



Northeast Ohio Regional Sewer District

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July 5, 1994

Mr. Ivan Selin
Chairman
U.S. Nuclear Regulatory Commission
Room 1701
11555 Rockville Pike
Rockville, Maryland 20852

Dear Chairman Selin:

On June 21, 1994, you testified on behalf of the Nuclear Regulatory Commission (NRC) at a joint hearing before the Senate Committee on Governmental Affairs and the House Committee on Government Operations. During your testimony, you made numerous statements that appear to be inconsistent with information previously provided to the Northeast Ohio Regional Sewer District (District) by the NRC. Many of these statements, such as whether the NRC has authority to recover the cost of off-site remediation from a licensee, are of importance to the wastewater treatment industry in general, and of particular importance to the District. The District would therefore appreciate a clarification on the statements listed below. As the District has not received a transcript of the hearing as of the date of this letter, your statements are paraphrased from notes and memory; your verbatim comments of interest will be supplied as soon as they become available.

Cost Recovery

You stated at the hearing that the NRC lacks authority to recover the cost the District has incurred from the responsible party, regardless of whether a violation occurred. According to your statement, cost recovery remains a matter for private litigation between the NRC licensee and the injured party.

While this statement is consistent with the NRC's position for the prior three and one-half years, it is inconsistent with the most recent NRC letter and Director's Decision dated June 16, 1994, which was received by the District by fax on June 20, 1994. This document was transmitted to the District less than 24 hours prior to the hearing and

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after the deadline for submission of written testimony. A copy of this Director's Decision is attached for your review.

This Director's Decision denies the District's request that Advanced Medical Systems be required to maintain financial assurance for public liability for future operations. The primary basis for denying this request appears to be that the risk posed by Advanced Medical Systems is less than the risk of an incident at a nuclear reactor (see page 7 of Director's Decision). The Decision also states on page 8, that, "the Commission requires that licensees, and not the public, bear the burden of prompt cleanup of accidental contamination from releases in violation of commission requirements."

This statement from the Director's Decision seems to directly conflict with your testimony. The District requests you clarify: a) whether the NRC has authority to hold a licensee liable for releases in violation of NRC requirements; b) if the NRC has such authority, whether releases in excess of quantities reported in the licensees' records would trigger a cost recovery; and (c) if contamination occurs as the result of releases/discharges that are within NRC requirements, whether the Commission would then require the injured party to bear the burden.

Notification to POTWS

You testified that the NRC had notified the Association of Metropolitan Sewerage Agencies (AMSA) and the Water Environment Federation (WEF) regarding the Advanced Notice of Rulemaking on sanitary disposal that appeared in the Federal Register on February 25, 1994. AMSA did receive a call, after submitting comments on this notice, but neither entity has any record of notice from the NRC intended to draw attention to the Federal Register notice as indicated in your testimony. The District requests you clarify when and to whom such notifications were delivered, and by whom.

Discharges to the District

In your testimony, you indicated there are 54 NRC licensees within the District's service area that are practicing sanitary disposal. The District has made repeated verbal requests for this information and filed a Freedom of Information request (F.O.I.A.) on June 19, 1993 for any record of such discharges. The NRC response to all such requests has been that such information is not available and cannot be compiled by the NRC due to a lack of a reporting requirement.

The District requests you clarify the basis of your statement that 54 licensees utilize sanitary disposal in the District's service area and provide a list of those licensees. This information is important to the District in its investigation of the source of contamination at the

Southerly and Easterly wastewater treatment plants, as well as to the District's efforts to protect itself from further future contamination by NRC licensees.

Records Destruction

You testified that one problem the NRC discovered as a result of preparing for the June 21, 1994 hearing was that discharge records from the London Road facility, prior to acquisition by AMS, have been destroyed. Furthermore, such destruction was not in violation of NRC regulations.

The District requests you clarify why the destruction of records regarding Picker International, the prior owner, came as a surprise to the NRC in June 1994. Attached is a copy of a letter dated January 24, 1984, which is a response to Picker's request for guidance on disposal of records. In that response, the NRC does not address sanitary disposal records.

