

Draft...Changes recommended by OI.
October 17, 1996

John E. Sweeney
Commissioner of Labor
U.S. Department of Labor
State Office Building Campus
Building 12
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 judgement 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 ~~the prompt and sufficient~~ 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

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PDR COMMS NRCC
CORRESPONDENCE PDR

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. ~~Non safety significant matters~~ 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.

Sincerely,

Shirley Ann Jackson

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JTaylor/EDO	WHehl/RI	OSP Staff (13)	OSP DIR R/F
JMilhoan/DEDO	HMiller/RI	GCaputo/OI	OSP S/F: NYDOL/A11 A/S
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JBlaha	KDolce/RI	WHutchison/OI	RSLO's (5)
RBangart/OSP	BLetts/RI	EWilson/RI	HNewsome/OGC
PLohaus/OSP	KCyr/GC	FXCameron/OGC	NRC PDR: YES
CPaperiello/NMSS	JLieberman/OE	SEbnetter/RII	ABBeach/RIII <i>W</i>
LJCallan/RIV	SBurns/OGC	WOlmstead/OGC	

*See previous concurrence

DOCUMENT NAME: G:\ROV\SWEENEY5

*Concurrence via telecon *email*

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OFFICE	OSP	E	OSP:DD	OGC	OI	Region I	OSP:D	EO		
NAME	RVirgilio:gd		PHLohaus*	KDCyr	GPCaputo	CWHehl	RLBangart	JLieberman		
DATE	09/25/96*		09/25/96*	10/2/96*	10/ /96*	10/ /96	10/ /96	10/ /96*		

OFFICE	NMSS		D/EDS		EDO				
NAME	CAPaperiello		HLThompson		JMTaylor				
DATE	10/ /96		10/ /96		10/ /96				

OSP FILE CODE: SP-AG-20-3

New York's jurisdiction. Throughout our investigation of NRC licensee activities, we fully recognized the State of New York's jurisdiction over the use of radioactive material at a temporary job site in that State.

As also indicated previously, under current practice and consistent with standard investigative procedures, the NRC does not provide routine State notification prior to entry into a State to investigate matters relating to NRC-licensed operations. This historically-based practice has prevailed in maintaining the integrity of the investigation. If, however, an immediate public health and safety issue is identified in the course of an investigation, and/or if NRC identifies information which raises concern about activities subject to Agreement State jurisdiction during an investigation, NRC will notify the State accordingly. In some cases, this information will be obtained during the course of the investigation and it is only possible to notify the Agreement State subsequent to its discovery.

While we may have irreconcilable differences on what transpired during this particular case, the focus of this correspondence is directed primarily at clarifying NRC's jurisdiction and recognizing the need to provide clearer communications between NRC and the Agreement States on this issue. Therefore, NRC staff will develop program guidance for use by Regional State Agreement Officers addressing communication of information to Agreement States about ongoing or completed NRC investigations conducted in Agreement States. This guidance will be shared with all Agreement States in draft and finalized after incorporation of comments to assure clarity.

A copy of this letter will be provided to all Agreement States. I trust that this response and impending action on the above efforts will further clarify our policy on this issue. Please contact Richard L. Bangart, Director, Office of State Programs, in the interim should you desire a meeting to further discuss this or related issues. He can be reached at (301)415-3340.

Sincerely,

Shirley Ann Jackson

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HThompson/DEDO	WKane/RI	RFortuna/OI	RSAO's (4)
JBlaha	KDolce/RI	Wlutchison/OI	RSLO's (4)
RBangart/OSP	BLetts/RI	EWilson/RI	HNewsome/OGC
WHehl/RI	KCyr/GC	FXCameron/OGC	NRC PDR: YES ✓✓

*See previous concurrence

**Concurrence via telecon/e-mail

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NAME	RVirgilio:gd		PHLohaus*	KCyr	GCaputo	CWHehl	RLBangart	HLThompson	JMTaylor
DATE	09/25/96*		09/25/96*	09/ /96	09/ /96	09/ /96	09/ /96	09/ /96	09/ /96

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WHehl/RI	KCyr/GC	FXCameron/OGC	NRC PDR: YES <input checked="" type="checkbox"/>

