



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

December 21, 1995

EA 95-105

J. Mike Gallagher
2444 Catalina Court
Richland, Washington 99352

Dear Mr. Gallagher:

This is in response to your letter dated December 4, 1995, which refers to our November 16, 1995 letter to you that informed you we would not withdraw the August 17, 1995 Notice of Violation (NOV) after reviewing your response. In your December 4, 1995 letter, you indicated that you disagreed with some of the specific points in our November 16, 1995 letter but that you did not plan to respond further until you had the opportunity to review documents that you had requested under the Freedom of Information Act (FOIA).

In your letter, you state that if your FOIA request fails to provide the information that you require, or if the documents are heavily redacted such that they do not furnish you sufficiently detailed information, you will request a hearing in order to afford yourself access to these documents. You further indicate that, if you "need to request a hearing in order to receive party status," NRC is to consider your letter a request for a hearing.

With respect to your FOIA request for information, it is my understanding that your request has been received and is currently being processed by NRC and will be responded to in accordance with NRC procedures. In the event that documents or information are withheld relative to your FOIA request, you may appeal the NRC's disclosure determination within the agency and ultimately in Federal Court. However, the NRC's action on your FOIA request does not give a right to a hearing on the NOV.

As was mentioned in our November 16, 1995 letter, our decision not to withdraw the NOV recognizes that your actions were not intentional and not significant from a reactor safety standpoint. However, we do consider the violation to be a significant regulatory concern. We note that the State of Washington Administrative Law Judge Initial Order dated September 26, 1995 (attached to your September 27, 1995 letter, in response to the NOV), while concluding that your actions did not show a "willful disregard" of your employer's interests, did describe your actions as a "grievous error" and a "very serious error." Notwithstanding our concerns, and as we reiterated in our November 16, 1995 letter, we do not believe that your future involvement in NRC-licensed activities need be restricted in any way.

Concerning your request for a hearing, the Atomic Energy Act does not provide a right to a hearing on an NOV. Neither the Act nor the Commission's regulations provide for a formal hearing for violations not associated with a civil penalty or an order. Consequently, a formal hearing is not available in this case.

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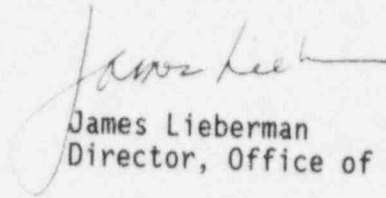
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J. Mike Gallagher

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In accordance with 10 CFR 2.709 of the NRC's "Rules and Regulations," a copy of this letter will be placed in the NRC Public Document Room.



James Lieberman
Director, Office of Enforcement

Docket No. 55-9405
License No. SOP 50300-1

cc:

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December 21, 1995

J. Mike Gallagher

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