Washington and Lee Law Review

Volume 36 | Issue 2 Article 14

Spring 3-1-1979

X. Environmental Law

part of the examination procedure.[54]

Notwithstanding the court's failure to insure against the possibility of jury misinterpretation of cautionary instructions, the *Gibson* decision provides an effective procedural safeguard against self-incrimination.[55] The bar against admission of incriminating statements made by a defendant at a compulsory psychiatric examination on the issue of guilt preserves the psychiatric examination as a useful device in determining the defendant's true mental condition, yet protects the defendant's constitutional right against self-incrimination.

SUSAN M. YODER

X. ENVIRONMENTAL LAW

In *Virginia Electric & Power Co. v. Nuclear Regulatory Commission,*[1] the Fourth Circuit examined the disclosure provision of the Atomic Energy Act of 1954.[2] At issue was the construction of section 186 of the Act which prohibits "materially false statements" in applications for licenses to construct nuclear facilities.[3] Section 186[4] does not state whether scienter must be demonstrated as a basis for license revocation, pursuant to a false statement made to the Nuclear Regulatory Commission (NRC).[5]

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[54] *See, e.g.,* LAFAVE & SCOTT, *supra* note 2, at 311; Louisell & Hazard, *Insanity as a Defense: The Bifurcated Trial,* 49 CAL. L. REV. 805 (1961).

[55] The Fourth Circuit decision in *Gibson* is consistent with its previous position on the applicability of the privilege against self-incrimination to compulsory psychiatric examinations. *See* United States v. Albright, 388 F.2d 719 (4th Cir. 1968); note 50 *supra.*

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[1] 571 F.2d 1289 (4th Cir. 1978).

[2] 42 U.S.C. §§ 2011-2282 (1976).

[3] 571 F.2d at 1290-91.

[4] 42 U.S.C. § 2236 (1976) provides in relevant part:

> (a) Any license may be revoked for any material false statement in the application or any statement of fact required under section 2232 of this title, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the Commission to refuse to grant a license on an original application, or for failure to construct or operate a facility in accordance with the terms of the construction permit or license or the technical specifications in the application, or for violation of, or failure to observe any of the terms and provisions of this chapter or of any regulation of the commission.

While absent in section 186, scienter is specifically mentioned in other sections of the Act which define offenses. *See, e.g.,* 42 U.S.C. § 2272 (1976) ("willfully violates"); 42 U.S.C. 2274-2276 (1976) ("intent to injure"); 42 U.S.C. § 2277 (1976) ("knowing or having reason to believe").

[5] 571 F.2d at 1290-91. When *VEPCO v. NRC* commenced, the regulatory functions now administered by the Nuclear Regulatory Commission were performed by the Atomic Energy Commission. The Energy Reorganization Act divided the Atomic Energy Commission into two parts. Research and development activities were transferred to the Energy Research and Development Administration, and the licensing and regulatory functions were delegated to the newly created NRC. *See* 42 U.S.C. § 5841 (1976). The transfer of regulatory authority did not affect this controversy.

The parties stipulated that Virginia Electric and Power Co. (VEPCO) believed the statements prepared in connection with its license applications were true when made, and none of the parties contended that VEPCO attempted to deceive the NRC.[6] The issues before the Fourth Circuit were whether false information furnished by VEPCO pursuant to its licensing application was "material," whether an omission can constitute a materially false statement, and whether scienter is necessary.[7] The court found that substantial evidence supported the NRC's determination that seven false statements by VEPCO were "material" within the meaning of section 186.[8] The Court also reasoned that VEPCO's omission of certain geologic information from its reports to the NRC constituted material false statements.[9] Furthermore, an intent to deceive was unnecessary to incur liability under section 186.[10]

The false statements were made in the course of licensing proceedings between VEPCO and the NRC.[11] Pursuant to an application filed in 1969, the NRC issued permits to VEPCO for construction at the North Anna site in Louisa County, Virginia.[12] VEPCO contractors commenced excavations for the reactor in 1970. Shortly thereafter contractors discovered a chlorite seam, a feature frequently associated with faulting in the Piedmont geo-

