

October 28, 1994

Director, Office of Enforcement
U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington, DC 20555

REFERENCE: EA 94-121
University of Missouri Research Reactor (MURR)
License R-103

SUBJECT: Reply from J. Charles McKibben as provided for in the Demand
for Information (94-121)

Dear Sir:

My eighteen years working at MURR have been focused on safely operating and using a 10 MW research reactor within the license requirements, federal regulations, and good engineering practices. During this time, I have attempted to build and strengthen a healthy safety culture. I have come to realize that what works in a facility when the staff all feel part of a team does not necessarily work as well when there are "different camps" within the facility. My appreciation of this has been sharpened during this DOL hearing process. My previous understanding of 10 CFR 50.7, was that one should never discriminate relating to protective activities. I saw this based on the simple principle that it is not right to do this and it can destroy the safety culture that is so important and hard to build.

In February 1993, the Director was considering the request for promotion for Dr. Zinn and personnel actions involving Dr. Morris. From several discussions with the Director, I felt I knew his reasons for his decisions. I never even consider 10 CFR 50.7, because I did not see protected activities in any way related to the basis for the Director's decision. When the DOL filings were made in April 1993, I felt the DOL review would determine the bases for the actions cited in the allegations to be unrelated to protected activities.

It was not until June 1994 when the ALJ's recommended ruling came out and after closely reading NUREG 1499 (issued January 1994), did I more fully appreciate what we should have been doing to counter any "chilling effect" that the allegations and DOL process were having on the MURR staff. Additionally, this brought a different light to the recommendation I had made in a memo to the

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Director on February 25, 1993 concerning his intended personnel actions involving Dr. Morris. I had recommended that he take

. . . a measured approach where you clearly let him know what your concerns are and how you want him to change his approach of "doing business" before any action is taken. This reenforces the policy of allowing staff the opportunity to meet clear defined expectations. . . .

In addition this consideration needs to be extended for the sake of the rest of the staff. It is important to overall morale that individuals have the confidence that they will clearly understand that management has strong concerns about their performance before personnel actions are taken. . . . We need researchers and managers to feel free about expressing their ideas and concerns involving the direction we are headed.

When I wrote that in February 1993, I had seen it as good personnel policy, but not required. Now, I feel it is necessary to document compliance with 10 CFR 50.7 if challenged about discrimination related to protected activities.

A couple of lessons learned through this process are best stated in the words from NUREG 1499 in section II.E 2.a. Allegation of Discrimination:

The *perception* of discrimination, as viewed by those involved and other employees, may be more important than whether discrimination actually occurred in setting the tone for the work environment. If employees believe that they will be retaliated against for raising concerns, thereby putting both themselves and their families at financial risk, it may be unrealistic to expect them to "go out on a limb" and raise concerns, unless those concerns are of gravest consequences. Even if the employer was entirely reasonable in its actions, it may be hard to convince [all of] the work force that management was right.

In many cases, a licensee faced with a charge of discrimination litigates to defend the company's position. Licensees have every right to do so; however, as a result while the company may prevail in the particular litigation, it may be at the cost of fostering friction in the workplace, creating an unintended impact on the ability to maintain a quality-conscious environment.

In July with this better understanding of 10 CFR 50.7, I discussed the situation with a fellow colleague from the Test, Research and Training Reactor (TRTR) group. Based on this discussion, I recommended to the Director that we invite Dr. Dale Klein to perform an outside review to assess if there had been any

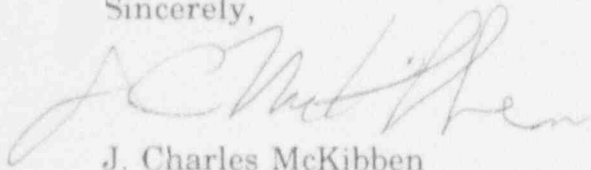
chilling effect. The Independent Safety Assessment Team was formed when the Director asked Dr. Klein to conduct this outside review. With our better appreciation and understanding of 10 CFR 50.7, we have implemented corrective actions in an attempt to reduce any chilling effect that might have occurred and to reduce significantly the chance of someone's feeling a need to file with DOL concerning discrimination related to protected activities.

On a personal note, I realize that the NRC bases its view on the DOL recommended ruling. I feel there are faulty conclusions on the part of the DOL ALJ. The ALJ implies that I influenced the discrimination because of Dr. Zinn's and Dr. Morris's activities related to the Shipping Task Force (STF). I realize that, for the ALJ to determine there was discrimination related to protected activities, he needed to show a connection between the actions taken by the Director and Dr. Zinn's and Dr. Morris's protected activities with which I was directly involved. While he cites the recommendations I made to the Director in his finding of fact, the ALJ seems to disregard them totally in drawing his conclusion. Two of these recommendations were determining how the University views a doctorate in Veterinary Medicine as a research degree, and issuing a written warning to Dr. Morris before taking personnel action. The fact that I asked Dr. Zinn to serve on the Irradiation Subcommittee when he raised his concerns seems also to be ignored. I did find at times that his way of expressing his concerns both orally and in writing to be adversarial, which made it more difficult to keep the Shipping Task Force working together as a team. I value Dr. Zinn's input concerning weaknesses in the shipping program, which is the reason I asked him to be on the Shipping Task Force in the first place.

Please let me know if you have any questions.

I appreciate the opportunity to express my personal view.

Sincerely,



J. Charles McKibben

cc: NRC Region III
S. Weiss, NRC/NRR