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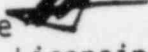

UNITED STATES
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD PANEL
WASHINGTON, D.C. 20555

July 12, 1983

MEMORANDUM FOR:

Chairman Palladino
Commissioner Gilinsky
Commissioner Roberts
Commissioner Asselstine

FROM:

Helen F. Hoyt, Judge 
Atomic Safety and Licensing Board
C. Sebastian Aloit, Attorney 
Office of the General Counsel

SUBJECT:

REPORT TO THE CHAIRMAN ON ALLEGATIONS OF THOMAS
APPLEGATE CONCERNING CONDUCT OF THE OFFICE OF
INSPECTOR AND AUDIT

In a memorandum dated May 6, 1983, Chairman Palladino directed us to conduct an inquiry into a series of allegations by Thomas Applegate and two attorneys from the Government Accountability Project representing Mr. Applegate (Lynne Bernabei and Thomas Devine). Those allegations, detailed in a memorandum dated November 16, 1982 from Martin G. Malsch, Deputy General Counsel, to Chairman Palladino, generally asserted that the Director of the Office of Inspector and Audit (OIA) and that office mishandled Applegate's original contact with the NRC in early 1980 and improperly discharged their responsibilities in subsequent investigations conducted by OIA and the Office of Inspection and Enforcement (IE) in 1980, 1981, and 1982. The results of our inquiry are attached.

By way of summary, we find no evidence of bad faith on the part of James Cummings or members of his staff in discharging what they believed were their responsibilities in first evaluating the adequacy of Region III's 1980 investigation of Applegate's allegations and in second pursuing possible criminal violations at the Zimmer Nuclear Power Station. Moreover, we cannot conclude that the conduct of senior NRC officials with respect to the Zimmer investigations violated any statutory or regulatory requirement applicable to this agency. Nor do we find any clear evidence of an intent on any employee's part to purposefully subvert the Commission's regulatory or enforcement mission.

However, at the heart of regulation is the full and fair investigation of any alleged breach of the regulation. Based on the record compiled in our inquiry, we cannot say that OIA's or IE's handling of the Applegate allegations or their progeny measurably increased the public's confidence in the Commission's ability to identify and correct violations of its own regulations. Notwithstanding the absence of any impropriety in fact, we, and presumably the public, are left with an appearance of impropriety. In our view, both are destructive to the integrity of any regulatory process.

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To some degree, the assumption of regulatory impropriety is an expected by-product of any attempt to regulate a controversial subject. Moreover, Applegate's and GAP's particular allegations of impropriety in this matter flow in part from their personal views as to the regulatory mission and authority of the Commission, the functions of component offices of the Commission, and proper investigative and management techniques. However, as set out in more detail in the attached report, the appearance of impropriety that swirls around the NRC's investigation at Zimmer must, in large measure, be assigned to (1) a series of poor judgments and unfortunate statements and commitments by Cummings, and James Keppler, Regional Administrator for Region III, regarding the discharge of their respective responsibilities, (2) the segmented civil/criminal approach adopted by the IE and OIA, and (3) the unduly restrictive interpretation of "health and safety" taken by Victor Stello, Deputy Executive Director for Regional Operations and Generic Requirements, and by senior Region III management in pursuing possible regulatory deficiencies at Zimmer.

We hope that the submission of this report will finally bring an end to the continual succession of investigations in this matter, each investigating its predecessor. It is indeed clear to us that since 1980, when the original Applegate allegations surfaced, the Commission has been required to devote an inordinate amount of its limited resources to look repeatedly at the same paper and re-interview the same people. Whatever good was accomplished by Applegate and his attorneys regarding an identification of problems at Zimmer is now in the regulatory mill. It is time to hone the inspection and investigative process to ensure the public health and safety and to identify and eliminate mismanagement, criminal or otherwise, from the nuclear industry. The Applegate affair deserves a decent burial.

Attachments
As stated

ENCLOSURE 3