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[6] *See* note 45 *infra.*

[7] 571 F.2d at 1291. The issuance of a permit or license for construction and operation of a nuclear power plant is a two-step process. Applications for both the construction permit and the operating license must contain extensive technical data evaluating the design of the plant, the proposed plant site, and compliance with safety regulations. Furthermore, the applicant must discuss the anticipated environmental impact of the plant construction. The application then must undergo a technical analysis by members of the NRC staff before a license is issued. Safety aspects of a nuclear power plant license application also are reviewed by the Advisory Committee on Reactor Safeguards, a panel of technical experts outside of the NRC which independently assess possible safety hazards associated with construction and operation of the proposed plant. Finally, a formal adjudicatory hearing is held pursuant to section 189 of the Atomic Energy Act of 1954, 42 U.S.C. § 2239 (1976). Hearings on applications for a construction permit are conducted before a three-member Atomic Safety and Licensing Board. Decisions of the Board are subject to review by an Atomic Safety and Licensing Appeal Board or by members of the NRC. As a general rule, all technical issues are resolved by the Licensing Board, which determines whether a requested constuction permit will be issued. *See generally* Mitchell, *The Participation of Private Interest Representatives in Nuclear Power Plant Licensing Proceedings,* 13 IDAHO L. REV. 309, 310-18 (1977); *see also* Grainey, *Nuclear Reactor Regulation: Practice and Procedure Before the Nuclear Regulatory Commission,* 11 GONZ. L. REV. 809 (1976); Jacks, *The Public and the Peaceful Atom: Participation in AEC Regulatory Proceedings,* 52 TEX. L. REV. 466, 481-89 (1974) [hereinafter cited as Jacks]. For a criticism of judicial acquiescence in NRC determinations, see Yellin, *Judicial Review and Nuclear Power: Assessing the Risks of Environmental Catastrophe,* 45 GEO. WASH. L. REV. 969, 976 (1977) [hereinafter cited as Yellin].

[8] 571 F.2d at 1291; *see* text accompanying notes 22-26 *infra.*

[9] 511 F.2d at 1291. *See also* Virginia Elec. & Power Co., 4 NRCI 480, 484 (1976). *VEPCO v. NRC* was the first case in which a licensee was charged with violating section 186 by making material false statements pursuant to a license application for a nuclear facility.

[10] 571 F.2d at 1291.

[11] *Id.* at 1290-91.

[12] Virginia Elec. & Power Co., 3 NRCI 347, 351 (1976). *See also* Virginia Elec. & Power Co. for Constr. Permits for North Anna Power Station Units No. 1 and 2, 4 AEC 544 (1971).

logic region.[13] Between 1970 and 1973, several geologists informed VEPCO's employees and contractors that the chlorite seam might be indicative of faulting.[14] VEPCO, however, did not notify the Commission of conflicting views among geologists concerning the significance of the seam.[15] Furthermore, applications for construction permits, filed in 1971,[16] and for operating licenses, filed in 1973, also failed to disclose either the existence of a chlorite seam in the area or disagreements among experts about the seam's significance.[17] Instead, the applications contained statements implying that no fault was suspected.[18]

In May 1973, VEPCO acknowledged to the Commission that the chlorite seam indicated a fault.[19] In October, the NRC's Director of Regulation issued an order to show cause why construction at the North Anna site should not be interrupted pending further investigation.[20] Specifically, the

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[13] Virginia Elec. & Power Co., 2 NRCI 498, 520-21 (1975). The chlorite seam was first observed in February 1970 by a geotechnical engineer employed by VEPCO's general contractor for construction of the North Anna facility. Several days later, the chlorite seam also was noted by a visiting geology professor, who reported his observations to a VEPCO utility engineer working at the site. *Id.* The Atomic Safety and Licensing Board rejected VEPCO's argument that it was not liable for its agents' or its independent contractors' failure to inform it of material information. *Id.* at 504-05. The Board noted that the licensee is subject to nondelegable duties under the Act, including full disclosure of features affecting site design. *Id. See also* 10 C.F.R. § 50.34(a)(1) (1978). Furthermore, the knowledge gained by agents in the scope of their employment is attributable to the principal. *See* RESTATEMENT (SECOND) OF AGENCY §§ 2 & 4 (1957). *See generally* Willard, *A Geologic Fault Bedevils Reactor,* Washington Post, Sept. 27, 1973, at G-1, col. 3.

