

[REDACTED]
January 26, 1996

Mr. Thomas T. Martin
Regional Administrator
Region I, Nuclear Regulatory Commission
475 Allendale Road
King of Prussia, Pennsylvania 19406-1415

Dear Mr. Martin:

In response to your letter to me dated January 2, 1996, concerning my actions relative to the adjudication of a Calvert Cliffs contractor employee's access authorization, I would like to provide my personal perspective for the record.

As a professional in the nuclear industry, I have a genuine appreciation for clear and concise regulations that promote safety and quality. As the Director, Nuclear Security at Calvert Cliffs, I fully support the intent of Title 10, Part 73 of the Code of Federal Regulations. Your letter, describing my actions taken in response to an issue dealing with a contractor employee's access authorization, stated the standards I set for my employees were in contradiction with the requirements of 10 CFR 73. In response, I feel it is important to provide my assessment of the event and ensure you clearly understand my position.

The sanction identified in your letter is the result of a brief telephone conversation I had with an inspector in the Office of Investigations in which I explained the rationale for the decision. NRC's public sanction of me personally appears rather severe, premised on extracts of the phone conversation and the fact that it is based on a judgment decision.

The individual in question had filed a formal appeal with the FBI concerning an arrest record seven years earlier for a minor misdemeanor committed in California which he denied was his. Our access decision was based upon our interpretation of the Code of Federal Regulations and its intent. Part 73 - Statement of Considerations states "The decision to grant or deny access while a challenge is being processed is at the discretion of and is the responsibility of the licensee. This is a judgment decision by the licensee and is dependent on the needs of the situation, the availability and cost of escort, prudence, security considerations, and other factors perceived by the licensee." In 73.57 c "Prohibitions" (1) it states that "a licensee may not base a final determination to deny an individual unescorted access ... solely on the basis of information received from the FBI involving (1) An arrest more than 1 year old for which there is no information of the disposition of the case." Again, under 73.57 (e) (2), the code states that "a licensee may make a final adverse determination based upon the criminal history record, if applicable,

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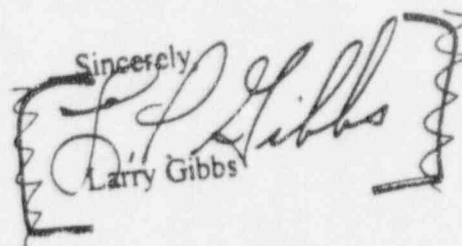
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only upon receipt of the FBI's confirmation of correction of the record." It would appear that the intent of these provisions is to protect employees until a final resolution of their appeal. In this case the appeal was pending and was part of the basis for the decision to allow continued access, as I explained to the OI investigator.

A final access determination was not being made at the time in question. However, termination or suspension of access is generally tantamount to dismissal by a contractor. There was no confirmation of correction of the record by the FBI at this time and no resolution of the disposition as it related to this individual. This employee had an exemplary work history and, in our opinion, "did not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage." His having potentially committed a minor misdemeanor, which he continued to deny, in our opinion, did not warrant a suspension of his access until final resolution of his criminal record was received. The criminal record in itself would not have been sufficient reason to deny him access. It is recognized in retrospect that other factors ultimately affected his access, but these were not known or not authenticated at the time of the decision for which I am being sanctioned. I also explained to the OI investigator that if he were to reapply, all factors would be considered prior to making an access decision.

My background of 23 years in the Maryland State Police obviously biased my decision as I am aware of the inaccuracies that can exist with police records and identification of individuals. A case in point recently occurred where we determined that the FBI record of an individual was inaccurate after the FBI informed us that an individual had a criminal record when, in fact, he did not. A copy of their correction is attached for your edification.

I have lived and worked in this community for forty years in positions of trust and responsibility and believe that I am held in high esteem for my integrity alone. There was no intent on my part at any point in this event to deliberately, or with careless disregard, to ignore my responsibilities with respect to the intent of 10 CFR 73. I fully understand the message you conveyed in your letter. Lessons have been learned at Calvert Cliffs as a result of this experience. For the record, it is equally important to me that the general public know the rationale of the actions and standards of this industry to which I am dedicated.

Sincerely

Larry Gibbs

cc: James Lieberman, Director, Office of Enforcement
cc: Congressman Steny H. Hoyer

The Honorable Steny H. Hoyer

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