DOCUMENT NAME: G:\ROV\SWEENEY3

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NAME	RVirgilio:gd	PHLohaus	KCyr	GCaputo		RLBangart	HLThompson	JMTaylor
DATE	09/15/96	09/25/96	09/ /96	09/ /96	09/ /96	09/ /96	09/ /96	09/ /96

OSP FILE CODE: SP-AG-20-3

(FYI)

RLB2

PHL

SLD

EXECUTIVE TASK MANAGEMENT SYSTEM

<<< PRINT SCREEN UPDATE FORM >>>

TASK # - 6E567

DATE - 07/31/96

MAIL CTRL. - 1996

TASK STARTED - 07/31/96

TASK DUE - 08/11/96

TASK COMPLETED - / /

TASK DESCRIPTION - 7/18/96 LTR RE NRC'S AUTHORITY TO ENTER AN AGREEMENT
STATE AT WILL TO INVESTIGATE AN NRC LICENSEE

REQUESTING OFF. - EDO

REQUESTER -

WITS -

0

FYP - N

PROG. - ROV

PERSON -

STAFF LEAD - ROV

PROG. AREA -

PROJECT STATUS -

EDO DUE DATE: 8/12/96

PLANNED ACC. - N

LEVEL CODE - 2

11/8/96

9/27/96

10/11/96

Telecon 8/1 AM w/ Rita Aldrich - re: proposal to meet during All A/S Mtg. Ry Counsel out on AL til 8/19. She asked we "hold up" NRC reply til then.

8/21 - Craig Gordon checks status w/ Rita while attending RI Workshop. Rita indicates she wants written response. Craig indicates O/S may followup w/ a phone call.

9/4/96 RLB2 Attempts to contact Rita - no return call

9/5 Begin written response (Chip on AL)

9/6 Forward draft to Chip for O/C input.

9/17-19 All A/S Meeting - discussion between RLB2 + N/DL

9/23 - Rec'd O/C Draft w/ Comments for OI/RI

9/26 - EXC/SB/WJO - O/C revisions

10/4 - Revised O/C version sent to OI/RI/OE for comments

ACTION

EDO Principal Correspondence Control

FROM:

DUE: 08/12/96

EDO CONTROL: GT96567

DOC DT: 07/18/96

FINAL REPLY:

John E. Sweeney
Commissioner of Labor
State of New York

TO:

Chairman Jackson

FOR SIGNATURE OF :

** PRI **

CRC NO: 96-0807

Chairman Jackson

DESC:

ROUTING:

NRC'S AUTHORITY TO ENTER AN AGREEMENT STATE AT
WILL TO INVESTIGATE AN NRC LICENSEE

Taylor
Milhoan
Thompson
Blaha
TMMartin, RI
Cyr, OGC
Caputo, OI
Lieberman, OE

DATE: 07/30/96

ASSIGNED TO:

CONTACT:

SP

Bangart

SPECIAL INSTRUCTIONS OR REMARKS:

Coordiante with OGC.
Ref. GT96277.

96 JUL 31 AM 8:49

OSP

4673

STATE OF NEW YORK
DEPARTMENT OF LABOR

Governor W. Averell Harriman
State Office Building Campus
Albany, New York 12240



JOHN E. SWEENEY
Commissioner of Labor

July 18, 1996

Shirley Ann Jackson, Ph.D.
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Jackson:

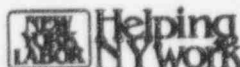
I have received your letter of June 3, 1996, responding to my April 19, 1996 letter, concerning an investigation conducted by the United States Nuclear Regulatory Commission (NRC) in New York State, without the knowledge or consent of this agency.

As I pointed out in my letter, the Nuclear Regulatory Commission (NRC) discontinued the exercise of regulatory authority over Atomic Energy Act (AEA) radioactive materials in New York State when it entered into the 1962 Agreement with the state. Under the terms of this Agreement, authority over all use and users of such materials in New York State was transferred to the state. This authority also extends to licensees of the NRC who use AEA materials in New York State. Conversely, New York State licensees who use AEA materials outside of the state, are subject to the jurisdiction of any Agreement State they enter, or NRC's jurisdiction in the case of a non-Agreement State.

