is employed and is not able to come to Chicago during the week, except as indicated below. He is available, however, on Tuesdays, Wednesdays and Fridays after 4:30 P.M. in Rockford, or in Chicago on any Saturday or Sunday.

You have refused to travel to Rockford for his interview or to interview him on a Saturday or Sunday. On November 12 you were finally able to confirm that you could meet with Mr. Smith on Friday, November 26, which is the only weekday on which he may come to Chicago. We had requested and you agreed that he would be given, prior to his interview, copies of the audit reports described in his affidavit. As I have told you, Mr. Smith needs these reports in order to refresh his recollection and to provide you with the most complete and accurate information for you to begin your investigation.

On November 16 you informed me of the following changes in your position: First, the documents would not be provided to Mr. Smith either before or during his interview. Indeed, no attempt has even been made to locate these documents or ascertain their existence even though NRC was aware of Mr. Smith's allegations and the importance of the documents to his assertions nearly two months ago. Mr. Smith has offered to provide you with information in addition to their description in his affidavit to aid you in locating the documents, which are at the plant site. I provided you with a precise description of the documents' location during our telephone conversation yesterday.

Second, you have decided that a personal interview with Mr. Smith would not be productive but requested that I arrange a conference call with him to discuss all matters raised in his affidavit.

Inasmuch as we had previously agreed that Mr. Smith would be provided with the documents prior to his interview (whether in person or by telephone) and that he needs the documents to refresh

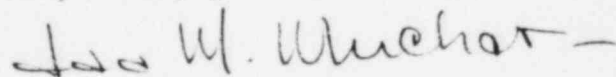
his recollection and provide you with the most complete and accurate information possible, I informed you on November 17 that a conference call would be put through by me on Friday, November 19 at 2:00 P.M. (the date and time requested by you) but that the topic would be limited to only that information sufficient to enable you to locate the documents. Mr. Smith remains ready to speak with you further about all matters raised in his affidavit, either personally or by telephone, as soon as he has the documents. You have requested, and I have agreed, to hold November 26 open for a possible personal interview with Mr. Smith should you find the documents and decide to interview him personally. As you know, November 26 is the only weekday on which Mr. Smith can come to Chicago for an interview.

I have told you repeatedly since November 9 that I do not see how the NRC can conduct an adequate investigation given the limited time remaining until December 1. Now, some 10 days after your initial contact with me, you have firmly scheduled only one personal interview, because of your constant changes of position and your inability to provide the necessary documents for Mr. Smith as well as the information necessary to negotiate an agreement with respect to Mr. Stomfey-Stitz. These actions on your part make it apparent that the investigation can in no way be completed by December 1.

I have also repeatedly requested you to inform the Board of your obvious inability to complete the inspection by December 1. Indeed, it appears that your inspection will not even have begun by that date, given your statements that interviews with my clients are merely prefatory to deciding what kind of inspection the NRC will do.

As you requested on November 16, I am enclosing under separate cover a copy of DAARE/SAFE's September 23 motion to reconsider and the attached affidavits.

Very truly yours,

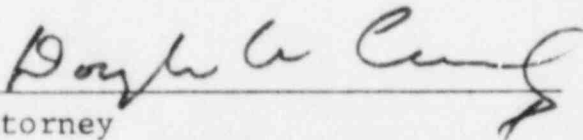


Jane M. Whicher

JMW:beg

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the foregoing Motion To Direct NRC Staff To Commence Special Inspection on all parties by causing copies thereof to be placed in envelopes and deposited in the U.S. mail at 109 North Dearborn, Chicago, Illinois, first class postage prepaid, properly addressed as indicated on the attached Service List, and by Federal Express to the Board members, this 18th day of November, 1982.



Attorney

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