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**UNION OF
CONCERNED
SCIENTISTS**

June 30, 1999

Dr. Malcolm R. Knapp
Deputy Executive Director for Regulatory Effectiveness
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

SUBJECT: BACKGROUND FOR INCOMPREHENSIBLE ENFORCEMENT INACTION

Dear Dr. Knapp:

This letter supplements my June 28, 1999, letter regarding the NRC's incomprehensible enforcement inactions.

By letter dated June 23, 1999, the NRC Director of the Office of Enforcement essentially informed me that ignorance of the law is indeed an excuse for condoning illegal activities by nuclear plant workers. The case in point is that of the Radiation Protection Manager at the Perry Nuclear Power Plant. The NRC imposed a \$110,000 fine on the Perry licensee after determining that the Radiation Protection Manager had discriminated against a plant worker, thus violating the employee protection requirements of 10 CFR 50.7. The NRC elected not to impose sanctions against the Radiation Protection Manager because, "The NRC determined, however, that the Manager was not familiar with the requirements of 10 CFR 50.7."

I heard from a reporter that the NRC is claiming its hands are tied in this matter. That may be true, but it is with imaginary string. A small dose of reality would free the NRC's hands and permit the agency to properly discharge its responsibilities.

I call you attention to the following three recent letters:

- April 30, 1999, letter from Mr. Hubert J. Miller to Mr. David Branham:

"OI concluded that you deliberately falsified sections of the procedure by indicating that two independent verifications of the Radioactive Liquid Release Rate calculation had been done, when you knew that they had not been completed."

"During our interview by OI on May 14, 1998, you contended that three independent verifications were actually performed by a Chemistry Technician, yourself, and a Control Room Supervisor. Notwithstanding your contention, the NRC maintains that the only verification done was by the technician."

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"You personally violated 10 CFR 50.5(a) which specifies that any employee of a licensee may not engage in deliberate misconduct that causes, or but for detection, would have caused, a licensee to be in violation of any rule, regulation, or order issued by the Nuclear Regulatory Commission."

"Because you were a supervisor and deliberately failed to comply with regulatory requirements, the NRC considers your falsifying the record of the release rate calculation certifications to be a significant violation."

"The licensee [Public Service Electric & Gas Company] took significant disciplinary action against you by terminating your employment."

- May 12, 1999, letter from Mr. Hubert J. Miller to Mr. Michael Thomas

"The NRC has concluded that you engaged in deliberate misconduct which, but for detection, would have caused CYAPCo to be in violation of NRC requirements."

"During your interviews with OI in June and August 1997, as well as at the enforcement conference, you denied that you deliberately attempted to conceal the release of contaminated equipment, or that you otherwise engaged in wrongdoing. Notwithstanding your denial, the NRC has concluded that you did engage in wrongdoing, in violation of 10 CFR 50.5."

"The licensee [Connecticut Yankee Atomic Company] has already taken significant disciplinary action against you."

- May 12, 1999, letter from Mr. Hubert J. Miller to Mr. Joseph M. Foley

"The NRC has concluded that you engaged in deliberate misconduct which, but for detection, would have caused CYAPCo to be in violation of NRC requirements."

"During the conference, you denied that you willfully or deliberately violated requirements. Notwithstanding your denial, the NRC concluded that you did engage in wrongdoing, in violation of 10 CFR 50.5."

"The licensee [Connecticut Yankee Atomic Company] has already taken significant disciplinary action against you."

Please note that the two CYAPCo letters, even though issued on the same date, actually involve two separate events by two separate individuals. The NRC did not contend that these two individuals conspired.

In the case of the Perry Radiation Protection Manager and in these three other cases, the accused individuals denied that their actions constituted deliberate misconduct. In only the Perry case, the NRC accepted this denial. In the other three cases, the NRC rejected the denials.

In the Perry case, the NRC claimed that it was unable to prove that the Radiation Protection Manager knew that his actions – which the NRC determined violated 10 CFR 50.7 – were improper. That lack of knowledge apparently saved the Perry Radiation Protection Manager from an individual sanction.

June 30, 1999

Page 3 of 3

In the other three cases, the NRC has not provided any evidence that the accused individuals knew that their actions – which the NRC determined violated its regulations – were improper. The NRC charged these individuals with deliberate misconduct despite an apparent lack of proof that the individuals knew beforehand that their deeds were illegal.

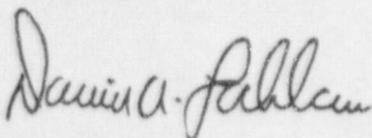
The NRC did not provide any indication that the Perry licensee took any disciplinary action – significant or not – against the Radiation Protection Manager for his illegal actions. The NRC reported that significant disciplinary action, including job termination in at least one case, was taken against all three individuals in the other cases.

The disparity between these NRC actions is made more distressing because the only case in which the agency pulled its punches involved employee protection issues. The NRC has a pitiful track record of meekly standing by as conscientious nuclear professionals are discriminated against for simply doing their jobs and raising safety concerns. By its inactions such as in this Perry case, the NRC is making it abundantly clear that it is not prepared to lift a finger to protect employees who raise safety concerns.

I respectfully request that you take the following two actions:

1. Arrange a public meeting between yourself and members of public interest groups to discuss the NRC's obligations and actions in employee protection cases.
2. Formally request an evaluation by the NRC Office of the Inspector General into the agency's handling of the Perry Radiation Protection Manager's case and the three other cases cited above. In at least one of these four cases, the NRC staff appears to have violated its own procedures and policies.

Sincerely,



David A. Lochbaum
Nuclear Safety Engineer