I have been informed, for example, that an NRC licensed company was found to have entered New York State on over 30 occasions during 1995, without filing the required notices and obtaining the approval of our Radiological Health Unit (RHU). When our RHU informed NRC of their licensee's habitual unauthorized entries into New York State, as a routine exchange of information, the RHU was told that NRC had no jurisdiction over the activities of its licensees in Agreement States and would take no action. While our staff agreed with the jurisdictional position and were proceeding with enforcement action against the company, they had thought that NRC would want to take some disciplinary action against a licensee that so consistently misused radioactive sources obtained under an NRC license.

Your response does not address jurisdictional limits, but appears to assume that NRC has the authority to enter an Agreement State at will to investigate the conduct of an NRC licensee. Since this is contrary to longstanding precedent, as illustrated above, and to our understanding of New York State's Agreement with NRC, we would appreciate clarification of the Commission's understanding of its' jurisdiction.

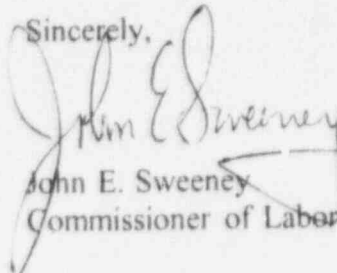
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As far as the exchange of information on the case at issue is concerned, at no time has our Radiological Health Unit been informed by NRC, that NRC's licensee had transferred control of a radioactive source to an unlicensed New York State company, even though seven months have passed since NRC's investigation in December, 1995. The RHU finally obtained this information on its own.

I look forward to your response on this important federal-state jurisdictional issue.

Sincerely,



John E. Sweeney
Commissioner of Labor

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TO:

Chairman Jackson

FOR SIGNATURE OF :

** PRI **

CRC NO: 96-0807

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WILL TO INVESTIGATE AN NRC LICENSEE

ROUTING:

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Milhoan
Thompson
Blaha
TMMartin, RI
Cyr, OGC
Caputo, OI
Lieberman, OE

DATE: 07/30/96

ASSIGNED TO:

CONTACT:

SP

Bangart

SPECIAL INSTRUCTIONS OR REMARKS:

Coordiante with OGC.
Ref. GT96277.

96 JUL 31 AM 8:49

OSP

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

PAPER NUMBER: CRC-96-0807 LOGGING DATE: Jul 30 96

ACTION OFFICE: EDO/OGC

AUTHOR: JOHN S. SWEENEY
AFFILIATION: NEW YORK

ADDRESSEE: CHAIRMAN JACKSON

LETTER DATE: Jul 18 96 FILE CODE:

SUBJECT: NRC'S AUTHORITY TO ENTER AN AGREEMENT STATE AT WILL
TO INVESTIGATE AN NRC LICENSEE

ACTION: Signature of Chairman

DISTRIBUTION: CHAIRMAN, COMRS, RF

SPECIAL HANDLING: SECY TO ACK 8/2/96

CONSTITUENT:

NOTES:

DATE DUE: ~~Aug 13 96~~
 9/27/96
 10/7/96
 11/8/96

SIGNATURE:

AFFILIATION:

DATE SIGNED:

4673

STATE OF NEW YORK
DEPARTMENT OF LABOR

Governor W. Averell Harriman
State Office Building Campus
Albany, New York 12240



JOHN E. SWEENEY
Commissioner of Labor

July 18, 1996

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Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

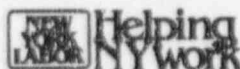
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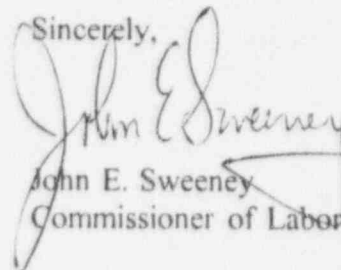
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I look forward to your response on this important federal-state jurisdictional issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "John E. Sweeney". The signature is fluid and cursive, with a large initial "J" and "S".

John E. Sweeney
Commissioner of Labor