[14] 2 NRCI at 521-32.

[15] *Id.*

[16] 3 NRCI at 351.

[17] Stipulations of Fact ¶ 39, 44, 96, 97; Joint Appendix 24, 26, 52-53.

[18] Stipulations of Fact ¶ 109; Joint Appendix 57-58.

[19] 2 NRCI at 528-29. VEPCO's acknowledgement followed the conclusion of public hearings conducted by the NRC in May 1973 concerning construction permits. VEPCO made no reference to faulting or suspected faulting at the North Anna site during the hearings and applications for permits and reasserted that no faulting was suspected. *See id.* at 533-34.

[20] *Id.* at 501. The parties before the NRC agreed to divide the inquiry into two parts, consisting of an examination of the geologic safety issue and a determination of whether VEPCO had made "material false statements" to the NRC in violation of section 186. 571 F.2d at 1291. In the first inquiry, the Atomic Safety and Licensing Board determined that the North Anna site was suitable for construction of nuclear reactors, that the presence of a fault did not prohibit approval of the construction permits, and that the power plant could be built and operated without creating an undue risk to the health and safety of the public. The decision was affirmed by the District of Columbia Court of Appeals. *See* North Anna Environmental Coalition v. United States Nuclear Reg. Comm'n, 533 F.2d 655, 656 (D.C. Cir. 1976). The court concluded that the fault was not "capable" within the meaning of 10 C.F.R. § 100, App. A, III(c) (1978), and therefore was not likely to cause an earthquake. *Id.* at 661. The court rejected the North Anna Environmental Coalition argument that all of the characteristics of a capable fault must be disproved before a site satisfies the construction regulation requirements. *Id.* at 662. Instead, the court adopted a reasonable assurance test and concluded that the lack of movement in the fault area over a long period of time coupled with continued surveillance by geologists satisfied the needs of safety and of power generation. *Id.* at 665. *But see* Yellin, *supra* note 7, at 976. *See generally* Comment, *The Energy Crisis: Reasonable Assurances of Safety in the Regulation of Nuclear Power Facilities,* 55 U. Det. J. Urb. L. 371, 399-400 (1978).

NRC sought to determine whether VEPCO had made "material false statements" to the NRC in violation of section 186.[21] During subsequent agency proceedings, VEPCO argued that the NRC had misconstrued section 186 of the Act.[22] VEPCO contended that materiality includes an element of reliance and the NRC had not demonstrated that it had relied upon VEPCO's allegedly false statements in issuing licenses for construction.[23] The Fourth Circuit, however, affirmed without comment the NRC's holding that materiality should be judged by whether a reasonable NRC staff member would consider the information material in performing his duties.[24] The NRC adopted the generally recognized test that a material statement is a statement which has a natural tendency to influence or is capable of influencing a decision-maker in the exercise of his governmental functions.[25] Materiality does not incorporate an element of reliance.[26]

According to the NRC, materiality will vary depending upon the stage of the licensing process.[27] The applicant is allowed greater latitude in the initial phases of the investigation to inquire into areas which may ultimately have little significance in the licensing decision.[28] At the hearing

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[21] 571 F.2d at 1290-91. *See also* 2 NRCI at 503.

[22] 571 F.2d at 1290. Earlier decisions within the agency are reported at 4 NRCI 480 (1976) (Nuclear Regulatory Commission); 3 NRCI 347 (1976) (Atomic Safety and Licensing Appeal Board); 2 NRCI 498 (1975) (Atomic Safety and Licensing Board).

[23] 4 NRCI at 487. *But cf.* Affiliated Ute Citizens v. United States, 406 U.S. 128, 152-54 (1972) (reliance held not a prerequisite to recovery pursuant to a violation of SEC Rule 10b-5 for failure to disclose material facts).

[24] 571 F.2d at 1291; 4 NRCI at 486, 489. The materiality of the information is not based upon whether a particular piece of information is specifically required by a statute. *Id.* Furthermore, the NRC rejected the North Anna Coalition argument that materiality should be judged in terms of what a layman, rather than an expert, would consider important. The NRC reasoned that by virtue of the complexity of the pertinent data, such a definition of materiality was untenable. *Id.* at 487.

