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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.

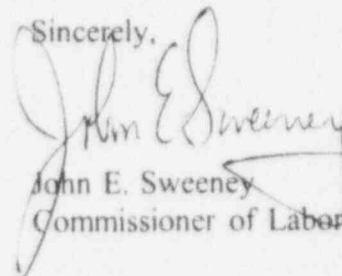
I have been informed, for example, that an NRC licensed company was found to have entered New York State on over 30 occasions during 1995, without filing the required notices and obtaining the approval of our Radiological Health Unit (RHU). When our RHU informed NRC of their licensee's habitual unauthorized 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.

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,

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