



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

November 19, 1996

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Mr. John E. Sweeney  
Commissioner of Labor  
State of New York  
Department of Labor  
State Office Building Campus  
Building 12, Room 500  
Albany, New York 12240

Dear Commissioner Sweeney:

I am responding to your letter of July 18, 1996, regarding the Nuclear Regulatory Commission's (NRC's) conduct of investigations in New York State. The NRC, as a Federal agency, has jurisdiction to conduct investigations of its licensees' activities in all States, including Agreement States. Nevertheless, I believe that the information you provided highlights the need to consider additional NRC procedures in this area.

The NRC conducts investigations and inspections in order to determine whether NRC licensees are in compliance with NRC requirements. In the case that I referenced in my June 3, 1996 letter, the issue involved a potential violation of NRC requirements by an NRC licensee. Our Office of Investigations (OI) was investigating alleged false statements made by an NRC licensee that the NRC-licensed material in question was located in Pennsylvania. Based on information suggesting that the sources actually were located in New York, it was necessary, in OI's judgment, to ascertain the actual location of the sources in order to complete its investigation.

This is in contrast to the case raised in your letter of July 18, 1996, in which New York State had informed the NRC of numerous instances where an NRC licensee had entered New York State without filing the required notices or obtaining the required approval of your Radiological Health Unit. As we both agree, NRC has no jurisdiction in this case because it concerns compliance with New York State requirements rather than those of the NRC. However, because an NRC licensee's failure to comply with an Agreement State's requirements may be indicative of failure to comply with NRC regulations while conducting business in non-Agreement States, it is important that timely exchanges of information should occur between the NRC and Agreement States. The Commission appreciates your Radiological Health Unit's efforts to keep us informed in this matter.

As a result of this case, the NRC staff is developing guidance that can be used to improve communication about, and coordination of, respective NRC and Agreement State inspection, investigation, and enforcement actions when NRC licensees violate Agreement State requirements and when Agreement State

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PDR COMMS NRCC  
CORRESPONDENCE PDR

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[Originated By: R. Virgilio, SP]

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licensees violate NRC requirements. The staff also will be developing guidance that documents the current practice of informing the Agreement State of any issue having immediate public health and safety significance within the State. Matters not of an immediate public health and safety significance under the State's regulatory authority which are discovered in the course of any NRC investigation or inspection of an NRC licensee in an Agreement State will, however, continue to be treated on a case-by-case basis. Depending upon the individual case circumstances and the need to maintain confidentiality of an investigation, Agreement States will be notified as soon as practicable. The NRC staff will coordinate the development of the proposed procedures with the Agreement States.

NRC continues to be available to meet with you to discuss further the specific circumstances of the case to which your correspondence referred, including any enforcement action taken within NRC jurisdiction. Please contact Richard L. Bangart, Director, Office of State Programs, at 301/415-3340, to arrange such a meeting or to discuss this letter.

Sincerely,

A handwritten signature in cursive script, reading "Shirley Ann Jackson".

Shirley Ann Jackson



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

John E. Sweeney  
Commissioner of Labor  
State of New York  
State Office Building Campus  
Building 12, Room 500  
Albany, New York 12240

Dear Commissioner Sweeney:

I am responding to your letter of July 18, 1996, regarding the Nuclear Regulatory Commission's conduct of investigations in New York State. Unlike individual States who must seek cooperation of sister States under "long arm" statutes when a State regulated person crosses state lines, the NRC, as a federal agency, has jurisdiction to conduct investigations of its licensees' activities in all States, including Agreement States. Nevertheless, I believe that the information you provided highlights the need to consider additional NRC procedures in this area.

NRC conducts investigations and inspections in order to determine NRC licensee compliance with NRC requirements. In this case, the NRC investigation in New York State referenced in my June 3, 1996 letter, the issue involved a potential violation of NRC requirements by an NRC licensee. The NRC Office of Investigations (OI) was investigating alleged false statements made by an NRC licensee that the NRC-licensed material was in Pennsylvania. Based on information suggesting that the sources were actually located elsewhere, *i.e.* New York, in OI's judgment it was necessary to pursue the investigation of the alleged false statements by ascertaining the actual location of the sources.

This is in contrast to the case raised in your letter of July 18, 1996, where New York State had informed the NRC of numerous instances where an NRC licensee had entered New York State without filing the required notices, or obtaining the required approval of your Radiological Health Unit. As we both agree, NRC has no jurisdiction in this case because it concerns compliance with New York State requirements rather than those of the NRC. However, a NRC licensee's failure to comply with State requirements may be indicative of failure to comply with NRC regulations while conducting business in NRC jurisdiction. Licensee non-compliance with State or NRC requirements is not acceptable and responsibility for an appropriate exchange of such information should be borne by both NRC and Agreement States when a licensee conducts activities in both jurisdictions.

Accordingly, I am directing the NRC staff to develop guidance that can be used to improve communication and coordination of respective NRC and Agreement State inspection, investigation and enforcement actions when NRC licensees violate Agreement State requirements and when Agreement State licensees violate NRC requirements. The staff will also be directed to develop guidance that documents the current practice of informing the Agreement State of any issue having immediate public health and safety significance

within the State. Matters not of an immediate public health and safety significance under the State's regulatory authority which are discovered in the course of any NRC investigation or inspection of an NRC licensee in an Agreement State will, however, continue to be treated on a case-by-case basis. Depending upon the individual case circumstances and the need to maintain confidentiality of an investigation, Agreement States will be notified as soon as practicable. The NRC staff will coordinate the development of the proposed procedures with the Agreement States.

Finally, NRC continues to be available to meet with you to further discuss the specific circumstances of the case your correspondence referred to, including any enforcement action taken within NRC jurisdiction. Please contact Richard L. Bangart, Director, Office of State Programs, at 301/415-3340, to arrange such a meeting or to discuss this letter.

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Shirley Ann Jackson

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Finally, NRC continues to be available to meet with you to further discuss the specific circumstances of the case your correspondence referred to, including any enforcement action taken within NRC jurisdiction. Please contact Richard L. Bangart, Director, Office of State Programs, at 301/415-3340, to arrange such a meeting or to discuss this letter.

Sincerely,

Shirley Ann Jackson

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\*See previous concurrence

\*\*Concurrence via e-mail/telecon

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