[25] *See* United States v. McGough, 510 F.2d 598, 602 (5th Cir. 1975); United States v. Krause, 507 F.2d 113, 119 (5th Cir. 1975); Tzantarmas v. United States, 402 F.2d 163, 168 (9th Cir.), *cert. denied,* 394 U.S. 966 (1968); Blake v. United States, 323 F.2d 245, 246 (8th Cir. 1963); Gonzales v. United States, 286 F.2d 118, 122 (10th Cir. 1960), *cert. denied,* 365 U.S. 878 (1961); Weinstock v. United States, 231 F.2d 699, 701-02 (D.C. Cir. 1956).

[26] 4 NRCI at 487. The standard for materiality in a stockholder's derivative suit under the Securities Exchange Act of 1934, 15 U.S.C. § 78a-kk (1976), for example, is whether undisclosed facts or facts which were disclosed in a misleading manner would have assumed actual significance in deliberations of reasonable and disinterested directors or which would have created a substantial likelihood that such directors would have considered the "total mix" of information "significantly altered." *See* Goldberg v. Meridor, 567 F.2d 209, 218-19 (2d Cir.), *cert. denied,* 434 U.S. 1069 (1977); *cf.* TSC Indus., Inc. v. Northway, Inc. 426 U.S. 438, 449 (1976) (an objective standard of materiality is used in proxy statements, based upon the significance of omitted or misrepresented facts to a reasonable investor); SEC v. American Realty Trust, 429 F. Supp. 1148, 1170 (E.D. Va. 1977) (the basic test for materiality is whether a reasonable and prudent investor would attach importance to the facts misrepresented or omitted). *See also* Affiliated Ute Citizens v. United States, 406 U.S. 128, 153-54 (1972); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 384 (1970); SEC v. Texas Gulf Sulphur Co., 401 F.2d 833, 849 (2d Cir. 1968), *cert. denied,* 404 U.S. 1005 (1971).

[27] 4 NRCI at 487.

[28] *Id.* For a similar analysis of materiality under Rule 10b-5, 17 C.F.R. § 240.10b-5 (1978), see Jacobs, *What is a Misleading Statement or Omission Under Rule 10b-5?,* 42 FORDHAM L.

stage of the proceedings, however, when agency decision-making is imminent, all potentially relevant data must be supplied promptly to the NRC.[29]

Acknowledging its failure to furnish information concerning the chlorite seam to the NRC, VEPCO urged that omissions of material facts were not "statements" within the meaning of section 186.[30] Both the Atomic Safety and Licensing Board[31] and the NRC[32] held that in view of the Act's direct mandate with regard to public health and safety,[33] an applicant is accountable for omissions, as well as actual statements, of material facts which are important to a review of health and safety issues.[34] The Licensing Board[35] and the NRC[36] also reasoned that section 186 of the Atomic Energy Act is analogous to section 18 of the Securities Exchange Act of 1934[37] insofar as section 18 does not expressly prohibit omissions but has been construed for sound policy reasons, to reach omissions.[38] Furthermore, the NRC[39] stressed the similarities between the monitoring function of the

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REV. 243, 246-47 (1973) [hereinafter cited as Jacobs]. Rule 10b-5 makes it unlawul to employ any device to defraud, deceive or manipulate in connection with the purchase or sale of any security. Jacobs notes that the same standards of materiality and deception are not applied to all types of statements. Courts tolerate a lower standard of accuracy for misstatements or partial omissions in shorter, less formal statements drafted under the exigencies of time pressure. Thus proxy statements and registration statements are usually subject to much stricter scrutiny than press releases or letters to stockholders issued during a proxy fight or tender offer. *Id.*

[29] 4 NRCI at 487-88.

[30] 571 F.2d at 1291; 4 NRCI at 488.

[31] 2 NRCI at 508.

[32] 4 NRCI at 488.

[33] The 1954 Act specifically conditions the issuance of licenses for the construction or operation of nuclear facilities upon an adequate provision for the health and safety of the public. 42 U.S.C. §§ 2073(e)(7), 2099, 2133(b), 2134(a)-(d) (1976). Furthermore, the NRC is charged with formulating rules and regulations to insure the public health and safety. 42 U.S.C. §§ 2012(d), (e), 2013(d), 2014(v), (cc), 2051(a)(5), (d), 2061(b), 2073(b), 2093(b), 2201(b), (i), 2232(a) (1976).