Furthermore, the NRC claims to have done an exhaustive investigation into the source of the District's contamination. (See, for example, the John Grobe memorandum dated November 27, 1991 and attached as Exhibit B to the District's written testimony to the Joint Committees). The District requests you provide an explanation of why the lack of records was not discovered in the investigation process.

When District personnel conducted a file review at Region III headquarters in February 1993, the lack of records regarding discharges from this facility prior to AMS acquisition in 1979 was already known to NRC personnel. The District requests you clarify what records you believe were destroyed and which entity had possession of these records. The District requests that you also identify any NRC files that were destroyed.

Negative Results At Easterly

In response to questions from Congressman Synar, you stated you are confident that contamination at other treatment plants has not been missed by NRC inspectors based on what you admitted are the very few inspections that have been conducted.

In addition to the inspection report on the Easterly treatment plant that Congressman Synar introduced, two additional NRC inspections missed Cobalt contamination at Easterly. (Inspection Reports enclosed.) Cobalt-60 is one of the more easily detected radionuclides and was readily detected by the District's consultant, B. Koh and Associates. The District conducted this survey prior to commencing a construction project because of a lack of confidence in the NRC surveys. The contamination found was in material that was placed in 1976 and earlier.

Therefore, not only was the Cobalt present during NRC surveys, it would have been more readily detectable earlier, as considerable decay occurred between the 1978 NRC inspection and the District's 1993-94 surveys.

The District requests you provide any details of surveys at other treatment works that would support your contention that other contamination was not overlooked.

Whole Body Counts

During your testimony, you referred to the negative results of whole body counts on District employees as additional evidence that wastewater treatment plant contamination is not a serious problem. You also stated, however, that no radiation had been "absorbed" by District personnel.

Although the use of the term "absorbed" may be technically correct, the District contends that the use of this word is misleading. It is the District's understanding that a whole body count measures only the gamma radiation emitted from the body, that is, only from radionuclides that have been inhaled or ingested. A whole body count does not reveal the dose of external radiation to which a person has been exposed. In the case of Southerly, in which any exposure most likely was external and occurred many years ago, a whole body count was absolutely inconclusive.

The District requests you clarify what you intended by using the word "absorbed" and how the Southerly whole body counts are meaningful evidence as to the seriousness of the treatment plant contamination problem.

"Red Herring"

During your testimony, you referred to the District's estimate of the cost of off-site disposal (at least \$40 million) as being a "red herring." You supported this statement by indicating the NRC does not intend to require off-site disposal.

The District's estimates are based on the quantity of material present, multiplied by the disposal fees which are currently charged at the Envirocare site in Utah and at the Barnewell site in South Carolina. This material is contaminated at levels above the NRC criteria for unrestricted release. The District is, therefore, faced with a choice of devoting considerable acreage to storage for decay and incurring monitoring and radiation control costs for many decades, or paying for off-site disposal. In addition, the NRC has not approved on-site storage, and there are state and local issues to be resolved before any on-site storage plan is finally accepted. Among other issues, it has been alleged that the District has violated Ohio law for transferring

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contaminated ash from the active lagoons to the restricted area.

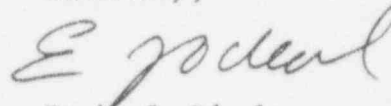
The District is fortunate in that space is available to consider storage as an option. Many wastewater plants would not have such a choice. The District is also fortunate that it was contaminated with a short-lived radionuclide. Storage for decay certainly may not be an option when the half-life is hundreds or thousands of years.

Given the above, the District requests you clarify why the estimated disposal costs are, in your opinion, a "red herring."

Your prompt response and clarification of your testimony would be appreciated. The NRC may not consider treatment plant contamination a priority issue. Obviously, the District considers the contamination of two of its three major plants a very serious matter.

You may contact either Tom Lenhart or me at (216) 881-6600 to discuss any of the above questions. The District would, however, appreciate a written response.

Sincerely,



Erwin J. Odeal
Executive Director

EJO/TEL/td

cc: Senator Glenn
Senator Metzenbaum
Congressman Stokes
Congressman Hoke
Congressman Synar
Congressman Mica
Javier Garza (GAO)
Jim Wells (GAO)
Mike Cook (U.S. EPA)
Jim Payne (OAG)
Jane Harf (OEPA)
Bob Owen (ODH)
William B. Schatz
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