[34] 2 NRCI at 508; 4 NRCI at 489. *But see* Virginia Elec. & Power Co., 3 NRCI 346, 361-62 (1976) ("statement" as used in section 186 connotes some affirmative representation and an omission cannot be construed as a "statement"). The NRC agreed with the Licensing Board and reinstated its holding that nondisclosures come within the meaning of section 186. *See* 4 NRCI at 488-93.

[35] 2 NRCI at 507-08, *citing* Caesars Palace Sec. Litigation, 360 F. Supp. 366, 386 n. 19 (S.D.N.Y. 1973).

[36] 4 NRCI at 490.

[37] 15 U.S.C. § 78r (1976).

[38] 4 NRCI at 490; *cf.* Caesars Palace Sec. Litigation, 360 F. Supp. 366, 386 n. 19 (S.D.N.Y. 1973) (an omission of material information from a document pursuant to a securid ties offering created a false and misleading statement just as surely as would the inclusion of incorrect information); Pennsylvania Cent. Sec. Litigation, 357 F. Supp. 869, 876 (E.D. Pa. 1973), *aff'd*, 494 F.2d 528 (3d Cir. 1974) (nondisclosure of material facts should be treated as material false statements). *See generally* Gann v. Bernzomatic Corp., 262 F. Supp. 301, 304 (S.D.N.Y. 1966); A. BECHT & MILLER, THE TEST OF FACTUAL CAUSATION IN NEGLIGENCE AND STRICT LIABILTY CASES, 21-43 (1961) (discussion of linguistic and legal problems arising in cases involving omissions); Hughes, *Criminal Omissions*, 67 YALE L.J. 590, 597-620 (1958).

[39] 4 NRCI at 490.

Atomic Energy Act of 1954, the Investment Advisors' Act of 1940,[40] and the 1933 and 1934 Securities Acts.[41] All four acts place a premium upon full disclosure of material information.[42]

The Fourth Circuit also addressed the question of intent and its relation to the full disclosure of material information required in Section 186. In affirming the NRC's holding, the Fourth Circuit emphasized that the purpose of the Atomic Energy Act is to protect the public by requiring a presentation of all pertinent information in a license application proceeding.[43] The NRC reasoned an applicant who was liable only for statements known to be false would be less likely to ensure that its agents were maintaining the highest standards in their work.[44] The less the applicant knew, the less its liability. Thus to allow innocent mistakes would place a premium on ignorance.[45] The Fourth Circuit accepted the NRC's argument that

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[40] 15 U.S.C. §§ 80b-1, 80b-3 (1976).

[41] *See, e.g.*, 15 U.S.C. §§ 78k(a), 78q(a), 78j(b), 78n(a), 78n(e), 78r(a) (1976).

[42] 4 NRCI at 490. The courts repeatedly have held that disclosure provisions designed to protect the public interest, such as in the area of securities offerings, are to be liberally construed in favor of full disclosure. In SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 186 (1963), for example, the Supreme Court held that the Investment Advisors' Act, 15 U.S.C. § 80b-1 to 21 (1976), requires full and frank disclosure of investment practices in order to insure equal access among investigators. The omission of a specific proscription against nondisclosures did not restrict the antifraud provisions of the Investment Advisors' Act. The Supreme Court reasoned that a broad remedial construction of the statute must encompass nondisclosures. *Id.; cf.* TSC Indus. Inc. v. Northway, Inc., 426 U.S. 438, 448 (1976) (full disclosure in proxy statements is intended not simply to insure that the transaction is fair, but also to enable shareholders to make an informed choice); Affiliated Ute Citizens v. United States, 406 U.S. 128, 151 (1972) (full disclosure of material information in connection with the purchase of any security is to be construed flexibly in order to effectuate a high standard of business ethic in the securities industry). *See generally* Mitchell v. Texas Gulf Sulphur Co., 446 F.2d 90, 97 (10th Cir.), *cert. denied*, 404 U.S. 1004 (1971); *see also* Jacobs, *supra* note 28, at 248-49 n.28.

[43] 571 F.2d at 1291. The hearing reports confirm that in passing the 1954 Act, the legislators were not concerned primarily with the culpability of the licensee. *Proposed Amendments to the Atomic Energy Act of 1946: Hearing Before the Joint Comm. on Atomic Energy*, 83d Cong., 2d Sess. 65, 113-14, 400-01 (1954). Paul W. McQuillen, Chairman of the Legal Committee, Dow Chemical-Detroit Edison and Associates Atomic Power Development Project, stated that sections 186 and 187 empowered the Atomic Energy Commission to amend or revoke licenses with virtually unlimited administrative discretion. *Id.* at 113-14. Similarly, Oscar M. Ruebhauser, Chairman of the Special Committee on Atomic Energy of the Association of the Bar of the City of New York, argued that section 186 would enable the Commission to revoke licenses "for reasons wholly beyond the control of the most diligent licensee." *Id.* at 400-01. The Joint Committee apparently was unresponsive to arguments that license revocation should be restricted to instance of willful or knowing false statements.

[44] 4 NRCI at 486.

[45] *Id.* Although the parties stipulated that VEPCO did not intentionally deceive the NRC, the chronology of facts suggests that VEPCO did in fact attempt to keep material information from the NRC. Small sheer faults were observed as early as 1968, and the chlorite seam was discovered in 1970. *See* text accompanying notes 13-18 *supra*. Nevertheless, VEPCO's consultants' reports and safety analysis reports repeatedly asserted that "the nearest known fault is several miles from the site" and "faulting of rock at the site is neither known nor is it suspected." 4 NRCI at 482-83. Perhaps the stipulation can be explained as a piece of trial strategy on the part of the North Anna Environmental Coalition and the NRC,

licensees must have every incentive to scrutinize their internal procedures thus insuring that their submissions to the NRC are complete and accurate. Accordingly, the court held that licensees were liable for any failure to disclose material information to the NRC, regardless of their intent.[46] Although neither the Fourth Circuit nor the NRC characterized its holdings as a strict liability decision, their focus on the purpose of the 1954 Act results in a strict liability standard whereby neither scienter nor negligence need be shown to create liability pursuant to section 186.[47]

To illustrate the focus on purpose and the resultant strict liability standard, the NRC noted that other varieties of legislation directed toward public well-being also have been interpreted to impose strict liability standards to insure compliance with federal regulations.[48] One of the most

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who preferred to have the controversy resolved in terms of a strict liability decision, rather than on grounds of VEPCO's culpability. Certainly the Fourth Circuit's holding that scienter need not be demonstrated pursuant to section 186 extends the application of the statute and the authority of the NRC to pursue license violations far more than a similar ruling based upon the licensee's guilty intent. To hold that scienter is required would necessitate litigation of the intent issue in every licensing proceeding. The Fourth Circuit decision mandates that scienter is no longer an issue.

[46] 571 F.2d at 1290-92; 4 NRCI at 486. 42 U.S.C. § 2011(a) (1976) states that "the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all times to the paramount objective of making the maximum contribution to the common defense and security." *See* X-Ray Eng'r Co., 1 AEC 553, 555 (1960). *See generally* Jacks, *supra* note 7, at 479; *see also* note 33 *supra*. Overwhelming congressional concern with virtually flawless power plant construction and design is evidenced by Congress' instruction to the NRC to conduct hearings at both the construction permit and licensing stages. Congress often prescribes hearing procedures but seldom directs when hearings must be conducted. *Id.*

[47] Strict liability offenses tentatively may be characterized as offenses in which the sole question is whether the defendant committed the act proscribed by the statute, regardless of intent. Wasserstrom, *Strict Liability in the Criminal Law*, 12 STAN. L. REV. 731, 733 (1960) [hereinafter cited as Wasserstrom]. Prosser notes that the strict liability statutes recognize no excuse for the violation committed, and neither reasonable ignorance nor proper care will avoid liability. W. PROSSER, LAW OF TORTS § 36 (4th ed. 1971) [hereinafter cited as PROSSER]. The Restatement (Second) of Torts states:

> (1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he had exercised the utmost care to prevent such harm.
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> (2) Such strict liability is limited to the kind of harm, the risk of which makes the activity abnormally dangerous.

RESTATEMENT (SECOND) OF TORTS § 519 (Tent. Draft. No. 10, 1964).

[48] 4 NRCI at 486-87; *cf.* United States v. International Minerals & Chem. Corp., 402 U.S. 558, 564-65 (1971) (improper transportation of acids); United States v. Freed, 401 U.S. 601, 607-10 (1971) (failure to register dangerous firearms); United States v. Dotterweich, 320 U.S. 277, 281 (1943) (distribution of adulterated and misbranded drugs); United States v. Balint, 258 U.S. 250, 252-54 (1922) (unlawful sale of narcotics without a written order); United States v. Chalaire, 316 F. Supp. 543, 548-49 (E.D. La. 1970) (unlawful sale of fireworks to children); State v. Lindberg, 125 Wash. 51, 215 P. 41, 44-47 (1923) (bank officer borrowing funds in excess of the statutory provision). *See generally* Blakely & Goldsmith, *Criminal Redistribution of Stolen Property: The Need for Law Reform*, 74 MICH. L. REV. 1512, 1590-91 (1976); O'Keefe, *Criminal Liability: Park Update*, 32 FOOD, DRUG, COSMETIC L.J. 392 (1977) [hereinafter cited as O'Keefe]; Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55, 62-70 (1933).

significant strict liability cases discussed by the NRC was *United States v. Park.*[49] In *Park,* the Supreme Court affirmed the conviction of a retail food chain president for his company's violations of the Federal Food, Drug, and Cosmetic Act, despite his insistence that he was not personally responsible for the violations.[50] The Court held that the defendant had the duty and authority either to prevent or to correct the illegal actions.[51] Furthermore, the law imposed an affirmative duty to insure that violations did not occur.[52] The Supreme Court reasoned that imposing liability upon food distributors and their agents who fail to investigate potential violations of the Food, Drug, and Cosmetics Act, promotes the public's interest in the purity of its food and thus effectuates the purpose of the statute.[53] The NRC stated that the public health consideration emphasized in *Park* applies at least with equal force in the nuclear power area, where the potential for catastrophe is considerable.[54]

Legislation designed to protect the public health and safety may forego conventional requirements of culpability.[55] The Supreme Court has acknowledged that individuals in an industrialized society are largely behind self-protection.[56] In the interest of society's well-being, the law has placed the burden of potential liability upon persons who stand in responsible positions in relation to a public danger.[57] In *Virginia Electric & Power Co. v. NRC,* the court determined that utilities engaged in the construction and operation of nuclear facilities are to be held strictly liable for any failure to disclose material information to the NRC. The Fourth Circuit, in its affirmation of the NRC's "stringent interpretation" of section 186, clearly agreed with the NRC's analysis.[59]

The Fourth Circuit also affirmed the imposition of a $32,500 fine against VEPCO.[60] The North Anna Coalition argued that the penalty was so mild as to constitute an abuse of administrative discretion.[61] The court, however, determined that in view of VEPCO's lack of intent to deceive the NRC, the fine was reasonable.[62] Moreover, a commission's interpretation

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[49] 421 U.S. 658 (1975). *See generally* O'Keefe, *supra* note 48, at 392.

[50] 421 U.S. at 671; *see* 21 U.S.C. § 331(k) (1976).

[51] 421 U.S. at 673-74.

[52] *Id.*

[53] *Id.* at 671.

[54] 4 NRCI at 487.

[55] PROSSER, *supra* note 47, at § 36; Wasserstrom, *supra* note 47, at 733. *See generally* note 48 *supra.* For other decisions construing violations of the Federal Food, Drug, and Cosmetic Act, see United States v. Cassaro, Inc., 443 F.2d 153 (1st Cir. 1971); United States v. Alfred M. Lewis, Inc., 431 F.2d 303 (9th Cir.), *cert. denied,* 400 U.S. 878 (1970). *See also* O'Keefe, & Isley, Dotterweich, *Revisited-Criminal Liability Under the Federal Food, Drug and Cosmetic Act,* 31 FOOD, DRUG, COSMETIC L.J. 69, 79 (1976).

[56] United States v. Dotterweich, 320 U.S. 277, 281 (1943). *See also* United States v. Balint, 258 U.S. 250 (1922).

[57] *See* note 47 *supra.*

[58] 4 NRCI at 491.

[59] 571 F.2d at 1291.

[60] *Id.* at 1291-92.

[61] *Id.* at 1290.

[62] *Id.* at 1291-92.